



City of Portsmouth
Planning Department
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Portsmouth, NH
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Memorandum

To: Planning Board
From: Peter Stith, Planning Manager
Date: February 16, 2023
Re: Recommendations for the February 16, 2023 Planning Board Meeting

I. APPROVAL OF MINUTES

A. Approval of the December 15, 2022 minutes.

**Revised minutes reflecting Member Hewitt's comments are included in the packet for consideration.*

B. Approval of January 19, 2023 minutes.

C. Approval of January 30, 2023 minutes.

Planning Department Recommendation

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

2) Board members should determine if the draft minutes include all relevant details for the decision making process that occurred at the January 19, 2023 meeting and vote to approve meeting minutes with edits if needed.

3) Board members should determine if the draft minutes include all relevant details for the decision making process that occurred at the January 30, 2023 meeting and vote to approve meeting minutes with edits if needed.

II. DETERMINATION OF COMPLETENESS

SITE PLAN REVIEW

- A. The request of **One Market Square LLC (Owner)**, for property located at **1 Congress Street** requesting Site Plan Review approval for the partial demolition and expansion of the existing structure to construct a 3-story mixed-use building with 58,780 square feet of gross floor area, 12,080 square foot building footprint, 13 parking spaces, and associated onsite and offsite improvements.

Planning Department Recommendations

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

A. REQUEST TO POSTPONE The request of **Liberty Mutual Insurance Co. (Owner)**, for property located at **225 Borthwick Avenue** requesting a Wetland Conditional Use Permit under section 10.1017. This project proposes shoreline stabilization work for two existing ponds on site with erosion impacts. This project proposes stabilizing the slopes with an extensive native vegetation planting plan which will occur along the slope and enhance the vegetated buffer. Said property is shown on Assessor Map 240 Lot 1 and lies within the Office Research (OR) District. (LU-22-212) **REQUEST TO POSTPONE**

Application Status

The applicant has indicated they are still working on the state permit and anticipate being ready for the March Planning Board meeting.

Planning Department Recommendation

Vote to postpone to the March meeting.

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.

- B. Phase II Regulatory Amendments** – The Planning Board will continue the public hearing and consider a recommendation to City Council to adopt amendments to Article 8 Supplemental Use Standards: Section 10.440 Table of Uses, Section 10.814 Accessory Dwelling Units, and Section 10.815 Garden Cottages; Article 11 Site Development Standards: Section 10.1110 Off-Street Parking; and Article 15 Definitions related to Accessory Dwelling Units and Garden Cottages.

Project Background

On February 7, 2022, the City Council established the Land Use Committee to look at diversifying land use regulations within the City. 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) with 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.

Regulatory Amendment Work Plan and Phase 1 Amendments

On April 9, 2022, the Land Use Committee approved transmittal of the draft 2021 Regulatory Amendment Work Plan to City Council. The City Council approved the Regulatory Work Plan on April 18, 2022. The work plan consists of three phases:

1. **Phase 1: Code Clean-Up – Building Height Standards. Adopted**
Purpose: Improve regulatory implementation and align with legislative intent. Eliminate ambiguous sections that result in unintended consequences.
2. **Phase 2: Accessory Dwelling Unit Amendments (ADUs) Under Consideration**
Purpose: Remove barriers and expand the number of eligible properties for ADUs and Senior Housing Facilities.
3. **Phase 3: Incentive Amendments Anticipated Drafts in 2023**

Purpose: Adjust incentives to place a higher emphasis on Workforce Housing.

Phase 2 Public Involvement Summary Report

On July 11, 2022, staff presented a Public Involvement Summary Report to City Council. The Summary Report provided an overview of outreach that had taken place in the spring of 2022 and was developed to inform regulatory amendments. The report identified the first two phases of outreach summarized below.

1. **Small Focus Group Meetings.** Four meetings took place over the course of two weeks from June 9th to June 15th when staff and a representative/moderator from the Land Use Committee met with representatives from four groups of stakeholders:
 - Previous applicants,
 - Architects,
 - Engineers, and
 - Neighborhood representatives.
2. **ADU Direct Abutter Survey.** A survey was distributed to over 200 direct abutters of approved ADUs built within the last five years.

Key Themes

The following key themes were identified in response to public outreach and were summarized in the Public Involvement Summary Report.

1. Process navigational support is needed.
2. Dimensional relief is both an obstacle and a protection.
3. There is considerable cost and risk in the process, and this is a deterrent.
4. Regulations for ADUs need to be clear and implementable.
5. Foremost among abutters concerns are: parking, short term rentals, neighborhood character, and buffering and separation.
6. Abutters were generally positive about ADU's.

The third phase of public involvement will take place through public meetings and public hearings. This phase has included public input provided in the Land Use Committee.

