
MEMORANDUM

TO: Planning Board
FROM: Rick Taintor, Planning Director *RT.*
Jessa Berna, Planner I
DATE: May 16, 2016
RE: Staff recommendations for May 19, 2016, Planning Board meeting

II. DETERMINATIONS OF COMPLETENESS

The Subdivision Rules and Regulations and the Site Plan Review Regulations require the Planning Board to determine that an application is complete according to the Regulations and to vote to accept it for consideration. These actions do not require a public hearing.

A. Subdivision

1. The application of Borthwick Forest, LLC, KS Borthwick, LLC, Atlantic Star Communications, HCA Realty, Inc., and Jackson Gray Condominium Association, Owners, for property located off Islington Street and Borthwick Avenue, requesting Preliminary and Final Subdivision Approval.
2. The application of Thirty Maplewood, LLC, Owner, for property located at 30-46 Maplewood Avenue, requesting Preliminary and Final Subdivision Approval.

Planning Department Recommendation

Vote to determine that these applications for subdivision approval are complete according to the Subdivision Rules and Regulations and to accept them for consideration.

B. Site Plan Review

- 1) The application of HCA Realty, Inc., Owner, for property located off Borthwick Avenue, and Jackson Gray Condominium Association, for property located at 330 Borthwick Avenue, requesting Site Plan Approval.
- 2) The application of Moray, LLC, Owner, for property located at 235 Commerce Way, and 215 Commerce Way, LLC, Owner, for property located at 215 Commerce Way, requesting Amended Site Plan Approval.
- 3) The application of 599 Lafayette, LLC, Owner, for property located at 599 Lafayette Road, requesting Site Plan Approval.

Planning Department Recommendation

Vote to determine that these applications for site plan approval are complete according to the Site Plan Review Regulations and to accept them for consideration.

III. PUBLIC HEARINGS – OLD BUSINESS

A. The application of the **Scott Mitchell, Owner**, and **Meredith Village Savings Bank, Applicant**, for property located at **2839 Lafayette Road**, requesting a Conditional Use Permit under Section 10.1017 of the Zoning Ordinance for work within the inland wetland buffer for the demolition of two existing buildings and the construction of a proposed 70' x 46' bank building with drive-thru, with 4,010 ± s.f. of impact to the wetland buffer. Said property is shown on Assessor Map 286 as Lots 18 & 19 and lie within the Gateway (G) District. (This application was continued from the April 21, 2016 Planning Board Meeting.)

Description

This application is for a conditional use permit for work in the wetland buffer in connection with site redevelopment for a new bank with accessory drive-through facility. The wetland buffer area on the site comprises 5,180 sq. ft. out of a total parcel area of 49,291 sq. ft.; and the proposed work will involve disturbance of 4,010 sq. ft. of buffer area.

In order to be granted a Conditional Use Permit for work within the wetland buffer, the applicant must satisfy the criteria for approval set forth in Section 10.1017.50 of the Zoning Ordinance, as follows:

1. The land is reasonably suited to the use, activity or alteration.
2. There is no alternative location outside the wetland buffer that is feasible and reasonable for the proposed use, activity or alteration.
3. There will be no adverse impact on the wetland functional values of the site or surrounding properties.
4. Alteration of the natural vegetative state or managed woodland will occur only to the extent necessary to achieve construction goals.
5. The proposal is the alternative with the least adverse impact to areas and environments under the jurisdiction of [the wetlands protection provisions of the Ordinance.

Conservation Commission Review and Recommendation

The Conservation Commission reviewed this application at its meetings on March 9, April 13 and May 11. In addition, the Commission engaged Rockingham County Conservation District to review the applicant's delineation of the wetland boundary, connectivity and size.

Following the April 13th meeting, the applicant revised the plan by shifting the parking area away from the wetland and adding landscaping in the buffer area. At the May 11th meeting, the Commission voted (5-1) to recommend approval of the conditional use permit with the following stipulations:

- 1) The applicant or his agent will be responsible for removing invasive species inadvertently introduced to the site. After removal, replant consistent with the planting plan or native species.
- 2) That buffer planting scheme be clarified to improve and enhance water quality on the westerly side of the site.
- 3) That the applicant or his agent continually monitor and remove invasive species on the site.

Other Required Approvals

In addition to the conditional use permit, the proposed project will also require two further approvals by the Planning Board: site plan approval, and a conditional use permit for the accessory drive-through facility. An early version of the proposed site plan was reviewed by the Technical Advisory Committee in a work session on February 2nd and a hearing on February 9th. Following the hearing, TAC voted to postpone the application indefinitely due to questions about the wetland buffer delineation and potential impacts. The applicant has not yet filed either a revised site plan or the application for a conditional use permit for the drive-through. Thus, the only matter before the Board at this time is the proposed work in the wetland buffer.

On May 16, the applicant's representative emailed the Planning Department with a request to postpone the hearing "until the TAC also reviewed/recommended the project for approval." Because it is not known whether the applicant will submit revised plans to the June or July TAC meetings, it is recommended that the Planning Board postpone the application to the June meeting.

Planning Department Recommendation

Vote to postpone consideration of this application to the Planning Board meeting on June 16, 2016.

It is recommended that Items B and C under Public Hearings – Old Business be discussed together and voted on separately.

A motion is needed to consider these two items together.

