



City of Portsmouth
Planning Department
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MEMORANDUM

To: Planning Board
From: Peter Britz, Interim Planning Director
Stefanie L. Casella, Planner
Date: September 10, 2021
Re: Recommendations for the September 16, 2021 Planning Board Meeting

III. DETERMINATIONS OF COMPLETENESS

SITE PLAN REVIEW

A. Request of **Green & Company (Applicant)** and **Philip J. Stokel and Stella B. Stokel (Owners)** for property located at **83 Peverly Hill Road** for Site Plan Review approval.

~~B. Request of **Ricci Construction Company Inc, (Owner)** and **Green & Company Building & Development Corp. (Applicant)** for property located at **3400 Lafayette Rd** for Site Plan Review approval.~~ **REQUEST TO POSTPONE**

Planning Department Recommendation

Vote to determine that the application is complete according to the Site Plan Review Regulations (contingent on the granting of any required waivers under Sections IV and VI of the agenda) and to accept the application for consideration.

SUBDIVISION

C. Request of **64 Vaughan Mall, LLC** and **Northern Tier Real Estate Acquisition & Development, LLC, (Owners)** for properties located at **64 Vaughan Street (Lot 1)** and **172 Hanover Street (Lot 1-A)**, requesting Preliminary and Final Subdivision approval (Lot Line Revision).

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 VI of the agenda) and to accept the application for consideration.

IV. PUBLIC HEARINGS – OLD BUSINESS

- A. The request 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

This project is an area that the property owner has been working to improve since June of 2019. The contractor hired to clear the invasive species cut a much larger area than was planned by the property owner and extensively cut vegetation in the wetland and wetland buffer. The cutting of vegetation in the wetland and portions of the wetland buffer is not allowed without a Wetland Conditional Use permit therefore this is an after the fact application.

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 has stated their intention to clear trash and invasive species from this parcel. While that activity is permitted and would not normally need a wetland conditional use permit the extent of clearing exceeded what is allowed under our wetland regulations.
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 where the work was proposed but the applicant went beyond the area where they had stated they would be clearing and mowed down a large area of wetland vegetation removing habitat, and creating ruts and the potential for erosion.
3. *There will be no adverse impact on the wetland functional values of the site or surrounding properties.* This project did create a temporary impact as they mowed down wetland vegetation exposed slopes by drainage ways and created ruts. However, once the violation had been identified the applicant was responsive and took immediate action to protect the erosion areas and stabilize the site. Once the site was stabilized the vegetation was allowed to return and the site is returning to a vegetated emergent wetland.
4. *Alteration of the natural vegetative state or managed woodland will occur only to the extent necessary to achieve construction goals.* This is the main issue with this project. A large area of wetland vegetation and the vegetated buffer were mowed without a wetland conditional use permit. While there are certainly short term impacts from this work the applicant appears committed to allow the area to restore naturally.

5. *The proposal is the alternative with the least adverse impact to areas and environments under the jurisdiction of this section.* Not mowing the wetland would have been less impacting. The fact that there was no fill placed in the wetland area and no major changes to the site beyond the mowing will mean the site can restore itself to its former condition.
6. *Any area within the vegetated buffer strip will be returned to a natural state to the extent feasible.* The plan is to allow the vegetated wetland and vegetated buffer strip to restore naturally using the existing seed bank in the soil on the site.

Conservation Commission Review

The Conservation Commission reviewed an application for Wetland Conditional Use at their June 9, 2021 meeting. This application was postponed at the request of the applicant to the August then again to this September meeting. At the June meeting the Commission requested the applicant provide information pertaining to proposed plantings, signage and management of the site. The applicant has provided a Concept Plan which includes proposed plantings, signage and maintenance. All of the components of the plan appear to be in compliance with the City's ordinance for cutting, pesticide and fertilizer use in the wetland buffer. In addition there is a plan to remove and limit future invasive species growth on the property.

The Conservation Commission was satisfied with the proposed plan and measures to implement it over the long-term as included in the application. There was some discussion about the planting of winterberry with a mix of male to female to ensure fruiting occurs. Commission recommended approval to the Planning Board unanimously with no stipulations.

Planning Department Recommendation

Vote to grant approval of the wetland conditional use permit as presented.

It is recommended that Items IVB and IVC 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 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.
- C.** 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.

Description

These applications are still pending TAC and Conservation Commission review.

