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**MEMORANDUM**

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**To:** Planning Board  
**From:** Juliet T.H. Walker, Planning Director *JTW*  
Stefanie Casella, Planner 1  
**Subject:** Staff Recommendations for the August 19, 2021 Planning Board Meeting  
**Date:** August 13, 2021 **revised August 17, 2021**

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**II. DETERMINATIONS OF COMPLETENESS**

**SITE PLAN REVIEW**

- A. The application of **Hampshire Development Corp. (Applicant) and 64 Vaughan Mall, LLC (Owner)** for property located at **64 Vaughan Street** requesting **Site Plan Review** approval.
- B. The application of **Green & Company (Applicant) and Philip J. Stokel and Stella B. Stokel (Owners)** for property located at **83 Peverly Hill Road** requesting **Site Plan Review** approval.
- C. The application of **Warner House Association, (Owner)**, for property located at **150 Daniel Street**, requesting **Site Plan Review**.
- D. The application of **Spaulding LLC, (Owner)**, for property located at **180 Spaulding Turnpike**, requesting **Site Plan review**.

Planning Department Recommendation

*Vote to determine that the applications are complete according to the Site Plan Review Regulations, (contingent on the granting of any required waivers under Sections III or V of the agenda) and to accept the application for consideration.*

**III. PUBLIC HEARINGS – OLD BUSINESS**

- A. The application of **Brora, LLC, Owner, and 210 Commerce Way LLC, Applicant**, for property located at **Shearwater Drive (at intersection of Portsmouth Boulevard and Market Street)** for a Wetland Conditional Use Permit according to Section 10.1017 of the Zoning Ordinance for an after the fact approval for cutting of vegetation on 88,700 square feet in the wetland and vegetated buffer areas. Said property is shown on Assessor Map 217 Lot 2-1975 and lies within the Office Research (OR) District.

Description

Applicant has requested to postpone until the September Planning Board meeting.

Planning Department Recommendation

*Vote to postpone to the September Planning Board Meeting.*

### III. PUBLIC HEARINGS – OLD BUSINESS (Cont.)

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*It is recommended that items III (B) and III (C) be discussed together and voted on separately. A motion is required to consider these items together.*

- B.** The request of **Banfield Realty, LLC, Owner**, for property located at **375 Banfield Road** requesting Site Plan review approval to demolish two existing commercial buildings and an existing shed and construct a 75,000 s.f. industrial warehouse building with 75 parking spaces as well as associated paving, stormwater management, lighting, utilities and landscaping. Said property is shown on Assessor Map 266 Lot 7 and lies within the Industrial (I) District.
- C.** The request of **Banfield Realty, LLC, Owner**, for property located at **375 Banfield Road** requesting a Wetland Conditional Use Permit according to Section 10.1017 of the Zoning Ordinance for work related to the construction of an industrial building that will require the removal of pavement in the 100' wetland buffer to create a vegetated area which will receive some of the stormwater runoff from the property. Said property is shown on Assessor Map 266, Lot 7 and lies within the Industrial (I) District.

Description

The applicant has requested to postpone consideration of these applications to the September Planning Board meeting.

Planning Department Recommendation

*Vote to postpone the applications to the September Planning Board meeting.*

### III. PUBLIC HEARINGS – OLD BUSINESS (Cont.)

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*It is recommended that items III (D) and III (E) be discussed together and voted on separately. A motion is required to consider these items together.*

- D.** Request of **The Fritz Family Revocable Living Trust**, Owner, for property located at **0 Patricia Drive** for amended subdivision approval to revise the roadway design and stormwater treatment for a previously approved subdivision that proposes to subdivide a lot with an area of 137,549 s.f. and 414.15 of continuous street frontage on a private road into two (2) lots as follows: Proposed lot 1 with an area of 92,908 s.f. and 150 ft. of continuous street frontage on a private road; and Proposed Lot 2 with an area of 44,641 s.f. and 264.15 ft. of continuous street frontage on a private road. Said property is shown on Assessor Map 283 Lot 11 and lies within the Single Residence A (SRA) District.
- E.** Request of **The Fritz Family Revocable Living Trust**, Owner, for property located at **0 Patricia Drive** for amended wetland conditional use permit approval under Section 10.1017 of the Zoning Ordinance to revise the roadway design and stormwater treatment for a previously approved subdivision which will result in 5,718 square feet of temporary wetland buffer impact. Said property is shown on Assessor Map 283 Lot 11 and lies within the Single Residence A (SRA) District.

