



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

Memorandum

To: Planning Board

From: Peter Stith, AICP
Planning Manager

Date: November 21, 2024

Re: Recommendations for the November 21, 2024 Planning Board Meeting

I. APPROVAL OF MINUTES

A. Approval of the September 26, 2024, October 17, 2024 and October 24, 2024 meeting 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 September 26, October 17 and October 24, 2024 meetings and vote to approve meeting minutes with edits if needed.

II. DETERMINATION OF COMPLETENESS

SUBDIVISION PLAN REVIEW

- A. The request of **Lawrence P. Bornheimer Revocable Trust and Roman Catholic Bishop of Manchester (Owners)**, for property located at **119 Diamond Drive** and **827 Woodbury Ave** requesting Preliminary and Final Subdivision approval for a Lot Line Revision between Map 220 Lot 31 and Map 219 Lot 39 to relocate the common boundary line to encompass existing encroachments including a fence, retaining wall and drainage features.
- B. The request of **Northeast Credit Union (Owner)**, for property located at **100 Borthwick Avenue** and **0 Borthwick Avenue** requesting Preliminary and Final Subdivision approval to adjust the boundary between Map 240 Lot 3 and Map 259 Lot 15 by adding approximately 4.88 acres to Map 240 Lot 3.

Planning Department Recommendation

1) Vote to determine that Items A & B are complete according to the Subdivision Review Regulations, (contingent on the granting of any required waivers under Section IV of the agenda) and to accept the applications for consideration.

III. PUBLIC HEARINGS – OLD BUSINESS

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

- A.** The request of Matt **Ball** and **Andrea Fershtam (Owners)**, for property located at **252 Wibird Street** requesting a Conditional Use Permit from Section 10.814 for the conversion of an existing accessory structure into a Detached Accessory Dwelling Unit (DADU) that does not conform with the dimensional requirements of the Ordinance. Said property is located on Assessor Map 149 Lot 12 and lies within the General Residence A (GRA) District. (LU-24-137)

****Application has been postponed to January 2025 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 **Port Harbor Land LLC (Owner)**, for property located at **2 Russell Street requesting** Conditional Use Permit Approval to allow a 40,000 square foot building footprint within the CD5 zone as permitted under Section 10.5A43.43 and a Conditional Use Permit to provide 340 parking spaces on separate lots where 334 are required under Section 10.11112.62 of the Zoning Ordinance. Said property is located on Assessor Map 124 Lot 12 and lies within the Character District 5 (CD5) Historic and Downtown Overlay Districts. (LU-24-191)

