



City of Portsmouth  
Planning Department  
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Portsmouth, NH  
(603)610-7216

Memorandum

To: Planning Board

From: Peter Stith, AICP  
Planning Manager

Date: January 16, 2025

Re: Recommendations for the January 16, 2025 Planning Board Meeting

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## I. ELECTION OF OFFICERS

The Chair will call for nominations for Chair and Vice Chair for the year.

Please find the section on Board Membership and Officers as found in the [Planning Board Rules and Procedures](#) below:

### *B. Board Membership and Officers.*

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*2. Officers: Board members shall elect annually from its membership in January of each year a Chair and Vice-Chair. The votes shall be public votes. The concurring votes of five members in attendance at a meeting shall be necessary to elect each Officer.*

*3. Duties of the Chair: The Chair shall:*

- a) Preside at all meetings.*
- b) Assist in the preparation of the agenda for each meeting in consultation with City staff.*
- c) Sign Board letters of decision, and Board approved plans for recording at the registry of deeds.*
- d) Have authority to sign agreements with consultants to the Planning Board only after: 1) a majority vote by the Planning Board specifically granting such authority; and, 2) the approval of the City Council to expend funds for a consultant.*
- e) Appoint alternate Board Members to sit in the absence of regular Board members.*
- f) Have complete voting privileges on all matters, including the election of officers.*

*g) Report any discussion or action relative to the Board that has taken place since the last meeting.*

*h) Receive, review and refer appropriate questions from the Board members to staff.*

*i) Represent the Planning Board outside Planning Board meetings, including before the City Council.*

*4. Duties of the Vice-Chair: The Vice-Chair shall assist the Chair and, in the absence of the Chair, shall have all the powers and duties of the Chair.*

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## II. APPROVAL OF MINUTES

A. Approval of the December 19, 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 December 19, 2024 meetings and vote to approve meeting minutes with edits if needed.

## III. DETERMINATION OF COMPLETENESS

### SITE PLAN REVIEW

A. The request of **One Market Square LLC (Owner)**, for property located at **1, 21 (15) Congress Street** requesting Site Plan Approval to construct an addition onto the previously approved project at 1 Congress Street and re-development of 15 Congress into a mixed-use building with associated site improvements; a Parking Conditional Use Permit from Section 10.1112.14 of the Zoning Ordinance to allow 21 parking spaces where 53 parking spaces are required. Said property is located on Assessor Map 117 Lots 12-15 and lies within the Character District 5 (CDR-5), Historic and Downtown Overlay Districts

### Planning Department Recommendation

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1) Vote to determine that Item A is complete according to the Site Plan Review Regulations, (contingent on the granting of any required waivers under Section V of the agenda) and to accept the application for consideration.

**IV. 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.*

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- B.** The request of **635 Sagamore Development LLC (Owner)**, for property located at **635 Sagamore Avenue** requesting Site Plan Review Approval for the demolition of the existing structures and construction of 4 single family dwellings with associated site improvements. Said property is located on Assessor Map 222 Lot 19 and lies within the Single Residence A (SRA) District.

Project Background

A site visit has not been scheduled yet for this project. Staff request the Board choose a date and time prior to the February meeting to conduct a site walk.

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**Planning Department Recommendation**

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- 1) Vote to postpone the application to the February 20, 2025 meeting and schedule a site walk.*

**IV. PUBLIC HEARINGS – OLD BUSINESS**

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

- B.** The request of **Durgin Square LLC (Owner)**, for property located at **1600 Woodbury Avenue** requesting amended Site Plan Review Approval for the addition of EV charging stations in the existing parking lot with associated equipment and transformer. Said property is located on Assessor Map 238 Lot 16 and lies within the Gateway Corridor (G1) District.

