

**City of Newport**  
**Department of Planning and Economic Development**  
**Staff Report to the Planning Board**

**Minor Subdivision**  
**Preliminary (and Final) Approval**

Meeting: November 12, 2019  
Certified Complete: September 13, 2019  
Filed: September 9, 2019

Location: 90 Harrison Avenue  
Applicant(s): Schoolyard Properties, LLC  
Assessor's Plat: 41  
Assessor's Lot(s): 14  
Zoning District: R-40, Residential, with an Historic Overlay zone  
Land Area: 257,064+/- square feet  
Surveyor: Northeast Engineers and Consultants, Inc.

The Applicant is requesting combined Preliminary and Final Approval of a Minor Subdivision to subdivide one (1) existing lot to create five (5) lots for future development, the proposed lots ranging from 40,463sf to 82,685sf. In accordance with the Design Standards of the City's Subdivision Regulations, dated June 19, 1995, and revised in 2008, "the Planning Board shall pay due regard to the character of the subdivision, whether open residence, dense residence, business or industrial." (II.A.)

**Planning Department Findings**

The Planning Department makes the following general findings:

1. That the subject property is located at 90 Harrison Avenue and is identified as Assessor's Plat: 41, Assessor's Lot: 14. The parcel is considered to be located within the Ocean Drive neighborhood (Comprehensive Land Use Plan, Map 5-7, Neighborhood Areas).
2. That in June of 2015, the City approved a Purchase and Sale Agreement with Mr. John D. Picotte, Jr. for the subject property, the former Underwood School. The 3.23-acre property had been relinquished by the School Department for disposition and redevelopment. The sale took place on June 17, 2015.
3. That this parcel was subsequently subdivided by the Elwell/Picotte/School Yard Administrative Subdivision, dated 23 April 2019, which reduced the parcel size from 278,275+/-sf to 257,064 +/-sf by transferring 21,211+/- sf to abutting lots 10 and 10-4.
4. That the existing buildings on the site have been razed and the parcel is currently undeveloped.
5. That there are properties within a 200' radius of the parcel which are zoned R-120 Residential, R-160 Residential, and Open Space.

6. That the subject property consists of one tax assessor's lot and is currently zoned R-40 Residential. The R-40 Residential Zoning District requires a minimum area of 40,000 square feet per individual lot and a minimum lot width of 200'.
7. That the property will have access to public water and public sewer (sewer through a non-City main).
8. That on March 26, 1997, the City entered into an agreement with the U.S. Government (Navy) for a sewer easement and a force sewer main (Council Letter No. 2855). As per this agreement, the Navy installed an underground odor control station on Harrison Avenue, just east of the Underwood School. This odor controls site is controlled by the Navy and is available for their forced main, which runs from Fort Adams to Morton Avenue.
9. That the CLUP notes the following: "There are at least 11 wetland areas in Newport, including swamps, marshes, coastal tidal marshes and estuarine marshes. All of the wetland areas are located along the Ocean Drive near the southern end of Lily and Almy Ponds and at the head of Brenton Cove. Because transitional wetlands do not always contain water throughout the year, they are not as easily recognized. Nevertheless, wetlands are known to be extremely fragile; they support important ecosystems when left in their natural state, reduce flooding, remove pollutants, and maintain groundwater supplies." (Pg. 9-15)
10. The Newport Open Space Partnership states that many of the inlets in the Ocean Drive neighborhood are listed as impaired wetlands. As wetlands provide many benefits for their surrounding communities, they should be preserved at all costs. Should these wetlands be damaged further, increased flooding may occur. Other ecological benefits such as water filtration and groundwater recharge could be lost as well. (CLUP, Pg. 9-15)

**Planning Board Review of  
Section 1, General Provisions of the  
City's Subdivision Regulations**

The Planning Board shall consider if this proposal addresses each of the general purposes stated in RIGL 45-23-30, and the General Provisions, Section I, of the City's Subdivision Regulations:

- 1.) Was the Board able to thoroughly and expeditiously review this proposal?  
**Providing for the orderly, thorough and expeditious review and approval of land developments and subdivisions;**  
Despite cancelling the October meeting and delaying the November meeting by 8 days, the petition is being reviewed prior to the 65-day timeline (November 18) outlined in the state subdivision act. The application was supplied to the Board 10 days prior to the meeting and the staff report was provided in advance of the meeting. The applicant has met with staff regarding this project several times over the last few years.
- 2.) Does the Board consider this subdivision to be high quality and appropriate design?  
**Promoting high quality and appropriate design and construction of land developments and subdivisions;**  
The Board should weigh the design of the through-lot in referencing this purpose.

