



# CITY OF PORTSMOUTH

Planning Department  
1 Junkins Avenue  
Portsmouth, New  
Hampshire 03801  
(603) 610-7216

## **PLANNING BOARD**

March 23, 2023

Lucky Thirteen Properties, LLC  
PO BOX 300  
Rye, NH 03870

RE: Site Plan Review approval for property located at 147 Congress Street (LU-22-192)

Dear Property Owner:

The Planning Board, at its regularly scheduled meeting of **Thursday, March 16, 2023**, considered your application for Site Plan review approval for a 700 square foot addition, front and rear canopies and associated offsite and onsite improvements. Said property is shown on Assessor Map 126, Lot 4 and lies within the Character District 5 (CD5), Downtown Overlay and Historic Districts. As a result of said consideration, the Board voted 1) 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, and 2) 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) *Applicant will work with the Building Department to appropriately size and locate the grease trap.*
- 2.5) *DPW is to observe and approve that sewer and stormwater systems are separated properly.*
- 2.6) *An excavation permit will be needed for the construction of the sidewalk.*

**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.*

The Board's decision may be appealed up to thirty (30) days after the vote. Any action taken by the applicant pursuant to the Board's decision during this appeal period shall be at the applicant's risk. Please contact the Planning Department for more details about the appeals process.

This site plan approval shall not be effective until a site plan review agreement has been signed satisfying the requirements of Section 2.12 of the City's Site Review Approval Regulations.

Unless otherwise indicated above, applicant is responsible for applying for and securing a building permit from the Inspection Department prior to starting any project work.

The Planning Director must certify that all outstanding conditions of approval have been completed prior to issuance of a building permit unless otherwise indicated above.

This site plan approval shall expire unless a building permit is issued within a period of one (1) year from the date granted by the Planning Board unless an extension is granted by the Planning Board in accordance with Section 2.14 of the Site Review Regulations.

*The Findings of Fact associated with this decision are available: attached here or as an attachment in the Viewpoint project record associated with this application and on the Planning Board Meeting website:*

<https://www.cityofportsmouth.com/planportsmouth/planning-board/planning-board-archived-meetings-and-material>

The minutes and audio recording of this meeting are available by contacting the Planning Department.

Very truly yours,

A handwritten signature in black ink, appearing to read "Rick Chellman". The signature is fluid and cursive, with the first name "Rick" written in a smaller, more legible script than the last name "Chellman".

Rick Chellman, Chairman of the Planning Board

cc: Shanti Wolph, Chief Building Inspector  
Rosann Maurice-Lentz, City Assessor

Peter H. Rice, Director of Public Works

Derek Durbin, Durbin Law Offices PLL

# Findings of Fact | Site Plan Review

## City of Portsmouth Planning Board

Date: March 16, 2023

Property Address: 147 Congress Street

Application #: LU-22-192

Decision: **Approve with Conditions**

### Findings of Fact:

Effective August 23, 2022, amended RSA 676:3, I now reads as follows: The local land use board shall issue a final written decision which either approves or disapproves an application for a local permit and make a copy of the decision available to the applicant. **The decision shall include specific written findings of fact that support the decision. Failure of the board to make specific written findings of fact supporting a disapproval shall be grounds for automatic reversal and remand by the superior court upon appeal, in accordance with the time periods set forth in RSA 677:5 or RSA 677:15, unless the court determines that there are other factors warranting the disapproval.** If the application is not approved, the board shall provide the applicant with written reasons for the disapproval. If the application is approved with conditions, the board shall include in the written decision a detailed description of the all conditions necessary to obtain final approval.

Site Plan Regulations Section 2.9 Evaluation Criteria - in order to grant site plan review approval, the TAC and the Planning Board shall find that the application satisfies evaluation criteria pursuant to NH State Law and listed herein. In making a finding, the TAC and the Planning Board shall consider all standards provided in Articles 3 through 11 of these regulations.