B. The application of **Borthwick Forest, LLC, KS Borthwick, LLC, Atlantic Star Communications, HCA Realty, Inc., and Jackson Gray Condominium Association, Owners**, for property located **off Islington Street and Borthwick Avenue**, requesting Preliminary and Final Subdivision Approval as follows:

1. To consolidate the following four lots:
 - a. Lot 25 as shown on Assessor Map 241 having an area of 22.807 ± acres,
 - b. Lot 26 as shown on Assessor Map 241 having an area of 4.927 ± acres,
 - c. Lot 113 as shown on Assessor Map 233 having an area of 13.815 ± acres,
 - d. Lot 112 as shown on Assessor Map 233 having an area of 0.732 ± acre;

- and to re-subdivide the consolidated lot into two new lots and a public right-of-way as follows:
- a. Proposed Lot "25/26" having an area of 25.572 ± acres and 970.58 ± feet of continuous frontage on a proposed street,
 - b. Proposed Lot "112/113" having an area of 15.262 ± acres and 889.92 ± feet of continuous frontage on a proposed street,
 - c. Proposed municipal land parcel having an area of 0.089 ± acres and 89.93 ± feet of continuous street frontage, and
 - d. Proposed City right-of-way having an area of 1.359 ± acres.
2. For a Lot Line Revision, to create a public right-of-way, as follows:
- a. Lot 2-2 as shown on Assessor Map 240 decreasing in area from 4.978 ± acres to 4.596± acres with 571.58 feet of continuous frontage on Borthwick Avenue,
 - b. Lot 7-4A as shown on Assessor Map 234 decreasing in area from 9.085 ± acres to 8.583 ± acres with 1,127.14 ± feet of continuous frontage on Borthwick Avenue,
 - c. Proposed City right-of-way having an area of 0.833 ± acre.
3. For a Lot Line Revision, to create a public right-of-way, as follows:
- a. Lot 114 as shown on Assessor Map 233 decreasing in area from .404 ± acres to 0.179 ± acre, with 84.64 ± feet of continuous frontage on Islington Street,
 - b. Proposed City right-of-way having an area of 0.225 ± acre.

The application also proposes to relocate and dedicate to the City as public rights-of-way two separate 60-foot rights-of-way across land owned by the Boston & Maine Railroad, which in conjunction with the above subdivision and lot line revisions will result in a new City street between Borthwick Avenue and Islington Street with a total length of 1,826 ± lf and a total right-of-way area of 2.764 ± acres.

Said properties are located in the Office Research (OR) District which requires a minimum lot size of 3 acres and 300' of continuous street frontage and Lot 114 as shown on Assessor Map 233 is in the Single Residence B (SRB) District which requires a minimum lot size of 15,000 s.f. and 100' of continuous street frontage. (This application was continued from the April 21, 2016 Planning Board Meeting.)

C. The application of **HCA Realty, Inc., Owner**, for property located **off Borthwick Avenue**, and **Jackson Gray Condominium Association**, for property located at **330 Borthwick Avenue**,, requesting Site Plan Approval for the reconfiguration of an existing parking area and construction of a roadway, with related paving, lighting, utilities, landscaping, drainage and associated site improvements. Said properties are shown on Assessor Map 234 as Lot 7-4-A and Assessor Map 240 as Lot 2-2 and lie within the Office Research (OR) District. (This application was continued from the April 21, 2016 Planning Board Meeting.)

Description

These two applications concern the subdivision of a tract of land containing approximately 42 acres between Borthwick Avenue and Islington Street, including the construction of a 1,826-foot (0.35 mile) public street. The subdivision will create two building lots containing 25.6 and 15.3 acres, which will be used for office development over a period of years.

It is important to emphasize that no specific site development is proposed as part of the subdivision plan. For the purposes of the traffic impact study, a conceptual future development level of 174,000 sq. ft. of office space was adopted, representing three buildings similar in size to the existing 58,000 sq. ft. Jackson Gray building. However, the actual future development of the two parcels may differ from this conceptual level.

Substantial portions of both new lots are constrained by wetlands and wetland buffers. In an earlier version of the proposal, the roadway would have impacted an area of wetlands. However, that proposal was not supported by the Conservation Commission, so the roadway was rerouted around the wetlands, resulting in the need to construct the bridge over the railroad tracks. The current proposal does not include any work in a wetland or wetland buffer.

The tract of land that is the subject of the subdivision application has been before the Planning Board twice in the last decade: for the "Islington Woods" mixed-use housing development in 2004-2006, and the "Borthwick Village" continuing care retirement community in 2007-2010. Both of those prior proposals would have required significant amendment to the Zoning Ordinance, while the current project envisions office development under the existing Office Research zoning.

This application has received extensive review by the Technical Advisory Committee, primarily related to the layout and design of the proposed public street and associated public infrastructure (water, sewer and stormwater). The proposed street must cross an active rail line near Borthwick Avenue (the "Rockingham Branch") and an abandoned rail corridor near Islington Street which is planned for conversion to a multi-use rail trail (the "Hampton Branch"). The roadway construction documents submitted with the subdivision application include construction of a new bridge over the Portsmouth branch, which will impact the existing parking lot for the Jackson Gray medical office building at 330 Borthwick Avenue and consequently requires the site plan amendment which is the subject of the second application. While the applicant has brought the bridge design to a level that is appropriate for preliminary subdivision approval, further detailed design and review are necessary for final approval, as reflected in the TAC proposed stipulations.

Because the new street will intersect with the New Hampshire Seacoast Greenway rail trail to be developed along the abandoned Hampton Branch rail corridor, the project design includes a separated multi-use trail along the length of the street, a safe crossing for bicyclists and pedestrians at the rail trail crossing (including a raised platform to alert drivers and slow down traffic), and a safe interface with Borthwick Avenue. These elements will implement recommendations of the 2004 Bicycle and Pedestrian Plan and will enhance the bike-ped network in this part of the City.

TAC Review and Recommendations

The Technical Advisory Committee reviewed this application in a work session (October 27, 2015) and four public hearings (December 1, 2015; and January 5, February 2 and April 5, 2016). The review process also included several meetings with staff of the Planning and Public Works Departments to address specific details, particularly the design of the bridge, roadway, public infrastructure, and bicycle-pedestrian elements.