Description

The applicant has requested to postpone consideration of these applications to the September Planning Board meeting.

Planning Department Recommendation

*Vote to postpone the applications to the September Planning Board meeting.*

#### IV. PUBLIC HEARINGS – CITY COUNCIL REFFERALS (OLD BUSINESS)

##### Statutory Requirements for Unmerger of Involuntarily Merged Lots

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 nor is there any requirement for the City to hold a public hearing. However, in Portsmouth the City Council has historically referred such requests to the Planning Board to conduct a public hearing.

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.

- A. The request of **David Higgins and Julia Higgins, Owners**, for the restoration of involuntarily merged lots at **344 Aldrich Road** to their pre-merger status pursuant to NH RSA 674:39-aa. Said property is shown on Assessor Map 166 Lot 50 and lies within the Single Residence B (SRB) District.

##### Description

At its meeting on May 3, 2021, the City Council considered a request from Thomas M. Keane, Esq, on behalf of the property owners David and Julia Higgins, requesting the restoration of involuntarily merged lots at 344 Aldrich Road to their pre-merger status pursuant to NH RSA 674:39-aa. The Council voted to refer this request to the Planning Board and the City Assessor for a report back.

Assessing Department Review

The City Assessor has reviewed this application and provided a report on her findings. Her review indicated that it is not clear from City records or records available at the registry and provided by the applicant whether the existing buildings were constructed across the pre-merger boundary line. The Assessor is recommending denial of this request unless more clarity can be provided on the location of the structures in relation to the pre-merger boundary line.

The applicant has requested to postpone consideration of their request to the next Planning Board meeting.

Planning Department Recommendation

*Vote to postpone the public hearing on this request to the August Planning Board meeting.*

- B. Request of Vincent Zingariello and Monica Abruzzese, Owners**, for the restoration of involuntarily merged lots at **135 Thaxter Road** to their pre-merger status pursuant to NH RSA 674:39-aa. Said property is shown on Assessor Map 166 Lot 15 and lies within the Single Residence B District.

Description

At its meeting May 17, 2021, the City Council considered a request from Bernie W. Pelech, Esq., on behalf of the property owners Vincent and Monica Zinganello, requesting the restoration of involuntarily merged lots at 135 Thaxter Road to their pre-merger status pursuant to NH RSA 674:39-aa. The Council voted to refer this request to the Planning Board and the City Assessor for a report back.

Assessing Department Review

The City Assessor has reviewed this request and concluded that it appears the property was voluntarily merged by an overt action of the owner.

Planning Department Recommendation

*Vote to recommend that the City Council deny this request as recommended by the City Assessor.*

## V. PUBLIC HEARINGS – NEW BUSINESS

- A. The request of **Hampshire Development Corp. (Applicant) and 64 Vaughan Mall, LLC (Owner)** for property located at **64 Vaughan Street** requesting Site Plan Review approval for the renovation of an existing building including a 2,475 sq. ft. expansion to the building footprint, a fourth-story addition to a portion of the existing building with retail space on the first floor and 14 residential units on the upper stories and an underground parking garage with related utilities, landscaping, and associated site improvements. Said property is shown on Assessor Map 126 Lot 1 and lies within the Character District 5 (CD5) District, the Historic District, and the Downtown Overlay District.

### Historic District Commission Review

This application will require a certificate of approval from the Historic District Commission, which has not yet been granted.

