



City of Portsmouth
Planning Department
1 Junkins Ave, 3rd Floor
Portsmouth, NH
(603)610-7216

Memorandum

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

I. APPROVAL OF MINUTES

A. Approval of the February 16, 2023 minutes.

B. Approval of February 23, 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 February 16, 2023 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 February 23, 2023 meeting and vote to approve meeting minutes with edits if needed.

II. DETERMINATION OF COMPLETENESS

SUBDIVISION REVIEW

- A. The request of **Frederick J. Bailey III & Joyce Nelson (Owners)**, and **Tuck Realty Corporation (Applicant)**, for properties located at **212, 214, and 216 Woodbury Avenue** requesting Preliminary and Final Subdivision Approval for a Lot Line Relocation to create the following lots: Proposed Lot 1 to be 60,025 square feet of lot area where 26,012 square feet are existing, Proposed Lot 2 to be 12,477 square feet of lot area where 29,571 square feet are existing, and Proposed Lot 3 to be 7,917 square feet of lot area where 24,836 square feet are existing. No changes in street frontage are proposed. Said properties are located on Assessor Map 175 Lots 1, 2, and 3 and lie within the General Residence A (GRA) District. (LU-22-129)

Planning Department Recommendations

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

- A.** The request of **Lucky Thirteen Properties LLC (Owner)**, for property located at **147 Congress Street** requesting 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) and Historic District. (LU-22-192)
- B.** The request of **Lucky Thirteen Properties LLC (Owner)**, for property located at **361 Islington Street** requesting 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 (CD-4-L2) and Historic District. (LU-22-195)
- C.** The request of **Frederick J. Bailey III & Joyce Nelson (Owners)**, and **Tuck Realty Corporation (Owner and Applicant)**, for properties located at **212 Woodbury Avenue** requesting Site Plan Approval for the construction of an eight-unit condominium development consisting of four (4) single living-unit structures, two (2) two-unit structures, 18 parking spaces where are 13 required, and associated stormwater, utility and site improvements with access to the development from Boyd Street. Said properties are located on Assessor Map 175 Lot 1 and lies within the General Residence A (GRA) District. (LU-22-129)

Planning Department Recommendations

- 2) *Vote to determine that these applications are complete according to the Site Plan Review Regulations, (contingent on the granting of any required waivers under Sections IV of the agenda) and to accept the applications 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 working on revising the scope of the project to remove the requirement for a state permit.

Planning Department Recommendation

Vote to postpone to the April meeting.

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.*

- A.** The request of **Lucky Thirteen Properties LLC (Owner)**, for property located at **147 Congress Street** requesting 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) and Historic District. (LU-22-192)

Project Background

The proposed project includes construction of an addition as part of a renovation of the commercial building. The applicant has received approval from the Historic District Commission and has obtained approval from the Board of Adjustment for a variance. The property is in the Downtown Overlay District where nonresidential uses do not require off-street parking.

The existing portion of the lot where the addition is proposed is a narrow sliver of open space consisting of a brick area near the corner near the southwest corner of the lot and plantings along the building as it tapers towards the parking lot. The project also includes off-site improvements, specifically the sidewalk adjacent to the building along Maplewood Avenue, where a brick sidewalk will be installed.

Project Review, Discussion, and Recommendations

The project has been before the the Zoning Board of Adjustment, Historic District Commission, and Technical Advisory Committee . See below for details.

Zoning Board of Adjustment

The Zoning Board of Adjustment, at its regular meeting on Tuesday, January 24, 2023, considered the application for a variance to allow 2% open space where 5% minimum is required for the district. The Board voted to grant the variance as presented.

