
MEMORANDUM

TO: Planning Board
FROM: Juliet T.H. Walker, Planning Director
DATE: May 16, 2017
RE: Staff recommendations for May 18, 2017 Planning Board meeting

II. DETERMINATIONS OF COMPLETENESS

A. Site Plan Review:

1. The application of S & G Realty, Owner, for property located at Chevrolet Avenue, requesting Site Plan Approval
2. The application of Borthwick Forest, LLC, and KS Borthwick, LLC, Owners, and Borthwick Forest, LLC, Applicant, for property located on proposed subdivision road to be created off Borthwick Avenue and off WBBX Road, requesting Site Plan Approval

Planning Department Recommendation

Vote to determine that these applications for site plan approval are complete (contingent on the granting of any required waivers under Section III of the agenda) according to the Site Plan Review Regulations and to accept them for consideration.

B. Subdivision:

1. The application of Borthwick Forest, LLC, KS Borthwick, LLC, and HCA Realty, Inc., Owners, and Borthwick Forest, LLC, Applicant, for property located off Borthwick Avenue and WBBX Road, requesting Preliminary and Final Subdivision Approval

Planning Department Recommendation

Vote to determine that these applications for subdivision approval are complete (contingent on the granting of any required waivers under Section III of the agenda) according to the Subdivision Rules and Regulations and to accept them for consideration.

III. PUBLIC HEARINGS – OLD BUSINESS

- A. The application of Peter Fregeau and Westwind Townhomes of Portsmouth Condominium Association, Owners, for property located at 1177 and 1179 Sagamore Avenue, requesting Site Plan Approval for demolition of an existing structure and the construction of three new condominium dwelling units (two separate building, seven total units) with related paving, lighting, utilities, landscaping, drainage, and associated site improvements. Said property is shown on Assessor Map 224 as Lots 12 and 13 and lies within the Mixed Residential Office (MRO) District. (The applicant has filed a notice of voluntary lot merger to combine the two lots

into a single lot.) (This application was postponed at the April 27, 2017 Planning Board Meeting).

Technical Advisory Committee Recommendation

The Technical Advisory Committee reviewed this application at its meeting on April 4, 2017, and voted to recommend site plan approval with the following stipulations:

1. As required by the City's Site Plan Review regulations, the applicant shall provide a detailed statement that lists and describes "green" building components and systems, including, but not limited to, whether the project is certifiable as demonstrated by a completed LEED (Leadership in Energy and Environmental Design) checklist.
2. The applicant shall provide a separate landscape plan in compliance with the Site Plan Review Regulations.
3. An easement shall be provided to the City for a future sidewalk along Sagamore Road to north of driveway and the applicant shall secure all necessary easements from the abutting property owner for construction of the sidewalk to the south of the driveway.
4. The drainage leading to Tucker's Cove shall be located under the sidewalk.
5. There shall be a blanket easement provided to the City for water service access.
6. The water service connection shall have two shut offs for domestic and fire.
7. The plans shall be updated with the pipe size for the existing sewer and where it will be tied into.
8. Note #4 on Sheet C3 shall be updated to comply with the requirements of the Fire Department.
9. Building elevations shall be submitted in accordance with the requirements of the Site Plan Review Regulations.

On April 12, 2017, the applicant submitted a revised plan set satisfying items 2 through 9 to the satisfaction of the Planning Department and related stipulations have been included in the recommendation below. The following items were also addressed in the revised submissions:

1. While the applicant provided a document listing sustainable strategies, the list is not very detailed and does not directly address the LEED checklist as referenced in the Site Plan Review requirements Section 2.5.3 (1). In the future, the Planning Department will provide more specific guidance to applicants on how best to satisfy this requirement.

Planning Board Review

At the April 27, 2017 Planning Board meeting, Planning Board members expressed concerns about the landscaping plan, protection of mature trees on the property, and the design and maintenance of the guard rail and retaining wall on the south side of the property. After discussion, the Board voted to postpone the application to the May meeting to provide the applicant with time to address the concerns raised.

On May 10, 2017, the applicant submitted a revised plan set including the following revisions:

1. The landscape plan has been updated to match the landscaping theme of the existing condominiums that are to the north of the proposed condos.
2. The applicant has provided Detail G on Sheet D2 proposing a weed barrier and mulch treatment for the area between the guard rail and the retaining wall.

3. Additional details were provided regarding the sewer and water utility lines on Detail 1, Sheet 3.

The plans still show that many of the existing trees on the property will be removed to accommodate the proposed development and site features. Section 6.3 (4) of the Site Plan Review Regulations provides for the retention of existing healthy mature trees if required by the Planning Board. No information has been provided on the health of the existing trees and only limited information has been provided on the age and species so it is not clear how many of the trees being removed are native, healthy, and mature. However, the applicant has proposed additional trees and landscaping to offset the removal of the existing trees where possible.

Detail G indicates that the fence will be 5' high and will sit above and slightly set back from the retaining wall. The elevations included on the Grading and Drainage Plan indicate that the elevation change at the wall will range from about 2' to about 6' at the corner closest to Sagamore Ave facing the abutting property to the south. The Zoning Ordinance allows for fences that are 6' or less in height to be exempt from side and rear yard requirements, so the fence technically complies with the ordinance. However, because there is as much as a 5' difference in elevation at the corner location, the fence will appear to be much taller than 6'. Therefore, where the elevation change at the wall is 3' or greater, the Planning Board may want to consider requiring the applicant to lower the fence height at that location, set the fence back from the wall (minimum side yard requirements in this district is 10'), or provide appropriate screening to soften the potential visual impact of the wall and fence on the abutting property.