### Technical Advisory Committee Review

The TAC reviewed this application at the July 6, 2021 meeting and voted to recommend approval of the application with the following stipulations:

1. Perpendicular parking spaces along the median island to the west of the access driveway to Hanover Street shall be widened to 9'. The parallel parking stalls along the building edge should be 9' wide as well.
2. The street lights on Hanover Street shall be shown in the correct locations as stipulated by DPW.
3. The existing water service shall be abandoned at the main and shall be shown on the demolition plan.
4. All catch basins on City property or in City ROW's are to have catch basin liners.
5. The plan details shall be updated to show 2" of pavement under the new brick sidewalks.
6. Tree planting details shall be updated to City standards, specifically, no burlap or cages allowed and the root ball flare must be at finished grade.
7. Waivers shall be requested for the lighting and landscaping plans.
8. The applicant will be responsible for milling and repaving of ½ the Worth Lot as shown on the plans.
9. Applicant shall provide a turning template to confirm the turning radius is adequate for right-turns out of the parking garage.
10. The front of the proposed mixed-use building shall be dedicated as community space (as a wide pedestrian sidewalk) in order to meet the setback and front lot-line buildout requirements.

On July 28th the applicant submitted revised plans addressing items 1 through 7 and 9 to the satisfaction of the Planning Department and DPW. The remaining items have been added as conditions of approval in the recommendation below.

This application also requires a lot line revision, which did not get advertised and noticed in time for this month's Planning Board meeting. A stipulation of approval noting this requirement has been added to the recommendation below.

Waiver Requests

The applicant has requested waivers from the Site Plan Review Regulations for the requirements of Section 2.5.4.3(j) Photometric Plan and Section 2.5.4.3(k) Landscaping Plan. The explanation is provided in a letter in the application. The Planning Board may waive any provision of these Regulations by a vote of six members, provided that such waiver will not have the effect of nullifying the spirit and intent of the Master Plan or these Regulations; and in granting a waiver, the Planning Board may require such conditions as will in its judgment secure the objectives of these Rules and Regulations.

Planning Department Recommendation

1) *Vote to find that the requested waivers 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 requirements:*

1. *Provision of an Outdoor Lighting Plan as required by Section 2.5.4.3(j);*
2. *Provision of a Landscaping Plan as required by Section 2.5.4.3(k).*

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

2) *Vote to grant Site Plan Review Approval with the following stipulations:*

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

- 2.1) *The application requires a Certificate of Approval to be granted by the Historic District Commission;*
- 2.2) *The application requires Subdivision Approval (Lot Line Revision) to be granted by the Planning Board;*
- 2.3) *Any easement plans and deeds for which the City is a grantor or grantee shall be reviewed and approved by the Planning and Legal Departments prior to acceptance by City Council;*
- 2.4) *The applicant shall prepare a Construction Management and Mitigation Plan (CMMP) for review and approval by the City's Legal and Planning Departments;*
- 2.5) *The site plan and any easement plans and deeds shall be recorded at the Registry of Deeds by the City or as deemed appropriate by the Planning Department.*

Conditions Subsequent:

- 2.6) *The applicant will be responsible for milling and repaving of ½ the Worth Lot as shown on the plans.*



## V. PUBLIC HEARINGS – NEW BUSINESS (Cont.)

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- B.** The request of **Green & Company (Applicant) and Philip J. Stokel and Stella B. Stokel (Owners)** for property located at **83 Peverly Hill Road** requesting Conditional Use Permit approval for an Open Space Planned Unit Development according to the requirements of Section 10.725 of the Zoning Ordinance and Site Plan Review approval for the construction of 56 single-family homes and a new 2,950-foot public road with related utilities, landscaping, drainage and associated site improvements. Said property is shown on Assessor Map 242 Lot 4 and lie within the Single Residence A (SRA) and Single Residence B (SRB) Districts.

### Open Space Planned Unit Development Conditional Use Permit and Site Plan Review Approval

According to the Zoning Ordinance, the purpose of allowing open space planned unit developments is to permit a higher density clustering of residential units than a conventional subdivision in order to preserve natural features and create usable open space. The base residential density for an OSPUD is calculated in either one of the following ways:

- The number obtained by dividing the *developable area* of the parcel by the minimum lot area per dwelling unit required in the underlying zoning district.
- The number of lots that could be developed in a conventional subdivision of the lot.

The developable area excludes open water bodies, wetlands, floodplains, slopes exceeding 15 percent, and areas subject to existing valid open space restrictions.

In addition to allowing clustering of the residential units (rather than spreading out on individual conforming lots) an OSPUD has reduced requirements for interior building setbacks and allows for a variety of residential types (single family dwelling, two-family dwelling, townhouse, and multifamily dwelling).