Planning and Public Works staff were careful to consider the potential traffic impacts of constructing a new road and ultimately developing a significant amount of new office space.

The City engaged the services of an independent transportation engineer (TEC, Inc.) to review and comment on the applicant's Traffic Planning Assessment. Throughout the public review of this application, concerns have been raised about the creation of a new road connection between Islington Street and Borthwick Avenue, focusing on the potential for cut-through traffic to increase on neighborhood streets between Islington Street and Middle Road. However, the traffic analyses prepared by the applicant and reviewed by the City's independent transportation consultant do not support these concerns, and staff believe that a new connector road will be beneficial to the City in terms of providing better emergency access and dispersing traffic volumes.

In order to ensure that there are no existing legal obstacles to the construction and maintenance of the proposed street and existing and proposed infrastructure, the City has engaged an independent surveyor (James Verra and Associates) to review the numerous easements listed on the Lot Consolidation and Resubdivision Plan and Lot Line Adjustment Plan (Sheet 2 of 5, Note 14). That review is not complete at this time, but will be complete prior to submission of the application for final subdivision approval.

Subdivision

At its meeting on April 5, 2016, the Technical Advisory Committee voted to recommend Preliminary Subdivision Approval with the following stipulations, which shall be completed prior to submission of an application for Final Subdivision Approval:

1. The applicant shall develop road, utility and bridge design plans to at least the 60 percent design level, including verification that the bridge can be built within the proposed right of way, and a compaction plan for the filled areas on the approaches to the bridge, and shall provide such plans to the Department of Public Works for review and comment. Note #11 on C-4A, notes #28 and #29 on Sheet C-6A, and any other relevant notes shall be adjusted to reflect this stipulation.
2. The applicant shall pay for the costs of an independent drainage study and an independent bridge design consultant, to review the applicant's drainage and bridge design and advise the City staff and Planning Board. The independent consultants shall be selected by the Department of Public Works with the approval of the applicant.
3. The review of existing and proposed easements by an independent surveyor shall be completed and reviewed by the Planning and Legal Departments, and any identified issues shall be addressed on the plans submitted for final approval.
4. The Construction Management and Mitigation Plan (CMMP) to be prepared for this project shall limit construction access to the Borthwick Avenue side of the site to the maximum extent possible, and a preliminary strategy to accomplish this shall be provided as part of the application for final approval.

On April 13, 2016, the applicant submitted a revised plan set incorporating the changes to notes required in TAC stipulation #1.

Site Plan

At its meeting on April 5, 2016, the Committee voted to recommend Site Plan Approval with the following stipulations:

1. Final utility designs shall be reviewed and approved by the Department of Public Works.
2. All easements shall be reviewed and approved by the City Legal Department.

Planning Department Recommendations

NOTE: At this time it is not known whether the issues that caused postponement at the April meeting have been resolved. The following recommendations assume that the application is ready to move forward at Thursday's meeting.

A. SUBDIVISION

Vote to grant Preliminary Subdivision Approval with the following stipulations, which shall be completed prior to the submission of an application for Final Subdivision Approval:

1. The applicant shall develop road, utility and bridge design plans to at least the 60 percent design level, including verification that the bridge can be built within the proposed right of way, and a compaction plan for the filled areas on the approaches to the bridge, and shall provide such plans to the Department of Public Works for review and comment.
2. The applicant shall pay for the costs of an independent drainage study and an independent bridge design consultant, to review the applicant's drainage and bridge design and advise the City staff and Planning Board. The independent consultants shall be selected by the Department of Public Works with the approval of the applicant.
3. The review of existing and proposed easements by an independent surveyor shall be completed and reviewed by the Planning and Legal Departments, and any identified issues shall be addressed on the plans submitted for final approval.
4. The Construction Management and Mitigation Plan (CMMP) to be prepared for this project shall limit construction access to the Borthwick Avenue side of the site to the maximum extent possible, and a preliminary strategy to accomplish this shall be provided as part of the application for final approval.

B. SITE PLAN

Vote to grant amended Site Plan Approval with the following stipulations:

1. Final utility designs shall be reviewed and approved by the Department of Public Works.
 2. All easements shall be reviewed and approved by the City Legal Department.
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IV. PUBLIC HEARINGS – NEW BUSINESS

A. The application of the **City of Portsmouth, Owner**, for property located at **195 Greenleaf Avenue**, requesting a Conditional Use Permit under Section 10.1017 of the Zoning Ordinance for work within the inland wetland buffer for the reconstruction of an existing parking lot, with 7,725 ± s.f. of impact to the wetland buffer. Said property is shown on Assessor Map 243 as Lot 4 and lies within the Municipal (M) District.

Description

The City of Portsmouth is planning to reconstruct the existing parking lot at the Greenleaf Recreation Center. Portions of the northwest side and south corner of the site are within wetland buffers. No work is proposed at the south corner, but on the northwest side, adjacent to Greenleaf Avenue, an area of existing pavement will be removed and replaced with landscaping and a rain garden. The project will result in a reduction of 14,163 sq. ft. of pavement, including 5,009 sq. ft. in the wetland buffer.

In order to be granted a Conditional Use Permit for work within the wetland buffer, the applicant must satisfy the criteria for approval set forth in Section 10.1017.50 of the Zoning Ordinance, as follows:

1. The land is reasonably suited to the use, activity or alteration.
2. There is no alternative location outside the wetland buffer that is feasible and reasonable for the proposed use, activity or alteration.
3. There will be no adverse impact on the wetland functional values of the site or surrounding properties.
4. Alteration of the natural vegetative state or managed woodland will occur only to the extent necessary to achieve construction goals.
5. The proposal is the alternative with the least adverse impact to areas and environments under the jurisdiction of [the wetlands protection provisions of the Ordinance.

