



City of Portsmouth  
Planning Department  
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**Memorandum**

To: Planning Board  
From: Beverly Mesa-Zendt, Incoming Planning Director  
Peter Britz, Environmental Planner/Sustainability Coordinator/Interim Planning Director  
Stefanie L. Casella, Planner  
Date: February 11, 2022– Revised February 15, 2022  
Re: Recommendations for the February 17, 2022 Planning Board Meeting

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**I. APPROVAL OF MINUTES**

**II. DETERMINATIONS OF COMPLETENESS**

**SITE PLAN REVIEW**

- A.** Request of **Ricci Construction Company Inc., (Owner)** and **Green & Company Building & Development Corp., (Applicant)** for property located at **3400 Lafayette Rd** requesting Conditional Use Permit for a Development Site in accordance with Section 10.5B40 of the Zoning Ordinance and Site Plan Review approval.
- B.** The request of **Monarch Village, LLC (Applicant)**, on behalf of **Neveesha Hospitality, LLC (Owner)**, for property located at **3548 Lafayette Road** requesting Site plan approval. (*PP from Jan*)
- ~~**C.** The rehearing request for property located at **31 Raynes Avenue, 203 Maplewood Avenue, and 1 Raynes Avenue** for a Conditional Use Permit as permitted by Section 10.1112.62 of the Zoning Ordinance and Site Plan Review.~~

*Planning Department Recommendation*  
*Vote to determine that this applications is complete according to the Site Plan Review Regulations, (contingent on the granting of any required waivers under Section III and IV of the agenda) and to accept the applications for consideration.*

### III. 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.*

***It is recommended that Item IVA and IVB be discussed together and voted on separately.***

***A motion is required to consider these items together.***

- A. Request of **Ricci Construction Company Inc., (Owner)** and **Green & Company Building & Development Corp., (Applicant)** for property located at **3400 Lafayette Rd** requesting a Wetland Conditional Use Permit under section 10.1017 to construct 50 town homes on an undeveloped lot. The (Applicant) is proposing five areas of wetland impact for a total of 21,350 square feet of permanent impact and three areas of temporary impact for a total of 2,350 square feet. Said property is shown on Assessor Map 297 Lot 11 and lies within the Gateway Neighborhood Mixed Use Corridor (G1) District and the Natural Resource Protection (NRP) District. (LU-21-98)
- B. Request of **Ricci Construction Company Inc., (Owner)** and **Green & Company Building & Development Corp., (Applicant)** for property located at **3400 Lafayette Rd** requesting Conditional Use Permit for a Development Site in accordance with Section 10.5B40 of the Zoning Ordinance and Site Plan Review approval for construction of a 50-unit multi-family residential development that includes community space and related landscaping, drainage, paving, utilities and other site improvements. Said property is shown on Assessor Map 297 Lot 11 and lies within the Gateway Neighborhood Mixed Use Corridor (G1) District and the Natural Resource Protection (NRP) District. (LU-21-98)

Project Description:

This application has been before the Technical Advisory Committee, the Conservation Commission, and the Zoning Board of Adjustment. Please see below for more information on the review from each.

Review of Wetland Conditional Use Permit

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

1. *The land is reasonably suited to the use activity or alteration.* Given this area is intended to be a highly functioning wetland system it is critical that the stormwater treatment does not introduce contaminants. The applicant has stated their willingness to avoid the use of salt to treat the driving areas in this

development. Additionally, the area to the rear of the site shows a sewer line through a prime wetland and prime wetland buffer. This impact is described as temporary. There is no detail on how that construction will take place. More information is needed to understand how these impacts will be only temporary and how the construction will be protective of the existing prime wetland system.

2. *There is no alternative location outside the wetland buffer that is feasible and reasonable for the proposed use, activity or alteration.* The applicant has designed a dense residential development on this site which could have longterm impact to the wetland area adjacent to it. The applicant has stated their willingness to reduce stormwater impacts by not using salt in the snow removal process. More information is needed as to how the impacts through the wetland at the rear of the site is being undertaken. If the sewer line were routed from Lafayette Road in front of the development there would be a substantial reduction in impacts.
3. *There will be no adverse impact on the wetland functional values of the site or surrounding properties.* The applicant has stated they will stipulate that snow removal will not include the use of salt. This needs to be documented in a way that can be enforced in the long term. The applicant has moved the trail closer to the development and has provided a fence to reduce impacts to the wetland buffer in this trail area. In addition they have provided a dog park which will reduce the impact of dog waste in the buffer.
4. *Alteration of the natural vegetative state or managed woodland will occur only to the extent necessary to achieve construction goals.* The area proposed for development is currently being used as a wood processing area therefore a portion of the natural vegetation has been impacted. The introduction of 50 housing units in this area will require removal of all the natural vegetation outside of the buffer and some of the vegetation in the buffer at least as a temporary impact. The applicant does have a fairly robust planting plan to restore the current wetland buffer.
5. *The proposal is the alternative with the least adverse impact to areas and environments under the jurisdiction of this section.* If the sewer line were not routed to the rear of the site that would be a less impacting alternative. Additionally, to reduce impacts to the wetland the removal of snow should be done without the use of sodium chloride.
6. *Any area within the vegetated buffer strip will be returned to a natural state to the extent feasible.* The applicant is proposing an extensive planting plan for the buffer impacts at the front of the site. The only restoration shown on the proposed sewer line to the rear of the site is planting of a New England wetland

seed mix. There should be more thought put into how the direct impact to the prime wetlands will be restored after the sewer is installed through that area.