- 3.) Does this proposal promote the protection of the existing natural and built environment and the mitigation of all significant negative impacts of any proposed development on the existing environment?

**Promoting the protection of the existing natural and built environment and the mitigation of all significant negative impacts of any proposed development on the existing environment;**

There is an existing wetlands complex on the parcel. The school at this location was previously demolished. While the plan has been reviewed and approved by Rhode Island Department of Environmental Management (RIDEM), Wetlands Application No. 17-0163, RIPDES Permit No. RIR101627, after a thorough technical review, the City's Director of Utilities, Director of Zoning and Inspections, and Superintendent of Parks, Grounds and Forestry have expressed concerns that basements at this location could drain the abutting wetlands, if not constructed correctly. The applicant has agreed to perform water table tests at the building sites prior to approval.

- 4.) Is this subdivision well integrated with the surrounding neighborhoods with regard to natural and built features, and concentrates development in an area that can support the use?

**Promoting design of land developments and subdivisions which are well integrated with the surrounding neighborhoods with regard to natural and built features, and which concentrate development in areas which can best support intensive use by reason of natural characteristics and existing infrastructure;**

The natural features of this area and this site in particular are a concern regarding the ability of the proposed subdivision to support development. It is important to note that this property was previously developed with one-story slab on grade structures.

- 5.) Does this proposal encourage local design and improvement standards that reflect the intent of the Comprehensive Land Use Plan with regard to the physical character of the various neighborhoods and districts of the city?

**Encouraging local design and improvement standards to reflect the intent of the Comprehensive Plan with regard to the physical character of the various neighborhoods and districts of the City;**

Please note standard II.K.1 from the Subdivision Regulations: "The shape and orientation of lots shall be appropriate for the location of the subdivision and the type of development contemplated."

- 6.) Has this proposal been given a thorough technical reviewed by City Officials?

**Promoting thorough technical review of all proposed land developments and subdivision by City officials;**

This proposal has been reviewed by the Zoning Official, City Planner, Director of Planning and Economic Development, Superintendent of Parks, Grounds and Forestry, Director of Zoning and Inspections, and Director of Utilities.

- 7.) Is there any documented need related to this subdivision that calls for the dedication of public land, impact mitigation or payment in lieu thereof? **Encouraging local requirements for dedications of public land, impact mitigation, and payment-**

**in-lieu thereof, to be based on clear documentation of needs and to be fairly applied and administered.**

Please note the believed presence of an odor control station for the Navy's force main at this site.

- 8.) Do the subdivision regulations lead to consistent records being kept of all matters regarding this proposal?

**Encouraging the establishment and consistent application of procedures for the record keeping on all matters of land development and subdivision review, approval and construction.**

Staff will maintain records of this proposal consistent with Department of Planning and Economic Development practices.

**Planning Board Review of  
the Standard Provisions of RIGL 45-23-60:**

The Planning Board shall make positive findings on the following standard provisions, as part of the proposed project's record, prior to granting approval.

- 1.) Is the proposed development consistent with the Comprehensive Land Use Plan and/or has satisfactorily addressed the issues where there were inconsistencies:**

The proposal is consistent with the Future Land Use Map (FLUM) as contained in the Comprehensive Land Use Plan which indicates the future use of this parcel as Low Density Residential, and which is defined as a density of less than one dwelling unit per acre, with lot sizes between 40,000 and 60,000 square feet. The area surrounding the parcel is classified in the Comprehensive Land Use Plan as "Estate Residential" which are areas of very low-density residential development.