The proposed development meets the criteria under which it may be exempted from site plan review (no increase in building height or floor area; no reduction in any setback; and no increase in impervious surface). However, the plan set submitted with the application is equivalent to a full application for site plan approval, and Board members may wish to use the hearing to ask questions about or comment on aspects of the plan beyond the wetland buffer. If the Board grants the conditional use permit, I will determine that it is exempt from site plan review.

Conservation Commission Recommendation

At its meeting on May 11, 2016, the Conservation Commission voted unanimously to recommend approval of the conditional use permit as requested.

Planning Department Recommendation

Vote to grant the conditional use permit as requested.

B. The application of **Moray, LLC, Owner**, for property located at **235 Commerce Way**, and **215 Commerce Way, LLC, Owner**, for property located at **215 Commerce Way**, requesting Amended Site Plan Approval for a proposed 4-story office building with a footprint of 28,125 ± s.f. and gross floor area of 112,500 ± s.f., and 640 parking spaces serving the proposed building and an adjacent existing office building (including a parking deck with 161 spaces below grade), with related paving, lighting, utilities, landscaping, drainage and associated site improvements. This amendment is to amend construction from two phases, as approved by the Planning Board on September 17, 2015, to three phases. Said properties are shown on Assessor Map 216 as Lots 1-8A and 1-8B and lie within the Office Research (OR) District.

Description

This application is to modify a September 17, 2015, site plan approval by adding a third phase to the development process. Where the previous site plan envisioned the first phase would include both work on the existing building at 215 Commerce Way and construction of the first portion of the new building at 235 Commerce Way. However, the applicant does not yet have a tenant secured for the new building and wishes to segment the work on the existing building as a separate phase.

TAC Recommendations

At its meeting on May 3, 2016, the Technical Advisory Committee voted to recommend site plan approval with the following stipulations:

1. Note 25 shall be added to the Utility Plan, Phase 2, regarding radio strength testing.
2. A letter shall be provided by the project engineer confirming that the municipal stormwater drainage system as constructed is sufficient for handling a 100-year storm from both the subject site and all contributing sites as well as the street itself and that the additional water will not overburden the system. The wetlands downstream of the site should receive the same amount of water preconstruction vs post construction.
3. Resolution of the domestic water line service for 215 Commerce Way shall be reviewed and approved by the Water Division prior to the Planning Board meeting.

On May 12, 2016, the applicant submitted a revised plan set incorporating the note required by TAC stipulation #1. The applicant also provided a letter to the Department of Public Works addressing stipulation #2. A report on stipulation #3 is required before the Planning Board meeting. The staff recommendation below therefore does not add any new stipulations, but repeats the four stipulations of the prior approval, updated to refer to the new phasing plan.

Planning Department Recommendations

Vote to grant amended site plan approval as requested with the following stipulations:

Conditions Precedent (to be completed prior to the issuance of a building permit):

1. *The Site Plan (Sheets C-2A, C-2B, C-2C and C-2D) and the Landscape Site Plan (Sheet L-01) shall be recorded at the Registry of Deeds by the City or as determined appropriate by the Planning Department.*

2. *The applicant shall contribute \$42,000 to the City for reconstruction of the sidewalk on Portsmouth Boulevard between Commerce Way and Market Street, and \$6,900 toward traffic and pedestrian signal upgrades at the intersection of Market Street and Portsmouth Boulevard.*
3. *The Construction Management and Mitigation Plan shall include specific provisions to address the displacement of required parking spaces during Phase 3 construction.*

Conditions Subsequent (to be completed prior to the final release of site plan security):

4. *The applicant shall videotape construction routes to the project prior to the initiation of site work, and shall be responsible for repairing any damage during construction. The site plan security shall be sufficient to cover any such repair.*

C. The application of **599 Lafayette, LLC, Owner**, for property located at **599 Lafayette Road**, requesting Site Plan Approval for the construction of a 772 s.f. 1-story drive-thru Aroma Joe's coffee shop, revision of the existing parking and circulation layout, and relocation of dumpsters, with related paving, lighting, utilities, landscaping, drainage and associated site improvements. Said property is shown on Assessor Map 229 as Lot 8 and lies within the Gateway (G) District.

Description

This application is for several changes to the site plan at the Bowl-o-Rama property at 599 Lafayette Road. The immediate impetus for the application is a proposal to construct a free-standing drive-through coffee shop at the southerly edge of the property, behind the existing Lens Doctors lot and adjacent to Margarita's restaurant. In addition, the applicant is requesting changes to the parking field in front of the existing building to accommodate an ongoing expansion of the building that was allowed administratively, and revisions to dumpsters and the pedestrian route at the rear of the building to bring the site into compliance with zoning, life safety and health codes.

There has been ongoing confusion about the manner in which this application has been presented to the City. The plans are variously labeled "Aroma Joe's" and "Bowl-o-Rama" and contain a notation distinguishing responsibility for the drive-through coffee shop from other aspects of the plan. Similarly, the application form and cover letter indicate that the applicant is Aroma Joe's and not the property owner, 599 Lafayette LLC. However, for the purposes of site plan review and approval, the application must be reviewed as a single project. Thus, this is not an "Aroma Joe's" plan, but an overall plan for the 599 Lafayette Road shopping center, which includes the Aroma Joe's coffee shop. Accordingly, there will be one site plan review agreement and one site plan review bond or other security to assure completion of all improvements shown on the plan.

This proposed layout involves a complex circulation and parking pattern on a shared easement between the two shopping centers, which has been the focus of much of the review by City staff. As shown by a comparison of Sheets C-1 and C-2, the proposed paired entrance and exit drives for the drive-through on the south side of the property result in the elimination of 9 parking spaces. These spaces are shared by the terms of a 1973 easement with the adjacent Margarita's restaurant, and this reduction is the subject of a written objection from the owner of Lafayette Plaza.

