

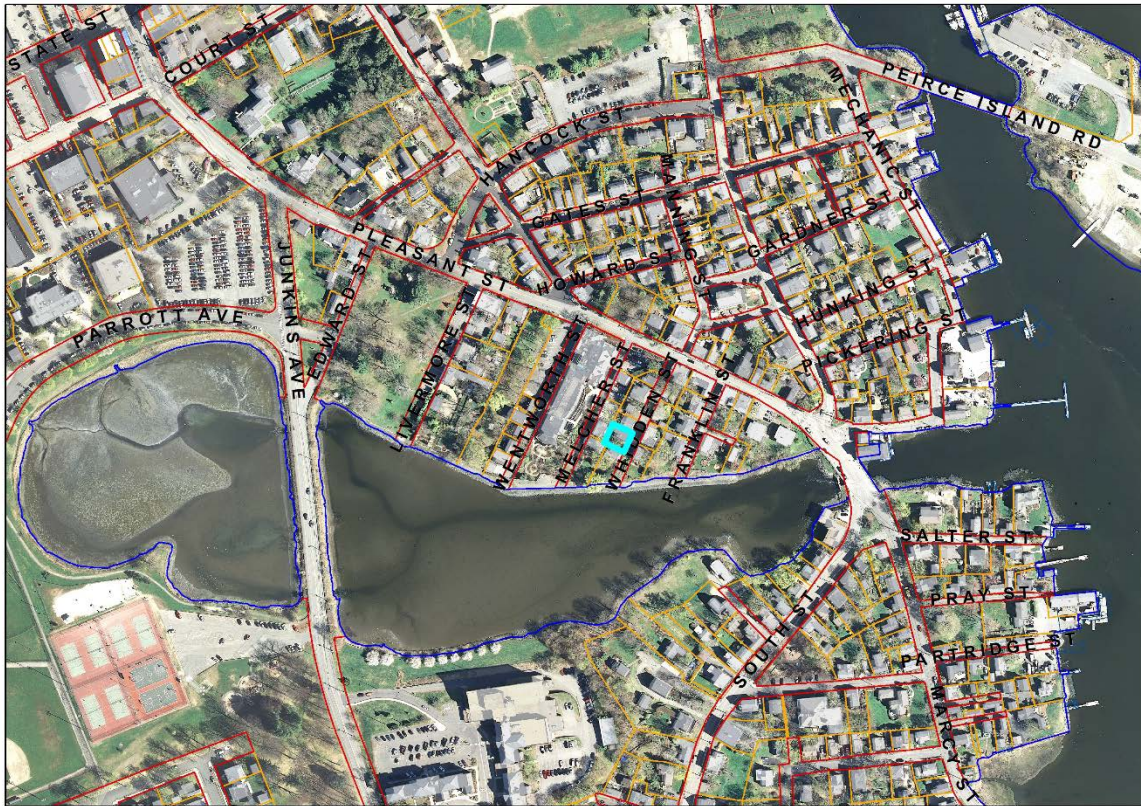


MEMORANDUM

To: Planning Board
From: Juliet T.H. Walker, Planning Director *JTW*
Jillian Harris, Planner 1
Subject: Staff Recommendations for the March 21, 2019 Planning Board Meeting
Date: 03/18/19 (revised 3/21/19)

III. PUBLIC HEARINGS – OLD BUSINESS

- A. The application of **Thomas and Ann Taylor, Owners**, for property located at **43 Whidden Street**, requesting Conditional Use Permit approval under Section 10.1017 of the Zoning Ordinance for work within the inland wetland buffer to install permeable pavers for two parking spaces and plantings, with 150 ± s.f. of impact to the wetland buffer. Said property is shown on Assessor Map 109, as Lot 2 and lies within the General Residence B (GRB) and Historic District. (This application was postponed at the November 15, 2018 Planning Board Meeting).



