

To: Auburn Planning Board
From: Megan Norwood, City Planner II
Re: North River Road (PID 271-101), Proposed 3, 12-Unit Apartment Buildings and associated parking, driveways, landscaping, utilities, & other site improvements in the General Business Zoning District (West Shore Landing Apartments).
Date: January 14, 2020



Figure 1: North River Road (PID: 271-101)

I. PROPOSAL/BACKGROUND (NOVEMBER) – In November of 2019, the Planning Board began Preliminary Subdivision review pursuant to Chapter 60, Article XVI Division 4, Subdivision, Sec. 60-1359 of the Auburn Code of Ordinances of the North River Road proposed apartments. At the November meeting, the Planning Board tabled the proposal and requested the following items be submitted/addressed before moving forward with the Preliminary Plan (*Staff responses to each are below in blue*):

a. **Sec. 60-1367. – Recreation Area/Open Space Standards in the City Ordinance requires, as part of a subdivision proposal, recreation and open space which is “adequate to meet the reasonably foreseeable needs of the residents of the subdivision.” The Planning Board felt that the proposed boat launch does not address this ordinance provision and recommends coming up with an alternative proposal to meet the recreation area/open space standards required under Sec. 60-1367 of the Ordinance.**

As the Planning Board is aware, Sec. 60-1367 requires open space at a rate of not less than 43,560 contiguous square feet or one acre of land for the first ten lots or units. The amount of land required is increased at a rate of 5,000 square feet per unit for each additional unit over ten units. For the 36 proposed units, the open space required would be 3.98 acres or 173,560 square feet. The parcel itself is only 3.3 acres. The Ordinance also allows the Developer to contribute a fee in-lieu amount in cash. The proposal includes 1.43 acres of open space and a fee in-lieu in the amount of \$34,000. The calculation is based upon the purchase price of the lot which was Staffs suggestion of how to calculate the fee in-lieu (breakdown below).

In-Lieu Fee Breakdown:

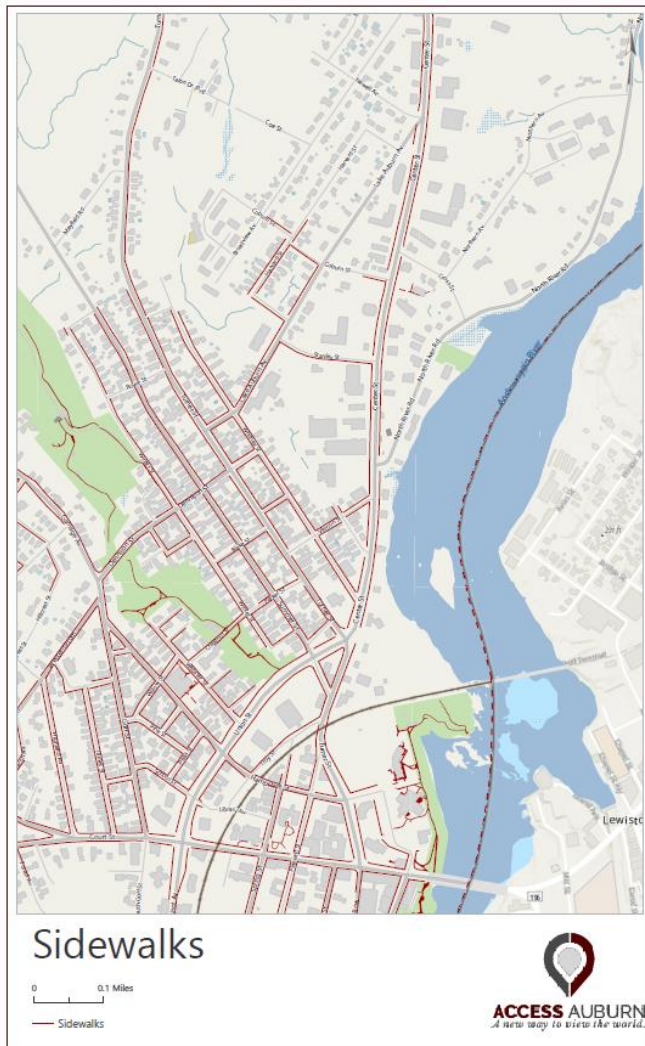
- *The ordinance requires 1 acre for the first 10 units and 5,000 square feet for each unit over 10 units, for 36 units: 173,560 square feet of open space is required.*
- *The Developer is proposing to provide 62,288 square feet of open space on the site. Subtracting that from the amount of open space required: 173,560-62,288 = 111,272 square feet of open space required.*
- *The property is 123,959 square feet and was purchased for \$37,000. (Purchase Price/Remaining Open Space Required) (\$37,000/123,959) = \$0.298486*
- *(111,272 square feet of open space required * \$0.298486 dollar value per square foot) = \$33,212.13 – The Developer is rounding this number up to \$34,000.*

In addition to the 1.43 acres of open space and the \$34,000 fee in-lieu, the Developer is also proposing to construct and maintain 500 feet of private trail along the river. The Developer and Staff have met with the Parks & Recreation Advisory Board on November 13th, December 11th and January 8th. The Planning Board is required to solicit an opinion from the Parks & Recreation Advisory board about the recreational needs of the

Subdivision’s residents, or how they feel they can best be met and carefully consider any recommendations in this regard. At the January 8th meeting, the board discussed what the recreational needs of the Subdivision’s residents are and agreed, at a minimum, the residents need access to walking trails and green space within a reasonable distance of the subdivision and a play area for children. The Board will provide a written recommendation explaining this to the Planning Board for the February meeting, The Boards sentiments are expressed below under the applicable section of the Recreation and Open Space ordinance.

There were several questions at the last Planning Board meeting about the Boards requirements under Sec. 60-1367. The ordinance is included in the Planning Board packets and has 12 parts (A-L) broken down below.

