



CITY OF PORTSMOUTH
PLANNING DEPARTMENT

MEMORANDUM

To: Planning Board
From: Juliet T.H. Walker, Planning Director *JTW*
Jillian Harris, Planner 1
Subject: Staff Recommendations for the April 18 and April 25, 2019 Planning Board Meetings
Date: 04/12/19

II. DETERMINATIONS OF COMPLETENESS

A. SUBDIVISION REVIEW

1. The application of **Wayne & Kristin Ricciardi Barrow, Owners** and **James Verra, Applicant**, for property located at **55 Lafayette Road**, requesting Subdivision approval.

Planning Department Recommendation

Vote to determine that the application is complete according to the Subdivision Rules and Regulations contingent on the granting of any required waivers under Section IV of the agenda and to accept the application for consideration.

B. SITE PLAN REVIEW

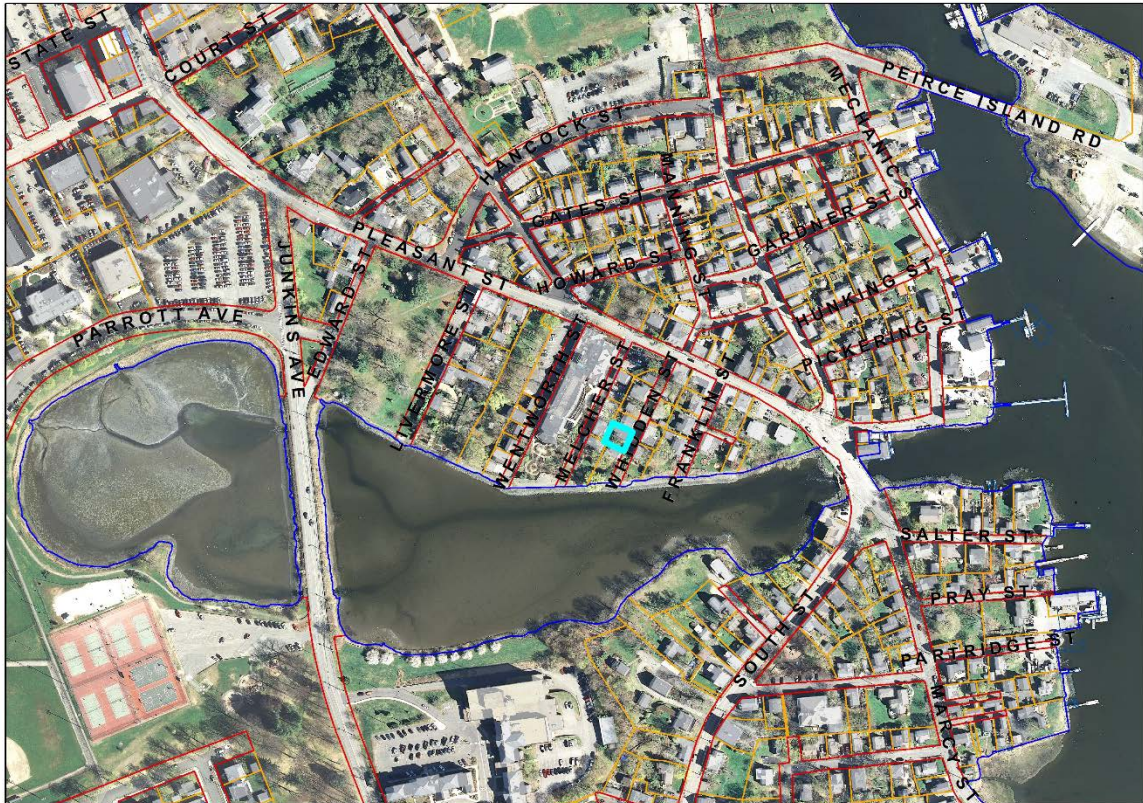
1. The application of **Islamic Society of the Seacoast Area, Owner**, for property located at **686 Maplewood Avenue**, requesting Site Plan approval.

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.

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

This application is to construct a porous paver driveway partially within the 100 foot tidal buffer zone. The proposal is to replace grass with a porous paver surface.

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 replacement of grass with porous pavers. The new pavers will infiltrate water where the lawn currently exists. Given there is currently parking there the proposal is reasonable.

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 porous parking where grass currently exists. This is the most feasible location for the proposed parking area.
3. *There will be no adverse impact on the wetland functional values of the site or surrounding properties.* The proposed project represents a replacement of grass for porous parking. Given the design of the porous pavers to replace grass there should be a slight improvement as the current condition often results in disturbance to the grass surface releasing sediment to runoff the site. The pavers will solve this problem and allow for a more stable parking surface.
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 removal of lawn to be replaced with porous pavers. There are no trees or other natural vegetation proposed to be removed.
5. *The proposal is the alternative with the least adverse impact to areas and environments under the jurisdiction of this section.* Overall this proposal is a positive step to reduce impacts on the site and provide for a more stable parking surface.
6. *Any area within the vegetated buffer strip will be returned to a natural state to the extent feasible.* The proposal includes new porous pavement parking strip. There are no impacts proposed in the vegetated buffer strip or limited cut area.

Conservation Commission Review

The Conservation Commission reviewed this application at the March 13, 2019 meeting and voted unanimously to recommend approval with the following stipulation:

1. The new porous paver driveway surface shall not be sanded as part of winter maintenance.

Staff Review

DPW has indicated that street improvements are planned for Whidden Street including an underdrain that is to be installed in the City ROW in front of the subject property. The applicant has requested to install the under-drain as shown on the plan provided by DPW (dated 1/3/19 from Seaport Engineering), up to the future drain line and extending this drain along the path of the future drain line until it daylights down slope (currently a grass area). This will allow for the applicant's improvements to be constructed without delay and serve to divert the water away from abutting properties while allowing the city to connect when the project is under construction.

Planning Department Recommendation

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

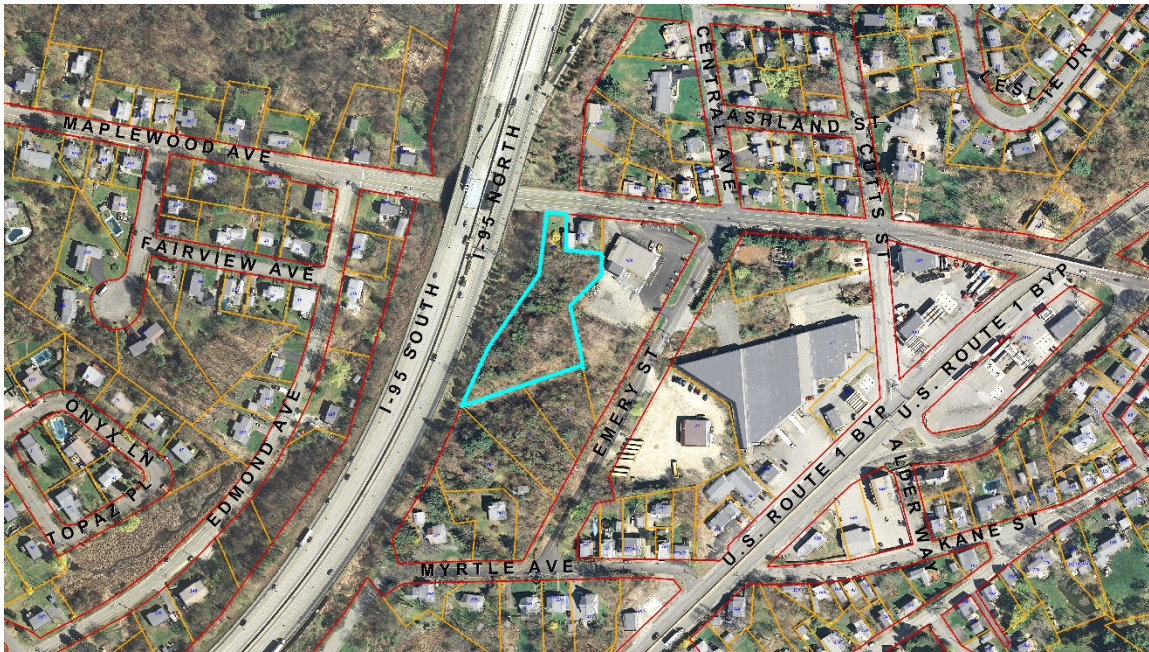
1. *The maintenance plan shall be updated to indicate that the porous paver driveway surface shall not be sanded.*
2. *Any work in the City's right-of-way shall be permitted by DPW and the City Council, as applicable.*