The Planning Board shall consider if this proposal is consistent with the City's Comprehensive Land Use Plan, including, but not limited to the following:

- Chapter 3, Land Use, Goal LU-1  
*To provide a balanced City consisting of residential, commercial, and employment uses consistent with the character, environmental resources and vision of the Community.*  
Staff believe this provision has been met.
- Chapter 3, Land Use, Policy LU-1.2 *The City shall protect the Ocean Drive neighborhood and southerly portions of the City, by maintaining an emphasis on very low-density residential uses, conservation and enhancement of exceptional natural resources, and appropriate public recreation.*  
This site is at the transition between the Fifth Ward and the Ocean Drive neighborhood. It is further impacted by the presence of wetlands.
- Chapter 6, Natural Resources, Goal NR-2  
*To provide for the effective, long-term preservation and restoration of natural resources.*  
Staff have some concerns about the parcelization of the wetlands into separate ownership.

- 2.) Is the proposed development in compliance with the standards and provisions of the city's zoning ordinance?**

All lots, as proposed, will conform to the requirements of the Residential R-40 Zoning District.

**3.) Is there any significant negative environmental impact from the proposed development as shown on the submitted plan? If yes, can these impacts be resolved on a final plan, with required conditions of approval?**

There is an existing wetlands complex on the parcel, and there is insufficient information at this time to determine if there will be no significant environmental impacts from the proposed development as shown on the submitted plan. While the plan has been reviewed and approved by Rhode Island Department of Environmental Management (RI DEM), Wetlands Application No. 17-0163, RIPDES Permit No. RIR101627, after a thorough technical review, the City's Director of Utilities has expressed concerns (Exhibit A) that the plans and analysis, as submitted do not address permanent ground water control for basement foundations and in-ground pools, and therefore the submittal does not fully address Items a, b, c of the said approval.

**4.) Does the subdivision, as proposed, result in the creation of individual lots with any physical constraints to development that building on those lots according to pertinent regulations and building standards would be impracticable?**

The development will not result in the creation of individual lots with such physical constraints to development that building on those lots according to pertinent regulations and building standards would be impracticable.

**5.) Do all the proposed lots have adequate and permanent physical access to a public street?**

The applicant proposes to create five (5) lots for future development, (2) lots fronting on Harrison Avenue; two (2) lots fronting on Brenton Road, and one (1) irregularly shaped corner lot with inaccessible frontage (within the wetlands complex) on both Harrison Avenue and Brenton Road. This proposed irregularly shaped lot has an additional 32' wide frontage on Harrison to provide ingress and egress to the parcel. The proposed development possesses access to a public street, with Proposed Lot 4 accessed via a 32' wide access point, located between Proposed Lots 1 and 2. This 32' wide access point is also the location of a proposed 20' wide utility easement.

### **Planning Department Recommendations**

That, if the Planning Board finds this proposal addresses each of the general purposes of RIGL 45-23-30, and Section 1 "General Provisions" of the City's Subdivision Regulations, and makes positive findings on the Standard Provisions of RIGL 45-23-60, the Planning Department recommends granting Preliminary approval, with Final Approval to be through the Administrative Officer, upon compliance with the following stipulations.

1. That the Final Plan shall be prepared in accordance with Section 9 of the Rules and Regulations adopted by the Rhode Island State Board of Registration for Professional Land Surveyors on November 25, 2015.

2. That the Final Plan shall depict the following items in accordance with Section F. Application Requirements, 2. For Minor and Major Subdivisions, of the Subdivision Regulations:
  - i. Subdivision name and total acreage
  - v. Please note in zoning table that the parcel is located within an Historic Overlay District
  - vi. Existing trees eighteen (18) inches or more in diameter
3. That the Applicant shall indicate the location of the Odor Control Station on the Final plan and reference any existing easement agreements. If the Odor Control Station is located on the parcel, a note shall be added to the plan indicating that this area shall remain available for continued sewer use.
4. That prior to Final Approval, the Project Engineer shall address any outstanding concerns and receive approval from the City's Director of Public Utilities.
5. That a granite bound shall be installed for each proposed lot; one bound may serve more than one lot. All monumentation shall be indicated on the Final Plan and shall be installed, prior to the recording of the "Record Plat".
6. That prior to Final Approval, the Applicant shall submit a landscape plan, prepared by a RI Registered Landscape Architect, which includes the planting of one tree per proposed lot, within twenty feet (20') of the Right of Way (ROW), if feasible. The Landscape Architect shall consult with the City's Superintendent of Parks, Grounds and Forestry regarding suggested location and species. (See Exhibit B)