- **Part A** requires 173,560 Square Feet of Recreation and Open Space. This can be varied under Sec. 60-1365 of the Ordinance if the project is a Low Impact Development. Sec. 60-1365 pertains to conformance with the Comprehensive Plan, preservation of natural and historic features and lot dimensions/frontage considerations. The Developer is providing 62,288 square feet of open space on the property. The site itself is only 123,959 square feet. They are not requesting the standards be varied but are instead providing a fee in-lieu (described below and broken down above).



- **Part B** allows the Planning Board to accept a fee in-lieu of open space due to “...other limiting factors” of the site. In this case, for the proposed 36-units, they would be required to provide more square footage of open space than the site has which is not feasible. The section describes that the fee in-lieu amount should be derived from a figure that is essentially equivalent to the market value of similarly zoned land in the area as determined by the City Tax Assessor. To the contrary, this section also says that the fee in-lieu is capped at the market value of similarly zoned land in the area. During initial conversations with the Developer, Staff encouraged the use of the purchase price of the property, which seemed to be a reasonable method to quantify the value of the open space which is how the \$34,000 figure was calculated. The City Tax Assessor could not find parcels similar in size in the area to this parcel but came up with a figure based on the average of a .92 acre, .64 acre and 1 acre parcel which equals \$44,400. The market

value of 2.27 acres in the General Business Zone is \$53,600 which would be the cap of the fee in-lieu.

- **Part C** requires the Planning Board to review the adequacy of existing facilities available to the future subdivision residents. While the ordinance does not specifically define “facilities” this requirement is under the “recreation/open space” section of the ordinance so it is assumed the Planning Board will be evaluating existing recreational facilities: sidewalks, potential parks, etc. At the January 8 meeting, the Parks and Recreation Board discussed some existing facilities in the area: Union Street – Chestnut Park, Municipal Beach, Existing Boat Launch, Pettengill Park and the Washburn School Playground. The Parks

& Recreation Board consider facilities to be “adequate” if they can be accessed by walking. Center Street is prohibitive to most of these facilities and makes them unlikely to be used by residents of the subdivision. The walking path proposed on site does provide some recreational amenity but is not ideal to satisfy the complete needs of the residents.

There has been a discussion internally about using a TIF to construct a sidewalk that would connect this development and those on Northern Avenue to Center Street and the existing downtown sidewalk network.



Planning Staff research the Northern Avenue Heights Project on Northern Avenue. Seventy units were approved in that complex under Site Plan/Special Exception Review. Since they were not reviewed as a Subdivision, they were not required to provide Recreation/Open Space under Sec. 60-1367. Northern Avenue Heights II proposed by Mr. Millet in 1995 was a 6-lot Subdivision on Northern Ave and was subject to the Recreation/Open Space standards under Sec. 60-1367. At the time, Mr. Millet dedicated the 10-acre parcel owned by the City on Northern Avenue for those 6 lots.

From the 1996 Staff Report: “The developer has been generous in the area being gifted to the City in that it encompasses approximately 10 acres of land. It should be known that the developer is also involved in land adjacent to this development which will be subdivided for residential purposes in the future. The land being given to the City for open space and recreation is sufficient in size to satisfy the requirements of the Northern Heights Subdivision and the future lots to be subdivided from Lot 24-1-33.” Below is the letter from the Parks & Recreation Board in 1996 regarding the Recreation/Open Space requirements and the parcel on Northern Avenue. A letter was also prepared by from

Director of the Auburn Parks and Recreation Department in 1996: “the property is situated on the easterly side of Center Street and would provide adequate park and recreation open space for residents living on Northern Ave, Bates, East Dartmouth, Buck, Center, and Cross Streets, North River Road and surrounding area in the future. It is in the neighborhood of Riverview Apt., Sasseville Apt., and the residents of the aforementioned streets. There is access to the property from East Dartmouth, Buck Street and Northern Ave...I walked the property a few days ago and although the contours are irregular it is a beautiful piece of property and well suited for hiking, picnicking, and a future play-area. Many area children are currently using the property.”



CITY OF AUBURN, MAINE

PARKS AND RECREATION DEPARTMENT

Hasty Community Center • Pettengill Arena
Pettengill Park, Auburn, Maine 04210

November 20, 1996

Mr. Joseph Kott, Chairman
Auburn Planning Board
45 Spring Street
Auburn, Maine 04210

Re: Northern Heights Subdivision

Dear Mr. Kott:

The Auburn Parks and Recreation Advisory Board examined the Northern Heights subdivision proposal as it relates to the open space requirements of the Open Space Ordinance Recreation/Open Space standards, Chapter 23, and unanimously recommends to the Planning Board that the Northern Heights subdivision plan be accepted as proposed by the developer.

The board has recognized the need for open space and provision for recreational opportunities on the easterly side of Center Street for many years, and has identified this need in their ten year comprehensive plan. This parcel is located within the residential area of Center, Northern, Bates, East Dartmouth, Buck and Cross Streets, and will serve these Auburn residents' leisure needs for many years in the future. In addition, this parcel is in close proximity to a small city-owned parcel located at the easterly end of Northern Avenue that could provide access to the Androscoggin River for canoeing in the future, but presently does not have adequate parking.

Thank you for your consideration.

Sincerely,

AUBURN PARKS AND RECREATION ADVISORY BOARD

Kathleen Kienitz
Chairperson

- **Part D** allows the Developer to use both the land dedication and the fee in-lieu to meet the ordinance standards. It does say that the fee in-lieu shall be used to develop, enlarge or enhance the recreation facility on the site. Where the Developer is proposing open space and a fee in-lieu that is not proposed to be used for an on-site recreation facility, this section is not applicable to the project.
- **Part E** requires the Planning Board to assess the projected needs of the inhabitants of the subdivision when determining the adequacy of open space and the fee in-lieu overall. **Does the Planning Board feel (given the recommendation from the Parks & Recreation Advisory Board that the 62,288 square feet of open space, \$34,000 fee in-lieu and 500 feet of private riverfront trail that could become public in the future if connections were made is enough to satisfy the ordinance requirement?**
- **Part F** allows the Developer to choose what the fee in-lieu can be used for. The Developer has not proposed a use for the fee in-lieu and defers to the Parks & Recreation Board. The board recommends the funds be used to connect existing walking trails, where available, to the private trail proposed behind the

development. If that is not attainable within two years, the Board recommends using the funds to improve an existing park (Chestnut on Union Street, municipal beach) or create a new park (potentially using the open space provided on Northern Ave as part of the Subdivision approval for the Northern Avenue Heights project).