IV. PUBLIC HEARINGS – NEW BUSINESS

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

A motion is required to consider these items together.

- A. The application of **Islamic Society of the Seacoast Area, Owner**, for property located at **686 Maplewood Avenue**, requesting a Conditional Use Permit in accordance with Section 10.674 of the Zoning Ordinance to construct a building for religious assembly within the Highway Noise Overlay District. Said property is shown on Assessor Map 220 as Lot 90 and lies within the Single Residence B (SRB) District.
- B. The application of **Islamic Society of the Seacoast Area, Owner**, for property located at **686 Maplewood Avenue**, requesting Site Plan approval to construct a 2-story building for religious assembly with a footprint of 3,880 s.f. and Gross Floor Area of 5,333 s.f., with related paving, lighting, utilities, landscaping, drainage and associated site improvements. Said property is shown on Assessor Map 220 as Lot 90 and lies within the Single Residence B (SRB) District.



Description

The applicant is seeking to construct a religious place of assembly on the subject property and received a Technical Advisory Committee recommendation for approval on April 2, 2019. The Planning Board granted a Conditional Use Permit for this site on January 17, 2019 for 60 parking spaces where 71 are required, with a number of conditions (Letter of Decision is enclosed for reference).

In February of 2017, the Zoning Board of Adjustment granted variances to permit the construction of a place of worship in the Single Residence B (SRB) District and for a lot with less than the required street frontage. The Board granted an extension through February 2020 for the variances granted.

Highway Noise Overlay District (HNOD) Conditional Use Permit

Within the HNOD, noise sensitive land uses, including places of assembly, shall require a conditional use permit from the Planning Board and shall be planned, designed and constructed to comply with the following Loudest Traffic Hour Sound Level:

- Interior of dwelling, institutional residence or residential care facility, hospital or lodging establishment – 45 dBA
- Interior of other noise sensitive use – 55 dBA
- Uses with outdoor activity areas, measured at the edge of the active use area closest to the highway – 65 dBA

A noise analysis prepared in compliance with Section 10.675 was submitted with this application indicating that the interior noise level is expected to be below the 55 dBA standard with the installation of glazing on the Southwest and Northwest facing windows with a sound transmission class range of STC 28-30. Although the ordinance does not require it for this use, the applicant has elected to implement measures to mitigate outdoor noise levels with the planting of trees at the property line. The analysis provided indicates that the exterior noise level at the edge of the active use area closest to the highway is expected to be 65 dBA or below with these measures.

Site Plan Review

The TAC reviewed this application at the December 4, 2018 and April 2, 2019 meetings. A third party review of the stormwater management and drainage plan was also conducted by CMA Engineers at the request of TAC. On April 2, 2019, TAC voted to recommend approval with the following stipulations:

1. Building elevations and floorplan and associated site plan changes related to required building access and egress shall be reviewed and approved by the Fire Department prior to Planning Board review; and,
2. The third party peer reviewer shall conduct a final review and sign off of the stormwater management design and Drainage Analysis prior to Planning Board review.

CMA Engineers completed a final review and approval on April 11, 2019 confirming that all comments have been addressed with the latest design iteration. Fire Department review and approval on building elevations and updated floorplans was confirmed on April 12, 2019.

Planning Department Recommendation

Conditional Use Permit for Noise Sensitive Land Use

1. *Vote to find that the application satisfies the requirements of Section 10.674.40 and to grant the Conditional Use Permit.*

Site Plan Review

2. *Vote to grant Site Plan Approval with the following stipulations to be completed prior to the issuance of a building permit:*
 - 2.1) *The Site Plan shall be updated to include metes and bounds information.*
 - 2.2) *The Site Plan shall be updated to include the note required by Section 2.5.4.2E of the Site Plan Review Regulations.*
 - 2.3) *The Site Plan shall be recorded at the Registry of Deeds by the City or as deemed appropriate by the Planning Department.*

An aerial photograph of a residential neighborhood with a grid of streets. A specific parcel is highlighted with a red outline. The parcel is located at the intersection of Lafayette Rd and Middle St, just north of the intersection with Lawrence St. The parcel is a triangular-shaped lot. Surrounding streets include Sunset Rd, Boss Ave, Middle St, Mendum Ave, Hawthorne St, Thaxter Rd, Wells Rd, Orchard St, Willard Ave, Marston Ave, Rand Ct, South St, Summit Ave, and Sheridan Ave. The map shows houses, trees, and a park area in the lower-left quadrant.

The subject properties received variances for lot area, lot area per dwelling unit and street frontage on November 20, 2018 from the Zoning Board of Adjustment. The TAC reviewed this application at the April 2, 2019 and voted to recommend approval as presented.

The application will require waivers from the following Sections of the Subdivision Regulations:

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- 9

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 Subdivision Regulations, and to waive the following regulations:*

- a) *Section 2.A - requiring side lines to be placed at right angles to straight street lines*
- b) *Section 9.A – underground electrical lines*

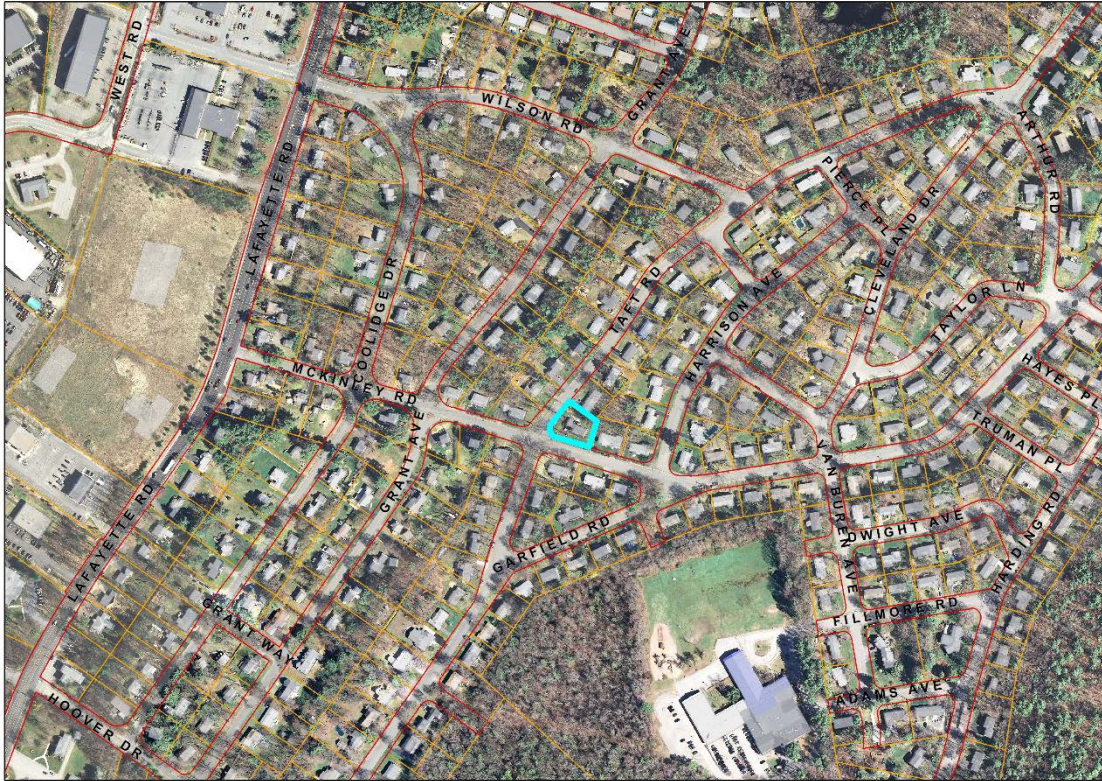
[Note: An affirmative vote of six members of the Planning Board is required to grant a waiver.]

