
M E M O R A N D U M

TO: Planning Board
FROM: Rick Taintor, Planning Director *RT.*
DATE: January 13, 2017
RE: Staff recommendations for January 19, 2017 Planning Board meeting

II. CAPITAL IMPROVEMENT PLAN

A. Presentation and adoption of **FY 2018–2023 Capital Improvement Plan.**

Description

The proposed FY 2016-2021 Capital Improvement Plan (CIP) will be presented by the Planning Board's CIP Subcommittee and City staff. Following consideration of this Plan, the Board is asked to adopt it and forward it on to the City Council with a favorable recommendation.

Planning Department Recommendation

Vote to adopt the FY 2018-2023 Capital Improvement Plan.

IV. DETERMINATIONS OF COMPLETENESS

A. Subdivisions:

1. The application of the the **City of Portsmouth and John W. Gray Revocable Trust and Bradford A. Gray Revocable Trust, Owners**, for properties located off Bridge Street and at 126 Bridge Street (Lot Line Revision).

Planning Department Recommendation

Vote to determine that this application for subdivision approval is complete (contingent on the granting of any required waivers under Section IV of the agenda) according to the Subdivision Rules and Regulations and to accept it for consideration.

B. Site Plan Review

1. The application of **City of Portsmouth, Owner**, for property located off **Bridge Street and Rock Street.**

Planning Department Recommendation

Vote to determine that this application for site plan approval is complete (contingent on the granting of any required waivers under Sections IV of the agenda) according to the Site Plan Review Regulations and to accept it for consideration.

III. PUBLIC HEARINGS – OLD BUSINESS

A. The request of **Deer Street Associates, Owner**, for property located at **165 Deer Street and 181 Hill Street** for design review of proposals to construct three mixed-use buildings fronting on Deer Street and a fourth mixed-use building fronting on a future public street off Bridge Street to be created in association with the City's new parking garage. Said properties are shown on Assessor Map 125 as Lot 17 and Assessor Map 138 as Lot 62 and all lots lie within the CD5 District and the Downtown Overlay District (DOD) and two of the proposed buildings lie within the Historic District.

Description

This item is a request for Design Review under the Site Plan Review Regulations. Under the State statute (RSA 676:4,II), the Design Review phase is an opportunity for the Planning Board to discuss the approach to a project before it is fully designed and before a formal application for Site Plan Review is submitted. The Design Review phase is nonbinding on both the applicant and the Planning Board.

Although the State statute calls this preapplication phase "design review," it does not encompass review of architectural design elements such as façade treatments, rooflines and window proportions. Rather, it refers to site planning and design issues such as the size and location of buildings, parking areas and open spaces on the lot; the interrelationships and functionality of these components, and the impact of the development on adjoining streets and surrounding properties.

Planning Department Recommendation

Following the public hearing and additional comment to the development team by the Planning Board, vote to determine that the design review phase has ended.

IV. PUBLIC HEARINGS – NEW BUSINESS

It is recommended that Items A and B under Public Hearings – Old Business and Item A under City Council Referrals/Requests be discussed together and voted on separately.

A motion is required to consider these three items together.

A. The application of the **City of Portsmouth, Owner**, for property located off Bridge Street, and **John W. Gray Revocable Trust and Bradford A. Gray Revocable Trust, Owners**, for property located at 126 Bridge Street, requesting Preliminary and Final Subdivision Approval (Lot Line Revision) between two lots as follows:

- a. Map 125, Lot 16 decreasing in area from 27,063 ± s.f. (0.6213 ± acres) to 26,727 ± s.f. (0.6136 ± acres) with 128.84' of continuous street frontage along Bridge Street.
- b. Map 138, Lot 62-1 increasing in area from 54,017± s.f. (1.2401 ± acres) to 54,353 ± s.f. (1.2478 ± acres) with 58.09' of continuous street frontage along Bridge Street.

Said lots lie within the Municipal (M) district, Character District 5 (CD5), and the Downtown Overlay District (DOD).