Planning Department Recommendation

Vote to grant Site Plan Approval with the following stipulations:

Conditions Precedent (to be completed prior to the recording of the site plan)

1. *The applicant shall record a notice of voluntary lot merger, executed by the Planning Director.*
2. *The final sidewalk and drainage easement plans and deeds shall be reviewed and approved by the Planning and Legal Departments.*
3. *The applicant shall secure all necessary easements from the abutting property owner for construction of the sidewalk to the south of the driveway.*
4. *See above for potential additional conditions regarding the retaining wall and fence.*

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

1. *The site plan, landscape plan, and easement plans and deeds shall be recorded at the Registry of Deeds by the City or as deemed appropriate by the Planning Department.*

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- B. The application of 215 Commerce Way, LLC and Moray, LLC, Owners, for property located at 215 and 235 Commerce Way, requesting amended Site Plan Approval to construct a 66,000 s.f., 3-story office building, with a footprint of 22,000 ± s.f., with related paving, lighting, utilities, landscaping, drainage and associated site improvements. Said property is shown on Assessor Map 213 as Lot 11 and Assessor Map 216 as Lot 1-8A and 1-8B and lies within the Office Research District. (This application was postponed at the April 27, 2017 Planning Board Meeting).

Description

This application is to modify a May 19, 2016 amended site plan approval by removing a third phase of construction and modifying phase 2 from a 4-story 63,000 s.f. office building to a 3-story 66,000 s.f. office building. The proposed first phase for site improvements to the existing 40,000 s.f. building remains unchanged.

Technical Advisory Committee Recommendation

The Technical Advisory Committee reviewed this application on April 4, 2017 and voted to recommend approval to the Planning Board as presented with stipulations, which have been included below in the Planning Department recommendation.

Planning Department Recommendation

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 and C-2B) 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 subdivision plan and deed from PSNH shall be recorded at the Registry of Deeds by the City or as determined appropriate by the Planning Department.*
3. *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.*
4. *In lieu of requiring a separate water service to the property at 215 Commerce Way, the property owner of 195 Commerce Way shall be responsible for payment of water and sewer fees for both 195 and 215 Commerce Way until such time title to either property is transferred.*
5. *A recorded deed restriction shall be placed on both 195 and 215 Commerce Way requiring that a separate water service from the water main in Commerce Way directly to the building at 215 Commerce Way shall be installed upon title transfer of either 195 or 215 Commerce Way.*
6. *As consideration for foregoing immediate installation of a water service to 215 Commerce Way, the property owner shall pay the sum of \$18,653.14, which covers the cost incurred by the City to provide water service.*
7. *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.*

IV. PUBLIC HEARINGS – NEW BUSINESS

- A. The application of Paul and Diane Messier, Owners, for property located at 171 Walker Bungalow Road, requesting Conditional Use Permit approval to create a one story, 320 ± s.f. attached accessory dwelling unit, with associated paving, lighting, and utilities. Said property is shown on Assessor Map 202 as Lot 8 and lies within the Single Residence B (SRB) District.

Description

The applicant proposes to construct an accessory dwelling unit as a rear addition to the existing home to be constructed in conformance with all dimensional standards for the zoning district. Because the resulting unit will be an attached accessory dwelling unit (AADU), the provisions of Sec. 10.814.40 apply.

The ordinance provides that “all land use regulations applicable to a single-family dwelling shall also apply to the combination of a principal dwelling unit and an accessory dwelling unit” with a few exceptions. In this case, off-street parking must be provided for the ADU in addition to the two spaces required for a single-family dwelling (one space must be provided for an ADU with up to 400 sq. ft. gross floor area). The property is located in the Single Residence B (SRB) zoning district, and the table below illustrates how the application meets the required dimensional and intensity regulations.

	Required	Provided / Proposed
Min. lot area (sf)	15,000	23,958
Lot area / dw unit (sf)*	15,000	23,958
Street frontage (ft)	100	>100
Lot depth (ft)	100	>100
Primary front yard (ft)	30	34
Right side yard (ft)	10	40
Left side yard (ft)	10	20
Rear yard (ft)	30	110
Height (ft)	35	<35
Bldg coverage (%) (max)	20%	9.7%
Open Space (%) (min)	40%	85.7%
Parking	3	4

*Note: In the Single Residence districts, the lot area per dwelling unit requirement only applies to the principal single family use.

The following table evaluates the proposed accessory dwelling unit against the standards in Sections 10.814.30 and 10.814.40.

Standards	Proposed AADU
<i>10.814.30 All accessory dwelling units</i>	
.31 The principal dwelling unit and the accessory dwelling unit shall not be separated in ownership (including by condominium ownership).	The application states that units will remain in common ownership.
.32 Either the principal dwelling unit or the accessory dwelling unit shall be occupied by the owner of the dwelling. The owner shall provide documentation demonstrating to the satisfaction of the City that one of the units is his or her principal place of residence.	The application states that the applicant/owner will occupy one of the dwelling units. (Note: Ongoing documentation is to be provided as part of the annual certification process.)

