

**MINUTES OF
WORK SESSION**

**PLANNING BOARD
PORTSMOUTH, NEW HAMPSHIRE**

**EILEEN DONDERO FOLEY COUNCIL CHAMBERS
CITY HALL, MUNICIPAL COMPLEX, 1 JUNKINS AVENUE**

6:30 P.M.

JANUARY 29, 2009

MEMBERS PRESENT: John Ricci, Chairman; Paige Roberts, Vice Chairman; Donald Coker; Anthony Coviello; John Rice; Anthony Blenkinsop; Cindy Hayden, Deputy City Manager; Richard A. Hopley, Building Inspector; and MaryLiz Geffert, Alternate

MEMBERS EXCUSED: M. Christine Dwyer, City Council Representative and Norman Patenaude, Alternate

ALSO PRESENT: David M. Holden, Planning Director;

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Chairman Ricci called the meeting to order and turned the meeting over to Rick Taintor, the City's consultant.

I. DRAFT REVISED ZONING ORDINANCE

A. Article 5 – Supplemental Use Standards;

This is a grab bag of everything else that is left over and is still in process so they did not go over it tonight.

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B. Article 7 – Dimensional and Intensity Standards

Mr. Taintor reviewed the draft with the Board. On the first page, Page 103, everything is the same except Section 10.711.20 which is just a clarification. The order was rearranged to go from lots to buildings which seemed more logical. That was also done in other places in the ordinance. Section 712 is the same provision with slight wording changes and Section 713 is the same. Mr. Holden wanted to emphasize the point that they can't do a free standing dwelling except in the listed districts.

Contiguous lots and common ownership has an incorrect cross reference which will be revised. The paragraphs under Section 714.20 are special regulations that apply to Atlantic Heights. Mr. Taintor changed some wording in Section 714.23 but he will probably change it back per discussion with City Attorney Bob Sullivan. Mr. Coviello asked for clarification on contiguous lots as in other towns the dividing line would be eliminated. Mr. Taintor explained that if all zoning requirements still apply then the lots can merge. Mr. Holden added these would pretty much be lots that pre-existed. Mr. Taintor continued that this is not to exempt lots that exist but if an owner has two lots,

he cannot sell one unless they comply with current regulations. Mr. Coker asked if that was only if there were no buildings on the lots? He was thinking of something from a long time ago, where every other lot in the area was the exact same size but the Planning Board turned it down. Mr. Holden explained that is the reason they do the ordinance, to eventually bring the neighbor up to compliance. Mr. Coker asked if there are two substandard lots with a house on one, they could still sell off one lot? Mr. Taintor confirmed they could not if the lot had a home on it.

Ms. Geffert felt that the definition of contiguous should be revised. They had talked about it at an earlier meeting. The general consensus was that the definition made sense.

Mr. Holden asked about the absence of the non conforming frontage requirement? Mr. Taintor stated it was in a different section. Ms. Geffert asked about two non conforming lots that still don't equal a conforming lot. Mr. Holden stated they would have to go to the Planning Board and show they have made it as conforming as possible as a buildable lot. Ms. Geffert felt they should state that. Otherwise you could still not transfer the non conforming lots together. Mr. Taintor pointed out that they do not have the Section on non-conforming lots and nonconforming buildings and nonconforming uses which is in Article 2. Mr. Taintor stated they could have a cross reference back to the nonconforming use section.

Section 10.715 Exception to Yard Requirements is a new section. If existing principal buildings on the same side of the same street, in the same district and within 200 feet of a lot are located closer to the street than the minimum required front yard specified in this Article, the required front yard for such lot shall be the average of the existing alignments of all such principal buildings. Mr. Coviello felt it would be better to use lot line rather than just lot. Mr. Taintor felt that would be confusing as they wouldn't know which lot line they were referring to. Deputy City Manager Hayden agreed that they were not referring to one lot and one building but rather a row of lots and buildings. Mr. Taintor felt if they put in lot line it raises questions. Maybe they could put in an illustration if they feel it is ambiguous. Mr. Rice liked the idea of an illustration.