Description

This application is for a lot line revision to add a small triangular parcel to the adjacent City parcel in order to provide sufficient right of way width for construction of a new public street that will provide access and frontage for the proposed municipal parking garage, a proposed private development by Deer Street Associates (so-called "Lot 6"), and a public community space adjacent to the parking garage to be developed by DSA in connection with the development of "Lot 6" and "Lot 3".

Planning Department Recommendation

Vote to grant Preliminary and Final Subdivision Approval (Lot Line Revision) with the following stipulations:

1. *Property monuments shall be set as required by the Department of Public Works prior to the filing of the plat.*
 2. *GIS data shall be provided to the Department of Public Works in the form as required by the City.*
 3. *The final plat shall be recorded at the Registry of Deeds by the City or as deemed appropriate by the Planning Department.*
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B. The application of the **City of Portsmouth, Owner**, for property located **off Bridge Street and Rock Street**, requesting Site Plan Approval for the demolition of the existing building and the construction of a 36,400 ± s.f., 600-space parking structure with mixed use on the ground level and related paving, lighting, utilities, landscaping, drainage and associated site improvements. Said properties are shown on Assessor Map 138, Lots 60 & 62-1 and lie within the Municipal (M) District.

Description

This application is for construction of a municipal parking garage, surface parking areas, a new public street, and related off-site improvements.

Parking Garage

The proposed garage is a 600-space, 6-tier municipal parking garage with 4,700 square feet of 1st floor flex space for use as retail and/or office uses.

New Public Street

In addition to the garage itself, the project includes the construction and dedication of a new 660-foot public street extending from the existing intersection of Deer Street and Bridge Street to the intersection of Rock Street and Sudbury Street. Initially, the street will be blocked to through traffic, with a roundabout next to Rock Street Park to accommodate vehicles reversing direction.

Off-Site Traffic Improvements

The traffic impact study for the garage and DSA projects identified the following off-site improvements as being necessary to mitigate the impacts of the garage project:

1. Construct the Deer Street Extension near the existing apex of Deer Street / Bridge Street to provide access and egress for the proposed parking garage;
2. Coordinate with the adjacent property and business operator, Redlon & Johnson, to investigate an opportunity to provide a new sidewalk (possibly with a landscape strip) and defined curb cuts and driveway aprons to create a more inviting walking environment on the west side of Bridge Street near the proposed parking garage;
3. Restripe the Deer Street eastbound approach between the Deer Street Extension and Maplewood Avenue, within the existing curb lines, to include a westbound receiving lane, an eastbound left-turn lane, and an eastbound shared through / right-turn lane with shoulders on each roadway edge;
4. Stripe dashed "tracking" pavement markings along Deer Street through the intersection to provide positive guidance for westbound motorists on Deer Street as they cross Maplewood Avenue;
5. Replace the existing 'No Left Turn' signs for the Bridge Street southbound approach to Islington Street and apply new right turn arrow and 'ONLY' pavement markings;
6. Modify existing traffic signal timing and coordination parameters along the Maplewood Avenue / Middle Street corridor, between Deer Street and State Street, to optimize operations and efficiency;

7. Reestablish traffic signal coordination at the intersection of Middle Street / State Street to allow for improved vehicle progression along the Maplewood Avenue / Middle Street corridor;
8. Consider additional dynamic parking garage message signs at key gateway locations within Downtown Portsmouth. TEC recommends dynamic signs be considered along the following Downtown gateway approaches:
 - Market Street southbound, north of Russell Street (enhance existing sign location);
 - Maplewood Avenue southbound, north of Raynes Avenue;
 - Middle Street northbound, south of Court Street; and
 - Memorial Bridge southbound, north of Bow Street;
9. Construct a sidewalk connecting the proposed Deer Street Parking Garage to the sidewalk network along Deer Street and Bridge Street. The sidewalk should provide curbing to vertically separate vehicular and pedestrian traffic flows;
10. Construct or reconstruct accessible ramps and driveway aprons along Deer Street between the proposed Deer Street Parking Garage and Maplewood Avenue to comply with Americans with Disabilities Act (ADA) standards;
11. Stripe shared-use lane markings “sharrows” along Deer Street and Bridge Street between Maplewood Avenue and Hanover Street;
12. Provide opportunities for bicycle sharing at the parking garage;
13. Provide bicycle racks to encourage bicycling, particularly for residents that may use the facility; and
14. Post COAST and Wildcat Transit maps and schedules within the parking garage to identify opportunities for visitors to utilize public transportation to/from Downtown.