|          | <b>Site Plan Review Regulations<br/>Section 2.9 Evaluation<br/>Criteria</b>                          | <b>Finding<br/>(Meets<br/>Standard/Criteria)</b> | <b>Supporting Information<br/>(provided by applicant)</b>   |
|----------|--|--|---|
| <b>1</b> | Compliance with all City Ordinances and Codes and these regulations.<br><u>Applicable standards:</u> | <b>Meets</b>                                     | <u>Applicable standards:</u>  |
| <b>2</b> | Provision for the safe development, change or expansion of use of the site.                          | <b>Meets</b>                                     | The Applicant will be making use of a small open space adjacent to the existing building capturing additional building area. There will be no impacts to traffic and stormwater runoff. The expansion and façade improvements will enhance the character of the neighborhood. |

|           | <b>Site Plan Review Regulations<br/>Section 2.9 Evaluation<br/>Criteria</b>   | <b>Finding<br/>(Meets<br/>Standard/Criteria)</b> | <b>Supporting Information<br/>(provided by applicant)</b>  |
|-----------|---|--|--|
| <b>3</b>  | Adequate erosion control and stormwater management practices and other mitigative measures, if needed, to prevent adverse effects on downstream water quality and flooding of the property or that of another.  | <b>Meets</b>                                     | There are no wetlands on the site or in the vicinity. Temporary erosion control measures will be installed to prevent the transport of sediment during construction.   |
| <b>4</b>  | Adequate protection for the quality of groundwater.   | <b>Meets</b>                                     | Roof drainage is directly connected to the City's closed drainage system.  |
| <b>5</b>  | Adequate and reliable water supply sources.   | <b>Meets</b>                                     | The property will make use of City water.  |
| <b>6</b>  | Adequate and reliable sewage disposal facilities, lines, and connections.   | <b>Meets</b>                                     | An interior grease trap will be provided to treat kitchen waste. The existing sanitary sewer service connection to the collection system in the street is adequate. The restrooms will have low flow / dual flow water closets for efficient water use.                                  |
| <b>7</b>  | Absence of undesirable and preventable elements of pollution such as smoke, soot, particulates, odor, wastewater, stormwater, sedimentation or any other discharge into the environment which might prove harmful to persons, structures, or adjacent properties. | <b>Meets</b>                                     | There will be no pollution associated with smoke, soot, particulates, odor, wastewater, stormwater, sedimentation or any other discharge into the environment resulting from the site improvements and proposed use that would be harmful to persons, structures or adjacent properties. |
| <b>8</b>  | Adequate provision for fire safety, prevention and control.   | <b>Meets</b>                                     | The buildings on the Property will be required to meet current building, life safety and fire codes. There will be fire suppression sprinkler and fire alarm systems installed per City requirements.  |
| <b>9</b>  | Adequate protection of natural features such as, but not limited to, wetlands.  | <b>Meets</b>                                     | The Property is in an urban area. There are no natural features, other than a small open space a portion of it will be preserved.  |
| <b>10</b> | Adequate protection of historical features on the site.   | <b>Meets</b>                                     | There is nothing of historical significance on the property. The Historic District Commission (HDC) has granted a certificate of approval for the design plans   |

|           | <b>Site Plan Review Regulations<br/>Section 2.9 Evaluation<br/>Criteria</b>  | <b>Finding<br/>(Meets<br/>Standard/Criteria)</b> | <b>Supporting Information<br/>(provided by applicant)</b>   |
|-----------|--|--|---|
|           |  |  | associated with the property.   |
| <b>11</b> | Adequate management of the volume and flow of traffic on the site and adequate traffic controls to protect public safety and prevent traffic congestion.   | <b>Meets</b>                                     | Not applicable. There is no on-site parking or access ways.   |
| <b>12</b> | Adequate traffic controls and traffic management measures to prevent an unacceptable increase in safety hazards and traffic congestion off-site.   | <b>Meets</b>                                     | Not applicable. There is no on-site parking or access ways.   |
| <b>13</b> | Adequate insulation from external noise sources.   | <b>Meets</b>                                     | Not applicable.   |
| <b>14</b> | Existing municipal solid waste disposal, police, emergency medical, and other municipal services and facilities adequate to handle any new demands on infrastructure or services created by the project. | <b>Meets</b>                                     | The Property and the building thereon are easily accessible from Congress Street and Maplewood Avenue as well as from the Worth Parking Lot. Solid waste and recyclables will be stored in totes in an enclosure on the north side of the building and will be removed through a private service.   |
| <b>15</b> | Provision of usable and functional open spaces of adequate proportions, including needed recreational facilities that can reasonably be provided on the site   | <b>Meets</b>                                     | The use of the Property will be as a restaurant, retail, and office space. Recreational facilities are not relevant.  |
| <b>16</b> | Adequate layout and coordination of on-site accessways and sidewalks in relationship to off-site existing or planned streets, accessways, bicycle paths, and sidewalks.                                  | <b>Meets</b>                                     | As an urban infill property. There are no on-site walkways. All points of access and egress are onto the public rights-of-ways. The improvements proposed will create a more pedestrian friendly environment as the Applicant is committed to reconstructing the sidewalk along Maplewood Avenue with a brick sidewalk, matching to the current City standards. |
| <b>17</b> | Demonstration that the land indicated on plans submitted with the application shall be of such character that it can be used for building purposes without danger to health.                             | <b>Meets</b>                                     | The existing addition will be used for restaurant purposes and will be designed to meet current building, fire, and life safety codes so as to avoid any threat to public health.   |

