



City of Portsmouth
Planning Department
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Memorandum

To: Planning Board
From: Beverly Mesa-Zendt, Planning Director
Stefanie L. Casella, Planner
Date: October 14, 2022
Re: Recommendations for the October 20, 2022 Planning Board Meeting

I. BOARD DISCUSSION OF REGULATORY AMENDMENTS AND OTHER MATTERS

II. APPROVAL OF MINUTES

A. Approval of the September 15, 2022 Meeting Minutes

Planning Department Recommendation

1) Board members should determine if the draft minutes include all relevant details for the decision making process that occurred at the September 15, 2022 meeting and vote to approve meeting minutes with edits if needed.

III. DETERMINATION OF COMPLETENESS

SUBDIVISION REVIEW

- A. The request of **Randi and Jeff Collins (Owners and Applicants)**, for property located at **77 Meredith Way** requesting Preliminary and Final Subdivision Approval to subdivide one (1) existing lot into two (2) lots.
- B. The request of **Richard Fusegni (Owner)**, for property located at **201 Kearsarge Way** requesting Preliminary and Final Subdivision approval to subdivide one (1) existing lot into three (3) lots.

Planning Department Recommendations

1) Vote to determine that the applications are complete according to the Subdivision Regulations, (contingent on the granting of any required waivers) and to accept the applications for consideration.

IV. 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. REQUEST FOR POSTPONEMENT The request of **Blus O’Leary Family Living Trust (Owner)**, for property located at **225 Wibird Street** requesting Conditional Use Permit Approval as permitted under Section 10814.40 of the Zoning Ordinance to construct an attached Accessory Dwelling Unit. Said property is located on Assessor Map 133 Lot 54 and located within the General Residence A (GRA) district. (LU-22-174) **REQUEST FOR POSTPONEMENT**

Planning Department Recommendation

1) Vote to postpone consideration to the November Planning Board meeting.

V. 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.** The request of **Coventry Realty, LLC (Owner)**, for property located at **111 State Street** requesting a conditional use permit approval in accordance with section 10.1112.14 of the Zoning Ordinance to allow zero (0) parking spaces where 35 are required. Said property is located on Assessor Map 107 Lot 50 and lies within the Character District 4 (CD4) and the Historic District. (LU-22-125)

Project Background

The Lot was recently the subject of a merger, where former Lot 51 (formerly 107 State Street) was merged with Lot 50. The new lot size is 4,530 square feet. Prior to merger, the two lots contained congruent 3- story brick buildings. Staff reviewed the proposed plans and consulted with the City's Chief Building Official and the Deputy Fire Chief who concluded that proposed improvements, specifically, improvements needed to comply with the Americans with Disabilities Act (hereinafter the "ADA"), the International Fire Code, and the International Building Code, which require a new egress stair tower and a new elevator, meet the requirements set forth in Section 10.323 of the Zoning Ordinance and therefore do not require further relief from zoning.

Historically, the Agave Mexican Bistro, located in the first and second floors of the west side of existing building, was used as a restaurant. Mr. Kim's Restaurant was in the first and second floors of the east side of the building. The third floor of the building was utilized for an office and a residential unit. As a result of the merger of the lots, the intent of the Applicant is to renovate the two buildings in order that they act as one complete building. The renovation will result in the removal of a restaurant use within the east side of the upper floors of the building, where the second-floor dining room for Mr. Kim was previously located. That space will be converted to two residential units, with the third floor being renovated to three residential units with the third floor office use also be eliminated. The five proposed residential units are intended to support workers for the restaurant within the building post-renovation. Additionally, the restaurant use on the second floor will be reduced to a smaller space.

Staff has conferred with the City Attorney and finds that the change of use, which is allowed in this zoning district, would trigger a Parking Conditional Use Permit. Although the change will bring the parking into greater conformance, the Zoning Ordinance clearly states that any change must be brought into conformity.