***It is recommended that Old Business Items IVB and New Business Item VA be discussed together and voted on separately.***

***A motion is required to consider these matters together.***

## V. 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 **Durgin Square LLC (Owner)**, for property located at **1600 Woodbury Avenue** requesting a Conditional Use Permit approval for the addition of EV charging stations in the existing parking lot with associated equipment and transformer. Said property is located on Assessor Map 238 Lot 16 and lies within the Gateway Corridor (G1) District.

### Project Background

The applicant is proposing to add 6 dual charging stations in the existing Whole Foods parking lot. The chargers will be EV fueling space B (Level 3), which requires a Conditional Use Permit.

### **EV fueling space B**

A public or private parking space with adjacent above ground charging support equipment that uses greater than customary residential electric service for charging EVs.



**Project Review, Decisions, and Recommendations**

The project was before the Technical Advisory Committee in December. See below for details.

**Technical Advisory Committee**

At their regularly scheduled meeting of Tuesday, December 3, 2024 meeting TAC voted to recommend that the Planning Board recommend approval with the following conditions:

1. *Include separate conduit trench detail for Right of Way (ROW) areas showing concrete encasement around primary conduit and replacement in kind of gravels, sidewalks, curbs and pavements. City standard requires 95% compaction within City ROW.*
2. *Confirm riser requirements on utility pole with Eversource (Rigid steel or sch 80 PVC).*
2. *Keep conduit crossing Durgin Lane 15 feet from any trees and protect trees during construction.*
3. *A license will be required by both Eversource and the applicant for the new utility pole and conduit in the right of way.*

***The TAC conditions have been addressed in the Planning Board submittal or added as conditions of approval.***

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**Planning Department Recommendation**  
**EV Fueling Space Conditional Use Permit**

1) *Vote to find that the Conditional Use Permit Application meets the requirements set forth in Section 10.243 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 10.243 of the Ordinance and adopt the findings of fact as amended.*

2) *Vote to grant the Conditional Use Permit as presented.*

**Planning Department Recommendation**  
**Amended Site Plan**

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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 Amended Site Plan approval with the following conditions:*

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2.1) *Keep conduit crossing Durgin Lane 15 feet from any trees and protect trees during construction.*

2.2) *A license will be required by both Eversource and the applicant for the new utility pole and conduit in the right of way.*

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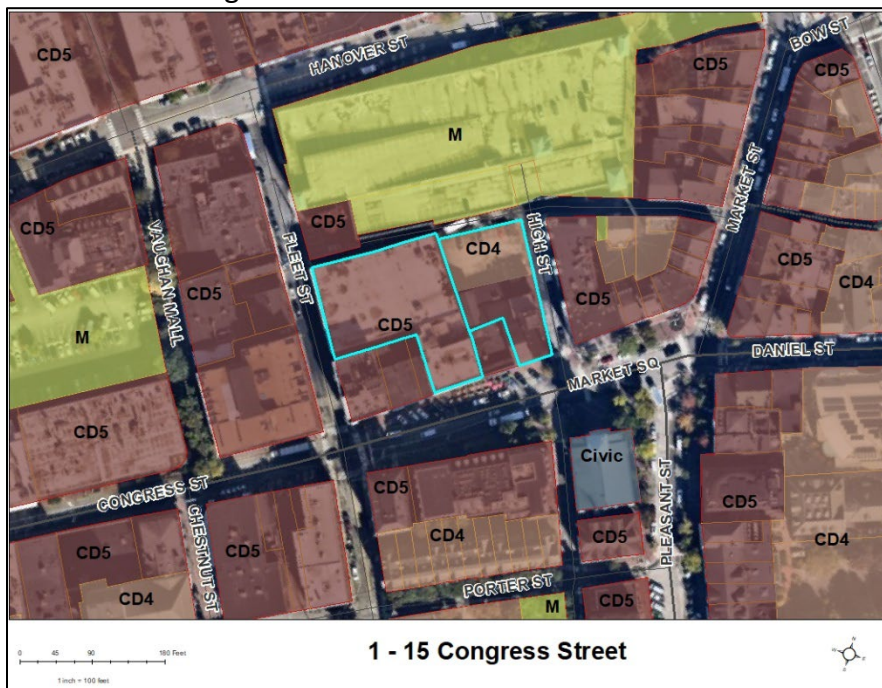
## V. PUBLIC HEARINGS – NEW BUSINESS

