



City of Portsmouth
Planning Department
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Portsmouth, NH
(603)610-7216

Memorandum

To: Planning Board

From: Peter Stith, AICP
Planning Manager

Date: March 14, 2025

Re: Recommendations for the March 20, 2025 Planning Board Meeting

I. APPROVAL OF MINUTES

A. Approval of the February 20, 2025 and February 27, 2025 meeting minutes.

Planning Department Recommendation

1) Board members should determine if the draft minutes include all relevant details for the decision-making process that occurred at the February 20, 2025 and February 27, 2025 meetings and vote to approve meeting minutes with edits if needed.

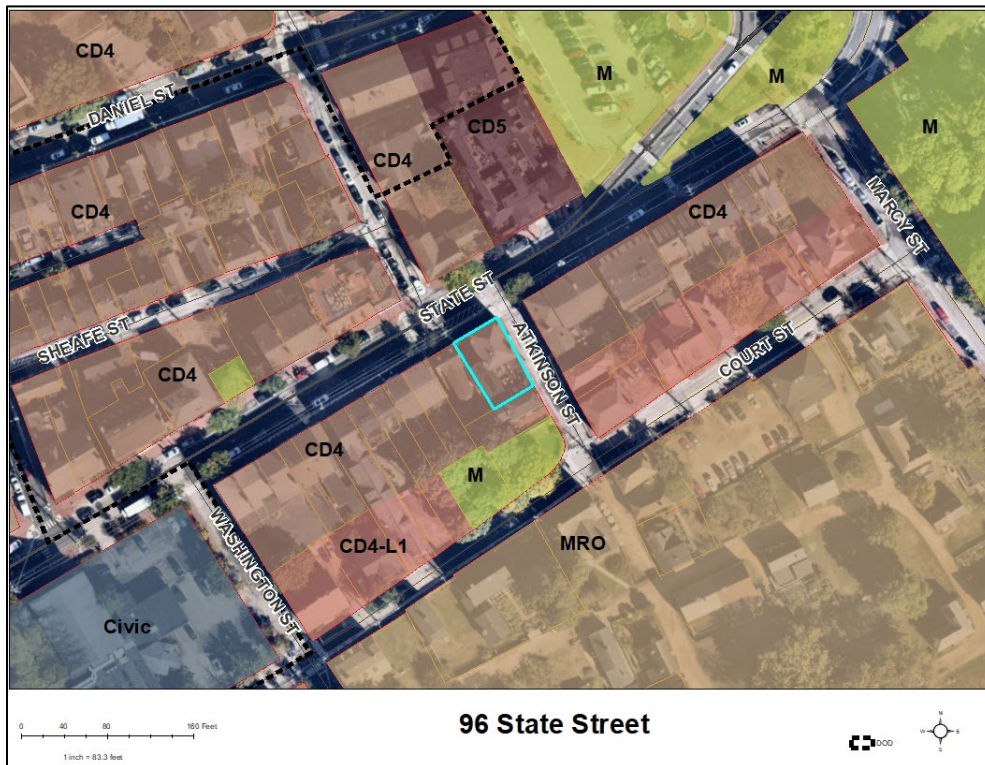
II. PUBLIC HEARINGS – NEW BUSINESS

The Board's action in these matters has been deemed to be quasi-judicial in nature. If any person believes any member of the Board has a conflict of interest, that issue should be raised at this point or it will be deemed waived.

- A.** The request of **96 Sate Street LLC (Owner)**, for property located at **96 State Street** requesting a parking Conditional Use Permit from Section 10.1112.14 to allow zero (0) parking spaces where thirty (30) are required. Said property is located on Assessor Map 107 Lot 52 and lies within the Character District 4 (CD-4) and Historic District.

Project Background

The applicant is seeking a Conditional Use Permit as a result of a change of use to convert part of the restaurant and a prior commercial space into a second apartment. An addition is proposed to the second and third floors which will result in a reduction in space for the existing restaurant and will allow for the second apartment. The lot does not have space to provide any off-street parking. The parking demand will decrease with the change of use from commercial and restaurant space to residential. The property is outside of the Downtown Overlay District (DOD); therefore, parking is required for all uses and parking must come into conformance with the Ordinance when there is a change of use on the property.