Historic District Commission Review

The Historic District Commission, at its regularly scheduled meeting of Wednesday, October 5, 2022, considered the application and voted to grant the Certificate of Approval with two stipulations:

- 1) *A mockup of the brick stain shall be presented prior to installation.*
- 2) *The requested modification of the rear awning shall return for Administrative Approval.*

Technical Advisory Committee Review

The Technical Advisory Committee, at its regularly scheduled meeting of Tuesday, February 7, 2023, considered the application for Site Plan Approval. The Committee voted to recommend Site Plan Approval to the Planning Board with the following conditions:

- 1) *Applicant will work with the Building Department to appropriately size and locate the grease trap.*
- 2) *DPW is to observe and approve that sewer and stormwater systems are separates properly.*
- 3) *An excavation permit will be needed for the construction of the sidewalk.*

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) *Applicant will work with the Building Department to appropriately size and locate the grease trap.*
- 2.6) *DPW is to observe and approve that sewer and stormwater systems are separates properly.*
- 2.7) *An excavation permit will be needed for the construction of the sidewalk.*

- 2.8) *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.*

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

- 2.9) *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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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.*

- B. The request of **Lucky Thirteen Properties LLC (Owner)**, for property located at **361 Islington Street** requesting 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. 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 and a 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 (CD-4-L2) and Historic District.

Project Background

The proposed project includes redevelopment of the Getty Station into a bagel shop with outdoor dining. This property has had many proposals over the past six years with only one a food truck business operating with no substantial improvements to the building or site. The current proposal includes two additions to the existing building, an outdoor dining area underneath the canopy, and landscaped areas. The outdoor dining use requires a Conditional Use Permit in the CD4-L2 district. A restaurant in the CD4-L2 is limited to an occupant load of 50 people. The applicant states the restaurant will provide 43 seats indoors with an additional area outside for 31 seasonal seats. The occupant load is based on the number of people that can occupy a building (including decks) and is determined by the building code.

Conditional Use Permit for Parking

The off-street parking standards in the City's Zoning Ordinance require 22 parking spaces for the site based on the parking requirements for a restaurant as provided in Section 10.1112.31. The outdoor dining use is an accessory use and does not require parking, thus the calculation is based on the restaurant within the structure. The applicant is proposing 12 compliant parking spaces as well as parking for motorcycles, mopeds, and bicycles.

Per Section 10.1116.13, any nonresidential use may substitute bicycle parking spaces for up to 5 percent of the required parking at 1 parking space may be replaced by 6 bicycle spaces or 2 bicycle lockers. The applicant is proposing 14 bike spaces in two racks. Because of this, the actual required parking should be reduced to 21 spaces

instead of the advertised 22 spaces.

Per Section 10.1112.14 of the Zoning Ordinance, the Planning Board may grant a conditional use permit to allow a building or use to provide less than the minimum parking spaces required by the off-street parking standards. An application for a conditional use permit for off-street parking must include a parking demand analysis.

Per Section 10.1112.142, an application for a conditional use permit shall identify permanent measures to reduce parking demand including but not limited to proximity to public transit and shared parking on a separate lot. The applicant has provided other types of parking (motorcycles, bicycles) and has enhanced pedestrian access to encourage alternative means of transportation to get to the site.

Conditional Use Permit for Outdoor Dining

The applicant is proposing to have an area for outdoor drinking and dining, which requires a Conditional Use Permit from the Planning Board in the CD4-L2 District. The use does not trigger the need for additional off-street parking as it is accessory and will be seasonal. As mentioned above, the outdoor seating area will provide 31 seats for seasonal use. This approval would be subject to any other Health or Inspections Department permits and/or review through a separate permitting process.

Technical Advisory Committee Review

Per Section 10.1112.141 of the Zoning Ordinance, the parking demand analysis must be reviewed by the Technical Advisory Committee prior to submission to the Planning Board. TAC reviewed the analysis at the February 7, 2023 meeting in conjunction with the site plan review.

Project Review, Discussion, and Recommendations

The project has been before the Technical Advisory Committee, Zoning Board of Adjustment and the Historic District Commission. See below for details.