Standards	Proposed AADU
.33 Neither the principal dwelling nor the accessory dwelling unit shall be used for any business, except that the property owner may have a home occupation use in the unit that he or she occupies as allowed or permitted elsewhere in this Ordinance.	The application states that neither dwelling unit will be used for any business except for possible home occupation by the owner.
.34 In addition to the two off-street parking spaces required for the single-family dwelling, one parking space shall be provided for an ADU up to 400 sq. ft. gross floor area, and two parking spaces shall be provided for an ADU larger than 400 sq. ft.	The online building permit application indicates that the existing property has 4 parking spaces and the provided site plan shows a parking area. Although the required 3 spaces are not delineated on the plan, the parking area is sufficiently sized to accommodate 3 vehicles. For single and two-family uses, the ordinance allows for tandem parking spaces (requiring the movement of one vehicle to enter and leave the space).
<i>10.814.40 Attached accessory dwelling units</i>	
.41 An interior door shall be provided between the principal dwelling unit and the accessory dwelling unit.	As shown on the proposed floor plan, an interior door is provided.
.42 The accessory dwelling unit shall not have more than two bedrooms and shall not be larger than 750 sq. ft. gross floor area.	The proposed floor plan shows one bedroom and the total gross floor area is 320 sq. ft. (Note: the interior door location on the floor plan does not match the site plan and the applicant has been notified they will need to correct this discrepancy at the Planning Board meeting)
.43 Any exterior changes to the single-family dwelling shall maintain the appearance of a single-family dwelling. If there are two or more doors in the front of the dwelling, one door shall clearly be the principle entrance and the others shall be designed to appear to be secondary.	This addition will be off the rear of the existing building with an accessible ramp proposed as an entrance along the side. The proposed addition will be a single story addition only. For these reasons, and based on the building elevations provided, it appears that the exterior changes will maintain an appearance of a single-family dwelling.

In order to grant a conditional use permit for an ADU, the Planning Board must first make the following findings (Sec. 10.814.60):

Required Findings	Comments
1. Exterior design of the ADU is compatible with the existing residence on the lot through architectural use of building forms, scale and construction materials.	While the building elevations only show one perspective, it appears that the design of the proposed ADU will be compatible with the design and style of the existing residence.

Required Findings	Comments
2. The site plan provides adequate open space and landscaping that is useful for both the ADU and the primary dwelling.	The proposed ADU will be placed on the footprint of an existing deck and both the existing residence and ADU will have access to the yard. The property is quite large and therefore, there will be adequate open space and landscaping for both units.
3. The ADU will maintain a compatible relationship to adjacent properties in terms of location and design, and will not significantly reduce the privacy of adjacent properties.	Although the applicant only provided limited information about the proposed design of the ADU, it appears to be compatible with adjacent properties. The location of the proposed ADU will be behind the existing single family home and setback from the lot lines so as not to significantly reduce the privacy of adjacent properties. Furthermore, the proposed ADU will be located next to an undeveloped portion of an abutting property that provides a buffer between the next closest residence.
4. The ADU will not result in excessive noise, traffic or parking congestion.	Adequate off-street parking will be provided.

Aerial photo showing the relationship of the lot to surrounding lots and buildings:



Planning Department Recommendation

Vote to grant the conditional use permit as presented, with the following stipulation:

1. *In accordance with Sec. 10.814.70 of the Zoning Ordinance, the owner is required to obtain a certificate of use from the Planning Department verifying compliance with all standards of Sec. 10.814, including the owner-occupancy requirement, and shall renew the certificate of use annually.*

- B. The application of Joseph and Ellen Yarborough, Owners, for property located at 746 Middle Road, requesting Conditional Use Permit approval to create a two-bedroom, 750 \pm s.f. detached accessory dwelling unit, with associated paving, lighting, and utilities. Said property is shown on Assessor Map 232 as Lot 49 and lies within the Single Residence B (SRB) District.

Description

The applicant proposes to construct a new accessory dwelling unit to be constructed in conformance with all dimensional standards for the zoning district. Because the resulting unit will be a detached accessory dwelling unit (DADU), the provisions of Sec. 10.814.50 apply.

The ordinance provides that “all land use regulations applicable to a single-family dwelling shall also apply to the combination of a principal dwelling unit and an accessory dwelling unit” with a few exceptions regarding off-street parking. For this application, off-street parking must be provided for the ADU in addition to the two spaces required for a single-family dwelling (two spaces must be provided for an ADU with more than 400 sq. ft. gross floor area). The property is located in the Single Residence B (SRB) zoning district, and the table below illustrates how the application meets the required dimensional and intensity regulations.

	Required	Provided / Proposed
Min. lot area (sf)	15,000	43,493
Lot area / dw unit (sf)*	15,000	43,493
Street frontage (ft)	100	100
Lot depth (ft)	100	435
Primary front yard (ft)	30	30
Right side yard (ft)	10	10
Left side yard (ft)	10	>10
Rear yard (ft)	30	>30
Height (ft)	35	<35
Bldg coverage (%)	20%	5.4%
Open Space (%)	40%	85.1%
Parking (#)	4	4

*Note: In the Single Residence districts, the lot area per dwelling unit requirement only applies to the principal single family use.

The following table evaluates the proposed accessory dwelling unit against the standards in Sections 10.814.30 and 10.814.50.

Standards	Proposed DADU
<i>10.814.30 All accessory dwelling units</i>	
.31 The principal dwelling unit and the accessory dwelling unit shall not be separated in ownership (including by condominium ownership).	The application states that units will remain in common ownership.
.32 Either the principal dwelling unit or the accessory dwelling unit shall be occupied by the owner of the dwelling. The owner shall provide documentation demonstrating to the satisfaction of the City that one of the units is his or her principal place of residence.	The application states that the applicant/owner will occupy one of the dwelling units. (Note: Ongoing documentation is to be provided as part of the annual certification process.)
.33 Neither the principal dwelling nor the accessory dwelling unit shall be used for any business, except that the property owner may have a home occupation use in the unit that he or she occupies as allowed or permitted elsewhere in this Ordinance.	The application states that neither dwelling unit will be used for any business except for possible home occupation by the owner.
.34 In addition to the two off-street parking spaces required for the single-family dwelling, one parking space shall be provided for an ADU up to 400 sq. ft. gross floor area, and two parking spaces shall be provided for an ADU larger than 400 sq. ft.	The site plan shows four parking spaces: two in the existing garage and two outside.
<i>10.814.50 Detached accessory dwelling units</i>	
.52 The DADU shall not have more than two bedrooms and shall not be larger than 750 sq. ft. gross floor area;	The proposed dwelling unit will have two bedrooms and a gross floor area of 750 sq. ft.
.54 The DADU shall be separated from the single-family dwelling by at least 20 feet.	The proposed ADU structure will be 20 feet from the single-family dwelling.