An OSPUD must dedicate at least 25 percent of the total site area as permanently protected common open space according to the following guidelines/requirements:

- A portion of the minimum required open space must be developable area that is at least equal to the portion of the overall site that is developable. In order to comply with this requirement for this site, the applicant must include 6 acres of developable area in the permanently protected open space area.
- Preserved in perpetuity by restrictive covenant owned by either a private, non-profit corporation, association, or other non-profit legal entity (such as a condominium agreement or homeowners association), a public body (such as the City), a private non-profit organization (such as The Nature Conservancy).
- Linear open space that connects or contributes to other public or private open space is encouraged.
- Regulated public access to the common open space is encouraged.

The approval process for an OSPUD follows the procedures and standards for BOTH the City's Subdivision Rules and Regulations and Site Plan Review Regulations and therefore is subject to Technical Advisory Committee Review. In addition, the Conservation Commission shall be afforded an opportunity to comment on the particulars of a proposed PUD, including but not limited to the natural features of the parcel and how these may be impacted by the proposed project.

Prior to granting a conditional use permit for an OSPUD, the Planning Board must make the following findings:

- 1) The site is appropriate for an OSPUD.
- 2) The anticipated impacts of the proposed OSPUD on traffic, market values, stormwater runoff or environmental factors will not be more detrimental to the surrounding area than the impacts of conventional residential development of the site.

At its discretion, the Planning Board shall consider one of the following courses of action when considering a project submitted under the OSPUD requirements of the Ordinance:

- To grant a conditional use permit for the maximum number of allowable dwelling units authorized;
- To grant a conditional use permit for a number of dwelling units which is less than the maximum number authorized;
- To deny the conditional use permit.

Representations made at public hearings or in materials submitted to the Planning Board by an applicant for a conditional use permit for a PUD (including specifications for exterior building design and features; dwelling types, e.g., garden style, townhouse, free standing; dwelling unit sizes; number of buildings on lot; mix of market rate and affordable units; and parking) shall be deemed conditions and shall be documented in a development agreement entered into between the applicant and the City. Said development agreement must be reviewed and approved by the City Attorney prior to Planning Board approval of a conditional use permit. The applicant has submitted the draft development agreement to the City Attorney for review. Staff will advise the Planning Board on the status of that review at the meeting.

#### Technical Advisory Committee Review

The TAC reviewed this application at the August 3, 2021 meeting and voted to recommend approval with the following stipulations:

1. Applicant will construct a temporary shared use path to connect to the existing sidewalk network and install crossing equipment to cross Peverly Hill Road at Middle Rd.
2. Applicant should provide detailed written confirmation that the application meets all of the requirements of Article 7 of the Site Plan Review regulations as these relate to stormwater management, specifically that the post-development flows all meet or decrease the pre-development stormwater flows.
3. Update subdivision and site plan review checklists prior to submission to PB.
4. Road profiles will show geometry, sewer manhole numbers, and inverts.

5. Final calculations regarding both the gravity and force sewer systems will be provided.
6. Cross slope percentages will be added as details.
7. Pavement will be used instead of pavers for areas of road that are widened at hydrant areas.
8. Water main shall be cl 52 CLDI wrapped in polyethylene with continuity wedges as per City Standards and called on in detail.
9. Design of Irrigation systems for houses will use smart controls and noted on plan set.
10. NHDES Sewer extension permit will be obtained.
11. Force main's entry into the gravity sewer will be detailed in plan set.
12. Reroute water main at entrance to provide separation from sewer line.
13. Show expanded tree clearing for City vehicle access.

The applicant submitted revised plans on August 11, 2021 **but did not provided all of the additional information as identified above. After consultation with DPW staff, staff is recommending this application be postponed to the September meeting.**

#### Conservation Commission Review

According to section 10.727.22 the Conservation Commission shall be provided an opportunity to comment on the particulars of a proposed PUD, including but not limited to the natural features of the parcel and how these may be impacted by the proposed project. The Conservation Commission reviewed this application at the August 11, 2021 meeting and provided the following comments for consideration by the Planning Board (these have been incorporated into the recommended stipulations below):

1. The applicant should install signage demarking the location of the wetland buffer boundary;
2. A statement should be added to the Condominium documents stating that the dumping of yard debris and other materials and storage is not permitted in the wetland buffer;
3. A statement should be added to the Condominium documents stating that no salt is to be used for ice control on property owners driveways or walkways on the site;
4. A statement should be added to the Condominium documents stating that the owners follow NOFA standards in the maintenance of landscaped areas.