The report also identified a number of additional off-site improvements to mitigate the anticipated impacts of the multiple projects being proposed by Deer Street Associates. However, those projects are still evolving and complete information was not available on DSA's proposed uses and site design, and the resulting traffic volumes and flows. As a result, the appropriate off-site mitigation for these projects will change as DSA refines its proposals, and will be addressed during site plan review of each component of the DSA developments.

Technical Advisory Committee Recommendation

This project was reviewed by the Technical Advisory Committee in work sessions on November 22 and December 27, 2016, and a meeting and public hearing on January 3, 2017. At its meeting on January 3, 2017, the Technical Advisory Committee voted to recommend site plan approval including the recommended off-site traffic improvements included in the traffic impact study with the following stipulations:

1. Final design and location of above-ground and underground utilities and connections shall be coordinated and approved by DPW.
2. Add a raised paver treatment that is mountable on the interior of the roundabout.
3. Revise the crosswalk before the roundabout to make it as perpendicular to the sidewalks as possible.

A revised plan set submitted to the Planning Department on January 11, 2017, satisfies all of the TAC stipulations. In addition, the plan was modified as follows:

1. A crosswalk (labeled “potential crosswalk”) has been added to the northeast of the parking garage entrance.

TAC had considered the addition of a crosswalk at this location at its work sessions and public hearing, and had also discussed adding flush pavers across the width of the road in front of the entrance driveway (similar to the treatment at the intersection Hanover Street with Portwalk Place and the Vaughan Mall). However, neither the crosswalk nor the paver treatment were considered to be necessary due to the construction of the garage alone because the garage plans do not include a sidewalk on the opposite side of the street.

While TAC did not recommend either a crosswalk or pavers, members did not oppose either pedestrian crossing measure. TAC members did acknowledge that the future redevelopment of the Deer St Associates Lot 6 would likely generate increased pedestrian traffic and could warrant the addition of a crosswalk and/or a traffic calming treatment such as the flush pavers at the entrance.

2. A transformer and generator previously located in the paved area on the northwest side of the garage and next to the railroad tracks have been relocated behind the new sidewalk next to the Heineman property on the southeast side of the roundabout. This option had originally been discussed by TAC members and was deemed acceptable if the first option was not feasible. Due to cost considerations, the applicant is proposing the location shown on the plan.

Planning Department Recommendation

Vote to grant Site Plan Approval with the following stipulations:

1. *The Site Plan and Landscape Plan submitted for recording shall include the following notes:*

- “1. This Site Plan shall be recorded in the Rockingham County Registry of Deeds.
2. All improvements shown on this Site Plan shall be constructed and maintained in accordance with the Plan by the property owner and all future property owners. No changes shall be made to this Site Plan without the express approval of the Portsmouth Planning Director.”

2. *The Landscape Plan shall also include the following additional notes:*

- “1. The property owner and all future property owners shall be responsible for the maintenance, repair and replacement of all required screening and landscape materials.
2. All required plant materials shall be tended and maintained in a healthy growing condition, replaced when necessary, and kept free of refuse and debris. All required fences and walls shall be maintained in good repair.
3. The property owner shall be responsible to remove and replace dead or diseased plant materials immediately with the same type, size and quantity of plant

materials as originally installed, unless alternative plantings are requested, justified and approved by the Planning Board or Planning Director.”

