



City of Portsmouth  
Planning Department  
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Portsmouth, NH  
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## Memorandum

To: Planning Board  
From: Beverly Mesa-Zendt, Incoming Planning Director  
Stefanie L. Casella, Planner  
Date: April 14, 2022  
Re: Recommendations for the April 21, 2022 Planning Board Meeting

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### I. APPROVAL OF MINUTES

#### Planning Department Recommendation

*Board members should determine if the draft minutes include all relevant details for the decision making process that occurred at the March 17, 2022 meeting, and vote to approve meeting minutes with edits if needed.*

*\*Please note that minutes for the Special Meeting on March 30, 2022 will be provided and available for approval at the May Planning Board Meeting\**

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## II. PUBLIC HEARINGS -- OLD BUSINESS

*The Board's action in these matters has been deemed to be quasi-judicial in nature.*

*If any person believes any member of the Board has a conflict of interest,  
that issue should be raised at this point or it will be deemed waived.*

- A. **REQUEST TO POSTPONE** The request of **Donald Lowell Stickney III (Owner)**, for property located at **213 Jones Avenue** requesting Conditional Use Permit under section 10.814 of the Zoning Ordinance and modification of the standards set forth in Sections 10.814.40 or 10.814.52 through 10.814.56, to construct a new single family residence and convert the existing residence into a Detached Accessory Dwelling Unit totaling 886 square feet of living area. Said property is shown on Assessor Map 222 Lot 69 and lies within the Single Residence B (SRB) district. (LU-22-34) **REQUEST TO POSTPONE**

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### Planning Department Recommendation

- 1) *Vote to postpone consideration to the May Planning Board Meeting*

**II. PUBLIC HEARINGS – OLD BUSINESS**

*The Board’s action in these matters has been deemed to be quasi-judicial in nature.*

*If any person believes any member of the Board has a conflict of interest, that issue should be raised at this point or it will be deemed waived.*

- B.** The request of **Nerbonne Family Revocable Trust (Owner)**, for property located at **189 Gates Street** requesting a Conditional Use Permit under section 10.815 of the Zoning Ordinance and modification of the standards set forth in Section 10.815.30 for the conversion of an existing accessory structure (garage) into a garden cottage with 507 gross square footage of living space. Said property is shown on Assessor Map 103 Lot 6 and lies within the General Residence B (GRB) and Historic Districts. (LU-22-30)

**Project Review, Decisions, and Recommendations**

This application went before the Zoning Board of Adjustment on March 15, 2022. Please see below for more information. The project will go before the Historic District Commission on May 4, 2022.

**Staff Review | Garden Cottage Standards 10.815.30**

Different from an Accessory Dwelling Unit, a Garden Cottage that complies with the standards of Section 10.815 is otherwise exempt from the residential density standards of the Zoning Ordinance (e.g. minimum lot area per dwelling unit). Garden Cottages comply the standards in Section 10.815.30 (below). In granting a conditional use permit for a garden cottage, the Planning Board may modify a specific dimensional or parking standard set forth in Section 10.815.30 consistent with the required findings in Section 10.815.40.

**Staff Review and Analysis**

<b>Required Standards (10.815.30)</b>	<b>Meets Standard</b>	<b>Does Not Meet Standard</b>	<b>Comments</b>
10.815.31. The existing accessory building shall not be expanded either vertically or horizontally, other than through the addition of a front entry not to exceed 50 sq. ft., or a side or rear deck not to exceed 300 sq. ft.		√	Modification Requested (see below) 192 SF proposed
10.815.32 The garden cottage shall not be larger than 600 sq. ft. gross floor area.	√		Total 507 SF
10.815.33 A garden cottage that is within the required yard for the zoning district shall not have any windows or doors higher than eight feet above grade facing the adjacent property.	√		The right side elevation that encroaches the required setback will have no windows or doors.