Phase 2 Amendments Timeline | Land Use Committee Review and Recommendation

The Land Use Committee reviewed public input provided in the Public Involvement Summary Report on July 1, 2022, the product of outreach to stakeholders, ADU abutters, and subject matter experts. On August 5, 2022, the

Land Use Committee began their work to develop draft ADU amendments to address City Council adopted goals. Between August and November, the Land Use Committee received significant public input and has continued to work with consultant Rick Taintor to respond to public input in the refinement of ADU regulations. On November 4, 2022, the Land Use Committee finalized recommended amendments and forwarded those to City Council for referral to the Planning Board.

- On November 14, the City Council referred draft regulations to the Planning Board for a recommendation.

Planning Board Review

The Planning Board held a Public Hearing on January 30, 2023 and voted to continue the hearing until the February meeting. A revised draft is included in your packet addressing the comments from the public and Board members made on the 30th. The revisions include the following:

- **10.814.30 – Parking:** No change to the minimum requirement of requiring one space per ADA and two spaces per single family structure for a total of three (3) spaces. Note that four (4) spaces would no longer be required as the maximum size of the ADU is proposed to be no greater than 750 SF (see below).
- **10.814.32 – ADU Size:** Restricting the maximum size of an ADU to 750 SF and changing the measurement calculation from gross floor area (GFA) to gross living area (GLA). Note that GFA is retained for the size of the building within which the ADU is located. We also added a new definition for GLA.
- **10.814.435 - Subordination Requirements:** There was a question as to whether the 75% standard for subordination would conflict with the State's requirement to allow AADUs up to 750 sq. ft. However, the 75% standard only applies to DADUs, which the State law does not require communities to permit.
- **10.814.50 – Architectural Standards:** Modifying the standard to architecturally consistent with or "similar in appearance to" the existing principal building. Additional modifications to clarify the intention of maintaining consistency without requiring verbatim building designs or details.
- **10.814.60 – Review and Approval Process:**
 - 611 – added a reference to "sign" and requirement for certified mail to abutters within 100 feet of the property.
 - 612 – added a new provision allowing anyone to comment within the 30-day notice period.
 - 614 – added a requirement that the Planning Director not approve the ADU application before the end of the notice period.
- **10.814.70 – Post-Approval Requirements:**
 - The requirement for an affidavit of owner-occupancy is moved from 10.814.22 to 10.814.71 so that both recording requirements are in the same place.

- The requirement for annual renewal of the certificate of use is moved from 10.814.72 to a new 10.814.73, and the reference to violations and penalties is added.

Planning Department Recommendation

- 1) *Vote to recommend approval of the zoning ordinance amendments to City Council.*
 - 2) *Vote to recommend approval of the zoning amendments to City Council as amended.*
 - 3) *Vote to continue the Public Hearing to March 16, 2023.*
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IV. PUBLIC HEARINGS – NEW BUSINESS

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

- C.** The request of **One Market Square LLC (Owner)**, for property located at **1 Congress Street** requesting Site Plan Review approval for the partial demolition and expansion of the existing structure to construct a 3-story mixed-use building with 58,780 square feet of gross floor area, 12,080 square foot building footprint, 13 parking spaces, and associated onsite and offsite improvements. Said property is shown on Assessor Map 117 Lot 14 and lies within the Character District 4 (CD4), Character District 5 (CD5), Downtown Overlay (DOD), and Historic District. (LU-22-12)

Project Background

The proposed project includes construction of a mixed-use building addition on the back of the existing buildings located at 1 and 3 Congress Street where a surface parking lot currently exists. In February of 2022 Map 117 Lot 14 and Lot 15 were voluntarily merged to create 1 lot in advance of filing for site plan approval for the proposed project. The newly merged lot is split zoned, CD5 and CD4. The applicant was before the Planning Board on April 21, 2022 for Design Review. Originally proposed as a hotel, the current proposal is a mixed-use building with retail and restaurant use on the first floor, office on the second and residential on the upper floors with 18 units. The basement level will have access from Haven Court and will provide 23 parking spaces. The property is located in the Downtown Overlay District where commercial and office uses do not require off-street parking. The 18 units require 22 spaces, which include 4 guest spaces.

The existing condition where the addition is proposed is a surface parking lot where current stormwater runoff is not treated. The proposed development will provide stormwater treatment to runoff from the new buildings and surface pedestrian ways via stormwater filtration treatment. The stormwater management system is described in further detail in the enclosed Drainage Analysis.

The project also includes on-site and off-site improvements including wide sidewalks, roadway improvements, community space, lighting, landscaping, and utilities. As the submission letter states, the applicant is proposing significant off-site improvements to High Street, Ladd Street and Haven Court. The other off-site improvements will be reviewed by TAC for a non-binding recommendation to the City Council.

Project Review, Discussion, and Recommendations

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

Historic District Commission Review

The Historic District Commission, at its regularly scheduled meeting of Wednesday, August 3, 2022, considered the application and voted to grant the Certificate of Approval.