- **Part G** discusses the land dedication provision and allows it to be in the form of a deed of a parcel of land within the Subdivision. This section also references a recreational/open space district map which does not exist. Another provision under this section allows the land dedication to be part of a condo or HOA. In this case, there is not an HOA because they are proposed to be apartments with 1 owner, but the open space will be private and for the use of the residents.
- **Part H** gives the Planning Board the opportunity to reject any land dedication if it will be too costly to maintain. There is no public expense associated with the proposed open space for this development.
- **Part I** also references using the funds to develop facilities in accordance with the recreational/open space district map *unless* the Planning Board or Developer have determined that a contribution to a facility outside of the mapped area would better serve the needs of the subdivision. Where the district map does not exist, the Parks & Recreation Advisory Board recommends the funds be used to connect existing walking trails, where available, to the private trail proposed behind the development. If that is not attainable within two years, the Board recommends using the funds to improve an existing park (Chestnut on Union Street or the Municipal Beach) or create a new park (potentially using the open space provided on Northern Ave as part of the Subdivision approval for the Northern Avenue Heights project). Staff recommends the Planning Board uphold the Parks & Recreation Advisory Board recommendation for where the funds should be used.
- **Part J** requires the Planning Board to solicit input from the Parks and Recreation Advisory Board and consider their recommendations (discussed throughout this section and through attendance at the advisory board meetings on 11/13, 12/11 and 1/8).
- **Part K** requires that if the project is adjacent to previously developed land (by the same Developer), that it be considered as one development. That was asked by the Planning Board at the October meeting, Staff is not aware of any additional development proposed by this Developer on any adjacent land other than a potential public river access site (boat launch).
- **Part L** allows the Planning Board to require the filing of a written agreement between the Developer and the City covering future deed and title, dedication and provisions for the costs of grading, developing, equipping and maintaining recreation areas. The Planning Board may want to require this for the proposed private trail along the river.

b. Several sections of the Shoreland Zone, Floodplain and Subdivision Ordinance have provisions for stormwater management and vegetation removal. Before moving forward with a Preliminary Plan approval, the Planning Board requested information be submitted on how stormwater will be handled at the project, and if any further vegetation is proposed for removal and/or restoration.

A Stormwater Management Report has been included in the more recent packets. It has been reviewed by the Engineering Department for compliance with the ordinances and State requirements and it meets the requirements. As discussed in the Stormwater Management Report, the paved parking, walkways and lawn areas are designed to direct stormwater towards two underdrain soil filters (UDSF), it is proposed to flow overland and through closed drainage systems in the parking areas to the two UDSFs. The report also includes

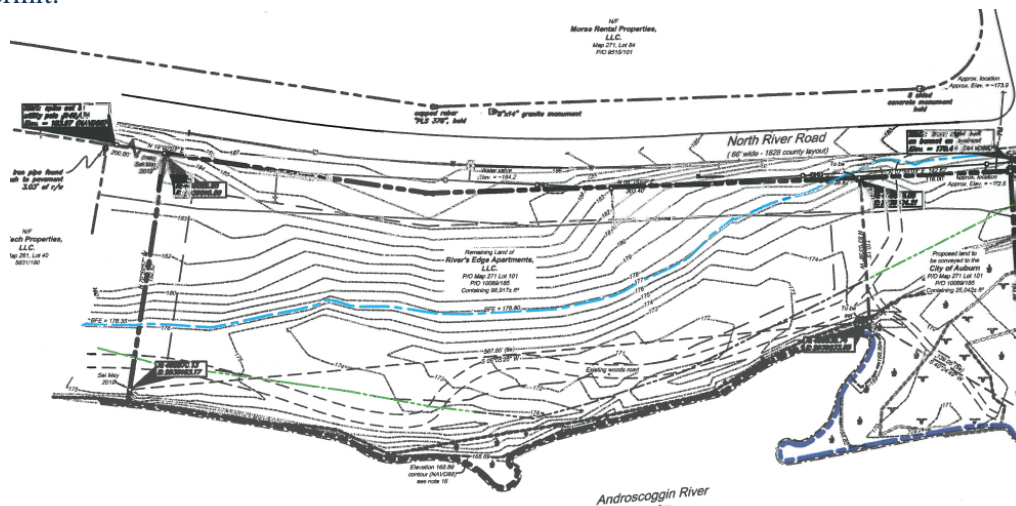
a site-specific Erosion and Sediment Control Plan and Inspection and Maintenance Plan of the Stormwater Management Facilities.

No further vegetation is proposed to be removed on the site. Notes were added to the site plan to restrict clearing in the river setback/buffer area. The limits of clearing/disturbance have already been delineated on site by a siltation barrier.

- c. **The Planning Board is looking for further information regarding the floodplain and the floodway and how the proposed project is sited in relation. They had questions regarding what has been submitted and/or approved by FEMA, and what would be further needed to ensure compliance with NFIP. To be more specific, we recommend a survey be completed for the property including a delineation of the “normal” high water mark, the riverine floodway, and the AE floodplain, and then demonstrate or describe how the fill and landscape would need to be engineered to mitigate impacts of future flood events.**

“Exhibit E” (included below), shows the floodplain (in light blue), the floodway (in green), and the normal high-water mark (in dark blue/bold black bordering the Androskoggin River). The Stormwater and Erosion Control plan does provide a description of how future flood events will be mitigated on the site. For example, it includes an analysis of the proposed UDSFs to ensure that during the 100-year flood event, they will function without over topping berms. As discussed above, all stormwater on the site is proposed to be discharged to and treated by two UDSFs. All of the structures are proposed to be elevated more than 7 feet above the Base Flood Elevation (BFE). They are also proposing a retaining wall.

