

# Findings of Fact | Parking Conditional Use Permit

## City of Portsmouth Planning Board

Date: March 20, 2025

Property Address: 96 State Street

Application #: LU-25-18

Decision:  Approve     Deny     Approve with Conditions

### Findings of Fact:

Per RSA 676:3, I: The local land use board shall issue a final written decision which either approves or disapproves an application for a local permit and make a copy of the decision available to the applicant. **The decision shall include specific written findings of fact that support the decision. Failure of the board to make specific written findings of fact supporting a disapproval shall be grounds for automatic reversal and remand by the superior court upon appeal, in accordance with the time periods set forth in RSA 677:5 or RSA 677:15, unless the court determines that there are other factors warranting the disapproval.** If the application is not approved, the board shall provide the applicant with written reasons for the disapproval. If the application is approved with conditions, the board shall include in the written decision a detailed description of all the conditions necessary to obtain final approval.

### Parking Conditional Use Permit

10.1112.14 The Planning Board may grant a conditional use permit to allow a building or use to provide less than the minimum number of off-street parking spaces required by Section 10.1112.30, Section 10.1112.61, or Section 10.1115.20, as applicable, or to exceed the maximum number of off-street parking spaces allowed by Section 10.1112.51.

	<b>Parking Conditional Use Permit 10.1112.14 Requirements</b>	<b>Finding (Meets Criteria/Requirement)</b>	<b>Supporting Information</b>
<b>1</b>	10.1112.141 An application for a conditional use permit under this section shall include a parking demand analysis, which shall be reviewed by the City's Technical Advisory Committee prior to submission to the Planning Board, demonstrating that the proposed number of off-street parking spaces is sufficient for the proposed use.	<b>Meets</b>  <b>Does Not Meet</b>	<ul style="list-style-type: none"> <li>The Applicant submits the parking demand analysis prepared by Altus Engineering, revised February 20, 2025. Altus Engineering has determined that forty-six (46) off street parking spaces are required by the Ordinance for the existing uses. The off-street parking requirement for the residential conversion of the second floor as proposed is thirty (30) spaces, which constitutes a 35% reduction in required off-street parking spaces. The Applicant met with the City's Technical Advisory Committee on February 11, 2025 and incorporated the Committee's recommendations into the revised Parking Demand Analysis.</li> </ul>
<b>2</b>	10.1112.142 An application for a conditional use permit under this section shall identify permanent evidence-based	<b>Meets</b>  <b>Does Not Meet</b>	<ul style="list-style-type: none"> <li>The conversion of the second floor of the building to a residential apartment for the owners and use of the third floor as housing for employees of the</li> </ul>

	<b>Parking Conditional Use Permit 10.1112.14 Requirements</b>	<b>Finding (Meets Criteria/Requirement)</b>	<b>Supporting Information</b>
	<p>measures to reduce parking demand, including but not limited to provision of rideshare/microtransit services or bikeshare station(s) servicing the property, proximity to public transit, car/van-pool incentives, alternative transit subsidies, provisions for teleworking, and shared parking on a separate lot subject to the requirements of 10.1112.62.</p>		<p>restaurant will reduce current on-street parking demand as indicated in the Parking Demand Analysis. The owners and employees of the business that own a vehicle and reside in the residential units will have convenient access to overnight public parking options such as the garage on High Hanover Street and the 72-hour municipal parking lot on Parrott Avenue. There will be less employees commuting to work on a daily basis. This will eliminate the need to utilize on- street parking spaces downtown or in the residential neighborhoods during peak hours of the day, The Property is conveniently situated directly on the COAST bus route, both reducing the need for patrons of the restaurant to park and creating convenient access to the employees residing on the upper floors to public transit.</p>
<p><b>3</b></p>	<p>10.1112.143 The Planning Board may grant a conditional use permit only if it finds that the number of off-street parking spaces required or allowed by the permit will be adequate and appropriate for the proposed use of the property. In making this determination, the Board may accept, modify or reject the findings of the applicant's parking demand analysis.</p>	<p><b>Meets Does Not Meet</b></p>	<ul style="list-style-type: none"> <li>The residential conversion of the second and third floors of the building reduces total parking demand based on the requirements set forth in the Ordinance and ITE Parking Generation Manual, Edition 6. The Property does not have any on-site parking nor does the potential to create any. If the entire building were to continue to be utilized as a restaurant or for other commercial purposes, the parking demand would be greater than it is with the residential conversion of the second floor, A restaurant use requires one (1) space per 100 sq. ft. of GFA. Section 10.1112.30. Even if the third floor was not considered, the parking demand based on the first and second floors alone would be forty-four (44) spaces. The residential conversion of the second floor reduces allocated restaurant space to 2,625 sq. ft. GFA, resulting in a reduced parking requirement of thirty (30) off-street spaces. Based on the ITE Parking Generation Manual (6th Edition), the parking demand is reduced from eighty-two (82) spaces to fifty-one (51).</li> </ul>