Zoning Ordinance Section 10.331 *A lawful nonconforming use may continue, but may not be extended, enlarged or changed except in conformity with this Ordinance.*

Although the change of use results in an overall reduction to the parking needed for the

site, changes in the scope of the restaurant use on the second floor and the 4 new residential units require that the affected areas be brought into compliance in accordance with the table below.

Parking Calculation	Spaces Required	
	actual	round up
Revised spaces needed for proposed floor plans		
5 Dwelling Units	4.3	5
Visitor: 1 space per 5 units	1	1
Restaurant, 2nd floor (reduced from existing)	28.3	29
Total		35

Project Review Discussion and Recommendations

The project has been before the Technical Advisory Committee and the Historic District Commission. See below for details.

Historic District Commission Review

The HDC approved the building addition for constructing a code complying stair tower and an elevator for handicap accessibility and related circulation space and other changes on July 06, 2022. Staff has reviewed proposed plans and consulted with the City’s Chief Building Official and the Deputy Fire Chief. Staff finds that the proposed improvements, specifically, improvements needed to comply with the Americans with Disabilities Act (hereinafter the “ADA”), the International Fire Code, and the International Building Code, which require a new egress stair tower and a new elevator, meet the requirements set forth in Section 10.323 and therefore do not require further relief from zoning. The HDC approved the building addition for constructing a code complying stair tower and an elevator for handicap accessibility and related circulation space and other changes on July 06, 2022.

Technical Advisory Committee Review

The Technical Advisory Committee reviewed the previous proposal at the September 6, 2022 meeting and recommended the Planning Board approve the request as presented.

Planning Department Recommendation

1) *Vote to find that the Conditional Use Permit application meets the criteria set forth in Section 10.1112.14 and to adopt the findings of fact as presented.*

(Alt.) Vote to find that the Conditional Use Permit application meets the criteria set forth in Section 10.1112.14 and to adopt the findings of fact as amended and read into the record.

2) *Vote to find that the number of off-street parking spaces provided will be adequate and appropriate for the proposed use of the property and to grant the conditional use permit as presented.*

V. 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.

- B.** The request of **Neal L. Ouellett Revocable Trust (Owner)**, for property located at **124 Kensington Road** requesting Wetland Conditional Use Permit approval in accordance with section 10.1017 of the Zoning Ordinance for the demolition of a detached garage and the construction of a new attached garage with 59 square foot increase of impervious area totaling 4,320 square feet of wetland buffer impacts on the property. Said property is shown on Assessor Map 152 Lot 20 and is lies within the Single Residence B (SRB) District. (LU-22-138)

Project Background

Applicant is proposing to demolish the existing detached garage and replace the structure with an attached garage. The majority of the property is located both within the wetland and wetland buffer area, with the proposed construction within the 100 foot buffer area.

Project Review Discussion and Recommendations

The application as proposed required review by the Conservation Commission. See below for more details.

Conservation Commission Review

The Conservation Commission reviewed the application at the September 14, 2022 meeting. See below for the Staff analysis of criteria as stated in Section 10.1017.50 of the Zoning Ordinance.

- 1.** The land is reasonably suited to the use activity or alteration.

Applicant is proposing to construct new garage further from the wetland boundary than the existing structure. Applicant is also proposing to remove existing impervious driveway in and around the 100' buffer and will replace with a pervious material.

- 2.** There is no alternative location outside the wetland buffer that is feasible and reasonable for the proposed use, activity or alteration.

Applicant is unable to move garage location outside of buffer area as it would be within the front yard setback. They are proposing to move garage further away from wetland and still keep it outside of this setback. They intend to remove part of the existing impervious coverage of the buffer and replace with pervious coverage and native buffer plantings.

- 3.** There will be no adverse impact on the wetland functional values of the site or surrounding properties.

Applicant is proposing no impact to the wetland and intends to improve the wetland buffer within the property and the stormwater that drains into the wetland on-site. The buffer plantings include multiple shrubs and herbaceous plants to be planted within the buffer between the proposed new structure and the wetland and existing retaining wall. The stormwater improvements include a stone drip edge along the perimeter of the proposed building and the permeable driveway and walkway which will both treat and infiltrate stormwater into the ground. These proposed improvements should help treat runoff as it reaches the buffer and wetland.