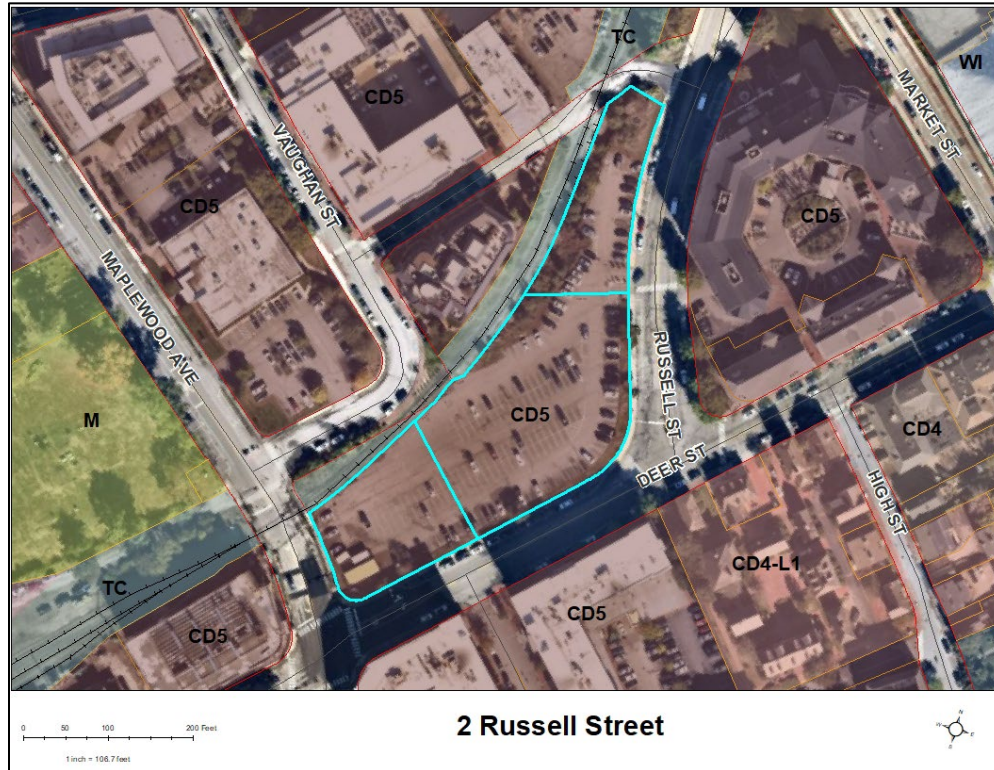
Project Background

The project was originally approved on December 15, 2022 and included lot line adjustments for three existing lots and the construction of three buildings consisting of office, retail/commercial, and residential uses. Building 1 is a proposed 4-story office building at the corner of Deer Street and Maplewood Avenue, Building 2 is a proposed 5-story mixed-use residential building at the corner of Deer Street and Russell Street with below ground parking, first floor residential lobby, commercial space and parking and 56 upper floor residential units, and Building 3 is a proposed 5-story mixed-use residential building along Russell Street with first floor residential lobby and commercial space and 24 upper floor residential units.

The subdivision/lot line adjustment plan was recorded in June 2024 and the applicant continues to work on the post approval conditions prior to getting a building permit. The site plan was extended for a second year at the Planning Board's October 17, 2024 meeting. Conditional Use Permits can only be extended one time for one year with no option for additional extensions, thus the reason the applicant is back before the Board seeking approval for the two CUPs that were originally granted in 2022.

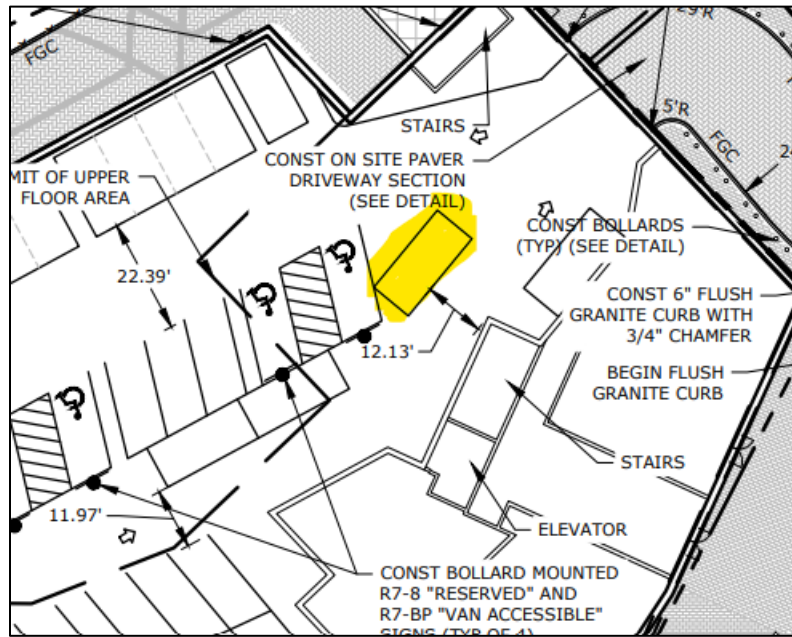
Since this project was originally approved in 2022, zoning amendments were adopted that now require workforce housing in addition to community space for incentives in the character districts, including increase in building footprint under Section 10.5A43.43. Applying the current regulations to this project, only 10% community space would be required and 10% of the units (if for sale) or 5% (if rented) to be designated as workforce housing units. This project was designed and approved under the prior ordinance and the applicant has been granted extensions as they complete their post-approval conditions prior to obtaining a building permit. The Ordinance only permits one extension for a CUP for a

period of one year. Additional extensions for site plan approval beyond one year are available and this project received a second one-year extension at the October 19, 2024 Planning Board meeting. The existing CUPs will expire on December 15, 2024 if a building permit is not issued. The applicant is working diligently on the remaining post approval conditions in order to have a building permit on or before December 15th, however if that does not happen, the CUPs will expire. The applicant is requesting new CUPs and requesting the Planning Board waive the requirement for workforce housing acknowledging the project will provide over 40% community space.