	<b>Parking Conditional Use Permit 10.1112.14 Requirements</b>	<b>Finding</b> (Meets Criteria/Requirement)	<b>Supporting Information</b>
4	10.1112.144 At its discretion, the Planning Board may require more off-street parking spaces than the minimum number requested by the applicant, or may allow fewer spaces than the maximum number requested by the applicant.	<p style="text-align: center;"><b>Meets</b></p> <p style="text-align: center;"><b>Does Not Meet</b></p>	
5	<b><u>Other Board Findings:</u></b>		
6	<b><u>Additional Conditions of Approval:</u></b>		

DRAFT

**BY: VIEWPOINT & HAND DELIVERY**

March 10, 2025

City of Portsmouth  
Attn: Peter Stith, Planner  
Planning Board  
1 Junkins Avenue  
Portsmouth, NH 03801

**RE: REVISION to Conditional Use Permit Application of 96 State LLC  
96 State Street, Portsmouth (Tax Map 107, Lot 52)**

Dear Peter,

Enclosed please find an update to the Conditional Use Permit Narrative and Parking Demand Analysis, originally submitted on behalf of 96 State LLC on February 25, 2025. The revisions to the materials were necessitated by an error in the square footage of the building shown in the existing space allocation of the Parking Demand Analysis. Correction of the square footage of the building resulted in changes to the calculation of the existing parking stall requirements. The updated CUP Narrative submitted herewith has been revised to show the updated calculations.

Please replace the CUP Narrative and Parking Demand Analysis submitted on February 25, 2025 with these two documents. In all other respects, the application remains unchanged.

Should you have any questions or concerns regarding the application materials, do not hesitate to contact me at your convenience.

Sincerely,



Derek Durbin, Esq.

**CITY OF PORTSMOUTH PLANNING BOARD  
CONDITIONAL USE PERMIT APPLICATION****96 State LLC (“Applicant”)  
96 State Street  
Portsmouth, NH 03801  
Tax Map 107, Lot 52****PARKING CUP NARRATIVE****Introduction**

The Applicant, 96 State LLC, owns the Property at 96 State Street in Portsmouth, identified on Tax Map 107 as Lot 52 (the “Property”). The Property is a 3,049 square foot parcel of land that contains a three-story commercial building. The Property is located within Character District 4 and is adjacent to but not located within the Downtown Overlay District. The ground and second floors of the building are occupied by the restaurant, Domo, which has been a staple of Portsmouth for the past decade. The top third floor of the building is presently used as housing. In the past, the third floor contained a spa.

