



MEMORANDUM

To: Planning Board
From: Juliet T.H. Walker, Planning Director *JTW*
Subject: Staff Recommendations for August 17, 2017 Planning Board Meeting
Date: August 14, 2017

II. DETERMINATIONS OF COMPLETENESS

A. SITE REVIEW

1. The application of **Deer Street Associates, Owner**, for property located at **165 Deer Street**, ("Lots 2 & 3").

Planning Department Recommendation

Vote to determine that the application is complete according to the Site Plan Review Regulations and to accept the application for consideration.

B. SUBDIVISION

1. The application of **Andrew F. Cotrupi and Jennifer B. Cotrupi, Owners**, for property located at **137 Wibird Street**.
2. The application of **Society for the Preservation of New England Antiquities, Inc., Owner**, for property located at **364 Middle Street**, and the **C. Sue Mautz 2008 Trust, Owner, C. Sue Mautz, Trustee**, for property located at **338 Middle Street**.

Planning Department Recommendation

Vote to determine that the application is complete according to the Subdivision Regulations and to accept the application for consideration.

III. PUBLIC HEARINGS – OLD BUSINESS

- A. The application of **Steven H. Lee, Owner**, for property located at **174 Dodge Avenue**, requesting Conditional Use Permit approval to create a two-story 1,000 + s.f. garden cottage in an existing building, with associated paving, lighting, and utilities. Said property is shown on Assessor Map 258 as Lot 43 and lies within the Single Residence B (SRB) District.

Description

The applicant proposes to convert an existing accessory building to a garden cottage dwelling unit and therefore the provisions of Sec. 10.815 apply. Different from an ADU, a garden cottage that complies with the standards of Section 10.815 is otherwise exempt from the residential density standards of the Zoning Ordinance (e.g. minimum lot area per dwelling unit).

The Ordinance requires that a garden cottage comply with the following standards (Section 10.815.30). As allowed under Section 10.815.60, in granting the conditional use permit the Planning Board may modify a specific dimensional or parking standard provided that the Board finds that the modification will be consistent with the required findings of Section 10.815.40.

Required Standard	Planning Department Comments
1. The existing accessory building shall not be expanded either vertically or horizontally, other than through the addition of a front entry not to exceed 50 sq. ft., or a side or rear deck not to exceed 300 sq. ft.	
2. The garden cottage shall not be larger than 600 sq. ft. gross floor area allowed per the Ordinance.	The proposed garden cottage is 1,268 sq. ft. The applicant is requesting a modification to this requirement indicating that he would like to use the second story as a bedroom and does not wish to partition the first floor. While this is understandable from a cost-savings standpoint, it would be feasible for the applicant to comply with the 600 GFA by partitioning the space and limiting the occupied space to the first floor only. He is also proposing to fit out the space with 1 ½ baths. With the larger GFA and the 1 ½ baths, the garden cottage would be more akin to a principal dwelling than an accessory unit. Having two principal dwellings on a lot is not consistent with the intended purpose of a single family residential district.

Required Standard	Planning Department Comments
3. A garden cottage that is within a required yard for the zoning district shall not have any windows or doors higher than 8 feet above grade facing the adjacent property.	The required yards in this zoning district are 10' on the side and 30' for the front and rear. The proposed garden cottage is not located within a required yard.
2. One off-street parking space shall be provided for the garden cottage in addition to the two required for the single-family dwelling.	
2. The principal dwelling unit and the garden cottage shall not be separated in ownership (including by condominium ownership); and either the principal dwelling unit or the garden cottage shall be occupied by the owner of the property.	