In order to grant a conditional use permit for an ADU, the Planning Board must first make the following findings (Sec. 10.814.60):

Required Findings	Comments
1. Exterior design of the ADU is compatible with the existing residence on the lot through architectural use of building forms, scale and construction materials.	The proposed ADU structure will be a gable-roofed building with wood shingle siding, and thus similar to other buildings in the neighborhood. The new building will be approximately the same width as the existing dwelling, but will be set back further from the street than the primary dwelling, and a story shorter.

Required Findings	Comments
2. The site plan provides adequate open space and landscaping that is useful for both the ADU and the primary dwelling.	The proposed ADU is being placed on a portion of the property that is currently surrounded by driveways. The proposed site plan will remove some of the pavement and replace with green area. Both the ADU and the primary dwelling will have access to the substantial open space area located in the back of the property.
3. The ADU will maintain a compatible relationship to adjacent properties in terms of location and design, and will not significantly reduce the privacy of adjacent properties.	The proposed ADU will be located in such a way as to reflect the spacing for other houses and accessory structures along the street. As it will be located in the center of the lot along the street frontage, it should not impact the privacy of adjacent properties.
4. The ADU will not result in excessive noise, traffic or parking congestion.	Adequate off-street parking and interior circulation is provided.

Aerial photo showing the relationship of the lot to surrounding lots and buildings:



Planning Department Recommendation

Vote to grant the conditional use permit as presented, with the following stipulation:

1. *In accordance with Sec. 10.814.70 of the Zoning Ordinance, the owner is required to obtain a certificate of use from the Planning Department verifying compliance with all standards of Sec. 10.814, including the owner-occupancy requirement, and shall renew the certificate of use annually.*
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- C. The application of Swirly Girl II, LLC, Owner, for property located at 244 South Street, requesting Conditional Use Permit approval under Section 10.1017 of the Zoning Ordinance for work within the inland wetland buffer to convert a three-unit residential building to a two-unit residential building, construct a 27' high, 22' x 30' addition, a 10' high, 7' x 17 addition, a 6' x 12.5' deck, the addition of 581 \pm s.f. of pervious driveway and stormwater management structures, with 1,091 \pm s.f. of impact to the wetland buffer. Said property is shown on Assessor Map 111 as Lot 3 and lies within the Single Residence B (SRB) District and the Historic District.

Conservation Commission Review

The Conservation Commission reviewed this application at its meeting on May 17, 2017, and voted to postpone this application to the June 14th meeting.

Planning Department Recommendation

Vote to postpone consideration of this application to the Planning Board meeting on June 15, 2017.

- D. The application of Five Hundred Five Lafayette Road, LLC, Owner, and Lens Doctors, Applicant, for property located at 605 Lafayette Road, requesting Site Plan Approval for the demolition of the existing building and the construction of a proposed 2-story office building, with a footprint of 7,000 \pm s.f. and gross floor area of 14,000 \pm s.f., with related paving, lighting, utilities, landscaping, drainage and associated site improvements. Said properties are shown on Assessor Map 229 as Lot 9 and lies within the Gateway (GW) District.

Description

The applicant has submitted a request to postpone to the June 15, 2017 meeting.

Planning Department Recommendation

Vote to postpone consideration of this application to the Planning Board meeting on June 15, 2017.

- E. The application of Pauline M. Dowd, Owner, and Tuck Realty Corporation, Applicant, for property located at 288 Peverly Hill Road, requesting Site Plan Approval for the demolition of an existing residence and the construction of a proposed Planned Unit Development (PUD) consisting of two 2 ½ story buildings, with five units in "Building A" with a footprint of 5,200 \pm s.f. and gross floor area of 13,230 \pm s.f., and four units in "Building B" with a footprint of 4,160 \pm s.f. and gross floor area of 10,504 \pm s.f., with related paving, lighting, utilities, landscaping,

drainage and associated site improvements. Said property is shown on Assessor Map 255 as Lot 8 and lies within the Single Residence B (SRB) District.

Description

The applicant has submitted a request to postpone to the June 15, 2017 meeting.

Planning Department Recommendation

Vote to postpone consideration of this application to the Planning Board meeting on June 15, 2017.

It is recommended that Items F under Public Hearings – New Business and A under City Council Referrals/ Requests be discussed together and voted on separately.

A motion is required to consider these two items together.

- F. The application of S & G Realty, Owner, for property located at Chevrolet Avenue, requesting Site Plan Approval for demolition of the existing buildings and the construction of a proposed 3 unit, 3-story residential development, with a footprint of 2,426 s.f. ± with related paving, lighting, utilities, landscaping, drainage and associated site improvements. Said property is shown on Assessor Map 147 as Lot 30 and lies within the General Residence C (GRC) District.