|           | <b>Site Plan Review Regulations<br/>Section 2.9 Evaluation<br/>Criteria</b>  | <b>Finding<br/>(Meets<br/>Standard/Criteria)</b> | <b>Supporting Information<br/>(provided by applicant)</b>   |
|-----------|--|--|---|
| <b>18</b> | Adequate quantities, type or arrangement of landscaping and open space for the provision of visual, noise and air pollution buffers.   | <b>Meets</b>                                     | The Property will have only 2.3% open space when fully developed. The limited open space will have small plantings including perennial ornamental grasses. ZBA approval for open space. |
| <b>19</b> | Compliance with applicable City approved design standards.   | <b>Meets</b>                                     | The proposed improvements have been designed to comply with all applicable City approved design standards.  |
|           | <b>Other Board Findings:</b> The Property was formerly retail/grocery store on the first floor. It will be converted to a restaurant and retail with offices above. The building will be modernized and aesthetically improved. The proposed adaptive reuse of the Property and building thereon will help to revitalize the neighborhood. |  |   |



# CITY OF PORTSMOUTH

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(603) 610-7216

## **PLANNING BOARD**

March 23, 2023

Lucky Thirteen Properties, LLC  
P.O. Box 300  
Rye, New Hampshire 03870-0300

RE: Site Plan Review approval for property located at 361 Islington Street (LU-22-195)

Dear Property Owner:

The Planning Board, at its regularly scheduled meeting of **Thursday, March 16, 2023**, considered your application for Site Plan Review approval for the redevelopment of the existing structure including a 695 square foot addition and a 73 square foot addition with associated site improvements including lighting, utilities, landscaping, and stormwater treatment/management. Said property is shown on Assessor Map 144 Lot 23 and lies within the Character District 4-L2 (CD4-L2) and Historic Districts. As a result of said consideration, the Board voted 1) 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; and 2) 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, which includes possible soil contamination for review and approval.
- 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) Update plan set to adjust curb behind the building per revised sketch dated 3/8/23.
- 2.6) Relabel the "Lounge" area on the plan to "canopy area".
- 2.7) Ensure all outdoor lighting is turned off 30 minutes after closing.

The Board's decision may be appealed up to thirty (30) days after the vote. Any action taken by the applicant pursuant to the Board's decision during this appeal period shall be at the applicant's risk. Please contact the Planning Department for more details about the appeals process.

This site plan approval shall not be effective until a site plan review agreement has been signed satisfying the requirements of Section 2.12 of the City's Site Review Approval Regulations.

Unless otherwise indicated above, applicant is responsible for applying for and securing a building permit from the Inspection Department prior to starting any project work.

The Planning Director must certify that all outstanding conditions of approval have been completed prior to issuance of a building permit unless otherwise indicated above.

This site plan approval shall expire unless a building permit is issued within a period of one (1) year from the date granted by the Planning Board unless an extension is granted by the Planning Board in accordance with Section 2.14 of the Site Review Regulations.

*The Findings of Fact associated with this decision are available: attached here or as an attachment in the Viewpoint project record associated with this application and on the Planning Board Meeting website:*

<https://www.cityofportsmouth.com/planportsmouth/planning-board/planning-board-archived-meetings-and-material>

The minutes and audio recording of this meeting are available by contacting the Planning Department.

Very truly yours,

A handwritten signature in black ink, appearing to read "Rick Chellman". The signature is stylized with a large, sweeping initial "R" and a long, horizontal flourish extending to the right.

Rick Chellman, Chairman of the Planning Board

cc: Shanti Wolph, Chief Building Inspector  
Rosann Maurice-Lentz, City Assessor

Peter H. Rice, Director of Public Works

Derek Durbin, Durbin Law Offices  
Eric Weinrieb, Altus Engineering



# Findings of Fact | Site Plan Review

## City of Portsmouth Planning Board

Date: March 16, 2023

Property Address: 361 Islington Street

Application #: LU-22-195

Decision: **Approve with Conditions**

### Findings of Fact:

Effective August 23, 2022, amended RSA 676:3, I now reads as follows: The local land use board shall issue a final written decision which either approves or disapproves an application for a local permit and make a copy of the decision available to the applicant. **The decision shall include specific written findings of fact that support the decision. Failure of the board to make specific written findings of fact supporting a disapproval shall be grounds for automatic reversal and remand by the superior court upon appeal, in accordance with the time periods set forth in RSA 677:5 or RSA 677:15, unless the court determines that there are other factors warranting the disapproval.** If the application is not approved, the board shall provide the applicant with written reasons for the disapproval. If the application is approved with conditions, the board shall include in the written decision a detailed description of the all conditions necessary to obtain final approval.