Required Standards (10.815.30)	Meets Standard	Does Not Meet Standard	Comments
T10.815.34. The principal dwelling unit and the garden cottage shall not be separated in ownership (including by condominium ownership); and either the principal dwelling unit or the garden cottage shall be occupied by the owner of the property.	√		Required condition per zoning ordinance.
Where municipal sewer service is not provided, the septic system shall meet NH Water Supply and Pollution Control Division requirements for the combined system demand for total occupancy of the premises.	√		Property is on municipal water service.

Request for Modifications:

The applicant requests following modification to 10.815.31 pursuant to Section 10.815.50 of the Zoning Ordinance as follows:

The applicant is proposing a 192 SF addition where 50 SF is allowed.

Staff Analysis

Staff recommends approval of the modification for the following reasons:

1. The total 192 SF expansion seems reasonable to create a livable space for a new dwelling unit and combined with the existing area meets the total limitation of 600 SF established in the ordinance at 507 SF.
2. The total expansion does not exceed the 350 SF expansion footprint contemplated in the ordinance.
3. Adequate space for off-street parking is still available on site.

Zoning Board of Adjustment (BOA)

At its March 15<sup>th</sup> BOA meeting, the Board considered the following variance requests:

1. Variances from Section 10.521 to allow a) 35.5% building coverage where 30% is the maximum allowed; and
2. 1' right side yard where 10' is the minimum.

The Board voted to grant the request approving the revised plan without the deck with a 4' right side yard and 31% building coverage.

The plans as submitted to the Planning Board have incorporated the above revisions.

Note: A request for rehearing was received on April 14, 2022. This item will go before the BOA on May 17, 2022.

Planning Board Review Criteria

In order to grant a conditional use permit for a Garden Cottage, the Planning Board must first make the following findings (Sec. 10.815.40):

Required Findings (10.815.40).	Applicant Analysis
1. Exterior design of the Garden Cottage is consistent with the existing single-family dwelling on the lot.	<i>Exterior siding, trim, windows and details are consistent with the existing dwelling. The garage was renovated in 1998 to complement the newly renovated house. The elevation drawings and photos on dwg. 3 of 3 clearly show this.</i>
2. The site plan provides adequate open space, landscaping and off-street parking for both the Garden Cottage and the primary dwelling.	<i>The garden cottage with the addition and deck is located to have minimal impact on the existing +/- 1 B00sf landscaped rear yard. This is shown on dwg. 1 of 3. The existing driveway will not change &amp; can easily accommodate 3 vehicles.</i>
3. The Garden Cottage will maintain a compatible relationship to adjacent properties in terms of location and design, and will not significantly reduce the privacy of adjacent properties.	<i>The garden cottage will have no windows on the right side and the deck will have just 6' of exposure to that right side. At the rear, the adjacent property is the Point of Graves Cemetery and the proposed addition to the garden cottage will break up the existing blank wall at the rear of the garage. At the left side the garden cottage is more than 30ft away from the adjacent property. All of the attached drawings&amp; photos help to illustrate this.</i>
4. The Garden Cottage will not result in excessive noise, traffic or parking congestion.	<i>There is adequate parking for the garden cottage (dwg. 1 of 3) and the family oriented residential use will not result in excessive noise.</i>

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**Planning Department Recommendations**

- 1) *Vote to grant a modification to the requirements set forth in section 10.815.31 to allow for an expansion that includes a 192 SF addition.*
  - 2) *Vote to find that the application meets the requirements set forth in Section 10.815.40 of the Zoning Ordinance and to grant the Conditional Use Permit with the following stipulation.*
    - *Any change, required as part of the Historic District Commission review and approval, that results in a change to the stipulations approved here or any change that is not substantially compliant with the approved Conditional Use Permit, as determined by the Planning Director, shall be resubmitted to the Planning Board for review and approval.*
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### III. PUBLIC HEARINGS – NEW BUSINESS

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

- A. The request of **Society for the Protection of NH Forests (Owner)**, for the property located at **400 Little Harbor Road** requesting a Wetland Conditional Use Permit under Section 10.1017 of the Zoning Ordinance for the installation of new public bathrooms resulting in 303 S.F. of permanent impacts for the building and 275 S.F. of temporary impact to the 100 ft wetland buffer area. Said property is located on Assessor Map 203 Lot 8 and lies within the Rural (R) District. (LU-22-31)

#### Project Review, Decisions, and Recommendations

This application has been before the Conservation Commission. Please see below for more information. The Planning Director has waived review by the Technical Advisory Committee for the following reasons.

