

**MINUTES OF
WORK SESSION**

**PLANNING BOARD
PORTSMOUTH, NEW HAMPSHIRE**

7:00 P.M.

**CITY COUNCIL CHAMBERS
CITY HALL, MUNICIPAL COMPLEX, 1 JUNKINS AVENUE**

MARCH 1, 2007

MEMBERS PRESENT:

John Ricci, Chairman; Jerry Hejtmanek, Vice-Chairman; M. Christine Dwyer, City Council Representative; Cindy Hayden, Deputy City Manager; Richard A. Hopley, Building Inspector; Raymond Will; Donald Coker; Anthony Coviello; Paige Roberts, and Timothy Fortier, Alternate;

MEMBERS EXCUSED:

n/a

ALSO PRESENT:

David M. Holden, Planning Director
Lucy E. Tillman, Chief Planner
Rick Taintor, Taintor & Associates

Chairman Ricci confirmed that there would be no public input tonight.

A) Zoning Ordinance Amendment: Chapter 10, Section 10-102 – Definition: Floor Area Ratio; Section 10-304 (A) Business – Table 10 Dimensional Requirements; and Section 10-304 – New (E) and (F) for Central Business A District (CBA);

David Holden, Planning Director, reminded the Board that this came from the City Council as a referral to change the building height from 50' to 40' in CBA. The Planning Board worked on this concept and they elected to look at various alternatives and recommended those alternatives to the City Council. Last month, a proposed change was given to the City Council which was scheduled for first reading. This allows the Planning Board to continue working on this today and hopefully they will schedule it for a public hearing before the Planning Board on March 15th. The City Council reading will be on March 19th. Mr. Holden asked the Board that they schedule this for a March 15th public meeting before the Planning Board and then a recommendation back to the City Council.

Mr. Taintor confirmed this was a refinement of what they talked about last time. They are recreating the Floor Area Ratio (FAR) and balancing it with a slightly larger open space requirement. They would look at open space accessibility, useable open space and stepping back of the upper floors.

They defined FAR and they added two provisions to the dimensional table. Anything over 40' in height must be 10' from the streetline. They could have the entire building 10' back or they could build to the street line by stepping back the top floors.

The second point is that the FAR is set at 3.5. There was discussion to increase that. The ordinance proposes a couple of opportunities to go to 3.75 with an open space requirement, which varies depending on whether the property is along the river. The 4.0, the maximum, would be if you either made the principal building on the site LEED certifiable or if they provide mid-path walkways to the waterfront.

The Dimensional Table changes reduce the maximum structure coverage from 95% to 90% and increased the minimum open space to 10%. They talked about what an insignificant number 5% of open space can be so this allows for some higher density with open space.

Mr. Coker asked for clarification regarding the first 10' back from the street. Mr. Taintor confirmed that the first 10' back cannot be more than 40'. Mr. Coker asked if they have any assurances that the City Council will accept that? Mr. Holden stated the City Council has requested a report back and this is the report they will consider but they do not have any assurances that they will accept the Planning Board report.

Deputy City Manager Hayden felt this was a great flexible solution to what the City Council and Planning Board were trying to achieve. She would like the Planning Board to endorse the plan and send it back to the City Council.

Mr. Coviello asked about the LEED condition and the maximum FAR 4.0. This is before any ground is disturbed. Although people have intentions of obtaining one of the different LEED levels, sometimes they don't actually get it and he asked how the City would handle that after the building was built? Deputy City Manager Hayden confirmed that would be enforced with their bond and they wouldn't get their money back. Mr. Holden added that, in any project, the City is always looking for voluntary compliance. There would be checks and balances along the way.

Deputy City Manager Hayden stated that they often hold developers to things and the City holds on tight to the Site Review Bond. Mr. Hopley felt that Mr. Coviello's point was well taken as the stakes are much higher in this instance. They would have a building bigger than what would have been allowed without the condition. Deputy City Manager Hayden didn't see this as being any different than when someone is allowed to build to 40' and they end up building to 42'. She does not want to see them get too hung up on this.