Site Plan Regulations Section 2.9 Evaluation Criteria - in order to grant site plan review approval, the TAC and the Planning Board shall find that the application satisfies evaluation criteria pursuant to NH State Law and listed herein. In making a finding, the TAC and the Planning Board shall consider all standards provided in Articles 3 through 11 of these regulations.

|          | <b>Site Plan Review Regulations<br/>Section 2.9 Evaluation<br/>Criteria</b>                          | <b>Finding<br/>(Meets<br/>Standard/Criteria)</b> | <b>Supporting Information<br/>(provided by applicant)</b>   |
|----------|--|--|---|
| <b>1</b> | Compliance with all City Ordinances and Codes and these regulations.<br><u>Applicable standards:</u> | <b>Meets</b>                                     | <u>Applicable standards:</u>  |
| <b>2</b> | Provision for the safe development, change or expansion of use of the site.                          | <b>Meets</b>                                     | The Applicant will be making adaptive reuse of a former gas station building while making a modest change to its footprint while improving parking and site access. Reduced impervious surface coverage, landscape and drainage improvements will reduce stormwater runoff and enhance the visual appeal of the property. The modifications to the site will result in safer vehicular movement onto and off of the property. |

|           | <b>Site Plan Review Regulations<br/>Section 2.9 Evaluation<br/>Criteria</b>   | <b>Finding<br/>(Meets<br/>Standard/Criteria)</b> | <b>Supporting Information<br/>(provided by applicant)</b>  |
|-----------|---|--|--|
| <b>3</b>  | Adequate erosion control and stormwater management practices and other mitigative measures, if needed, to prevent adverse effects on downstream water quality and flooding of the property or that of another.  | <b>Meets</b>                                     | Erosion control and stormwater management on the property will be improved beyond what exists now.   |
| <b>4</b>  | Adequate protection for the quality of groundwater.   | <b>Meets</b>                                     | A closed drainage system with catch basins has been added to provide preliminary treatment of stormwater runoff prior to discharge into the City's closed drainage system.   |
| <b>5</b>  | Adequate and reliable water supply sources.   | <b>Meets</b>                                     | The property will make use of City water.  |
| <b>6</b>  | Adequate and reliable sewage disposal facilities, lines, and connections.   | <b>Meets</b>                                     | A restroom will be provided in the building that includes low flow / dual flow water closets for efficient water use. Wastewater will be discharged to the public sewer system.  |
| <b>7</b>  | Absence of undesirable and preventable elements of pollution such as smoke, soot, particulates, odor, wastewater, stormwater, sedimentation or any other discharge into the environment which might prove harmful to persons, structures, or adjacent properties. | <b>Meets</b>                                     | There will be no pollution associated with smoke, soot, particulates, odor, wastewater, stormwater, sedimentation or any other discharge into the environment resulting from the site improvements and proposed use that would be harmful to persons, structures or adjacent properties. <i>See Applicant's Drainage Summary and Stormwater Inspection and Maintenance Manual.</i> |
| <b>8</b>  | Adequate provision for fire safety, prevention and control.   | <b>Meets</b>                                     | The buildings on the Property will be required to meet current building, life safety and fire codes. There will be sprinkler and fire alarm systems installed per City requirements.   |
| <b>9</b>  | Adequate protection of natural features such as, but not limited to, wetlands.  | <b>Meets</b>                                     | The Property consists of 95% impervious surface which will be reduced to 83%. There are no natural features, other than an existing mature oak tree, which will remain. Shade trees and other vegetation will be added to the site that does not exist, improving natural features.  |
| <b>10</b> | Adequate protection of historical features on the site.   | <b>Meets</b>                                     | There is nothing of historical significance on the property. The Historic District Commission (HDC) has granted a  |