The Applicant is seeking to construct a small addition on the second and third floors to fill in empty space above a portion of the first floor. The added space would consist of 575 sq. ft. on the second floor and 350 sq. ft. on the third floor. The Applicant intends to convert the expanded second floor of the building from the present restaurant use to a residential use. The expanded third floor would remain a residential use. There would be one apartment unit of approximately 2,315 sq. ft. Gross Floor Area (“GFA”) on the second floor and a separate apartment unit of approximately 2,085 sq. ft. GFA on the third floor. The second-floor apartment would be occupied by the owners of the restaurant. The third-floor apartment would be used for employee housing. As the City is acutely aware, there is very little affordable housing for restaurant workers and others of a similar income bracket in the City. The expansion and conversion of the two upper floors to a residential use would help to alleviate that issue and help the Applicant to better retain employees over the long-term.

The Property has no designated off-street parking spaces but is located centrally downtown on State Street, which is lined with on-street parallel parking. Additionally, there is a small public parking lot between Scott Avenue and Dutton Avenue, along with the High-Hanover parking garage within 0.25 miles and the Parrott Avenue municipal lot within 0.5 miles. Additional overnight parking is available on Washington Street and throughout the South End area. The Property has a rear alley that has been mostly used as a loading area and for tandem parking for the owners and employees of the restaurant, although it does not meet the City’s standards for either use.

Due to the lack of parking spaces on-site, the Applicant seeks a Conditional Use Permit (“CUP”) from the Planning Board to allow zero (0) off-street parking spaces where the minimum



required by Section 10.1112.30 of the Portsmouth Zoning Ordinance (the “Ordinance”) for the proposed use is thirty (30). Based on the existing use of the Property, the required number of off-street spaces is forty-six (46). The conversion of the second floor to residential use results in an overall decreased parking demand upon the Property.

### **Off-Street Parking Ordinance Criteria**

Section 10.1112.14 of the Ordinance allows the Planning Board to grant a CUP to allow a building or use to provide less than the minimum number of off-street parking spaces required by Section 10.1112.30, Section 10.1112.61 or Section 10.1115.20, as applicable, or to exceed the maximum number of off-street parking spaces allowed by Section 10.1112.51. The applicable minimum off-street parking requirements relative to the Property are as set forth in Sections 10.1112.31, 10.1112.321 and 10.1112.60, below.

**10.1112.31 Parking Requirements for Residential Uses**  
Dwelling Unit Floor Area over 750 sq. ft.: 1.3 spaces per unit

**10.1112.321 Parking Requirements for Nonresidential Uses**  
All eating and drinking places: 1 space per 100 s.f. GFA

**10.1112.60 Shared Parking:** Developments that contain a mix of uses on the same parcel shall reduce the number of off-street parking spaces in accordance with the methodology set forth in Section 10.1112.61. The Applicant notes, however, that using the methodology set forth in that Section does not result in a reduced number of minimum parking spaces for the Property because the residential and restaurant uses set forth in the table share the same maximum parking occupancy rates for the weekday and weekend evening periods.

### **Conditional Use Criteria**

*Section 10.1112.141: An application for a conditional use permit under this section shall include a parking demand analysis, which shall be reviewed by the City’s Technical Advisory Committee prior to submission to the Planning Board, demonstrating that the proposed number of off-street parking spaces is sufficient for the proposed use.*

The Applicant submits the parking demand analysis prepared by Altus Engineering, revised February 20, 2025. Exhibit A (the “Parking Demand Analysis”). Altus Engineering has determined that forty-six (46) off street parking spaces are required by the Ordinance under the existing uses. The off-street parking requirement for the residential conversion of the second floor as proposed by the Applicant is thirty (30) spaces, which constitutes a 35% reduction in required off-street parking spaces. *See Exhibit A.* The Applicant met with the City’s Technical Advisory Committee on February 11, 2025 and incorporated the Committee’s recommendations into the revised Parking Demand Analysis submitted herewith.