Conservation Commission Decision:

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

1. The applicant will plant trees and other tall vegetation in the wetland buffer across from units 20-24 at the end of the proposed development to protect the wetland from light spillover.
2. The applicant shall follow NOFA standards for the landscaping on the site.
3. The Condominium docs should include maintenance for the landscaping and plants proposed for the wetland buffer
4. The applicant shall provide signage for the wetland buffer designating its location and requiring all dogs be leashed.
5. The applicant shall provide a three bar split rail fence at the wetland side of the proposed trail behind the buildings in the wetland buffer.
6. The applicant shall have the snow removal company staff attend the Green Snow Pro Trainings.
7. The applicant shall include language in the condominium docs prohibiting the use of salt.
8. Drainage plan TR1 shall be corrected to accurately depict the contributing area for stormwater.

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

Conditional Use Permit Approval for Development Site

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

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

Technical Advisory Committee Review of Conditional Use Permit and Site Plan

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

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

On August 25, 2021 the applicant submitted updated plans addressing items 1, 2, and 4.

For item 6, the applicant has worked closely with the Department of Public Works (DPW) to resolve the issue of infiltration. A letter from DPW will be issued when a solution has been identified.

For item 8, the applicant completed a fire hydrant flow rate test and determined that the project is in need of a booster pump. The applicant's water system designer, Weston & Sampson, has met with DPW and generally agreed on a design. As a formal plan has not been submitted for DPW review, this is identified as a recommended stipulation of approval by Staff.

For item 3, staff feels that more discussion is needed with the Planning Board to determine how the deeded public access (to the proposed open space) should be provided.

Planning Department staff have noted that the applicant is required by the Zoning (Section 10.5B92) to provide an 8' wide pedestrian walkway throughout the lot that connects to adjacent streets, access ways, sidewalks, and off-street parking areas to the entrances of all principal buildings. In reviewing these plans, the applicant has integrated pedestrian walkways and crosswalks throughout the proposed development area to include a greenway trail that is accessible from Lafayette via the proposed pedestrian connections. This section of code presumes a mixed-use site, typically permitted in the Gateway Neighborhood Mixed Use District, where multiple users including residents, shoppers, and pedestrians will bring a sustained level of activity throughout the day to the site. Instead, the proposed use is limited to residential uses which are reasonably supported by the proposed pedestrian walkways, crosswalks, and pathways.

The remaining items have been carried forward as recommended stipulations of approval.

Planning Department Recommendations

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

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

- 1) *Vote to approve the wetland conditional use permit with the following stipulations:*
  - 1.1) *The Condominium documents shall include maintenance for the landscaping and plants proposed for the wetland buffer area and also a requirement that the property owners shall utilize NOFA (Northeast Organic Farming Association) approved practices (or comparable equivalent) for landscaped areas on the site.*
  - 1.2) *The condominium documents shall prohibit the use of salt on paved surfaces.*
- 2) *Vote to find that the application meets the requirements of Section 10.5B43.10 and to grant a conditional use permit for a Development Site subject to the requirements and conditions of site plan review approval.*

**10.5B43.10** *Conditional Use Permit Criteria: Prior to granting a conditional use permit for development sites in the Gateway Neighborhood Mixed Use Districts*

according to the requirements of this Article, the Planning Board shall make the following findings.

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

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

Conditions Precedent

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

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

3.2) Any easement plans and deeds for which the City is a grantor or grantee shall be reviewed and approved by the Planning and Legal Departments prior to acceptance by City Council.

3.3) The applicant shall deposit \$155,000 to the City of Portsmouth prior to approval of the Site Plan Agreement for the purpose of infiltration and inflow removal.

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

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

3.6) The site plan and any easement plans and deeds shall be recorded at the Registry of Deeds by the City or as deemed appropriate by the Planning Department.

3.7) Applicant to provide a design report on the water booster system summarizing water system supply, pressures and operation for potable water, irrigation, and fire suppression to the satisfaction of the Fire Department and Department of Public Works.