In order to grant a conditional use permit for a Garden Cottage, the Planning Board must first make the following findings (Sec. 10.815.40):

Required Findings	Planning Department Comments
1. Exterior design of the Garden Cottage is compatible with the existing residence on the lot through architectural use of building forms, scale and construction materials.	As the applicant indicates, the accessory building was built in the same style as the primary residence on the property and was designed to be architecturally compatible.
2. The site plan provides adequate open space and landscaping that is useful for both the Garden Cottage and the primary dwelling.	Both the primary dwelling and the garden cottage will have access to usable open space and the existing landscaping on the property will not be altered.
3. The Garden Cottage 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 request to allow a GFA of 1,268 sq. ft. where 600 sq. ft. is the maximum allowed more than doubles the size of the space and would give the garden cottage a total floor area that is more akin to a principal dwelling than an accessory unit. As the applicant indicates, the property is fairly isolated and the existing character and privacy of the property and the surrounding neighborhood will not be altered significantly. However, the existence of two principal dwellings on a lot has potential to impact the privacy and character of the neighborhood, which is in a single family district.

Required Findings	Planning Department Comments
4. The Garden Cottage will not result in excessive noise, traffic or parking congestion.	Adequate off-street parking is provided and the location of the proposed garden cottage and distance from neighboring properties will reduce the likelihood of increased noise. If the garden cottage is used more like a principal dwelling than an accessory unit as a result of the increased GFA, there is some potential for impact on noise and traffic, while unlikely to be excessive.

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



Planning Department Recommendation

1. *Vote to find that the application satisfies the requirements of 10.815.40.*
2. *Vote to grant the conditional use permit as presented, with the following stipulations:*
 1. *The garden cottage shall be partitioned to have a maximum gross floor area of 600 sq. ft. as allowed per the standards of the Zoning Ordinance.*
 2. *In accordance with Sec. 10.815.50 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. 10.815, including the owner-occupancy requirement, and shall renew the certificate of use annually.*

III. PUBLIC HEARINGS – OLD BUSINESS (cont.)

- B. The application of **Merton Alan Investments, LLC, Owner**, for property located at **30 Cate Street**, requesting Amended Site Plan Approval to remove the 10 foot wide walkthroughs in the center of the two 8-unit buildings and move the units together; to provide a 20 foot wide separation between the 6-unit building to create two 3-unit buildings; and the revision of grading and utilities to accommodate the new building locations. Said property is shown on Assessors Map 165 as Lot 1 and lie within Character District 4-W (CD-4W).

Planning Department Recommendation

The applicant has withdrawn this application. No action is required by the Planning Board.

IV. PUBLIC HEARINGS – NEW BUSINESS

- A. The application of **Andrew F. Cotrupi and Jennifer B. Cotrupi, Owners**, for property located at **137 Wibird Street**, requesting Preliminary and Final Subdivision Approval to subdivide one lot into two lots as follows:
1. Proposed lot A having an area of 7,770 ± s.f. (0.18 acres) and 76' of continuous street frontage on Wibird Street. 100' of continuous street frontage on Lincoln Avenue; and
 2. Proposed lot B having an area of 7,525 ± s.f. (0.17 acres) and 58.85' of continuous street frontage on Lincoln Avenue.

Said property is shown on Assessor Map 134 as Lot 48 and lies within the General Residence A (GRA) District where the minimum lot area is 7,500 s.f. and the minimum continuous street frontage is 100'.

Description

The applicants are proposing to subdivide their existing property with one single family home and a garage into two single family lots. The Board of Adjustment granted a variance on August 16, 2016 to allow proposed Lot B to have 58.85 s.f. of continuous street frontage and to contain an accessory garage as a principal use.

Technical Advisory Committee Review

The TAC reviewed this application on August 1, 2017 and voted to recommend approval with the following stipulations:

- 1) The applicant shall install a backflow preventer, preferably a "Red Valve" or equivalent mechanically operated backflow preventer to the proposed drainage system.
- 2) The applicant shall show the curb to curb area to show repairs to the pavement upon the completion of all work on utilities in the roadway.
- 3) Show area where concrete sidewalk will be repaired/replaced.
- 4) The applicant shall secure a driveway permit for the proposed new driveway.
- 5) The applicant shall amend the plans to show a 3' radius on the proposed new driveway.
- 6) The drain line connecting to the City storm drain should be a 6" diameter pipe.
- 7) The infiltration trench should be depressed at least 6" below the surrounding grade.
- 8) The applicant shall consider moving the porous pavement areas up to 3' closer to the street to allow the two planting beds adjacent to the house to be more functional.