4. Alteration of the natural vegetative state or managed woodland will occur only to the extent necessary to achieve construction goals.

Currently no natural vegetative state on the site plan is proposed to be altered or disturbed. Part of the buffer will receive additional plantings.

5. The proposal is the alternative with the least adverse impact to areas and environments under the jurisdiction of this section.

This proposal shows an addition of buffer plantings and the applicant is proposing to treat runoff entering into the wetland where there was no treatment previously which should result in reducing the impacts of pollutants into the wetland.

6. Any area within the vegetated buffer strip will be returned to a natural state to the extent feasible.

The applicant is proposing to restore over 760 s.f. of previously disturbed buffer area with an assortment of buffer plantings

On September 14, 2022 the Conservation Commission voted unanimously to recommend approval to the Planning Board with the following stipulations:

1. There will be signage placed within the buffer or the wetland itself stating that this is an environmentally-sensitive wetland area.
2. There is to be a note placed in the deed that a maintenance plan is required for the permeable hardscaping areas on site as well as the stormwater systems. This note will also be added to the Site Plans prior to Planning Board approval.

The revised plans, as submitted to the Planning Board, stipulation 2 has been satisfied and stipulation one has been carried forward as a recommended stipulation listed below.

Planning Department Recommendation

1) Vote to find that the Conditional Use Permit application meets the criteria set forth in Section 10.1017.50 and to adopt the findings of fact as presented.

(Alt.) Vote to find that the Conditional Use Permit application meets the criteria set forth

in Section 10.1017.50 and to adopt the findings of fact as amended and read into the record.

2) Vote to grant the Wetland Conditional Use permit with the following condition.

Conditions to be satisfied subsequent to final approval of subdivision plan but prior to the issuance of a building permit or the commencement of any site work or construction activity:

2.1) Signage will be placed within the buffer or wetland itself stating that it is an environmentally sensitive wetland area. Applicant is to contact Peter Britz in the Planning Department to obtain signage.

V. 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.

- C. The request of **Peter Ward (Owner)**, for property located at **15 Central Avenue** requesting Conditional Use Permit Approval as permitted under Section 10814.40 of the Zoning Ordinance to construct an attached Accessory Dwelling Unit. Said property is shown on assessor Map 209 Lot 4 and lies within the Single Residence B (SRB) and the Highway Noise Overlay Districts. (LU-22-123)

Project Background

The applicant is proposing new living space above the existing home and garage. The applicant is proposing to build a one - bedroom 750 SF Attached Accessory Dwelling Unit (AADU) over the garage. The current structure includes a pitched roof attic. Dormers will be added to the attic level, raising the roof height to accommodate the new dwelling unit.

Project Review Discussion and Recommendations

This project has been before the Zoning Board of Adjustment and reviewed by staff. Please see below for more details.

Zoning Board of Adjustment Review

The existing single-family home with the attached garage is non-conforming with respect to the front and side yard setbacks. As a result of how the home and garage are situation on the property – improvements and changes to the structure will require variances. At its regularly scheduled meeting of Wednesday, June 22, 2022, the Zoning Board of Adjustment approved the following variances:

- 1) Variances from Section 10.521 to allow:
 - a) a 6' front yard where 30' is required; and
 - b) a 4' side yard where 10' is required.
- 2) A Variance from Section 10.321 to allow a nonconforming building or structure to be expanded, reconstructed or enlarged without conforming to the requirements of the Ordinance.

Staff Review

Attached accessory dwelling units must comply with standards set forth in the following sections of the Zoning Ordinance:

- 10.814.10
- 10.814.20
- 10.814.30
- 10.814.40

In granting a conditional use permit for an accessory dwelling unit, the Planning Board may modify a specific standard set forth in Sections 10.814.40 (below) including requiring additional or reconfigured off-street parking spaces, provided that the Board finds such modification will be consistent with the required findings in Section 10.814.60.