Project Review, Discussion, and Recommendations

The project was before the Zoning Board of Adjustment in October to seek dimensional relief for parking spaces and aisle widths in Building 2. The change to the parking layout increased the number of spaces by 6 and the Board granted the requested variances. The applicant was before the Technical Advisory Committee for the second site plan extension request and TAC reviewed the changes to the parking layout with no concerns other than one space shown below that appears to interfere with a vehicle parked in the adjacent handicap space.



Planning Department Recommendation

Conditional Use Permit – 10.1112.62 Shared Parking

1) Vote to find that the Conditional Use Permit application meets the criteria set forth in Section 10.1112.62 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 10.1112.62 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 with the following condition:

- 2.1) The shared parking arrangement shall be secured by a covenant acceptable to the City and recorded at the Rockingham County Registry of Deeds.

Conditional Use Permit – 10.5A43.43 Maximum Building Footprint

1) Vote to find that the Conditional Use Permit application meets the criteria set forth in Section 10.5A43.43 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 10.5A43.43 and to adopt the findings of fact as amended and read into the record.

2) Vote to grant the conditional use permit to allow a building footprint up to 40,000 SF within the CD5 as permitted under 10.5A43.43 with 40.4% Community Space and no workforce housing.

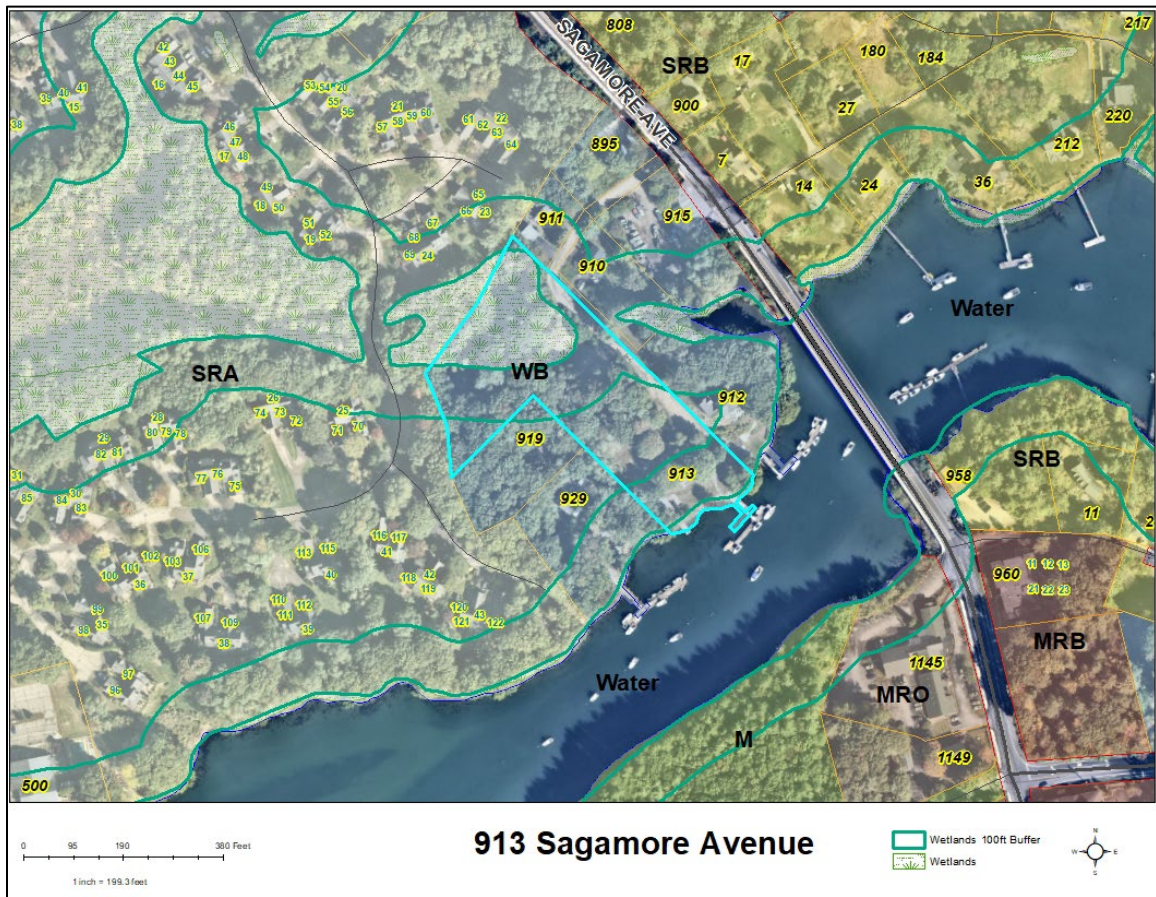
IV. PUBLIC HEARINGS – NEW BUSINESS

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 **Hogswave LLC (Owner)**, for property located at **913 Sagamore Avenue** requesting a Wetland Conditional Use Permit from Section 10.1017.50 for 9,574 square feet of disturbance within the wetland buffer area for re-development including demolition of the existing dwelling, construction of a new dwelling, re-configuration of the gravel driveway, pervious paver patio, and deck, grading, utility connections and landscaping. Said property is located on Assessor Map 223 Lot 27 and lies within the Waterfront Business (WB) District. (LU-24-141)

Background

This application is for the demolition of an existing residential structure and the construction of a new home, reconfiguration of the existing gravel driveway, the addition of a pervious paver patio, deck, removal of impervious surfaces, reconstruction of a retaining wall, grading, utility connections and landscaping. The existing conditions within the 100' wetland buffer include a one-story residential structure with 1,110 s.f. of impact and approximately 900 s.f. of impervious pavement. This application proposed the removal of the 1,110 s.f. of building impact within the buffer and the removal of 914 s.f. of pavement. The applicant is proposing to permanently impact approximately 6,855 s.f. of the 100' wetland buffer, compared to the existing condition of 7,743 s.f. of permanent impact.



Staff Analysis – Wetland CUP

1. The land is reasonably suited to the use activity or alteration.