Mr. Will understood that the LEED certification would be either gold, silver or bronze. Looking at F 1 B 2, top of 2nd page, regarding a park. He asked if there was a definition of a pocket park as opposed to a regular park? Mr. Holden stated that there would be a different set of issues depending on whether it was public or private.

Mr. Coker reminded them that if they could build a bigger building and not end up getting the LEED certification, they could just give up their bond. Mr. Holden has never seen a developer yet that has wanted to have the reputation of having their bond seized. He also reminded the Board that they will also have another chance to look at this issue when they work on the Zoning Ordinance rewrite.

Councilor Dwyer wondered whether the 10' gives them the proportionality in that area that they were looking for. Mr. Taintor felt it was a 1:1 ratio, 40' street width to a 40' building height.

Vice Chairman Hejtmanek asked what size bond would a large building project post in Portsmouth? Mr. Holden felt that for a \$10,000,000 building, a bond might be around \$100,000, which is on a site related aspect. There would be other fees involved as well.

Mr. Coviello read that Boston now requires that all buildings over a certain size must be LEED certified.

Mr. Hopley asked about under Table 10, Maximum Height of Structure. Would it be beneficial to put "see also 10 304 E"? He didn't want them to miss that is was 40' in some areas.

Mr. Holden noted there was a minor typo in the area for A & B. Also, there is a relationship they need to look at with open space, height and lot area. They should look at that down the road as he thinks the lot sizes for CBA & B are too small.

Regarding F. 1. a., Mr. Coker asked for further explanation. Mr. Taintor indicated that they would put it into an easement from lot line to lot line. Mr. Holden felt the trick was to make it as useable

as possible. Mr. Coker was concerned about the abutting lot. Mr. Taintor stated they would be looking for it to work on a long range plan.

Mr. Will felt this was a good idea for sculptured rooftops and he thought they should enumerate it in this ordinance. What makes the new building at 10 Congress Street so beautiful is the sculptured rooftops. That will make a nice transition. He was not sure where to put it as an incentive. Mr. Holden responded that they haven't pushed it as there may be a couple of other places to put it. It's not lost but just in abeyance. Mr. Will felt they should make it an incentive in the height section. Mr. Taintor felt they were at a point of either/or. They might be able to say either a 10' set back or some kind of a sculptured rooftop. They could provide it as an alternative but there would be problems if they include it as part of the set back part.

Chairman Ricci referred to F. 2. b., mid block public pathways, and asked for an elaboration. Mr. Taintor indicated that this would only apply to a few parcels. The Parade Mall, with several buildings and a pathway, with an opportunity to get a perpendicular walkway to the water. Chairman Ricci asked if it could be a covered walkway? Mr. Taintor asked how would you make it public? Chairman Ricci asked if an easement conveyed to the City would be considered public? Mr. Taintor confirmed it would be.

Mr. Coker asked if anyone has actually taken the time to see exactly what type of building could be built with these "conceptual grasps." He wants to make sure the ordinance works for the district. Mr. Taintor referred to the handout with the diagrams, showing a variety of different scenarios. Mr. Coker was concerned about exactly what type of building could be built on each lot. Chairman Ricci liked the fact that there is flexibility. They may find out down the road that one particular element doesn't work and they can revise it.

Mr. Coviello added, unlike the OR where they were trying something new, they are taking items from buildings that they like, where they have seen things being done. He would like to see an either/or on the 10' set back at 40' or a sculptured roof. Mr. Taintor felt that was possible. They would have to define a sculptured rooftop and that does not get at the issue of the proportions of height to widths. Councilor Dwyer felt they have heard a lot from the public and they have objections about the narrowing of the proportions. Mr. Holden thought they can work on the sculptured roofs but this may not be the place or time to do that and they have a time limit on this.