Description

This application is proposing to construct 3 single family townhomes on an existing lot. As part of this project, the applicant is working with the City to resolve a boundary line discrepancy, which is discussed further under City Council Referrals. The Zoning Board of Adjustment has granted variances for this project to allow a lot area per dwelling unit of 3,357 s.f. where 3,500 s.f. is required and for parking location.

Technical Advisory Committee Review

TAC reviewed this application on May 2, 2017 and voted to recommend approval with the following stipulations:

1. The proposed Boundary Line Agreement and Easement Deed shall be prepared by the Applicant for review and approval by the City Legal Department.
2. The applicant will work with the abutter to rebuild the fence along the property line and in doing so ensure that the site distance is not impeded.

Subsequent to the TAC meeting, the applicant has met with the City's legal department and a proposed boundary line agreement and easement deed are on the City Council's agenda for the May 15, 2017 meeting. It is anticipated that the City Council will vote to refer these items to the Planning Board for a recommendation.

Planning Department Recommendation

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 Layout and Landscaping Plan (Sheet C2) shall be recorded at the Registry of Deeds by the City or as determined appropriate by the Planning Department.*
2. *After approval by the City Council, the Boundary Line Agreement and Easement Deed shall be recorded at the Registry of Deeds by the City or as determined appropriate by the Planning Department.*
3. *The applicant shall work with the abutter to rebuild the fence along the property line and in doing so ensure that the site distance is not impeded.*

It is recommended that Items G, H, and I under Public Hearings – New Business be discussed together and voted on separately.

A motion is required to consider these two items together.

- G. The application of Borthwick Forest, LLC, KS Borthwick, LLC, and HCA Realty, Inc., Owners, and Borthwick Forest, LLC, Applicant, for property located off Borthwick Avenue and WBBX Road, requesting Preliminary and Final Subdivision Approval to combine four lots into one lot and create a new public right-of-way 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;into a single lot containing 42.281 acres; and
 2. To create a public right-of-way from Borthwick Avenue to the consolidated lot, as follows:
 - a. Following a reserved right-of-way across land of HCA Realty, Inc. (Assessors Map 234 Lot 7-4A), having an area of 44,032 ± sq. ft.,
 - b. Following a right-of-way across land of Boston and Maine Corporation (Assessors Map 165 Lot 14), having an area of 5,457 ± sq. ft., and
 - c. Extending into the consolidated lot with an area of 31,657 ± sq. ft. (0.727 ± acre), thereby reducing the area of the consolidated lot to 41.544 ± acres;said proposed public right-of-way having a total area of 81,146 ± sq. ft. (1.863 ± acre) and total length of approximately 1,000 feet (0.2 mile).

Said properties lie within the Office Research (OR) district where the minimum lot area is 3 acres and the minimum continuous street frontage is 300 feet.

- H. The application of Borthwick Forest, LLC, Owner, Boston and Maine Corp, Owner, and HCA Realty, Inc., Owner, for properties located off Borthwick Avenue, requesting Conditional Use Permit approval under Section 10.1017 of the Zoning Ordinance for work including a 60' wide road right-of-way with a 28' wide road and 10' paved multiuse path including an at grade railroad crossing and new 50' radius cul-de-sac and a new 50,000 s.f. building. Work within the inland wetland buffer includes construction and grading for portions of a new roadway, railroad crossing, multiuse path, drainage structures and the restoration of WBBX Road, with 18,100 ± s.f. of temporary impact and 13,500 ± s.f. of permanent impact to the inland wetland

buffer. Said properties are shown on Assessor Map 233 as Lot 113, Assessor Map 165, as Lot 14, and Assessor Map 234, as Lot 7-4A and lie within the Office Research (OR) District.

- I. The application of Borthwick Forest, LLC, and KS Borthwick, LLC, Owners, and Borthwick Forest, LLC, Applicant, for property located on proposed subdivision road to be created off Borthwick Avenue and off WBBX Road, requesting Site Plan Approval to construct a 50,000 s.f. office building with related paving, lighting, utilities, landscaping, drainage, fire access drive and associated site improvements. Said property is shown on Assessor Map 241 as Lots 25 & 26 and Assessor Map 233 as Lots 112, 113, & 114 and lies within the Office Research (OR) and the Single Residence B (SRB) Districts.

Description

These applications concern the consolidation of four lots located between two branches of the Boston & Main Railroad (one abandoned and one active), the construction of a 1,000-foot (0.2 mile) public street across an existing lot which fronts on Borthwick Ave to the new lot, and construction of a limited access emergency vehicle / bicycle and pedestrian road from the new public street to Islington Street. The subdivision will create one 42-acre lot where a 50,000 s.f. office building is proposed.

The tract of land that is the subject of the subdivision application has been before the Planning Board three times in the last decade: for the "Islington Woods" mixed-use housing development in 2004-2006, the "Borthwick Village" continuing care retirement community in 2007-2010, and the previous Borthwick Forest / Jackson Gray Building subdivision in 2016. Two of these 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"). The proposed emergency access road will extend from the end of the cul-de-sac on the proposed street and will cross an abandoned rail corridor near Islington Street which is planned for conversion to a multi-use rail trail (the "Hampton Branch").

Because the new street will provide access to 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 public street 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.

Conditional Use Permit

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.