Project Review, Discussion, and Recommendations

The project was before the Technical Advisory Committee and Historic District Commission. See below for details.

Historic District Commission

The Historic District Commission granted a certificate of approval for the addition at their regular meeting of Wednesday, September 4, 2024.

Technical Advisory Committee

The applicant began the site plan review process with TAC at their February 11, 2025 meeting to review the parking demand analysis as required under Section 10.1112.141. There were questions about the square footage and with the proposed additions to the second and third floor. The applicant was instructed to review and confirm the actual square footage allocation per use and submit to the DPW prior to submitting to Planning Board. The applicant revised the parking demand analysis based on comments from TAC and confirmed the square footage in the updated materials for the Planning Board.

Planning Department Recommendation

Parking Conditional Use Permit

1) *Vote to find that the Conditional Use Permit Application meets the requirements set forth in Section 10.1112.14 of the Ordinance and adopt the findings of fact as presented.*

(Alt.) Vote to find that the Conditional Use Permit Application meets the requirements set forth in Section 10.1112.14 of the Ordinance and adopt the findings of fact as amended.

2) *Vote to grant the Conditional Use Permit as presented.*

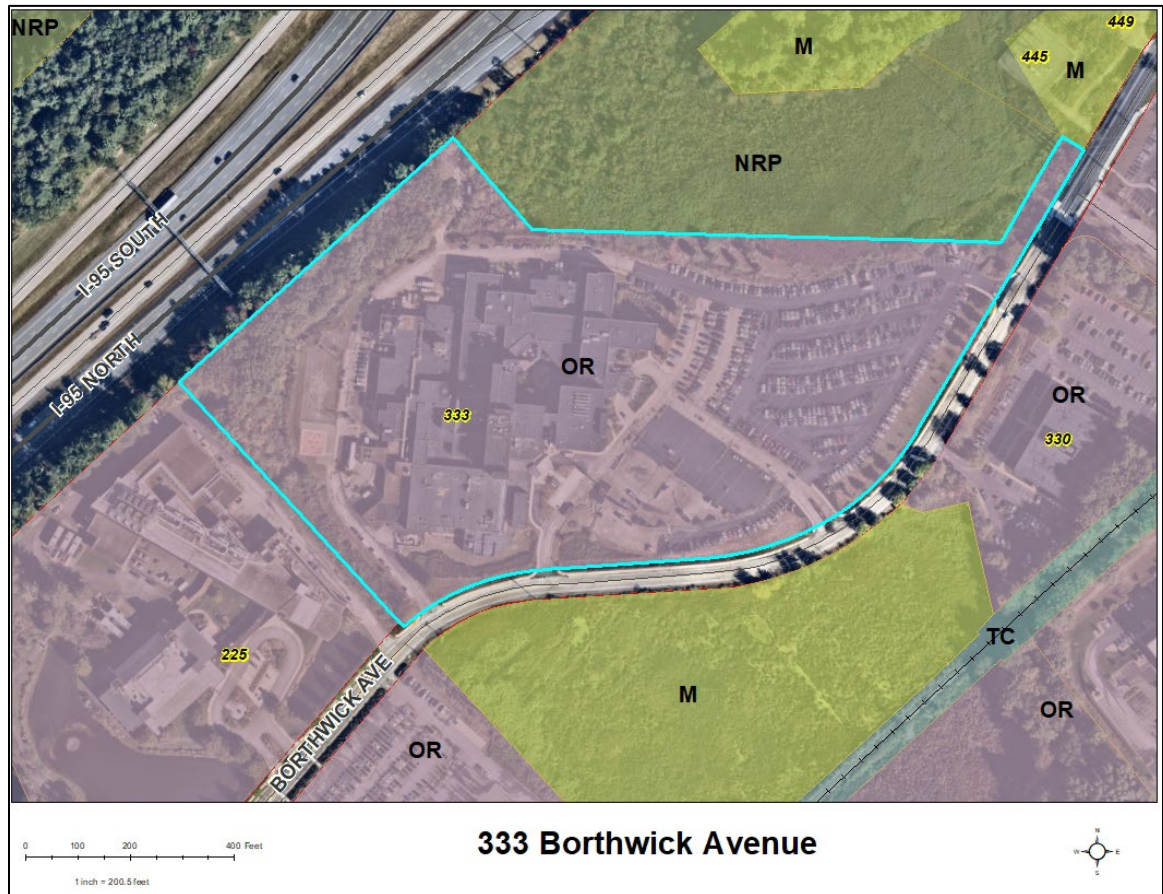
II. PUBLIC HEARINGS – NEW BUSINESS

The Board's action in these matters has been deemed to be quasi-judicial in nature. If any person believes any member of the Board has a conflict of interest, that issue should be raised at this point or it will be deemed waived.

- A. The request of **HCA Health Services of NH INC, dba Ducharme McMillen and Associates (Owner)**, for property located at **333 Borthwick Avenue** requesting a Wetland Conditional Use Permit in accordance with Section 10.1017.50 for the removal of 3 existing 24" culverts and replacement with a Box Culvert. Said property is located on Assessor Map 240 Lot 2-1 and lies within the Office Research (OR) District.

Project Background

The applicant is proposing to replace three existing culvert pipes with a concrete box culvert structure to enhance flow in the drainage channel behind the hospital.



Staff Analysis – Wetland CUP

According to Article 10 Section 10.1017.50 the applicant must satisfy the following conditions for approval of this utility project.

