

**PLANNING DEPARTMENT MEMORANDUM**

**TO: PLANNING BOARD**

**FROM: RICK TAINTOR, PLANNING DIRECTOR  
JESSA BERNA, ASSOCIATE PLANNER**

**DATE: APRIL 24, 2015**

**SUBJECT: APRIL 30, 2015 PLANNING BOARD MEETING**

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**I. DETERMINATIONS OF COMPLETENESS**

**Staff Report:**

The Subdivision Rules and Regulations and the Site Plan Review Regulations require the Planning Board to determine that an application is complete according to the Regulations and to vote to accept it for consideration. This action does not require a public hearing.

**Recommendation:** Vote to determine that the following two applications are complete according to the Site Plan Review Regulations and to accept them for consideration.

1. The application of **Rye Port Properties, Owner, and Charter Foods North LLC, Applicant**, for property located at **2299 Lafayette Road**, requesting Site Plan Approval to construct a 50-seat, 2500 s.f. Taco Bell Restaurant.
  2. The application of **Old Tex Mex, LLC, Owner**, for property located at **290 Heritage Avenue**, requesting Site Plan Approval to construct a 110' x 250' two story steel frame building.
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## II. PUBLIC HEARINGS – OLD BUSINESS

*The Board's action in these matters has been deemed to be quasi-judicial in nature.  
If any person believes any member of the Board has a conflict of interest,  
that issue should be raised at this point or it will be deemed waived.*

A. The application of **Saco Avenue Professional Building, Inc., Owner**, for property located at **125 Brewery Lane**, requesting an extension of Site Plan Approval to construct a 4-story, 64' x 240', 15,500 ± s.f., 48-unit residential building, with related paving, lighting, utilities, landscaping, drainage and associated site improvements. (Site plan approval was originally granted on November 18, 2005, and extensions were granted through November 17, 2010.)

**Staff Report:** Saco Avenue Professional Building, Inc., is the owner of the former City DPW Yard at 125 Brewery Lane. The property is adjacent to the Malt House Exchange on the north and Plaza 800 on the south, and contains two commercial buildings along Brewery Lane and a metal industrial building in the rear.

On November 17, 2005, the Planning Board approved a site plan for the development of the southerly portion of the lot for a 48-unit residential building. Because the owner agreed to allow the City to use the site as a laydown area for utility construction projects that directly impacted the project, the Planning Board granted four one-year extensions of its site plan approval, with the last extension to November 17, 2009. The owner then entered into a site plan review agreement with the City specifying that all site plan work would be complete by January 17, 2013.

On January 17, 2013, the Planning Director notified Saco Avenue Professional Building, Inc., that the site plan approval had expired. The owner disputed the Planning Director's determination, and attempts were made to resolve the dispute through various meetings and correspondence. However, the parties were not able to come to an agreement, and on November 3, 2014, the City Attorney sent a letter to the owner's attorney reaffirming that the site plan approval was no longer valid.

In an effort to avoid potential litigation over the matter, the parties agreed to participate in non-binding mediation, which took place on March 26, 2015. As a result of this mediation, both parties agreed to request the Planning Board to grant another extension of the 2005 site plan approval. If the Planning Board grants this extension, the Planning Director will execute a new site plan review agreement stipulating that all site work be completed within two years of the Board's action, i.e., by April 30, 2017.

The City Attorney will be present at the April 30 Planning Board meeting to present this request and answer any questions.

The requested extension requires a waiver of the Planning Board's Site Plan Review Regulations, Section 2.13.2, which requires that an extension be "requested and acted upon prior to the expiration date."

**Recommendations:**

- (1) Vote to waive compliance with Section 2.13.2 of the Site Plan Review Regulations with respect to the requirement that an extension of site plan approval be requested and acted upon prior to the expiration date.

*[Note: Granting a waiver requires an affirmative vote by six members of the Board.]*

- (2) Vote to extend the site plan approval originally granted on November 17, 2005, and most recently extended to November 17, 2009, with the stipulation that all site work shown on the Site Plan shall be completed by April 30, 2017.

*It is recommended that item B under Public Hearings – Old Business  
and item B under Public Hearings – New Business  
be discussed together and voted on separately.*

*A motion is needed to consider these two items together.*

B. The application of **Rye Port Properties, Owner, Charter Foods North, LLC, Applicant**, for property located at **2299 Lafayette Road**, requesting a Conditional Use Permit under Section 10.1017 of the Zoning Ordinance for work within an inland wetland buffer to construct a 50-seat 2,500 s.f. Taco Bell Restaurant with drive-thru, with 5,990 ± s.f. of impact to the wetland buffer. Said property is shown on Assessor Plan 272 as Lot 10 and lies within the Gateway (G) District. (This application was postponed at the March 19, 2015 Planning Board Meeting.)

**Staff Report:**Conditional Use Permit

This application is for the construction of a new 50 seat restaurant on the site of a former development with only a slab foundation remaining. This project had been on hold, in order to allow the snow to melt on the site so a wetland delineation could be conducted to the level warranted for this project.

In order to be granted a Conditional Use Permit for work within the wetland buffer, the applicant must satisfy the criteria for approval set forth in Section 10.1017.50 of the Zoning Ordinance, as follows:

1. The land is reasonably suited to the use, activity or alteration.
2. There is no alternative location outside the wetland buffer that is feasible and reasonable for the proposed use, activity or alteration.
3. There will be no adverse impact on the wetland functional values of the site or surrounding properties.
4. Alteration of the natural vegetative state or managed woodland will occur only to the extent necessary to achieve construction goals.
5. The proposal is the alternative with the least adverse impact to areas and environments under the jurisdiction of the wetlands protection provisions of the Ordinance.

The Conservation Commission is scheduled to review this application at its meeting on April 29, 2015. Therefore, a recommendation will be presented at the April 30 Planning Board meeting.

#### Site Plan

The applicant is requesting Site Plan Approval to construct a 50-seat, 2500 s.f. Taco Bell Restaurant with a drive thru. The site is currently just a slab foundation located on Lafayette Road between Springbrook Circle and Advanced Autoparts. The proposed Taco Bell will share the existing exit with the Advanced Autoparts lot.

The Technical Advisory Committee reviewed this application at its meeting on March 31, 2015, and voted to recommend site plan approval with the following stipulations:

1. The site plans shall be amended as follows:
  - (a) The site driveway shall be restricted to right turns exiting the site.
  - (b) The sidewalk along the parcel frontage shall extend from the site driveway to the pedestrian signal at the crosswalk, shall be handicapped accessible, and shall include a connection to the building. With or without an easement.
  - (c) The bus stop shall be located approximately 40-50 feet closer to Springbrook Circle, and shall include a shelter.
  - (d) The plan shall show adequate area for snow storage, which shall not be in the bioretention area.
  - (e) The chain link fence in the AUR shall be 6' tall and shall include a gate for maintenance access.
  - (f) Fencing shall be added along the back of the site.
  - (h) The new sewer force main on site and the new sewer service in Lafayette Road shall be moved to the location of the existing service, and the existing service shall be removed.
  - (h) The silt fence shall be replaced with silt socks.
  - (i) The grease trap detail shall be changed to the DPW standard.
2. The applicant shall be responsible for upgrading the traffic signal at the intersection of Lafayette Road, Springbrook Circle and the Southgate Plaza drive to all-way video detection.
3. The applicant shall apply for and obtain connection permits from the Department of Public Works for stormwater, sanitary sewer and water.

On April 21, 2015, the applicant submitted a revised plan set addressing the TAC stipulations as follows:

1. The site plans has been amended as follows:
  - (b)The sidewalk along the parcel frontage shall has been extended from the site driveway to the pedestrian signal at the crosswalk, is handicapped accessible, and includes a connection to the building.
  - (c) The bus stop has been located approximately 40-50 feet closer to Springbrook Circle.
  - (d) Adequate areas for snow storage have been shown on the revised plans.
  - (e) The chain link fence has been modified as requested.
  - (f) Fencing with access gates have been added to the back.

- (g) The sewer service to the site has been relocated to the existing service location with the removal of the existing service shown on the revised plans.
- (h) The silt fence has been replaced with silt socks.
- (i) The grease trap detail has been revised to the City of Portsmouth standard.