Section 10.715.20, Yard Adjoining a Railroad Right of Way. They expanded this to every district. The yard is the required distance from the lot line to the building. They don't use the word setback in the ordinance as much as they do yard. The definitions of yard would not fit this sentence. Mr. Holden felt this is not very different from what they have. If they start changing this, they will have to do it everywhere. Chairman Ricci asked if there are districts where this is not required? Mr. Taintor confirmed that there are, CB for one.

Section 10.715.30, Corner Lot Vision Obstruction The illustration needs to be revised. Mr. Hopley assumed the purpose of this section is the vehicular line of site so he suggested adding the phrase "... to vehicular line of site visibility". He also asked about fences? Mr. Taintor confirmed this is what this section applies to. They will deny fences within that triangle and over 2 ½ feet high. Mr. Hopley thought they currently allow fences if you can see through them. Mr. Taintor agreed that if this is going to be an issue they should probably re-write the section. Mr. Holden added that they don't issue permits for fences unless they are in the HDC. Mr. Taintor felt that, rather than argue about the wording, they should just fix it. He wondered if 2 ½' was too low? Someone in a Smart Car may have trouble seeing over it. Chairman Ricci felt they could also dispute whether they can see through the proposed fence or not.

Section 10.716 Roof Appurtenances has not changed. Mr. Coviello asked if they can exclude solar panels? Mr. Taintor felt that raised a very good point because this section was not worded very well. This was meant to be the roof appurtenances that exceed the allowed building height. Going to page 106, Table Dimensional Standards shows structure heights of 35' and roof appurtenances of 8'. A solar panel would not typically be that. They could fix it by including items that exceed the height of the roof. If someone somebody figures out how to build a roof appurtenance that is 8' high and covers the entire roof, you have essentially lost your height limit so they have included

area in their requirements. They talked about having different percentages for commercial vs. residential as commercial could have a larger need. Mr. Hopley asked if they are classifying roof appurtenances to include electrical equipment? Mr. Coviello felt that 33% is high for a commercial building? Mr. Hopley explained they had to pick a number and that blended into the mezzanine concept. It is the downtown where they try to squeeze in another story. Mr. Taintor felt that the 33% may seem big but they might have a setback from the edge so it wouldn't seem so big. Mr. Holden added that they should keep flag poles as roof appurtenances. Ms. Geffert asked why this doesn't apply to solar panels. Mr. Taintor explained that it would but when he re-wrote he didn't make the connection between page 105 and 106 as it is in a different form. A solar panel mostly likely is not over the peak of the roof so it's not over the height of the building. However a flat roof would exceed the height, although it may not be an issue if they are set back and not visible from the street. He asked if they should exempt solar panels? Ms. Geffert did not think it was a bad idea. Deputy City Manager Hayden suggested having them exempt in residential districts in the height restriction. Mr. Blenkinsop felt that allows the potential of having a roof covered with solar panels and not aesthetically pleasing. Mr. Taintor stated if a solar panel went all the way to the peak, it would already be at the height limit. Mr. Holden asked if it would be possible to address this as an accessory use? Chairman Ricci felt that most houses are a cape and it will not extend over. Mr. Taintor confirmed that he will re-write this section.