Description

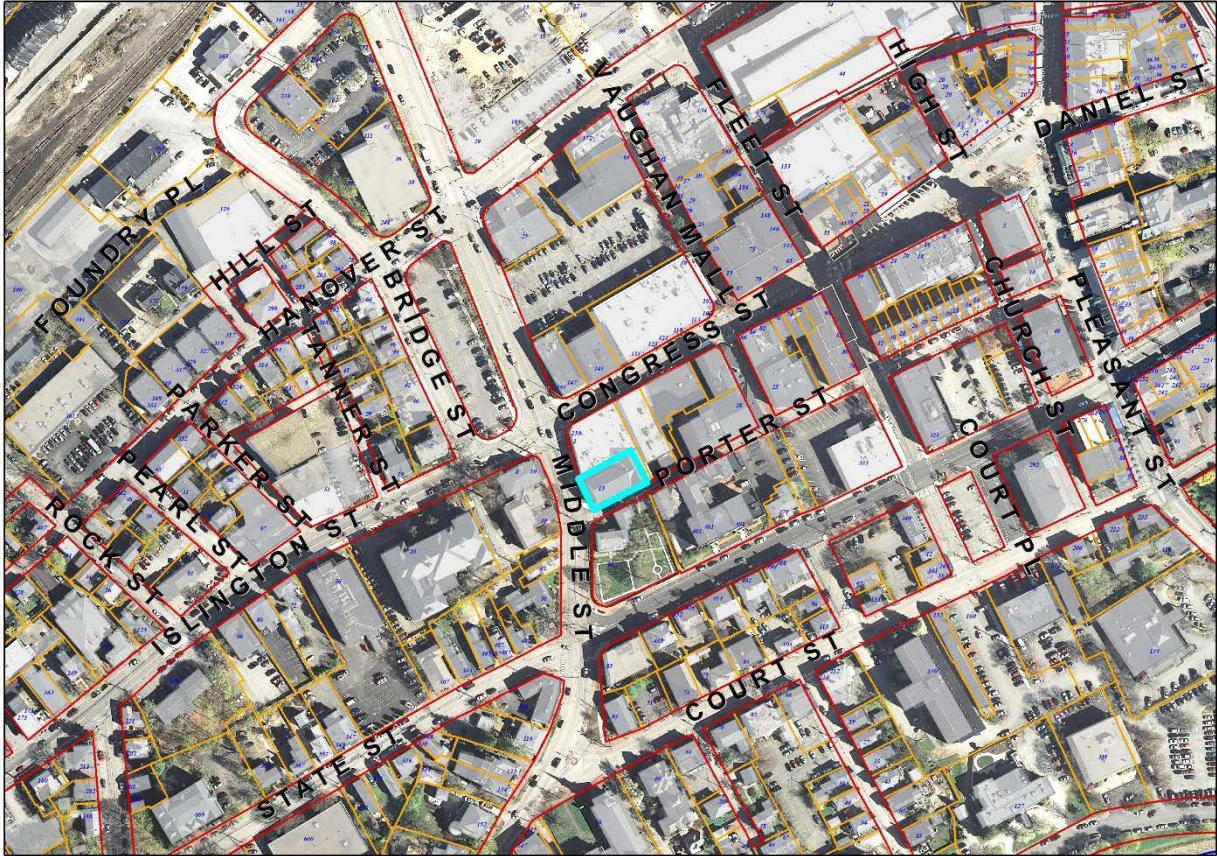
The applicant has requested to postpone the application to the April 18, 2019 Planning Board Meeting.

Planning Department Recommendation

Vote to postpone the application to the April 18, 2019 Planning Board Meeting.

IV. ZONING AMENDMENTS - PUBLIC HEARINGS – NEW BUSINESS

- A. The request of James McSharry to amend the zoning for the property located at 15 Middle Street, Map 126, Lot 12 (former Salvation Army building) from the CIVIC District to Character District 4 (CD4).



Description

On February 4, 2019, Attorney Phoenix submitted a letter to the City Council on behalf of his client, James McSharry, requesting that this property be re-zoned from CIVIC to Character District 4 (CD-4).

At the February 19, 2019 City Council meeting, the Council voted to refer this request to the Planning Board for a recommendation. One of the principle legislative functions of the Planning Board is to make recommendations on the adoption of amendments to the zoning ordinance. This role plays out in two ways. Many zoning amendments are generated by the Board itself which, in Portsmouth, also involves a public hearing process. If the proposed amendment comes either from a citizen petition or a referral by the City Council, then the Board has the responsibility to review and make a recommendation and to take the proposal through a public hearing process. All zoning amendments also require three readings in front of City Council, which includes a public hearing. These would occur after the Planning Board has completed its process and made a recommendation to the City Council.