|           | <b>Site Plan Review Regulations<br/>Section 2.9 Evaluation<br/>Criteria</b>  | <b>Finding<br/>(Meets<br/>Standard/Criteria)</b> | <b>Supporting Information<br/>(provided by applicant)</b>   |
|-----------|--|--|---|
|           |  |  | certificate of approval for the design plans associated with the property.  |
| <b>11</b> | Adequate management of the volume and flow of traffic on the site and adequate traffic controls to protect public safety and prevent traffic congestion.   | <b>Meets</b>                                     | Traffic flow on the Property will be improved over existing conditions with the removal of egress onto Islington Street. As the Property exists now, vehicles can freely enter and exit the property from multiple locations. Traffic will now be forced to enter via Islington Street and follow a one-way pattern around the building and exit onto Cabot Street near the existing traffic light. |
| <b>12</b> | Adequate traffic controls and traffic management measures to prevent an unacceptable increase in safety hazards and traffic congestion off-site.   | <b>Meets</b>                                     | See finding above, which is hereby incorporated by reference.   |
| <b>13</b> | Adequate insulation from external noise sources.   | <b>Meets</b>                                     | Not applicable.   |
| <b>14</b> | Existing municipal solid waste disposal, police, emergency medical, and other municipal services and facilities adequate to handle any new demands on infrastructure or services created by the project. | <b>Meets</b>                                     | The Property and the building thereon is easily accessible from Islington and Cabot Streets. Rubbish disposal will be via totes and will be removed through a private service. The site has been design to allow for adequate access for rubbish disposal and access for emergency services.  |
| <b>15</b> | Provision of usable and functional open spaces of adequate proportions, including needed recreational facilities that can reasonably be provided on the site   | <b>Meets</b>                                     | Open space on the Property is significantly improved (14%) over what exists (4%). The use of the Property will be as a restaurant, so recreational facilities are not relevant. However, the design of the site will encourage pedestrian and bicycle use.  |
| <b>16</b> | Adequate layout and coordination of on-site accessways and sidewalks in relationship to off-site existing or planned streets, accessways, bicycle paths, and sidewalks.                                  | <b>Meets</b>                                     | The improvements proposed will create a more pedestrian friendly environment with adequate separation from vehicular traffic entering and existing the Property and other safety features. Bicycle parking will be created with direct access off of Islington Street.  |
| <b>17</b> | Demonstration that the land indicated on plans submitted with the application shall be of such character that it can be used for building purposes without danger to health.                             | <b>Meets</b>                                     | The existing building and additions will be used for restaurant purposes and will be designed to meet current building, fire and life safety codes so as to avoid any threat to public health.  |

|    | Site Plan Review Regulations<br>Section 2.9 Evaluation<br>Criteria   | Finding<br>(Meets<br>Standard/Criteria) | Supporting Information<br>(provided by applicant)   |
|----|--|---|---|
| 18 | Adequate quantities, type or arrangement of landscaping and open space for the provision of visual, noise and air pollution buffers.   | Meets                                   | The Property presently consists of approximately 95% impervious surface and is covered in pavement. Landscaping will be introduced to the site and open space will be improved by 10%, thus creating greater visual, noise and air pollution buffers. Darky sky lights will be used on the Property and will be directed away from abutting properties. See Landscape Plan which is hereby incorporated by reference. |
| 19 | Compliance with applicable City approved design standards.   | Meets                                   | The proposed improvements have been designed to comply with all applicable City approved design standards.  |
|    | <b>Other Board Findings:</b> The Property was formerly a Getty service station is currently unoccupied. The proposed adaptive reuse of the Property and building thereon for restaurant use will help to revitalize the Property. The proposed enhancements to the Property will allow this site to integrate with and contribute to the vitality of the neighborhood. |   |   |



# CITY OF PORTSMOUTH

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1 Junkins Avenue  
Portsmouth, New  
Hampshire 03801  
(603) 610-7216

## **PLANNING BOARD**

March 23, 2023

Lucky Thirteen Properties, LLC  
P.O. Box 300  
Rye, New Hampshire 03870-0300

RE: Conditional Use Permit for property located at 361 Islington Street (LU-22-195)

Dear Property Owner:

The Planning Board, at its regularly scheduled meeting of Thursday, March 16, 2023, considered your application for A Conditional Use Permit approval in accordance with section 10.1112.14 of the Zoning Ordinance to allow twelve (12) parking spaces where 22 are required. Said property is shown on Assessor Map 144 Lot 23 and lies within the Character District 4-L2 (CD4-L2) and Historic Districts. As a result of said consideration, the Board voted The Board voted 1) to find that the Conditional Use Permit application meets the criteria set forth in Section 10.1112.14 and to adopt the findings of fact as presented; and 2) 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 with the following condition:

2.1) The applicant will work with the Planning Department to review the possible use of the moped spaces as a parking space during the off season.