Deputy City Manager Hayden felt there are always a lot more things they can do but they have a lot of work to do and they need to move this on.

Deputy City Manager Hayden made a motion to recommend to the City Council that they don't take any action on the old proposed ordinance and that they recommend tonight's proposed ordinance in its place. Mr. Will seconded the motion.

The motion passed unanimously.

Chairman Ricci stated that he was very impressed with the work they were forwarding to the City Council and he thought this had gone far beyond what the City Council originally sent to them.

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B) Nonresidential Planned Unit Development (PUD) which would function as an overlay in the Office Research (OR) and Industrial (I) Districts;

Mr. Taintor provided a revised handout to the members. They talked about various items at the last work session that they wanted him to work on and so he got more focused on those issues. There were no changes in the first two sections entitled Purpose and Intent, and General.

They tightened up the eligibility criteria quite a bit. This is now only available to OR that abuts an I district and that is a very significant change. Then, they moved the development criteria up to the next section. They stated that it must include a principal use that is permitted in the OR district, the individual uses in a PUD-NR shall be developed in a unified manner, any use not permitted in the OR district shall be located at least 75' from any residentially zoned property, any use classified as a high hazard use in the City's Building Code shall be located at least 300 feet from any residentially zoned property and no use shall be classified as H1 or H2 in the City's Building Code.

They made the Permitted Uses section more detailed but simpler. All uses permitted in the OR are allowed and adding uses that are functionally related to and integrated with a principal use that is permitted in the OR District, including light industry, food processing, beverage manufacturing, hotel or motel with not more than 125 rooms, restaurant ancillary to and integrated within the same structure, gallery or museum and arts and crafts studio or workshop.

They added food processing and expanded it. Also, there is a mistake in item c which should say 75,000 barrels per year (not 75,000 gallons). Mr. Hopley felt it should be generic as barrel was generic to a specific product. Chairman Ricci thought it should be gallons. Mr. Holden clarified that what they are trying to say is that to qualify for this ordinance, it has to have an upper limit. If they go beyond the 75,000 barrels, they are going into a major production, and then this site may not be appropriate.

Councilor Dwyer asked about the hotels. It is very common in small motels/hotels that would be ideal for this setting to have small function rooms for assembly. Mr. Taintor explained that it depends on existing zoning. They could do anything they want to do with this and they need to tune it. They might want to go with the capacity of a function room so they may want to look at those separately. Councilor Dwyer pointed out that you get a higher quality hotel with a function room and she was talking about a small meeting room. Mr. Will suggested that they could put an upper limit on the capacity.

Mr. Taintor pointed out that a restaurant must be attached to the structure. Gallery, museum, and an arts and crafts studio or work shop were in the previous draft.

In E. 3., he reduced the percentage from 30% to 20% and the reason was because they had been thinking of a restaurant as an accessory use. This could be a small retail store. It prohibits an accessory use taking up a huge space.

The only other change was in the last paragraph on the last page, #4 was added to read "The Planning Board may require surety to ensure performance of any requirement of this section or the conditional use permit."

Mr. Coker felt that Councilor Dwyer's point was well taken because he travels a lot too and attends meetings in the hotel. He asked how specifically they would deal with that. Chairman Ricci asked if that is something that the Board decides or are there some regulations somewhere on that? Mr. Taintor thought they could use a percentage of the floor area of the building. But, he suggested just taking out the prohibition of function rooms. Mr. Hopley asked if they were setting up a conflict with the items that they were allowing or disallowing. There is probably some justification in trying to limit it. He thought floor area ratio sounds good. Chairman Ricci indicated they will have Mr. Taintor look into that.

Mr. Hopley referred to D 1, where it says that a PUD NR must include principal use that is permitted in the OR district. He asked if that means the principal use of the building has to be allowed in the OR district? He's thinking a brewery is not a principal use in an OR district so they wouldn't be able to allow it. Mr. Taintor explained that at least one use would have to be allowed in the OR district and maybe the wording needs to be revised. Chairman Ricci suggested say a non-accessory use rather than principal use.