The property is currently zoned Civic District. Portsmouth has six main Character Districts in the Zoning Ordinance. Except for the “Civic District”, all the Districts pertain to private properties and uses in the Downtown, North End, and West End. In contrast, Civic Districts contain properties that are designated to preserve the existing buildings and uses which are open to and primarily serve the general public (i.e. religious facilities, historical societies and other non-profit establishments). Properties in the Civic District are generally open to the general public and dedicated to the arts, culture, education, religion, or other public uses. Properties in the Civic District may be converted to other civic uses permitted under the ordinance, however new structures, alterations or expansions of the existing structures that propose non-civic uses require a change to the Regulating Plan (or Zoning Map) as set forth in Section 10.5A22 of the Zoning Ordinance.

Being a religious use for more than a century, the structure at 15 Middle Street was designated as a Civic Use upon adoption of the Character-Based Zoning in 2013. Since that time, the current property owner (the Salvation Army) has marketed the property for other uses and recently signed a purchase and sale agreement to convert the use of the building to a non-civic use -- hotel. Thus, the conversion of the use requires a change in the Regulating Plan as well as land use approvals from the Historic District Commission and the Planning Board.

This property abuts both the higher-density CD5 District along Congress Street – the heart of the downtown commercial district – and the medium-density CD4 District located along Porter Street. Due to the orientation, setback, and the fact that the primary entrance to the building is located along Porter Street, City Planning Department staff recommended re-zoning to CD4. Note that the permitted land uses are exactly the same for CD4 and CD5. The only discernible difference between the districts are the building placement characteristics and its occupation on the lot. Understanding the current reuse proposal is to make relatively minor alterations to the existing structure, the CD4 District will permit such changes without the need for additional zoning relief.

In addition to the base zoning districts, the Character District properties are also subject to separate requirements for building height standards. These are regulated by Zoning Maps 10.5A21B. These standards follow street frontages and not property lines (e.g. a property that fronts on more than one street may be subject to different height standards on each street). The height standards for each of the abutting street frontages are *2 to 3 stories or 40 feet* maximum. Planning Department staff recommends amending the standards for this property to match the standards as listed above.

Properties in the Civic District are exempt from dimensional standards. A comparison of the primary dimensional standards for the CD4 and CD5 zoning districts is provided below:

Dimensional Standards	CD4	CD5
Principal front yard (max)	10 ft	5 ft
Secondary front yard (max)	15 ft	5 ft
Side yard	NR	NR
Rear yard (min)	5 ft	5 ft
Front lot line buildout (min)	50%	80%

Dimensional Standards	CD4	CD5
Building block length (max)	200 ft	225 ft
Façade modulation length (max)	80 ft	100 ft
Entrance spacing (max)	50 ft	50 ft
Building coverage (max)	90%	95%
Building footprint (max)	15,000 sf	20,000 sf
Lot area (min)	NR	NR
Lot area per dwelling unit (min)	NR	NR
Open Space (min)	10%	5%
Ground floor gross floor area per use (max)	15,000 sf	15,000 sf
Building height (max)	see Map 10.5A21B	see Map 10.5A21B
Finished floor surface of ground floor above sidewalk grade (max)	36"	36"
Ground story height (min)	12 ft	12 ft
Second story height (min)	10 ft	10 ft
Façade glazing	70% min for shopfront façade	70% min for shopfront façade

Permitted uses in the Civic District are uses open to the general public and dedicated to arts, culture, education, religion, recreation, government, transit, gardening, horticulture, public gathering, assembly, or meeting. The primary land uses allowed in CD4 and CD5 are listed provided below.

Land Uses	CD4/CD5
Single family dwelling	P
Attached ADU	CU
Garden Cottage	CU
Two-family dwelling	P
Townhouse	P
Multifamily dwelling	P
Live/Work unit	P
Assisted Living Center	P
Residential Care Facility	P
Place of Assembly	S
School	P
Museum	P
Performance Facility	P/S (depending on size)
Club / fraternal organization	P
Indoor amusement facility	P
Health club, etc	P/S (depending on size)
Office	P
Financial institution	P
Group daycare	P

Land Uses	CD4/CD5
Personal and consumer services	P
Convenience stores	P
Retail sales	P
Restaurant / bar	P/S (depending on size)
Bed and breakfast	P
Inn	P
Hotel or motel	P
Conference center	P

Planning Department Recommendation

Vote to recommend to the City Council to re-zone this property as follows:

- 1) From CIVIC District to Character District 4 (CD4)*
- 2) From no height standard to 2-3 stories (40')*

V. PUBLIC HEARINGS – NEW BUSINESS

It is recommended that Items V.A, V.B and VI.A be discussed together and voted on separately.