In addition, the owners of the Lens Doctors parcel are preparing a site plan to replace the existing building with a new and larger one, with a revised circulation pattern close to the coffee shop drive-through exit in the easement area. The same engineering firm is involved in preparing both plans, so presumably the interactions between the driveways for Aroma Joe's and Lens Doctors have been taken into account in the current application.

Variances and Conditional Use Permit

An accessory drive-through facility requires the granting of a conditional use permit by the Planning Board, and no application for such a permit has been submitted. However, on January 26, 2016, the Zoning Board of Adjustment granted three variances for this project:

1. A use variance to allow a stand-alone drive-through facility as a principal use;
2. A variance to allow a side yard of 23.6 feet where 30 feet is required; and
3. A variance to allow a drive-through facility's outdoor service facilities (transaction windows, menu boards, speakers, etc.) to be located 64 feet from a residential zoning district where a 100-foot setback is required.

Whether the variance allowing a drive-through use as a principal use rather than an accessory use supersedes the conditional use permit is not clear at this time. If conditional use approval is required for principal as well as accessory drive-throughs, the Planning Board may grant such approval "only if it determines that the level of service and traffic safety conditions of all streets and intersections to be impacted by the project will be the same as, or better than, predevelopment conditions."

Standards for Drive-Through Facilities

The Site Plan Review Regulations, Section 3.6, establish specific standards for all drive-through uses, which are in addition to the standards in Section 10.836 of the Zoning Ordinance. No waivers are necessary from the site plan standards.

TAC Review and Recommendations

The Technical Advisory Committee reviewed this application in a work session on March 29, 2016 and a public hearing on May 3, 2016. At its meeting on May 3, 2016, the Technical Advisory Committee voted to recommend site plan approval with the following stipulations:

1. The following revisions to the Site Plan must be reviewed and approved by the Department of Public Works prior to appearing before the Planning Board:
 - a.) lighting design;
 - b.) water main connection;
 - c.) sewer connection;
 - d.) external grease trap (or a Waiver must be granted by DPW);
 - e) the addition of ADA parking spaces and a pedestrian refuge island for the angled crosswalk abutting the Lenscrafters property.
2. The parking spaces shall be evaluated and, where possible, restriped so that the high turnover spaces closer to the building are wider than 8.5'.

3. Written confirmation shall be provided that the parking easement concern raised by the abutting property owner has been addressed.
4. For the record, there shall be no additional stormwater run-off leaving the site.

On May 11, 2016, the applicant submitted a revised plan set incorporating the addition of a grease trap, an accessible parking space and a pedestrian refuge island, as well as a lighting plan and various plan details. The parking plan does not appear to have been changed in response to TAC stipulation #2. The Planning Department has not yet received either DPW approval of the changes pursuant to stipulation #1, or written confirmation regarding the parking easement concern as required by stipulation #3. The applicant has been informed that all these stipulations must be provided to the Department by close of business on Thursday in order for the application to proceed at the hearing.

The proposed pedestrian island is shown on the abutting Lens Doctors property. An easement to construct and maintain this element will be required as a condition of approval.

The staff recommendation below is contingent on (1) the applicant satisfying all TAC stipulations by close of business on Thursday, and (2) a determination that the variance granted by the ZBA supersedes the requirement for a conditional use permit for a drive-through use.

Planning Department Recommendations

NOTE: The following recommendations assume that by the close of business on Thursday the applicant will have submitted the following:

1. Written confirmation regarding the abutter's parking easement concern, including evidence that the abutter either concurs with the resolution or has been made aware of the report in sufficient time to respond prior to the hearing.
2. Either written confirmation that the parking easement issue has been resolved to the abutter's satisfaction, or evidence that the abutter has been made aware of the report in sufficient time to respond prior to the hearing.

If either of these items have not been provided, the matter should probably be postponed to the next Planning Board meeting.

A. Vote to grant the following waivers from the Site Plan Review Regulations:

1. *Section 8.1.2 – All new and relocated wires, conduits, and cables shall be located underground.*

Note: The granting of a waiver requires an affirmative vote of 6 member of the Board.

B. Vote to grant site plan approval subject to the following stipulation:

1. *There shall be no additional stormwater run-off leaving the site.*

D. The application of **Thirty Maplewood, LLC, Owner**, for property located at **30-46 Maplewood Avenue**, requesting Preliminary and Final Subdivision Approval to subdivide one lot into two lots as follows:

1. Proposed lot #1 having an area of 34,887 \pm s.f. (0.8009 acres) and 194.56' of continuous street frontage on Maplewood Avenue, 102.71' of continuous street frontage on Hanover Street, 313.32' of continuous frontage on Bridge Street, and 46.61' of continuous street frontage on Deer Street; and
2. Proposed lot #2 having an area of 21,798 \pm s.f. (.5004 acres) and 159.97' of continuous street frontage on Maplewood Avenue and 147.98' of continuous street frontage on Deer Street.

Said property is shown on Assessors Map 125 as Lot 2 and is located in the Character District 4 (CD4), Historic District and Downtown Overlay District (DOD). Minimum required lot area is 2,000 s.f.

Description

This application is to subdivide the lot at 30 Maplewood Avenue into two lots, one of which would contain most of the parking spaces on the existing site. For several years, the applicant has been developing plans for a new mixed-use building to be on the site of this parking area, and until recently it was anticipated that the applications for subdivision and site plan approval would be submitted to the Planning Board at the same time in order to ensure that the plans are consistent with each other. Now, the applicant wants to move forward with subdivision approval prior to completing other reviews, in order to address his financing needs.

Although the proposed new building at 46-64 Maplewood Avenue is not the subject of this application, some history is necessary to provide context to the proposed subdivision.