The applicant has indicated that they have not amended the plan to meet stipulation 1(a) stating that the site driveway shall be restricted to right turns exiting the site. The reason the applicant has not complied with this stipulation is that it is not required by NHDOT. However, the City has the right to apply stricter standards than the state and has placed similar restriction on other exits on Lafayette Road.

The applicant also noted that they do not plan to add a bus shelter per stipulation 1(c) for the following reasons:

1. According to the Transit Cooperative Research Program (TCRP) Report 19 a number of factors determine if a shelter should be installed, including the number of passengers. Portsmouth is considered an urban area and according to this report a shelter is suggested for 50-100 boardings per day in this area.
2. The applicant does not believe that any bus shelters along this route have been provided for by a private entity.
3. There is no “rationale nexus” for requiring this expense for this project, and the developer is not amenable to this condition.

Given the importance of bus service on the Lafayette Road corridor and the extensive site work proposed, the TAC believes installing a bus shelter at this location is a reasonable and rational request. Also, it was stated by TAC that the reason for the bus shelter wasn't the frequency of stops, but rather that people will be standing in close proximity to a heavily trafficked area.

The TAC also stipulated that the applicant shall be responsible for upgrading the traffic signal at the intersection of Lafayette Road, Springbrook Circle and the Southgate Plaza drive to all-way video detection. However, the applicant is unwilling to comply with this request. Instead, the applicant is proposing to provide for “a proportionate share equal to the impact of traffic thru the intersection.” According to the applicant this would equate to 1.4% of the impact, resulting in a contribution of \$350 towards the installation of a video detection system should the State agree to the installation of such system. However, the TAC believes that the applicant should be responsible for upgrading this traffic signal given the impact of the project to this corner. The TAC originally recommended that the applicant work with the Springbrook Circle condo association to gain entrance to the site via this private drive. While this could not be mandated, it would have provided a traffic light for entrance and exit to the site and would have eliminated the need for a right turn only stipulation on the site exit.

### **Recommendations:**

- A. Conditional Use Permit: Consider the Conservation Commission's verbal recommendation.
- B. Site Plan: Vote to approve the project with the following stipulations:

1. The site plans shall be amended as follows:
  - (a) The site driveway shall be restricted to right turns exiting the site.
  - (b) The bus stop shall include a shelter.
2. The applicant shall be responsible for upgrading the traffic signal at the intersection of Lafayette Road, Springbrook Circle and the Southgate Plaza drive to all-way video detection.
3. The applicant shall apply for and obtain connection permits from the Department of Public Works for stormwater, sanitary sewer and water.
4. The Site Plan (Sheet C1) and Landscape Plan (Sheet L1) shall be recorded at the Registry of Deeds by the City or as determined appropriate by the Planning Department, prior to the issuance of a building permit.

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### III. PUBLIC HEARINGS – NEW BUSINESS

*The Board's action in these matters has been deemed to be quasi-judicial in nature. If any person believes any member of the Board has a conflict of interest, that issue should be raised at this point or it will be deemed waived.*

A. Request of **Stella B. Stokel 1993 Trust, Stella B. Stokel, Trustee, Nancy A. Stokel 1993 Trust, Nancy A. Stokel, Trustee, and Philip J. Stokel, Owners**, and the **City of Portsmouth, Applicant**, for property located at **83 Peverly Hill Road**, requesting a waiver of the Subdivision Rules and Regulations, Section VI.3.I – Cul-de-Sacs, to allow a cul-de-sac to exceed 500 feet in length. Said property is shown on Assessor Map 242 as Lot 4, and lies within the Single Residence A (SRA) and Single Residence B (SRB) districts.

**Staff Report:** As described in the memorandum from the Legal Department dated March 30, 2015, the City is requesting Planning Board approval of one element of a settlement in a court case. The case pertains 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 have argued that the taking deprived them of a second access to the lot and thereby reduced its development potential. The City has disputed this and has prevailed in initial appeals. However, in order to avoid the cost of litigation and the potential risk associated with it, the Legal Department has negotiated a compromise under which the owners would refrain from further appeals if granted a waiver from the Planning Board's 500-foot limit on the length of a cul-de-sac.

The requested waiver is unusual in two respects. First, it is 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 does not have a plan to review in connection with this request, but the Planning Department has prepared a map showing the lot and its context. Second, the waiver would expire after 10 years if no development plan is submitted within that time period.

The City Attorney will attend the Planning Board meeting to present this request and answer any questions.

**Recommendation:** Vote 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. This waiver shall 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.

*[Note: Granting a waiver requires an affirmative vote by six members of the Board.]*

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B. The application of **Rye Port Properties, Owner**, and **Charter Foods North LLC, Applicant**, for property located at **2299 Lafayette Road**, requesting Site Plan Approval to construct a 50-seat, 2500 s.f. Taco Bell Restaurant with drive thru, with related paving, lighting, utilities, landscaping, drainage and associated site improvements. Said property is shown on Assessor Map 272 as Lot 10 and lies within the Gateway district.

**Staff Report:** See item B under Public Hearings – Old Business.

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C. The application of **Northern New England Conference of Seventh Day Adventist, Owner**, for property located at **861 Middle Road**, requesting Site Plan Approval to construct an 18' x 33' addition to the front of the existing church, with related paving, lighting, utilities, landscaping, drainage and associated site improvements. Said property is shown on Assessor Map 232 as Lot 120 and lies within the Single Residence B (SRB) district.

The Technical Advisory Committee reviewed this application at its meeting on March 31, 2015, and voted to recommend site plan approval with the following stipulations:

**Staff Report:**

The Technical Advisory Committee considered this application at its meeting on March 31, 2015, and voted to recommend site plan approval with the following stipulations:

1. The applicant shall have a code specialist determine the occupancy capacity of the building for parking and sprinkler system requirements, and shall confirm these determinations with the Inspections and Fire Departments.
2. The zoning calculations (e.g., yards, coverage, off-street parking, open space, occupancy, etc.) shall be added to the site plan.
3. The discrepancy between impervious surface percentages shown on different plan sheets shall be resolved.
4. An appropriate parking area for the school bus shall be shown on the plan.
5. The plan shall address the directional and informational sign changes identified by the Parking and Traffic Engineer.
6. The applicant shall provide an easement to the City at the rear of the site for snow storage and possibly drainage for the end of Pearson Street.

On April 21, 2015, the applicant submitted a request to postpone consideration of this application to the May 21 Planning Board meeting.

**Recommendation:** Vote to postpone consideration of this application to the Planning Board meeting on May 21, 2015.

*It is recommended that items D and E under Public Hearings – New Business be discussed together and voted on separately.*

*A motion is needed to consider these two items together.*

D. The application of **Old Tex Mex, LLC, Owner**, for property located at **290 Heritage Avenue**, requesting a Conditional Use Permit approval under Section 10.1017 of the Zoning Ordinance for work within an inland wetland buffer to construct a 110' x 250' two story steel frame building, with 9,860 ± s.f. of impact to the wetland buffer. Said property is shown on Assessor Plan 275 as Lot 7 and lies within the Industrial (I) District.

E. The application of **Old Tex Mex, LLC, Owner**, for property located at **290 Heritage Avenue**, requesting Site Plan Approval to construct a 110' x 250' two story steel frame building with a footprint of 27,683 ± and gross floor area of 40,211 ± s.f., with related paving, lighting, utilities, landscaping, drainage and associated site improvements. Said property is shown on Assessor Map 275 as Lot 7 and lies within the Industrial (I) District.

### **Staff Report:**

#### Conditional Use Permit

This application is for the construction of a new industrial building on a vacant lot with associated paving, grading and landscaping. The applicant is proposing to landscape and install a raingarden in the wetland buffer.

In order to be granted a Conditional Use Permit for work within the wetland buffer, the applicant must satisfy the criteria for approval set forth in Section 10.1017.50 of the Zoning Ordinance, as follows:

1. The land is reasonably suited to the use, activity or alteration.
2. There is no alternative location outside the wetland buffer that is feasible and reasonable for the proposed use, activity or alteration.
3. There will be no adverse impact on the wetland functional values of the site or surrounding properties.
4. Alteration of the natural vegetative state or managed woodland will occur only to the extent necessary to achieve construction goals.
5. The proposal is the alternative with the least adverse impact to areas and environments under the jurisdiction of the wetlands protection provisions of the Ordinance.