1. The land is reasonably suited to the use activity or alteration.

The majority of the work area is already disturbed wetland with an existing culvert and roadway crossing. The replacement of this culvert and associated repair work proposes to improve the flow of water through this stream.

2. There is no alternative location outside the wetland buffer that is feasible and reasonable for the proposed use, activity or alteration.

The proposed location is where an existing culvert system and roadway are located today. While the proposal is a direct wetland impact, the post-construction culvert system is proposed to fix current sedimentation and flow issues that exist today.

3. There will be no adverse impact on the wetland functional values of the site or surrounding properties.

This replacement project will have direct wetland impacts but construction activities are proposed to minimize direct impacts to the stream during the replacement project.

4. Alteration of the natural vegetative state or managed woodland will occur only to the extent necessary to achieve construction goals.

This proposal shows work involving the stream bank and utilizing erosion control blankets. The applicant proposes seeding the banks for stabilization with a conservation mix. The applicant should provide a maintenance plan to ensure the establishment of the seed mix and for long-term vegetation maintenance that would consider aspects such as sustaining wildlife habitat and maintaining sediment trapping.

5. The proposal is the alternative with the least adverse impact to areas and environments under the jurisdiction of this section.

This proposal appears to be the least adverse impact to the wetland as the alternative to increasing flow would be to dredge most of the length of the stream. This proposal limits the permanent impacts as well as the temporary impacts compared to dredging and will hopefully solve the flow issues within this wetland.

6. Any area within the vegetated buffer strip will be returned to a natural state

to the extent feasible.

The applicant is proposing temporary disturbance of the streambank for construction activities. The applicant has indicated areas on plan that will receive conservation seed mix/New England wet mix.

Conservation Commission

The applicant was before the Conservation Commission at its regularly scheduled meeting of Wednesday, January 8, 2025 and the Commission voted unanimously to recommend approval with the following conditions:

- 1. Applicant shall include a plan for invasive species management in the proposed disturbance area. Included in this plan should be best management practices for monitoring, removal and disposal.*
- 2. Applicant shall ensure wildlife notes are consistent: Sheet C2-00 Wildlife Note #6 shall be included in Sheet C3-01 Erosion Control Blanket Notes and in Sheet C3-00 Erosion Control Notes and Erosion Control Legend.*
- 3. The use of fertilizer is prohibited within this jurisdictional wetland and wetland buffer per section 10.1018.24 of the City of Portsmouth Zoning Ordinance. Please note this on plans.*
- 4. Applicant shall note on plans the location of wetland boundary markers. These shall be permanently installed prior to the start of construction between the edge of pavement and the top of the stream bank every 50' to deter foot traffic in the sensitive area.*
- 5. Applicant shall install two 'no snow storage' signs along the swale behind the hospital. Please indicate proposed locations on plans.*
- 6. Applicant shall monitor the success of proposed seeded areas and prepare a memo to be sent to the Portsmouth Planning & Sustainability Department annually for the first two years after planting/seeding. If after two years, the seeded areas show a survival rate of less than 80%, applicant will replant/reseed.*
- 7. Applicant shall confirm that the proposed box culvert will meet 50-year design storm requirements.*

The applicant has addressed the Conservation Commission's recommended conditions in the Planning Board application or they have been added to the conditions below.

Planning Department Recommendation
Wetland Conditional Use Permit

1) *Vote to find that the Conditional Use Permit Application meets the requirements set forth in Section 10.1017.50 of the Ordinance and adopt the findings of fact as presented.*

(Alt.) Vote to find that the Conditional Use Permit Application meets the requirements set forth in Section 10.1017.50 of the Ordinance and adopt the findings of fact as amended.

2) *Vote to grant the Conditional Use Permit with the following conditions:*

2.1) *Applicant shall monitor the success of proposed seeded areas and prepare a memo to be sent to the Portsmouth Planning & Sustainability Department annually for the first two years after planting/seeding. If after two years, the seeded areas show a survival rate of less than 80%, applicant will replant/reseed.*

2.2) *In order to maintain the existing stormwater flow, an easement shall be provided to allow flowage rights and to allow the City to remove sediment, if necessary, from the stormwater channel. The applicant will work with the Legal Department to finalize the easement language.*

III. PRELIMINARY CONCEPTUAL CONSULTATION

- A. The request of **Brora LLC (Owner)**, for property located at **0 Dunlin Way** **requesting** Site Plan Review Approval to construct three (3), six (6) story multifamily residential buildings consisting of approximately 270 dwelling units with associate site improvements. Said property is located on Assessor Map 213 Lot 12 and lies within the Office Research (OR) District and Gateway Neighborhood Overlay District (GNOD). (LUPD-25-3)

The applicant has provided preliminary site plans located in the newly adopted Gateway Neighborhood Overlay District (GNOD). The applicant will be seeking incentives in the GNOD to build six-story buildings with up to 120 dwelling units, which will require one of three options for workforce housing; construction of units, payment in-lieu of or a land transfer to the City.

As authorized by NH [RSA 676:4,II](#), the Site Plan Regulations require preliminary conceptual consultation for certain proposals, including (1) the construction of 30,000 sq. ft. or more gross floor area, (2) the creation of 20 or more dwelling units, or (3) the construction of more than one principal structure on a lot. Preliminary conceptual consultation precedes review by the Technical Advisory Committee.

Preliminary conceptual consultation is described in the state statute as follows: *[Preliminary conceptual consultation] ... shall be directed at review of the basic concept of the proposal and suggestions which might be of assistance in resolving problems with meeting requirements during final consideration. Such consultation shall not bind either the applicant or the board and statements made by planning board members shall not be the basis for disqualifying said members or invalidating any action taken. The board and the applicant may discuss proposals in conceptual form only and in general terms such as desirability of types of development and proposals under the master plan.*

The preliminary conceptual consultation phase provides the Planning Board with an opportunity to review the outlines of a proposed project before it gets to detailed design (and before the applicant refines the plan as a result of review by the Technical Advisory Committee and public comment at TAC hearings). In order to maximize the value of this phase, Board members are encouraged to engage in dialogue with the proponent to offer suggestions and to raise any concerns so that they may be addressed in a formal application. Preliminary conceptual consultation does not involve a public hearing, and no vote is taken by the Board on the proposal at this stage. Unlike Design Review, completion of Preliminary Conceptual Consultation does not vest the project to the current zoning.