A motion is required to consider these items together.

- A.** The application of **Cate Street Development, Owner & Applicant**, for property located at **428 Route 1 Bypass**, requesting Wetland Conditional Use Permit pursuant to Section 10.1017 of the Zoning Ordinance for 19,567 square feet of temporary impacts and 50,225 square feet of permanent impacts for a total of 69,792 square feet of wetland buffer disturbance to redevelop the lots for residential living space including office and retail space. Said property is shown on Assessor Map 172 as Lot 1, Assessor Map 173 as Lot 2, Assessor Map 165 as Lot 2 and Assessor Map 163 as Lots 33 & 34 and lies within the Gateway Neighborhood Mixed Use Corridor (G1) District.
- B.** The application of **Cate Street Development, Owner & Applicant**, for property located at **428 Route 1 Bypass**, requesting a Conditional Use Permit pursuant to Section 10.5B25 for building length and number of units and Section 10.5B71.20 of the Zoning Ordinance for 22 dwelling units per acre to redevelop the lots for residential living space including office and retail space. Said property is shown on Assessor Map 172 as Lot 1, Assessor Map 173 as Lot 2, Assessor Map 165 as Lot 2 and Assessor Map 163 as Lots 33 & 34 and lies within the Gateway Neighborhood Mixed Use Corridor (G1) District.

- VI. A.** Proposed land swap at 428 Route 1 Bypass, owned by Cate Street Development, LLC.



Description

The project proposes to redevelop the property known as the Frank Jones Center to a mixed-use development called “West End Yards.” The project will include 250 residential rental apartments, 23 individually owned Townhouse Condominiums with 360 parking spaces and 44,000 sq.ft. of retail and office space with 175 parking spaces. The project also proposes a land swap to enable the construction of a public road that connects Cate Street and Borthwick Ave.

Density Bonus Incentive Conditional Use Permit

In the zoning for the Gateway Neighborhood Mixed Use Districts, Section 10.5B72 allows the Planning Board to grant a conditional use permit for one or more density bonus incentives -- increased housing density, increased building height, and increased building footprint. The requirements for granting a CUP include provision of workforce housing and, if more than one density bonus incentive is requested, public realm improvements.

The applicant is requesting a density bonus incentive to allow 22.4 dwelling units per acre where up to 36 units per acre is allowed with the granting of a density bonus incentive conditional use permit. In exchange for the granting of the density bonus, the applicant is proposing to provide 27 workforce housing units for rent where 55 units would normally be required.

The Ordinance standards for workforce housing under the density bonus incentive are that at least 20% of the dwelling units in the development, but no less than three units, shall be workforce housing units for sale or rent complying with the following criteria:

- 1) For sale units shall be affordable to a household with an incomes of no more than 100% of the median income for a 4-person household for the Portsmouth-Rochester HMFA;
- 2) Rental units shall be affordable to a household with an income of no more than 60% of the median income for a 3-person household for the Portsmouth-Rochester HMFA;
- 2) For sale units shall be at least the average gross floor area of the proposed units in the building or 1,000 sq.ft., whichever is greater;
- 2) Rental units shall be at least the average gross floor are of the proposed units in the building or 800 sq.ft., whichever is greater;
- 3) The workforce housing units shall be distributed throughout the building wherever dwelling units are located.

As proposed, only 10% of the dwelling units would be workforce housing rental units affordable to a household with an income of 80 % of the median income for a 3-person household for the Portsmouth-Rochester HUD Metropolitan Fair Market Rent Area (HMFA). While the current proposal does not satisfy the requirements listed above, under Section 10.5B74.30, the Planning Board has the authority to modify specific standards when it comes to granting a conditional use permit provided the Board “finds such modification will promote the design flexibility and overall project quality, or that such modification is required for the development to provide a proposed workforce housing component, and that such modification is consistent with the purpose and intent” of Article 5B of the Zoning Ordinance.