On August 8, 2017, the applicant submitted revised plans addressing the items above to the satisfaction of the Planning Department.

Waiver Request

The applicant has requested a waiver to the Section VI (2) (B) of the Subdivision Regulations, which requires that corner lots shall have at least 10% extra width to permit appropriate building setback from the orientation to both streets. The proposed width of Lot A is 100' so a minimum of 110' would be required. The Planning Department recommends granting the requested waiver as the location of the existing house on Lot A will not be changed and meets the required setbacks from both streets.

Planning Department Recommendation

1. *Vote to find that strict conformity would pose an unnecessary hardship to the applicant and waiver would not be contrary to the spirit and intent of the regulations and, therefore, to waive compliance with Section VI.2.B of the Subdivision Rules and Regulations requiring all lot dimensions to comply with the requirements of the Zoning Ordinance.*
2. *Vote to grant Preliminary and Final Subdivision Approval with the following stipulations:*
 1. *Lot numbers as determined by the Assessor shall be added to the final plat.*
 2. *Property monuments shall be set as required by the Department of Public Works prior to the filing of the plat.*
 3. *GIS data shall be provided to the Department of Public Works in the form as required by the City.*
 4. *The final plat and Site Plan shall be recorded concurrently at the Registry of Deeds by the City or as deemed appropriate by the Planning Department.*
 5. *The applicant shall apply for a driveway permit for the proposed new driveway.*

IV. PUBLIC HEARINGS – NEW BUSINESS (cont.)

- B. The application of **Society for the Preservation of New England Antiquities, Inc., Owner**, for property located at **364 Middle Street**, and the **C. Sue Mautz 2008 Trust, Owner, C. Sue Mautz, Trustee**, for property located at **338 Middle Street**, requesting Preliminary and Final Subdivision Approval (Lot Line Revision) between two lots as follows:

- (1) Map 136, Lot 22 decreasing in area from 81,454 ± s.f. (1.87 acres) to 80,717 ± s.f. (1.8530 acres) with 211.91' of continuous street frontage on Middle Street.
- (2) Map 136, Lot 23 increasing in area from 5,958 ± s.f. (0.1368 acres) to 6,695 ± s.f. (0.1537 acres) with 66.9' of continuous street frontage on Middle Street.

Said lots lie within the Mixed Residential Office (MRO) District where the minimum lot area is 7,500 s.f. and the minimum continuous street frontage is 100', and the Historic District.

Planning Department Recommendation

1. *Vote to grant Preliminary and Final Subdivision Approval with the following stipulations:*
 1. *Lot numbers as determined by the Assessor shall be added to the final plat.*
 2. *Property monuments shall be set as required by the Department of Public Works prior to the filing of the plat.*
 3. *GIS data shall be provided to the Department of Public Works in the form as required by the City.*
 4. *The final plat and all easement deeds shall be recorded concurrently at the Registry of Deeds by the City or as deemed appropriate by the Planning Department.*

IV. PUBLIC HEARINGS – NEW BUSINESS (cont.)

- C. The application of **Karona, LLC, Owner**, for property located at **36 Artwill Avenue**, requesting Conditional Use Permit approval to create a one-bedroom 1,096 ± s.f. detached accessory dwelling unit on the second story of an existing (unfinished) garage, with associated paving, lighting, and utilities. Said property is shown on Assessor Map 229 as Lot 4 and lies within the Single Residence B (SRB) District.