IV. DESIGN REVIEW APPLICATION ACCEPTANCE

- A. **361 Hanover Steam Factory, LLC (Owner)**, for property located at **361 Hanover Street**, requesting Design Review application acceptance for the construction of new residential buildings along Hanover Street and the renovation of the existing building with associated site improvements. Said property is located on Assessor Map 138 Lot 63 and lies within the Character District 5 (CD5), Downtown Overlay District (DOD), and North End Incentive Overlay District (NEIOD). (LUPD-25-2)

Description

This item is a request for Design Review under the Site Plan Review Regulations. Under the State statute (RSA 676:4,II), the Design Review phase is an opportunity for the Planning Board to discuss the approach to a project before it is fully designed and before a formal application for Site Plan Review is submitted. The Design Review phase is not mandatory and is nonbinding on both the applicant and the Planning Board.

The applicant was first before the Board in April of 2024 for Preliminary Conceptual and Design Review for a by-right proposal. Design Review was granted for the by-right proposal on May 16, 2024. The applicant returned to Planning Board for Preliminary Consultation on July 18, 2024 for an alternate plan that required several variances from the Board of Adjustment, which were recently granted on February 18, 2025. The applicant is now requesting Design Review for the alternate plan.

Although the State statute calls this pre-application phase “design review,” it does not encompass review of architectural design elements such as façade treatments, rooflines and window proportions. Rather, it refers to site planning and design issues such as the size and location of buildings, parking areas and open spaces on the lot; the interrelationships and functionality of these components, and the impact of the development on adjoining streets and surrounding properties.

The process as outlined in Section 2.4.3 of the Site Review regulations is that the Board first has to determine that the request for design review includes sufficient information to allow the Board to understand the project and identify potential issues and concerns, and, if so, vote to accept the request and schedule a public hearing. *Completion of the design review process also has the effect of vesting the project to the current zoning.*

Design review discussions must take place in a public hearing. At the conclusion of the public hearing process, the Board makes a determination that the design review process for the application has ended.

Planning Department Recommendation

1) Vote to accept the application for Design Review and schedule a public hearing at the April 17, 2025 Planning Board meeting.

V. CITY COUNCIL REFERRALS [NOTE: ANY REFERRALS REQUIRING PUBLIC HEARING SHOULD BE INCLUDED ABOVE]

A. 25 Sims Avenue – Involuntary Merger Reversal

Background

Applicant Michael Roylos has submitted an application/request to the City for Restoration of Involuntarily Merged Lots for the property located at 25 Sims Avenue, Portsmouth, New Hampshire; Map/Block/Lot number 0233-0071-0000, located in the Single Residence B (SRB) zoning district. The applicant has provided preliminary documentary support for his request. Additional research will be required to verify the documentary record.



RSA 674:39-aa requires the City Council to vote to restore “to their premerger status” any lots or parcels that were “involuntarily merged” by municipal action for zoning, assessing, or taxation purposes without the consent of the owner. Unlike all other lot divisions, there is no statutory role for the Planning Board in this process nor is there any requirement for the City to hold a public hearing. However, in Portsmouth the City Council has historically referred such requests to the Planning Board for a recommendation.

The statute defines “voluntary merger” and “voluntarily merged” to include “any overt action or conduct that indicates an owner regarded said lots as merged such as, but not limited to, abandoning a lot line” (RSA 674:39-aa, I). It is therefore the City Council’s responsibility to determine whether a merger was voluntary (i.e., requested by a lot owner) or involuntary (implemented by the City without the owner’s consent). If the merger was involuntary, the Council must vote to restore the lots to their premerger status. Following such a vote, the City GIS and Assessing staff will update zoning and tax maps accordingly. It will then be up to the owner to take any further action to confirm the restoration to premerger status, such as

recording a plan at the Registry of Deeds.

It is important to note that the granting of a request to restore lots to their premerger status does not mean that the resulting lots will be buildable or, if already developed, will conform to zoning. The statute states that “The restoration of the lots to their premerger status shall not be deemed to cure any non-conformity with existing land use ordinances” (RSA 674:39-aa, V).