2. *Vote to grant Final Subdivision Approval with the following stipulations:*

- 2.1) *Lot numbers as determined by the Assessor shall be added to the final plat.*
- 2.2) *Property monuments shall be set as required by the Department of Public Works prior to the filing of the plat.*
- 2.3) *GIS data shall be provided to the Department of Public Works in the form as required by the City.*
- 2.4) *The final plat shall be recorded at the Registry of Deeds by the City or as deemed appropriate by the Planning Department.*

IV. PUBLIC HEARINGS – NEW BUSINESS (Cont.)

- D. The application of **Laurie Griffin, Owner**, and **Bernie Pelech, Applicant**, for property located at **221 McKinley Road** requesting a Conditional Use Permit in accordance with Section 10.814 of the Zoning Ordinance for a 480 sq. ft. Attached Accessory Dwelling Unit (AADU) in the basement of the existing home. Said property is shown on Assessor Map 251 as Lot 26 and lies within the Single Residence B (SRB) District.



Description

The applicant requests a conditional use permit to create an attached accessory dwelling unit (AADU) in an existing residential structure. A dwelling unit was created in the basement of the residence in approximately 2009 without benefit of any permits or approvals. An enforcement action was commenced by the City and subsequently the appropriate plumbing, electrical and building permits and inspections were performed. Although the owner worked with the City to receive appropriate permits for the renovations, the space was never approved as a second dwelling unit.

Due to recent changes to the zoning ordinance in regard to ADU's, the pre-existing basement unit is eligible to be permitted as an ADU in an existing nonconforming lot/building with no building expansion proposed.

Because the resulting unit will be an attached accessory dwelling unit (AADU), the provisions of Sec. 10.814.40 apply.

Section 10.521 Dimensional Requirements

	Required	Provided / Proposed
Min. lot area (sf)	15,000	13,068**
Lot area / dw unit (sf)*	15,000	13,068**
Street frontage (ft)	100	107
Lot depth (ft)	100	84**
Primary front yard (ft)	30	25**
Secondary front yard	30	30
Right side yard (ft)	10	18
Rear yard (ft)	30	38
Height (ft)	35	<35'
Bldg coverage (%) max.	20%	14%
Open Space (%) min.	40%	78.7%
Parking (#)	4	4

* For an attached accessory dwelling unit, the lot area per dwelling unit requirement only applies to the principal single family use.

**Section 10.814.22 allows an AADU for existing nonconforming lots/buildings with no building expansion.

In addition to the dimensional requirements of Section 10.521 above, the Ordinance requires that an AADU comply with the following standards (Section 10.814.30 and 10.814.40).

Required Standard	Planning Department Comments
The principal dwelling unit and the accessory dwelling unit shall not be separated in ownership.	The applicant has indicated compliance with this requirement, verification will be required in order for a certificate of use to be issued.
Either the principal dwelling unit or the accessory dwelling unit shall be occupied by the owner of the dwelling.	The applicant has indicated compliance with this requirement, verification will be required in order for a certificate of use to be issued.
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 applicant has indicated compliance with this requirement.
Where municipal sewer service is not provided, the septic system shall meet NH Water Supply and Pollution Control Division requirements.	N/A

Required Standard	Planning Department Comments
An interior door shall be provided between the principal dwelling unit and the ADU.	An interior door is being provided.
The ADU shall not have more than two bedrooms and shall not be larger than 750 sq. ft. gross floor area.	The proposed ADU is a 480 s.f. studio unit.
Any exterior changes to the single-family dwelling shall maintain the appearance of a single-family dwelling.	The applicant is not proposing any modifications to the exterior of the residence.
No portion of the AADU shall be closer to the front lot line than the existing front wall of the principal dwelling unit.	The AADU is proposed to be within the basement of the existing principal dwelling unit.

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.	The applicant is not proposing to modify the exterior of the existing residence and the proposed AADU will be located in an existing portion of the structure.
2. The site plan provides adequate open space, landscaping and off-street parking for both the ADU and the primary dwelling.	Both the primary dwelling and the AADU will have access to usable open space and the existing landscaping on the property will not be altered. Four parking spaces are provided in the existing garage/driveway.
3. The ADU will maintain a compatible relationship to adjacent properties in terms of location, design and off-street parking layout and will not significantly reduce the privacy of adjacent properties.	The residence is not proposed to be modified. It should not be incompatible with adjacent properties, nor have a significant impact on the privacy of adjacent properties.
4. The ADU will not result in excessive noise, traffic or parking congestion.	The applicant is providing 4 parking spaces and the location of this unit in an established residential neighborhood is unlikely to create a noticeable change in traffic.

Planning Department Recommendation

1. *Vote to find that the application satisfies the requirements of 10.814.60.*
2. *Vote to grant the conditional use permit as presented, with the following stipulations:*
 - 2.1) *In accordance with Sec. 10.814.90 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.*

IV. PUBLIC HEARINGS – NEW BUSINESS (Cont.)

- E. The application of **Wentworth-Gardner & Tobias Lear Houses Association, Owner,** and **Stephen M. Foster, Applicant,** for property located at **49 Hunking Street** requesting a Conditional Use Permit in accordance with Section 10.1112.14 of the Zoning Ordinance for provision of no on-site parking spaces where a minimum of three are required to operate an Inn. Said property is shown on Assessor Map 103 as Lot 39 and lies within the General Residence B (GRB) and Historic Districts.

