



City of Portsmouth
Planning Department
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Portsmouth, NH
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Memorandum

To: Planning Board

From: Peter Stith, AICP
Planning Manager

Date: February 14, 2025

Re: Recommendations for the February 20, 2025 Planning Board Meeting

I. APPROVAL OF MINUTES

A. Approval of the January 16, 2025 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 January 16, 2025 meetings and vote to approve meeting minutes with edits if needed.

II. 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 **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

The property is located in the Single Residence A district and contains an auto detailing shop and apartment. application is for site plan review to demolish the existing structures and construct four single-family dwellings on one lot. The applicant completed Preliminary Conceptual Consultation on January 27, 2022 with the Planning Board and initially presented 6 single-family units on one lot. This was reduced to a 4-unit development as the applicant went through the variance process with the Zoning Board outlined below.



Project Review, Discussion, and Recommendations

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

Board of Adjustment

The applicant first submitted to the Zoning Board in May of 2022 with a proposal for 5 single-family dwellings on a lot but withdrew the application before it was considered by the Board in order to work with neighbors to address concerns with the proposal. The applicant submitted a new variance application and was back before the Board at their regularly scheduled meeting of Tuesday, May 16, 2023 meeting. The applicant requested the following: 1) A Variance from Section 10.513 to allow four free-standing dwellings where one is permitted and 2) A Variance from Section 10.521 to allow a lot area per dwelling unit of 21,198 square feet per dwelling where 43,560 square feet is required.

The Board initially voted to deny the request, but the motion failed. A subsequent motion to approve the request passed with the following condition:

- 1. The design and location of the dwelling may change as a result of Planning Board review and approval.*

Technical Advisory Committee

The applicant began the site plan review process with TAC in April 2024 and has been working through site design since then. A third-party engineer was engaged to review the storm water and drainage design throughout the process. A letter from Altus engineering is included, stating they are satisfied with the design. At their regularly scheduled meeting of Tuesday, November 5, 2024 meeting TAC voted to recommend that the Planning Board recommend approval with the following conditions:

The following changes will be made prior to Planning Board submission:

- 1. The stormwater maintenance manual shall be updated for the submission to the Planning Board.*

- 1. Trees to remain are clearly marked before site work can commence.*

- 2. Monthly and annual reporting of stormwater and drainage infrastructure as defined in the stormwater maintenance manual to the Department of Public Works.*

- 3. Engineer to certify that stormwater mitigation system was monitored during construction, is installed as designed and that the system will function in compliance with the proposed drainage study and plan.*

4. Developer to pay for the installation of the fire hydrant extended to the site. The hydrant was installed exclusively for the benefit of this site. The cost to install was \$20,900.

5. Developer to provide fair share contribution for catch basin installed up gradient to the Tidewatch intersection. The catch basin was installed partially for the benefit of this site. The fair share contribution is \$15,208.

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

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 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.
- 2.3) 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>
- 2.4) Key elevations should be added to the stone infiltration basins under the decks for Units 3 and 4. Add notes to the plan requiring inspection of the subgrade by the City to ensure that the design criteria is met.
- 2.5) The sitework details for both the sand absorption area and the infiltration

stone underneath deck specify uncompacted in-situ soil or suitable backfill from subject parcel native material is placed beneath and adjacent to the systems. The Designer should provide gradation, compaction, and infiltration rate requirements for the placement of the fill adjacent, below and down gradient of the infiltration practice. The sand absorption area for unit 3 is in 5-foot fill section. The detail should include a minimum depth of native material below the treatment area as well as down gradient.

- 2.6) Trees to remain shall be clearly marked before site work can commence.*
- 2.7) Developer shall pay \$20,900 to cover the cost of the installation of the fire hydrant extended to the site, which was installed exclusively for the benefit of this site.*
- 2.8) Developer shall provide fair share contribution for catch basin installed up gradient to the Tidewatch intersection. The catch basin was installed partially for the benefit of this site. The fair share contribution is \$15,208.*

Conditions to be satisfied subsequent to final approval of site plan but prior to the issuance of a certificate of occupancy and release of the surety:

- 2.6) 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;*
 - 2.7) A stormwater inspection and maintenance report shall be completed annually (or monthly as outlined in O & M manual) and copies shall be submitted for review to the City's Stormwater Division/ Public Works Department.*
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III. 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 **Donna J. Sullivan (Owner)**, for property located at **435 Greenside Avenue** requesting a Conditional Use Permit from Section 10.814 for an Attached Accessory Dwelling Unit (AADU). Said property is located on Assessor Map 261 Lot 12 and lies within the Single Residence B (SRB) District.