- The Planning Board first reviewed this project in a public hearing for Design Review on December 19, 2013. The design review process vested the project from subsequent changes in zoning regulations. In particular, design review preserved the project's eligibility to apply for a conditional use permit to allow an increased building height above the 3½-story/45-foot maximum height then applicable in the Central Business B district. The conditional use permit provision, which allowed an increase to 60 feet subject to certain criteria and findings, was eliminated for most properties in April 2014.
- On November 17, 2014, the applicant filed an application for site plan review. The Technical Advisory Committee considered this application in a work session on November 25, 2014, and in public hearings on December 2 and 30, 2014, and January 7, 2015. At the January 7 meeting, TAC voted to recommend site plan approval with three stipulations, including a requirement that the plan be revised and approved by DPW prior to being submitted to the Planning Board. It was noted at the time that the Planning Board could not grant site plan approval until the Historic District Commission had granted a conditional use permit for building height. Therefore, the application was not placed on the Board's agenda as would be typical, and the applicant was informed that a new legal notice and abutter notification to abutters would be required at such time as the applicant was ready to proceed with the application.

- On October 27, 2015, the applicant met with TAC in another work session to review some changes that were being made to the plan, in part as a result of HDC review.
- Meanwhile, the applicant started working through the Historic District Commission process. The HDC held work sessions on the proposed development in February, March and May, 2016. No application for a public hearing has yet been filed.

Given the state of design development for the HDC, and the requirement for the Planning Board to make a recommendation to the HDC on a conditional use permit prior to acting on the site plan, it is unlikely that an application for site plan approval will be before the Board until July at the earliest.

TAC Recommendations

At its meeting on May 3, 2016, the Technical Advisory Committee voted to recommend site plan approval with the following stipulations:

1. A parking table shall be added to the plan, confirming that the property complies with the parking requirements in the City's Zoning Ordinance.
2. The ADA parking space must either be located on the lot or the applicant must verify that the Zoning Ordinance allows ADA parking spaces off-site.
3. A determination shall be made whether the Zoning Ordinance allows parking as a principal use in the Character District 4.
4. A note shall be added to the plan which references the specific table in the IBC regarding the boundary line not creating a nonconformity with regard to unprotected openings.

On May 11, 2016, the applicant submitted a revised plan addressing the TAC stipulations as follows:

1. Note 10 has been added to the plan, showing that Lot 1 requires 7 off-street parking spaces including 1 ADA space. The plan shows 13 conforming spaces, including 1 ADA space, to serve the uses on Lot 1, plus an additional 12± spaces not counted toward these uses.
2. The ADA parking space has been relocated onto Lot 1.
3. A note has been added to the plan stating "Parking area to be removed, if a use variance is not granted." However, it is not the practice of the Planning Board to grant final subdivision approval prior to a required variance being granted.
4. The plan does not include the note as stated in the TAC stipulation. Instead, the plan shows a "building restriction area" and Note 9 has been added as follows:

Lot 2 is burdened by a potential no build area, subject to final design approval by the Portsmouth Building Inspector's office. The applicant shall review applicable IBC codes relative to the setbacks to unprotected

openings in the 30 Maplewood Avenue building created by the proposed boundary line and make corrections, if necessary.

This note appears to indicate that the proposed lot line may result in a violation of the Building Code and may need to be revised after further review. If this is the case, it may be more appropriate for the Board to vote to grant Preliminary Subdivision Approval rather than Final Subdivision Approval.

Planning Department Recommendations

Vote to grant Preliminary Subdivision Approval, with the following stipulations to be satisfied prior to Final Subdivision Approval:

- 1. Grant by the Zoning Board of Adjustment of a variance to allow parking as a principal use with no building or streetscreen (Zoning Ordinance, Section 10.440 and Section 10.5A44.32).*
- 2. Determination by the Building Inspector that the proposed lot line does not result in a violation of the IBC relative to unprotected openings in the building on proposed Lot 1 (30 Maplewood Avenue).*

V. CITY COUNCIL REFERRALS

A. Consideration of rezoning options for 678 Maplewood Avenue and the adjacent vacant parcel to allow for the development of affordable housing.

Description

At its meeting on March 14, 2016, the City Council voted to refer to the Planning Board a letter from Joseph R. Russell, attorney for Maplewood Ridge LLC, requesting that two parcels on Maplewood Avenue be rezoned from Single Residence B (SRB) to the Business (B) district. The stated purpose of the requested rezoning was to allow the development of the combined parcels for “affordable housing in the form of town houses and apartments, including micro-units and designated (deed restricted) workforce housing units.” These parcels were the subject of similar requests that were considered by the Planning Board in 2012 and 2013, as well as an application for several zoning variances that was considered by the Zoning Board of Adjustment in February 2016. In all three cases, these prior requests for rezoning or variances were denied.

Following a public hearing, the Planning Board voted unanimously on April 21, 2016, to recommend that the City Council not rezone the parcels as requested. While the Board continues to support the objective of providing additional affordable housing in the City, it recognized that there would be no guarantee that a rezoning to Business would achieve that objective. In addition, concern was expressed about the residential density allowable under the proposed Business zoning. Alternative rezoning approaches that would permit a lower density of multifamily residential development might be more acceptable.

At its meeting on May 2, 2016, the City Council voted to accept the Planning Board's recommendation not to rezone the parcels as Business, and to refer the issue back to the Planning Board to examine other options for rezoning.