*Section 10.1112.142: An application for a conditional use permit under this section shall identify permanent evidence-based measures to reduce parking demand, including but not limited to provision of rideshare/microtransit services or bikeshare station(s) servicing the property,*

*proximity to public transit, car/van-pool incentives, alternative transit subsidies, provisions for teleworking, and shared parking on a separate lot subject to the requirements of 10.1112.62.*

The conversion of the second floor of the building to a residential apartment for the owners and use of the third floor as housing for employees of the restaurant will reduce current on-street parking demand as indicated in the Parking Demand Analysis prepared by Altus Engineering. *See Exhibit A.* The owners and employees of the business that own a vehicle and reside in the residential units will have convenient access to overnight public parking options such as the garage on High Hanover Street and the 72-hour municipal parking lot on Parrott Avenue. There will be less employees commuting to work on a daily basis. This will eliminate the need to utilize on-street parking spaces downtown or in the residential neighborhoods during peak hours of the day. The Property is conveniently situated directly on the COAST bus route, both reducing the need for patrons of the restaurant to park and creating convenient access to the employees residing on the upper floors to public transit. For the foregoing reasons, the number of off-street parking spaces requested with the Applicant's CUP permit application will be appropriate for the proposed use of the Property.

*Section 10.1112.143: The Planning Board may grant a conditional use permit only if it finds that the number of off-street parking spaces required or allowed by the permit will be adequate and appropriate for the proposed use of the property. In making this determination, the Board may accept, modify or reject the findings of the applicant's parking demand analysis.*

The residential conversion of the second and third floors of the building reduces total parking demand based on the requirements set forth in the Ordinance and ITE Parking Generation Manual, Edition 6. *See Exhibit A.* It is important to recognize that the Property does not have any on-site parking nor does the potential exist to create any. If the entire building were to continue to be utilized as a restaurant or for other commercial purposes, the parking demand would be greater than it is with the residential conversion of the second floor. A restaurant use requires one (1) space per 100 sq. ft. of GFA. Section 10.1112.30. Even if the third floor was not considered, the parking demand based on the first and second floors alone would be forty-four (44) spaces (based on 4,365 sq. ft. GFA, rounded up in accordance with Section 10.1112.22). The residential conversion of the second floor reduces allocated restaurant space to 2,625 sq. ft. GFA, resulting in a reduced parking requirement of thirty (30) off-street spaces. Based on the ITE Parking Generation Manual (6th Edition), the parking demand is reduced from eighty-two (82) spaces to fifty-one (51). *See Exhibit A.*

Due to the lack of off-street parking, the Property relies primarily on surrounding public parking options along State Street and surrounding residential streets. The reduction in the size of the restaurant and more intensive use associated with it will reduce the demand for off-street parking needs, particularly during peak hours of the day.

Respectfully Submitted,

96 State Street, LLC

By and Through His Attorneys,  
Durbin Law Offices PLLC

Dated: March 10, 2025

By:



Darcy Peyser, Esq.

Derek R. Durbin, Esq

144 Washington Street

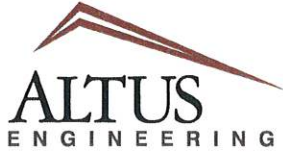
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## **PARKING DEMAND ANALYSIS**

**96 State Street**

**TAX MAP 107, LOT 52**

**PORTSMOUTH, NH**

Revised March 6, 2025

96 State Street, LLC owns the property located at 96 State Street. A commercial building is sited on the 0.07-acre (per City GIS) downtown, urban parcel. The parcel is located on the corner of State and Atkinson Streets. Altus has not inspected the interior of the building, the building uses and areas have been provided to us from Winter Holben Architects. The building has three levels. A restaurant, Domo, occupies the first and second floor. It is understood that the third floor is currently used as an apartment but was permitted as a spa.

The Owner is proposing to fully convert the second and third floors to residential uses with an expansion on both levels.