Required Standards (10.814.40)	Meets Standard	Does Not Meet Standard	Comments
10.814.41 An interior door shall be provided between the principal dwelling unit and the accessory dwelling unit.		√	There is an interior door to the garage from the principal structure. There is no interior door from the AADU to the garage.
10.814.42 The accessory dwelling unit shall not have more than two bedrooms and shall not be larger than 750 sq. ft. gross floor area. For the purpose of this provision, gross floor area shall not include existing storage space, shared entries, or other spaces not exclusive to the accessory dwelling unit	√		The AADU will be limited to 725 SF and will have one bedroom.
10.814.43 Any exterior changes to the single-family dwelling shall maintain the appearance of a single-family dwelling. If there are two or more doors in the front of the dwelling, one door shall be designed as the principal entrance and the other doors shall be designed to appear to be secondary.	√		The cladding and trim of the renovated garage structure (proposed AADU) will match closely the style of the existing single family residence.
10.814.44 No portion of the AADU shall be closer to the front lot line than the existing front wall of the principal dwelling unit.	√		The existing footprints of the single family dwelling and the garage will not change.
10.814.451 An exterior wall of the AADU that faces a street on which the lot has frontage shall comprise no more than 40 percent of the total visible façade area of the dwelling as seen from that street.	√		The overall SF of the visible façade is 1395 SF. The portion of the façade comprised by the AADU = 301SF. That means only 22% of the total visible façade is the AADU portion.
10.814.452 The addition to or expansion of the existing single-family dwelling may include an increase in building height only as an upward expansion of the existing principal building with no increase in building footprint.	√		The building footprint will remain the same.
10.814.453 The building height of any addition or expansion that includes an increase in building footprint shall be less than the building height of the existing principal building.	√		The existing principal building height will ± 4'-0 taller than the garage/AADU roof height
10.814.454 The AADU shall be architecturally consistent with the existing principal dwelling through the use of similar materials, detailing, roof pitch, and other building design elements.	√		The buildings, as indicated in the elevations, are consistent with the existing building elements and details.

Planning Department Recommendation

1) *Vote to find that the Conditional Use Permit application meets the criteria set forth in Section 10.814.60 and to adopt the findings of fact as presented.*

(Alt.) Vote to find that the Conditional Use Permit application meets the criteria set forth in Section 10.814.60 and to adopt the findings of fact as amended and read into the record.

2) *Vote to grant the conditional use permit with a modification to the requirement set forth in section 10.814.41 to not require an interior door between the principal dwelling unit and the accessory dwelling , and to approve the Conditional Use Permit with the following stipulation:*

2.1) In accordance with [Sec. 10.814.70] of the Zoning Ordinance, the owner is required to obtain a certificate of use from the Planning Department verifying compliance with all standards of [Sec. 10.814], including the owner-occupancy requirement, and shall renew the certificate of use annually.

V. 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.

- D.** The request of **Randi and Jeff Collins (Owners and Applicants)**, for property located at **77 Meredith Way** requesting Preliminary and Final Subdivision Approval to subdivide one (1) existing lot with 22,463 square feet of lot area and 31.7 feet of street frontage into two (2) lots with associated 73.3 foot road extension as follows: Proposed Lot 1 with 11,198 square feet of lot area with 73.79 feet of street frontage, and Proposed Lot 2 with 11,265 square feet of lot area and 31.61 feet of street frontage. Said property is located on Assessor Map 162 Lots 16 and lies within the General Residence A (GRA) District. (LU-22-61)

Project Background

The property, located at 77 Meredith Way is currently developed as a single family residence. The applicant is proposing a subdivision to create two lots where there is now one. The existing dwelling will be demolished in advance of construction on the two new lots. The applicant anticipates the construction of two single family dwellings.

Project Review Discussion and Recommendations

The application as proposed required a variance from the Zoning Board of Adjustment and review by the Technical Advisory Committee. See below for more details.