The proposed building site has been cleared and is mainly upland. There is a small isolated wetland at the rear of the property and the front of the property falls within the 100 foot wetland buffer of a wetland on the opposite side of Heritage Avenue. Given this is an industrial area this undeveloped lot is reasonably suited to the activity. Given that the wetland buffer is bisected by a road the proposed siting of the raingarden in the wetland buffer is reasonable. The applicant has been asked by the Technical Advisory Committee to perform monitoring of the site to insure they do not increase the volume of flow to the existing stormdrain network. The new raingardens proposed in the buffer of the wetland will provide some stormwater benefit before the stormwater leaves the site and eventually makes its way to the Great Bog system.

At their April 8, 2015 meeting, The Commission voted (5-0) to recommend approval of the application to the Planning Board as presented with the following stipulations:

1. Before site construction begins the applicant shall measure current water levels of the wetland to the west of the site and monitor water elevations of this wetland during construction and post construction at least quarterly for two years. If the results clearly demonstrate an impact to the adjacent wetland system the applicant will work with the City to address and mitigate these impacts.
2. That the occupants are educated about wildlife passage through the area on the site and that signage is erected to notify the users of the site and protect the wildlife passage area as well;
3. That the City's Environmental Planner is informed of the results of the monitoring studies until the site stabilizes.

### Site Plan

The application is for the site plan approval of a 2-story steel frame commercial/office building off of Heritage Avenue. The lot is a vacant lot on Heritage Avenue and the site is a large hill. The proposed plan will have two 2-way driveways along the north and south frontage on Heritage Avenue. There will be 89 parking spaces and 4 of them will be ADA accessible. There will be pedestrian entrances on both sides and street trees along the frontage and the north and south side of the parking area.

Two waivers have been requested as a part of this application. The first waiver is for Section 3.3.2.3 of the Site Plan Review Regulations, requiring only one driveway per lot. The applicant has requested this waiver to allow for the segregation of tenant space/entry, as the building is served by two entrances on either side of the building. This waiver will also allow for easier circular movement of tractor trailers.

The second waiver requested is for Section 5.2.4, requiring sidewalks along the front of the site and a sidewalk connecting building entrances. However, since this is an industrial area and there are currently no sidewalks on any portion of the street, this waiver is appropriate.

The Technical Advisory Committee reviewed this application at its meeting on March 31, 2015, and voted to recommend site plan approval with the following stipulations:

1. The site plans shall be revised as follows:
  - (a) Add a 6' chain link fence at the rear of the site to prevent wind-blown debris, leaving a suitable area for snow storage and including a gate for access.

- (b) Change the width of the stop bars.
  - (c) Designate the area in front of the overhead doors on the south side of the building (currently shown as four parking spaces) as a no-parking area by cross-hatching, and revise the notes and parking calculations accordingly (maximum allowed number of spaces is 90).
  - (d) Changing the drain and sewer details on Sheets D2 and D3.
  - (e) Remove doghouse manhole.
  - (f) Remove vegetation within the Heritage Avenue layout to the north of the site to provide adequate sight distance for exiting vehicles.
  - (g) Show pavement overlay in Heritage Avenue.
2. The applicant shall prepare and implement a post-construction monitoring plan with mitigation measures to be approved by the Department of Public Works. The plan shall include follow-up and a commitment to work with DPW to assure that the stormwater volume and flow rate do not increase. The results of the monitoring will determine what, if any, additional post-construction measures may need to be implemented before bond release.
  3. The applicant shall apply for and obtain connection permits from the Department of Public Works for stormwater, sanitary sewer and water.
  4. The applicant shall apply for and obtain a sign permit from the Inspections Department for the proposed property sign.

On April 21, 2015, the applicant submitted a revised plan set addressing the TAC stipulations as follows:

1. The site plans has been revised as follows:
  - (a) A 6 foot chain link fence and gate have been added at the dumpster location. (See Sheet C3) This fence was placed closer to the source at the request of the Conservation Commission in order to facilitate animal migration across the site.
  - (b) The width of the stop bars has been changed (See Sheet C3).
  - (c) On Sheet C3 the area in front of the overhead doors on the south side of the building has been designated as a no-parking area by cross-hatching, and the notes and parking calculations have been revised accordingly.
  - (d) The drain and sewer details on Sheets D2 and D3 have been corrected.
  - (e) The Doghouse manhole has been removed.
  - (f) The vegetation within the Heritage Avenue layout to the north of the site has been removed in order to provide adequate sight distance for exiting vehicles.
  - (g) The pavement overlay in Heritage Avenue is shown on Sheet C2.

The applicant agrees to the following stipulations:

1. The applicant shall prepare and implement a post-construction monitoring plan with mitigation measures to be approved by the Department of Public Works. The plan shall include follow-up and a commitment to work with DPW to assure that the stormwater volume and flow rate do not increase. The results of the monitoring will determine what, if any, additional post-construction measures may need to be implemented before bond release.
2. The applicant shall apply for and obtain connection permits from the Department of Public Works for stormwater, sanitary sewer and water.
3. The applicant shall apply for and obtain a sign permit from the Inspections Department for the proposed property sign.

**Recommendations:****A. Conditional Use Permit:**

Vote to approve with the following stipulations:

1. Before site construction begins the applicant shall measure current water levels of the wetland to the west of the site and monitor water elevations of this wetland during construction and post construction at least quarterly for two years. If the results clearly demonstrate an impact to the adjacent wetland system the applicant will work with the City to address and mitigate these impacts.
2. That the occupants are educated about wildlife passage through the area on the site and that signage is erected to notify the users of the site and protect the wildlife passage area as well;
3. That the City's Environmental Planner is informed of the results of the monitoring studies until the site stabilizes.

**B. Site Plan:**

- a. Vote to grant a waiver from the Site Plan Review Regulations, Section 3.3.2(3), limiting driveways to one per lot.

*[Note: Granting a waiver requires an affirmative vote by six members of the Board.]*

- b. Vote to grant a waiver from the Site Plan Review Regulations, Section 5.2.4, requiring sidewalks along the front of the site and connecting the building entrances.

*[Note: Granting a waiver requires an affirmative vote by six members of the Board.]*

- c. Vote to grant site plan approval subject to the following stipulations:

1. The applicant shall prepare and implement a post-construction monitoring plan with mitigation measures to be approved by the Department of Public Works. The plan shall include follow-up and a commitment to work with DPW to assure that the stormwater volume and flow rate do not increase. The results of the monitoring will determine what, if any, additional post-construction measures may need to be implemented before bond release.
  2. The applicant shall apply for and obtain connection permits from the Department of Public Works for stormwater, sanitary sewer and water.
  3. The applicant shall apply for and obtain a sign permit from the Inspections Department for the proposed property sign.
  3. The Site Plan (Sheet C2) and Landscape Plan (Sheet L1) shall be recorded at the Registry of Deeds by the City or as determined appropriate by the Planning Department, prior to the issuance of a building permit.
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#### IV. PUBLIC HEARINGS – CITY COUNCIL REFERRALS

*The Board's action in these matters has been deemed to be quasi-legislative in nature. If any person believes any member of the Board has a conflict of interest, that issue should be raised at this point or it will be deemed waived.*

A. The request by **Portsmouth Land Acquisition, LLC**, that the following lots be rezoned from Industrial (I), Office Research (OR) or Municipal (M) to Gateway (GW):

- Assessors Map 163, Lots 33, 34 and 37.
- Assessors Map 165, Lots 1, 2 and 14.
- Assessors Map 172, Lots 1 and 2.
- Assessors Map 173, Lots 2 and 10.

and including Cate Street between Hodgson's Brook and Bartlett Street, and that the Zoning Map be revised accordingly; and further that the Zoning Ordinance, Article 7, Section 10.730 – Gateway Planned Development, be amended by inserting a new Section 10.734.40 as follows:

##### **10.734.40 Workforce Housing Incentives**

If a GPD with a Residential Component contains 10% or greater Workforce Housing Units, the following shall apply:

- 10.734.41 The minimum lot area per dwelling unit shall be 1,000 square feet.
- 10.734.42 The maximum building length set forth in Article 5, Section 10.522 shall be increased to 350 feet.
- 10.734.43 Required off-street parking may be located in a required front yard or between a principal building and a street.

(This proposed amendment was previously considered at the October 20, 2014, Planning Board meeting.)