Technical Advisory Committee Review

The Technical Advisory Committee, at its regularly scheduled meeting of Tuesday, January 3, 2023, considered the application for Site Plan Approval. As stated above, the Committee recommended the applicant separate the off-site improvements from the plan on-site construction and advised the applicant to come back before

TAC to review the off-site improvements before seeking approval from the City Council. The Committee voted to recommend Site Plan Approval to the Planning Board with the following conditions:

Conditions to be satisfied prior to the Planning Board Submittal date:

- 1) *Applicant and project team will meet with the Planning staff to discuss the zoning compliance table.*
- 2) *Pole lights will be removed and the replacement fixtures will be reviewed and approved by Public Works Department.*
- 3) *Any utility work that is necessary to construct a fully operational building will need to be reviewed and approved by the Public Works Department.*

Subsequent to Planning Board approval but prior to Building Permit issuance:

- 1) *Prior to issuance of building permit the proposed off-site improvement for High Street and Ladd Street and Haven Court will be reviewed and approved authorized by the City entity to ensure building, pedestrian, vehicular, and emergency vehicle safety.*

The updated submission, as provided to the Planning Board, satisfies all stipulations above with the exception of number 3) and those identified as *Subsequent to Planning Board approval but prior to Building Permit issuance.*

Planning Department Recommendation

Site Plan Approval

1) *Vote to find that the Site Plan Application meets the requirements set forth in the Site Plan Regulations Section 2.9 Evaluation Criteria and adopt the findings of fact as presented.*

(Alt.) Vote to find that the Site Plan Application meets the requirements set forth in the Site Plan Regulations Section 2.9 Evaluation Criteria and adopt the findings of fact as amended.

2.) *Vote to grant Site Plan Approval with the following conditions:*

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

- 2.1) *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.*
- 2.2) *The applicant shall prepare a Construction Management and Mitigation Plan (CMMP) for review and approval by the City's Legal and Planning*

Departments.

- 2.3) *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.*
- 2.4) *Any site development (new or redevelopment) resulting in 15,000 square feet or greater ground disturbance will require the submittal of a Land Use Development Tracking Form through the Pollutant Tracking and Accounting Program (PTAP) online portal. For more information visit <https://www.cityofportsmouth.com/publicworks/stormwater/ptap>*
- 2.5) *Prior to issuance of building permit the proposed off-site improvements for High Street and Ladd Street and Haven Court will be reviewed and approved authorized by the City entity to ensure building, pedestrian, vehicular, and emergency vehicle safety.*
- 2.6) *Any utility work that is necessary to construct a fully operational building will need to be reviewed and approved by the Public Works Department.*

Prior to the issuance of a Certificate of Occupancy or release of the bond:

- 2.7) *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.*
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V. CITY COUNCIL REFERRALS

Phase II Amendments on the Accessory Dwelling Units. Continue public hearing and discussion on proposed amendments. (See Item B under Old Business)

VI. OTHER BUSINESS

- A.** 238 Deer Street, LLC for property located at 238 Deer Street requesting a 1-year extension of the Site Plan approval granted on March 17, 2022 and to modify the conditions of approval of the Conditional Use Permit granted on February 17, 2021. (LU-20-238)

Project background

As stated in the applicant's memo, a Conditional Use Permit was granted on February 17, 2021 to allow no on-site parking spaces where 12 were required. Subsequent approvals from the Zoning Board and Historic District Commission were granted later in 2021 and the Site Plan approval was granted in March 2022. The applicant is requesting to amend the conditions of approval to allow the CUP to track with the site plan extension request. The parking CUP will expire on Friday, February 17, 2023 and would require the applicant to seek a new CUP for no on-site parking if the request is not granted.

10.246.10 A conditional use permit shall expire unless a building permit is obtained within a period of one year from the date granted, unless otherwise stated in the conditions of approval. The Board may, for good cause shown, extend such period by as much as one year if such extension is requested and acted upon prior to the expiration date. No other extensions may be requested.

Section 2.14 of the Site Plan Review Regulations provides that the Planning Board may, for good cause shown, extend such period by as much as one (1) year if requested and acted upon prior to the expiration date.

Planning Department Recommendation

- 1) Vote to grant a one-year extension to the Planning Board Approval of the Site Plan and amend the conditions of approval for the Conditional Use Permit as requested.*
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VI. OTHER BUSINESS

B. 325 Little Harbor Road – Land Management Plan Update

Project background

The Planning Board, granted a Wetland Conditional Use Permit on April 21, 2022, 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. The following conditions were part of the approval:

2.a) For each review identified and provided for in the Land Management Plan, an update and report of findings will also be provided to the Planning Board.

2.b) There will be an inspection and report submitted to the Planning Board on the bridge status and safety every 5 years.

See attached memo from Kate Homet, Associate Environmental Planner for additional information and the updated management plan. No action by the Board is required.

C. Chairman's Updates and Discussion Items

D. Planning Board Rules and Procedures

Background

The Board has had discussion about amending the Rules and Procedures over the course of this year. This is an opportunity for continued discussion of changes to the rules. The Chair has provided a marked up copy of the procedures for the Board to consider.

E. Board Discussion of Regulatory Amendments and Other Matters

VII. ADJOURNMENT