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

- C. The request of **One Market Square LLC (Owner)**, for property located at **1, 21 (15) Congress Street** requesting Site Plan Approval to construct an addition onto the previously approved project at 1 Congress Street and re-development of 15 Congress into a mixed-use building with associated site improvements; a Parking Conditional Use Permit from Section 10.1112.14 of the Zoning Ordinance to allow 21 parking spaces where 53 parking spaces are required. Said property is located on Assessor Map 117 Lots 12-15 and lies within the Character District 5 (CDR-5), Historic and Downtown Overlay Districts

### Project Background

This applicant received site plan approval for the project at 1 Congress on February 16, 2023 for the construction of a mixed-use building. The applicant has since acquired the JJ Newbury building adjacent to 1 Congress and is proposing to combine the project into one development by merging the lots, constructing an addition on the previously approved 1 Congress building and converting the JJ Newbury building into a mixed-use building with residential units on the upper floors. The project also includes regrading Haven Court to make it accessible from Fleet Street to High Street.



With the addition of 19 residential units in the JJ Newbury building, the project will need a parking Conditional Use Permit to allow 21 parking spaces where 53 are required per the zoning. Parking is not required for non-residential uses in the Downtown Overlay District (DOD), and a credit of 4 spaces is allowed in the DOD. The parking calculation can further be reduced by up to 5% for providing bicycle parking and the applicant is providing 36 spaces for bicycles. The property is directly adjacent to the High Hanover Garage and other municipal lots are close to this property, providing options for residents to park off-site.

As stated, the project includes merging the two lots, which can be accomplished administratively through an application for a lot merger to the Planning Department. The proposed addition on the 1 Congress building will extend to the JJ Newbury building and create a building footprint exceeding 30,000 square feet. The definition of building footprint below includes two or more buildings separated by common walls, fire walls or property lines as part of the building footprint.

**Building footprint**

The total area of a **building** at or above 18 inches in elevation as measured from the outside walls at the **grade plane** of a detached **building**, or of two or more **buildings** separated only by fire walls, common walls or property lines.

Uncovered **community space** located immediately above a **building's story** below the **grade plane** shall not constitute **building footprint**, provided it is not more than 10 feet above the adjacent **street** grade.

The definition is problematic for a majority of the built environment in the downtown core due to the fact that blocks of buildings are connected to one another. As presented, the proposed building footprint exceeds the maximum building footprint with the addition of the 1 Congress building connecting to the JJ Newbury building. The options below would allow the project to move forward:

1. *Seek a Conditional Use Permit under Section 10.5A43.43 to allow for a building footprint over 30,000 square feet which requires 10% community space and workforce housing, 5% (rental) or 10% (for sale).*
2. *Construct a smaller addition on the 1 Congress building so it does not attach to the JJ Newbury building.*
3. *Request the Planning Board amend the definition of building footprint for properties located in the CD4 and CD5 districts.*

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**Project Review, Decisions, and Recommendations**

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

Historic District Commission

The project was originally approved by the HDC at their at their regularly scheduled meeting of Wednesday, August 2, 2022 and has since received 2 extensions for one-year each. The addition of the JJ Newbury building was incorporated and presented to the HDC at their meeting of Wednesday, November 6, 2024. As a result of their review, the HDC granted approval as presented.