Planning Department Recommendation

Vote to postpone these items to the October Planning Board meeting.

It is recommended that Items IVD and IVE 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 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.
- E.** 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.

Description

These applications are still pending TAC and Conservation Commission review.

Planning Department Recommendation

Vote to postpone the public hearing on this request indefinitely until the applicant is ready to proceed. The project should be re-advertised and abutters re-noticed when the public hearing is scheduled.

- F. 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.

After reviewing the revised plans submitted subsequent to TAC review, staff provided the following additional comments:

To be addressed by applicant prior to Planning Board review

1. Engineer indicated that Section 7.6.2 – Enhanced Stormwater Standards for New and Redevelopment Disturbing More than 15,000 square feet of Area is Not Applicable to this submission. The City does not agree/ Engineer to address.
2. Drainage pipes alignment and manhole locations interfere with water main pipes and water services in multiple areas. Engineer to address.
3. Engineer to submit calculations for drainage pipe sizing to verify sizes shown.
4. It appears that spacing of CB's will not have sufficient inlet capacity to accommodate stormwater flow for the larger storms which might not correlate to the drainage analysis/report and pipe sizing calculations. Possible additional CB's may be considered. Engineer to address.
5. The naming of a public roadway is the purview of the City Council with recommendations from the Planning Board. If you have a specific roadway name in mind that you would like to request, that should be part of your presentation package to the Planning Board. It is helpful to include an explanation for the road name you are requesting.

Recommended for Conditions of Planning Board approval (some of these will be required prior to building permit issuance, others can be completed subsequent)

6. All easements to benefit the City shall be reviewed and approved by the DPW, Planning and Legal Departments prior to final acceptance by the City Council. In most cases, metes and bounds describing the easement area shall be required.
7. It is understood the homeowners and/or homeowners association will own all stormwater facilities, drainage pipes and outfalls outside the roadway easement/ROW. This will include all activities associated with ownership and maintenance of the stormwater facilities and pipelines. For this reason, easements will be required in order for the City to have drainage and flowage rights for any stormwater draining from the public road into the private facilities or across private property.
8. Road Plan/Profile is missing information including roadway horizontal curve information, stationing and pipe sizes at SMH's and CB's, pipe material. The City will complete the design review once a revised plan set is received and additional comments may be provided.

9. Low pressure sewer force main appears to be excessively deep in areas. Engineer to address/redesign and final design shall be subject to DPW review and approval. City may require third party review at applicant's expense.
10. All "Cleanout/Air Vacuum" and "Terminal Manholes" for the sewer force main need to be clearly located and called out on the plan view and detail sheet.
11. Details and design for the proposed retaining wall along proposed roadway shall be designed by a qualified registered engineer. Design and wall type shall be reviewed and approved by DPW prior to building permit approval. Details shall include the required guard rail and drainage pipe penetration.
12. Plans indicated a significant amount of the construction for new utilities and roadway will be in areas to be filled. The approach to construction will be important for the stability of the proposed utilities and longevity of the roadway. A Construction Mitigation and Management Plan shall be required for this project, to include a proposed approach to progress of constructions in the areas with significant fill.
13. The City will require a full set of construction plans and specifications prior to construction. This will be reviewed by a third party at the cost of the applicant.
14. The applicant shall agree to pay for the services of an oversight engineer, to be selected by the City, to monitor the construction of improvements within the public rights-of-way and on site;
15. The applicant shall provide an easement along the frontage on Peverly Hill Road for construction of the shared use path. The easement must be donated to the City of Portsmouth for the shared use path per Federal Requirements. The City will provide the appropriate documentation for the applicant's use. The applicant shall provide a contribution for future construction of the section from the new roadway to the south of property line in the amount of \$100,000. [note: this is a change from the TAC recommendation]
16. A statement shall 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;
17. A statement shall 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;
18. A statement shall be added to the Condominium documents that property owners shall utilize NOFA (Northeast Organic Farming Association) approved practices (or comparable equivalent) for maintenance of landscaped areas;
19. The Applicant or its engineer shall submit a copy of a completed Land Use Development Tracking Form using the Pollutant Tracking and Accounting Program (PTAP) online portal currently managed by the UNH Stormwater Center or similar form approved by the City;
20. The applicant shall enter into a development agreement with the City per the requirements of the Zoning Ordinance and subject to review and approval by the Legal Department.
21. The applicant shall install signage/markers indicating the location of the wetland buffer boundary;
22. A NHDES sewer extension permit is required;
23. The Engineer of Record shall submit a written report (with photographs and engineer stamp) certifying that the stormwater infrastructure was constructed to the approved plans and specifications and will meet the design performance;
24. A stormwater inspection and maintenance report shall be completed annually and copies shall be submitted to the City's Planning and Public Works Departments.