The Board's decision may be appealed up to thirty (30) days after the vote. Any action taken by the applicant pursuant to the Board's decision during this appeal period shall be at the applicant's risk. Please contact the Planning Department for more details about the appeals process.

Unless otherwise indicated above, applicant is responsible for applying for and securing a building permit from the Inspection Department prior to starting any project work. All stipulations of approval must be completed prior to issuance of a building permit unless otherwise indicated above.

This approval 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 Planning 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.

*The Findings of Fact associated with this decision are available: attached here or as an attachment in the Viewpoint project record associated with this application and on the Planning Board Meeting website:*

<https://www.cityofportsmouth.com/planportsmouth/planning-board/planning-board-archived-meetings-and-material>

The minutes and audio recording of this meeting are available by contacting the Planning Department.

Very truly yours,

A handwritten signature in black ink, appearing to read "Rick Chellman". The signature is fluid and cursive, with a large initial "R" and "C".

Rick Chellman, Chairman of the Planning Board

cc: Shanti Wolph, Chief Building Inspector  
Rosann Maurice-Lentz, City Assessor

Derek Durbin, Durbin Law Offices  
Eric Weinrieb, Altus Engineering

# Findings of Fact | Parking Conditional Use Permit

## City of Portsmouth Planning Board

Date: March 16, 2023

Property Address: 361 Islington Street

Application #: LU-22-195

Decision: **Approve with Conditions**

### Findings of Fact:

Effective August 23, 2022, amended RSA 676:3, I now reads as follows: The local land use board shall issue a final written decision which either approves or disapproves an application for a local permit and make a copy of the decision available to the applicant. **The decision shall include specific written findings of fact that support the decision. Failure of the board to make specific written findings of fact supporting a disapproval shall be grounds for automatic reversal and remand by the superior court upon appeal, in accordance with the time periods set forth in RSA 677:5 or RSA 677:15, unless the court determines that there are other factors warranting the disapproval.** If the application is not approved, the board shall provide the applicant with written reasons for the disapproval. If the application is approved with conditions, the board shall include in the written decision a detailed description of the all conditions necessary to obtain final approval.

### Parking Conditional Use Permit

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.

|          | <b>Parking Conditional Use Permit<br/>10.1112.14 Requirements</b>   | <b>Finding<br/>(Meets<br/>Criteria/Requirement)</b> | <b>Supporting Information<br/>(provided by applicant)</b>  |
|----------|---|---|--|
| <b>1</b> | 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. | <b>Meets</b>  | The Applicant has demonstrated through its Parking Demand Analysis that sufficient parking exists for the proposed use, considering on-site parking and surrounding availability of parking coupled with pedestrian and non-vehicular accessibility. |
| <b>2</b> | 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   | <b>Meets</b>  | Parking demand has been reduced through the inclusion of five (5) moped/motorcycle spaces and two (2) bike rack areas that can accommodate up to fourteen (14) bicycles. The site design also encourages pedestrian access.                          |

|          | <b>Parking Conditional Use Permit<br/>10.1112.14 Requirements</b>   | <b>Finding<br/>(Meets<br/>Criteria/Requirement)</b> | <b>Supporting Information<br/>(provided by applicant)</b>   |
|----------|---|---|---|
|          | 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.  |   |   |
| <b>3</b> | 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.  | <b>Meets</b>  | A reasonable effort has been made by the Applicant to reduce on-site parking demand and maximize available parking on the Property while creating safer traffic flow patterns and pedestrian access. The Board accepts the Applicant's Parking Demand analysis which is hereby incorporated by reference. |
| <b>4</b> | 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.  | <b>Meets</b>  | The Board has accepted the Applicant's Parking Demand analysis and finds that it is not feasible with the improvements proposed to add additional parking without compromising another integral aspect of the site plan.  |
| <b>5</b> | <b><u>Other Board Findings:</u></b><br>Based on seating capacity, the property will have proportionately more on-site parking than other similar surrounding uses on Islington Street, including the White Heron and The Kitchen. As a bagel-focused restaurant, there will be high customer turnover throughout the day, which mitigates the need for additional parking. Requiring the Applicant to meet the on-site parking requirement is not feasible given the constraints of the Property. The Foundry Place Garage is located approximately 2,000 feet from the Property. Employees will be encouraged to park the Foundry Place Garage if not walking to the site. |   |   |
| <b>6</b> | <b><u>Additional Conditions of Approval:</u></b><br><br><b>The applicant will work with the Planning Department to review the possible use of the moped spaces as a parking space during the off season.</b>  |   |   |