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

The impacts proposed from this project are best reviewed on the Buffer Restoration and Sequencing Plan. In the legend of the plan the applicant has called out 6,300 square feet of impact where the new road and multi-use path are proposed, an additional 7,200 square feet also in the buffer of grading and stormwater treatment swales to support the new road and stormwater treatment from the new impervious surfaces including the roadway, new

parking area and building. These impacts are being offset by removal of the existing access road of 5,800 square feet and an adjacent graded and buffer planting area of 12,300 square feet. There is an additional area of Eastern white pine planting to replace the loss of a stand of eastern white pine. This area is approximately 9000 square feet with trees planted 20' on center. The impacts to the wetland buffer and adjacent wetlands include the input of stormwater from the new roadway, multi-use path and building. This stormwater will be treated by a gravel wetland out of the wetland buffer then discharged to drainage swales in the buffer. This is a large impact in the buffer which the applicant has taken steps to offset with a detailed restoration effort. If the restoration efforts are successful and the stormwater treatment systems are maintained and function as intended the proposed project is reasonable for this site.

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

The proposed project is to provide access to a development site by the owner of this property. The only access that the property owner is able to secure is across the railroad right-of-way as shown on the plan. Access through this area requires that the roadway to access the site be constructed to City of Portsmouth Street standards and the only path is through a wetland buffer. Given the constraints of the property the applicant has taken steps to minimize the impacts in the wetland buffer and developed a feasible plan for development.

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

The applicant has provided information about how impacts to the site have been reduced and a statement that there will be no impact to wetland functional values on the site. The applicant has identified the usage of one of the properties on the site by Blandings turtles and by the Sora. There is no impact proposed in the areas described for these species but given the sensitivity of this habitat care should be taken to protect these areas and other buffer areas from future development impacts.

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

The project will result in the loss of quite a bit of natural woodland vegetation including a stand of pines where the access road and drainage swale are going. The applicant has amended their plan to include planting a stand of white pine to offset the impact of the loss off the existing stand. It is important that provisions be included to monitor the success of the proposed trees and restoration areas and insure future protection of these restoration areas.

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 project has been designed to reduce impacts. In fact an early alternative was provided which reduced impacts to a large stand of pine trees. The applicant has also taken steps to reduce the impacts to the wetlands and wetland buffer by removing an existing paved road and fill which was installed to support that roadway. The plan shows where the restoration areas are proposed but there is no assurance of a minimum planting area or minimum number of species of each type proposed.

Conservation Commission Review

The Conservation Commission reviewed this application at the May 10, 2017 meeting and voted to recommend approval of the project to the Planning Board with stipulations. These stipulations have been incorporated into the Planning Department recommendations below.

Subdivision & Site Plan*Technical Advisory Committee Review*

The Technical Advisory Committee reviewed this application at the May 2, 2017 meeting and voted to recommend approval of the project to the Planning Board with the following stipulations.

Revisions to be completed prior to Planning Board approval

1. Applicant shall include a low maintenance landscaping treatment for the median island in the cul-de-sac.
2. No mulch shall be used in the landscaped areas on the site and applicant shall use a non-flammable alternative.
3. The applicant shall clear up any discrepancies on the landscaping plan to make sure landscaping features are labeled and described correctly.
4. The location and boundaries of the gravel wetland shall be added to the site plan, landscaping plan, and restoration plan.
5. The light pole and based shall be a 24' aluminum light pole standard with 8' arm and applicant shall also provide wiring for light to the fixture mounting location. The City will provide the luminaire.
6. A 20' water line easement shall be provided for the existing cross country water line. The easement is to be centered on the existing main.
7. The applicant shall provide more details about the proposed use and occupancy of the existing house on Islington Street.
8. Details for manholes shall be City standard.
9. The applicant shall add additional landscape islands to break up the areas where there are more than 20 parking spaces in a row along the outer edges of the parking area.
10. A detail for the retaining wall and guard rail shall be provided.
11. On the detail of the gravel wetland, the note shall be revised to indicate that a qualified professional shall be hired to assess and implement measures to improve function.
12. To address the recommended traffic mitigation measures at the intersection of Route 33 / Borthwick Avenue, the applicant shall provide an estimate of a meaningful cost-sharing contribution to advance the design development process for long-term intersection improvements, or for DPW's use to investigate the feasibility of realigning Borthwick Avenue as it approaches Route 33.
13. Convert the intersection of Borthwick Avenue and Greenland Road and Sherburne Road to an all-way stop intersection, with stop signs installed on all three approaches. In addition, the Applicant's traffic engineer shall review the safety and sight distance characteristics of the pedestrian crossing immediately to the east of this intersection to determine if additional pedestrian safety enhancements may be required for the increased traffic queuing resulting from the project.
14. The applicant shall upgrade the existing pedestrian crossing signage near the proposed access roadway intersection with Borthwick Avenue to current Manual on Uniform Traffic Control Devices (MUTCD) standards.

Recommended conditions to be satisfied prior to issuance of a building permit

These items are included below under the Planning Department recommendation.

Recommended conditions to be satisfied post-permit approval:

This item is included below under the Planning Department recommendation.

On May 11, 2017, the applicant submitted revised plans addressing all of the items to be addressed prior to review by Planning Board to the satisfaction of the Planning Department with the exception of items 12 and 13. Items 12 and 13 required additional input from the applicant's traffic engineer and the applicant will be providing supplemental material prior to the Planning Board meeting. For item 2, the applicant has proposed an alternative solution for the request not to use any mulch in landscaped areas. The Planning Department has asked the applicant to confirm this with the Fire Department, but feel that the proposed alternative should be sufficient to address the concerns raised by TAC.