Description

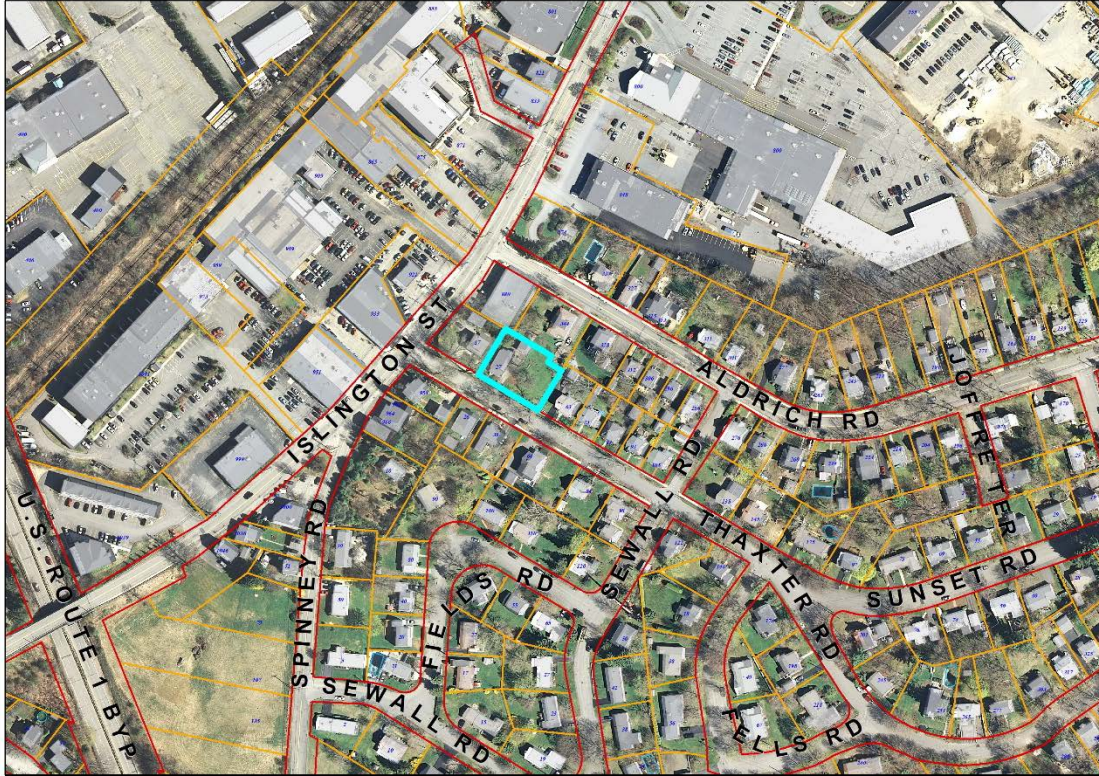
The applicant has requested to postpone to the May 16, 2019 Planning Board meeting.

Planning Department Recommendation

Vote to postpone this application to the May 16, 2019 Planning Board Meeting.

VI. CITY COUNCIL REFERRAL – PUBLIC HEARING

- A. Request for restoration of involuntarily merged lots at **27 Thaxter Road**, Assessor Map 166, Lot 39.



Description

The parcel at 27 Thaxter Rd (Assessor Map 166, Lot 39) appears to have been created from 3 previous existing lots, which the owner's representative indicates were described in the City's tax records dating back to 1951. The owner is requesting that the lots be restored to their premerger status, former Lot 46 measuring 2,580 sq.ft. and former lots 44 and 45 measuring 5,000 sq.ft. severally. The 2,580 sq.ft. parcel (Lot 46 on the tax cards provided) fronts on Thaxter Rd and does not include any buildings, former lot 44 fronts on Thaxter Rd and includes the existing single family home and part of the detached garage. Former lot 45 includes part of the detached garage. This request is being made pursuant to RSA 674:39-aa, Restoration of Involuntarily Merged Lots.

Statutory Requirements

RSA 674:39-aa requires the City Council to vote to restore "to their premerger status" any lots or parcels that were "involuntarily merged" by municipal action for zoning, assessing, or taxation purposes without the consent of the owner. Unlike all other lot divisions, there is no statutory role for the Planning Board in this process, but the City Council is referring such requests to the Board for its review and report back.

The statute defines “voluntary merger” and “voluntarily merged” to include “any overt action or conduct that indicates an owner regarded said lots as merged such as, but not limited to, abandoning a lot line” (RSA 674:39-aa, I). It is therefore the City Council’s responsibility to determine whether a merger was voluntary (i.e., requested by a lot owner) or involuntary (implemented by the City without the owner’s consent). If the merger was involuntary, the Council must vote to restore the lots to their premerger status. Following such a vote, the City GIS and Assessing staff will update zoning and tax maps accordingly. It will then be up to the owner to take any further action to confirm the restoration to premerger status, such as recording a plan at the Registry of Deeds.

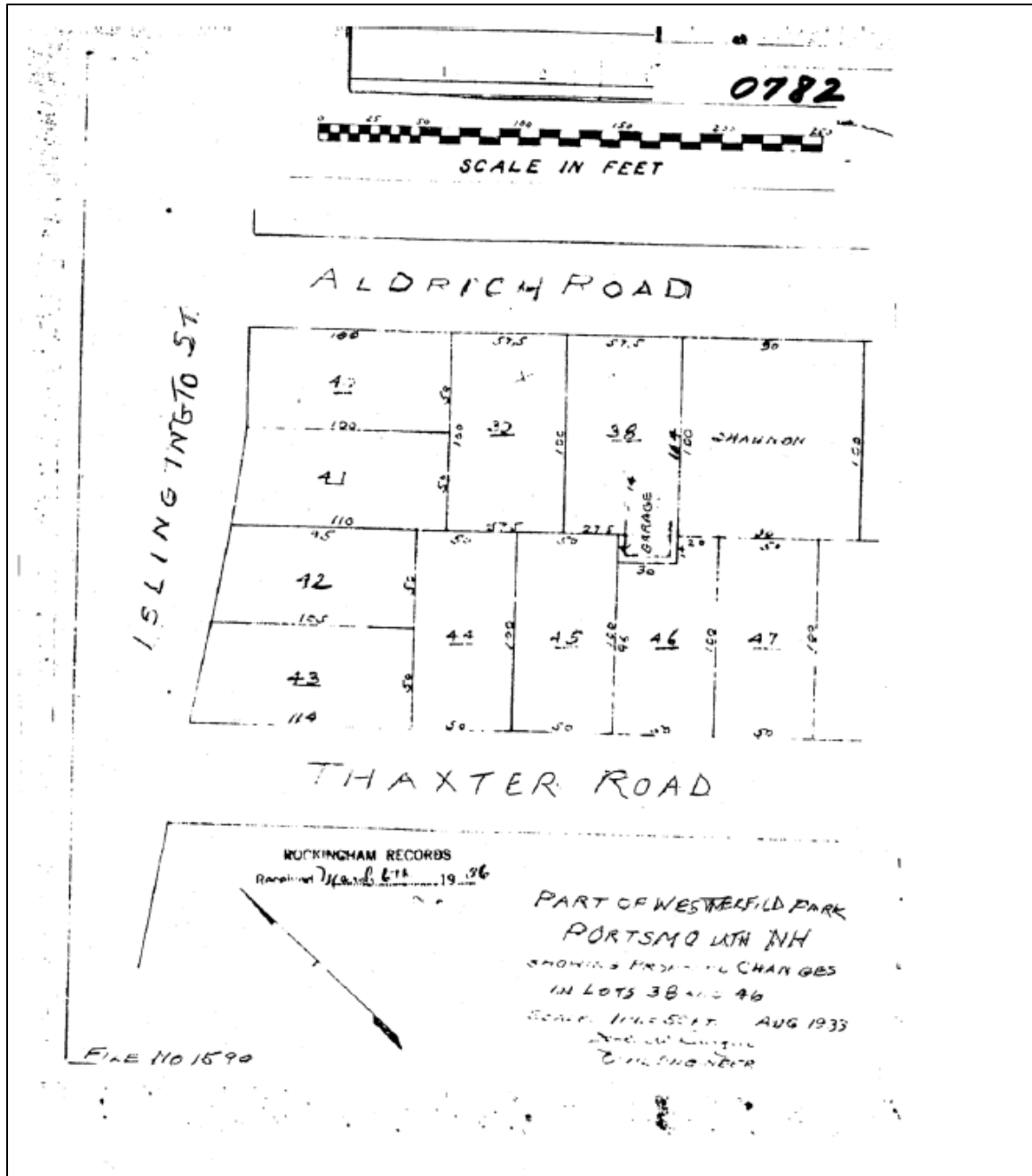
It is important to note that the granting of a request to restore lots to their premerger status does not mean that the resulting lots will be buildable or, if already developed, will conform to zoning. The statute states that “*The restoration of the lots to their premerger status shall not be deemed to cure any non-conformity with existing land use ordinances*” (RSA 674:39-aa, V). For example, the restored lots may not comply with current zoning requirements for lot area, frontage and depth, and the re-establishment of a lot line between any two premerger lots may introduce a new nonconformity with respect to maximum allowed building coverage or a minimum required side yard where a building already exists on one of the premerger lots. In such cases, the owner(s) of the applicable lot(s) would have to apply to the Zoning Board of Adjustment for the necessary variances to restore zoning compliance or to allow future development.