This area is a previously disturbed area within the tidal buffer with an existing residential structure. The proposal seeks to remove the old structure and construct a new, larger structure. Given the proximity to the resource and the existing runoff conditions and slope, the proposed re-grading should be performed carefully. Appropriate erosion control measures are proposed, and the monitoring of these controls should be performed regularly during the construction season. The applicant is proposing stone drip edges and crushed stone beneath the rear deck, a rip rap swale at the toe of the slope, and a large vegetative buffer to help with existing sheet flow of stormwater on the property.

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

The applicant has explored an alternative location further from the wetland resource but due to ledge, it is not feasible without blasting or drilling.

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

The proposed replanting of the 25' vegetated buffer should have a positive impact on the wetland functional values on site where sheet flow over gravel previously existed. In addition, efforts to slow down and control the sheet flow onsite with a swale and drip edge should enhance existing stormwater conditions.

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

The proposed restoration of the 25' vegetated buffer will help to protect the adjacent wetland.

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

This project will be increasing the building impact within the 100' wetland buffer but the applicant is making strides to offset these impacts with stormwater filtration and vegetated buffer enhancement.

6. Any area within the vegetated buffer strip will be returned to a natural state to the extent feasible.

Applicant is proposing to revegetate a large portion of the 25' buffer.

Project Review, Decisions, and Recommendations

The applicant will be before the Board of Adjustment on Tuesday, November 19, 2024 seeking variances to allow a residential use in the Waterfront Business District. The applicant was before the Conservation Commission. See below for details.

Conservation Commission

The applicant was before the Commission at its regularly scheduled meeting of Wednesday, October 9, 2024 and the Commission voted unanimously to recommend approval with the following conditions:

1. *The proposed Northern Red Oaks should be at least of 2" caliper sizing.*
2. *The Conservation Commission recommends that the applicant follow NOFA standards on the site:*
https://nofaolc.wpenqinepowered.com/wpcontent/uploads/2019/10/nofa_organic_lan_d_care_standards_6thedition_2017_opt.pdf
3. *Wetland boundary markers shall be permanently installed prior the start of construction in locations noted on plan set.*

The Conservation Commission conditions have been met and included in the Planning Board submission.

Planning Department Recommendation
Wetland Conditional Use Permit

1) Vote to find that the Conditional Use Permit Application meets the requirements set forth in Section 10.1017.50 of the Ordinance and adopt the findings of fact as presented.

(Alt.) Vote to find that the Conditional Use Permit Application meets the requirements set forth in Section 10.1017.50 of the Ordinance and adopt the findings of fact as amended.