1. The Public Works Department was satisfied with the existing drainage plan.
2. The applicant certified that the site had sufficient septic capacity for the proposed use.

#### Conservation Commission

The Conservation Commission reviewed the application at the March 9, 2022 meeting. See below for 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.*

The proposed project is to construct a new exterior bathroom facility for users of the site. The new building is proposed partially within the wetland buffer with 303 square feet of permanent impacts for the building and 275 square feet of temporary impact for the work around the building. The location is previously disturbed and the new building is on the far side of the existing building with only a portion in the buffer. Therefore, this appears to be a reasonable location for this structure.

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

According to the applicant this is the most appropriate location for the new structure due to on-site ledge and longer runs of utility lines.

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

The proposed structure will result in a new building in the buffer where there is currently gravel adjacent to a parking lot. Given the structure is proposed with a stone drip edge the impact from the new structure (if adequate erosion protections are provided) should be less than or equal to the existing condition.

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

The new construction on the site is proposed in a previously disturbed area with just lawn and gravel. There is no impact to the natural vegetation or managed woodland proposed with this project.

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

The proposed building will not create new impacts for the wetland as designed.

*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 the disturbed area by replacing the lawn. Staff recommends the applicant consider the addition of plantings inside the property line in the area closest to the wetland to

enhance wetland buffer habitat and provide additional water filtration for stormwater runoff from the lawn area.

The Commission voted unanimously to recommend approval of the Wetland Conditional Use Permit to the Planning Board with the following stipulations:

1. Plant blueberry bushes or other native shrubs along the buffer area near the wetland edge.
  2. Maintain property according to NOFA standards.
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**Planning Department Recommendations**

- 1) *Vote to find that the application satisfies the criteria set forth in Section 10.1017.50 of the Zoning Ordinance*
- 2) *Vote to grant the Wetland Conditional Use permit with the following stipulations:*
  - a. *Blueberry bushes or other native shrubs are planted along the buffer area near the wetland edge.*
  - b. *Property is maintained according to NOFA standards.*

### III. PUBLIC HEARINGS – NEW BUSINESS

*The Board's action in these matters has been deemed to be quasi-judicial in nature.*

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- B.** Request of **ADL 325 Little Harbor Road Trust (Owner)**, for property located at **325 Little Harbor Road** requesting Wetland Conditional Use Permit under Section 10.1017 of the Zoning Ordinance to replace the existing single family structure, carriage house, shed, barn, and paddock; construct a garage, pool, pool cabana playground; and renovate the existing barn and shed with all associated electric, gas, water, and sewer updates as required on private property and within the public right of way resulting in 195,656 S.F. of impact in the tidal buffer area and 17, 189 S.F. of temporary impact to in the tidal wetland area. Said property is shown on Assessor Map 205 Lot 2 and is located within the Rural (R) and Single Residence A (SRA) Districts. (LU-22-23)

#### **Project History**

The Planning Board, at its regularly scheduled meeting of Thursday, January 27, 2022, approved a Conditional Use Permit for the conversion of an existing accessory structure (formerly caretaker's home) into a Detached Accessory Dwelling Unit with a gross floor area of 1,300 square feet of gross floor area with the following stipulations:

1. The applicant can demonstrate the availability of sewer or approved onsite septic or septic holding tank approved by NHDES prior to Building Permit issuance.
2. The applicant will add a note on the plans and record an affidavit at the registry that states this DADU will be the only accessory dwelling unit on the property.

#### **Project Review, Decisions, and Recommendations**

This application has been before the Technical Advisory Committee and the Conservation Commission. Please see below for more information.

#### **Technical Advisory Committee**

Although this project did not meet the thresholds under which Site Plan review would be required per Section 1.2 of the Site Plan Review Regulations, the Planning Director asked that this project be reviewed by the Technical Advisory Committee to discuss proposed infrastructure work in the public right-of-way, and fire service.