On September 8, 2021 the applicant submitted updated plans addressing items 1 through 5 above. **These plans are still being reviewed by staff and an updated recommendation will be provided at the Planning Board 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 Recommendations

- 1) *If the Planning Board determines that the applicant has made the case that the proposed OSPUD will not be more detrimental than a conventional subdivision, the Planning Board should vote to find that:*
 - 1.1) *The site is appropriate for an OSPUD, and;*
 - 1.2) *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.*

- 2) *Vote to grant waivers to the Subdivision Regulations Residential Streets Standards (Appendix to the Subdivision Regulations) and Minimum Right of Way requirements (Section VI(3)(b)) by finding that:*

[NOTE: NH RSA 674:36, II(n) requires the Planning Board to make one of the following findings in order to grant a waiver and the City's Subdivision Regulations require approval by a vote of six members]

a) Strict conformity would pose an unnecessary hardship to the applicant and waiver would not be contrary to the spirit and intent of the regulations

[OR]

b) Specific circumstances relative to the subdivision, or conditions of the land in such subdivision, indicate that the waiver will properly carry out the spirit and intent of the regulations

- 3) *Vote to find that the requested waiver to the Site Plan Review regulations 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 requirement:*

Requirement of Section 2.5.4.3(c) requiring use of AASHTO truck turning templates.

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

- 4) *Vote to grant the conditional use permit and site plan review approval with the following stipulations:*

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

4.1) *The Applicant or its engineer shall submit a copy of a completed Land Use Development Tracking Form using the Pollutant Tracking and Accounting Program (PTAP) online portal currently managed by the UNH Stormwater Center or similar form approved by the City;*

4.2) *The applicant shall enter into a development agreement with the City per the requirements of the Zoning Ordinance and subject to review and approval by the Planning and Legal Departments.*

4.3) *It is understood the homeowners and/or homeowners association will own all stormwater facilities, drainage pipes and outfalls outside the roadway easement/ROW. This will include all activities associated with ownership and maintenance of the stormwater facilities and pipelines. For this reason, easements will be required in order for the City to have drainage and flowage rights for any stormwater draining from the public road into the private facilities or across private property.*

4.4) *All easements to benefit the City shall be reviewed and approved by the DPW, Planning and Legal Departments prior to final acceptance by the City Council. In most cases, metes and bounds describing the easement area shall be required.*

4.5) *Road Plan/Profile is missing information including roadway horizontal curve information, stationing and pipe sizes at SMH's and CB's, pipe material. The City will complete the design review once a revised plan set is received and additional comments may be provided.*

4.6) *Low pressure sewer force main appears to be excessively deep in areas. Engineer to address/redesign and final design shall be subject to DPW review and approval. City may require third party review at applicant's expense.*

4.7) *All "Cleanout/Air Vacuum" and "Terminal Manholes" for the sewer force main need to be clearly located and called out on the plan view and detail sheet.*

4.8) *Details and design for the proposed retaining wall along the proposed roadway shall be designed by a qualified registered engineer. Design and wall type shall be reviewed and approved by DPW prior to building permit approval. Details shall include the required guard rail and drainage pipe penetration.*

4.9) *Plans indicated a significant amount of the construction for new utilities and roadway will be in areas to be filled. The approach to construction will be important for the stability of the proposed utilities and longevity of the roadway. A Construction Mitigation and Management Plan shall be required for this project, to include a proposed approach to progress of constructions in the areas with significant fill.*

4.10) The City will require a full set of construction plans and specifications for site improvements and utilities prior to construction. This will be reviewed by a third party at the cost of the applicant.

4.11) The applicant shall agree to pay for the services of an oversight engineer, to be selected by the City, to monitor the construction of improvements within the public rights-of-way and on site;

4.12) The applicant shall provide an easement along the frontage on Peverly Hill Road for construction of the shared use path. The easement must be donated to the City of Portsmouth for the shared use path per Federal Requirements. The City will provide the appropriate documentation for the applicant's use. The applicant shall provide a contribution for future construction of the section from the new roadway to the south of property line in the amount of \$100,000.