2.) Vote to grant the Conditional Use Permit with the following condition:

2.1) Wetland boundary markers shall be permanently installed prior the start of construction in locations noted on plan set.

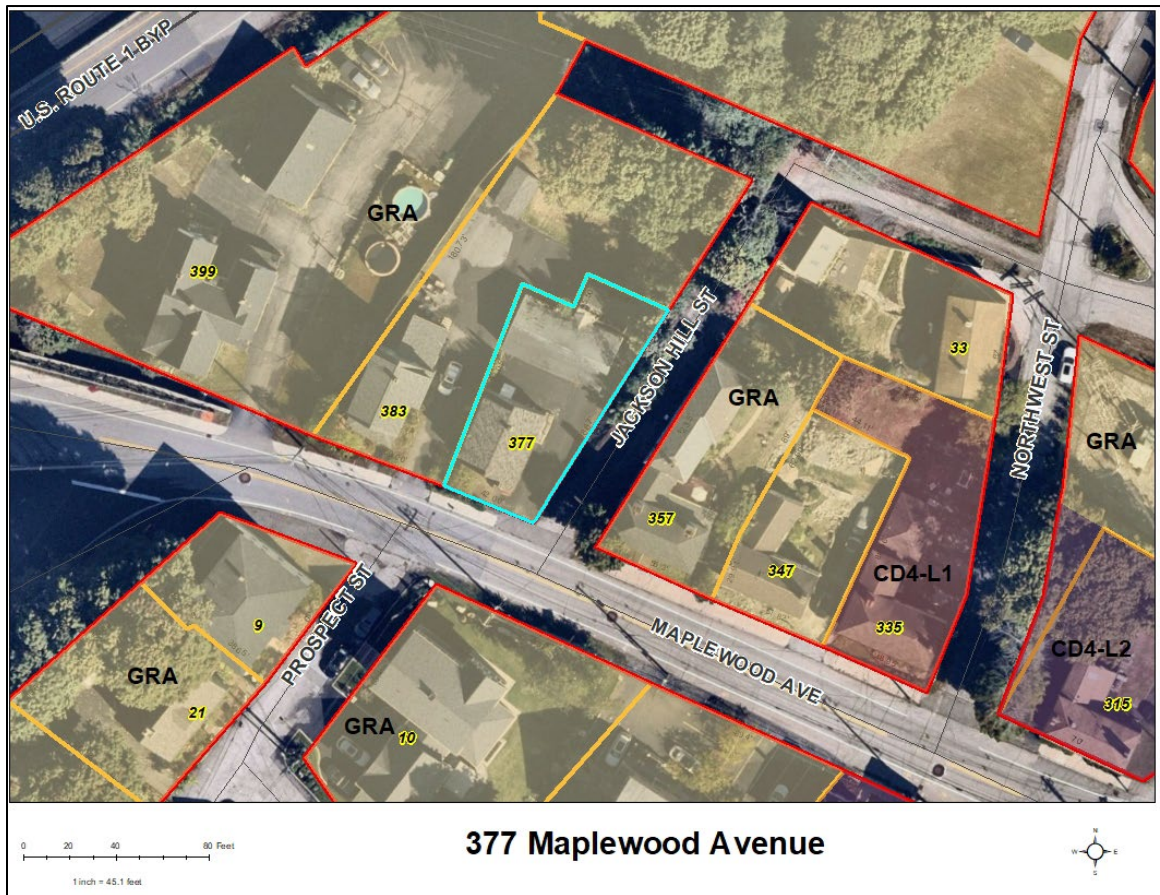
IV. PUBLIC HEARINGS – NEW BUSINESS

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 Kevin Shitan Zeng Revocable Trust of 2017 (Owner), for property located at **377 Maplewood Avenue** requesting a Conditional Use Permit from Section 10.814 for a Detached Accessory Dwelling Unit. Said property is located on Assessor Map 141 Lot 22 and lies within the General Residence a (GRA) and Historic Districts. (LU-24-133)

Project Background

The application for a new Detached Accessory Dwelling Unit (DADU) includes demolition of the existing dilapidated accessory structure and construction of a new DADU.