Zoning Board of Adjustment Review

The Board of Adjustment reviewed the request for the following variances at the June 22, 2022 meeting:

- 1) A Variance from Section 10.521 to allow 73 feet of frontage for Lot A and 31 feet of frontage for Lot B where 100 feet is required for both.

The request for variance was granted with the following condition of approval:

- 1) The proposed house plans are conceptual and may change from what was presented to the Board as long as they conform to the requirements of the Zoning Ordinance.

Technical Advisory Committee Review

The Technical Advisory Committee, at its regularly scheduled meeting of Tuesday, October 4, 2022, considered the application for Preliminary and Final Subdivision and voted to recommend approval to the Planning Board at the

October meeting with the following stipulations:

1. POI-3 of Sheet C-04 will be corrected and amended to DPW satisfaction.
2. A note will be added to sheet C-07 detailing easement turnaround area will be constructed with Heavy Duty Pavement.
3. Applicant will add an Easement Plan to the plan set (indicated as S3).
4. Prior to recordation the proposed easements in which the City is a party will be approved by the City Council.
5. A note to sheet C-03 will be added to the plans stating that the proposed principal structures will be located in substantial compliance with siting depicted in the plan set.
6. Raingarden detail shall reflect direction provided by Public Works at the 10-4-2022 Technical Advisory Committee meeting and be updated and resubmitted for approval by Public Works prior to consideration by the Planning Board.
7. All runoff from the structures is to be directed towards the appropriate rain gardens.
8. A letter detailing plan changes and updates will be submitted with the plan resubmission.

The updated submission, as provided to the Planning Board satisfies all stipulations above with the exception of #6. DPW have reviewed and have requested the following condition be included with a Planning Board approval:

A note will be added to the plan that says a stone drip edge will be provided around both homes that is at least 6" wider than any roof line constructed. The drip edge is to be constructed with an underdrain (french drain) that carries roof runoff to the rain gardens to be infiltrated. The Engineer of record is to inspect these conveyance systems and the construction of the raingardens themselves during their construction to confirm that the soils under the rain gardens are suitable for infiltration and that all construction above that point meets the intent of the design. Engineer to provide the City with pictures and stamped final report guaranteeing that all is built properly and will function in accordance with the design.

Planning Department Recommendation

1) Vote to find that the Subdivision application meets the standards and requirements set forth in the Subdivision Rules and Regulations to adopt the findings of fact as presented.

(Alt.) Vote to find that the Subdivision application meets the standards and requirements set forth in the Subdivision Rules and Regulations to adopt the findings of fact as amended and read into the record.

2) Vote to grant preliminary and final subdivision approval with the following stipulations:

Conditions to be satisfied subsequent to final approval of subdivision plan but prior to the issuance of a building permit or the commencement of any site work or construction activity:

2.1) A note will be added to the plan that says a stone drip edge will be provided around both homes that is at least 6" wider than any roof line constructed. The drip edge is to be constructed with an underdrain (french drain) that carries roof runoff to the rain gardens to be infiltrated. The Engineer of record is to inspect these conveyance systems and the construction of the raingardens themselves during their construction to confirm that the soils under the rain gardens are suitable for infiltration and that all construction above that point meets the intent of the design. Engineer to provide the City with pictures and stamped final report guaranteeing that all is built properly and will function in accordance with the design

2.2) Lot numbers as determined by the Assessor shall be added to the final plat prior to recordation. .

2.3) Property monuments shall be set as required by the Department of Public Works prior to the filing of the plat.

2.4) GIS data shall be provided to the Department of Public Works in the form as required by the City.

2.5) 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 and accepted by City Council prior to recordation.

2.6) The final plat and all easement plans and deeds shall be recorded concurrently at the Registry of Deeds by the City or as deemed appropriate by the Planning Department.

2.7) Final house plans shall conform the requirements of the zoning ordinance.