Mr. Holden referred to the references to hazardous uses and asked if the light industry definition was a conflict? Mr. Taintor felt that anything considered as a light industry should be a high hazard use. Chairman Ricci went on to ask if the components are high hazard does that make the use high hazard? Mr. Coker felt you can have small quantities of high hazard and it's not considered a high hazard use. Mr. Hopley indicated that they don't want the H1 or H2 which are high hazard. Mr. Taintor noted that the Zoning Ordinance lists H3 & H4 as high hazard. Mr. Coviello suggested they say any use classified as high hazard (H3 and H4 in the City's Zoning Ordinance) and then #5 should say that no use shall be classified as High Hazard 1 or 2 in the City's Zoning Ordinance. Mr. Taintor would like to always refer to the building code for consistency. Councilor Dwyer thought they could combine #4 and #5 into one.

Mr. Will talked about food processing (E. 2. b.). Last session they were talking about what they wanted to avoid. Mr. Hopley asked if the intent was to get manufacturing processes internal to the building in this district? Mr. Taintor confirmed that was the intent. A discussion followed regarding keeping the operation inside a building and the definition of the preparation of sea related products.

Mr. Coviello stated that the Redhook Brewery burns off their methane. Would that be allowed? Deputy City Manager Hayden asked if that would be an H1 or H2?

Mr. Holden asked the Board if Peter Eggleston could speak to that. Mr. Eggleston, owner of Smuttynose Brewery, indicated that their waste water treatment is currently rather primitive but their plans are to have a more sophisticated program but it will still be fairly low tech. It will involve buffering the ph of the water that goes down the drain, separating out as much high BOD (Biochemical Oxygen). The little bugs in the wastewater plant depend on oxygen and if you put too much organic material in it will overwhelm them and kill them off. The object with wastewater treatment with a facility such as Redhook is either to pre-treat it by predigesting all of that organic material, which does produce methane. Mr. Eggleston added that if they built that plant today, they would be using that methane rather than off-gassing it and that is a ridiculer waste. Smuttynose's plan is to divert as much of their organic material and haul it off with the rest of their solid waste off to the cow farm. They pay for every gallon that they put down the drain so they try to keep as little of the BOD count material from going down the drain. Mr. Holden asked if it would it be appropriate to have the ordinance state that those materials should be trucked off the site? Mr. Eggleston indicated it would be appropriate for his purposes.

Chairman Ricci asked if the venting of methane is covered under another section? Mr. Taintor confirmed it was prohibited further down.

Councilor Dwyer went back to food processing and the definition relating to sea related products. There are sea related products in a lot of foods that are not related to fish or sea food. What do they mean by sea related? Deputy City Manager suggested adding "retail" to products. Mr. Taintor thought it could just read food processing and delete the seafood. He suggested copying the footnote as a performance standard. Mr. Will thought they might want to address odor but they need to consider this is a seafaring community. He would like to specify anything dealing with fish preparation. Chairman Ricci was concerned about once the process is up and running, how does the City enforce the odor? Mr. Holden stated there was an enforcement mechanism but it's difficult and time consuming. Mr. Hopley suggested they should add the wording "significant".

There was a discussion regarding odors, seafood processing, abutting residential neighborhoods and how to word the ordinance so that it could be enforced.

At the conclusion, Deputy City Manager Hayden suggested that if they want to move this forward, why not just leave it in. Obviously, people are concerned about seafood. Mr. Taintor will also leave in the definition for light industry. Chairman Ricci indicted they would leave it in and move it forward.

Mr. Coker asked that the City Attorney review it. Mr. Holden added that Mr. Sullivan will also attend the public meeting.