Page 106, Table of Dimensional Standards for Residential and Mixed Residential Districts. Mr. Taintor wanted to look at a couple of items. He wanted to have the actual roof percentage coverage for roof appurtenances in this table rather than in a separate provision. He has some questions about some existing provisions. Comparing GRA and GRB, the rear yard dimensions, they go from a 7500 GRA lot area and allows 20' rear yard and a 5000 GRB lot area and yet the yard is larger. And the opposite happened when you look at GA/MH. He wondered if it makes sense to drop the GRB yard down to 20' and increase the GA/MH rear yard to 40'? GRB is the heart of the downtown. The idea of 25' is that the building is usually located in the front, it was to keep the back yard more open. Mr. Holden wanted to state that the rural has worked very well in the past however they had to fight a subdivision because it had no continuous street frontage. They made pie lots where the tips of the lots intersected the street. The idea was they did not want to encourage streets. It might be a good idea to require some sort of street frontage to avoid that as the lack of street frontage requirement in Rural has been a problem. He would recommend 50'. Previously, they were trying to avoid streets going through the subdivided lots. Mr. Taintor asked if there were any problems with things such as emergency access? Mr. Holden felt there could be problems. Perhaps they need a statement indicating what the intent of the Board is. Portsmouth does not traditionally do developments by driveways. Deputy City Manager Hayden agreed that most towns have frontage.

Mr. Taintor stated that he needs to work on the next to bottom line regarding maximum structure coverage on lots in SRA and SRB. There are many non conforming lots and it might be difficult to achieve the 10% structure coverage on the lot. The intent would not be to increase the coverage generally but to make a special provision for those lots that are below minimum lot size. They would go to BOA under the current ordinance. They could have an adjusted percentage for pre existing non conforming lots. They generally get BOA relief now unless a neighbor complains.

Ms. Geffert asked about getting rid of coverage percentage? Mr. Taintor felt they should keep it there with a provision for non-conforming lots. The first idea is to have some sort of formula but he has not written it yet. They are considering districts where they have a lot of BOA relief, which is basically all residential districts. Mr. Holden asked if it is a pre existing non conforming lot, why does it matter what district it is in?

Page 107. Table of Dimensional Standards – Business and Industrial Districts. The Business Corridor is the big change here. They are mapping a new district with the general premise of GB with some changes. The height shows a lower height but it really doesn't matter as they can't get to

the 60' because of the parking requirements. This would be a base district to build in incentives for design quality. They might do the FAR and apply a .5 there. That would begin to give them a base to work from with higher design standards. The biggest change is the front yard standard. They now have 105 on Lafayette Road which is huge. They had a meeting and talked about the City's long term goals of Route 1. They are starting with the premise that the long time plan for Route One would be a 9s' right of way. That would include a cross lane, sidewalk and bike path. Because the 92' cross section has not been established they cannot define where the front line is. So they will work from the middle of the road. What they will be doing is talking about a different development option that will go in Section 12 under Flexible Development which will be called a Business Corridor Planned development and is similar to what they were talking about with the Smuttynose approach. It will allow some smaller front yards and required parking to be behind the front line and a high standard of development. Next week they will get into the details.

Mr. Holden noted that the WB does not allow residential so the NR should be NA. Also, when the doing existing ordinance they had a lot of discussion about minimum lot area for the CBA and CBB and that should be discussed. Mr. Taintor asked if he knows of any significant grouping of lots that meet the standards? Mr. Holden confirmed there are some. The 1,500 sf was more of a consensus figure for CBA. For CBB, the 2,000 sf wasn't very scientific and could possibly go bigger. Maybe they should discuss it one more time before finalizing. Mr. Coviello felt that further down by Rayne Avenue there are fairly large lots. Would they encourage subdividing them down to 1500 lots? Mr. Taintor confirmed that they went through this with the height discussions. Deputy City Manager Hayden asked what scenario would they want to subdivide these lots down? Mr. Holden stated they had one on State Street. He is just asking if this is still valid. Deputy City Manager Hayden felt they should look at lot areas in that area. Vice Chairman Roberts stated that she would not be in favor of encouraging large lots and she would not want to see it go much higher. Mr. Coviello also agreed. Vice Chairman Roberts felt it has been successful the way it has been. She doesn't want to see us replicate urban renewal. Mr. Taintor will look at the size of the lots that are there.