**Staff Report:** Portsmouth Land Acquisitions, LLC, the owner of several parcels on the Route 1 Bypass and Cate Street, is requesting that these parcels and adjoining land owned by the City and by Merton Alan Investments be rezoned to the Gateway District, and that several amendments be made to the Gateway district regulations to incentivize the inclusion of workforce housing. In addition, Portsmouth Land Acquisitions, LLC, has submitted a request for Design Review under the Site Plan Review Regulations, which illustrates a potential outcome of the proposed rezoning.

The Planning Board has previously considered the zoning of these parcels on two separate occasions over the past year. First, the City Council authorized a study for expanding Character-Based Zoning to include the area bounded by Bartlett Street, the railroad line, the Route 1 Bypass and Hodgson's Brook, and the Planning Department proposed that the City consider as an interim measure the rezoning of this area to Character District 4 (CD4). The Planning Board held a public hearing on the proposed rezoning at its August meeting and voted "to report back to the City Council that this area should be rezoned from the existing Industrial and Office Research zoning, but that the proposed rezoning to Character District 4 (CD4) is not appropriate at this time. The Board recommends that further study is needed to determine the best zoning approach for these parcels."

On September 15, 2014, Attorney Bernard W. Pelech (representing Portsmouth Land Acquisition, LLC, owner of a majority of the subject parcels) submitted a request that the area previously proposed for rezoning to CD4 be instead rezoned to the Gateway district, along with modifications to several other zoning standards for Gateway Planned Development projects in which Workforce Housing constitutes at least 10% of the total dwelling units. This is the same request that is now before the Board for consideration.

Rezoning to the Gateway district would allow the following uses that are not permitted by the existing Industrial zoning (partial listing):

Residential Uses:	Townhouse
Institutional Residence or Care Facilities:	Assisted living center Residential care facility (S)
Educational, Religious, Charitable, Cultural and Public Uses:	Places of assembly (S) Schools (primary, secondary, post-secondary) Museum Performance facility
Medical Services and Health Care:	Medical offices and clinics (outpatient only) Clinics with inpatient care (S) Ambulatory surgical center (S)
Services, Other Than Health Care:	Group day care facility Personal services Consumer services Laundry and dry cleaning facilities establishments – drop-off/pick-up or self-service
Retail Trade:	Convenience goods Retail sales Shopping center
Eating and Drinking Places:	Nightclub or bar Restaurant
Lodging Establishments:	Boarding house (S) Hotel or motel (S) Conference center
Motor Vehicle Related Uses:	Sales, renting or leasing of passenger cars, light trucks, motorcycles, etc. Motor vehicle service station (S) Sales, renting or leasing of trucks (S)

(S) = requires special exception from Zoning Board of Adjustment

In addition, several industrial uses that are permitted in the Industrial district would be prohibited if the area were rezoned to the Gateway district.

Properties in the Gateway district are also eligible to be considered for a Conditional Use Permit from the Planning Board to allow a “Gateway Planned Development” (GPD), for which the regulations are set forth in Section 10.730 of the Zoning Ordinance. The GPD option allows multifamily dwellings to

be included in a mixed-use development, provided that residential uses comprise at least 30 percent and not more than 70 percent of the gross floor area of the development. The GPD also allows taller buildings (up to 60 feet, compared with a 40-foot limit in the Gateway district without a conditional use permit, increased building coverage (75% vs. 30%), reduced off-street parking requirements, and other changes designed to increase flexibility while encouraging a higher standard of design.

Along with the proposed rezoning to the Gateway district, Portsmouth Land Acquisition is requesting changes to three zoning provisions for Gateway Planned Development projects in which at least 10% of the dwelling units qualify as “Workforce Housing”:

1. Reduce the minimum lot area per dwelling unit to 1,000 sq. ft.

A Gateway Planned Development currently requires a minimum of 2,500 sq. ft. of lot area per dwelling unit. This is equal to the requirement in the Business (B) district, and permits a higher residential density than any other district except for the Central Business districts and Character Districts 4 and 5 (there is no residential density limit in those four districts). The proposed amendment would represent a 150% increase in allowable residential density in exchange for inclusion of workforce housing.

2. Increase the maximum building length to 350 feet.

Section 10.522 of the Zoning Ordinance states that “The maximum building length of a multifamily dwelling shall not exceed 160 feet.” This provision was added to the Ordinance in October 2010, partially in response to issues raised by a proposed multifamily development on Lang Road and Longmeadow Road. At that time, the following estimated building dimensions were provided to the Planning Board for comparison:

Heritage Hill	90' x 33'
Riverbrook (Middle Rd.)	120' x 28'
Osprey Landing	145' x 30'
Cedars (1)	155' x 50'
Cedars (2)	180' x 50'
Beechstone	280' x 38'
Lang & Longmeadow (proposed)	160' x 90'

The zoning amendment by Portsmouth Land Acquisition would allow buildings with substantially greater length than any of the existing multifamily dwellings in the City. On the other hand, the historic Button Factory complex on Islington Street, which consists of a group of connected industrial buildings that have been converted to mixed residential-nonresidential use, extends approximately 1,100 feet from end to end.

3. Allow required off-street parking to be located in a required front yard or between a principal building and a street.

Section 10.1113.20 of the Zoning Ordinance provides, “Required off-street parking shall not be located in any required front yard, or between a principal building and a street (including on a

corner lot).” This provision applies in all zoning districts and was added as part of the 2009 comprehensive revision of the Ordinance so that parking areas would be located beside or behind buildings, in order to enhance the streetscape and encourage more pedestrian-friendly development.

The purpose of the proposed amendment is to exempt a Gateway Planned Development with at least 10% workforce housing units from this City-wide provision, allowing off-street parking spaces to be (a) in front of a principal building and (b) closer to the street than the 30-foot front yard required in the Gateway District.

Because the Gateway Planned Development section was created specifically for the Lafayette Road corridor, it includes two dimensional standards that reference setbacks from Lafayette Road:

- Sec. 10.734.20 establishes the front yard as between 70 and 90 feet from the centerline of Lafayette Rd.
- Sec. 10.734.33 establishes the maximum building height in relation to the building setback from the centerline of Lafayette Rd.

These are two distinct provisions: the first supersedes the 30-foot front yard requirement in Article 5, but the second is a constraint on the 60-foot height limit in Sec. 10.734.31. In order to minimize ambiguity, Section 10.734.20 should be amended to define the front yard requirement for properties that do not front on Lafayette Road, and this may be different for parcels fronting on the Route 1 Bypass vs. those that front on another road (such as the new road to be constructed between the Bypass and Bartlett Street as part of a GPD project by Portsmouth Land Acquisition). Consideration should also be given to modifying Section 10.734.33 as regards maximum building height in relation to setback from the Route 1 Bypass.

The area proposed to be rezoned is shown on the two maps on the following pages.

The Planning Board previously considered this request at its meeting on October 16, 2014. At that time, planning for the Islington Street Corridor (West End) charrette was under way, and the Board determined that it would be premature to make a recommendation regarding rezoning to the Gateway district until residents had an opportunity to weigh in on a vision for the future of this area. Therefore, the Board voted “to report to the City Council that the Planning Board does not support re-zoning these parcels at this time and would recommend moving forward including them in the Charrette process currently scheduled for February.”