3. *The Site Plan and Landscape Plan shall be recorded at the Registry of Deeds by the City or as deemed appropriate by the Planning Department*
4. *Off-site improvements as identified in the traffic impact study shall be completed in conjunction with the project.*

C. The application of **Gregory C. and Sandra M. Desisto, Owners**, for property located at **36 Shaw Road**, requesting Amended Conditional Use Permit approval under Section 10.1017 of the Zoning Ordinance for work within the inland and tidal wetland buffers to remove a bulkhead, remove an air conditioner pad, add heat pump pads, add a buried propane tank and reconfigure a rain garden, the drain line and manhole, with 7 ± s.f. of permanent impact and 375 ± s.f. of temporary impact to the wetland buffer. Said property is shown on Assessor Map 223 as Lot 22 and lies within the Single Residence B (SRB) District. (Conditional Use Permit approval was granted at the September 17, 2015 Planning Board Meeting.)

Description

This application is for an amendment to a conditional use permit granted in September 2015 for work within the inland and tidal wetland buffers. The request at that time was to renovate an existing house, including the addition of a second floor, the addition of a new garage, breezeway, porches and deck, and landscape improvements, with 14,060 + s.f. of permanent impact and 1,353 + s.f. of temporary impact to the wetland buffer. The proposed amendment will result in 375 s.f. of *additional* permanent impact and 7 s.f. of *additional* temporary impact to the wetland buffers.

In order to be granted a Conditional Use Permit for work within the wetland buffer, the applicant must satisfy the criteria for approval set forth in Section 10.1017.50 of the Zoning Ordinance, as follows:

1. The land is reasonably suited to the use, activity or alteration.
2. There is no alternative location outside the wetland buffer that is feasible and reasonable for the proposed use, activity or alteration.
3. There will be no adverse impact on the wetland functional values of the site or surrounding properties.
4. Alteration of the natural vegetative state or managed woodland will occur only to the extent necessary to achieve construction goals.
5. The proposal is the alternative with the least adverse impact to areas and environments under the jurisdiction of [the wetlands protection provisions of the Ordinance].

The additional impacts proposed in the current application are minor changes to the previously approved plan and reasonable considering the overall project underway.

Conservation Commission Review

The Conservation Commission reviewed this application at its meeting on January 11, 2017, and voted to recommend approval of the conditional use permit with no stipulations.

Planning Department Recommendation

Vote to grant the conditional use permit as requested.

VII. CITY COUNCIL REFERRALS/REQUESTS

A. Proposed construction and acceptance of a public way between Bridge Street and Rock Street.

Description

As part of the municipal parking garage project, the City plans to construct a new public street from Bridge Street to the intersection of Rock Street and Sudbury Street.

Under the City Ordinance, Chapter 11, Article VI, before the City Council takes final action on “any plan for the construction, alteration, relocation, acceptance or discontinuance of a public way” the matter must be referred to the Planning Board in writing for a report thereon. The City Council voted at its January 9, 2017 meeting to make the referral as required.

The documentation submitted with the referral includes a plan showing the proposed right-of-way and an orthophoto showing the proposed ROW in the context of the surrounding neighborhood. In addition, the site plans submitted for the parking garage (Item B under Public Hearings – New Business) detail the construction plans for the proposed street, including grading, drainage, utilities and conduits.

Planning Department Recommendations

Vote to recommend that the City construct the proposed new street as shown on the Deer Street Parking Garage site plans dated January 11, 2017 (including any revisions that may be approved by the Planning Board through the Site Plan Review process), and to recommend that the new street be dedicated and accepted as a City street upon completion of construction in accordance with the approved plans

Items B and C under City Council Referrals/Requests

Restoration of Involuntarily Merged Lots – Overview

RSA 674:39-aa requires the City Council to vote to restore “to their premerger status” any lots or parcels that were “involuntarily merged” by municipal action for zoning, assessing, or taxation purposes without the consent of the owner. Unlike all other lot divisions, there is no statutory role for the Planning Board in this process, but the City Council has begun referring such requests to the Board for its review and report back.