Conditions Subsequent:

4.13) The applicant shall construct a temporary shared use path to connect to the existing sidewalk network and install crossing equipment to cross Peverly Hill Road at Middle Road. The design and installation shall be subject to review and approval by the DPW;

4.14) A statement shall 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;

4.15) A statement shall 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;

4.16) A statement shall be added to the Condominium documents that property owners shall utilize NOFA (Northeast Organic Farming Association) approved practices (or comparable equivalent) for maintenance of landscaped areas;

4.17) The applicant shall install signage/markers indicating the location of the wetland buffer boundary;

4.18) A NHDES sewer extension permit is required;

4.19) The Engineer of Record shall submit a written report (with photographs and engineer stamp) certifying that the stormwater infrastructure was constructed to the approved plans and specifications and will meet the design performance;

4.20) A stormwater inspection and maintenance report shall be completed annually and copies shall be submitted to the City's Planning and Public Works Departments.

V. PUBLIC HEARINGS – CITY COUNCIL REFERRALS (OLD BUSINESS)

- 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. Given that this hearing has been postponed a number of times at the request of the applicant, the staff recommends the Board postpone indefinitely and re-notice and re-advertise this hearing when the applicant is ready to proceed.

Planning Department Recommendation

Vote to postpone the public hearing on this request indefinitely until the applicant is ready to proceed. The project should be re-advertised and abutters re-noticed when the public hearing is scheduled.

VI. PUBLIC HEARINGS – NEW BUSINESS

It is recommended that Items VIA and VIB be discussed together and voted on separately.

A motion is required to consider these items together.

- A. The request of **Ricci Construction Company Inc, (Owner)** and **Green & Company Building & Development Corp. (Applicant)** for property located at **3400 Lafayette Rd** requesting a wetland Conditional Use Permit under section 10.1017 to construct 50 town homes on an undeveloped lot. The applicant is proposing five areas of wetland impact for a total of 21,350 square feet of permanent impact and three areas of temporary impact for a total of 2,350 square feet. Said property is shown on Assessor Map 297 Lot 11 and lies within the Gateway Neighborhood Mixed Use Corridor (G1) District and the Natural Resource Protection (NRP) District.
- B. The request of **Ricci Construction Company Inc, (Owner)** and **Green & Company Building & Development Corp. (Applicant)** for property located at **3400 Lafayette Rd** requesting Conditional Use Permit for a Development Site in accordance with Section 10.5B40 of the Zoning Ordinance and Site Plan Review approval for construction of a 50-unit multi-family residential development that includes community space and related landscaping, drainage, paving, utilities and other site improvements. Said property is shown on Assessor Map 297 Lot 11 and lies within the Gateway Neighborhood Mixed Use Corridor (G1) District and the Natural Resource Protection (NRP) District.

Wetland Conditional Use Permit

The majority of the proposed development falls outside of the wetland buffer however there is stormwater treatment area and site drainage and sewer line construction proposed to go into the wetland and wetland buffer area.

1. *The land is reasonably suited to the use activity or alteration.* Given this area is intended to be a highly functioning wetland system it is critical that the stormwater treatment does not introduce contaminants. The applicant has stated their willingness to avoid the use of salt to treat the driving areas in this development. Additionally, the area to the rear of the site shows a sewer line through a prime wetland and prime wetland buffer. This impact is described as temporary. There is no detail on how that construction will take place. More information is needed to understand how these impacts will be only temporary and how the construction will be protective of the existing prime wetland system.
2. *There is no alternative location outside the wetland buffer that is feasible and reasonable for the proposed use, activity or alteration.* The applicant has designed a dense residential development on this site which could have longterm impact to the wetland area adjacent to it. The applicant has stated their willingness to reduce stormwater impacts by not using salt in the snow removal process. More information is needed as to how the impacts through the wetland at the rear of the site is being undertaken. If the sewer line were routed from Lafayette Road in front of the development there would be a substantial reduction in impacts.