At their meeting April 8 2022, the Technical Advisory Committee approved the project with the following stipulations:

#### **Item to be addressed before Planning Board submittal:**

1. Sewer force main has more than one high point. Should be designed and stamped by design engineer. Plan to accommodate high points and air relief.

#### **Items to be addressed before construction:**

1. Confirm high points in force main does not require air release valve for air entrapment.

The above conditions have been satisfied in the updated submission provided to the Board.

#### **Conservation Commission**



The Conservation Commission reviewed the application at the March 9, 2022 meeting. See below for 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.*

The proposed project reviewed in November of 2021 was approved by the Conservation Commission. The proposed changes to the project include work in the 100' tidal buffer zone to repair the bridge. This request is reasonable as it is necessary to safely access the island.

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

With regard to the new impacts not yet reviewed in this application this is the only way to access the island, therefore, this location is reasonable.

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

The bulk of the impacts not yet reviewed by the Conservation Commission are located on an island. There is work proposed in the access road to the island and in Little Harbor Road. Those impacts are under the existing roadbed or shoulder and should not cause new impacts if erosion control measures are installed and monitored during project construction.

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

In addition to the impacts for the pool and home construction there are a great deal of impacts which serve to enhance the tidal buffer zone and upland areas on the island. The applicant is working with a detailed land management plan to control invasive species and provide an extensive planting plan which should result in a net enhancement to the vegetative state and managed woodland on the property.

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

The Conservation Commission previously approved the extensive work to construct the house, caretaker house, swimming pool and associated pool house in addition to the extensive landscaping work. While there is a great deal of disturbance for the overall project, the reduction in invasive species and planned enhancement to the natural and landscaped areas and overall reduction of impervious surfaces result in a reduction of impacts.

*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 and extensive invasive species removal and buffer enhancement planting plan.

The Commission voted 4 in favor and 3 opposed to recommend approval of the Wetland Conditional Use Permit to the Planning Board.

Some of the concerns were the amount of impact from the house and a better location could be found with less buffer impact. Those voting for mentioned all of the beneficial landscaping components, the net reduction of impervious surfaces and removal of the septic system from the buffer.

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**Planning Department Recommendations**

- 1) *Vote to find that the application satisfies the criteria set forth in Section 10.1017.50 of the Zoning Ordinance*
- 2) *Vote to grant the Wetland Conditional Use Permit as presented.*

### III. PUBLIC HEARINGS – NEW BUSINESS

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- C. Request **Sharolyn McDermith (Owner)**, for property located at **1054 Banfield Road** requesting Wetland Conditional Use Permit under Section 10.1017 of the Zoning Ordinance to increase the amount of building in the buffer by 270 S.F. for the breezeway and 72 S.F. for the garage for a total building in size increase of 342 S.F. Said property is located on Assessor Map 283 Lot 38 and lies within the Single Residence A (SRA) District. (LU-22-5)

#### **Project Review, Decisions, and Recommendations**

This application has been before the Conservation Commission. Please see below for more information.

#### **Conservation Commission**

The Conservation Commission reviewed the application at the February 9, 2022 meeting. See below for 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.*

The proposed project is to expand the size of the breezeway and garage. The proposed plan will increase the amount of building in the buffer by 270 square feet for the breezeway and 72 square feet for the garage for a total building in size increase of 342 square feet. While this is all new work in the buffer the proposal is to remove the asphalt for the area of work so there will be a reduction in paved surface by the same amount or 342 square feet. The balance, if constructed properly, will amount to a small net improvement where pavement which currently accommodates automobiles will be replaced by roof surface.

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

Almost the entire property is within the 100' wetland buffer therefore there is no location outside of the buffer that is feasible for this work.

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

This project does not show an erosion control plan or how the construction will be accomplished. If the applicant installs adequate erosion control measures the site should not be impacted by this project.

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

The new construction on the site is proposed completely in a developed area. There is no impact to the natural vegetation or managed woodland proposed with this project.

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

The construction portion of the project could be seen as a net benefit given the impervious is going from driveway or asphalt pavement to roof surface.