Zoning Context

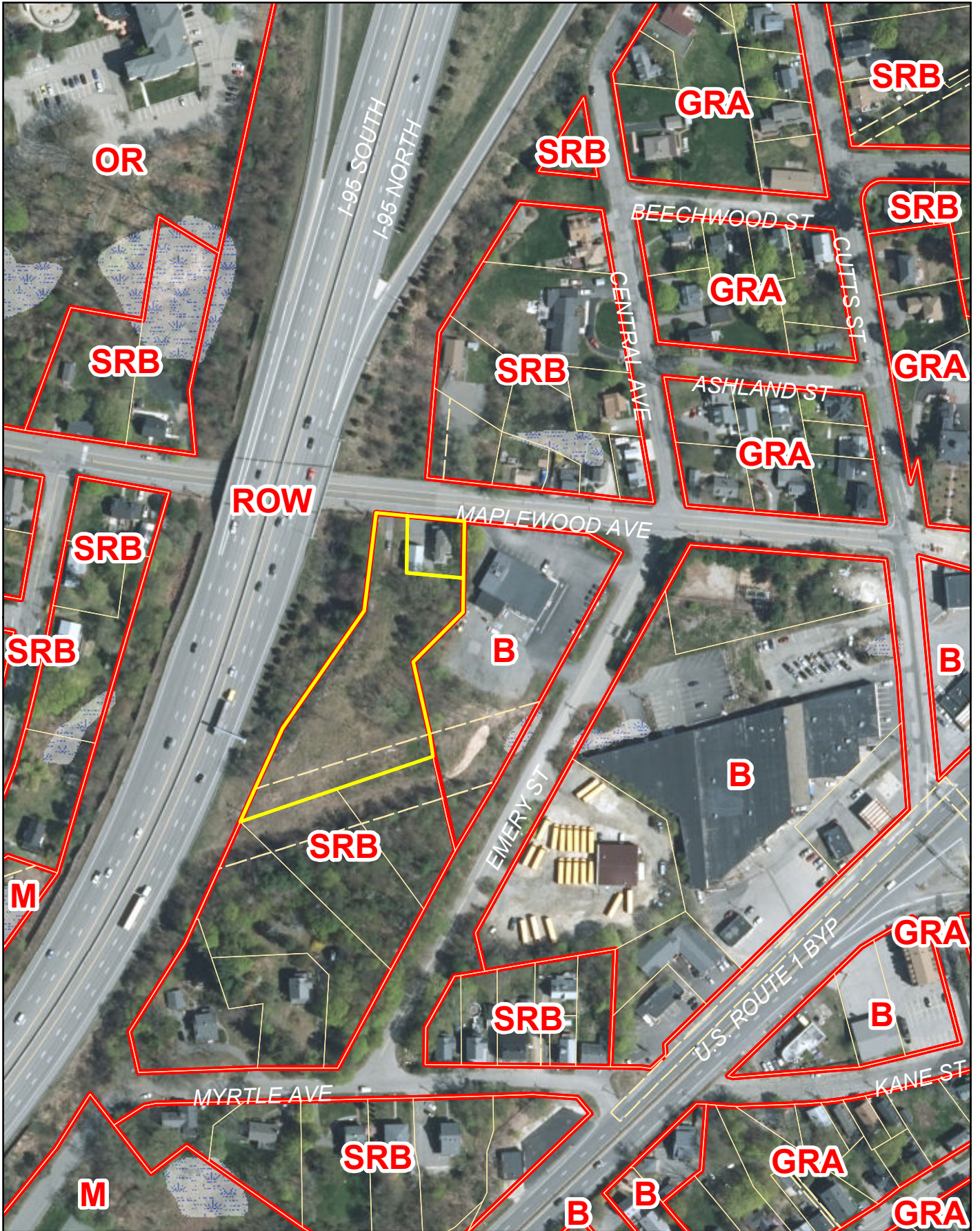
Attached to this memo is a map showing existing zoning for the area under consideration. The subject parcels are sandwiched between Interstate 95 and a Business (B) district that extends up Maplewood Avenue from the Route 1 Bypass. To the east of the site, the properties on the north side of Maplewood Avenue are zoned Single Residence B (SRB) from I-95 to Central Avenue and General Residence A (GRA) from Central Ave. to the Route 1 Bypass.

The land on Maplewood Avenue immediately opposite the subject parcels is in the SRB district, and Maplewood Avenue to the west of the I-95 overpass is zoned SRB on both sides of the road (except for a narrow extension of the Office Research district that fronts on Market Street). In fact, it appears that the existing SRB zoning on the east side of I-95 is a relic of the zoning pattern prior to the construction of the Interstate highway, which bisected a large Single Residence district leaving only a narrow strip on the easterly side.

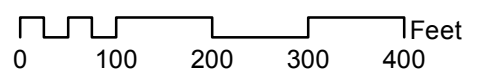
One potential rezoning option to consider is to extend the adjacent GRA district to include the 8 privately-owned SRB parcels on the north side of Maplewood Avenue as well as the two subject parcels. Such a rezoning would represent a natural extension of the GRA district with the Interstate forming a physical boundary between the GRA and SRB districts. Rezoning to GRA would allow up to 9 dwelling units on the 1.7-acre subject property. GRA zoning would also make the property eligible for a Residential Density Incentive Planned Unit Development (RDI-PUD), which conceptually would allow for construction of up to 13 dwelling units if at least 5 were affordable units. Furthermore, where Business zoning would require that nonresidential uses be part of any site development, the GRA zoning does not permit any business uses. Thus, the GRA approach could provide a middle ground between the current land use and the business uses with much higher residential density that Business zoning would permit. (It should also be noted that 4 of the 8 parcels on the north side of the street are currently nonconforming as to land area, and would conform to the lot area requirements of the GRA district.)

Planning Department Recommendation

Schedule a public hearing on potential rezoning options for the Planning Board meeting on June 16, 2016.



678 Maplewood Avenue
Existing Zoning Context



B. Acquisition of land off Deer Street for construction of a municipal parking garage and associated access and utility improvements.