Analysis

While no original subdivision plan has been provided by the owner, a cursory review of the Rockingham County Registry of Deeds records by the Planning Department found a recorded deed (Book 0943, Page 0498) dated August 10, 1938 that described these lots as lots 44, 45 and a part of 46 as shown on a plan entitled “Plan of part of Westfield Park, drawn by John W. Durgin, C.E., dated August 1933 and recorded in Rockingham Records, Plat 25, Page 2”. Further search of the County Records located the plan (#0782) dated August, 1933 which appear to show the lots referenced in the deed (See below). The lots described on these two documents from the Registry are also consistent with the dimensions provided in the tax cards provided by the owner in his request to restore the lots to their premerger status.

Planning Department Recommendation

Vote to recommend to the City Council to restore the three involuntarily merged lots at 27 Thaxter St to their premerger status.



MEETING TO BE RECONVENED ON APRIL 25, 2019

APRIL 25, 2019
reconvened from
APRIL 18, 2019

I. PUBLIC HEARINGS – NEW BUSINESS

- A. The application of **Graham Openshaw & Janet Lennie, Owners**, and **Mark West, Applicant**, for property located at **86 New Castle Avenue** requesting a Wetland Conditional Use Permit under Section 10.1017 of the Zoning Ordinance for work within the wetland buffer to build an addition with a footprint and gross floor area of 405 s.f. with 2,764 s.f. of wetland buffer disturbance. Said property is shown as Assessor Map 207 as Lot 70 and lies within the Single Residence B (SRB) District.



Description

This project proposes a 405 square foot addition and a 630 square foot pervious paver patio and walkways located where existing lawn and landscaped areas currently exist.

Conservation Commission Review

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 is an addition and new pervious pavers in the wetland buffer. The small size of the addition and the inclusion of the porous pavers appears to be reasonable for the site.

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 expand the *footprint* of the interior living space where a deck currently exists. Given they are utilizing an existing footprint the location is the best alternative.
3. *There will be no adverse impact on the wetland functional values of the site or surrounding properties.* The proposed project represents a small new impact of *impervious* surface but the applicant is adding landscaping and porous pavers to the site which will reduce any overall impact.
4. *Alteration of the natural vegetative state or managed woodland will occur only to the extent necessary to achieve construction goals.* There is no impact to the woodland and the only natural vegetation will be removal of some lawn and landscaped areas which are *fairly* small and will be replaced by porous pavers and new landscaping.
5. *The proposal is the alternative with the least adverse impact to areas and environments under the jurisdiction of this section.* Overall the applicant has provided an alternative with a fairly small impact to the wetland buffer.
6. *Any area within the vegetated buffer strip will be returned to a natural state to the extent feasible.* The proposal includes a plan with native landscaping and porous paver buffer.

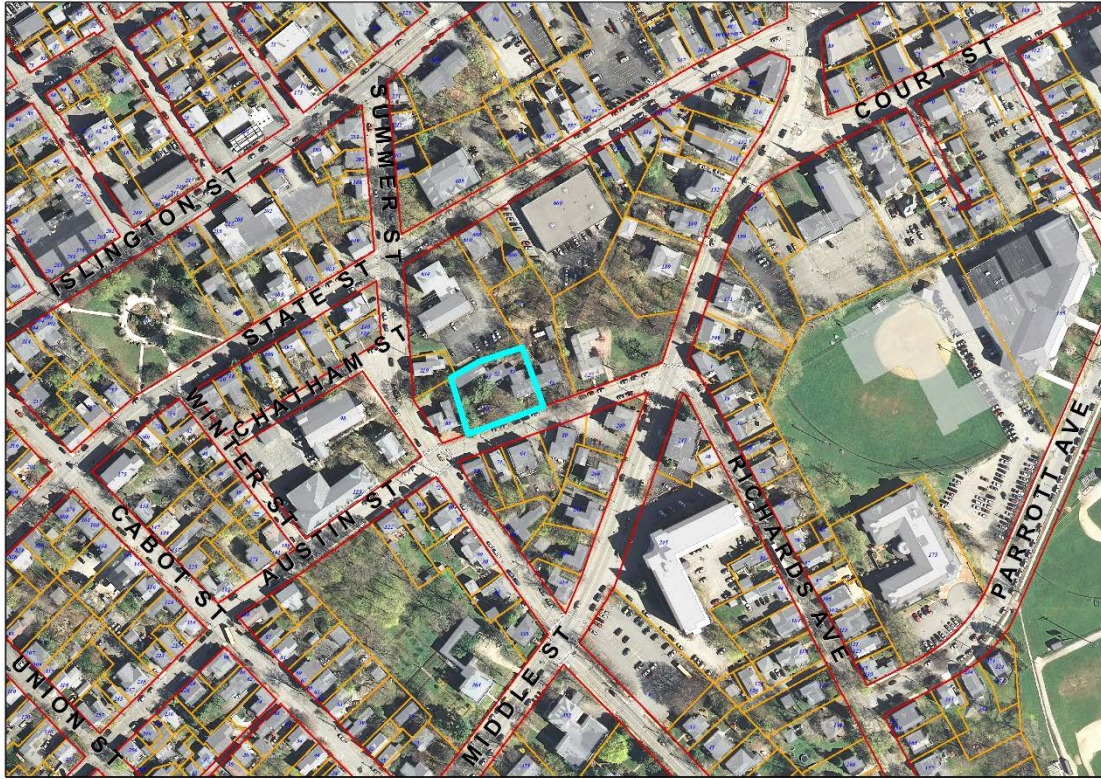
The Conservation Commission reviewed this application at the April 10, 2019 meeting and voted unanimously to recommend approval as presented.

Planning Department Recommendation

Vote to grant the Conditional Use Permit as presented.

I. PUBLIC HEARINGS – NEW BUSINESS (Cont.)

- B. The application of **Frank Veneroso, Owner and Applicant**, for property located at **53 Austin Street** requesting a Conditional Use Permit in accordance with Section 10.1112.14 of the Zoning Ordinance to provide twelve on-site parking spaces where a minimum of seventeen are required to operate an Inn. Said property is shown as Assessor Map 127 as Lot 26 and lies with the General Residence C (GRC) District.