Project Background

The applicant is proposing to construct a rear addition with an Attached Accessory Dwelling Unit (AADU). The one-story addition will conform to all dimensional requirements of the ordinance and no modifications are requested with the proposed AADU.



Planning Department Recommendation
Attached 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 Conditional Use Permit with the following conditions:*

2.1) *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.*

2.2) *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.*

2.3) *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.*

III. 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 issues should be raised at this point or it will be deemed waived.

- B. Proposed Ordinance Amendment that Chapter 10, ZONING ORDINANCE, be amended 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 Ordinances of the City of Portsmouth, all in order to bring the Zoning Ordinance into better alignment with the Building Code, and to increase government efficiency.

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.

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.

At the February 3, 2025 City Council meeting, the Council held second reading and revised the language outlined in the action sheet below. The revised version is included in the

Board's packet showing the strikethrough language.

9. PUBLIC HEARING AND SECOND READING of Ordinance amendment to 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 10.811.6 and 10.811.61, relating to Accessory Uses to Permitted Residential Uses of the Ordinance of the City of Portsmouth – Held a public hearing.

Voted to suspend the rules to take up Item XV. B. – Councilor Moreau – Update on Zoning Ordinance amendment relating to Accessory Uses to Permitted Residential Uses.

Voted to amend Section 10.811.60 by the removal of the words “*up to one*” to read as follows: *Any lot containing one or two dwelling units is permitted to construction and maintain one-story detached accessory structure used as a tool or storage shed, playhouse, treehouse, or similar use per dwelling unit on the property, with a square footage not greater than 120 square feet. Voted to pass as amended second reading and hold third and final reading at the March 17, 2025, City Council meeting.*

Section 10.515.13

The change from 6 foot to 8 foot in height for fences along the side and rear lot lines exceeds what is exempt from a building permit. The building code exempts fences 7 feet and under from requiring a building permit.

Section 10.515.14

The proposed amendments contain the elimination of the regulation of certain HVAC equipment pursuant to Section 10.515.14. This leads to multiple variance applications each month, which are routinely granted by the Zoning Board of Adjustment.

Section 10.811.60 & Section 10.811.61

The draft amendments proposed two new sections in Article 8 under Section 10.811 Accessory Uses to Permitted Residential Uses.

Section 10.570 (below) outlines requirements for accessory structures including prohibiting them from being located in a front yard or closer to the street than a principal structure. Proposed Sections 10.811.60 and 10.811.61 would allow accessory structures to be placed in the front yard and in front of a principal structure.

Section 10.573 provides setback requirements for certain sized accessory structures based on square footage and height. Specifically, Section 10.573.10 requires a 5-foot setback for an accessory structure up to 100 square feet and less than 10 feet in height. If larger than 10 square feet or taller than 10 feet, the setback is based on the height of the structure or the required setback, whichever is less, as outlined in Section 10.573.20.

Section 10.574 requires accessory structures to be included in the building coverage

calculation for a lot. The proposed amendments would remove this requirement for an accessory structure up to 120 square feet.

If the Board recommends the proposed amendments as drafted, recommendations should also be considered to Section 10.570 so there are not any conflicts.

Section 10.570 Accessory Buildings, Structures and Uses	
10.571	No accessory building, structure or use shall be located in any required front yard , or closer to a street than the principal building .
10.572	In a Character, Business or Industrial district, all accessory buildings and structures shall conform to the side yard and rear yard requirements of the applicable zoning district.
10.573	In a Residential or Mixed Residential district, an accessory building or structure may be located in a required side yard or rear yard subject to the following:
10.573.10	An accessory building or structure not more than 10 feet in height and not more than 100 square feet in area shall be set back at least 5 feet from any lot line .
10.573.20	An accessory building or structure more than 10 feet in height or more than 100 square feet in area shall be set back from any lot line at least the height of the building or the applicable yard requirement, whichever is less.
10.574	All accessory buildings and structures shall be included in the computation of building coverage .