Zoning Board of Adjustment

The Zoning Board of Adjustment, at its regularly scheduled meeting of Tuesday, October 18, 2022, considered the application and voted to grant the requested variances with the condition that:

- 3) *The design and location of the project may change based on the Planning Board and Historic District Commission review and approval.*

Historic District Commission Review

The Historic District Commission, at its regularly scheduled meeting of Wednesday, November 2, 2022, considered the application and voted to grant the Certificate of Approval with the following stipulations:

- 1) *The applicant shall return with details on the composite panels including how they would be finished and attached, the flat roof, the corrugated screenings, the tree and wall issues, and the sign and lighting.*
- 2) *The applicant shall return with a reflected ceiling plan for the canopy if necessary.*
- 3) *The applicant shall return with any changes resulting from the TAC work session.*

Technical Advisory Committee Review

The Technical Advisory Committee, at its regularly scheduled meeting of Tuesday, February 7, 2023, considered the application for Site Plan Approval and a parking Conditional Use Permit. The Committee voted to recommend approval to the Planning Board with the following conditions:

- 1) *Plans are updated to show separate connections for domestic 1" water and 4" fire services.*
- 2) *Crushed stone paths will be updated to be either hardscaped or landscaping.*
- 3) *12x18 inserta Tee and 12" PVC will be used to connect the drainage main in street to PCB1.*
- 4) *A note will be added to the plan to abandon old water service at the main.*
- 5) *Applicant will work with DPW to get locations of the existing sewer main in Cabot St.*
- 6) *Plans and notes are revised to show cage and burlap will be removed entirely from tree plantings.*
- 7) *Plans and notes are revised to show all lighting on site will be dark sky compliant.*
- 8) *Applicant will revise the plans to move rear retaining wall 1 foot towards the rear boundary line and modify trash/tote enclosure to create functional traffic circulation around the back of the structure. DPW Transportation Engineer to review and approve.*
- 9) *Plans and notes will be revised to indicate bike parking racks will be on a hard-scaped surface.*
- 10) *Plans will be revised to add additional protection (bollard, planter, or something similar) between canopy seating and vehicle parking spaces.*

The updated plan set has addressed all of the conditions from TAC with the exception of number 8. The rear retaining wall was moved back 1 foot, however there was still concern for vehicles navigating around the building. The applicant has submitted a revised sketch layout dated March 8, 2023 pulling the curb back to the edge of the building to allow more room for vehicles to navigate without hitting the curb. A condition has been added to revise the plan set based on this layout.

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) Update plan set to adjust curb behind the building per revised sketch dated 3/8/23.*

Planning Department Recommendation

Parking Conditional Use Permit

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

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

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

Planning Department Recommendation

Outdoor Dining Conditional Use Permit

1) *Vote to 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.*

(Alt.) Vote to 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 amended and read into the record.

2) *Vote to approve the conditional use permit as presented.*

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.*

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

A motion is required to consider these items together.

- C. The request of **Frederick J. Bailey III & Joyce Nelson (Owners)**, and **Tuck Realty Corporation (Applicant)**, for properties located at **212, 214, and 216 Woodbury Avenue** requesting Preliminary and Final Subdivision Approval for a Lot Line Relocation to create the following lots: Proposed Lot 1 to be 60,025 square feet of lot area where 26,012 square feet are existing, Proposed Lot 2 to be 12,477 square feet of lot area where 29,571 square feet are existing, and Proposed Lot 3 to be 7,917 square feet of lot area where 24,836 square feet are existing. No changes in street frontage are proposed. Said properties are located on Assessor Map 175 Lots 1, 2, and 3 and lie within the General Residence A (GRA) District. (LU-22-129)
- D. The request of **Frederick J. Bailey III & Joyce Nelson (Owners)**, and **Tuck Realty Corporation (Owner and Applicant)**, for properties located at **212 Woodbury Avenue** requesting Site Plan Approval for the construction of an eight-unit condominium development consisting of four (4) single living-unit structures, two (2) two-unit structures, 18 parking spaces where are 13 required, and associated stormwater, utility and site improvements with access to the development from Boyd Street. Said properties are located on Assessor Map 175 Lot 1 and lies within the General Residence A (GRA) District. (LU-22-129)

Project Background

The lot line revision plan proposed will create a 1.38-acre lot at 212 Woodbury Avenue to construct an 8-unit development consisting of 2 two-family units and 4 single-family units. The rear portions of 214 and 216 Woodbury will be merged into 212 Woodbury and the new access will be off Boyd Road and the remaining areas for 214 and 216 will be conforming lots and will not be part of the site plan development.