Description

The applicant is seeking to convert a single-family residence to an Inn on a property that also contains 3 existing rental units. The proposal is before the Board of Adjustment at their April 16, 2019 meeting seeking relief for a change of use to an Inn in a district where the use is not permitted. Should the required relief be granted at that meeting the applicant intends to provide additional material for the Planning Board's review in order to seek a Conditional Use Permit for less than the required minimum number of parking spaces for the uses on the property.

Per Section 10.1112.14 of the Zoning Ordinance, the Planning Board may grant a conditional use permit to allow a building or use to provide less than the minimum required by the off-street parking standards. An application for a conditional use permit for off-street parking must include a parking demand analysis.

The off-street parking standards in the City's Zoning Ordinance for an Inn requires 1.25 per guest room + 1 per 100 SF of lounge or restaurant area + 1 per 25 SF of conference or banquet facilities. For the proposed Inn and existing rental units on the property 17 parking spaces are required and 12 spaces are provided on site.

Per Section 10.1112.14, an application for a conditional use permit shall also include permanent measures to reduce parking demand, including but not limited to, provision of rideshare services, proximity to public transit, and shared parking on a separate lot.

A parking demand analysis and narrative outlining the criteria of Section 10.1112.14 is expected and will be distributed to the Board prior to the meeting.

Planning Department Recommendation

The Planning Department has requested additional information from the applicant. An update will be provided prior to the meeting along with a recommendation.

I. PUBLIC HEARINGS – NEW BUSINESS (Cont.)

- C. The application of the **City of Portsmouth School Department, Owner**, for the property located at **32 Van Buren Avenue (Dondero Elementary School)** requesting to amend a Wetland Conditional Use Permit under Section 10.1017 of the Zoning Ordinance for playground renovations. The amendment includes addition of a performance area with stage and benches and an accessible recreation access route/boardwalk with 309 s.f. of wetland buffer disturbance. Said property is shown on Assessor Map 250 as Lot 106 and lies within the Municipal (M) District.



Description

This application is to construct a performance stage and boardwalk behind Dondero School.

Conservation Commission Review

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 to expand the outdoor playground features at the Dondero School and add a boardwalk through a forested wetland area. The locations of the stage in a lawn area and the low impact nature of the boardwalk are reasonable for this location.

2. *There is no alternative location outside the wetland buffer that is feasible and reasonable for the proposed use, activity or alteration.* The school site is almost completely within the wetland buffer so utilizing the existing lawn and designing a low impact trail system is the best alternative for the proposed use.
3. *There will be no adverse impact on the wetland functional values of the site or surrounding properties.* The proposed stage is designed to be on sonotubes with fairly small footprint and limited ground disturbance. The roof is impervious but will runoff onto a lawn area where stormwater will be able to infiltrate. The boardwalk system will allow water to flow through and has a fairly small footprint. There should be minimal impact to the wetland system from this project.
4. *Alteration of the natural vegetative state or managed woodland will occur only to the extent necessary to achieve construction goals.* The stage design will require some lawn area to be removed. The boardwalk will have a small impact on vegetation where the posts are set and also where the vegetation is located under the boardwalk. However, some of the vegetation will be able to grow under the boardwalk area with minimal disturbance.
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 fairly small impact to a lawn area and a natural area. Overall it will provide access to the wetlands for students and a better outdoor experience at the school.
6. *Any area within the vegetated buffer strip will be returned to a natural state to the extent feasible.* The proposal includes new plantings to replace some of the lawn area.

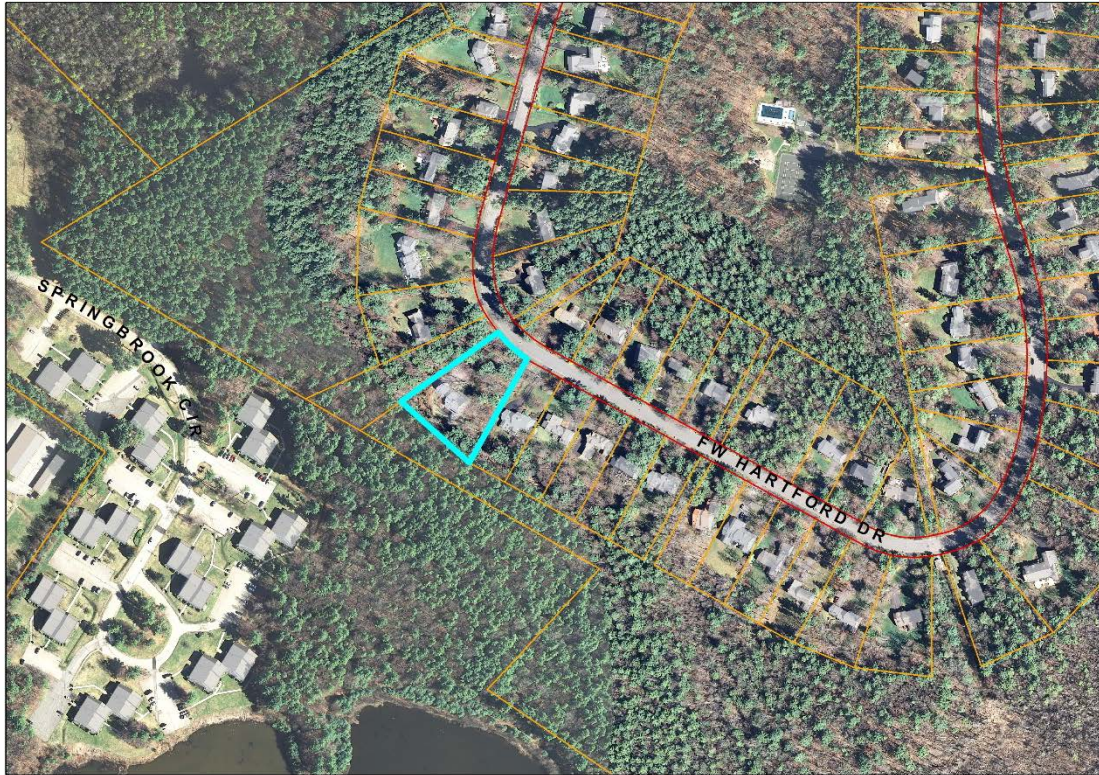
The Conservation Commission reviewed this application at the April 10, 2019 meeting and voted unanimously to recommend approval as presented.

Planning Department Recommendation

Vote to grant the Conditional Use Permit as presented.

I. PUBLIC HEARINGS – NEW BUSINESS (Cont.)

- D. The application of **David & Tracey Foster, Owners** and **Ambit Engineering, Inc., Applicant**, for property located at **200 FW Hartford Drive** requesting a Wetland Conditional Use Permit under Section 10.1017 of the Zoning Ordinance for wetland and buffer restoration work with an impact of 11,800 s.f. Said property is shown on Assessor Map 270 as Lot 33 and lies with the Single Residence B (SRB) District.



Description

This application is to restore a site in which fill was brought into the wetland and wetland buffer without a wetland conditional use permit.

Conservation Commission Review

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 applicant is proposing to restore the site which was filled and grading was underway when they were stopped due to the fact that they did not have a permit for the work. In September 2018 I received a call stating there was a large amount of fill being brought in to 200 F.W. Hartford. After visiting the site it was clear that greater than 100 cubic yards of material was brought into the site. This in itself requires a permit from the City.