2.8) Any site development (new or redevelopment) resulting in 15,000 square feet or greater ground disturbance will require the submittal of a Land Use Development Tracking Form through the Pollutant Tracking and Accounting Program (PTAP) online portal. For more information visit

<https://www.cityofportsmouth.com/publicworks/stormwater/ptap>

V. 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.

- E. The application of **Richard Fusegni (Owner)**, for property located at **201 Kearsarge Way** requesting Preliminary and Final Subdivision approval to subdivide a lot with an area of 52,253 s.f. and 205' of continuous street frontage into three (3) lots as follows: proposed Lot 1 with an area of 17,125 s.f. and 100' of continuous street frontage; proposed Lot 2 with an area of 17,406 s.f. and 100.2' of continuous street frontage; and Proposed Lot 3 with an area of 17,723 s.f. and 82.84' of continuous street frontage. Said property is shown on Assessor Map 218 Lot 5 and lies within the Single Residence B (SRB) District. (LU-22-150)

Project Background

This proposal was previously approved by the Planning Board on February 27, 2020. After one six-month extension, approved by the Planning Director, the approval expired on February 27, 2021.

Project Review Discussion and Recommendations

The application as proposed required a variance from the Zoning Board of Adjustment and review by the Technical Advisory Committee. See below for more details.

Zoning Board of Adjustment Review

On August 16, 2022 the Board of Adjustment granted the following request as presented:

- 1) A Variance from Section 10.521 to allow 82.5 feet of street frontage where 100 feet is required for proposed Lot 3.

Technical Advisory Committee Review

October 4, 2022

1. Applicant will confirm with Assessing Department that previously assigned addresses and Map and Lot numbers are still valid.
2. A declarative covenant or some other mechanism shall be developed and recorded to preserve areas noted for conservation on proposed lots.
3. Water service will use existing 2" water main.
4. Utility plan will be updated to depict the conduit feeding electric and communications will be no closer than 8 feet from the existing manhole and will be reviewed by DPW.
5. A letter detailing plan changes and updates will be submitted with the plan resubmission.

Conditions have been satisfied with the updated submission as provided to the

Planning Board.

Planning Department Recommendation

1) *Vote to find that the Subdivision application meets the standards and requirements set forth in the Subdivision Rules and Regulations to adopt the findings of fact as presented.*

(Alt.) Vote to find that the Subdivision application meets the standards and requirements set forth in the Subdivision Rules and Regulations to adopt the findings of fact as amended and read into the record.

2) *Vote to grant preliminary and final subdivision approval with the following stipulations:*

2.1) Property monuments shall be set as required by the Department of Public Works prior to the filing of the plat;

2.2) GIS data shall be provided to the Department of Public Works in the form as required by the City;

2.3) The final plat shall be recorded at the Registry of Deeds by the City or as deemed appropriate by the Planning Department.

2.4) Any site development (new or redevelopment) resulting in 15,000 square feet or greater ground disturbance will require the submittal of a Land Use Development Tracking Form through the Pollutant Tracking and Accounting Program (PTAP) online portal. For more information visit

<https://www.cityofportsmouth.com/publicworks/stormwater/ptap>

2.5) Conditions as listed in the February 27, 2020 letter of decision to be completed as applicable

2.5.1) The drainage for the houses shall be incorporated into the back yard areas where they can be maintained without impacting the portion of the property designated to be a conservation area along with the following conditions:

2.5.1-1) Drainage easements shall be provided across lot 3 for lot 2 and 1 drainage and across lot 2 for lot 1 drainage. Maintenance responsibilities for the storm-tech systems shall be included in the easement language or otherwise addressed through a maintenance agreement;

2.5.1-2) Plans shall be updated and approved by the Department of Public Works to show grading around Catch Basin 1;

2.5.1-3) Plans shall be updated to note stabilized construction entrances shall be installed for all 3 lots;

2.5.1-4) Department of Public Works final review and approval shall confirm that the drainage across Birch Street will not increase flow onto the abutting properties.