Conditions Subsequent:



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

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

#### 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.*

- C. The request of **Monarch Village, LLC (Applicant)**, on behalf of **Neveesha Hospitality, LLC (Owner)**, for property located at **3548 Lafayette Road** requesting Site Plan Review and a Conditional Use Permit as permitted under 10.5B41.10 of the Zoning Ordinance to allow for the demolition of 6 structures; the redevelopment of 6 existing structures to create 6 units in building 8, 15 units in building 2, 5 units in building 4, 2 units in building 5, 9 units in building 7; the construction of 4 new structures to create 12 units in building 3 with a 4,303 square foot footprint, 24 units in building 6 with a 7,048 square foot footprint, a 250 square foot storage structure and an 825 square foot storage structure; creating a total of seventy-five (75) residential units with 123 parking spaces where 113 spaces are required. Said property is shown on Assessor Map 297 Lot 6 and lies within the Gateway Corridor (G1) District. (LU-21-90)

##### Project Description:

This application has been before the Technical Advisory Committee and the Zoning Board of Adjustment. Please see below for more information on the review from each.

##### Zoning Board of Adjustment Review and Decision

At the June 15, 2021 Zoning Board of Adjustment meeting the Board voted to grant the following Variances as presented:

1. A Variance from Section 10.5B53.10 to allow new buildings to be constructed on a lot with existing non-conforming buildings, to be outside of the minimum and maximum front building setback if the 50% front lot line buildout has not been met.
2. A Variance from Section 10.5B22.40 to allow buildings to be constructed outside of the special setback from Lafayette Road which requires a 70' minimum and 90' maximum setback from the centerline of Lafayette Road.

##### Technical Advisory Committee Review of the Site Plan

At the December 7, 2021 Technical Advisory Committee meeting, the committee voted to recommend approval to the Planning Board with the following stipulations:

1. That the applicant use only Sno-pro certified contractors to conduct snow removal on the property.
2. Hydrant location reviewed by DPW.

3. Provide easement or rationale for prescriptive easement to the Legal department for drainage and electrical service coming from the abutting property.
4. Show a note on the site plan that the area proposed for cleanup in the wetland exclude heavy equipment and earth disturbance.
5. Plan showing revised community space areas including design details for an enclosed dog park, playground and/or other active recreation (e.g. half-court basketball or a pickleball courts).
6. Remove 8 parking spaces along the proposed community space adjacent building #7.
7. Update utility plan showing fire service to each building on the site.
8. Provide colored shutoff's for both domestic and fire water supply valves.
9. The sewer laterals for building 6 and 7 are revised so as to not conflict with the water mains.
10. The new sewer is to enter manhole 5158 at least a few inches above the main sewer run.
11. Sewer mains are installed about 1 foot above sewer on a constant grade.
12. Provide a hydraulic Ripley Dam on the proposed sewer main at Station 3+00.
13. A yard drain detail is added to the plan set.
14. The 12' FES from the CPP leaving outlet structure 1 should be at least elev. 49.00.
15. The 4" proposed water will have a tapping saddle and valve.
16. The water shut off heads for the buildings will be permanently painted blue if domestic and red if for fire service.
17. Add a note to plan that building 8 is to provide shot off valves on both the incoming and outgoing mains to facilitate meter changing. 4" backflow device and bypass metering required. Portsmouth DPW to review plans prior to construction.
18. Applicant will hire a 3rd party company to identify areas of groundwater infiltration and create capacity within the sewer system for this project. The City must agree on the targeted areas and the applicant will construct the system to create capacity. The amount of infiltration to be removed must be a value equal or greater to two times the amount of waste predicted from the development.
19. A second fire hydrant will be installed at the beginning of the water main near Lafayette Road.

Applicant has worked with DPW and Planning staff to update plans according to the above stipulations. All outstanding stipulations have been brought forward and are listed as recommended Planning Board Stipulations of approval.

#### Conditional Use Permit Review

The applicant has requested a Conditional Use Permit under section 10.5B32.20 of the [Zoning Ordinance](#) which provides the following:

*Number of Buildings: No more than one principal building type is allowed on a lot except where otherwise specified in Section 10.5B40.*

Section 10.5B40 of the [Zoning Ordinance](#) allows a single development site to provide more than one principal building or building type with the approval of a Conditional Use Permit in the Gateway Neighborhood Mixed Use District.

**10.5B43.10 Conditional Use Permit Criteria:** Prior to granting a conditional use permit for development sites in the Gateway Neighborhood Mixed Use Districts according to the requirements of this Article, the Planning Board shall make the following findings. The applicant has provided the following analysis