3. *There will be no adverse impact on the wetland functional values of the site or surrounding properties.* The applicant has stated they will stipulate that snow removal will not include the use of salt. This needs to be documented in a way that can be enforced in the long term. The applicant has moved the trail closer to the development and has provided a fence to reduce impacts to the wetland buffer in this trail area. In addition they have provided a dog park which will reduce the impact of dog waste in the buffer.
4. *Alteration of the natural vegetative state or managed woodland will occur only to the extent necessary to achieve construction goals.* The area proposed for development is currently being used as a wood processing area therefore a portion of the natural vegetation has been impacted. The introduction of 50 housing units in this area will require removal of all the natural vegetation outside of the buffer and some of the vegetation in the buffer at least as a temporary impact. The applicant does have a fairly robust planting plan to restore the current wetland buffer.
5. *The proposal is the alternative with the least adverse impact to areas and environments under the jurisdiction of this section.* If the sewer line were not routed to the rear of the site that would be a less impacting alternative. Additionally, to reduce impacts to the wetland the removal of snow should be done without the use of sodium chloride.
6. *Any area within the vegetated buffer strip will be returned to a natural state to the extent feasible.* The applicant is proposing an extensive planting plan for the buffer impacts at the front of the site. The only restoration shown on the proposed sewer line to the rear of the site is planting of a New England wetland seed mix. There should be more thought put into how the direct impact to the prime wetlands will be restored after the sewer is installed through that area.

Conservation Commission Review

The Commission reviewed this application at the August 11, 2021 meeting and voted to recommend approval with stipulations. It should be noted that the vote to recommend approval was not unanimous, with three members voting to approve and two opposed.

1. The applicant will plant trees and other tall vegetation in the wetland buffer across from units 20-24 at the end of the proposed development to protect the wetland from light spillover.
2. The applicant shall follow NOFA standards for the landscaping on the site.
3. The Condominium docs should include maintenance for the landscaping and plants proposed for the wetland buffer
4. The applicant shall provide signage for the wetland buffer designating its location and requiring all dogs be leashed.
5. The applicant shall provide a three bar split rail fence at the wetland side of the proposed trail behind the buildings in the wetland buffer.
6. The applicant shall have the snow removal company staff attend the Green Snow Pro Trainings.
7. The applicant shall include language in the condominium docs prohibiting the use of salt.

8. Drainage plan TR1 shall be corrected to accurately depict the contributing area for stormwater.

On August 25, 2021 the applicant submitted updated plans addressing items 1, 4-6, and 8 to the satisfaction of the Planning Department staff. The remaining items have been included as stipulations below.

Conditional Use Permit Approval for Development Site

Per Section 10.5B43.10, prior to granting a conditional use permit for development sites in the Gateway Neighborhood Mixed Use Districts, the Planning Board shall make the following findings.

- 1) The development project is consistent with the Portsmouth Master Plan.
- 2) The development project has been designed to allow uses that are appropriate for its context and consistent with City's planning goals and objectives for the area.
- 3) The project includes measures to mitigate or eliminate anticipated impacts on traffic safety and circulation, demand on municipal services, stormwater runoff, natural resources, and adjacent neighborhood character.
- 4) The project is consistent with the purpose and intent set forth in Section 10.5B11.

Site Plan Review

Technical Advisory Committee Review

At the August 3, 2021 meeting, the TAC voted to recommend approval with the following conditions:

1. Applicant will update community space area terminology to be consistent with Ordinance terminology.
2. Trailhead connections and wayfinding signs will be included for residents on the eastern side of the development to access the recreational trails.
3. Deeded public access will be provided to the proposed open space and undeveloped portion of the property that abuts city-owned parcels.
4. Water main sizes will be labeled.
5. Applicant will provide written statement that demonstrates conformance with Article 7 of the City's Site Plan Review regulations.
6. Applicant will hire a 3rd party company to identify areas of ground water infiltration that can be eliminated from the local municipal sewer collection system. After agreement from the City on the targeted areas, the developer will need to permit and construct via whatever means are approved (repair/replace/reline) areas of the sewer successfully in order to create capacity for this development in the sewer system. The amount of infiltration to be removed must be a value equal or greater to two times the amount of waste predicted from the development.
7. Applicant will hire a third party to inspect all utilities and stormwater systems.
8. Applicant will provide a fire hydrant flow rate plan that shows acceptable pressure as determined by city DPW and Fire Department.

On August 25, 2021 the applicant submitted updated plans addressing items 1, 2, and 4. For item 8, the applicant completed a fire hydrant flow rate test and determined that the project is in need of a booster pump. DPW staff is still reviewing

items 5 and 6 and an update on the status of that review will be provided at the Planning Board meeting.