The Ordinance requires a Flood Hazard Development Permit before any construction or other development begins within any areas of special flood hazard. A Flood Hazard Development Permit was applied for and issued in May for the fill at the site. With the fill, the proposed buildings are located out of the regulated floodplain and floodway. However, the Applicant still needs to apply for a Letter of Map Revision (LOMR-F) based on fill through FEMA to remove the portion of the property that was filled from the regulated floodplain. The other option they have would be to apply for another Flood Hazard Development Permit with the City. We recommend the Planning Board place a condition of approval on the plan that they apply for and receive their LOMR-F or apply for a Flood Hazard Development Permit with the City before the issuance of a building permit.



- d. **The Planning Board had questions about the fill placed at the site, the number of cubic yards, the pre-fill landscape, the type of fill used, and what additional land stabilization would be needed to construct the proposed buildings. Planning Staff can provide information based on the Fill Permit Application that was applied for, the Applicant may be able to elaborate more on this.**

As discussed above, a Flood Hazard Development Permit was applied for and issued in May for fill at the site. The Applicant also provided a description of the pre-fill landscape under Section 2, Pg.2 of the December 6th submission. The summary also included a description from a Geotechnical Report regarding the ability of the land to support the buildings as well as how much fill was placed at the site and the type. A final geotechnical report will be provided once final grading and foundation loading are determined. We recommend a Condition of Approval require this.

e. Can the Applicant provide current photos of the site, including the area proposed for the boat launch?

While a boat launch is no longer included as part of this proposal, current photos of the site have been included in the most recent submission dated 12/6/19 (Section 4).

f. Can the Applicant provide current photos of the area across the street and the surrounding area so the Planning Board can visualize the Abutters concerns and “character of the neighborhood” considerations? It would be useful to note the height of the bluff across from the project site and where the proposed finished roof lines would be in relation to that.



View of Northern Avenue Heights Development from N. River Road

Section 4 of the 12/6/19 submission also includes current photos of the site and the surrounding neighborhood. On the same side of the road as the development are three businesses: A printing shop, a wholesale fruit and produce shop and an Orthotic and Prosthetic service company. Across the street are the Northern Avenue Heights Apartments (also referred to as Rivers Edge Apartments and Androscoggin Village Apartments), multifamily and single-family homes. The area where the apartments are proposed is zoned General Business, however, across the street the zone is Multifamily Suburban. In terms of residential uses, the General Business Zoning District reverts to the Multifamily Suburban for residential dwelling densities so this same type of

development would be permissible across the street. The General Business District also encompasses Center Street and the Auburn Mall area.

The Comprehensive Plan has the area proposed for the development designated as a Limited Business Development District. Center Street from Minot Ave to Union Street and up to the intersection of Mount Auburn Ave is also designated Limited Business Development. Both the General Business and Limited Business Development Districts are flexible in terms of permitted uses for both commercial and multifamily residential uses.

As discussed on Page 3 of Section 2 of the 12/6/19 submission materials, the top of the bluff across the street is at an elevation of about 216 feet and the proposed roof peak elevation is approximately 224 feet.

g. The Planning Board had questions about how the buildings will be sited in relation to the Future Land Use Map. For example, will any of the structures be located in the Resource Protection area as designated by the Comprehensive Plan Future Land Use Map?

The Future Land Use Map was not intended to be used at a parcel scale. It is intended to provide a general overview of what the area should look like and is purposefully vague in where the lines are drawn. In fact, in

some communities the lines on the Future Land Use map are blurred where two districts intersect to make it obvious that they are not intended to be interpreted at a parcel level.

As we have discussed, the Future Land Use Plan is NOT a zoning map. It is intended to show, in a general sense, the desired pattern of future land use and development. The boundaries shown on the Future Land Use Map are general. They are intended to reflect the general pattern of desired future land use. The allowed uses and development standards set out for each land use designation are intended to serve as guidelines as the zoning ordinance is reviewed and revised. While the density listed in the Comprehensive Plan may be a guide for how the Zoning Ordinance should be reviewed and revised, the ordinance has not yet been amended and there is a significant contrast between the two.

Having said this, based on the language in the Shoreland Zone, it appears as though the Resource Protection line followed the floodplain and looking at the flood maps from 2010 (when the Future Land Use Map was created), the buildings are located outside of the Resource Protection Shoreland Zone. The Applicants have also included a map under Section 3, showing the location of the Resource Protection (and Floodplain) at the time the Comprehensive Plan was created.

h. The Planning Board wanted clarification on the density calculations in relation to lot size (i.e. 2+ acres or 3+ acres), as well as a possible calculation for the density called for in the future land use designation as Limited Business Commercial for conformance with the Comprehensive Plan. This was questioned in context of “split zoned” land, and how this would work in relation to the site.

When the preliminary plan was submitted, there were a few lot sizes used that either excluded or included the reserved land proposed to be conveyed to the City for a boat launch/recreation space. The lot proposed for the apartments is 2.27 acres. A breakdown of the density calculations for the 2.27-acre lot was included in the previous Staff Report and is described below:

For Multifamily buildings, the density is 10,000 square feet for the first dwelling unit and 2,000 square feet for each additional dwelling unit but caps multifamily housing at 17 units per acre. With a 98,881 square foot lot size (2.27 acres), the math allows for up to 38 units (2.27 acres x 17 units allowed per acre).

As discussed above, the Future Land Use Map shows the proposed buildings in the Limited Business Commercial Future Land Use designation, not the Resource Protection. The Limited Business Commercial District wants residential uses at a density of up to 10-12 units per acre. This would allow for up to 27 units (2.27 acres x 12 units per acre).

The total lot area, including the land proposed to be used for a public boat launch and recreation area at a later date, is 2.85 acres. Using the total lot area, including the area proposed for the public boat launch/recreation space, the Developer could have up to 34 units (2.85 x 12 units per acre).