#### Waiver Requests

The applicant has requested waivers to the subdivision and site plan review requirements for this project including the requirements for Residential Street standards and Truck Turning template standards unless otherwise approved by TAC. Given TAC recommended approval of the plans as presented, staff does not believe that the second waiver is required, however the applicant has requested one so it is included in the recommended vote. The explanations for the waiver requirements are provided in a letter in the application. The Planning Board may waive any provision of these Regulations by a vote of six members, provided that such waiver will not have the effect of nullifying the spirit and intent of the Master Plan or these Regulations; and in granting a waiver, the Planning Board may require such conditions as will in its judgment secure the objectives of these Rules and Regulations.

Previous Planning Board Action

On April 30, 2015, the Planning Board considered a request from the City to approve one element of a settlement in a court case. The case pertained to the taking of a parcel of land in connection with the construction of the Route 33 bridge over the former Hampton Branch railroad line. The property owners had argued that the taking deprived them of a second access to the lot and thereby reduced its development potential. The City disputed this and prevailed in initial appeals. However, in order to avoid the cost of litigation and the potential risk associated with it, the Legal Department negotiated a compromise under which the owners would refrain from further appeals if granted a waiver from the Subdivision Regulations requiring a maximum of 500-foot on the length of a cul-de-sac.

The requested waiver was unusual in two respects. First, it was not attached to any specific development plan, but rather would open up the possibility for the current owners or any future owners to submit a subdivision or PUD plan showing a longer cul-de-sac road than allowed by the Subdivision Rules and Regulations. Thus, the Planning Board did not have a plan to review in connection with the request at that time. Second, the waiver would expire after 10 years if no development plan is submitted within that time period.

On April 30, 2015, the Board voted to waive in its entirety the 500 foot cul-de-sac limitation found in Section VI.3.I of the Subdivision Rules and Regulations for the property located at 83 Peverly Hill Road (Map 242, Lot 4); subject to any owner/applicant otherwise obtaining all other approvals and permits from local land use boards as may be necessary to develop the property. The decision stipulated that the waiver would run with the land and shall be effective for any subdivision application submitted to the Planning Board within ten (10) years of the date of approval of the waiver.

Planning Department Recommendation

*Vote to postpone to the September meeting.*

## V. PUBLIC HEARINGS – NEW BUSINESS (Cont.)

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- C. The request of **Arbor View and the Pines, LLC, (Owner and Applicant)** for property located at **145 Lang Road** requesting a Wetland Conditional Use Permit Approval in accordance with Section 10.1017 of the Zoning Ordinance to install new playground equipment with 5,300 square feet of ground disturbance within the 100-foot wetland buffer area and installation of new impervious surfaces for equipment footings. Said property is shown on Assessor Map 287 Lot 1 and lies within the Natural Resource Protection (NRP) and the Garden Apartment/Mobile Home Park (GA/MH) Districts.

### Description

The applicant is requesting a conditional use permit for disturbance that will occur in the 100 foot wetland buffer area during the installation of new playground equipment.

### Conservation Commission Review

According to Article 10 Section 10.1017.60 Public and Private Utilities within Rights-of-Way in Wetlands and Wetland Buffers 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 lawn area is being disturbed to accommodate the playground equipment. It is likely that the woodchips and playground equipment will provide better infiltration than the lawn that is there today. In addition to the playground equipment the debris pile has been removed from the buffer. It appears that there is additional work needed to remove an area of fill still at the wetland edge at the rear of the property as in its current state there is ponding of water and fill still located in the transition area between the wetland and upland.
2. *There is no alternative location outside the wetland buffer that is feasible and reasonable for the proposed use, activity or alteration.* The proposed location is lawn area now and the use will not substantially change the way the area functions today. There has been material stored in the buffer since at least the 1980's so the removal of this material from the wetland buffer is a positive effort on the part of the applicant. However, additional work is needed to complete the project.
3. *There will be no adverse impact on the wetland functional values of the site or surrounding properties.* The proposed playground equipment should not create adverse impacts to the adjacent wetland area. In addition the removal of material from the wetland buffer is a benefit to the site which needs to be completed so that long-term sedimentation and erosion issues are prevented.
4. *Alteration of the natural vegetative state or managed woodland will occur only to the extent necessary to achieve construction goals.* The project proposes to remove existing lawn area to install the playground equipment. A revegetation plan should be proposed for the material storage area which has been removed from the 100' wetland buffer.
5. *The proposal is the alternative with the least adverse impact to areas and environments under the jurisdiction of this section.* The proposed removal of lawn area and replacement with woodchips is a better alternative than an impervious surface for the fall zone below the playground equipment. In addition the removal of the material pile from the 100' wetland buffer represents a reduction of impacts but that work appears to need additional attention to complete.