Altus prepared this Parking Demand Analysis based on the following uses:

### **CURRENT SPACE ALLOCATION**

Basement	accessory storage	2,245 SF GFA
First floor	restaurant	2,625 SF GFA
Second floor	restaurant	1,740 SF GFA
Third floor	1 dwelling unit (> 750 SF GFA)	1,740 SF GFA

### **PROPOSED SPACE ALLOCATION**

Basement	accessory storage	2,245 SF GFA
First floor	restaurant	2,625 SF GFA
Second floor	1 dwelling unit (> 750 SF GFA)	2,315 SF GFA
Third floor	1 dwelling unit (> 750 SF GFA)	2,085 SF GFA

Basement accessory storage has no requirements and does not create any parking demand.

Parking spaces required for the City of Portsmouth Zoning Ordinance Section 10.1110 Off Street Parking

All eating and drinking places	1 space per 100 SF GFA
Dwelling units over 750 SF	1.3 spaces per unit

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**Existing Parking Stalls required**

Restaurant 4,365 SF GFA/100 SF GFA	43.7 spaces (44)
1, 3 <sup>rd</sup> floor apartment (over 750 SF)	<u>1.3</u> spaces (2)
	46.0 spaces
	46 spaces required <sup>1</sup>

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**Proposed Parking Stalls required**

Restaurant 2,625 SF GFA/100 SF GFA	26.3 spaces (27)
1, 2 <sup>nd</sup> floor apartment (over 750 SF)	1.3 spaces
1, 3 <sup>rd</sup> floor apartment (over 750 SF)	<u>1.3</u> spaces (3 (2 <sup>nd</sup> and 3 <sup>rd</sup> floor combined))
	30 spaces
	30 spaces required <sup>1</sup>

Based on the City Ordinance alone, the parking spaces required for Tax Map 107, Lot 52 is reduced from 46 spaces to 30 spaces, a 35 percent reduction. There is one alley/loading space on the property.

There is parallel parking along State Street as well as a small public parking lot between Dutton and Scott Avenues. Additionally, the High Hanover Street parking garage is within 0.25 miles of the site. The Parrott Avenue surface parking lot is less than 0.5 miles from the site.

To determine the expected parking that will be generated by the existing/proposed uses, Altus normally utilizes the ITE Parking Generation Manual, 6<sup>th</sup> Edition. It is our opinion that the setting/location falls under the General Urban/Suburban category. However, the manual has limitations when it comes to small traffic generators and unique end users like 2-unit apartment buildings. Additionally, ITE states that “it contains information that can also easily be misinterpreted without sound professional judgement...”

Land Use Code 931 Quality Restaurant

Peak Period Parking Demand on a Saturday 7:00 to 8:00 PM

Setting/Location: General Urban/Suburban

Average rate 18.23 vehicles per 1,000 SF GFA

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<sup>1</sup> See Section 10.1112.22: “Where the computation of required off-street parking spaces results in a fractional number, the computation shall be rounded up to the next whole number.”

Land Use Code Residential 220 Multifamily housing (Low-Rise)

Peak Period Parking Demand on a Saturday

Average rate 1.18 spaces per dwelling unit

**Existing Parking Demand**

Restaurant

4,365 SF GFA x 18.23 vehicles per 1,000 SF GFA = 79.6 spaces (80)

1 dwelling unit x 1.18 spaces per dwelling unit = 1.2 spaces (2)

80.8 spaces

**Existing 82 spaces demand**

**Proposed Parking Demand**

Restaurant

2,625 SF GFA x 18.23 vehicles per 1,000 SF GFA = 47.9 spaces (48)

2 dwelling units x 1.18 spaces per dwelling unit = 2.4 space demand (3)

50.3 spaces

**Proposed 51 space demand**

Based on ITE, it is reasonable to believe that the parking demand will be reduced by 31 spaces.

With the approval of this project, the parking demand will decrease. Thus, it is Altus' opinion that the existing building can function adequately without adverse impacts to the community with the conversion of the second and third floor spaces into two residential dwelling units.

Wde/5637 parking demand analysis rev-2.docx