2. *There is no alternative location outside the wetland buffer that is feasible and reasonable for the proposed use, activity or alteration.* Our wetland maps did not accurately show the extent of wetlands on this property so at the time it was not clear that an impact to the wetlands and wetland buffer had occurred. The owner was asked to perform a delineation to confirm the location of the wetlands and then depending on the outcome to submit the appropriate permit application. After hiring Ambit Engineering it turns out that there was wetlands and wetland buffer where the work was underway on the property so the owner has submitted a wetland conditional use permit application.
3. *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 to restore the site to its original grade and provide wetland and wetland buffer plantings to enhance the site. This is the only location where this work is appropriate in order to restore the impact. While the application states that there is approximately 230 cubic yards of material that was placed on the site the exact amount should be determined based on the order for the material as placed by the homeowner. Once that amount is confirmed an equal amount should be removed to appropriately restore the site.
4. *There will be no adverse impact on the wetland functional values of the site or surrounding properties.* While the fill in the wetland and wetland buffer had temporary impacts the restoration plan should, if successful restore the site to a condition at least equal to that before the fill was brought in.
5. *Alteration of the natural vegetative state or managed woodland will occur only to the extent necessary to achieve construction goals.* At this stage the construction goals are to restore the site to its prior condition or better which the plan appears to do. More information about the amount of fill would provide greater assurance that the restoration is complete.
6. *The proposal is the alternative with the least adverse impact to areas and environments under the jurisdiction of this section.* Overall this proposal should restore the site to its prior condition with additional information to confirm that the amount of material removed is based on what was placed. While no monitoring is recommended by the engineers monitoring of the site would be appropriate to insure the success of the restoration project.
7. *Any area within the vegetated buffer strip will be returned to a natural state to the extent feasible.* The proposed restoration plan will remove fill and provide plantings to restore the site.

The Conservation Commission reviewed this application at the April 10, 2019 meeting and when Steve Riker from Ambit Engineering presented he pointed out that they wanted to leave three inches of fill behind which would not allow them to proceed as the application had stated that they would remove all the fill placed or 230 cubic yards. The Conservation Commission was concerned that three inches of fill in the wetland and wetland buffer areas identified would essentially fill the wetland on the site. They recommended the applicant remove all the stone and fill down to the original soil material. Then apply only the amount of fill needed to accomplish the planting proposed.

The Commission voted 6-1 to recommend approval with the following stipulations:

1. The applicant shall remove all fill except for only the amount of loam necessary to restore the wetland to existing grade.
2. The applicant shall provide a monitoring report at the end of the second growing season and if the success of the new plants is less 80% the dead plants will be replaced and a new monitoring plan will be provided.
3. All work shall be completed by July 15, 2019.

Planning Department Review

Given this is a restoration project and work was undertaken prior to receiving approval, if the Planning Board accepts the recommendation of the Conservation Commission, Planning Department staff is recommending that the work be overseen by a third party engineer. The third party engineer would be tasked with confirming that the level of fill left on the site for planting is not higher in elevation than the elevation of the site before the fill was placed.

Planning Department Recommendation

Vote to grant the Conditional Use Permit with the following stipulations:

- 1. The applicant shall remove all fill except for only the amount of loam necessary to restore the wetland to existing grade.*
- 2. The applicant shall provide a monitoring report at the end of the second growing season and if the success of the new plants is less 80% the dead plants will be replaced and a new monitoring plan will be provided.*
- 3. All work shall be completed by July 15, 2019.*
- 4. Applicant shall pay for the services of a third party engineer to confirm that the level of fill left on the site for planting is not higher in elevation than the elevation of the site before the fill was placed.*

I. PUBLIC HEARINGS – NEW BUSINESS (Cont.)

It is recommended that Items I.E, II.A be discussed together and voted on separately.

A motion is required to consider these items together

- E. The application of the **City of Portsmouth, Owner**, and **Lee Carbonneau, Applicant**, for property located at **Banfield Road** requesting a Wetland Conditional Use Permit under Section 10.1017 of the Zoning Ordinance for work within the inland wetland and buffer and prime wetland and prime wetland buffer to replace three culverts, install a guardrail, and construct granite curbing with a multi-use trail/sidewalk from Ocean Road to Heritage Avenue. The work will be within an approximately 3,000 foot section on Banfield Road and will be completed in stages.

- II.A. Review easements for Banfield Road improvement project for recommendation to City Council.



Description

This is a City of Portsmouth roadway and drainage improvement project to more than ½ mile of Banfield Road. The wetland permit application includes not only the work to improve the road but also a mitigation plan to offset the impacts to Banfield Road. The mitigation (part of the State Wetland Permit Application) is the acquisition of a 34.5 acre parcel of land adjacent to the Great Bog which will be protected in conservation.

The project also requires easements at certain locations, which require a recommendation from Planning Board prior to review by Council. More details on these will be provided at the meeting.

Conservation Commission Review

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 is an important public safety project which will widen the road and allow for construction of bicycle and pedestrian access along this roadway. Banfield Road is a narrow road and will benefit from these improvements. The impacts in general are fairly linear along the edge the road and the impact will be marginal in any one location but overall result in a fairly large impact. There are also impacts where culverts are being constructed that will be an enhancement to the area as the project includes the addition of equalization culverts which will allow wetlands on both sides of the road to be better connected. Given the public interest components of the project and the large area of protected conservation land going towards mitigation this is a reasonable project.
2. *There is no alternative location outside the wetland buffer that is feasible and reasonable for the proposed use, activity or alteration.* Given that this project is specifically designed to address current deficiencies with Banfield Road this is the only alternative that works for this project.
3. *There will be no adverse impact on the wetland functional values of the site or surrounding properties.* The project will have temporary impacts to the wetlands adjacent to it but there are also some enhancements from the culverts proposed. When looked at as a whole with the proposed mitigation, this project should not have an adverse impact on the wetland system in this area.
4. *Alteration of the natural vegetative state or managed woodland will occur only to the extent necessary to achieve construction goals.* There are quite a few trees and a mix of scrub shrub vegetation that will be impacted for this project. However, the project corridor has been minimized as much as possible to reduce impacts while providing a road design.
5. *The proposal is the alternative with the least adverse impact to areas and environments under the jurisdiction of this section.* A great deal of effort has been taken to reduce impacts in the project corridor. The design presented is the list impacting alternative which satisfies the public safety need of the roadway improvements.
6. *Any area within the vegetated buffer strip will be returned to a natural state to the extent feasible.* Areas where temporary impacts occur will be restored along the project corridor.

The Conservation Commission reviewed this application at the April 10, 2019 meeting and raised some concern about the impact of the proposed curbing as creating a barrier for crossing of the roadway for amphibians and other small animals. The applicant stated they could amend the plan to include sloped granite curbing four inches tall to accommodate this. They had some discussion about the loss of trees along the route and there was some back and forth about the project goal to replace trees but also some balance necessary as the more trees that are along the roadway means the road does not get as much sun therefore more salt is required which creates an impact in the adjacent wetland areas. The applicant stated they would work with the homeowners and asses the tree planting to reach an appropriate balance along the corridor. The Commission voted unanimously to recommend approval with the following stipulations:

1. The applicant shall use sloped curbing where curb is shown on the plan.
2. The applicant shall give special attention to tree placement.