6. *Any area within the vegetated buffer strip will be returned to a natural state to the extent feasible.* The plan provides for removal of lawn area and replacement with woodchips which is likely slightly better from an infiltration standpoint. In addition the material storage area needs planting to complete and stabilize the site.

At the July 14, 2021 Conservation Commission meeting, the Commission voted unanimously to recommend approval with the following stipulations:

1. The berm is removed and upland area graded to allow sheet flow to the wetland.
2. The first 25' of upland be planted with a conservation seed mix and signage indicating this is a no cut zone and sensitive wetland area.
3. The property owner will follow NOFA standards.
4. The owner will not apply or store salt within the 100' wetland buffer.

On July 28, the applicant submitted updated plans addressing these items and noting the requirements on the plans.

Planning Department Recommendation

*Vote to grant the Wetland Conditional Use Permit as presented.*

**V. PUBLIC HEARINGS – NEW BUSINESS (Cont.)**

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- D.** The Request of **Warner House Association, (Owner)**, for property located at **150 Daniel Street**, requesting Site Plan Review approval for the construction of a two-story Carriage House with 576 square foot building footprint that will include new utility services and the installation of stone walkways. Said property is shown on assessor Map 106 Lot 58 and lies within the Civic, Historic, and Downtown Overlay Districts.

Technical Advisory Committee Review

The TAC reviewed this application at the August 3, 2021 meeting and voted to recommend approval as presented.

Planning Department Recommendation

*Vote to grant Site Plan Review Approval with the following stipulation:*

- 1. The site plan shall be recorded at the Registry of Deeds by the City or as deemed appropriate by the Planning Department.*

**V. PUBLIC HEARINGS – NEW BUSINESS (Cont.)**

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- E.** Application of **Spaulding LLC, (Owner)**, for property located at **180 Spaulding Turnpike**, requesting Site Plan review for the renovation of the existing show room and the expansion of the customer service and office areas increasing the total square footage by 4,795 square feet. Said property is shown on Assessor Map 236 Lot 39 and lies within the General Business (GB) district.

Technical Advisory Committee Review

The TAC reviewed this application at the August 3, 2021 meeting and voted to recommend approval.

Wetland Conditional Use Permit

This application will also require a wetland conditional use permit. The application has completed review by the Conservation Commission and the wetland conditional use permit approval will be advertised and noticed for the September Planning Board meeting.

Planning Department Recommendation

*Vote to grant Site Plan Review Approval as presented with the following stipulations:*

- 1. The application requires granting of a wetland conditional use permit by the Planning Board;*
- 2. The site plan shall be recorded at the Registry of Deeds by the City or as deemed appropriate by the Planning Department.*



## VI. CITY COUNCIL REFERRALS

- A. Acceptance of four sewer line easements located on the portion of Sagamore Avenue which is a private way.
- B. Request for Release of Interest in Paper Street located at Ruth Street and Thornton Street.

### Description

In order to complete the Sagamore Avenue sewer line project, the City requires sewer line easements within a private right of way known as Sagamore Avenue West. Three easements are required from property owners that will directly benefit from the public sewer extension.

In addition to the three easements, a fourth easement is required over property of Mark Simpson, located on Sagamore Avenue, which contains exclusively a private right-of-way (no structures on the property). Mr. Simpson resides at 28 Thornton Street and is not benefited by the public sewer line extension. In consideration for the grant of a sewer line easement over the private right of way, Mr. Simpson requests the City convey by quitclaim deed any interest it may have in a portion of a paper street, called Ruth Street, adjacent to his home at 28 Thornton Street.