Description

In connection with the proposed construction of a new municipal parking built off Deer Street, the City has been negotiating a set of land transfers and easements with Deer Street Associates (DSA), the current owner of the land on which the garage will be built. On August 20, 2015, the Planning Board took three actions related to the garage project:

1. Voted to approve a six-lot subdivision plan;
2. Voted to recommend that the City acquire from DSA a lot shown on the above plan for construction of the garage and access road;
3. Voted to transfer to DSA an area of land at the corner of Deer and Bridge Streets.

In the nine months since that meeting, negotiations have continued resulting in some changes to the Disposition Plan upon which the Board based its actions. While the approved lot line have not been modified, some of the notes concerning existing and proposed easements have been revised, requiring review and approval by the City Council. Most significantly, the parties previously anticipated relocating an existing sewer main from DSA's property into the new access road, but have now agreed to keep the main in place and to build both the City garage and a DSA building over the line. In addition, an easement for relocating the existing railroad office was previously shown as "proposed" but is now an existing easement.

Planning Department Recommendation

Vote to recommend that the City Council approve the revised Disposition Plan.

C. Request for waiver of referral and report regarding leases/easements for solar power arrays at Portsmouth High School and the Madbury Water Treatment Plant.

Description

At its meeting on May 16, 2016, the City Council will have before it for consideration a solar power purchase agreements and lease for the installation and operation of a roof-top solar array at the Portsmouth High School as well as a solar power purchase agreement and lease for the installation and operation of a ground array at the Madbury Water Treatment Plant. The City Council is under a time constraint to approve these agreements and leases in order to secure a \$450,000.00 grant from the Public Utilities Commission. These agreements and leases are for 25-year terms and have covenants within them that are effectively in the form of easements to service the arrays and to ensure that sunlight reaches the arrays.

Pursuant to Article 6, Section 11.602 of the City Ordinances, the City Council typically refers easements, licenses and other interests in land to the Planning Board for a report back before proceeding. In this instance, due to timing issues, such process would jeopardize the funding. Consequently, staff is requesting that the Planning Board exercise its authority under Article 6, Section 11.602 (C) to waive the Planning Board referral.

Planning Department Recommendation

Vote to waive Planning Board referral and report back for the agreements and leases necessary to install a solar array on the rooftop of the Portsmouth High School and a ground array at the Madbury Water Treatment Plant.

VI. OTHER BUSINESS

A. Proposed amendments to the Zoning Ordinance, Articles 2, 3, 4, 5, 6, 8, 10, 11, 12 and 15, relating to variances, nonconforming buildings and structures, accessory dwelling units, building coverage and yards, residential bulk control and building heights, Historic District exemptions, wetlands protection, off-street parking setbacks, signs and definitions.

Description

Over the past year the Planning Department staff has been working on a number of proposed zoning changes, both to address specific issues and to clean up problematic sections of the Zoning Ordinance. Although the intent was to present a comprehensive “omnibus” package of amendments, the workload in the Department has prevented us from completing this effort. Rather than postpone needed changes indefinitely, we are presenting an initial set of proposals to begin the process.

Included in the Planning Board’s packet for this meeting are ___ separate ordinances, as follows:

1. Article 2 – Administration and Enforcement: Extend the life of variances and special exceptions from 1 year to 2 years, to conform to a change in state law.
2. Article 3 – Nonconforming Lots, Buildings, Structures and Uses: Revise one provision relating to changes to nonconforming buildings and structures, and delete three other provisions, in order to eliminate inconsistencies and clarify the intent. (Note: As written, the proposed amendment includes the words “lawful conforming”; however, the correct wording is “lawful nonconforming”. This will be corrected in the next version.)
3. Accessory Dwelling Units: Additions to Articles 4, 8 and 15 to begin implementation of the new state law (SB 146), which takes effect on June 1, 2017. There are a number of choices to be made in responding to the new law, and this draft should be considered an initial step to begin discussion of the issue.
4. Article 5 – Dimensional and Intensity Standards: Revise and clarify several provisions relating to building coverage, yards and projections into required yards.
5. Article 5 – Bulk Control Plane and Building Height: Establish a new “bulk control plane” provision and reduce maximum building height in residential and mixed residential zoning districts, in order to address increasing concerns regarding infill development that is out of scale and character with the surrounding neighborhood.
6. Article 6 – Historic District Exemptions: Revise 15 provisions regarding exemptions from HDC review, and add 3 additional exemptions, to reduce burdens on property

- owners proposing minor changes. Also clarify that exempted activities, while not requiring a public hearing, are subject to administrative review and approval. (These amendments have been recommended by the Historic District Commission.)
7. Article 10 – Environmental Protection Standards: Expand the jurisdictional areas to include a portion of the Piscataqua River shorefront north of the I-95 bridge; clarify the existing allowance for a 25 percent expansion of a single- or two-family dwelling; and add a sixth criteria for approval of a conditional use permit. (These amendments have been recommended by the Conservation Commission.)
 8. Article 11 – Site Development Standards: Off-Street Parking: Add the Gateway district to two tables of setback requirements for off-street parking areas. (These tables were not updated when the Gateway district was established.)
 9. Article 12 – Signs: Add a provision strictly limiting the type and manner of illumination of signs using “direct illumination”, such as LED or plasma signs.
 10. Article 15 – Definitions: Amend the existing definition of “structure” to exclude fences less than 4 feet in height from yard and setback requirements.

It would be useful to begin discussion of these proposed amendments at the May 19 meeting. The next step would be either to schedule a public hearing at the June meeting, or to schedule a work session on one or more of the proposed amendments for more discussion prior to holding a hearing.

Planning Department Recommendation

Schedule a public hearing on the proposed zoning amendments for the Planning Board meeting on June 16, 2016;

Or

Schedule a work session on the proposed zoning amendments at such time as the Board chooses.