*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 a significant area of the buffer by replacing lawn with shrubs. This area is at the edge of the wetland and could provide habitat and potential water filtration for stormwater runoff from the lawn area.

The Commission voted unanimously to recommend approval of the Wetland Conditional Use Permit to the Planning Board with the following stipulations:

1. The applicant will add new plantings along the fence closest to the wetland in addition to those shown at the front of the property.
  2. The applicant will install appropriate erosion control measures during construction.
  3. The applicant will follow NOFA standards for lawn care in the wetland buffer
  4. The applicant will provide a planting plan showing the spacing, type and location of the new plantings.
  5. The applicant will show the location of the drywell on the plans.
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**Planning Department Recommendations**

- 1) *Vote to find that the application satisfies the criteria set forth in Section 10.1017.50 of the Zoning Ordinance*
- 2) *Vote to grant the Wetland Conditional Use permit with the following stipulations:*
  - a) *The applicant will add new plantings along the fence closest to the wetland in addition to those shown at the front of the property.*
  - b) *The applicant will install appropriate erosion control measures during construction.*
  - c) *The applicant will follow NOFA standards for lawn care in the wetland buffer*
  - d) *The applicant will provide a planting plan showing the spacing, type and location of the new plantings for review by Staff.*
  - e) *The applicant will show the location of the drywell on the plans for review by Staff.*

**III. PUBLIC HEARINGS – NEW BUSINESS**

*The Board’s action in these matters has been deemed to be quasi-judicial in nature.*

*If any person believes any member of the Board has a conflict of interest, that issue should be raised at this point or it will be deemed waived.*

- D. The request of **Charles Dudas (Owner)**, for property located at **32 Monteith Street** requesting a Conditional Use Permit under Section 10.814 of the Zoning Ordinance for the construction of an Attached Accessory Dwelling Unit totaling 576 S.F. in gross floor area. Said property is located on Assessor Map 143 Lot 22 and lies within the General Residence A (GRA) district. (LU-22-44)

**Project History**

32 Monteith is a 30,644 SF lot with a single family home. This property requested a Wetland Conditional Use Permit by Planning Board on June 18, 2020 for the removal of an existing garage and the construction of new garage, addition, and deck. This approval was granted a 1-year extension on June 17, 2021.

Applicant has revised plans to add an ADU above the proposed garage and expanded footprint outside of the wetland buffer area. This expansion will require relief from the Zoning Ordinance for side yard encroachment.

**Project Review, Decisions, and Recommendations**

The application will be before the Board of Adjustment on April 19, 2022. More information is provided below.

**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.	√		The second floor of the ADU would be accessed by an interior stairwell that connects the garage to the existing house.

Required Standards (10.814.40)	Meets Standard	Does Not Meet Standard	Comments
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 proposed accessory structure provides one bedroom and is 576 SF.
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 principal entrance is clearly identifiable. The AADU entrance is located as a side entrance.
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.	√		Proposed garage is set back 26 ft. from principal façade.
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.	√		Substantial compliance achieved when the garage wall is counted towards the total visible façade of the building.
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 accessory unit is a proposed 576 SF addition and part of a larger renovation project.
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.	√		New garage with accessory unit does not exceed the height of the existing principal structure.
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 proposed addition is harmonious with the principal structure in materials and is not readily discernable from the principal dwelling.

Staff Analysis

Staff recommends approval of the modification for the following reasons:

1. The total 576 SF expansion for the AADU seems reasonable to create a livable space for a new dwelling unit and does not exceed the total limitation of 750 SF established in the ordinance.
2. Adequate space for off-street parking is still available on site.
3. The proposed AADU, as presented is compatible with the principal dwelling in design and materials.

Board of Adjustment

An application for the following will be before the Board of Adjustment at their meeting scheduled for April 19, 2022.

1. Variance to the Portsmouth Zoning Ordinance 10.521: Dimensional Standards 10' Minimum Side Yard Dimension to allow for a 8' side yard setback.

Staff will provide an update on the application before the Board of Adjustment at the Planning Board meeting on April 21, 2022.