Project Review, Decisions, and Recommendations

The applicant was before the Zoning Board of Adjustment at their regularly scheduled meeting on Tuesday, September 17, 2024 and the Board voted to grant the following variances:

1) Variance from Section 10.521 to a) allow a building coverage of 37.5% where 25% is allowed; b) allow an open space of 24.5% where 30% is required; c) allow a secondary front yard setback of 6 feet where 10 feet is required; d) allow a left yard setback of 4.5 feet where 10 feet is required; e) allow a rear yard setback of 3 feet where 20 feet is required; and

2) Variance from Section 10.321 to allow a nonconforming building or structure to be extended, reconstructed or enlarged without conforming to the requirements of the Ordinance.

Per Section 10.814.63 below, the Planning Board may modify certain standards in this section except for the size and height of the ADU.

10.814.63 In granting a conditional use permit for an **accessory dwelling unit**, the Planning Board may modify a specific standard set forth in Sections 10.814.26 and 10.814.30 through 10.814.50 (except the size and height of any ADU), including requiring additional or reconfigured **off-street parking** spaces, provided that the Board finds such modification will be consistent with the required findings in Section 10.814.62.

The applicant is seeking one modification for the building footprint from Section 10.814.434, which limits the footprint of the building containing the DADU to 750 square feet. The proposed footprint of the building containing the DADU will be 1,104 square feet.

10.814.434 The **building footprint** of the **building** containing the **DADU** shall be no greater than 750 sq. ft.

The one-car garage is attached to the DADU, which is the main reason for the increase in the size of the footprint. The footprint of the portion of the building containing the DADU without the garage is 756 square feet, which would still require a modification, but is close to what is required under 10.814.434.

Planning Department Recommendation
Detached Accessory Dwelling Unit Conditional Use Permit

1) Vote to find that the Conditional Use Permit Application meets the requirements set

forth in Section 10.814.62 of the Ordinance and adopt the findings of fact as presented.

(Alt.) Vote to find that the Conditional Use Permit Application meets the requirements set forth in Section 10.814.62 of the Ordinance and adopt the findings of fact as amended.

2) Vote to grant the following modification:

2.1) Modification from Section 10.814.434 to allow a building footprint of 1,104 square feet.

3) Vote to grant the Conditional Use Permit with the following conditions:

3.1) Documentation of the conditional use permit approval shall be recorded at the Rockingham County Registry of Deeds, together with an affidavit that either the principal dwelling unit or the accessory dwelling unit will be occupied by the owner of the dwelling as the owner's principal place of residence, as required by Section 10.814.22.

3.2) A certificate of use issued by the Planning Department is required to verify compliance with the standards of this Section, including the owner occupancy and principal residency requirements. Said certificate shall be issued by the Planning Department upon issuance of a certificate of occupancy by the Inspection Department. A certificate of use shall not be issued prior to recording of documentation as required by this Ordinance.

3.3) The certificate of use shall be renewed annually upon submission of such documentation as the Planning Department may require to verify continued compliance with the standards of this Section. Failure to comply with this requirement shall be deemed a violation of the ordinance and may be enforced as provided in Article 2.

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.

- D.** The request of **Lawrence P. Bornheimer Revocable Trust and Roman Catholic Bishop of Manchester (Owners)**, for property located at **119 Diamond Drive** and **827 Woodbury Avenue** requesting Preliminary and Final Subdivision approval for a Lot Line Revision between Map 220 Lot 31 and Map 219 Lot 39 to relocate the common boundary line to encompass existing encroachments including a fence, retaining wall and drainage features. Said properties are located on Assessor Map 220 Lot 31 and Map 219 Lot 39 and lie within the Single Residence B (SRB) District. (LU-24-199)

Project Background

The application for a lot line adjustment between the two properties is proposed to resolve encroachments that include a fence, retaining wall and drainage features that extend onto 827 Woodbury and benefit 119 Diamond Drive. The lot line revision will add 4,590 square feet to Lot 31 (119 Diamond), which will result in a lot area of 17,910 square feet.