As the Planning Board is aware, Sec. 60-1365(1) requires that proposed subdivisions be in conformance with the Comprehensive Plan. To say that this project is “not in conformance” with the Comprehensive Plan because it exceeds the number of units the Comprehensive Plan says an area *should* have may pose some issues for the Board down the road with other projects. The Comprehensive Plan is clearly in conflict with the Zoning Ordinance. Sec. 60-1365(1) assumes they go hand in hand by saying “any proposed subdivision shall be in conformity with the Comprehensive Plan of the City *and* with the provisions of all pertinent state and local codes and ordinances.”

The language in the Comprehensive Plan accounts for projects of this very nature. It explicitly says on Page. 78 that the higher densities encouraged for multifamily housing developments are intended to account for lower intensity of use per unit typically found in this type of housing (smaller units, fewer occupants per unit, etc.).

The 36 units are comprised of 21 one-bedroom apartments and 15 two-bedroom apartments. The number of bedrooms correlates with the number of families an apartment complex will attract. The Comprehensive Plan recognizes this when it *encourages* the City to use other measures of development intensity when revising the zoning requirements, if those alternative measurements better reflect the intensity and impacts of a development. Some of those alternative measurements could include the amount of floor area or the floor area ratio, the number of vehicle trips, or the number of bedrooms. If the Planning Board reduces the number of units, it could drive up the number of bedrooms/families per unit and create a more intensive use which in a way does not achieve the objectives of the Comprehensive Plan. The Comprehensive Plan is intended to reflect the general pattern of desired future land use and to serve as a guideline for how the zoning ordinance should be reviewed and revised.

This portion of North River Road is located in a designated Growth area which is an area the City wants growth and development to occur. The anticipation is that most residential and non-redevelopment over the next 10 years (through 2021) will occur in these growth areas (Comp. Plan Page.74). This is exactly what is happening with this development, new residential development (infill) is proposed in a designated Growth area. The maximum densities suggested for the Limited Business Development District are predicated on the City adopting development standards that ensure new development results in good quality, residential areas with appropriate parking and green space (Comp. Plan Page 90). The development is proposing 63% open space which exceeds the ordinance requirements for 50%.

In addition, the Comprehensive Plan and Strategic Plans adopted by the City, prioritize goals related to attracting new residents, workforce and increasing the City's population (Strategic Plan Pgs. 10, 11, 14, 24 and Growth Goal #5). The plans support growth in a defined and orderly way by choosing where development should occur and limiting development in other areas (Comp. Plan Pgs. 74-75). It is a goal of the City to provide varied housing opportunities. While the area for the boat launch is intended to be conveyed to the City of Auburn, it is not intended to be used for development and will remain as recreation/open space.

Typically, apartment/condominium projects of this nature are reviewed under Site Plan/Special Exception. However, in 2018 with revisions to Subdivision Law, the language is vague enough to require Subdivision review for this project. Two nearly identical projects across from this project were approved in the 80's – 90's under Site Plan/Special Exception (Northern Avenue Heights on Northern Ave & The Highlands Apartment Complex on Center Street). Since the requirement for Subdivision Review for apartment and condominium projects like this is recent, it makes it difficult to find an example of a project of this nature subject to Subdivision requirements such as the recreation/open space standards.

Sec. 60-40. – Reduction in Dimensional Requirements of the City Ordinance says *“any land...conveyed for a public purpose shall not be deemed in violation of this provision. Any setback or lot that is reduced below the minimum or extended beyond the dimensional requirements as a result of land...conveyed for a public purpose shall not be deemed nonconforming.”* The ordinance allows for up to 38 units on the 2.27 acres proposed for this development. The Developer could technically use the total 2.85 acres, which is still all part of the same lot, and achieve a much higher density of 48 units and then, at a later date, convey the 0.58 acres to the City for a public boat launch/recreation area and still be in conformance with the Zoning Ordinance.

Due to the discrepancy and the fact that the Applicant is requesting less units than what would be allowed under the current Zoning Ordinance, Staff recommends the Planning Board move forward with allowing the 36 units given the fee in-lieu, open space provided on the site, proposed private walking trail, potential boat launch and other recreation amenities and the items discussed above regarding the language in the Comprehensive Plan.

i. What will the composition of the apartments be, market rate, tax subsidized? What is the actual bedroom count for the total number of units?

The Applicant provided a response to this in their 12/6/19 submission materials. The apartments will be market rate, 21 one-bedroom apartments and 15 two-bedroom apartments for a total of 51 bedrooms between the 36 units.

j. The Planning Board requested the Complete Streets report as it pertains to North River Road. Planning Staff will obtain the report and an opinion from the Engineering Department. The Planning Board was questioning whether a project of this magnitude was considered when developing the Complete Streets report for this portion of North River Road and what sort of calculations in terms of future development were incorporated into that study. The Complete Streets Study classifies the North River Road as a “Rural Road” (p.26) in a rural zone, with naturalistic landscaping with no parking, transit, bikeway, walkway or curb. As a Minor Arterial the target speed is 45mph.

Planning Staff reached out to the Engineering Department for their input on the Complete Streets Study. The Complete Streets Committee facilitated the creation of a Best Management Practice document. On page 26, they used North River Road as an actual example of the thoroughfare typology that should be implemented when reconstructing a roadway. The document is for both Lewiston and Auburn to use when redesigning roads as a toolbox for what is ideal. Each street is a separate case and may or may not accommodate each recommendation. Future development was not considered when designing the BMP report.

k. Is the Applicant willing to share any proposed major changes to abutting properties in the area? The Planning Board realizes this is not a requirement but would be helpful for the deliberations.

Staff did not receive any information from the Applicant regarding this. However, we do know they have been forthcoming about a boat launch on the adjacent parcel at some point in the future. That proposal is not part of this discussion.

l. There are also a number of questions/comments on Page 10 of the Staff Report prepared for the Planning Board, dated November 12, 2019 that the Board recommends be discussed/addressed as part of the new submission.

See below.