Planning Department Recommendation

1. Vote to grant the Conditional Use Permit with the following stipulations:

- 1.1) The applicant shall use sloped curbing where curb is shown on the plan.*
- 1.2) The applicant shall give special attention to tree placement.*

2. Vote to recommend acceptance of the easements to City Council.

I. PUBLIC HEARINGS – NEW BUSINESS (Cont.)

- F.** The application of **Joseph & Ellen Yarborough, Owners and Applicant**, for property located at **746 Middle Road** requesting a Conditional Use Permit in accordance with Section 10.814 of the Zoning Ordinance for a Detached Accessory Dwelling Unit with a footprint of 799 +/- s.f. Said property is shown as Assessor Map 232 as Lot 49 and lies within the Single Residence B (SRB) District.

Description

The applicant requests a conditional use permit to create a detached accessory dwelling unit (DADU) above a new detached garage structure.

Because the resulting unit will be a detached accessory dwelling unit (DADU), the provisions of Sec. 10.814.50 apply.

Section 10.521 Dimensional Standards

	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	15 (existing)
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%	4.78%
Open Space (%) min.	40%	89.38%
Parking (#)	3	4

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

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).

Required Standard	Planning Department Comments
The principal dwelling unit and the accessory dwelling unit shall not be separated in ownership.	The applicant has indicated compliance with this requirement, verification will be required as a condition of approval.
Either the principal dwelling unit or the accessory dwelling unit shall be occupied by the owner of the dwelling. The owner shall provide documentation that one of the units is his or her principal place of residence.	The applicant has indicated compliance with this requirement, verification will be required in order for a certificate of use to be issued.
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 applicants have indicated they intend to comply with this requirement.
Where municipal sewer service is not provided the septic system shall meet NH state requirements for the combined system for total occupancy of the premises.	N/A
In a General Residence District, the combination of the principal dwelling unit and the DADU shall comply with minimum lot area per dwelling unit specified for the district. In a Single Residence District, a lot with a DADU shall comply with the minimum lot area for the district, but need not comply with the minimum lot area per dwelling unit.	The lot complies with this standard.
The DADU shall not have more than two bedrooms and shall not be larger than 750 sq. ft. gross floor area.	The proposed DADU is 799 +/- SF and the applicant is requesting a modification for this requirement.
The DADU shall be clearly subordinate to the principle dwelling unit in scale, height and appearance.	The applicant is requesting a modification for a façade area of 44.8% where the maximum allowed is 40% of the combined façade area of the DADU and the single family dwelling.
The DADU shall be separated from the single-family dwelling by at least 20 feet.	The proposed DADU will be 29' from the principal dwelling.
The front wall of the DADU shall be set back at least 10 feet further from the front lot line than the existing front wall of the single-family dwelling.	The DADU is proposed to be more than 10 feet from the front lot line than the existing front wall of the single-family dwelling.
No portion of the DADU shall be located in any required front yard regardless of the location of the single-family dwelling.	The proposed DADU complies with this requirement.

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

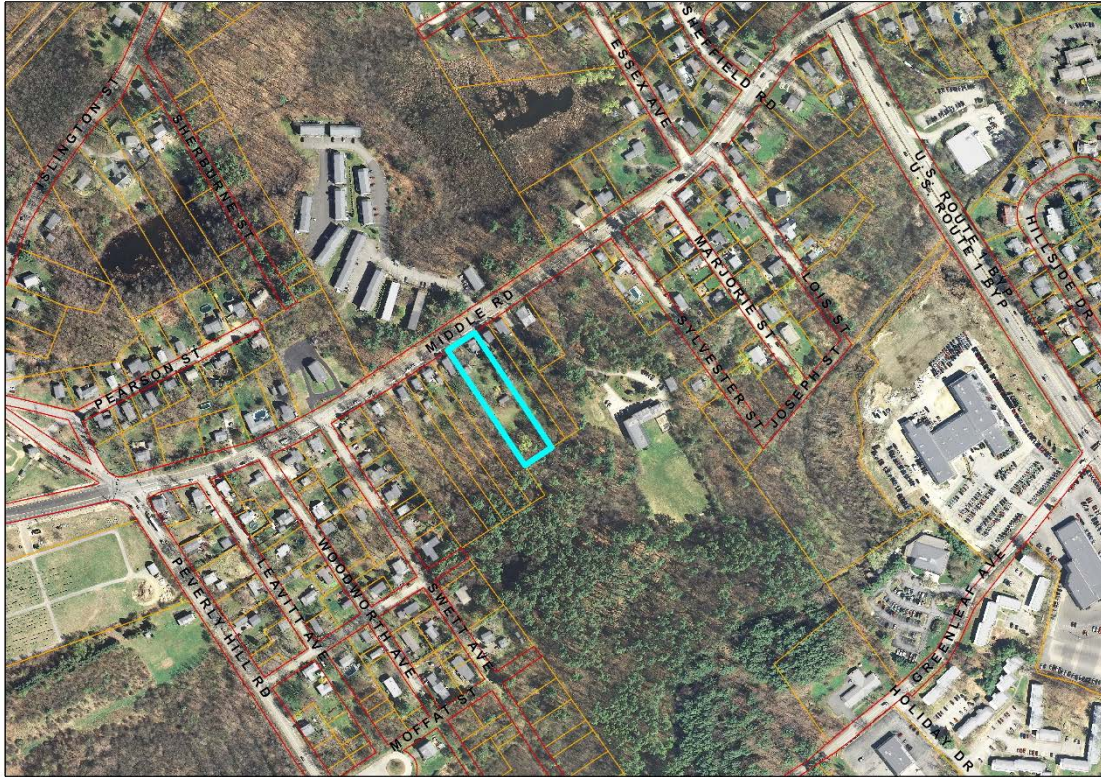
Required Findings	Planning Department Comments
1. Exterior design of the ADU is compatible with the existing residence on the lot through architectural use of building forms, scale and construction materials.	It appears that the design of the proposed ADU will be compatible with the design and style of the existing residence. However, the applicant has also indicated there are planned renovations to the main house in the near future. The applicant should confirm that the style will be compatible with both the existing and future renovation.
2. The site plan provides adequate open space, landscaping and off-street parking for both the ADU and the primary dwelling.	The proposed ADU will be placed on the footprint of the current garage and both the existing residence and the ADU will have access to the yard. Adequate off-street parking is being provided in both the garage and driveway.
3. The ADU will maintain a compatible relationship to adjacent properties in terms of location, design and off-street parking layout, 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.

Request for Modifications

The applicant requests modifications pursuant to Section 10.814.70 of the Zoning Ordinance as it pertains to:

- 1) Section 10.814.52 of the Zoning Ordinance – for approval of an AADU of 799+/- s.f. of gross floor area where 750 s.f. is the maximum allowed.
- 2) Section 10.814.531 of the Zoning Ordinance – for a façade area of 44.8% where the maximum allowed is 40% of the combined façade area of the DADU and the principle single family dwelling.

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



Planning Department Recommendation

1. *Vote to grant a modification from the following sections:*
 - 1.1) *Section 10.814.52 of the Zoning Ordinance – for approval of an AADU of 799+/- s.f. of gross floor area where 750 s.f. is the maximum allowed.*
 - 1.2) *Section 10.814.531 of the Zoning Ordinance – for a façade area of 44.8% where the maximum allowed is 40% of the combined façade area of the DADU and the principle single family dwelling.*
2. *Vote to find that the application satisfies the remaining requirements of 10.814.50.*
3. *Vote to grant the conditional use permit as presented, with the following stipulations:*
 - 3.1) *In accordance with Sec. 10.814.90 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.*