Planning Board Review Criteria

Before granting a conditional use permit for an attached or detached ADU, the Planning Board shall make the following findings (10.814.60):

<b>Required Findings (10.814.60)</b>	<b>Applicant Analysis</b>
10.814.61 Exterior design of the ADU is consistent with the existing principal dwelling on the lot.	<i>The ADU will be architecturally consistent with principal dwelling unit.</i>
10.814.62 The site plan provides adequate and appropriate open space, landscaping and off-street parking for both the ADU and the primary dwelling.	<i>Response: The site plan shows the garage/ADU structure with open space around it particularly to the south and east to the back yard. The location of the garage/ADU structure allows for landscaping around all non-driveway sides of it. The site plan shows a driveway large enough for 4 cars and includes a 2-car garage for a total of 6 off-street parking for both the ADU and primary dwelling.</i>
10.814.63 The ADU will maintain a compatible relationship to adjacent properties in terms of location, design, and off-street parking layout, and will not significantly reduce the privacy of adjacent properties.	<i>Response: We worked closely with an architect to ensure the design of the ADU is compatible with the primary dwelling and fits with the character of the neighborhood. Off street parking shall be provided as noted above. The location of the ADU does not significantly reduce the privacy of the adjacent property.</i>
10.814.64 The ADU will not result in excessive noise, traffic or parking congestion.	<i>Response: The ADU is attached to the primary dwelling and excessive noise from the ADU would not be tolerated by the homeowners (us). The site plan indicates a driveway large enough for 4 cars which allows for off street parking for the ADU and will not cause traffic or parking congestion.</i>

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**Planning Department Recommendations**

- 1) *Vote to grant a modification to the requirements set forth in section 10.814 to allow for an expansion that includes a 576 SF addition.*
  - 2) *Vote to find that the application meets the requirements set forth in Section 10.814.60 of the Zoning Ordinance and to grant the Conditional Use Permit as presented.*
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#### IV. DESIGN REVIEW – PUBLIC HEARING

- A. The request of **One Market Square LLC (Owner)**, for the property located at **1 Congress Street** requesting Design Review approval to partially demolish existing buildings and construct a new 3 story structure with a short 4<sup>th</sup> story. Said property is shown on Assessor Map 117 Lot 14 and lies within Character District 4 (CD-4), Character District 5 (CD-5) and the Historic District. (LUPD-22-6)

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 provided the project application is submitted within 12 months.

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

1. *The applicant may request to meet with the Board for nonbinding discussions of a potential application that involve more specific design and engineering details than in the preliminary conceptual consultation phase.*
2. *A request for design review accompanied by all plans and exhibits shall be submitted to the Planning Department at least 14 days prior to the date of a scheduled meeting of the Board via the City’s online permitting system as well as in hard copy. The total number of hard copies required shall be determined by the Planning Director.*
3. *The request for design review shall include enough of the information listed in Section 2.5.3(1) and plans displaying enough of the information listed in Section 2.5.4(3) so that the Board is able*

*to review the project. Detailed engineering of infrastructure and utilities are not required at the design review phase, but the information listed in Section 2.5.4(3) should be displayed in sufficient detail to enable the Board to understand the proposed project and identify potential issues and concerns.*

*4. At a regular meeting of the Planning Board, the Board shall determine if the request for design review includes sufficient information to allow the Board Site Plan Review Regulations 6 November 2020 to understand the project and identify potential issues and concerns, and shall vote on whether to accept the request for design review and to schedule a public hearing. If the Board determines that the request does not describe the proposed project in sufficient detail, it shall notify the applicant of the specific deficiencies that need to be addressed.*

*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.*

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**Planning Department Recommendations**

*Planning Board should review relevant sections of the Zoning Ordinance and Site Plan Review Regulations with the applicant.*

*At the closure of discussion, vote to find the design review process is complete.*

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**V. PRELIMINARY CONCEPTUAL CONSULTATION**

- A. The request of **EightKPH LLC (Owner)**, for property located at **161 Deer Street** to be known as **88 Maplewood Avenue** requesting Preliminary Conceptual Consultation for the demolition of the existing one story commercial building and the construction of a four story building with a pent house. Said property is shown on Assessor Map Lot and lies within the Character District 5 (CD5). (LUPD-22-7)