For item 3, **staff feels that more discussion is needed with the Planning Board to determine how the deeded public access should be provided, to what extent, and whether there should be any limitations on access.**

In addition to the comments above, Planning Department staff have noted that the applicant is required by the Zoning (Section 10.5B92) to provide an 8' wide pedestrian walkway throughout the lot that connects to adjacent streets, accessways, sidewalks, and off-street parking areas to the entrances of all principal buildings. In reviewing these plans, **staff does not feel that the application satisfies this requirement. Staff is recommending the plans be revised to meet this requirement prior to final Planning Board approval.**

Planning Department Recommendations

- 1) *Vote to request that the applicant revise the plans to comply with the requirements of Section 10.5B92 related to the provision of an 8' wide pedestrian walkway throughout the site.*

[NOTE: if the Board does not act on or does not approve the above recommended action, then the following votes are recommended for approval of the application as presented]

- 1) *Vote to approve the wetland conditional use permit with the following stipulations:*

- 1.1) *The Condominium documents shall include maintenance for the landscaping and plants proposed for the wetland buffer area and also a requirement that the property owners shall utilize NOFA (Northeast Organic Farming Association) approved practices (or comparable equivalent) for landscaped areas on the site.*

- 1.2) *The condominium documents shall prohibit the use of salt on paved surfaces.*

- 2) *Vote to find that the application meets the requirements of Section 10.5B43.10 and to grant a conditional use permit for a Development Site subject to the requirements and conditions of site plan review approval.*

- 3) *Vote to grant site plan review approval with the following stipulations:*

Conditions Precedent

- 3.1) *Deeded public access will be provided to the proposed open space and undeveloped portion of the property that abuts city-owned parcels.*

[NOTE: staff feels that more discussion is required with the Planning Board to determine the scope of the public access to the site and any proposed limitations on use]

3.2) 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.

3.3) Applicant will hire a 3rd party company to identify areas of ground water infiltration that can be eliminated from the local municipal sewer collection system. After agreement from the City on the targeted areas, the developer will need to permit and construct via whatever means are approved (repair/replace/reline) areas of the sewer successfully in order to create capacity for this development in the sewer system. The amount of infiltration to be removed must be a value equal or greater to two times the amount of waste predicted from the development.

3.4) The applicant shall agree to pay for the services of an oversight engineer, to be selected by the City, to monitor the installation of utilities and stormwater infrastructure.

3.5) The Applicant or its engineer shall submit a copy of a completed Land Use Development Tracking Form using the Pollutant Tracking and Accounting Program (PTAP) online portal currently managed by the UNH Stormwater Center or similar form approved by the City.

3.6) 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:

3.7) The Engineer of Record shall submit a written report (with photographs and engineer stamp) certifying that the stormwater infrastructure was constructed to the approved plans and specifications and will meet the design performance;

3.8) A stormwater inspection and maintenance report shall be completed annually and copies shall be submitted to the City's Planning and Public Works Departments.

- C. The request of **Kelly Property Trust A.B. and Ashley W.M. (Owners)**, for property located at **0 Oriental Gardens** requesting an application for a wetland Conditional Use Permit under section 10.1017 to remove existing obsolete sewer infrastructure and improve a storm water outfall on the site with a proposed temporary impact of 4,554 square feet and permanent impact of 187 square feet. Said property is shown on Assessor Map 215 Lot 9 and lies within the Gateway Corridor (G1) and Office Research (OR) Districts.

Description

The project involves removing the sewer pump station and associated piping and removing vegetation around the outlet of a culvert to maintain an existing drainage swale. This project was approved in 2017 but the work was never conducted and the permit expired.