Description

The applicant is seeking approval to create an accessory dwelling unit above a new three-car garage. The garage was partially constructed with a space for a living unit above by the previous owner. However, the garage was not built to the specifications approved by the Inspections Department and, therefore, was constructed illegally. As originally approved, the garage was proposed as a 2-story, 2-car garage with an unconditioned space above the garage. As partially constructed, the garage is a 3-car garage, 2-stories plus an attic space, and a conditioned space for a living unit on the 2nd floor.

In March 2014, the previous owner was advised that the garage as partially constructed was beyond the scope of the original building permit, and that he was not authorized to continue work on the garage until he had submitted an updated application to the City for approval. In June 2014, the previous owner applied to the Zoning Board of Adjustment requesting relief to allow a second free-standing dwelling unit, more than one free-standing dwelling unit on a lot, and a lot area of 13,068 s.f. per dwelling unit where 15,000 s.f. was required. The ZBA denied these requests and the owner never applied for nor received approval from the Inspections Department for the modified garage.

In March 2017, the new owner issued an order to demolish the structure that was partially constructed. The order was then suspended for (90) days to allow the owner to seek land use approvals, and the applicant has subsequently submitted applications to the ZBA for relief from the street frontage requirement and to the Planning Board for a CUP for an accessory dwelling unit. The suspension is in effect until the application completes review by the Planning Board.

In July 2017, the applicant was granted zoning relief to allow 0' street frontage as Artwill Ave is not a public street and the lot does not have frontage on a public street. This was required per Section 10.814.20 which stipulates that any properties that include an accessory dwelling unit must be conforming to the Zoning Ordinance.

Because the resulting unit will be a detached accessory dwelling unit (DADU), the provisions of Section 10.814.50 apply. Per Section 10.814.80, the applicant is seeking modifications to the dimensional requirements for maximum gross floor area and distance from the principal dwelling.

Section 10.521 Dimensional Standards

	Required	Provided / Proposed
Min. lot area (sf)	15,000	26,737
Lot area / dw unit (sf)*	15,000	26,737
Street frontage (ft)	100	0**
Lot depth (ft)	100	>100
Primary front yard (ft)	30	N/A
Right side yard (ft)	10	>10
Left side yard (ft)	10	>10
Rear yard (ft)	30	>30
Height (ft)	35	<35
Bldg coverage (%) max.	20%	9.7%
Open Space (%) min.	40%	>40
Parking (#)	4	5

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

**On July 25, 2017 the Board of Adjustment granted a variance for 0' street frontage.

In addition to the dimensional requirements of Section 10.521 above, the Ordinance requires that a DADU comply with the following standards (Section 10.814.30 and 10.814.50). As allowed under Section 10.814.80, in granting the conditional use permit, the Planning Board may modify a specific dimensional or parking standard provided that the Board finds that the modification will be consistent with the required findings of Section 10.814.60.

Required Standard	Planning Department Comments
The principal dwelling unit and the accessory dwelling unit shall not be separated in ownership.	
Either the principal dwelling unit or the accessory dwelling unit shall be occupied by the owner of the dwelling.	The owner is required to provide documentation demonstrating to the satisfaction of the City that one of the units is the owner's principal place of residence. The current owner is in the process of preparing the property for re-sale and does not plan to live in either the primary residence or the accessory unit. However, because the current garage which includes a space for a living unit on the second floor was built illegally by the previous owner, the City is requiring the owner to apply for and receive all required land use approvals before he can be authorized to continue work on the property. For this reason, he has requested that the Planning Board approval of the ADU be contingent upon a future sale of the property. Therefore, the Planning Board approval would need to stipulate that a certificate of use would not be issued until the new owner has occupied the property.