Technical Advisory Committee

At their regularly scheduled meeting of Tuesday, December 3, 2024 meeting TAC voted to recommend that the Planning Board recommend approval of the project moving forward as two separate buildings unless the Planning Board has a different interpretation or the applicant seeks a Conditional Use Permit for building footprint and with the following conditions:

1. *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. *Later review and approval of all off-site areas including but not limited to Ladd St, High St and Haven Ct planned improvements will be required in a separate reviewing action.*
3. *The City makes no guarantee on the timeline that the proposed Fleet Street utility improvements will be constructed. The applicant must therefore show the existing utilities in Fleet Street and how any proposed work will be incorporated into the existing Fleet St pipe network. A separate sheet should be provided showing the proposed Fleet Street improvement design and how any new improvements on Haven Ct or the Newberry building will eventually interface.*
4. *Proposed elevation changes to Haven Ct may affect the foundations, walls etc. of the Hanover Municipal parking garage. Third party review of structures and foundations will be required by the City.*

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**Planning Department Recommendation**  
**Site Plan Review Approval**

Staff recommends approval **only if** the footprint issue is resolved through one of the options stated above.

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 in addition to the original conditions of approval stated in the Letter of Decision dated February 16, 2023:*

- 2.1) 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.*
- 2.2) Later review and approval of all off-site areas including but not limited to Ladd St, High St and Haven Ct planned improvements will be required in a separate reviewing action.*
- 2.3) The City makes no guarantee on the timeline that the proposed Fleet Street utility improvements will be constructed. The applicant must therefore show the existing utilities in Fleet Street and how any proposed work will be incorporated into the existing Fleet St pipe network. A separate sheet should be provided showing the proposed Fleet Street improvement design and how any new improvements on Haven Ct or the Newberry building will eventually interface.*
- 2.4) Proposed elevation changes to Haven Ct may affect the foundations, walls etc. of the Hanover Municipal parking garage. Third party review of structures and foundations will be required by the City.*

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**Planning Department Recommendation**  
**Parking Conditional Use Permit**

*1) Vote to find that the Conditional Use Permit Application meets the requirements set forth in Section 10.1112.14 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 10.1112.14 of the Ordinance and adopt the findings of fact as amended.*

*2) Vote to grant the Conditional Use Permit as presented.*

**VI. CITY COUNCIL REFERRALS [NOTE: ANY REFERRALS REQUIRING PUBLIC HEARING SHOULD BE INCLUDED ABOVE]**

**A. Zoning Amendments**

Background

At the October 7, 2024 City Council meeting, the City Council voted to refer to the Legal and Planning & Sustainability Departments a request to draft an ordinance which would exempt certain structures which do not require a building permit from zoning requirements. The draft amendments limit review of structures accessory to one and two-family dwellings such as sheds, playhouses, treehouses, playground equipment, and prefabricated above-ground pools and hot tubs. Under this proposal, up to one of these structures per dwelling unit would be exempt from zoning regulations such as setbacks and lot coverage and would only need approval pursuant to environmental protection standards, Historic District compliance, and compliance with corner lot vision obstruction regulations. In addition, the amendments include increasing height of fences exempt from side and rear yard setbacks from six feet to eight feet.

The proposed amendments contain the elimination of the regulation of certain HVAC equipment pursuant to Section 10.515.14. Multiple variance applications from this section are routinely granted by the Zoning Board of Adjustment.

At the December 16, 2024 City Council meeting, the Council took the action below to:

7. First reading of Ordinance amending Chapter 10, Zoning Ordinance, by striking Article 5, Measurement Rules, Section 10.515.14; by amending Section 10.515.13; and by adding new Sections 10.811.60 and 10.811.61, relating to Accessory Uses to Permitted Residential Uses of the Ordinance of the City of Portsmouth, all in order to bring the Zoning Ordinance into better alignment with the Building Code, and to increase governmental efficiency – Moved to pass first reading and schedule a public hearing and second reading at the January 6, 2025 City Council meeting.

Agreed to accept a friendly amendment to refer the ordinance to the Planning Board for review and report back with a public hearing and second reading to be held at the February 3, 2025, City Council meeting. **Voted** to pass first reading and refer to the Planning Board for review and report back with a public hearing and second reading at the February 3, 2025, City Council meeting.