In addition to a modification in the workforce housing requirement, the applicant is also requesting a modification to the following requirements:

- 1) Section 10.5B25 to allow building lengths of 355 feet, 205 feet, 305, and 340 feet where a maximum of 200 linear feet is allowed;
- 2) Section 10.5B72.10 to allow 132 and 118 dwelling units per building where a maximum of 36 is allowed.

In considering a request to modify the standards of the Ordinance:

The Planning Board may request that the applicant provide additional documentation and information from the applicant demonstrating that the requirements of this Ordinance are prohibitive to the successful completion of the project as proposed. Such information shall include, but not be limited to, project cost factors related to land acquisition, improvements for roads, utilities & drainage, insurance, labor, building materials, and profit to identify a total gross cost of the project and per unit gross costs.

The applicant has submitted an evaluation of the feasibility of providing workforce housing with their application. This evaluation summarizes that the provision of 20 percent workforce housing at 60 percent Area Median Income (AMI) as required by the Ordinance does not allow the preferred proposed site plan to be financially feasible.

Wetland Conditional Use Permit

The application includes stormwater management improvements and improvements to the buffer area adjacent to Hodgson Brook.

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

1. *The land is reasonably suited to the use activity or alteration.* The overall project proposes a reduction in impervious surface in the 100' wetland buffer zone, plans to remove invasive species and improve stormwater treatment on the site. The applicant has provided greater detail on the revised plans and the improvements to the buffer are clearly shown.
2. *There is no alternative location outside the wetland buffer that is feasible and reasonable for the proposed use, activity or alteration.* The existing project is to remove some of the paved area to outside of the wetland buffer and enhance the area along the edge of Hodgson Brook. This is conceptually positive and the revised plan shows where the proposed pavement removal will occur.
3. *There will be no adverse impact on the wetland functional values of the site or surrounding properties.* The proposed project represents a reduction in impervious surface and should result in an enhanced wetland buffer on the site due to the new buffer plantings on the bank of Hodgson Brook. The applicant has provided a detailed planting plan for both the stream buffer and site landscaping.

4. *Alteration of the natural vegetative state or managed woodland will occur only to the extent necessary to achieve construction goals.* The design calls for removing invasive species and other work along the bank of Hodgson Brook. Detailed plans have been provided showing where the buffer planting will occur and how the banks will be protected from erosion.
5. *The proposal is the alternative with the least adverse impact to areas and environments under the jurisdiction of this section.* Overall this project proposes a number of positive steps by reducing impervious surface on the site providing stormwater treatment where there is none today and providing native plantings in the wetland buffer. The revised plans show how the stormwater treatment will occur and how these areas will be planted.
6. *Any area within the vegetated buffer strip will be returned to a natural state to the extent feasible.* The proposal includes extensive invasive removal and native buffer plantings. A detailed plan is included as to how the invasive will be removed and how these areas will be planted.

Conservation Commission Review

The Conservation Commission reviewed this application at the March 13, 2019 meeting and voted unanimously to recommend approval as presented.

Proposed Land Swap

On February 14, 2019, Attorney Bosen submitted a letter to the City Manager on behalf of his client, Cate Street Development LLC, requesting a land swap that would convey 136,919 square feet of private land to the City in exchange for 47,470 square feet of City land.

On February 19, 2019, the City Council voted to refer the request to the Planning Board for a recommendation. Per Chapter 11, Article VI of the City Ordinances any municipal actions relating to land acquisition or disposition shall be referred to the Planning Board for a recommendation. In addition, City staff from DPW, the Legal Department, and Planning Department are in the process of reviewing this proposed land swap and will be reporting back to the City Council. Approval of this land swap would provide the right-of-way for the creation of a new City road extending between Bartlett Street and US Route 1 Bypass to be built either now, or in the future. However, actual design, construction, and acceptance of the road would require additional approval by the City Council and a recommendation from the Planning Board per Chapter 11, Article VI, which also refers “any plan for construction, alteration, relocation, acceptance, or discontinuance of a public way” to the Planning Board.