**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 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.

*Site Plan Review Regulations Article 2 Section 2.4.2: Preliminary Conceptual Consultation Phase*

*1. The applicant may request a meeting with the Planning Board to discuss a proposal in conceptual form. The preliminary conceptual consultation phase is mandatory for a site plan that meets any of the following criteria: Site Plan Review Regulations 5 November 2020*

- (a) Includes the construction of 30,000 square feet or more gross floor area;*
- (b) Includes the creation of 20 or more dwelling units;*
- (c) Includes the construction of more than one principal structure on a single parcel.*

*2. A request for preliminary conceptual consultation accompanied by all plans and exhibits shall be submitted to the Planning Department at least 14 days prior to the date of a scheduled meeting of the Board via the City's online permitting system and in hard copy. The total number of hard copies required shall be determined by the Planning Director.*

3. Preliminary conceptual consultation may occur only at formal meetings of the Planning Board. However, such discussions shall not be the subject of a public hearing, and formal notice of abutters and the public shall not be required.

4. Preliminary conceptual consultation shall be directed at review of the basic concept of the proposal and suggestions that might be of assistance in resolving problems with meeting requirements during final consideration. The Board and the applicant may discuss proposals in conceptual form only and in general terms such as the desirability of the proposed development type, scale, intensity and layout under the Master Plan.

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#### **Planning Department Recommendations**

The Board and the applicant should discuss proposals in conceptual form only and in general terms such as the desirability of the proposed development type, scale, intensity and layout under the Master Plan. Assistance should be given to the applicant to help resolve problems in meeting city requirements.

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 10.520 RESIDENTIAL AND MIXED RESIDENTIAL DISTRICTS
  - SECTION 10.5A40 CHARACTER DISTRICT DEVELOPMENT STANDARDS
  - SECTION 10.1110 OFF-STREET PARKING
  - SECTION 10.1130 LANDSCAPING AND SCREENING
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## VI. DESIGN REVIEW – APPLICATION ACCEPTANCE

- A. The request of **EightKPH LLC (Owner)**, for property located at **161 Deer Street to be known as 88 Maplewood Avenue** requesting Preliminary Conceptual Consultation for the demolition of the existing one story commercial building and the construction of a four story building with a pent house. Said property is shown on Assessor Map Lot and lies within the Character District 5 (CD5). (LUPD-22-7)

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 provided the project application is submitted within 12 months.

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.

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

- 1. The applicant may request to meet with the Board for nonbinding discussions of a potential application that involve more specific design and engineering details than in the preliminary conceptual consultation phase.*
- 2. A request for design review accompanied by all plans and exhibits shall be submitted to the Planning Department at least 14 days prior to the date of a scheduled meeting of the Board via the City’s online permitting system as well as in hard copy. The total number of hard copies required shall be determined by the Planning Director.*
- 3. The request for design review shall include enough of the information listed in Section 2.5.3(1) and plans displaying enough of the information listed in Section 2.5.4(3) so that the Board is able to review the project. Detailed engineering of infrastructure and utilities are not required at the design review phase, but the information listed in Section 2.5.4(3) should be displayed in sufficient detail to enable the Board to understand the proposed project and identify potential issues and concerns.*
- 4. At a regular meeting of the Planning Board, the Board shall determine if the request for design review includes sufficient information to allow the Board Site Plan Review Regulations 6 November 2020 to understand the project and identify potential issues and concerns, and shall vote on whether to accept the request for design review and to schedule a public hearing. If the*

*Board determines that the request does not describe the proposed project in sufficient detail, it shall notify the applicant of the specific deficiencies that need to be addressed.*

*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. ...*

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**Planning Department Recommendations**

*Board members should identify if the submitted materials are adequate for Design Review Consideration*

*If submitted materials are sufficient, vote to find that Design Review application is complete and to schedule the public hearing to take place at the April 21, 2022 Planning Board meeting.*