The statute defines “voluntary merger” and “voluntarily merged” to include “any overt action or conduct that indicates an owner regarded said lots as merged such as, but not limited to, abandoning a lot line” (RSA 674:39-aa, I). It is therefore the City Council’s responsibility to determine whether a merger was voluntary (i.e., requested by a lot owner) or involuntary (implemented by the City without the owner’s consent).

Following the City Council vote to restore involuntarily merged lots to their premerger status, the City GIS and Assessing staff will update zoning and tax maps accordingly. It will be up to the owner to take any further action to confirm the restoration to premerger status, such as recording a plan at the Registry of Deeds

It is important to note that the granting of a request to restore lots to their premerger status does not mean that the resulting lots will be buildable or, if already developed, will conform to zoning. The statute states that “The restoration of the lots to their premerger status shall not be deemed to cure any non-conformity with existing land use ordinances (RSA 674:39-aa, V). For example, the re-establishment of a lot line between the two premerger lots may introduce a new nonconformity with respect to minimum required lot area or street frontage for either or both of the premerger lots, or with respect to maximum building coverage or a minimum required side yard where a building already exists on one of the premerger lots. In such cases, the owner(s) of the applicable lot would have to apply to the Zoning Board of Adjustment for the necessary variances to restore zoning compliance or to allow future development.

B. Request to restore involuntarily merged lots at 21 Elwyn Avenue to their premerger status.

Description

The parcel at 21 Elwyn Avenue (Assessors Map 113, Lot 28) is comprised of two lots shown on a plan compiled from an 1899 survey and recorded at the Rockingham County Registry of Deeds. According to a letter from the owners’ attorney to the City Council, no owner in the chain of title ever voluntarily merged the two lots, and therefore the lots were involuntarily merged by the City. The owners now request that the Council restore the merged lots to their premerger status as authorized by RSA 674:39-aa.

As shown on the 1899 plan, the two original lots that comprise the current parcel were each 50 feet wide by 100 feet deep, like the other lots in the block bounded by Elwyn Ave., Rockland St., Kent St. and Lincoln Ave. While the two lots at the corner of Lincoln and Kent were ultimately developed in a different orientation, the subject lot is the only one in the block that has been merged to be a “double” lot of 100 feet by 100 feet. An existing single-

family dwelling, garage and shed have a total footprint of 1,526 sq. ft., thus occupying 15.3 percent of the total lot area.

In addition to the documents submitted by the owners, the materials in the Planning Board's packet include two plans generated from the City's geographical information system: an orthophoto overlaid with parcel boundaries, and a plan showing building footprints and the approximate location of the premerger lot line (blue dashed line). As this second plan shows, both the existing dwelling and the shed are very close to the boundary separating the two premerger lots, and the dwelling may even be situated across the former property line. However, it is important to note that due to the different ways in which different layers have been created for the GIS there could be up to 3-4 feet difference in the relationship between the building layer and the parcel layer.

Zoning Issues

The subject lot is in the General Residence A zoning district, which requires a minimum lot area of 7,500 sq. ft. and continuous street frontage of 100 feet. Because this zoning was applied to the neighborhood after it was fully developed, most lots in the area do not conform to the zoning requirements, typically having around 5,000 sq. ft. of lot area and 50 feet of frontage. While the subject lot does comply with the area and frontage requirements, the two premerger lots do not, and would require zoning relief if they were separated.

If City Council grants the request to separate the existing lot into the two original lots, the vacant lot will require variances for lot area and frontage in order to construct a dwelling. Variances should also be required to create a new substandard lot area and side yard setback for the existing dwelling. Furthermore, depending on where the existing dwelling and shed lie in relation to the previous lot line, the division may also require an easement to allow such structures to remain on the adjacent lot. Such variances and easement would normally be required by the Planning Board if the lots were divided through the subdivision process; however, since the request is to divide lots in accordance with RSA 674:39-11, there is no regulatory authority for staff to require a lot survey or to ensure that all these zoning details are addressed.