Planning Department Staff Comments

This application will also require Site Plan Review approval by the Planning Board. In many cases, we recommend that the Planning Board hear all land use applications at the same hearing. However, given the complexity and size of this application, in this case it made sense to allow the applicant to come before the Board for the conditional use permit requests as both of these approvals will impact how they proceed with their site design. If the site review process results in any changes that impact the conditional use permit applications, then the applicant will have to return to the Planning Board for amended approvals at that time.

Planning Department Recommendation

Conditional Use Permit for Density Bonus Incentive

- 1) *Vote to find that the proposed project and the proposed conditions of approval satisfy the requirements in Section 10.5B73 and that the proposed project is consistent with the purpose and intent set forth in Section 10.5B11.*
- 2) *Vote to find that the following modifications to the standards of the Ordinance will promote design flexibility and overall project quality, are required for the development to provide the proposed workforce housing component, and are consistent with the purpose and intent set forth in Section 10.5B11:*
 - A) *A modification to the requirements of Section 10.5B25 to allow building lengths of 355 feet, 205 feet, 305, and 340 feet where a maximum of 200 linear feet is allowed;*
 - B) *A modification to the requirements of Section 10.5B72.10 to allow buildings with 132 and 118 dwelling units per building where a maximum of 36 is allowed;*
 - C) *A modification to the requirements of Section 10.10.5B73.10 to allow 10% of the dwelling units to be workforce housing units where at least 20% is required;*
 - D) *A modification to the requirements of 10.5B73.10 to allow units that are affordable to a household with an income of 80% of the median income for a 3-person household for the Portsmouth-Rochester HUD Metropolitan Fair Market Rent Area (HMFA) instead of 60% of the median income to qualify as workforce housing units.*
- 3) *Vote to grant the conditional use permit to allow 22 dwelling units per acre with the requested modification of standards with the following stipulations:*
 - A) *Prior to receiving final site plan approval for the project, the applicant shall provide documentation confirming that the proposed housing units qualify as workforce housing units as defined by this Ordinance and as modified above;*
 - B) *Prior to receiving final site plan approval for the project, the applicant shall provide a proposed covenant or other legally binding agreement that provides enforceable restrictions as to price and occupancy to ensure long-term availability and affordability of the units for a minimum of 30-years (such agreement shall be reviewed and finalized according to the requirements of the City prior to issuance of a building permit).*
 - C) *This conditional use permit shall expire unless a building permit is obtained within one year from the date granted. The Board may, for good cause shown, extend such period by as much as one year if such extension is requested and acted upon prior to the expiration date.*

Wetland Conditional Use Permit

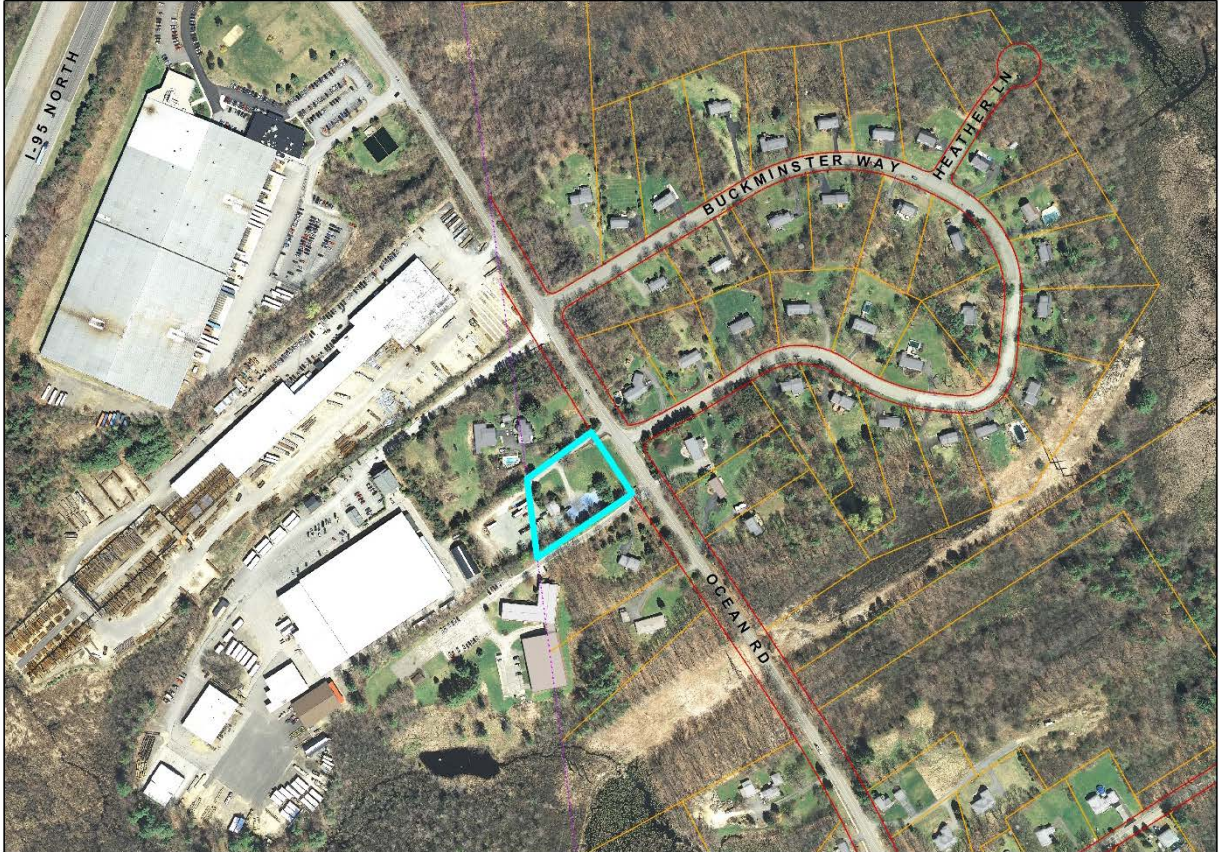
Vote to grant the wetland conditional use permit as presented.