Planning Department Recommendation*A. Wetlands Conditional Use Permit*

Vote to grant the conditional use permit with the following stipulations:

- 1. The Restoration Plan shall specify that any mulch used shall be untreated and shall include a minimum number and size of plants so that the restoration work can be accurately completed by the restoration contractor.*
- 2. A note shall be added to the recorded Site Plans that the property owner shall provide an as-built restoration plan and follow-up monitoring one and three years after the restoration work has been completed to insure a survival rate of at least 80% of the new plantings. The monitoring plan shall be submitted to the Planning Department and shall include a requirement that any new invasive species found in the restoration area during the site monitoring be mechanically removed.*
- 3. The applicant shall provide a deed restriction or protective covenant providing additional protections for land located within the 100-foot wetland buffer including, at a minimum, buffer areas around the prime wetlands area and area in the southern portion of the property where the Blanding Turtle Habitat has been identified. This protective covenant shall be reviewed and approved by the Planning and Legal Departments.*
- 4. A note shall be added to the recorded Site Plans that ATV use shall be prohibited in the described Blanding Turtle nesting area and the impacted area shall be signed accordingly by the property owner.*
- 5. Plans shall be amended to accurately define the prime wetland area on the southern portion of the site.*

B. Subdivision

- 1. Due to the specific circumstances of the proposed subdivision location in relation to access off of Borthwick Ave and the location of the railroad which bisects the property, and considering that the proposed subdivision road will properly carry out the spirit and intent of the regulations, vote to grant a waiver to Section VI 3(I) to allow a cul-de-sac subdivision road that is greater than 500 feet in length.*
- 2. Vote to grant Preliminary and Final Subdivision Approval with the following stipulations:*
 - 1. The applicant shall work with DPW to locate drop inlet / catch basins or other drainage as the Department finds appropriate near the rail crossing.*

2. *The applicant shall coordinate with DPW and PanAm to refine the roadway design including geotechnical design, cross sections, drainage features, and utility locations with final design being subject to final approval by DPW.*
3. *Any easements required for roadway and drainage maintenance and management will be subject to final review and approval by the City.*
4. *The pavement details shall include addition of at least 3" of 'fine' pavement binder for the roadway's first course of pavement to accommodate construction traffic.*
5. *The applicant shall agree to pay for the services of an oversight engineer, to be selected by the City, to monitor the construction of the road.*
6. *Lot numbers as determined by the Assessor shall be added to the final plat.*
7. *Property monuments shall be set as required by the Department of Public Works prior to the filing of the plat.*
8. *GIS data shall be provided to the Department of Public Works in the form as required by the City.*
9. *The final plat and all easement plans and deeds shall be recorded concurrently at the Registry of Deeds by the City or as deemed appropriate by the Planning Department.*

C. Site Plan Review

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

1. *To address the recommended traffic mitigation measures at the intersection of Route 33 / Borthwick Avenue, the applicant shall provide a meaningful cost-sharing contribution, to be determined in consultation with the DPW and Planning Department, to advance the design development process for long-term intersection improvements, or for DPW's use to investigate the feasibility of realigning Borthwick Avenue as it approaches Route 33.*
2. *The Site Plans (C 102.1 and C 102.2), General Notes Sheets (G-101.1 and G-101.2), and Landscape Plans (C-105.1 and C-105.2) shall be recorded at the Registry of Deeds by the City or as determined appropriate by the Planning Department and shall include the following notes:*
 1. *The Site Plan shall be recorded in the Rockingham County Registry of Deeds.*
 2. *All improvements shown on the Site Plan shall be constructed and maintained in accordance with the Plan by the property owner and all future property owners. No changes shall be made to this Site Plan without the express approval of the Portsmouth Planning Director.*
 3. *The property owner and all future property owners shall be responsible for the maintenance, repair and replacement of all required screening and landscape materials.*
 4. *All required plant materials shall be tended and maintained in a healthy growing condition, replaced when necessary, and kept free of refuse and debris. All required fences and walls shall be maintained in good repair.*
 5. *The property owner shall be responsible to remove and replace dead or diseased plant materials immediately with the same type, size and quantity of plant materials as originally installed, unless alternative plantings are requested, justified and approved by the Planning Board or Planning Director."*

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

1. *The property owner shall prepare a monitoring report for the intersection of Borthwick Avenue with Greenland Road and Sherburne Road within one year of the occupation of the proposed office building.*

V. CITY COUNCIL REFERRALS/REQUESTS

- A. Request from S & G Realty for a Boundary Line Adjustment and Easement (City Council referral)

Description

The City Council is scheduled to consider this request at the May 15, 2017 meeting and refer to the Planning Board for a report back. The proposed boundary line adjustment would resolve a discrepancy in the boundary line between S & G Realty's property (Map 157 Lot 30) and the portion of Chevrolet Ave owned by the City. The proposed agreement would include a 10' utility easement that would enable the City to maintain public sewer and drainage infrastructure.

Planning Department Recommendation

Vote to recommend that the City Council approve the Boundary Line Agreement and Easement.

- B. Request from David Calkins for City Council to Authorize Issuance of Building Permit for property off of Swett Avenue, Moffat Street, and Woodworth Avenue (City Council Referral)

Description

In a letter to the City Council received April 26, 2017, Attorney Durbin, representing Mr. David Calkins, requested authorization for the issuance of building permits for construction of single family homes on lots located off of Swett Avenue, Moffat Street, and Woodworth Avenue pursuant to RSA 674:41(d). The City Council voted to refer this to the Planning Board at the May 15, 2017 Council meeting.

In the same letter Attorney Durbin included a request for the City Council to postpone voting on the Richer's request for release of interest in portions of two paper streets that abut Mr. Calkins' lots and consider Mr. Calkins' building permit request and the Richers request at the same time. This request was referred to the Planning Board, who voted to recommend that the City release interest in the paper streets per the Richers' request at the April meeting. The City Council has voted to postpone consideration of this request until receiving a report back from the Planning Board regarding Mr. Calkins' request.