Planning Department Recommendation

Vote to recommend to the City Council whether the parcel at 21 Elwyn Avenue should be restored to its premerger status as two lots, and municipal zoning and tax maps be updated to identify the premerger status of the lots as shown on the 1899 plan recorded at the Rockingham County Registry of Deeds.

C. Request to restore involuntarily merged lots at 70 Sims Avenue to their premerger status.

Description

According to the descriptions in deeds going back to at least 1935, the parcel at 70 Sims Avenue (Assessors Map 233 Lot 76) is comprised of two original lots: a 50' x 100' lot at the corner of Sims Avenue and Fletcher Street, and a larger lot (100' x approximately 130') fronting on Fletcher Street. . According to a letter from the owners' attorney to the City

Council, no owner in the chain of title ever voluntarily merged the two lots, and therefore the lots were involuntarily merged by the City. The owners now request that the Council restore the merged lots to their premerger status as authorized by RSA 674:39-aa.

The original parcels are shown on a subdivision plan titled "Daniels Park", prepared for Belmont Realty Company in June 1918 and recorded at the Rockingham County Registry of Deeds.

An aspect of this request that is different from all other requests for restoration of involuntarily merged lots is that the City acquired the parcel in 1935 by a tax collector's sale, and conveyed it in 1948. However, the 1935 tax deed lists three lots on the Daniels Park plan (lots 55, 64 and 65) while the 1947 deed only conveys two of those lots (lots 55 and 64). It does not seem likely that the City would have merged lots 64 and 65 during the 13 years that it had ownership of the three lots, and the metes and bounds description of the combined lot only appeared in deeds subsequent to the 1947 sale. Because lots 55 and 64 were separated by lot 65, it is possible that the 1947 deed, and all subsequent deeds, were in error, and should have referred to all three original lots rather than just two of them.

With no further information, it appears that the proper action by the City Council is to restore the parcel to its premerger status as three lots, i.e., Lots 55, 64 and 65 as shown on the 1918 plan of Daniels Park.

Planning Department Recommendation

Vote to recommend to the City Council whether the parcel at 70 Sims Avenue should be restored to its premerger status as three lots, and municipal zoning and tax maps be updated to identify the premerger status of the three lots as shown on the 1918 plan recorded at the Rockingham County Registry of Deeds.

VIII. OTHER BUSINESS

A. The request of **299 Vaughan Street, LLC, Owner**, for property located at **299 Vaughan Street**, and **Sanel Realty Co., Inc., Owner**, for property located at **225 Vaughan Street**, requesting preliminary conceptual consultation of a proposal to construct a 39,950 ± s.f. (footprint) hotel with a height of 60', and a waterfront community park. Said properties are shown on Assessor Map 124 as Lots 10, 11 & 15 and lie within the CD4 (Lot 15) and CD5 (Lots 10 & 11), the North End Incentive Overlay District, the Downtown Overlay District (DOD) and the Historic District.

Description

This request is for preliminary conceptual consultation for a proposed project at 299 and 225 Vaughan Street, which are currently occupied by a municipal parking lot and Sanel Auto Parts, respectively. The project site also includes a third parcel, abutting the parking lot and extending behind 3S Artspace to the North Mill Pond, which is currently undeveloped except for a large electric utility pylon. The applicant proposes to combine the two Vaughan Street parcels and construct a 5-story, 60-foot high hotel.

Pursuant to the State statute, the Planning Board's Site Plan Review Regulations describe the preliminary conceptual consultation phase as follows:

Preliminary conceptual consultation shall be directed at review of the basic concept of the proposal and suggestions that might be of assistance in resolving problems with meeting requirements during final consideration. The Board and the applicant may discuss proposals in conceptual form only and in general terms such as the desirability of the proposed development type, scale, intensity and layout under the Master Plan.

Planning Department Recommendation

Preliminary conceptual consultation does not result in any action by the Planning Board.