Proposed Land Swap

Vote to recommend approval of the land swap to the City Council with the understanding that City staff will be providing additional guidance to the Council related to this matter.

V. PUBLIC HEARINGS – NEW BUSINESS (Cont.)

- C. The request of **Ambit Engineering, Inc.**, Applicant and the **Donahue Realty Trust, Owner**, for property located at 278 Ocean Road, for Earth Products Removal and Placement in accordance with Section 10.1020 of the Zoning Ordinance for placement of 814 cubic yards of fill. Said property is shown on Assessor Map 282 as Lot 03 and lies within the Single Residence A (SRA) District.



Description

The application proposes to place 814 cubic yards of fill in the front portion of the property nearest to Ocean Road.

According to *Article 10 Section 10.1023*, the applicant must satisfy the following criteria for this project.

10.1023.10. The application is complete and provides sufficient information upon which to base an action. The application appears complete and contains sufficient information upon which to base an action.

10.1023.20. *The proposed earth products removal or placement activity will not result in any hazard to the public or to adjacent properties.* The project is a re-shaping of the landscape and should not result in any hazard to the public or adjacent properties.

10.1023.30. *The proposed earth products removal or placement activity will not create a safety hazard due to traffic or other cause.* The placement of fill should not create a safety hazard to traffic and there is sufficient area on the lot for trucks to maneuver during the proposed project.

10.1023.40. *The proposed earth products removal or placement activity will not result in a reduction in property values or a change in the character of a residential neighborhood.* The placement of fill in this area should not change the character of the neighborhood or cause a reduction in property values to abutting parcels.

According to Section 10.1024, a permit for earth products removal or placement shall specify conditions pertaining to the following:

- (a) *Control of drainage so as to prevent any adverse impact on adjoining parcels during and after work:* The project does not divert drainage to another property.
- (b) *Disposition of boulders, vegetation, stumps and other debris including unused material and any structures used in connection with the operations:* The Plan Notes indicate only clean fill with no organic materials will be placed as fill.
- (c) *The construction of necessary fencing to protect against hazards:* The plan notes the location of erosion control fencing to prevent erosion. It is not anticipated that site fencing is required as there are no steep slopes or cuts associated with the work.
- (d) *Vegetation to remain as a visual barrier:* The applicant has noted they do not anticipate needing a visual barrier as it is not an excavation pit.
- (e) *Hours of operation:* The work will occur during normal work hours as regulated for all commercial projects in the Portsmouth Codes and Ordinances.
- (f) *Routes for transportation of materials and method of transportation so as to minimize impact on surrounding parcels:* The applicant has indicated Ocean Road is the intended truck route for transportation of materials.
- (g) *Setbacks of the proposed removal from public rights of way and property lines shall be specified:* The proposal does not involve removal and is setback from the property lines.
- (h) *The finished level and grading:* The Plan notes the finished level and grading.
- (i) *The placing of topsoil for purposes of seeding and planting to prevent erosion or dust:* The plan notes erosion control measures including the placing of topsoil, seeding and planting to prevent erosion or dust.