Required Standard	Planning Department Comments
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.	
In addition to the two off-street parking spaces required for the single-family dwelling, two parking spaces shall be provided for an ADU larger than 400 sq. ft.	
The DADU shall not have more than two bedrooms and shall not be larger than 750 sq. ft. gross floor area.	The proposed DADU has only one-bedroom, but the proposed GFA is 1,268 sq. ft. The applicant is requesting a modification to the maximum GFA requirement indicating that the unit is already constructed and he does not want to “artificially” reduce the size of the existing unit. While the garage may already be partially constructed, as it was constructed illegally by the previous owner, the Planning Board should consider this application as if it were new construction. Although the modification or partitioning may be an inconvenience to the new owner, the fact that it was built larger than what is allowed is not a reasonable justification for granting a modification to the 600 sq. ft. GFA retroactively. It would be reasonable for the Planning Board to require that the unit be partitioned or reconstructed all together to comply with the 600 sq. ft. GFA. With the larger GFA and as currently designed, the DADU would be more akin to a principal dwelling than an accessory unit. Having two principal dwellings on a lot is not consistent with the intended purpose of a single family residential district and a similar request was denied by the Zoning Board of Adjustment in the past for this reason.
The DADU shall be separated from the single-family dwelling by at least 20 feet.	The proposed DADU will be 10.2’ from the principal dwelling. The applicant’s argument for requesting a modification to this requirement is that the garage is already constructed. Again, the Planning Board should consider this application as if it were new construction and, if there is no other reasonable justification for why the DADU has to be closer than what is required, then the 20’ requirement should be complied with.

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	Planning Department 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 garage as partially constructed is larger than the existing structure and therefore not compatible in terms of building scale. Similar construction materials have been used, but the large second story window on the garage is not in keeping with the architectural form of the existing residence.
2. The site plan provides adequate open space and landscaping that is useful for both the ADU and the primary dwelling.	Both the primary dwelling and the proposed accessory dwelling unit will have access to usable open space and the existing landscaping on the property will not be altered, but placing the DADU closer than the 20' required has the effect of limiting the open space access for the primary residence.
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 garage as partially constructed is substantially larger than the existing structure and, as an accessory building, is not compatible in terms of building scale, location and design to similar buildings on adjacent properties. As the unit is located on a dead end, the location and scale of the large two+ story structure with a large window on the front would primarily impact the privacy of the neighbor across the road. No attempt was made by the previous owner to set the garage away from the private street or otherwise shield the property from the neighbor across the street.
4. The ADU will not result in excessive noise, traffic or parking congestion.	While this property is located on a dead end, any new traffic from the accessory unit will impact the street. While the unit is proposed to be a 1-bedroom, its proposed size and the capacity for as many as 6 parking spaces indicates potential for generating significantly more traffic than this small neighborhood is accustomed to.

Planning Department Recommendation	
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1. *Vote to find that the application does not satisfy the requirements of 10.814.60.*
2. *Vote to deny the conditional use permit as presented.*

IV. PUBLIC HEARINGS – NEW BUSINESS (cont.)

- D. The application of **Cristin Pugliese, Owner**, for property located at **5 Buckminster Way**, requesting Conditional Use Permit approval to create a two-story, two-bedroom 1,083 \pm s.f. attached accessory dwelling unit in an existing building, with associated paving, lighting, and utilities. Said property is shown on Assessor Map 282 as Lot 6-23 and lies within the Single Residence A (SRA) District.

Description

The Planning Department is still working with the applicant to clarify some of the application materials that have been submitted with this application and also to address a potential concern regarding septic capacity on this property. For this reason, the Planning Director recommends postponing this application until the application is ready for review by the Planning Board.

Planning Department Recommendation

Vote to postpone this application until such a time as the Planning Department determines that this application satisfies the submission requirements and is ready for review by the Planning Board.

IV. PUBLIC HEARINGS – NEW BUSINESS (cont.)

- E. The application of **Goodman Family Real Estate Trust, Owner, and Aroma Joe's Coffee, Applicant**, for property located at **1850 Woodbury Avenue**, requesting Conditional Use Permit approval under Section 10.1017 of the Zoning Ordinance for work within the inland wetland buffer to construct a 785 \pm s.f. restaurant/take-out building and 195 \pm s.f. attached patio, with drive thru service and a walk –up window, with 6,870 \pm s.f. of impact to the wetland buffer. Said property is shown on Assessor Map 239 as Lot 9 and lies within the General Business (BD) District.