# CITY OF PORTSMOUTH

Planning Department  
1 Junkins Avenue  
Portsmouth, New  
Hampshire 03801  
(603) 610-7216

## PLANNING BOARD

March 23, 2023

Lucky Thirteen Properties, LLC  
P.O. Box 300  
Rye, New Hampshire 03870-0300

RE: Conditional use Permit for property located at 361 Islington Street (LU-22-195)

Dear Property Owner:

The Planning Board, at its regularly scheduled meeting of Thursday, March 16, 2023, considered your application for Conditional Use Permit in accordance with Section 10.440, Use 19.50 for an outdoor dining and drinking area as an accessory use. Said property is shown on Assessor Map 144 Lot 23 and lies within the Character District 4-L2 (CD4-L2) and Historic Districts. As a result of said consideration, the Board voted 1) find that the Conditional Use Permit application meets the criteria set forth in Section 10.243.20 and to adopt the findings of fact as presented; and 2) to **approve** the conditional use permit as presented with the following **condition**:

2.1) *The outdoor use shall not extend beyond 8 pm.*

The Board's decision may be appealed up to thirty (30) days after the vote. Any action taken by the applicant pursuant to the Board's decision during this appeal period shall be at the applicant's risk. Please contact the Planning Department for more details about the appeals process.

Unless otherwise indicated above, applicant is responsible for applying for and securing a building permit from the Inspection Department prior to starting any project work. All stipulations of approval must be completed prior to issuance of a building permit unless otherwise indicated above.

This approval 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 Planning 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.

*The Findings of Fact associated with this decision are available: attached here or as an attachment in the Viewpoint project record associated with this application and on the Planning Board Meeting website:*

<https://www.cityofportsmouth.com/planportsmouth/planning-board/planning-board-archived-meetings-and-material>

The minutes and audio recording of this meeting are available by contacting the Planning Department.

Very truly yours,

A handwritten signature in black ink, appearing to read "Rick Chellman". The signature is fluid and cursive, with the first name "Rick" written in a smaller, more legible script than the last name "Chellman", which is more stylized and overlapping.

Rick Chellman, Chairman of the Planning Board

cc: Shanti Wolph, Chief Building Inspector  
Rosann Maurice-Lentz, City Assessor

Derek Durbin, Durbin Law Offices  
Eric Weinrieb, Altus Engineering

# Findings of Fact | Outdoor Dining Conditional Use Permit

## City of Portsmouth Planning Board

Date: March 16, 2023

Property Address: 361 Islington Street

Application #: LU-22-195

Decision: **Approve with Conditions**

### Findings of Fact:

Effective August 23, 2022, amended RSA 676:3, I now reads as follows: The local land use board shall issue a final written decision which either approves or disapproves an application for a local permit and make a copy of the decision available to the applicant. **The decision shall include specific written findings of fact that support the decision. Failure of the board to make specific written findings of fact supporting a disapproval shall be grounds for automatic reversal and remand by the superior court upon appeal, in accordance with the time periods set forth in RSA 677:5 or RSA 677:15, unless the court determines that there are other factors warranting the disapproval.** If the application is not approved, the board shall provide the applicant with written reasons for the disapproval. If the application is approved with conditions, the board shall include in the written decision a detailed description of the all conditions necessary to obtain final approval.

### Outdoor Dining Conditional Use Permit

10.242.10 The Planning Board may grant a conditional use permit if the application is found to be in compliance with the general criteria in Section 10.243 or, if applicable, the specific standards or criteria set forth in this Ordinance for the particular use or activity.

|          | <b>Outdoor Dining Conditional Use Permit 10.243 Requirements</b>   | <b>Finding</b><br>(Meets Criteria/Requirement) | <b>Supporting Information</b><br>(provided by applicant)   |
|----------|--|--|--|
| <b>1</b> | 10.243.21 The design of proposed structures, their height and scale in relation to the site's surroundings, the nature and intensity of the proposed use or activity, and the layout and design of the site will be compatible with adjacent and nearby properties, buildings and uses, will complement or enhance the character of surrounding development, and will encourage the appropriate and orderly development and use of land and buildings in the surrounding area. | <b>Meets</b>                                   | The design, height, scale and layout of the proposed use has been deemed appropriate by the Historic District Commission ("HDC") which gave its approval. The Planning Board may rely upon the HDC's decision to find that the proposed use will complement or enhance the character of the surrounding neighborhood. It is similar in scale to other similar uses including The Kitchen and Liar's Bench Brewery. |
| <b>2</b> | 10.243.22 All necessary public and private utility infrastructure and services will be available and adequate to serve the   | <b>Meets</b>                                   | The property has frontage on both Islington and Cabot Streets. There are adequate utility services in both rights-of-ways to service the property. Access infrastructure is in place   |