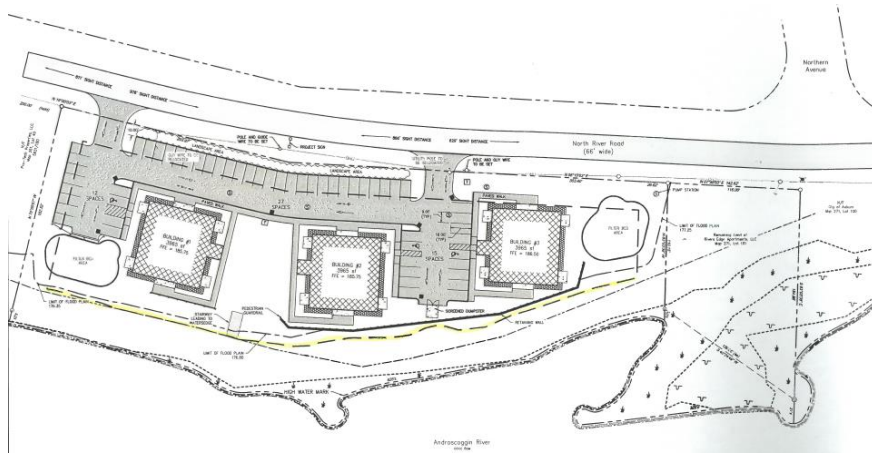
m. Any other items discussed/questioned during the Planning Boards deliberations on November 12, 2019. The meeting video is available on YouTube.

The Notice of Decision issued after the November Planning Board meeting covers the concerns discussed by the board at that time which have been included here.

There were additional items in the October Staff Report that Planning Staff felt would be helpful for the board, each of these items are bulleted below with updated responses.

1. Recommend the 25-foot stream setback and normal high-water mark for the building, parking areas and retaining wall be delineated on the final plan.

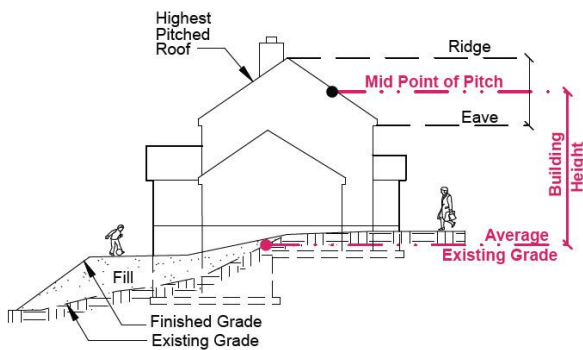
The high-water mark has been delineated on the plan. The setback line along the water is the shoreland zone setback. The Developer met on site with DEP and determined that the line be measured from the top of the bank (slopes greater than 3:1) rather than the mean high waterline. All structures and parking areas are proposed to be located out of this setback (see highlighted area below for the setback in relation to building and parking areas).



2. Review the building height to ensure it complies with the ordinance requirements as discussed in the Staff Report.

Sec. 60-992 of the Shoreland Zoning Ordinance (Principal and Accessory Structures) (b) says Principal or accessory structures and expansions of existing structures which are permitted in the underlying zoning district, shall not exceed 35 feet in height. Maine DEP Chapter 1,000 are the guidelines for municipal shoreland zoning ordinances. The DEP definition under Chapter 15 (Land Use Standards) B (Principal and Accessory Structures) (2) says: Principal or accessory structures and expansions of existing structures

which are permitted in the Resource Protection, Limited Residential, Limited Commercial, and Stream Protection Districts, shall not exceed thirty-five (35) feet in height...” Planning Staff reached out to DEP for an opinion on this and Colin Clark the Shoreland Zoning Coordinator said Chapter 1,000 does allow structures to be taller than 35 feet in the General Development Districts. However, it sounds as though the City Ordinance may be more restrictive which would allow the City to set the limit.



Measuring Building Height
(figure 1)

accessory structures...shall not exceed 35 feet in height...” Because of this, it is Staffs interpretation that regardless of the Shoreland district a project is located in, it has to meet the 35-foot height requirement set forth for all projects in the Shoreland Zone.

The way our Shoreland Zoning Ordinance language is written (60-992(b)): Principal or

However, because the DEP/State regulations does not require this project to meet the height requirements set forth in Chapter 1,000 if they are located in the General Development Shoreland Zone, the City definition of building height can be used instead of the States more restrictive definition.

Staff has used the “mean of the gable” for building height measurements in the past. It is a common architectural standard that is not spelled out in the ordinance which allows some latitude with the need for steeper pitches for Maine winters and for matching local character. Staff recommends a condition of approval that project meets the 35-foot building height requirement using the mean of the gable as the measurement.

3. Recommend the size of a “typical parking stall” be shown on the plan per Sec. 60-607(2).

This has been shown on the plan. It meets ordinance requirements.

4. Recommend the size of the width for the interior driveways as well as the ingress/egress points be shown on the plan per Sec. 60-607(4).

By scaling, this aisle width is 20 feet.

5. It appears that the two proposed curb-cuts exceed 20 feet in width (Sec. 60-607(15)), recommend requesting a waiver from this and the Applicant consult with the Fire Prevention Officer as discussed in the Staff Report.

A Cover Letter dated 11/7/19 to David O'Connell (Fire Prevention Officer) was submitted requesting a recommendation from the Fire Prevention Officer to have the Planning Board waive this section of the ordinance to allow the wider curb cuts. The Fire Prevention Officer provided a response stating that after reviewing the provided documentation, he does not have any reservations with the proposed 24-foot curb cuts. He goes on to say that NFPA requires a minimum of 20 feet for fire department access roads as well as a minimum curb cut extending at least 2 feet beyond each edge of the access road.

The decision to grant a waiver is ultimately up to the Planning Board. The ordinance on the curb cut width is short and the Engineering Department guesses it was written that way on purpose to encourage waiver requests on a project by project basis. The way the curb cuts are designed for the North River Road Project improves access to and from the site for emergency purposes. Planning Staff recommends that the Planning Board grant the waiver.

6. The two access points proposed are both two-way, recommend requesting a waiver from Sec. 60-801(2) to have them remain two-way access points as well as consulting with the Fire Prevention Officer.

The ordinance does not allow for more than one two-way access or two one-way accesses in total onto a single roadway. As proposed, they are requesting two, two-way accesses onto North River Road. If the Planning Board grants the waiver discussed above, it would make sense for the wider access points to be two-way. The waivers in a way go hand in hand. Again, Planning Staff would recommend granting the waiver to improve access to and from the site for emergency purposes.