The City Council voted to refer these items to the Planning Board at the August 2, 2021 Council meeting.

### Planning Department Recommendation

1. *Vote to recommend that the Council approved the required easements.*
2. *Vote to recommend that the Council approve conveyance of a quitclaim deed to the portion of the paper street known as Ruth Street.*

## VII. PRELIMINARY CONCEPTUAL CONSULTATION

- A. Application of **2422 Lafayette Road Associates LLC C/O Waterstone Retail (Owner)** for property located at **2454 Lafayette Road** requesting a **Preliminary Conceptual Consultation** to demolish the existing 29,000 square foot structure and replace it with a 41,000 square foot footprint structure consisting of five (5) stories and 100 multi-family condominium units. Said property is shown on Assessor Map 273 Lot 3 and lies within the Gateway Corridor (G1) District.

### Description

As authorized by NH RSA 676:4,II, the Site Plan Review Regulations require preliminary conceptual consultation for certain proposals, including (1) the construction of 30,000 sq. ft. or more gross floor area, (2) the creation of 20 or more dwelling units, or (3) the construction of more than one principal structure on a lot. Preliminary conceptual consultation precedes review by the Technical Advisory Committee.

Preliminary conceptual consultation is described in the state statute as follows:  
*[Preliminary conceptual consultation]... shall be directed at review of the basic concept of the proposal and suggestions which might be of assistance in resolving problems with meeting requirements during final consideration. Such consultation shall not bind either the applicant or the board and statements made by planning board members shall not be the basis for disqualifying said members or invalidating any action taken. The board and the applicant may discuss proposals in conceptual form only and in general terms such as desirability of types of development and proposals under the master plan.*

The preliminary conceptual consultation phase provides the Planning Board with an opportunity to review the outlines of a proposed project before it gets to detailed design (and before the applicant refines the plan as a result of review by the Technical Advisory Committee and public comment at TAC hearings). In order to maximize the value of this phase, Board members are encouraged to engage in dialogue with the proponent to offer suggestions and to raise any concerns so that they may be addressed in a formal application. Preliminary conceptual consultation does not involve a public hearing, and no vote is taken by the Board on the proposal at this stage. Unlike Design Review, completion of Preliminary Conceptual Consultation does not vest the project to the current zoning.

**VIII. DESIGN REVIEW ACCEPTANCE OF APPLICATION**

- A. Request of **2422 Lafayette Road Associates LLC C/O Waterstone Retail (Owner)** for property located at **2454 Lafayette Road** requesting **Design Review Approval** to demolish the existing 29,000 square foot structure and replace it with a 41,000 square foot footprint structure consisting of five (5) stories and 100 multi-family condominium units. Said property is shown on Assessor Map 273 Lot 3 and lies within the Gateway Corridor (G1) District.

Description

This item is a request for Design Review under the Site Plan Review Regulations. Under the State statute (RSA 676:4,II), the Design Review phase is an opportunity for the Planning Board to discuss the approach to a project before it is fully designed and before a formal application for Site Plan Review is submitted. The Design Review phase is not mandatory and is nonbinding on both the applicant and the Planning Board.

Although the State statute calls this pre-application phase “design review,” it does not encompass review of architectural design elements such as façade treatments, rooflines and window proportions. Rather, it refers to site planning and design issues such as the size and location of buildings, parking areas and open spaces on the lot; the interrelationships and functionality of these components, and the impact of the development on adjoining streets and surrounding properties.

The process as outlined in Section 2.4.3 of the Site Review regulations is that the Board first has to determine that the request for design review includes sufficient information to allow the Board to understand the project and identify potential issues and concerns, and, if so, vote to accept the request and schedule a public hearing. *Completion of the design review process also has the effect of vesting the project to the current zoning.*

Design review discussions must take place in a public hearing. At the conclusion of the public hearing process, the Board makes a determination that the design review process for the application has ended.

Planning Department Recommendation

*Vote to accept the request and schedule a public hearing for the September 16, 2021 Planning Board meeting.*