|          | <b>Outdoor Dining Conditional Use Permit 10.243 Requirements</b>   | <b>Finding</b><br>(Meets Criteria/Requirement) | <b>Supporting Information</b><br>(provided by applicant)  |
|----------|--|--|---|
|          | proposed use.  |  | with a signalize intersection at the Cabot and Islington Street intersection. The signal and Islington Street is scheduled for improvements during the 2023 construction season. The project was reviewed by the Portsmouth Technical Advisory Committee which recommended approval at their February 7, 2023 meeting.  |
| <b>3</b> | 10.243.23 The site and surrounding streets will have adequate vehicular and pedestrian infrastructure to serve the proposed use consistent with the City's Master Plan.  | <b>Meets</b>                                   | The Property served as a gas station for many years. It has an open sea of pavement that encourages an uncontrolled traffic flow with vehicles entering and exiting the Property in multiple locations. The Property has been redesigned to be more pedestrian friendly, create safer vehicular access and flow, and to maximize available parking while not creating an “overabundance of spaces because on-site parking drives up residential and commercial costs.” <i>See</i> Master Plan, Pg. 112. The proposed use will implement the goal of the Master Plan to encourage “reinvestment of underutilized buildings [which] creates more activated spaces while preserving the City’s industrial and merchant past.” <i>Id.</i> at Pg. 114. Safeguards have been proposed to adequately buffer the outdoor seating area from vehicular traffic and to provide safe pedestrian access to avoid customer-vehicular conflicts. Having pedestrian-oriented businesses and an “active streetscape” is encouraged by the Master Plan for the “West End” of Portsmouth and is consistent with CD-4 zoning and the character of the area. |
| <b>4</b> | 10.243.24 The proposed structures, uses, or activities will not have significant adverse impacts on abutting and surrounding properties on account of traffic, noise, odors, vibrations, dust, fumes, hours of operation, and exterior lighting and glare. | <b>Meets</b>                                   | The Property was previously used for outdoor dining (2018-2020) without adverse impact upon abutters. The ZBA granted multiple variances in 2021 to allow for the current proposed use of the Property by the Applicant, finding that it would not negatively impact surrounding properties or the general public. Terraforma has created a robust planting plan that improves buffering between the street and the site and to abutting properties. The proposed outdoor seating will be located to the front of the building closest to Islington Street. The proposed use  |

|          | <b>Outdoor Dining Conditional Use Permit 10.243 Requirements</b>  | <b>Finding</b><br>(Meets Criteria/Requirement) | <b>Supporting Information</b><br>(provided by applicant)  |
|----------|---|--|---|
|          |   |  | is a restaurant that will primarily sell bagels and bagel sandwiches. As a result, the proposed use will not generate undue noise, odors, vibrations, fumes, or dust. The site will be paved. There will be no dust generated from the site. Exterior lighting is minimal and only to the minimum standards of the Site Plan Review Regulations and is dark sky compliant. The hours of operation will be inherently limited due to the type of restaurant (bagel-focused). |
| <b>5</b> | 10.243.25 The proposed structures and uses will not have significant adverse impacts on natural or scenic resources surrounding the site, including wetlands, floodplains, and significant wildlife habitat.  | <b>Meets</b>                                   | The concerns set forth by Section 10.243.25 do not apply to the Property. The landscape improvements to the site coupled with the reduction in impervious surface and increased stormwater runoff control will only benefit the natural environment.  |
| <b>6</b> | 10.243.26 The proposed use will not cause or contribute to a significant decline in property values of adjacent properties.   | <b>Meets</b>                                   | The ZBA granted multiple variances for the Property and found that the proposed use would not cause a diminution in surrounding property values. The HDC also found in granting its approval that surrounding values will not be adversely impacted. If anything, the improvement of the Property with the proposed use would only lead to an increase in surrounding property values.  |
| <b>6</b> | <b>Other Board Findings:</b> The proposed use will make adaptive re-use of a former gas station property which will improve vehicular access and traffic flow, parking, pedestrian and non-vehicular access, building, fire and life safety code compliance and the environmental conditions of the property while enhancing its aesthetic appeal. It will revitalize a derelict property and convert it into a valuable neighborhood asset. Overall site conditions will be significantly improved over what exists. |  |   |
| <b>7</b> | <b>Additional Conditions of Approval:</b><br>The outdoor use shall not extend beyond 8 pm.  |  |   |