1. The development project is consistent with the Portsmouth Master Plan.  
**Applicant Response:** *The project proposes the redevelopment of the site into 75 new housing units, identified as a top priority in the Master Plan. Location of the project site on Lafayette Road at the edge of the City lends itself to more affordable housing than is found in the downtown core. This reinvestment in underutilized buildings and land is in direct conformity with Plan.*
2. The development project has been designed to allow uses that are appropriate for its context and consistent with City's planning goals and objectives for the area.  
**Applicant Response:** *According to the Master Plan, the redevelopment of the gateway areas was overwhelmingly identified by residents as the preferred strategy to increase housing stock. The abutting lots to the north are also currently or proposed for residential uses such as this. Therefore, the project is appropriate for the site and not out of context with the surrounding area.*
3. The project includes measures to mitigate or eliminate anticipated impacts on traffic safety and circulation, demand on municipal services, stormwater runoff, natural resources, and adjacent neighborhood character.  
**Applicant Response:** *Given that the project is the redevelopment of an existing motel and restaurant, the impact to these elements is relatively minimal. However, the design does implement several measures to mitigate its modest impacts. These include a pedestrian-friendly layout with a roadway designed for slow vehicular speeds, payment of a fee to the City to improve sewer services in the area, pre-treatment and infiltration of the entirety of the site runoff, preservation of a buffer to an offsite wetland, and complete rehabilitation of the majority of the site's existing buildings. This redevelopment will be an improvement over the existing condition of the neighborhood.*
4. The project is consistent with the purpose and intent set forth in Section 10.5B11.  
**Applicant Response:** *The site plan includes various amenities including a dog park, patio area, bocce court, open lawn, woodland and a short walking trail that connects to other offsite trails to the west of the site. Bike racks are provided at several locations and the project will construct a multi-use path along its Route 1*

*frontage. These features promote both active and passive recreation. Parking has also been reduced to the absolute minimum required by the zoning ordinance. Desirable studio and one-bedroom units comprise 44% of the unit mix, more than twice the City average. Complemented with a variety of two- and three bedroom units, the plan provides for a range of housing types and is well-suited to the demographic trends of the City.*

**Planning Department Recommendations**

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

**10.5B43.10 Conditional Use Permit Criteria:** *Prior to granting a conditional use permit for development sites in the Gateway Neighborhood Mixed Use Districts according to the requirements of this Article, the Planning Board shall make the following findings.*

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

**Site Plan Approval**

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

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

- 2.1 Remove one additional space from parking area between Building 7 and Building 8 to total 11 spaces and update parking calculations found in note #8.
- 2.2 Include design detail for dog-park subject to review by Planning Staff.
- 2.3 DPW – (Item 18) The applicant shall provide \$22,733 to the City of Portsmouth prior to approval of the Site Review Agreement for the purpose of the infiltration and inflow removal project. The costs will be used for engineering and construction of the Sewer System Rehabilitation Contract 1 project being overseen by the City. This work is anticipated to be complete by October 2023.
- 2.4 Page C4 note 15, polyethylene wrap needs to be soil tight not water tight and is only needed around ductile iron pipe. If the contractor is going to use c900 water pipe, tracing wires must be provided that meet the water department requirements.
- 2.5 DPW (Item 12) Add to the profile near the Ripley Dam that 'the City MUST inspect the dam as it's being installed'. Dam should be moved to station 0+60 now that drainage design has changed.
- 2.6 DPW (2 and 19) Add thrust block at horizontal 90 degree bend at hydrant. Hydrant location is fine with DPW, needs to be approved by Portsmouth Fire.

- 2.7 The site plan and any easement plans and deeds shall be recorded at the Registry of Deeds by the City or as deemed appropriate by the Planning Department.
- 2.8 Any easement plans and deeds for which the City is a grantor or grantee shall be reviewed and approved by the Planning and Legal Departments prior to acceptance by City Council.
- 2.9 The applicant shall prepare a Construction Management and Mitigation Plan (CMMP) for review and approval by the City's Legal and Planning Departments.
- 2.10 The applicant shall agree to pay for the services of an oversight engineer, to be selected by the City, to monitor the construction of improvements within the public rights-of-way and on site
- 2.11 Owner shall provide an access easement to the City for water valve access and leak detection. The easement shall be reviewed and approved by the Planning and Legal Departments prior to acceptance by the City Council.
- 2.12 The Applicant or its engineer shall submit a copy of a completed Land Use Development Tracking Form using the Pollutant Tracking and Accounting Program (PTAP) online portal currently managed by the UNH Stormwater Center or similar form approved by the City.

Conditions Subsequent

- 2.13 The Engineer of Record shall submit a written report (with photographs and engineer stamp) certifying that the stormwater infrastructure was constructed to the approved plans and specifications and will meet the design performance;
- 2.14 A stormwater inspection and maintenance report shall be completed annually and copies shall be submitted to the City's Planning and Public Works Departments.