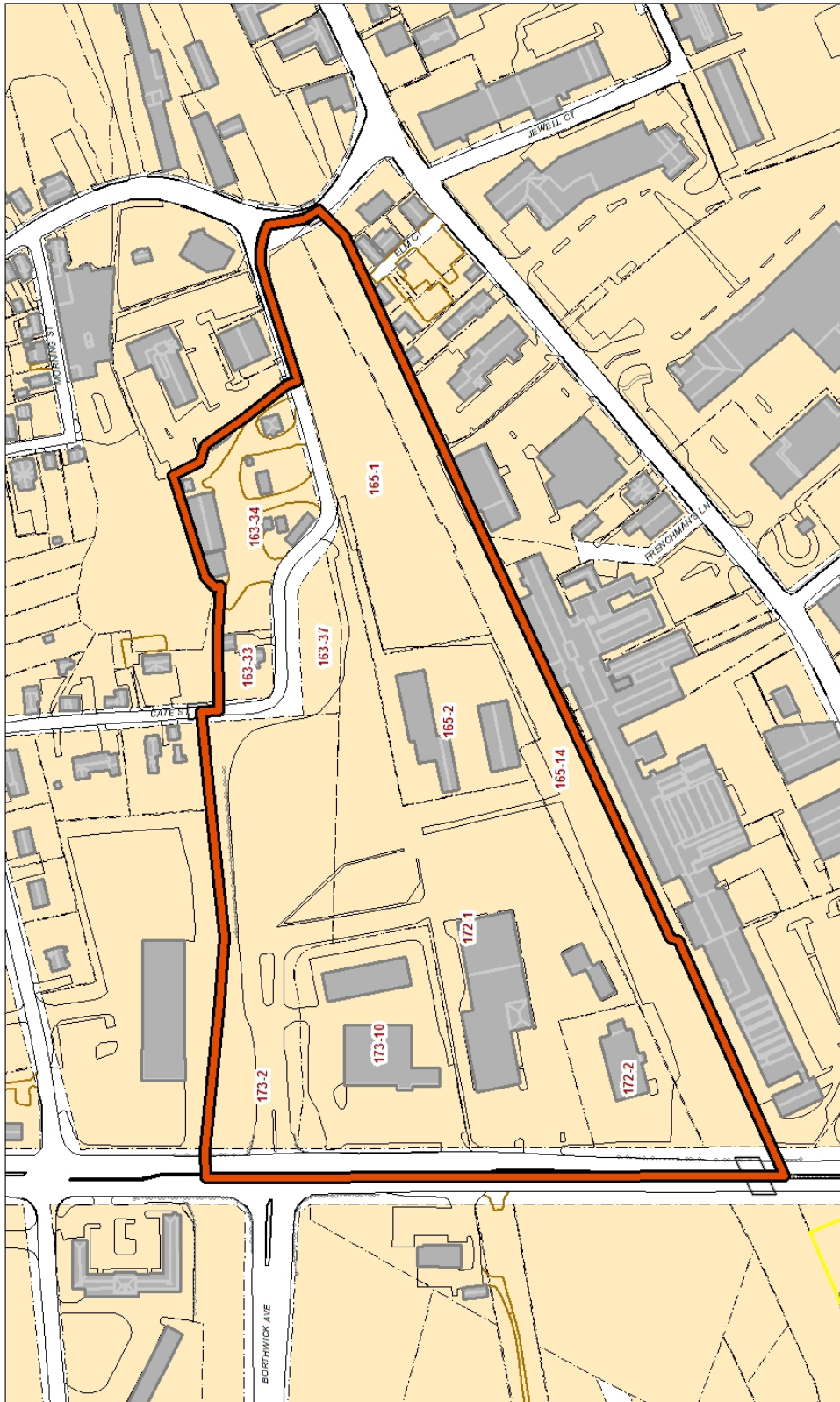
Based on the February charrette, TPUDC has produced a preliminary Vision Plan for the West End, which is included with this memo. The Vision Plan describes the land use character of this area as follows:

Land uses in the West End will include a variety of residential, office, civic and commercial spaces, including light industrial “maker” spaces and artist’s workshops. Charrette participants voiced the need for additional housing, which could include rowhouses, live-work units, artists’ lofts, small single-family homes, mid-rise multi-family buildings and possibly microhousing apartments. While a full range of housing opportunities should be

provided for residents of all income levels, some emphasis should be placed on keeping existing housing affordable and creating additional workforce housing units. Ground floor uses in most areas along the corridor will be commercial in order to activate streetscapes and keep residences out of potential flood zones. Parking will be located on street, in the rear yards, in underground garages, or in lined parking structures concealed from public view.

The Vision Plan proposes rezoning the parcels that are the subject of the current rezoning request to Character District 4, but does not illustrate proposed building forms or indicate any specific proposed building heights. Existing CD4 districts in the downtown area allow building heights of up to 4½ stories.





Area Proposed To Be Rezoned to Gateway (GW)





Area Proposed To Be Rezoned to Gateway (GW)

Proposed Gateway District



**Recommendation:** To be determined based on the public hearing and the Board's review of the proposed zoning amendments.

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B. Proposal to amend the Zoning Ordinance by inserting a new Section 10.814 – Short-Term Rentals, and to make conforming amendments to other sections of the Ordinance as necessary.

**Staff Report:** At its meeting on March 2, 2015, the City Council voted to request the Planning Board:

... to prepare proposed amendments to the zoning ordinance to address short-term rentals by home owners. Based on the Council-Planning Board work session discussion of February 17th, the Planning Board could take into account discussion points that emerged, including at least:

- a) Creating a definition that captures the short-term rental, perhaps a bed-breakfast 3 rather than attempting to force-fit one of current definitions;
- b) Addressing in the definition the requirements for number of rooms, parking, length of stay, life safety plan, health-food inspections, registration with the City;
- c) Considering which current zoning districts can allow the rental by special exemption.

#### Existing Zoning Provisions

The Zoning Ordinance includes the following definitions relative to dwellings and lodging uses:

##### Dwelling

A building or portion thereof containing one or more dwelling units.

##### Dwelling unit

A building or portion thereof providing complete independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking and sanitation. This use shall not be deemed to include such transient occupancies as hotels, motels, rooming or boarding houses.

##### Bed and breakfast

The provision of short-term lodging and breakfast within an owner-occupied dwelling. The capacity of the dining facilities shall accommodate no more than 25 persons.

##### Bed and Breakfast 1

A bed and breakfast with between 1 and 5 guest rooms.

##### Bed and Breakfast 2

A bed and breakfast with between 6 and 10 guest rooms.

##### Boarding house

A residential structure, other than a bed and breakfast, in which rooms are rented, leased or otherwise made available for compensation to more than two but not more than 10 individuals, and where such rooms do not contain separate cooking or bathroom facilities.

**Inn**

A building offering lodging for transient boarders with up to 15 sleeping rooms. An Inn may have a caretaker residence but does not have to be occupied by the owner, and shall not serve food to the public.

**Hotel**

A building in which the primary use is transient lodging accommodations offered to the public on a daily rate for compensation and where ingress and egress to the sleeping rooms is made primarily through an inside lobby or office, supervised by a person in charge at all hours. Such facilities may include, where allowed, such accessory uses as restaurants, bars, taverns, nightclubs, function rooms, places of public assembly or recreational facilities.

**Motel**

A building or group of detached or connected buildings intended or used primarily to provide sleeping accommodations to the public on a daily rate for compensation and having a parking space generally located adjacent to a sleeping room with each sleeping room discharging directly outdoors. Such facilities may include, where allowed, such accessory uses as restaurants, bars, taverns, nightclubs, function rooms, places of public assembly or recreational facilities.

Thus, the Ordinance defines four types of lodging or transient accommodation uses: bed and breakfast (owner-occupied, up to 10 rooms for rent, including breakfast), boarding house (3 to 10 rooms for rent, with shared cooking and bathroom facilities), inn (up to 15 rooms, no public food service), and hotel or motel (rented by the day; distinguished by type of access to the room; and may include restaurants and other ancillary facilities open to the public).

### The Short-Term Rental Issue, and Regulatory Responses by Other Communities

Recently the issue of short-term rentals by homeowners has become a concern in various neighborhoods of the City. This is in part because the existing terms and definitions in the Zoning Ordinance do not cover the range of potential transient accommodation types. Two recent examples of ambiguous situations are the renting of rooms in an owner-occupied dwelling without breakfast being served, and the short-term rental of an entire house (thus, not owner-occupied), both of which have been determined to fall in the “inn” category by default. Furthermore, the terms “transient” and “short-term” are not defined, so there is no clear distinction in the City’s land use regulations among rentals for a weekend, two weeks or six months.

The emergence of online booking agents such as Airbnb, HomeAway and VRBO in the last few years has made short-term rentals much more accessible for both homeowner and travelers, and has raised issues which communities across the country have begun to address through zoning regulations and other strategies. The Planning Department has researched strategies from a number of communities including small to mid-size cities with significant tourism economies such as Annapolis, MD; Charleston, SC; Durango, CO; Islamorada, FL; Sandpoint, ID; and Savannah, GA.