The application must meet the following performance standards, according to Section 10.1025:

10.1025.10. *Earth products removal and placement activities shall respect the existing elevations at all lot lines with abutting properties, and shall not raise or lower the finished grades at a side or rear lot line in such a way as to create any condition that may be detrimental or depreciating to abutting lots or uses.* The applicant should provide certification that the change in grading along the side lot line will not change the drainage pattern to the abutting property.

10.1025.20 *Any raising or lowering of finished grades or construction of drainage facilities, swales or retaining walls at a property line shall be subject to review and approval by the Code Official.* The application shall be subject to review and approval by the Dept. of Public Works.

10.1025.30 *Earth products removal and placement activities shall be designed and carried out so that stormwater either will be infiltrated on site or will flow to a public surface drainage system or existing natural drainage course, both during the activity and upon completion and final grading. Such activities shall utilize stormwater Best Management Practices as set forth in the Planning Board's Site Plan Review Regulations.* The proposed design does not appear to change the existing drainage pattern significantly and flow is directed to an existing culvert on the abutting property as it currently is.

10.1025.40 *No material used in the filling or raising of land within residential lots shall include any garbage, ash or organic material, or any material detrimental to stability of the structure as determined by the Code Official.* The Plan notes that clean fill with no organic content shall be used.

Planning Department Recommendation

Vote to grant the Earth Products Removal and Placement Permit with the following stipulation:

- 1. The application shall be subject to final review and approval by the Dept. of Public Works.*

V. PUBLIC HEARINGS – NEW BUSINESS (Cont.)

- D. The application of **William L. Pingree, Owner**, for property located at **11 Sagamore Grove**, requesting Conditional Use Permit approval under Section 10.1017 of the Zoning Ordinance for work within the inland wetland buffer to infill a previously excavated depression, smooth a 7 ft. path for utility/emergency vehicle access, and the removal of 6 trees with 1,850 s.f. of impact to the wetland buffer. Said property is shown on Assessor Map 201 as Lot 1-1 and lies within the Single Residence B (SRB) district.



Description

This application is to grade a 675 square foot path and fill a previously excavated area of 1,175 square feet within the 100' tidal buffer zone.

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

1. *The land is reasonably suited to the use activity or alteration.* This project proposes a disturbance in the tidal buffer to grade a path and fill a depression in the rear yard. The work proposed is a temporary disturbance outside of the 50 vegetated buffer strip or no cut zone.

2. *There is no alternative location outside the wetland buffer that is feasible and reasonable for the proposed use, activity or alteration.* The applicant is proposing a temporary disturbance to improve the landscaping of their yard.
3. *There will be no adverse impact on the wetland functional values of the site or surrounding properties.* The proposed project is more than 50 feet back from the Highest Observable tide line and the direction of stormwater flow is away from the tidal area. There should be no impact on the functional wetland values from this work.
4. *Alteration of the natural vegetative state or managed woodland will occur only to the extent necessary to achieve construction goals.* The design calls for temporary disturbance to construct a vegetated path and fill a surface depression in the yard. There are some small trees proposed for removal but all this work is outside of the vegetated buffer strip and limited cut area.
5. *The proposal is the alternative with the least adverse impact to areas and environments under the jurisdiction of this section.* Overall this proposal will result in a temporary impact to the tidal buffer zone and will be revegetated when complete with no new impervious surfaces proposed.
6. *Any area within the vegetated buffer strip will be returned to a natural state to the extent feasible.* The proposal includes temporary disturbance and will be revegetated when complete.

Conservation Commission Review

The Conservation Commission reviewed this application at the March 13, 2019 meeting and voted unanimously to recommend approval as presented.

Planning Department Recommendation

Vote to grant the wetland conditional use permit as presented.