#### 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.*

***It is recommended that Item IVD and IVE be discussed together and voted on separately.***

***A motion is required to consider these items together.***

- D.** The rehearing request of **Duncan McCallum (Rehearing Applicant)**, for property located at **31 Raynes Avenue, 203 Maplewood Avenue, and 1 Raynes Avenue** for a Conditional Use Permit as permitted by Section 10.1112.62 of the Zoning Ordinance and according to the requirements of Section 10.1112.14 to allow 113 off-street parking spaces including 18 reserved spaces to be provided on-site and 25 spaces to be provided on a separate lot where a total of 138 are required and Site Plan Review approval for the demolition of three existing buildings and construction of the following: 1) a 5-story mixed use building with 66,676 gross floor area and 16,629 sq. ft. building footprint including 7,720 sq. ft. of commercial use on the ground story and 32 residential units on the upper stories; 2) a 5-story 124-room hotel with 65,980 gross floor area and 14,622 sq. ft. of building footprint; 3) 34,427 sq. ft. of community space as well as associated paving, lighting, utilities, landscaping and other site improvements. Said properties are shown on Assessor Map 123 Lot 14, Map 123 Lot 13, Map 123 Lot 12, Map 123 Lot 10 and lie within the Character District 4 (CD4) District, Downtown Overlay District (DOD), Historic District, and the North End Incentive Overlay District. (LU-21-54)
- E.** The rehearing request of **Duncan McCallum (Rehearing Applicant)**, for property located at **31 Raynes Avenue, 203 Maplewood Avenue, and 1 Raynes Avenue** requesting a Wetland Conditional Use Permit under section 10.1017 to construct two buildings 1) a 5 story mixed use commercial and residential building and 2) a five story hotel building with 124 rooms. The project has removed all of the impervious surface from the 25' tidal buffer, proposes 67 square feet of impervious surface in the 25-50' tidal buffer and 21,190 square feet of impervious in the 50-100' tidal buffer. Overall the project is able to demonstrate a reduction of 7,070 square feet of impervious surface in the tidal wetland buffer from the existing condition or a reduction of 10,107 square feet if the reserve parking is not constructed. Said properties are shown on Assessor Map 123 Lot 14, Map 123 Lot 13, Map 123 Lot 12, Map 123 Lot 10 and lie within the Character District 4 (CD4) District, Downtown Overlay District (DOD), Historic District, and the North End Incentive Overlay District. (LU-21-54)

#### **Project History**

This project was originally heard at the December 16, 2021 Planning Board meeting. On January 14, 2022 Attorney Duncan McCallum filed a request for rehearing with the

Planning Department. On January 25, 2022 Attorney Michael Ramsdell, of the applicant's team, filed an objection to the motion for reconsideration. At the January 27, 2022 Planning Board meeting, the Board granted the rehearing request.

**Technical Advisory Committee** (Parking CUP and Site Plan Review)

The applicant met with the TAC committee various times to review the proposed site plan and parking conditions.

Section 10.1112.14 of the Zoning Ordinance found below.

**10.1112.14** *The Planning Board may grant a conditional use permit to allow a building or use to provide less than the minimum number of off-street parking spaces required by Section 10.1112.30, Section 10.1112.61 or Section 10.1115.20, as applicable, or to exceed the maximum number of off-street parking spaces allowed by Section 10.1112.51.*

**10.1112.141** *An application for a conditional use permit under this section shall include a parking demand analysis, which shall be reviewed by the City's Technical Advisory Committee prior to submission to the Planning Board, demonstrating that the proposed number of off-street parking spaces is sufficient for the proposed use.*

**10.1112.142** *An application for a conditional use permit under this section shall identify permanent evidence-based measures to reduce parking demand, including but not limited to provision of rideshare/microtransit services or bikeshare station(s) servicing the property, proximity to public transit, car/van-pool incentives, alternative transit subsidies, provisions for teleworking, and shared parking on a separate lot subject to the requirements of 10.1112.62.*

**10.1112.143** *The Planning Board may grant a conditional use permit only if it finds that the number of off-street parking spaces required or allowed by the permit will be adequate and appropriate for the proposed use of the property. In making this determination, the Board may accept, modify or reject the findings of the applicant's parking demand analysis.*

**10.1112.144** *At its discretion, the Planning Board may require more off-street parking spaces than the minimum number requested by the applicant, or may allow fewer spaces than the maximum number requested by the applicant.*

According to the reports and third party reviews performed on the available parking and predicted traffic patterns the TAC members accepted the proposed conditions as adequate for a Conditional Use Permit.

**TAC Recommendation to the Planning Board:**



The committee voted to recommend approval to the Planning Board with the following stipulations:

- 1) The Community space plan is to include all the public space types.
- 2) Dock, kayak launch, and pier are included as public spaces
- 3) Parking spaces are reduced to 138 with specific space reduction on Maplewood Ave.
- 4) Lights will include full cut off feature with a shield to prevent light pollution across the water.
- 5) Mountable curb is included on pedestrian walkway between proposed hotel and 3S Art Space.
- 6) Grease traps will be designed to meet code requirements.
- 7) Sewer connection permit will be obtained from DES.
- 8) Applicant and City will enter into a Community Space Agreement.
- 9) Fertilizing within the buffer zone will follow city guidance.
- 10) Third party inspection services are required during construction.
- 11) Square footage will be added to the public space plan, matrix and exhibits.
- 12) Wide pedestrian sidewalks and alleyways, including seating, are to be included as Community Space.
- 13) Exposed parking shall be screened from view.
- 14) Proposed greenway trail along the abutting property is shown on the site and landscape plan.