The images above clearly show the encroachment from Lot 31 onto Lot 39. The top image is from the 2000 aerial imagery and the bottom photo is from 2024, evidence that these encroachments have been present for at least 24 years. This lot line adjustment did not need to go before the Technical Advisory Committee because the application did not contain any of the following:

- a. Creation of a new lot;
- b. Construction of a new public or private street;
- c. Widening or realignment of an existing public or private street;

- d. Construction of public or private water, sewer or stormwater facilities serving more than one lot;
- e. Establishment of an easement over one lot for water, sewer or stormwater facilities to serve a different lot; or
- f. Provision of a common driveway or access easement;

Planning Department Recommendation

Subdivision Waiver

1. *Vote to grant the requested waivers to the Subdivision Standards from Section IV.9/V.8 Requirements for Preliminary Plat and Requirements for Final Plat.*

[NOTE: Motion maker must select one of the following options]:

a) *Strict conformity would pose an unnecessary hardship to the applicant and waiver would not be contrary to the spirit and intent of the regulations.*

[OR]

b) *Specific circumstances relative to the subdivision, or conditions of the land in such subdivision, indicate that the waiver will properly carry out the spirit and intent of the regulations.*

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:*
 - 3.1) *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.*
 - 3.2) *Property monuments shall be set as required by the Department of Public Works prior to the filing of the plat;*
 - 3.3) *GIS data shall be provided to the Department of Public Works in the form as required by the City;*

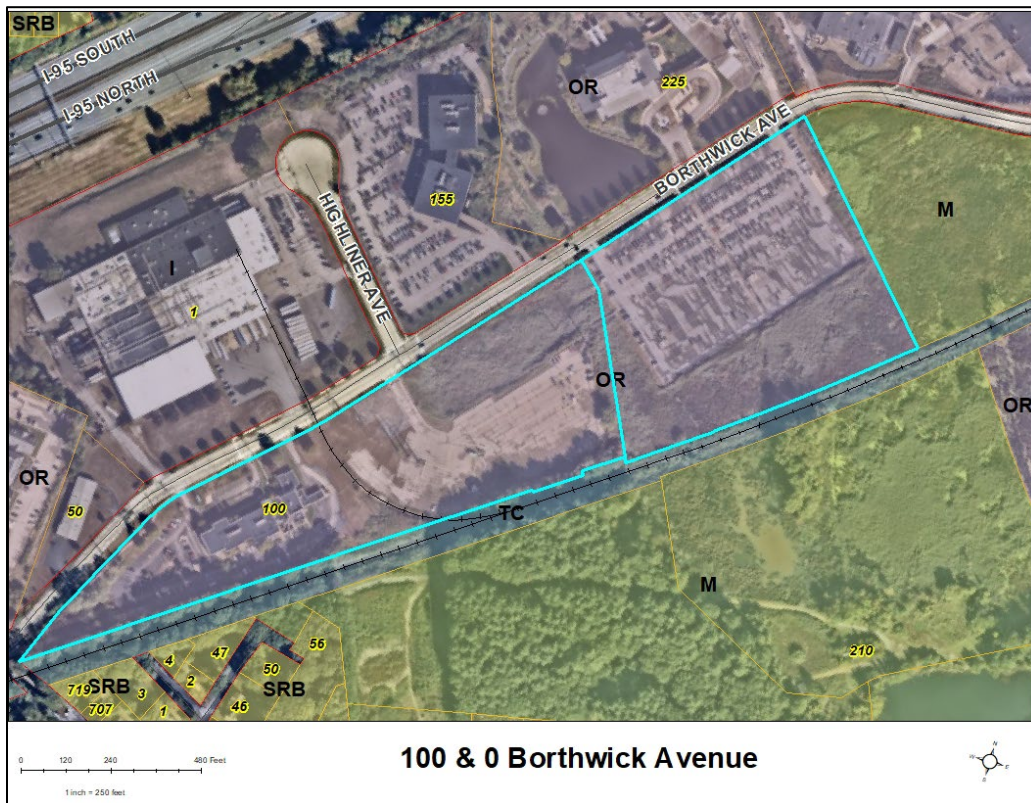
IV. PUBLIC HEARINGS – NEW BUSINESS

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.

- E. The request of **Northeast Credit Union (Owner)**, and **f Liberty Mutual Insurance Company (Owner)**, for property located at **100 Borthwick Avenue and 0 Borthwick Avenue requesting** Preliminary and Final Subdivision approval to adjust the boundary between Map 240 Lot 3 and Map 259 Lot 15 by adding approximately 4.88 acres to Map 240 Lot 3. Said property is located on Assessor Map 259 Lot 15 and Map 240 Lot 3 and lies within the Office Research (OR) District. (LU-24-151)

Project Background

The applicant is proposing a lot line adjustment between the Liberty Mutual parking lot and a portion of the adjacent property with Northeast Credit Union to add approximately 4.88 acres to the existing parking lot parcel. The adjustment will add 264 parking spaces to the Liberty Mutual lot. As stated in the application materials, Liberty Mutual constructed the parking lot on 100 Borthwick and now with North East Credit Union vacating the parcel, Liberty Mutual is seeking the lot line adjustment to incorporate all of their parking onto one lot.