Several general themes have emerged from this research:

- In almost all cases, “short-term” rentals are defined as rentals for less than 30 consecutive days. The exception to this rule is Annapolis, which defines short-term rentals as up to six months in a calendar year, but does not regulate units that are exclusively rented during U.S. Naval Academy graduation ceremonies or annual boat shows.
- Almost all these regulations relate to the short-term rental of an entire dwelling unit, whether it is a single-family home or a unit in a multifamily dwelling. The rental of rooms within a dwelling unit is treated separately, typically as a “bed and breakfast” accommodation.
- Many jurisdictions require an annual licensing of short-term rental units, including payment of a fee to cover the cost of inspection and administration.
- Most jurisdictions require short-term rental units to be inspected for compliance with building and life safety codes. Where an annual license is required, the ordinance typically requires an annual re-inspection tied to the renewal of the license.

#### Proposed Zoning Ordinance Amendments

Attached is a set of draft amendments to the Zoning Ordinance relating to these short-term vacation rentals as well as several related changes to the regulations regarding other types of transient accommodations. The proposed changes are as follows:

- Change the definitions of “Bed and Breakfast,” “Bed and Breakfast 1” and “Bed and Breakfast 2” by reducing the number of guest rooms and the capacity of the dining facilities.
  - “Bed and Breakfast 1” is proposed to include establishments with only 1 or 2 guest rooms (currently, this category allows up to 5 rooms), and with or without breakfast being served. This scale of operation is unlikely to change the single-family character of the property or neighborhood.
  - “Bed and Breakfast 2” is proposed to be defined as having 3 to 5 guest rooms (currently, 6 to 10 rooms). This reduction in allowed size is because there is currently a broad overlap between this use and “inn”, which under the Zoning Ordinance may provide lodging for up to 15 people, corresponding to as few as 8 double rooms. Thus, any establishment with between 6 and 10 rooms would be categorized as an inn rather than a Bed and Breakfast 2.
  - The maximum capacity of a breakfast room is reduced proportionately to the permitted number of guest rooms. The current allowance of a 25-person dining room is excessive for a B&B with only 1 to 5 guest rooms, and therefore the capacity limits are proposed to be set at approximately the maximum number of guest rooms multiplied by 3 persons per room.
- Change the Table of Uses to allow Bed and Breakfast 1 by special exception in the Rural and Single Residence districts. This proposal may raise some concerns and should be considered carefully by the Board; however, it seems appropriate to allow the ZBA to permit this lowest-intensity B&B use on a case-by-case basis in the lower density residential areas of the City.

- Define “short-term vacation rental” as a new use and allow it by special exception in the GRA, GRB and MRO districts, and as a permitted use in the CBA, CBB, CD4, CD5 and B districts. (Note that, by reference, the use regulations for the CD4 and CD5 districts are the same as those for the CBA and CBB districts, respectively.)
- Change the Table of Uses to prohibit hotels and motels with more than 250 rooms in the CBA and CD4 districts, and to require special exceptions in the CBB and CD5 districts. The largest existing hotels in the CBB and CD5 districts are all well below this threshold (Sheraton Harborside, 200 rooms; Hilton Garden Inn, 131 rooms; Residence Inn by Marriott, 128 rooms; Hampton Inn, 120 rooms). Based on the concerns about recent hotel development, it is difficult to imagine an appropriate site in the downtown or the West End for a hotel with more than 250 rooms, which is about twice the size of the three hotels most recently permitted in the City.
- Combine “conference hotel” and “conference center” in the Table of Uses because the use regulations are the same for both (neither term is defined in the Ordinance).
- Insert a new Section 10.837.20, “Short-Term Vacation Rentals,” with the following provisions:
  - The lot shall comply with existing zoning standards;
  - Occupancy shall be limited to no more than two persons per bedroom;
  - The short-term rental use shall require a license from the City Council, with a fee to cover administrative and inspection services;
  - No two short-term rental facilities shall be located within 300 feet of each other;
  - The dwelling shall comply with building and life safety codes, and shall be subject to initial inspections and annual re-inspections to verify compliance;
  - The owner shall pay all state rooms taxes;
  - No tents, trailers or other temporary shelters shall be used for living or sleeping in connection with the short-term rental use.
- Add “short-term vacation rental” to the table of off-street parking standards.

These proposed amendments are an initial draft for the purpose of framing the discussion of an appropriate regulatory response to the short-term vacation rental phenomenon. Following discussion and public comment, the Board may be able to make a recommendation to the City Council, or may determine that additional research and/or revisions are needed.

**Recommendation:** Vote to recommend that the City Council enact the proposed amendments, with such revisions as the Board may deem advisable; or to postpone consideration to a future meeting.

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## V. OTHER BUSINESS

A. The request of **Portsmouth Land Acquisitions, LLC, Owner**, for property located at **428 U.S. Route 1 By-Pass, property off Cate Street and 55 Cate Street**, for Design Review under the Site Plan Review Regulations, for a proposed mixed use development consisting of 288 dwelling units and 40,000 s.f. of commercial space in 3 buildings, with related paving, lighting, utilities, landscaping, drainage and associated site improvements. Said properties are shown on Assessor Map 172 as Lot 1, Map 173 as Lot 2, Map 165 as Lot 2, and Map 163 as Lots 33, 34 and 37, and lie within the Industrial (I) District, the Office Research (OR) District, and the Municipal (M) District.

### **Staff Report:**

Since part of this project is on City owned land, an affirmative vote from the City Council is required before the applicant can formally request Design Review under the Site Plan Review Regulations. It is anticipated that the City Council will hear this item at the May 4, 2015 meeting. If approval is granted at this meeting, the Planning Board may vote accept the request for design review at the May 21, 2015 Planning Board meeting.

**Recommendation:** Vote to postpone to the May 21, 2015 Planning Board meeting.

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## VI. PLANNING DIRECTOR'S REPORT

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# THE WEST END: ISLINGTON STREET CORRIDOR PRELIMINARY VISION PLAN



## DESIGN NARRATIVE

The West End is envisioned as a cohesive Portsmouth neighborhood with an improved multi-modal, walkable street system, shared civic space, and a mix of land uses. New buildings will be designed to complement the existing historic structures in the area, including the Button Factory, the Eldridge and Frank Jones Brewery buildings. New street connections, parks, plazas, greens and buildings will be integrated within the historical context, creating more opportunities for living, working, shopping and engaging in the already-present arts and “maker” culture of the area. These changes will help the West End transform from the conventional suburban patterns that characterize it today. Implementing of this vision will likely require a wide array of innovative land use regulations, policies and programs, and a cooperative approach to redevelopment.

The West End Vision Plan has four main components:

## CIVIC SPACE

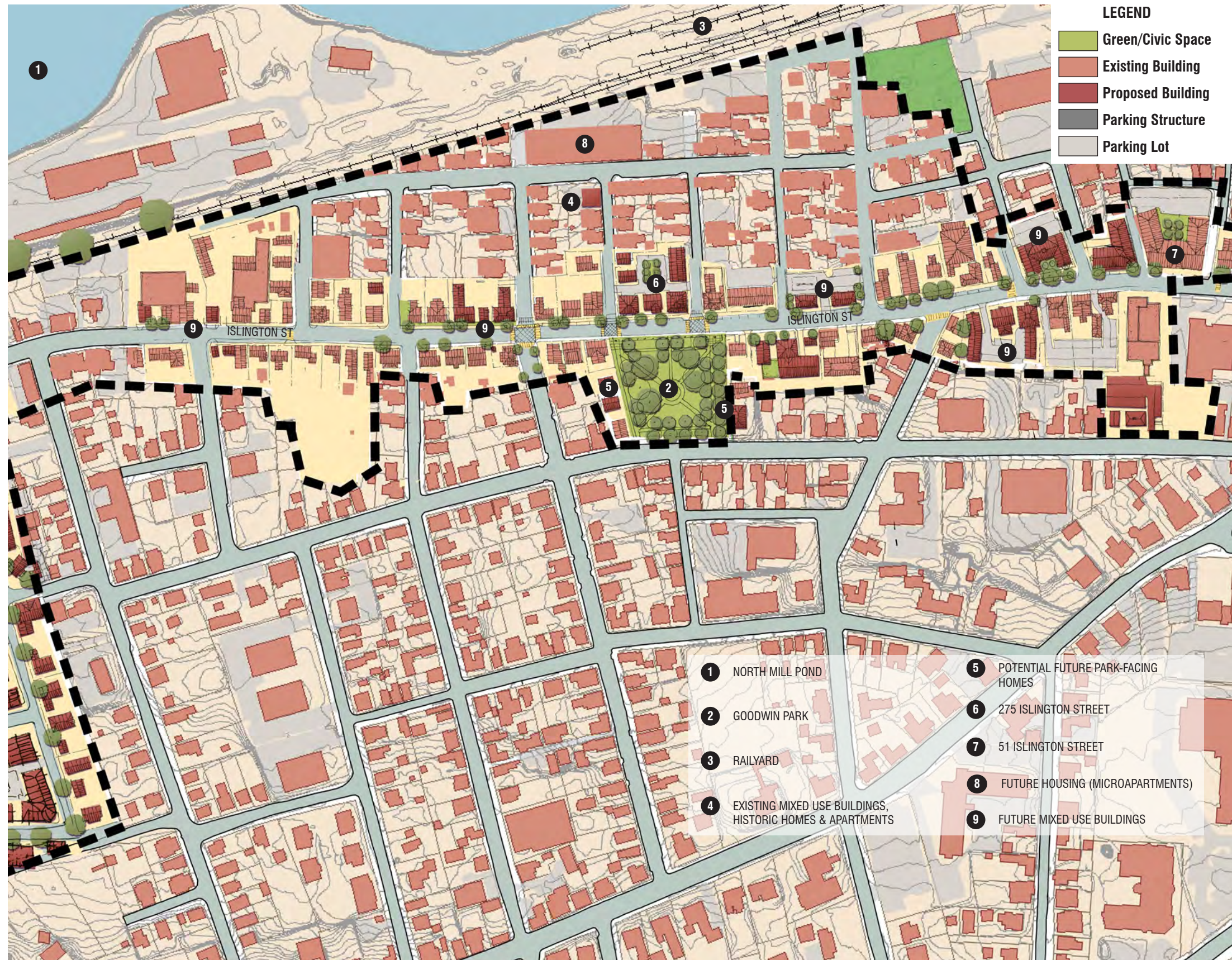
The Plan incorporates a network of parks, plazas, and greenways. One essential feature is the creation of several new civic spaces designed to anchor the neighborhoods and provide places for recreation and gathering. One such space, envisioned for the area adjacent to the historic Button Factory, is ideally suited for a future transit station and includes plenty of space for recreation. A second civic space within the former Frank Jones Brewery complex is imagined as a plaza with the potential for outdoor dining and park space. Another important feature of the Plan is the daylighting of Hodgson Brook, and the creation of a greenway for walking, biking, and passive recreation along the restored waterway. A series of pocket parks, greens and plazas throughout the West End will ensure that residents and visitors are never more than a short walk from a well-designed civic space. One feature is the incorporation of a shared street into the Button Factory area, a place where working artisans can demonstrate their crafts and display their goods while pedestrians and motorists move through the space. Throughout the Plan, opportunities will be sought to incorporate street trees, particularly when whole blocks or streetscapes are redeveloped.

## BUILDING DESIGN

The design strategy for the Vision Plan is based on the juxtaposition of existing historic homes, mixed use and industrial buildings and new, more contemporary buildings and additions. During the West End charrette, the public expressed their desire for a variety of building heights, volumes and massing, and were open to the injection of contemporary architecture into the mix. The intention is for these neighborhoods to develop their own character and styles, independent of downtown Portsmouth. In order to achieve a higher density of uses and buildings, structured parking will be required.



# THE WEST END: ISLINGTON STREET CORRIDOR PRELIMINARY VISION PLAN



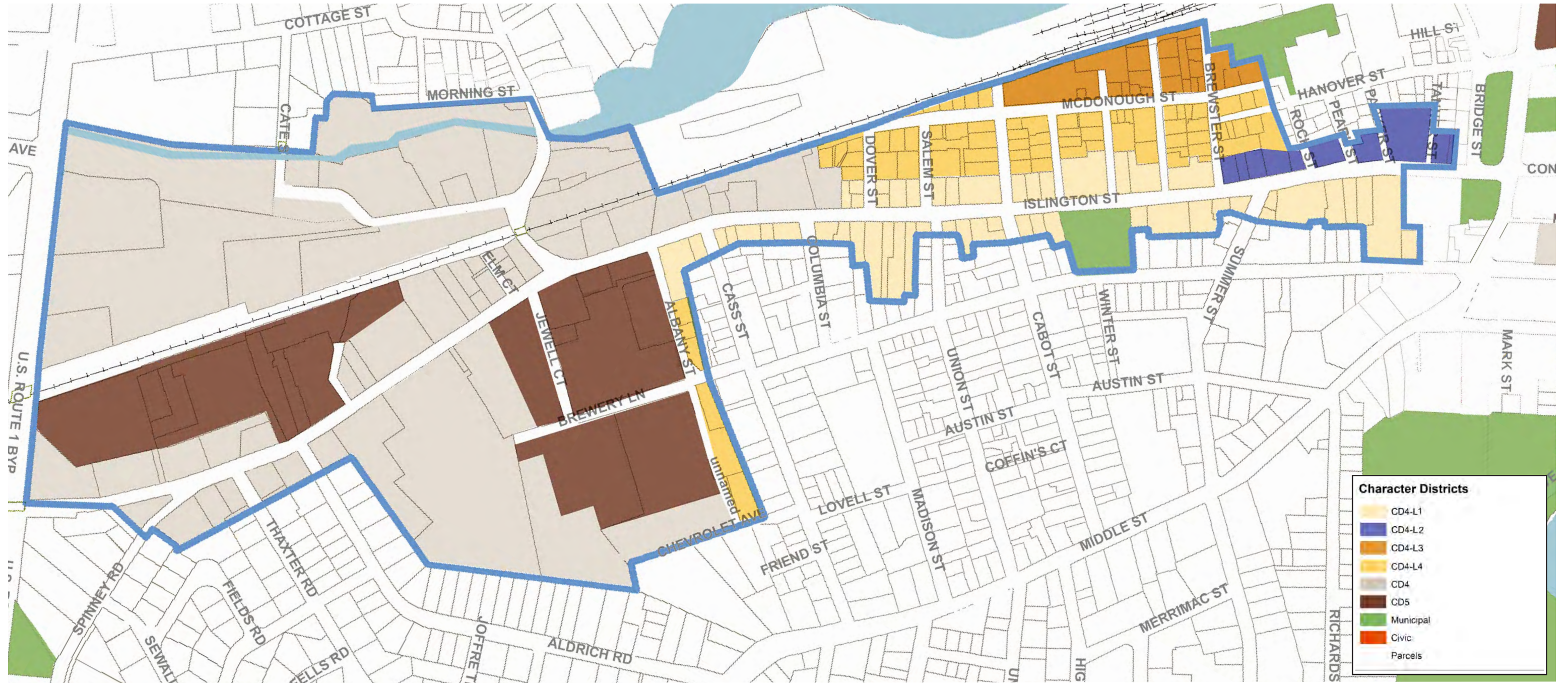
## LAND USE

Land uses in the West End will include a variety of residential, office, civic and commercial spaces, including light industrial “maker” spaces and artist’s workshops. Charrette participants voiced the need for additional housing, which could include rowhouses, live-work units, artists’ lofts, small single-family homes, mid-rise multi-family buildings and possibly microhousing apartments. While a full range of housing opportunities should be provided for residents of all income levels, some emphasis should be placed on keeping existing housing affordable and creating additional workforce housing units. Ground floor uses in most areas along the corridor will be commercial in order to activate streetscapes and keep residences out of potential flood zones. Parking will be located on street, in the rear yards, in underground garages, or in lined parking structures concealed from public view. The introduction of a new Artisan Industrial Character District will allow for the type of development envisioned for the Button Factory maker place.