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## **VI. OTHER BUSINESS**

### **A. Review and discuss presentation on Land Use Committee Existing Conditions and Strategy Report and Regulatory Amendment Work Plan.**

On February 7, 2022, the City Council established the Land Use Committee to look at diversifying land use regulations within the City. The purpose of the Committee is to review all current zoning and policies surrounding housing and development to encourage sustainable, diverse, and affordable development including expanded multi model transportation. The Land Use Committee is charged with reporting back to the City Council on recommended alterations to the zoning and existing policies along with any new zoning or policies to be considered important to furthering the City's Goals. Members include:

- City Councilor/Chair Beth Moreau,
- City Councilor Rich Blalock,
- Rick Chellman, Planning Board Chair
- Corey Clark, Planning Board Vice Chair
- Beverly M. Zendt, Planning Director
- Nick Cracknell, Principal Planner
- Craig Welch, Executive Director, Portsmouth Housing Authority
- Economic Development Commissioner, Sarah LaChance

As part of the first package of amendments, the Land Use Committee has focused on advancing the citywide housing goals identified by City Council in their 2022-2023 Goals. These objectives were refined on February 27, 2022 and include:

1. Increase diversity of housing types and price points;
2. Remove regulatory barriers for housing diversification in neighborhoods (ADUS) – context sensitive design and consideration to impacts to traffic, on street parking and other infrastructure impacts;
3. Restructure incentives to deliver greater public benefit in workforce housing construction; and
4. Identify and maximize partnerships, coalitions, and funding opportunities to deliver affordable housing.

#### **Existing Conditions and Strategy Report**

The Existing Conditions and Strategy Report (**Attachment A**) will be used to inform regulatory amendments that will be developed and recommended for adoption by Land Use Committee and the Planning Board consistent with the City Council adopted goals of diversifying and enhancing the supply of housing choices in Portsmouth. The report includes the following:

- Summary of adopted Master Plan goals and City Council adopted policies related to housing;
- State requirements for workforce housing;
- Data regarding city approvals over the past seven years related to housing;
- Summary of existing housing types; and
- Summary of city cost burden for renters and owners.

#### **Regulatory Amendment Work Plan**

On April 9, 2022, the Land Use Committee approved transmittal of the draft 2021 Regulatory Amendment Work Plan to City Council (Attachment B). The work plan consists of three phases:

1. **Phase 1: Code Clean-Up**  
*Purpose: Improve regulatory implementation and align with legislative intent. Eliminate ambiguous sections that result in unintended consequences.*
2. **Phase 2: Accessory Dwelling Unit Amendments**  
*Purpose: Remove barriers and expand the number of eligible properties for ADUs and Senior Housing Facilities.*
3. **Phase 3: Incentive Amendments**  
*Purpose: Adjust incentives to place a higher emphasis on Workforce Housing.*

The work plan includes evaluation of proposed amendments for alignment with existing Master Plan goals, City Council adopted goals (2022-2023) and City Council adopted policies (Housing Policy). The work plan further identifies stakeholders and focus group members to be included in public outreach. Both Phase 2 and Phase 3 will include a public input summary which will identify key themes and concerns. Public involvement strategies will target those most impacted by regulatory changes and subject matter experts.

**Land Use Committee Recommendation and Council Action**

The Land Use Committee is seeking approval of the 2022 Regulatory Amendment Work Plan and is asking the City Council to transmit phase one draft regulation amendments to the Planning Board for review and a recommendation. Upon Planning Board Recommendation, City Council will schedule the first reading of Phase 1 amendments.

Phase 1 Amendments include the following:

1. **Building Height Map.** Section 10.5A21B: Add new streets, add building heights for civic and municipal properties and modify building heights. Correct the reference to 10.5A46.
2. **Building Height Standards.** Section 10.5A21B: Clarify the standards for corner, through or waterfront lots
3. **Civic Districts.** Section 10.5A52.40: Apply the CD4 development standards to civic properties
4. **Definitions.** Section 10.153: Add definitions for public places and modify building height to be based on existing versus finished grade.

Full proposed amendments are provided in **Attachment B**.

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**X. ADJOURNMENT**