The application as submitted to the Planning Board has resolved stipulations 1-5, 11, 12, and 14. The remaining stipulations have been included as conditions of approval in the staff recommendation below.

Conservation Commission (Wetland Conditional Use Permit review and recommendation)

This item was heard at the Conservation Commission meeting on **Wednesday June 16, 2021**. According to *Article 10 Section 10.1017.50* the applicant must satisfy the following conditions for approval of this project:

1. *The land is reasonably suited to the use activity or alteration.* This project is located in an area along the North Mill Pond that is currently private and not open to the public. The current property is being improved to include a bicycle and pedestrian trail made of porous pavement and a new landscaping plan which enhances what is there today and provides public access along the water consistent with the North Mill Pond Greenway plan. The overall project

reduces the amount of impervious surface. For these reasons the land is reasonably suited to the proposed alterations.

2. *There is no alternative location outside the wetland buffer that is feasible and reasonable for the proposed use, activity or alteration.* The location of the property is primarily within the 100' wetland buffer. The applicant has removed the majority of the impacts from the first fifty feet of the wetland buffer. Given the small amount of developable area outside of the wetland buffer there is no alternative location that is reasonable for a project in this area.
3. *There will be no adverse impact on the wetland functional values of the site or surrounding properties.* The proposed development is significantly further from the edge of wetland and there is a reduction in impervious surface with this proposal. The proposal also seeks to improve the treatment of stormwater on the site with a treatment and detention system. The pedestrian trail that is proposed is planned for porous pavement. This project provides community space that will allow people to walk along the pond on a safe accessible trail and proposed a landscape plan which is an improvement over the existing pavement and small area of vegetation currently in the buffer.
4. *Alteration of the natural vegetative state or managed woodland will occur only to the extent necessary to achieve construction goals.* The proposed project has plans to remove a good deal of building and impervious surface from the buffer. The plans include a landscape plan which will provide adjacent wetland habitat and an amenity to the public using the greenway trail.
5. *The proposal is the alternative with the least adverse impact to areas and environments under the jurisdiction of this section.* This application propose to provide enhancements to the tidal buffer zone over what exists today. The project will provide enhanced landscaping over what exists today and will provide public access this portion of the North Mill pond where none exists today. Given these improvements and the reduction of impervious surface and treatment of stormwater on the site staff believes this project has worked to provide an application which reduces the overall impacts.
6. *Any area within the vegetated buffer strip will be returned to a natural state to the extent feasible.* The applicant provided a landscape plan which includes plantings around the proposed building and within the 100' tidal wetland buffer. The use of native plantings within the 100 foot buffer and removal of invasive species on this site will provide a benefit over the vegetation in buffer which exists today.

A motion was made to recommend approval of the conditional use request to the Planning Board with the following stipulations:

- 1) Relating to the porous asphalt maintenance requirements, monitor periodically to ensure the pavement surface drains effectively after storms, and if not look into replacing the porous pavement.
- 2) The clause 'no salt and de-icing material shall be used in the 100-ft buffer' shall be added to the Operations and Maintenance Plan, probably in Section 1.7.
- 3) Add instructions for the two-plus year time span on eliminating mulching and maintenance to allow for natural growth and esthetics on some of the planted islands.
- 4) Add frequency of inspection of the jellyfish.
- 5) Store salt indoors.

- 6) Add the clause 'sweeping of de-icing material after storm events' to the general sweeping section in the Operations and Maintenance Plan.
- 7) Restore the pier to something vegetative and porous and investigate it in that stage.

The Commission's vote to approve failed 3-3.

At the July 14, 2021 Conservation Commission meeting the applicant submitted a letter requesting reconsideration and re-vote of the recommendation. The Commission voted to reconsider the application. The vote to reconsider failed 1-5 (with one abstention). Therefore, the application was not reconsidered.

### Project Update

Since the Conservation Commission reviewed the project there has been a further reduction of buffer impacts of 3,270 square feet to the wetland buffer area.