## TRANSPORTATION & INFRASTRUCTURE

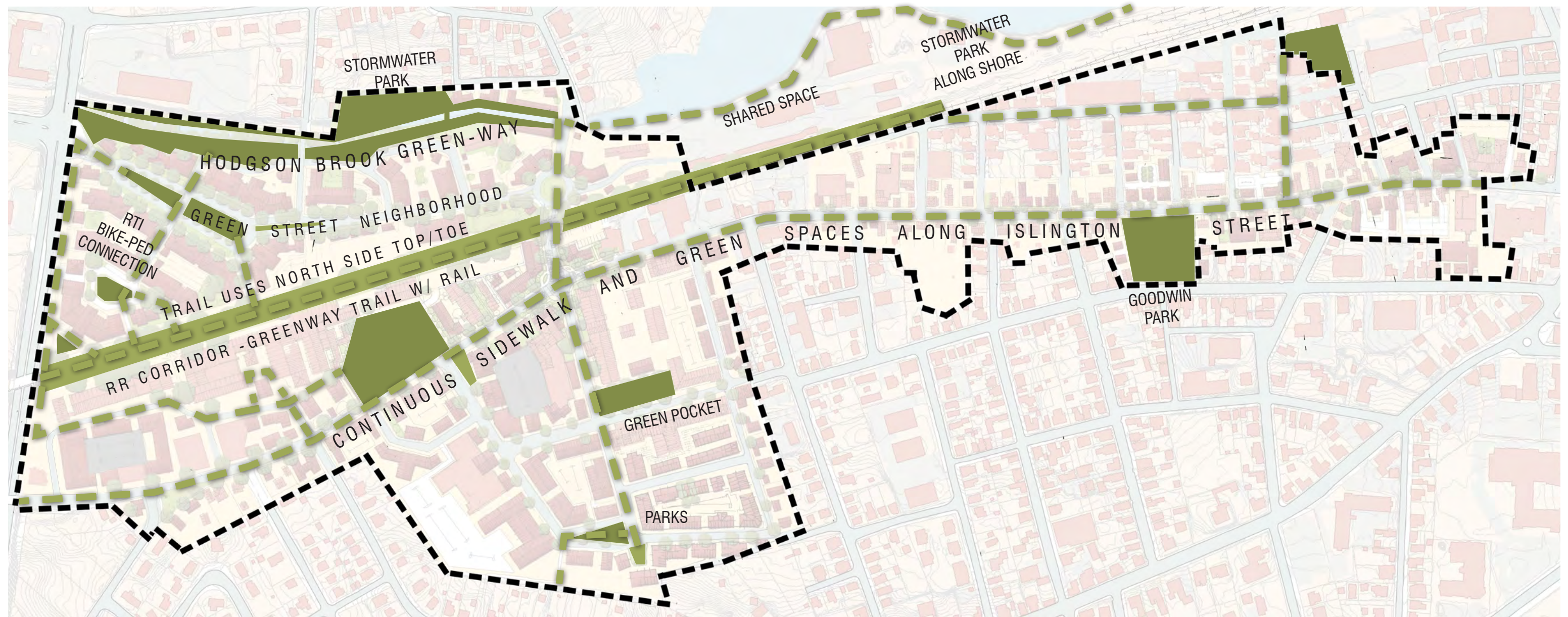
Participants in the West End charrette were quick to point out the safety concerns at intersections, rail crossings, and the lack of pedestrian and bicycle facilities in the area. The Plan provides for a better connected street network and harmonious integration of various modes of transportation including pedestrian, bicycle and motorist, as well as public transit. The transit-ready plan includes a potential hub for future connections to downtown Portsmouth and the surrounding region by way of a bus or an on-street trolley line. Three major intersections have been redesigned to facilitate flow of traffic and accommodate large truck circulation. All thoroughfares are designed to be pedestrian-friendly and incorporate multi-modal design features including generous sidewalks and bike lanes where possible. One unique feature of the Vision Plan is the introduction of a shared street adjacent to the Button Factory, where pedestrians and slow-moving motorists will utilize the same pavement area. Finally, the creation of a rail trail along the existing rail line will improve pedestrian and bike connectivity to other parts of Portsmouth and the region.

# THE WEST END: ISLINGTON STREET CORRIDOR PRELIMINARY VISION PLAN



**PRELIMINARY REGULATING PLAN**

# THE WEST END: ISLINGTON STREET CORRIDOR PRELIMINARY VISION PLAN



**CIVIC SPACE NETWORK**

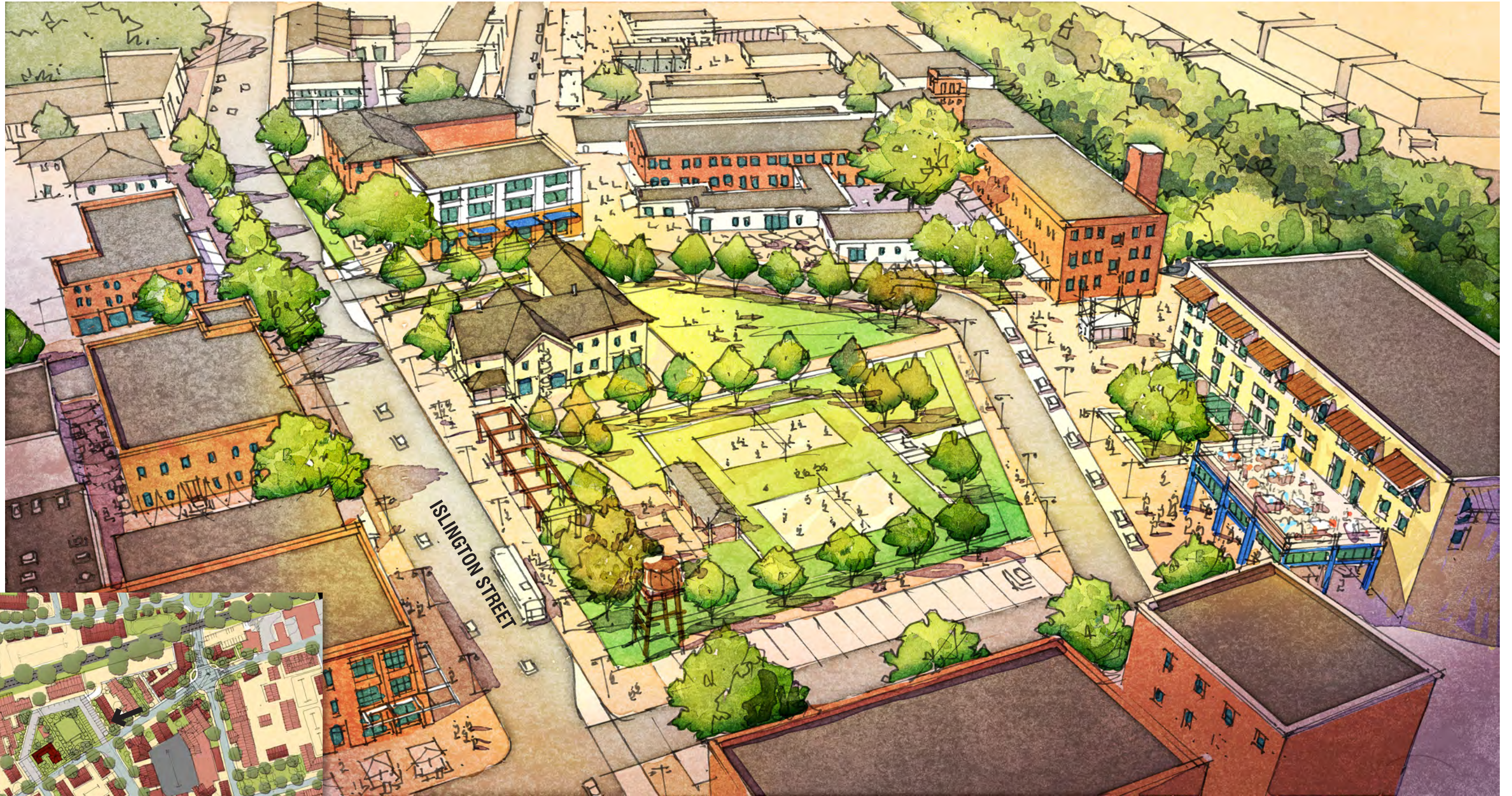
# THE WEST END: ISLINGTON STREET CORRIDOR PRELIMINARY VISION PLAN



KEY PLAN

**PROPOSED PLAZA AT HISTORIC FRANK JONES BREWERY**

# THE WEST END: ISLINGTON STREET CORRIDOR PRELIMINARY VISION PLAN



***PROPOSED DISTRICT CENTRAL SQUARE ADJACENT TO HISTORIC BUTTON FACTORY***

# THE WEST END: ISLINGTON STREET CORRIDOR PRELIMINARY VISION PLAN



***SHARED STREET/ARTISAN INDUSTRIAL AT THE HISTORIC BUTTON FACTORY***

# THE WEST END: ISLINGTON STREET CORRIDOR PRELIMINARY VISION PLAN



**TYPICAL RESIDENTIAL: MCDONAUGH STREET NEIGHBORHOOD**