For example, the restored lots may not comply with current zoning requirements for lot area, frontage and depth, and the re-establishment of a lot line between any two pre-merger lots may introduce a new nonconformity with respect to maximum allowed building coverage or a minimum required side yard where a building already exists on one of the premerger lots. In such cases, the owner(s) of the applicable lot(s) would have to apply to the Zoning Board of Adjustment for the necessary variances to restore zoning compliance or to allow future development.

The City Assessor reviewed the request and initially recommended denial based on the initial request to restore “the lots”, which included all three. The applicant indicated they only wanted to unmerge Lot 44, which is vacant, and provided and emailed an amended request. The Assessor supplemented her memo with a recommendation to unmerge Lot 44 only.

Planning Department Recommendation

Vote to recommend City Council restore Lot 44 only.

VI. OTHER BUSINESS

A. Coliving Amendments

After the February 27th work session, staff reviewed the draft coliving amendments with the Fire Department, Inspections Department and Legal Department and have incorporated their input into the latest version.

Planning Department Recommendation

1) Vote to recommend the City Council hold first reading on the proposed zoning amendments as presented.

Or

1) Vote to recommend the City Council hold first reading on the proposed zoning amendments as amended. (pending and Planning Board edits/revisions)

B. 581 Lafayette Road – Requesting a 1-Year extension to the Site Plan Review and Conditional Use Permit approvals granted on May 16, 2024.

Project Background

On May 16, 2024, the Planning Board granted approval for Site Plan and a Conditional Use Permit for the project referenced above. The applicant is working on post approval conditions in order to obtain a building permit. The applicant has yet to obtain a building permit and has requested the one-year extension per Section 2.14 of the Site Plan Regulations below.

Section 2.14 of the Site Plan regulations allows for an extension:

Section 2.14 Approval Expiration and Extension

1. Site plan approval by the Planning Board shall expire unless used (obtain a Building Permit) within a period of one (1) year from the date granted.
2. The Planning Board may, for good cause shown, extend such period by as much as one (1) year if requested and acted upon prior to the expiration date.

Conditional Use Permit approval may be extended for an additional one year as follows:

10.246 Expiration and Abandonment of Approvals

- 10.246.10 A conditional use permit shall expire unless a **building permit** is obtained within a period of one year from the date granted, unless otherwise stated in the conditions of approval. The **Board** may, for good cause shown, extend such period by as much as one year if such extension is requested and acted upon prior to the expiration date. No other extensions may be requested.

Planning Department Recommendation

- 1) *Vote to grant a one-year extension to the Planning Board Approval of the Site Plan and Conditional Use Permit to May 16, 2025.*

- C. **60 Pleasant Point Drive** – Requesting a one-year extension to the Wetland Conditional Use Permit granted on December 21, 2023.

Background

The Planning Board granted a Wetland CUP on December 21, 2023. A letter requesting a one-year extension was uploaded to the online application on November 18, 2024, however the request was not placed on the December agenda. With any submission, a hard copy of the application or request is required and staff did not receive a hard copy of this request, thus the reason is that this request was overlooked and not put before the Board for consideration and the approval technically expired on December 21, 2024. The applicant expects to submit a building permit within the month. Without the extension, the applicant would have to seek a new CUP from the Planning Board and Conservation Commission. However, due to the fact the request was submitted prior to the expiration, the Board could consider granting the extension to December 21, 2025. In some cases, an extension request is received prior to the expiration but the next available meeting falls after the expiration date. The past practice for any Board has been to still consider the request, since it was submitted prior to the expiration.

10.246 Expiration and Abandonment of Approvals

10.246.10 A conditional use permit shall expire unless a **building permit** is obtained within a period of one year from the date granted, unless otherwise stated in the conditions of approval. The **Board** may, for good cause shown, extend such period by as much as one year if such extension is requested and acted upon prior to the expiration date. No other extensions may be requested.

Planning Department Recommendation

- 1) *Vote to grant a one-year extension to the Wetland Conditional Use Permit to December 21, 2025.*

D. Chairman's Updates and Discussion Items

E. Board Discussion of Regulatory Amendments and Other Matters

VII. ADJOURNMENT