### Staff Recommendation:

**This matter will not be heard per court order.**

- ~~1) Board members should evaluate if the new plan meets the standards and criteria for a Wetland Conditional Use Permit.~~
- ~~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.~~
- ~~3) Vote to grant Site Plan Approval with the following stipulations:~~

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

- ~~3.1 The site plan and any easement plans and deeds shall be recorded at the Registry of Deeds by the City or as deemed appropriate by the Planning Department.~~
- ~~3.2 The applicant shall record a notice of voluntary lot merger.~~
- ~~3.3 Any easement plans and deeds for which the City is a grantor or grantee shall be reviewed and approved by the Planning and Legal Departments prior to acceptance by City Council.~~
- ~~3.4 The applicant shall prepare a Construction Management and Mitigation Plan (CMMP) for review and approval by the City's Legal and Planning Departments.~~
- ~~3.5 The applicant shall agree to pay for the services of an oversight engineer, to be selected by the City, to monitor the construction of improvements within the public rights of way and on site~~

- ~~3.6 — Owner shall provide an access easement to the City for water valve access and leak detection. The easement shall be reviewed and approved by the Planning and Legal Departments prior to acceptance by the City Council.~~
- ~~3.7 — The Applicant or its engineer shall submit a copy of a completed Land Use Development Tracking Form using the Pollutant Tracking and Accounting Program (PTAP) online portal currently managed by the UNH Stormwater Center or similar form approved by the City.~~
- ~~3.8 — Grease traps will be designed to meet code requirements.~~
- ~~3.9 — Sewer connection permit will be obtained from DES.~~
- ~~3.10 — Applicant and City will enter into a Community Space Agreement.~~
- ~~3.11 — Fertilizing within the buffer zone will follow City guidance.~~
- ~~3.12 — Exposed parking shall be screened from view.~~
- Conditions Subsequent:
- ~~3.13 — The Engineer of Record shall submit a written report (with photographs and engineer stamp) certifying that the stormwater infrastructure was constructed to the approved plans and specifications and will meet the design performance;~~
- ~~3.14 — A stormwater inspection and maintenance report shall be completed annually and copies shall be submitted to the City's Planning and Public Works Departments.~~

**V. PUBLIC HEARINGS – 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.*

***It is recommended that Item IVF and IVG be discussed together and voted on separately.***  
***A motion is required to consider these items together.***

- F. REQUEST TO POSTPONE** The request of **Cate Street Development (Owner)**, for property located at **406 US Route 1 Bypass**, requesting amended Site Plan Review approval to reconfigure and expand parking on Tax Map 172 Lot 2, Tax Map 172 Lot 1, and Tax Map 165 Lot 2 to contain 73 new spaces (52 covered); to renovate the existing structure on Tax Map 172 Lot 2; and to add a bioretention stormwater facilities, stormwater collection and treatment facilities on Tax Map 172 Lot 1 and Map 165 Lot 2. Said properties are shown on Assessor Map 172 Lot 1, Map 172 Lot 2, and Map 165 Lot 2 and lie within the Gateway Corridor (G1) District. (LU-22-7) **REQUEST TO POSTPONE**
- G. REQUEST TO POSTPONE** The request of **Cate Street Development LLC (Owner)**, and **Boston and Maine Corp (Owner)**, for properties located at **428 US Route 1 Bypass**, **406 US Route 1 Bypass**, and 55 Cate St requesting Preliminary and Final Subdivision approval (Lot Line Revision) to convey 31,187 square feet from Map 165 Lot 14 to Map 172 Lot 2, Map 172 Lot 1 and Map 165 Lot 2 which will result in a total of 52,820 square feet lot area for Map 172 Lot 2, 126,500 square feet lot area for Map 172 Lot 1, and 260,789 square feet lot area for Map 165 Lot 2. Said properties are shown on Assessor Map 172 Lot 1, Map 172 Lot 2, Map 165 Lot 2, and Map 165 Lot 14 and lie within the Transportation Corridor (TC) and the Gateway Corridor (G1) District. (LU-22-7) **REQUEST TO POSTPONE**

## VII. DESIGN REVIEW – PUBLIC HEARING

- A. The request of **Port Harbor Land LLC, (Owner)** for the property located at **2 Russell Street and along Russell Street and Deer Street** requesting Design Review for a mixed use project consisting of office, retail/commercial, and residential uses in one 4-story and two 5-story buildings. The site is located between, Russell Street, Deer Street, Maplewood Avenue and the Railroad Corridor. Said properties are located on Assessor Map 124 Lot 12, Assessor Map 118 Lot 28, Assessor Map 119 Lot 4, and Assessor Map 125 Lot 21 and lie within the Character District 5 (CD-5). (LUPD-22-1)

### Description

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

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

The process as outlined in Section 2.4.3 of the Site Review regulations is that the Board first has to determine that the request for design review includes sufficient information to allow the Board to understand the project and identify potential issues and concerns, and, if so, vote to accept the request and schedule a public hearing. *Completion of the design review process also has the effect of vesting the project to the current zoning for 1 year.*

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

In accordance with Section 2.4.3 (1-4) of the Site Review regulations, on the January 27, 2022 meeting of the Planning Board, the Planning Board voted to accept the request for design review and to schedule a public hearing, finding that the proposal included sufficient information to allow the Board to understand the project and identify potential issues and concerns. Once the application has been accepted by the Planning Board, the following sections are applicable.

*Site Plan Review Regulations – Article 2, Section 2.4.3: Design Review Phase*

...