7. Recommend the sight distance be shown on the plan or in the application materials for the area between the two curb cuts and Northern Avenue per Sec. 60-799.

This has been shown on the plans and the sight distance exceeds the requirements in the ordinance.

8. Further information on proposed parking lot lighting should be submitted to ensure it is deflected away from adjacent properties and North River Road (Sec. 60-607(11)).

A lighting plan has been included in your packets for the January meeting. The plan includes the types of lights, their location and foot-candles. The light is not proposed to shed onto any adjacent properties.

9. The Planning Board should determine if additional curbing is needed along the side setback and in between the 27 spaces in the front of the parking area and 10-foot landscaped area abutting North River Road (Sec. 60-607(12)).

The curbing now extends in this area on the most recent Site Plan and meets the ordinance requirement.

10. Additional information should be provided on the slope of the road/driveway banks as well as the road/driveway grades and surface drainage to ensure they meet Sec. 60-998(1&4), Sec. 60-998(5) and Sec. 60-998(6) of the Ordinance.

This information has been provided in the new materials dated 12/6/19. The road/driveway banks, grades and surface drainage meet the ordinance requirements (see discussion above).

11. Additional information will need to be submitted regarding clearing/removing of vegetation per Sec. 60-1004, if applicable. Is any more clearing going to take place on the site?

This information was discussed above. No further vegetation is proposed to be removed on the site. Notes were added to the site plan to restrict clearing in the river setback/buffer area. The limits of clearing/disturbance have already been delineated on site by a siltation barrier.

12. The Applicant will have to show they meet the Erosion and Sedimentation Control standards per Sec. 60-1005.

An Erosion and Sedimentation Control Plan was submitted that meets the ordinance requirements.

II. DEPARTMENT REVIEW –

- a. **Police:** The Police Department would be looking for pedestrian and traffic impacts or potential impacts to be considered for a multifamily facility being constructed on a road with little to no shoulder or sidewalks to accommodate additional pedestrian and bike traffic. Also wonder what impact the intersection of Center and Cross Street might see, if any. This can be a difficult intersection at high traffic times of the day when making a left hand turn onto Center Street. This would certainly not be the only road with similar problems on Center Street but again, how much additional traffic will this project generate?

Is there an opportunity here to work with the Developer under City Ordinance Sec. 60-1367 Recreation Area/Open Space Standards – to establish a pedestrian path along the rivers edge that would bring pedestrians and bike traffic closer if not all the way to the intersection of Center Street and North River Road where there is already established crossings and sidewalks?

The Applicant provided a response to the Police Department concerns in their most recent submission. The project will not exceed or approach an increase of 100 one-way trips in the peak hour which is the trigger for a Traffic Movement Permit.

- b. **Auburn Water and Sewer:** I reviewed the Development Review Application submitted for the River's Edge Apartments, LLC dated 10/3/2019. After the review I have the following comments.

Sewer: There currently is no public sewer in the area of the proposed apartments. The proposal includes the installation of a gravity sewer main on North River Road and a pump Station and Force main that will connect to the public sewer on Northern Ave. The District has sufficient capacity to serve this proposed development but we will not accept ownership of the proposed gravity line, pump station or force main. The development will be subject to connection fees based off the size of the water meters installed at each building.

Water: The District has sufficient capacity to serve this proposed development with both domestic water and fire protection.

- c. **Fire Department:** After reviewing the provided documentation, I do not have any reservations with your clients request for the 24' curb cuts. If you refer to **NFPA 1 (Edition 2018)** you will find that there is a minimum 20' fire department access road(s) requirement (**NFPA 1: 18.2.3.5.1.1**), as well as a minimum curb cut extending at least 2' beyond each edge of the access road (**NFPA 1: 18.2.3.5.3.3**). With these to code requirements I feel you would meet the 24' opens that you are requesting. Please let me know if you require anything further.
***Note- NFPA 1: 18.2.3.1.2 Fire department access roads shall consist of roadways, fire lanes, parking lot lanes, or a combination thereof.
- d. **Engineering:** Comments on stormwater and the Complete Streets Report have been included throughout the Staff Report.
- e. **Public Services:** No comments.
- f. **Economic and Community Development:** The City is currently underserved for market rate residential units as evidenced by long wait lists at recent apartment projects. Additional apartment

units will support growing the labor pool to help alleviate the current regional labor shortage. These high quality apartments in this location should prove to be highly desirable, and could be an asset when marketing the City. The Department supports growing residential units in appropriately zoned areas of the City.

- g. **Addressing:** Add a condition to the final plan that an addressing plan be coordinated with the Addressing Officer before a building permit is issued.

III. PLANNING BOARD ACTION –

Sec. 60-1359. – Subdivision Guidelines. When reviewing any subdivision for approval, the planning board shall consider the following criteria, and before granting either approval or denial, shall determine that the proposed subdivision:

- (1) Will not result in undue water, air or noise pollution. In making this determination it shall at least consider:
 - (a) The elevation of land above sea level and its relation to the floodplains, the nature of soils and subsoils and their ability to adequately support waste disposal;
 - (b) The slope of the land and its effect on effluents;
 - (c) The availability of streams for disposal of effluents; and
 - (d) The applicable state and local health and water resources regulations, including stormwater management requirements in accordance with section 60-1301(14);
- (2) Has sufficient water available for the reasonably foreseeable needs of the subdivision;
- (3) Will not cause an unreasonable burden on an existing water supply, if one is to be utilized;
- (4) Will not cause unreasonable soil erosion or reduction in the capacity of the land to hold water so that a dangerous or unhealthy condition may result;
- (5) Will not cause unreasonable highway or public road congestion or unsafe conditions with respect to use of the highways or public roads existing or proposed;
- (6) Will provide for adequate sewage waste disposal;
- (7) Will not cause an unreasonable burden on the ability of a municipality to dispose of solid waste and sewage if municipal services are to be utilized;
- (8) Will not have an undue adverse effect on the scenic or natural beauty of the area, aesthetics, historic sites or rare and irreplaceable natural areas;
- (9) Is in conformance with a duly adopted subdivision regulation or ordinance, comprehensive plan, development plan, or land use plan, if any;
- (10) Is funded by a subdivider which has adequate financial and technical capacity to meet the standards of this section;
- (11) Will not adversely affect the character of the surrounding neighborhood and will not tend to depreciate the value of property adjoining the neighboring property under application;
- (12) Has provisions for on-site landscaping that are adequate to screen neighboring properties from unsightly features of the development;
- (13) Will not create a fire hazard and has provided adequate access to the site for emergency vehicles;
- (14) Will not, alone or in conjunction with existing activities, adversely affect the quality or quantity of groundwater;
- (15) Does not have long-term cumulative effects of the proposed subdivision will that unreasonably increase a great pond phosphorus concentration during the construction phase and life of the proposed subdivision.