In general, the Planning Department does not regulate swings or playground equipment, above ground temporary pools or even tree houses¹ and historically would consider these to fall under Section 10.811.50 and treat them as structures customarily associated with a residential use. Hot tubs have been treated as accessory structures and typically adhere to the 5-foot setback requirement under 10.573.10.

10.811.50	Other accessory uses and accessory structures , may be permitted if the Code Official determines that such uses or structures are customarily associated with and subordinate to a principal permitted use .
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¹ There was a recent instance where a large treehouse was constructed and enforcement action was taken, however it was a substantial structure with footings. The structure was reduced in height and size and was allowed to remain.

Allowing a 120 square foot shed anywhere on a lot without having to abide by setbacks, building coverage could create a situation where four properties connect and each lot has a 120 square foot shed on the corner of the lot with no space between the structures. Alternatively, sheds could be placed in the front yard on the front lot line, which would detract from the character of many neighborhoods throughout Portsmouth.

The amendment made by Council on February 3rd aims to allow a cumulative square footage of the items listed, up to 120 square feet. One could have multiple accessory structures that equal 120 square feet and comply with this section. This would be difficult to track and enforce.

Planning Department Recommendation

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

Or

1) Vote to recommend the City Council hold third reading on the proposed zoning amendments as amended. (pending and Planning Board edits/revisions)

IV. PRELIMINARY CONCEPTUAL CONSULTATION

- A. The request of **Walter D. Hett Trust (Owner)**, for property located at **0 Banfield Road** and **Pevery Hill Road** requesting the subdivision of an existing 8.5-acre parcel into five new residential lots with the associated site improvements. Said property is located on Assessor Map 255 Lot 2 and lies within the Single Residence A (SRA) District. (LUPD-25-1)

The applicant has provided a set of preliminary subdivision plans for discussion with the Board.

As authorized by NH [RSA 676:4,II](#), the Site Plan Regulations require preliminary conceptual consultation for certain proposals, including (1) the construction of 30,000 sq. ft. or more gross floor area, (2) the creation of 20 or more dwelling units, or (3) the construction of more than one principal structure on a lot. Preliminary conceptual consultation precedes review by the Technical Advisory Committee.

Preliminary conceptual consultation is described in the state statute as follows: *[Preliminary conceptual consultation] ... shall be directed at review of the basic concept of the proposal and suggestions which might be of assistance in resolving problems with meeting requirements during final consideration. Such consultation shall not bind either the applicant or the board and statements made by planning board members shall not be the basis for disqualifying said members or invalidating any action taken. The board and the applicant may discuss proposals in conceptual form only and in general terms such as desirability of types of development and proposals under the master plan.*

The preliminary conceptual consultation phase provides the Planning Board with an opportunity to review the outlines of a proposed project before it gets to detailed design (and before the applicant refines the plan as a result of review by the Technical Advisory Committee and public comment at TAC hearings). In order to maximize the value of this phase, Board members are encouraged to engage in dialogue with the proponent to offer suggestions and to raise any concerns so that they may be addressed in a formal application. Preliminary conceptual consultation does not involve a public hearing, and no vote is taken by the Board on the proposal at this stage. Unlike Design Review, completion of Preliminary Conceptual Consultation does not vest the project to the current zoning.

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

A. Zoning Amendments – *see above*

VI. OTHER BUSINESS

A. **99 Bow Street** – Requesting a 1-Year extension to the Site Plan Review approval that was granted on March 20, 2024.

Project Background

On March 20, 2024, the Planning Board granted Site Plan approval for the project referenced above. The applicant is working on post approval conditions in order to obtain a building permit.

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>Section 2.14 Approval Expiration and Extension</p> <ol style="list-style-type: none">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.
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Planning Department Recommendation

1) *Vote to grant a one-year extension to the Planning Board Approval of the Site Plan to March 20, 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. 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 was before TAC at the regular meeting on Tuesday, February 4, 2025 and voted to recommend a second, one-year extension.

This project was combined with the 21 (15) Congress Street project and received Planning Board approval at the January 16, 2025 meeting. Due to the appeal period of that project, the applicant proceeded with the second extension request. If there are no appeals within the 30-day appeal period (February 17th), the applicant will withdraw the second extension request, as it will not be necessary.

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.

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.

C. Chairman's Updates and Discussion Items

D. Board Discussion of Regulatory Amendments and Other Matters

VII. ADJOURNMENT