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**Planning Department Recommendation**

1) *Vote to recommend the City Council hold second reading on the proposed zoning amendments as presented.*

*Or*

2) *Vote to recommend the City Council hold second reading on the proposed zoning amendments as amended.*

**VI. OTHER BUSINESS**

- A. 815 Lafayette Road** – Requesting a 1-Year extension to the Site Plan Review, Development Site and Wetland Conditional Use approvals that were granted on January 18, 2024.

Project Background

On January 18, 2024, the Planning Board granted Site Plan approval, a Development Site CUP and a Wetland CUP for the project referenced above. A building permit should be issued soon, however the applicant is seeking the extensions in case the permit is not issued by the 18<sup>th</sup>.

The applicant has yet to obtain a building permit and has requested the one-year extension per Section 2.14 of the Site Plan Regulations below.

Section 2.14 of the Site Plan regulations allows for an extension:

<p><b>Section 2.14 Approval Expiration and Extension</b></p> <ol style="list-style-type: none"><li>1. Site plan approval by the Planning Board shall expire unless used (obtain a Building Permit) within a period of one (1) year from the date granted.</li><li>2. The Planning Board may, for good cause shown, extend such period by as much as one (1) year if requested and acted upon prior to the expiration date.</li></ol>
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Section 10.246.10 of the Zoning Ordinance allows for a one-time one-year extension of the CUP:

<p><b>10.246 Expiration and Abandonment of Approvals</b></p> <p><b>10.246.10</b> A conditional use permit shall expire unless a <b>building permit</b> is obtained within a period of one year from the date granted, unless otherwise stated in the conditions of approval. The <b>Board</b> 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.</p>
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**Planning Department Recommendation**

- 1) *Vote to grant a one-year extension to the Planning Board Approval of the Site Plan and Conditional Use permits to January 18, 2026.*

- B. 1 Congress Street** – Requesting a second 1-year extension to unless the Board grants approval for the updated 1-15 Congress Street project. The first extension was granted on November 16, 2023 and will expire on February 16, 2025.

Background

The Planning Board approved the project on February 16, 2023 and granted an extension on November 16, 2023. The applicant is requesting a second extension request if the application under agenda item **VB** is not acted upon. A second extension request must first go before TAC for review and the applicant has submitted that request, which will be on the February agenda. While at TAC recently, the request for a second extension was not requested.

**Section 2.14 Approval Expiration and Extension**

1. Site plan approval by the Planning Board shall expire unless used (obtain a Building Permit) within a period of one (1) year from the date granted.
2. The Planning Board may, for good cause shown, extend such period by as much as one (1) year if requested and acted upon prior to the expiration date.
3. If additional one (1) year extensions are requested, the owner will be required to have the previously approved plans reviewed by the TAC and the Planning Board. For this review the owner shall provide to the Planning Department the previously approved plans and supporting data.
4. Upon review of a request for an extension, the Planning Board shall have the authority to amend or deny a previously approved application. This review shall not require an application fee; however, the Planning Board and/or TAC may, if deemed necessary by either chair, conduct a public hearing at the owner's expense.

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*Site Plan Review Regulations* *18* *November 2020*

5. A time extension shall be granted if determined that no change has taken place that would materially affect the currently approved site plan in regard to:
  - (a) Traffic flow, volume, or congestion;
  - (b) Pedestrian safety;
  - (c) Drainage;
  - (d) Water availability;
  - (e) Sewer capacity;
  - (f) Design standards;
  - (g) Landscape elements; and
  - (h) Zoning compliance.
6. The Planning Board shall not deny a request for an extension without first having held a public hearing.

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**Planning Department Recommendation**

- 1) *Vote to postpone the request to the February 20, 2025 meeting in order for review by the Technical Advisory Committee at their February meeting.*
- C. Chairman's Updates and Discussion Items
- D. Board Discussion of Regulatory Amendments and Other Matters

**VII. ADJOURNMENT**