Mr. Holden mentioned that regarding odors, etc, they normally work with lot lines, which also gives them a little more flexibility. Mr. Taintor stated they do not have a noise or light standard in the Zoning Ordinance.

Councilor Dwyer referred to Preliminary Approval and felt that traffic impact needs to be on that list because it is always a deal breaker. A traffic study may not be required but if they leave it broad the Board can guide that.

Deputy City Manager Hayden made a motion to move forward to a public hearing on March 15, 2007, the motion was seconded and passed unanimously.

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C) Zoning Audit Report;

Mr. Taintor provided a Handout entitled "Uses", which included a picture showing how zoning can affect a City street. He indicated that they are looking at different ways to change design.

The middle part of packet was included as part of the Audit Report. He wanted to talk about incorporating the form based ideas into the Zoning Ordinance, understanding that a lot of the City is already built out. He broke it into three sections: Uses, Forms, Uses + Forms x Districts. The Use section establishes the basis uses and there are a limited number of uses that are allowed. Those uses get cross referenced with the building types. That is the form that is allowed in the district. Form and Use are separate things. The document ends with a table at the end. He referred to Page E4, showing where a particular use would be allowed. You would then go back to the form section which would define items.

He would be interested in exploring what aspects of design and use they see for different segments of the City. Lafayette Road would be a key area for redevelopment and regeneration. There are issues of location of building from the street, the height of the building, frontage, parking, etc.. Mr. Will would also like to see that in areas where buildings would be more likely to be torn down or razed. He thinks they would be more receptive on Lafayette Road than they would be on Islington Street as they are more established. Maybe there should be one set of regulations for the areas they want to deal with rather than different regulations for each area. Mr. Taintor referred to the tables. He noted that most of the Northern Tier has been designed by now so they might want to use that as an example of what they want for other areas. Mr. Coker was concerned that he was unaware of property being redeveloped in the Northern Tier. Deputy City Manager Hayden confirmed that formal applications may not have been filed but there has been a lot of movement in that area so the City is aware of what is going on. Mr. Taintor indicated that his point is that he thought the form based zoning would be used in the Northern Tier.

Mr. Coviello would like to see Lafayette Road/Route One have more of the connector roads to avoid Route One, such as West Road, and what they did with Home Depot. Mr. Holden indicated that was in the Master Plan. Mr. Taintor indicated it would depend on how much building form they want to get into. Also, the Zoning Ordinance would not address connector roads.

Councilor Dwyer asked if landscaping would fit into form based? Mr. Taintor confirmed that could be included.

Deputy City Manager Hayden felt there were pieces of the handout that she really liked, such as pieces in the commercial section. For instance, she would hate to see the K-Mart Plaza rebuilt the same way that it is now. She views this document as a homework assignment and she would like to study it. Mr. Taintor indicated that he would like to know what they like best and what they like least. Deputy City Manager Hayden felt it would be real useful to go through it and think of sections in town where they would like to have these items.

Chairman Ricci confirmed they will take this up at the April 5th work session.

Mr. Taintor asked the Board to look at the uses and forms and have them think about where they would like to see more flexibility. Also what would work and what would be problematic.

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Mr. Holden had one new item regarding a proposed Site Review Regulation amendment. It has become apparent that this has become a real issue in the downtown. To formalize this, they are proposing an amendment to the Site Review Regulations which requires a Construction Management & Mitigation Plan. He was asking that they authorize the amendment at their March 15th meeting. This will give them more authority over how a project is mitigated during construction.

Mr. Coker asked if there was any reference to form or content to this plan? Mr. Holden confirmed it was to set up the requirement only. He will bring the working outline to the March 15th meeting.

There was a consensus to do a public meeting on this on March 15th.

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II. ADJOURNMENT

A motion to adjourn at 8:55 pm was made and seconded and passed unanimously.

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Respectfully submitted,

Jane M. Shouse
Acting Secretary for the Planning Board

These minutes were approved by the Planning Board on April 19, 2007.