1. *The land is reasonably suited to the use activity or alteration.* The swale area is an existing drainage swale and the applicant is proposing to add 130 square feet of riprap to the culvert outlet coming from the Starbucks parking lot to reduce the flow velocity and prevent erosion in the swale area. This work is appropriate to maintain proper site drainage.
2. *There is no alternative location outside the wetland buffer that is feasible and reasonable for the proposed use, activity or alteration.* Since the drainage swale, tank and pipe are all existing there is no alternative location for the work.
3. *There will be no adverse impact on the wetland functional values of the site or surrounding properties.* The proposed project should help reduce sediment to the wetland area at the rear of the site where the swale outlets.
4. *Alteration of the natural vegetative state or managed woodland will occur only to the extent necessary to achieve construction goals.* The project is proposing to prune existing vegetation along the length of the swale to allow future maintenance.
5. *The proposal is the alternative with the least adverse impact to areas and environments under the jurisdiction of this section.* The proposed project is necessary to maintain the drainage from the site and the addition of rip rap outlet should reduce any adverse sediment impacts. The removal of sewer infrastructure is necessary as it is not needed for the sewer to function.
6. *Any area within the vegetated buffer strip will be returned to a natural state to the extent feasible.* The applicant is proposing to prune vegetation along the swale but this area will remain naturally vegetated. The lawn area will remain to allow future access to clean out the drainage swale.

Conservation Commission Review

At the August 11, 2021 meeting, the Conservation Commission voted unanimously to recommend approval as presented.

Planning Department Recommendation

Vote to grant the wetland conditional use permit as presented.

- D. The request of **Spaulding Group, LLC, (Owner)** for property located at **180 Spaulding Turnpike** requesting a wetland Conditional Use Permit under section 10.1017 to expand and reconstruct an existing building within the wetland buffer. The application calls for temporary impacts of 2,528 square feet and permanent impacts of 3,287 square feet. The entire application is proposed where the site is completely impervious surface where a portion of pavement is being converted in to a building. Said property is shown on Assessor Map 236 Lot 39 and lies within the General Business (GB) District.

Description

This application is to demolish a portion of an existing building and rebuild it expanding it over an existing paved area. There is no increase in impervious surface with this application and all of the proposed work is within the existing development footprint.

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 project currently has pavement and building within the 100 foot wetland buffer. While the ratio of building to pavement will increase there is no change in the amount of impervious surface.
2. *There is no alternative location outside the wetland buffer that is feasible and reasonable for the proposed use, activity or alteration.* The proposal is to reconstruct an existing building. There will be no increase in impacts to the wetland buffer.
3. *There will be no adverse impact on the wetland functional values of the site or surrounding properties.* Given this area is all impervious surface the only impact will be a reduction of pavement. As a result there could be a slight reduction in contaminants in the runoff from the site.
4. *Alteration of the natural vegetative state or managed woodland will occur only to the extent necessary to achieve construction goals.* There is no change to the natural vegetative state proposed with this project.
5. *The proposal is the alternative with the least adverse impact to areas and environments under the jurisdiction of this section.* The proposed project does not represent a change to the wetland buffer in terms of impacts.
6. *Any area within the vegetated buffer strip will be returned to a natural state to the extent feasible.* The plan does not call for the removal of any vegetation. The applicant could be asked if there are areas on the site which could be returned to a natural state.

Conservation Commission Review

At the August 11, 2021 meeting, the Conservation Commission voted unanimously to recommend approval as presented.

Planning Department Recommendation

Vote to grant the wetland conditional use permit as presented.

- E. The request of **Ivo and Caitlin Van Der Graaff, (Owners)** for property located at **10 FW Hartford Drive** requesting a wetland Conditional Use Permit according to section 10.1010 of the City's Zoning Ordinance to remove 15 trees 12 of which are located in the wetland or wetland buffer adjacent to the residence at 10 FW Hartford. The removal of the trees will result in a disturbance of 450 square feet in the wetland area and 500 square feet in the inland wetland buffer. Said property is shown on Assessor Map 269 Lot 53 and lies within the Single Residence B (SRB) District.

Description

This is a project proposal to remove trees in the wetland and wetland buffer behind the home. The applicant hired an arborist to assess the health of the trees on the property and requests removal of five trees inside the wetland area, two trees on the line or just outside the wetland area and 8 trees outside of the vegetate buffer and limited cut area.

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 trees in the wetland or just outside of the wetland require approval for the owner to cut trees 8-14 as shown in the provided plans. The other trees 1-7 and 15 are not regulated by the City's Zoning Ordinance.
2. *There is no alternative location outside the wetland buffer that is feasible and reasonable for the proposed use, activity or alteration.* The health of the trees or the threat to property make the decision to remove these trees the only reasonable alternative for this proposal.
3. *There will be no adverse impact on the wetland functional values of the site or surrounding properties.* Given the density of trees in this forest and the goal of improving the health of the woodland this project will not have an adverse impact on wetland values.
4. *Alteration of the natural vegetative state or managed woodland will occur only to the extent necessary to achieve construction goals.* This is a project to manage the trees on the site. Removal of the trees is intended to keep the property safe and according to the arborist improve the function of the woodland.
5. *The proposal is the alternative with the least adverse impact to areas and environments under the jurisdiction of this section.* The proposed is intended to improve the health of the forest and make the site safer for people and the adjacent home.
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 trees but not to change the natural state of the forested area surrounding the home.