*5. Design review discussions shall take place in a public hearing at a regularly scheduled meeting of the Planning Board, after notice to abutters, holders of conservation, preservation, or agricultural preservation restrictions, and the general public as required by State statute.*

*6. At any public meeting of the Planning Board, the Board may determine that the design review process of an application has ended and shall inform the applicant in writing within 10 days of such determination.*

Staff Recommendation:

Vote to find that the Design Review process is complete.

## VI. PRELIMINARY CONCEPTUAL CONSULTATION

- A. The request of **Julia R. Tiebout Revocable Trust (Owner)**, for the property located at **405 South Street** requesting Preliminary Conceptual Consultation for the subdivision of the existing parcel of 0.52 acres (22,750 square feet) into two lots. Said property is shown on Assessor Map 111 Lot 18 and is located in the General Residence A (GRA) District.

### Description

The applicant has provided a set of preliminary plans for discussion with the Board.

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

Preliminary conceptual consultation is described in the state statute as follows:

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

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

<u>Staff Suggestions:</u>
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- Board members should review section 3.A.2 Preliminary Conceptual Consultation Phase of the [Subdivision Regulations](#).
- Board members should review sections of the [Zoning Ordinance](#) that may apply to this application. Possible sections may include but are not limited to:

- Section 10.521 Table of Dimensional Standards

**VI. PRELIMINARY CONCEPTUAL CONSULTATION**

- B.** The request of **230 Commerce Way LLC**, for the property located at **230 Commerce Way** requesting Preliminary Conceptual Consultation for the construction of a new 2-story structure with 12,000 square feet of office space and veterinary clinic. Said property is shown on Assessor Map 216 Lot 1-5 and located within the Office Research (OR) District.

Description

The applicant has provided a set of preliminary plans for discussion with the Board.

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

Preliminary conceptual consultation is described in the state statute as follows:

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

Staff Suggestions:

- Board members should review section 2.4.2 Preliminary Conceptual Consultation Phase of the [Site Plan Regulations](#).
- Board members should review sections of the [Zoning Ordinance](#) that may apply to this application. Possible sections may include but are not limited to:

- Section 10.440 Table of Uses for SRA district
- Section 10.1010 Wetlands Protection

## VIII. PUBLIC HEARING - CITY COUNCIL REFERRALS

- A. Application of **Randi Collins (Owner)**, for the restoration of involuntarily merged lots at **77 Meredith Way** to their pre-merger status pursuant to NH RSA 674:39-aa. Said property is shown on Assessor Map 162 Lot 16 and lies within the General Residence A (GRA) district. (RIML-21-5)

### Description

At its meeting on November 15, 2021, the City Council considered a request from R. Timothy Phoenix and Monica F. Keiser, on behalf of their client property owners Jeff and Rand Collins, requesting the restoration of involuntarily merged lots at 77 Meredith Way Map 162 Lot 16 to their pre-merger status pursuant to NH RSA 674:39-aa. The Council voted to refer to the Planning Board and Assessor for report back.

### Statutory Requirements for Unmerger of Involuntarily Merged Lots

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

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

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

lot(s) would have to apply to the Zoning Board of Adjustment for the necessary variances to restore zoning compliance or to allow future development.

Assessing Department Review

The City Assessor has reviewed this application and provided a report on her findings. Her review indicates that this request does not meet the requirements set forth in NH [RSA 674:39-aa](#).

Planning Department Recommendation

The Planning Board should determine if the application meets the requirements set forth in NH RSA 674:39-aa and make a recommendation to the City Council.

**IX. OTHER BUSINESS**

- A. Request of **238 Deer Street LLC (Owner)**, for the property located at **238 Deer Street** for a 1-year extension of the Conditional Use Permit approval granted on February 18, 2021. (LU-20-238)

Description

This application received Planning Board approval on February 18, 2021. The approval expires one-year from the date granted. The Planning Board may, for good cause shown, extend such period by as much as 1-year if requested and acted upon prior to the expiration date. The original letter of decision and approved site plan are included in the packet for reference.

Please see Section 2.14 of the [Site Plan Review Regulations](#) to reference application approval, expiration and extension steps.

Planning Department Recommendation

*Vote to grant a 1-year extension of the Conditional Use Permit.*

## IX. OTHER BUSINESS

- B. Request of **Robert Gigliotti (Owner)**, for the property located at **292 Lang Road** for a 1-Year extension of the Wetland Conditional Use Permit approval granted on February 18, 2021. (LU-20-215)

### Description

This application received Planning Board approval on February 18, 2021. The approval expires one-year from the date granted. The Planning Board may, for good cause shown, extend such period by as much as 1-year if requested and acted upon prior to the expiration date. The original letter of decision and approved site plan are included in the packet for reference.

Please see Section 2.14 of the [Site Plan Review Regulations](#) to reference application approval, expiration and extension steps.

### Planning Department Recommendation

*Vote to grant a 1-year extension of the Conditional Use Permit.*

**X. ADJOURNMENT**