Project Review, Decisions, and Recommendations

The applicant was before the Technical Advisory Committee and Zoning Board of Adjustment. See below for details.

Technical Advisory Committee

The applicant was before the Technical Advisory Committee at its regularly scheduled meeting of Tuesday, September 3, 2024 and the Committee voted unanimously to recommend approval with the following conditions:

1. *The application will only move forward if the Zoning Board of Adjustment grants approval for the current proposal.*
2. *Improve sidewalk to Borthwick Ave and crossing to an ADA compliant and concrete sidewalk.*
3. *Drainage on site must be functioning as originally designed. If deficient make improvements.*
4. *The existing system should be completely cleaned (basins & pipes) and all of the outlet pipes should be found, located and dredged out as needed to confirm their adequacy and ability to continue to function for the next 20 years. The catch basins sumps are the first line of defense regarding sediments and system clogging.*
5. *That detention pond no longer meets standards but as a minimum; show that it can handle a 50-year storm without overtopping so please run a drainage calculation on that and provide with the results.*
6. *A yearly drainage maintenance plan will be necessary to confirm that the basins are being cleaned annually.*
7. *Boundary survey showing extent of all lots is required.*
8. *Variance from BOA is needed to expand the use of parking as a primary use.*
9. *Proposed dimensions for new lots must be included in lot line adjustment plan.*
10. *Existing and proposed site plans must be provided.*
11. *Please provide the wetland delineation from June 2024.*

The TAC comments have been satisfied or included in Planning Board submission.

Board of Adjustment

The applicant was before the Zoning Board of Adjustment at its regularly scheduled meeting of Tuesday, October 15, 2024 and the Board voted unanimously to approve the variance to allow the expansion of a non-conforming use and to permit a surface parking lot as a principal use on a lot.

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:

- 3.1) 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.*
 - 3.2) Property monuments shall be set as required by the Department of Public Works prior to the filing of the plat;*
 - 3.3) GIS data shall be provided to the Department of Public Works in the form as required by the City;*
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V. CITY COUNCIL REFERRALS [NOTE: ANY REFERRALS REQUIRING PUBLIC HEARING SHOULD BE INCLUDED ABOVE]

A. Osprey Landing Open Space

Background

See attached memo from Director Britz and Bob Sullivan related to the property at Osprey Landing.

Planning Department Recommendation

The Planning Board recommend to the City Council that it approve the acceptance, execution and recording of the terms of a restrictive covenant agreement relating to Lot 2-1950 on a certain plan entitled, "Resubdivision Plan Osprey Landing, Shearwater Drive/Sanderling Way/Osprey Drive, Portsmouth, New Hampshire," by Costello, Lomasney & de Napoli, Inc., dated February 1999, and recorded in the Rockingham County Registry of Deeds as Plan No. D-27099, all in substantial conformance to those as presented to the Planning Board this evening.

B. 27 Hancock Street

Background

The dwelling at 27 Hancock Street encroaches into the right-of-way as shown in the survey submitted by Attorney Phoenix. This was acknowledged in a letter by Attorney Sullivan in a letter from 2006, however no action was taken by City Council at the time to allow the encroachment. The property is under agreement and the legal representative for the buyer has flagged this as a title defect. The request is for an easement from City Council to allow the minor encroachment of the dwelling into the right-of-way, which will solve the title issue.

Planning Department Recommendation

Recommend the City Council accept an easement for the encroachment at 27 Hancock Street.

C. Recommendation on FY2026-FY2031 Capital Improvement Plan

Background

Prior to this meeting, the Planning Board will have held a joint work session and public

hearing with City Council on the FY26-FY31 CIP. The Planning Board may want to entertain additional public comment at the regular meeting. If so, it would be appropriate to do so prior to making a recommendation to the Council.

Planning Department Recommendation

Vote to recommend adoption of the Capital Improvement Plan to the City Council.

VI. OTHER BUSINESS

- A. Chairman's Updates and Discussion Items
- B. Board Discussion of Regulatory Amendments and Other Matters

VII. ADJOURNMENT