2.5.2) Birch Street shall be reclaimed and reconstructed to City standards after installation of utilities and plans shall be updated to include a cross-section for review and approval by Department of Public Works,

which shall also confirm if any additional modifications are required to improve drainage;

2.5.3) The plans shall note that during construction, access will be provided to all existing properties located on Birch Street;

2.5.4) Owner shall provide an easement to allow the City to turn around in the driveway of Lot 5-2 for the purpose of snow plowing and the easement shall be reviewed and approved by the Planning and Legal Departments prior to acceptance by the City Council;

2.5.5) The location of gas, electric, and communication lines shall be added to the subdivision plans;

5-1) For underground electric and communication lines, the sidewalk from Birch Street to the driveway of Lot 5-2 shall be widened to provide 5.5' clear.

2.5.6) Sheets C2 and C3 shall be reviewed and approved by Department of Public Works for confirmation of stormwater, grading and utility updates and standard details;

VI. CITY COUNCIL REFERRALS – PUBLIC HEARING

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 request of **Dale Whitaker (Owner)** for the restoration of involuntary merged lots at **880 Woodbury Avenue** to their pre-merger status pursuant to NH RSA 674:39aa. Said property is shown on Assessor Map 236 Lot 52 and lies within the Single Residence B District. (RIML 22-1)

Request for Restoration of Involuntarily Merged Lots and City Council Referral

Applicant Dale Whitaker has submitted an application/request to the City for Restoration of Involuntarily Merged Lots for the property located at 880 Woodbury Avenue, Portsmouth New Hampshire; Map/Block/Lot number 0236--0052—0000, located in the Single Residence B (SRB) zoning district. The applicant has provided preliminary documentary support for his request. Additional research will be required to verify the documentary record. At the July 11, 2022 meeting of the City Council, the City Council voted to refer this request to the Planning Board and the Assessor for a report back.

Statutory Context and Procedural Requirements

RSA 674:39-aa requires the City Council to vote to restore “to their premerger status” any lots or parcels that were “involuntarily merged” by municipal action for zoning, assessing, or taxation purposes without the consent of the owner. Unlike all other lot divisions, there is no statutory role for the Planning Board in this process nor is there any requirement for the City to hold a public hearing. However, in Portsmouth the City Council has historically referred such requests to the Planning Board to conduct a public hearing.

The statute defines “voluntary merger” and “voluntarily merged” to include “any overt action or conduct that indicates an owner regarded said lots as merged such as, but not limited to, abandoning a lot line” (RSA 674:39-aa, 1). It is therefore the City Council’s responsibility to determine whether a merger was voluntary (i.e., requested by a lot owner) or involuntary (implemented by the City without the owner’s consent). If the merger was involuntary, the Council must vote to restore the lots to their premerger status. Following such a vote, the City GIS and Assessing staff will update zoning and tax maps accordingly. It will then be up to the owner to take any further action to confirm the restoration to premerger status, such as recording a plan at the Registry of Deeds. It is important to note that the granting of a request to restore lots to their premerger status does not mean that the resulting lots will be buildable or, if already developed, will conform to zoning. The statute states that “The restoration of the lots to their premerger status shall not be deemed to cure any

non-conformity with existing land use ordinances” (RSA 674:39-aa, V). For example, the restored lots may not comply with current zoning requirements for lot area, frontage and depth, and the re-establishment of a lot line between any two pre-merger lots may introduce a new nonconformity with respect to maximum allowed building coverage or a minimum required side yard where a building already exists on one of the premerger lots. In such cases, the owner(s) of the applicable lot(s) would have to apply to the Zoning Board of Adjustment for the necessary variances to restore zoning compliance or to allow future development.

Staff Analysis

It is the City Assessor’s opinion that the request to unmerge the lots meets the requirements of NH RSA 674:39 and is supported by various New Hampshire court decisions. See Attachment B – City Assessor’s Report and Exhibits.

Planning Department Recommendation

1) Vote to recommend the City Council restore the property located at 880 Woodbury Avenue to its pre-merger status and direct the City GIS and Assessing staff to update zoning and tax maps accordingly.

VII. OTHER BUSINESS

A. Chairman's Updates and Discussion Items

VIII. ADJOURNMENT