C. Sec. 60-1365. General Requirements.

In reviewing applications for the subdivision of land, the board shall consider the following general requirements. In all instances the burden of proof shall be upon the persons proposing the subdivision.

- (1) *Subdivision plan shall conform to the comprehensive plan.* Any proposed subdivision shall be in conformity with the comprehensive plan of the city and with the provisions of all pertinent state and local codes and ordinances.
- (2) *Preservation of natural and historic features.* The board may require that a proposed subdivision design include a landscape plan that will show the preservation of existing trees and vegetation, graded contours, streams and the preservation of scenic, historic or environmentally desirable areas. The street and lot layout shall be adapted to the topography. Extensive grading and filling shall be avoided as far as possible.
- (3) *Lots.* a. The lot size, width, depth, shape and orientation and the minimum building setback lines shall be appropriate for the location of the subdivision and for the type of development and use contemplated. b. Depth and width of properties reserved or laid out for all purposes shall be adequate to provide for off-street parking and service facilities for vehicles required by the type of use and development contemplated. c. No person shall make a subdivision within the city unless all lots of the proposed subdivision have frontage, as regulated by the zoning ordinance, upon a way granting legal access.

Sec. 60-899. – Review of Subdivisions and Development Proposals (Floodplain).

The Planning Board shall, **when reviewing subdivisions and other proposed developments that require review under other federal law, state law or local ordinances or regulations** and all projects on five or more disturbed acres, or in the case of manufactured home parks divided into two or more lots, assure that:

- (a) All such proposals are consistent with the need to minimize flood damage.
- (b) All public utilities and facilities, such as sewer, gas, electrical and water systems are located and constructed to minimize or eliminate flood damages.
- (c) Adequate drainage is provided so as to reduce exposure to flood hazards.
- (d) All proposals include base flood elevations, flood boundaries, and, in riverine floodplain, floodway data. These determinations shall be based on engineering practices recognized by the Federal Emergency Management Agency.
- (e) Any proposed development plan must include a condition of plan approval requiring that structures on any lot in the development having any portion of its land within a special flood hazard area, are to be constructed in accordance with section 60-897 of this division. Such requirement will be included in any deed, lease, purchase and sale agreement, or document transferring or expressing an intent to transfer any interest in real estate or structure, including but not limited to a time-share interest. The condition shall clearly articulate that the municipality may enforce any violation of the construction requirement and that fact shall also be included in the deed or any other document previously described. The construction requirement shall also be clearly stated on any map, plat or plan to be signed by the planning board or local reviewing authority as part of the approval process.

IV. STAFF RECOMMENDATIONS – When granting preliminary approval to the preliminary plan, the Planning Board needs to state the conditions of such approval, if any, with respect to:

- (1) The specific changes which it will require in the final plan;
- (2) The character and extent of the required improvements for which waivers may have been requested and which in its opinion may be waived without jeopardy to the public health, safety and general welfare.

Planning Staff recommends the Planning Board discuss the remaining items in the Staff Report and make a ruling on the preliminary plan which should include the *specific changes the Planning Board would like to require for the final plan*. To summarize the changes discussed in the Staff Report:

- The Applicant shall apply for and receive either their Letter of Map Revision, based on fill (LOMR-F) through FEMA or a Flood Hazard Development Permit with the City before the issuance of a building permit;
- Once final grading and foundation loading has been determined, a final geotechnical report shall be submitted prior to the issuance of a building permit;
- The building height shall be limited to 35 feet as measured from the mean of the gable;
- An addressing plan shall be provided to the Addressing Officer before the issuance of a building permit;
- Ruling on three waiver requests:
 - Sec. 60-607(15): On lots where one entrance and exit driveway or curb-cut is constructed, the curb-cut shall not exceed 32 feet in width. Where two or more driveways or curb-cuts are constructed, the curb cuts shall not exceed 20 feet in width. For automotive service stations, the curb cut widths may be increased to 32 feet for each driveway or access, but shall not exceed two driveways. These widths may be increased up to a maximum of 44 feet on arterial roads if required by the city engineering department or the state department of transportation. *Waive this requirement to allow for two 24-foot curb-cuts.*
 - Sec. 60-801(2): No medium or high volume traffic generator shall have more than one two-way access or two one-way accesses in total onto a single roadway. *Waive this requirement to allow for two, two-way accesses onto a single roadway.*

Suggested Motion: I will make a motion to approve the preliminary plan to construct 3, 12-unit apartment buildings on North River Road (PID 271-101) in the General Business, Shoreland Zoning Districts contingent upon the following items being included in the final plan:

- *The Applicant shall apply for and receive either their Letter of Map Revision, based on fill (LOMR-F) through FEMA or a Flood Hazard Development Permit with the City before the issuance of a building permit;*
- *Once final grading and foundation loading has been determined, a final geotechnical report shall be submitted prior to the issuance of a building permit;*
- *The building height shall be limited to 35 feet as measured from the mean of the gable;*
- *An addressing plan shall be provided to the Addressing Officer before the issuance of a building permit;*
- *Any conditions discussed as part of the waiver requests.*

Megan Norwood

Megan Norwood
City Planner II