The existing condition where the development is proposed consists mostly of open space with vegetation and trees. The predevelopment drainage sheet flows onto the adjacent hotel site. The proposed development will provide stormwater treatment with 2 bioretention systems and infiltration beds located between the structures. The stormwater management system is described in further detail in the enclosed Drainage Analysis.

The project also includes off-site improvements including a 5-foot sidewalk from the new entrance to the development on Boyd Road and extending around the corner along the frontage on Woodbury Avenue.

Project Review, Discussion, and Recommendations

The project has been before the Technical Advisory Committee and the Zoning Board of Adjustment. See below for details.

Zoning Board of Adjustment

The Zoning Board of Adjustment, at its regularly scheduled meeting of Tuesday, April 19, 2022, considered the application and voted to grant a variance to allow more than one free standing dwelling on one lot with the following stipulations:

- 1) *The Board shall allow any changes made through TAC and the Planning Board during their review processes.*
- 2) *The Demolition Committee shall review the petition if anyone objects to the mansard building's demolition.*
- 3) *The applicant shall be allowed to make modifications based on any discussion with the abutters.*

Technical Advisory Committee Review

The Technical Advisory Committee, at its regularly scheduled meeting of Tuesday, February 7, 2023, considered the application for Subdivision and Site Plan Approval. The Committee voted to recommend approval to the Planning Board with the following conditions:

- 1) *DPW will review and approve the locations of domestic fire service lines entering all buildings.*

Three of the proposed units fall within the Highway Noise Overlay District (HNOD), which requires a Conditional Use Permit. A CUP was not submitted for the Board's consideration, thus a condition has been added to the site plan approval that requires the applicant obtain a CUP prior to the issuance of a building permit.

Planning Department Recommendation

Subdivision

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

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

2) Vote to grant Preliminary and Final Subdivision Approval with the following stipulations:

- 2.1) The subdivision plan, and any easement plans and deeds shall be recorded simultaneously at the Registry of Deeds by the City or as deemed appropriate by the Planning Department.*
- 2.1) Property monuments shall be set as required by the Department of Public Works prior to the filing of the plat;*
- 2.2) GIS data shall be provided to the Department of Public Works in the form as required by the City;*

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:

- 2.3) 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.*
- 2.4) 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.*
- 2.5) 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>*
- 2.6) DPW will review and approve the locations of domestic and fire service lines entering all buildings.*
- 2.7) Applicant will obtain a Conditional Use Permit for being located within the Highway Noise Overlay District.*

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

- 2.8) 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.*

V. CITY COUNCIL REFERRALS

None

VI. OTHER BUSINESS

- A.** Tuck Realty Corporation, for property located at 668 Middle Street requesting a 1-year extension of the Site Plan approval granted on May 19, 2022.

Project background

Site plan approval was granted on May 19, 2022 for the construction of two two-unit structures and improvements to the existing structures to create a total of 8 units on three lots. The applicant is working on the post-approval conditions, but likely will not obtain a building permit before May 19, 2023. The subdivision was recently finalized and scheduled to be recorded on March 10, 2023.

Planning Department Recommendation

- 1) Vote to grant a one-year extension to the Planning Board Approval of the Site Plan.*
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VI. OTHER BUSINESS

A. Chairman's Updates and Discussion Items

B. Planning Board Rules and Procedures

Background

The Board has had discussion about amending the Rules and Procedures over the course of this year. The Chair provided a marked up copy of the procedures for the Board to consider in February and is currently being reviewed by the Legal department and comments will be sent out once they have finished their review.

VII. ADJOURNMENT