Mr. Calkins' original subdivision proposal called for extending Woodworth and Swett Avenues to the paper street portion of Moffat Street, and constructing a street within the Moffat Street layout to create frontage for the new lots. The Zoning Board of Adjustment originally granted variances for reduced lot area and street frontage for this project in February. Because the City has never accepted this portion of Moffat Street, as originally proposed the subdivision would require the consent of the abutting owners in order to be considered by the Planning Board.

Possibly in response to this proposed subdivision, the owners of abutting property at the end of the Moffat Street cul-de-sac petitioned the City Council to release paper street portions of Moffat Street and Woodworth Avenue that abut their two parcels. The Planning Board recommended approval and the City Council granted their request at its March 6 meeting.

Another property owner, Raymond and Maryrose Richer requested that the City release to them its interest in the paper street portions of Woodworth Avenue and Moffat Street adjoining their property at 85 Woodworth Avenue. At the April Planning Board meeting, the Board voted to recommend granting this request.

Without the consent of the abutting property owners, the proposed subdivision road as previously proposed by the application would no longer be possible and at least one of the proposed lots would not have any street frontage. Therefore, in April the applicant applied for and received relief from the Zoning Board of Adjustment for creation of a buildable lot with no frontage on a public way.

Although the applicant has received relief from the Zoning Board of Adjustment for creation of a residential lot with no street frontage, the Planning Department has advised the applicant that the applicant will also need to get approval from the City Council because of a state statute related to street access (RSA 674:40 and 674:41). This law prohibits the issuance of a building permit unless the lot has access to a street that meets one of the following criteria (simplified):

- has been accepted by the City
- is shown on the City's official map (which we don't have)
- is shown on an approved subdivision plan
- is shown on a "street plat" approved by the planning board
- is a class VI highway
- is a private road, provided that the City Council has voted to authorize the issuance of building permits on said private road

After consultation with the Legal Department, the Planning Department has determined that the applicant cannot build on the lots as proposed without a City Council vote. Furthermore, RSA 674:41 requires that the City Council receive review and comment from the Planning Board prior to authorizing a building permit.

While the applicant discussed a few different proposed access routes to the proposed lots when he presented to the Zoning Board of Adjustment, he has not provided anything definitive in this regard for the City Council or the Planning Board's consideration. As this authorization would allow for issuance of building permits on a private road, it would be important to know more information about the private road location and design prior to making a decision on the request. Furthermore, as this project will ultimately require subdivision approval and therefore any road and lot layout is only conceptual at this time, any authorization from the City Council for building permits should be contingent on the Planning Board granting subdivision approval.

Planning Department Recommendation

Vote to postpone consideration of this request pending further information from the applicant regarding the proposed location and design of the private road accessing these lots.

VI. PRELIMINARY CONCEPTUAL CONSULTATION

- A. The request of The Provident Bank, Owner, for property located at 25 Maplewood Avenue, for Preliminary Conceptual Consultation, to construct a four story mixed use building, including 1st floor commercial/retail/parking, 2nd floor offices, and 3rd and 4th floor residential. Said property is shown on Assessor Map 126 as Lot 2, and lies

within Character District 5 (CD-5), the Downtown Overlay District (DOD) and the Historic District.

Description

The Site Plan Review Regulations provide two options for “preapplication review” as authorized by RSA 676:4,II: “preliminary conceptual consultation” and “design review”. For many projects, preliminary conceptual consultation is at the option of the applicant. However, in September 2016 the Regulations were amended to *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. The current proposal shows the construction of two 4-unit rowhouse structures in addition to the three existing residential buildings, and thus meets the third threshold.

Preliminary conceptual consultation is described in the statute as follows:

[P]reliminary 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.

In *The Planning Board in New Hampshire: A Handbook for Local Officials*, the NH Office of Energy and Planning stresses the importance of limiting the discussion to concepts:

New Hampshire statutes place great emphasis on the obligation of the planning board to provide notice to the abutters and the public of any substantive discussions on specific development proposals. Neither the applicant nor the planning board may go beyond the general and conceptual limits and begin discussing the design or engineering details of a proposal until the abutters and general public have been notified. This must occur either prior to the design review phase of the pre-application review or when a completed application has been filed.

Preliminary conceptual consultation does not involve a public hearing, and no vote is taken by the Board on the proposal at this stage.

Planning Department Recommendation

No action is required.

VII. OTHER BUSINESS

- A. Request that the City accept a sewer line easement from Charles Schultz and Katherine Cahill of 240 Myrtle Avenue and from David Lear of 260 Myrtle Avenue.

Description

The property owners of the above described properties have been approached by the City to execute the required temporary and permanent easements that are required for the relocation of a portion of a public sewer main that currently crosses private property.

Planning Department Recommendations

Vote to recommend the City Council accept a sewer line easement from Charles Schultz and Katherine Cahill of 240 Myrtle Avenue and from David Lear of 260 Myrtle Avenue.

- B. Request of Richard Fusegni, for property located at 201 Kearsarge Way, for a six month extension of Final Subdivision approval which was granted by the Planning Board on June 16, 2016. A first six month extension was granted by the Planning Director on November 8, 2016 to expire on June 16, 2017.

Description

The Subdivision Rules and Regulations provide that all stipulations of subdivision approval, including recording of the plan, shall be completed within 6 months of the date of approval by the Planning Board. The Planning Director may grant one 6-month extension administratively, but a second (and final) six-month extension requires approval by the Planning Board.

Planning Department Recommendations

Vote to grant a second six-month extension of subdivision approval, to expire on December 16, 2017.