Conservation Commission Review

At the August 11, 2021 meeting, the Conservation Commission voted unanimously to recommend approval with the following conditions:

1. That the stumps and trees that are cut be left in place
2. That the applicant install native plants along the edge of wetland in the buffer
3. That the applicant follow NOFA standards in their landscape maintenance.

Planning Department Recommendation

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

- 1) The stumps and trees that are cut shall be left in place*
- 2) The applicant install native plants along the edge of wetland in the buffer*
- 3) The property owner shall utilize NOFA (Northeast Organic Farming Association) approved practices (or comparable equivalent) for maintenance of landscaped areas*

- F. Request of **64 Vaughan Mall, LLC** and **Northern Tier Real Estate Acquisition & Development, LLC, (Owners)** for properties located at **64 Vaughan Street (Lot 1)** and **172 Hanover Street (Lot 1-A)**, requesting Preliminary and Final Subdivision approval (Lot Line Revision) to convey 133 square feet from Lot 1 to Lot 1-A which will result in a total lot area of 13,964 square feet of lot area for Lot 1 and 5,621 square feet of lot area for Lot 1-A. Said properties are shown on Assessor Map 126 Lot 1 and Lot 1-A and lie within the Character District 5 (CD5), Downtown Overlay District, and Historic District.

Description

Authorization is still pending from the owner of 172 Hanover Street. Staff will provide an update on the status at the meeting.

9/15/2021 Staff Update

All owner authorizations have been provided.

Planning Department Recommendations

Vote to grant Preliminary and Final Subdivision (Lot Line Revision) Approval with the following stipulations:

- 1) Property monuments shall be set as required by the Department of Public Works prior to the filing of the plat.*
- 2) GIS data shall be provided to the Department of Public Works in the form as required by the City.*
- 3) The final plat and all easement deeds shall be recorded concurrently at the Registry of Deeds by the City or as deemed appropriate by the Planning Department.*

- G.** Request of **Mary M. Griffin, (Owner)**, for property located at **7 Curriers Cove** requesting a wetland Conditional Use Permit under section 10.1017. The applicant is proposing to replace and failing culvert under the Currier's Cove roadway with 192 square feet of wetland disturbance and 1,208 square feet of wetland buffer disturbance. The existing 36" corrugated metal culvert is proposed to be replaced with a reinforced concrete culvert four feet shorter than the existing culvert with new concrete headwalls for both the inlet and outlet location with areas of rip rap proposed to dissipate energy on the outlet side and to protect the inlet side from erosion and undercutting. The application also proposed removal of existing vegetation and includes a planting plan for new vegetation. Said properties are shown on Assessor Map 204 Lot 16 and lie within the Single Residence A (SRA) District.

Description

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

Conservation Commission

At the September 8, 2021 Commission meeting, the Commission voted unanimously to recommend approval of this project with the following conditions:

- 1) That arbor vitae be planted to replace the arbor vitae that is being removed and that an evergreen shrub be planted in at least equal number to those being removed.

Planning Department Recommendation

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

- 1) *That arbor vitae be planted to replace the arbor vitae that is being removed and that an evergreen shrub be planted in at least equal number to those being removed.*

VII. DESIGN REVIEW

- 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. (LUPD-21-7)

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 find that the design review process is complete.

VIII. OTHER BUSINESS

- A. Request of **Spyglass Development, LLC & C/O The Kane Company (Owners)**.
Proposed lot line revision is located at **30 New Hampshire Drive** which is identified as Map 301 Lot 3 on the City of Portsmouth Tax Maps. The proposed revision is to reduce the lot of record from the existing 369,643 sf to 314,607 sf 30 New Hampshire Avenue (LU-21-154)

Description

An explanation of this project and the process for review is provided by the PDA staff and is included in the packet.

Planning Department Recommendation

Vote to recommend approval of the lot line revision.