Description

The applicant has requested to postpone to the September 21st Planning Board meeting.

Planning Department Recommendation

Vote to postpone this application to the September 21, 2017 Planning Board meeting.

IV. PUBLIC HEARINGS – NEW BUSINESS (cont.)

- F. The application of **Deer Street Associates, Owner**, for property located at **165 Deer Street**, ("Lots 2 & 3"), requesting Site Plan Approval for creation of a temporary parking lot having 73 standard parking spaces and 3 handicap accessible parking spaces, with related paving, lighting, utilities, landscaping, drainage and associated site improvements. Said property is shown on Assessor Map 125 as Lots 17 and 17-1 and lies within the within the CD5 District and the Downtown Overlay District (DOD).

Description

This proposal is to use the existing vacant property, Lots 2 and 3 of the Deer Street Associates development project, as a private off-street parking lot until such time as the proposed development project receives final permitting. The property is currently used for this purpose, but the demolition of the principal buildings on the lot changed it from an accessory use to a principal use and required that the property owner receive land use approvals from the Zoning Board of Adjustment and Planning Board.

The applicant is also seeking waivers to the Site Review regulations Sections 2.5.3 and 2.5.4. Per Section 2.10 of the regulations, a waiver request requires an affirmative vote of at least six (6) members and a finding that the granting of the waiver will not nullify the spirit and intent of the City's Master Plan or these regulations.

Technical Advisory Committee Review

TAC reviewed this application at the August 1, 2017 meeting and voted to recommend approval with the following stipulations:

- 1) The application should clearly state that the approval for this parking lot is for only 27 months and any extension would need to be granted by the Planning Board.
- 2) The applicant will shim the area formally occupied by the building with pavement to take out the flat spot and create positive drainage on the site.
- 3) The applicant should consider extending the hours and use of the parking lot to allow for public use in the evening which would require future approval by the Planning Board or Planning Department.
- 4) The plans should reflect that the landscaped areas will incorporate non-combustible mulch.
- 5) A "Do Not Enter" sign should be added to the right side of the drive isle where it is currently proposed on the left.
- 6) In the area outside of the trailer pavement striping shall be added at the limit of the 20 foot travel way.
- 7) Given the short duration of the use, the landscape plan shall be revised to show only shrubs and herbaceous plants, no trees.

The applicant submitted revised plans on August 7, 2017 addressing the items above to the satisfaction of the Planning Department.

Planning Department Recommendation

1. *Vote to find that a waiver will not have the effect of nullifying the spirit and intent of the City's Master Plan or the Site Plan Review Regulations, and to waive the following regulations:*
 - 1) *Section 2.5.3 2(b):*
 - *Calculations relating to stormwater runoff;*
 - *Information on composition and quantity of water demand and wastewater generated;*
 - *Information on air, water or land pollutants to be discharged, including standards, quantity, treatment and/or controls;*
 - *Estimates of traffic generation and counts pre- and post-construction;*
 - *Estimates of noise generation;*
 - *A Stormwater Management and Erosion Control Plan;*
 - *Endangered species and archaeological / historical studies;*
 - *Wetland and water body (coastal and inland) delineations;*
 - *Environmental impact studies.*
 - 2) *Section 2.5.4 3:*
 - (i) *Stormwater Management*
 - (j) *Outdoor Lighting*
 - (k) *Landscaping*
2. *Vote to grant Site Plan Approval with the following stipulations:*
 - 1) *The temporary parking lot shall be in operation for no longer than 27 months from the date of the Planning Board approval.*
 - 2) *The Site Plan (Sheet C2) shall be recorded at the Registry of Deeds by the City or as deemed appropriate by the Planning Department.*
 - 2) *The plan sheet(s) submitted for recording shall include the following notes:*
 - “1. This Site Plan shall be recorded in the Rockingham County Registry of Deeds.
 2. All improvements shown on this 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.”