Section 10.732 Exceptions to Dimensional Standards for Certain Lots in the Industrial and OR Districts. Mr. Taintor stated that the last draft was referring to old assessor lot numbers so he had no idea where these were. He replaced the lot numbers with actual boundaries. This is the OR district at the North Mill Pond. Mr. Holden pointed out that the City Council asked to have this area zoned OR.

Section 10.732.20. Building Height Setback from Waterfront. In the existing ordinance this talks about the Office Research Mariners Village Overlay District and it only applied to one lot. They will be remapping that area so that the Office Research component of the Mariners Village Overlay District will be renamed as Office Research District. Rick read the current ordinance and it just doesn't make sense so they are re-working it.

Sections 10.734, 10.735 and 10.736 have all recently been adopted and are unchanged.

Mr. Coviello referred to Section 10.734, Inclusion of Waterfront Public Access in Open Space, and thought they had talked about having this really useable and not just a token. Are they defining what that benefit is? Mr. Coker remembered a past proposal for Mike's Marina for access to the water where better guidelines would have been helpful. It was billed as a canoe launch but there was no parking which negated its value as a public benefit. Mr. Taintor referred to Section 10.733.10 where they are demanding public access and it is recordable and enforceable by the City.

Section 10.740, Airport Districts, was unchanged.

Section 10.1050 Conservation Districts. Mr. Taintor felt this should just be called the Natural Resource Protection District because it makes more sense. He has not changed the regulations and has only changed for format.

Section 10.770, Accessory Buildings, Structures and Uses. They should look at this more carefully. Dumpster is not defined. Should they prohibit dumpsters in front yards and/or should they prohibit dumpsters within 20' rather than 10' of property lines. Mr. Holden stated these have not come up in residential districts. He would recommend a prohibition on a front yard. Mr. Taintor asked if a dumpster was an accessory use? Mr. Holden felt it should be screened. Deputy City Manager Hayden felt it might be good to touch base with Jason Page as he gets a lot of calls on this. Mr. Taintor confirmed this is a permanent dumpster as opposed to construction dumpster. They will define this section better. Mr. Hopley pointed out that there is a difference between the front yard and between the building and the street. Mr. Holden felt they should also look at "Pods", which are storage units. If they are temporary they don't need to worry about them but they may become more permanent. So far they have only been connected to a construction project. Maybe they should add them to their definitions. Mr. Hopley confirmed that when someone is doing a substantial renovation and living in the house, they rent a POD.

Section 10.781, Minimum Distance Between Structures in Nonresidential Districts and Lots in Residential or Mixed Residential Districts. They have structures and uses and they are all separations from residential districts. In 781 they probably want to say "no portion of a structure, including accessory structure" to be clearer. Mr. Holden indicated the intent was to protect residentially zoned property from that use and they haven't had many problems.

Section 10.782, Additional District Between Specific Nonresidential Uses and Lots in Residential or Mixed Residential Districts. This is a new section. Outdoor recreation can be removed. Sales, rental, leasing, distribution and repair of vehicles needs to be reviewed to make sure they pick up a number of things that are in the new definition and they want to make sure they include things like motorcycles, tractors, or snowblowers.

Mr. Rice asked how do you define Water Country? Mr. Taintor confirmed that is outdoor recreation and it is no longer allowed today.

Mr. Blenkinsop asked about the definition for truck refueling facility? (See definition) Mr. Coviello confirmed that its primary use has to be refueling trucks? There was a discussion regarding the intent of this definition. It is an existing use that the Board decided shouldn't be there and this is the regulation that prohibits another station from doing the same thing. When they start with the diesel fuel, they have a problem. This use is only allowed in the industrial district now. Mr. Coviello felt they need to better define this and be more specific. Deputy City Manager Hayden suggested that they talk to Bob Sullivan about the truck fueling station definition. A discussion was held about types of trucks. The consensus was to talk to Bob Sullivan for his opinion.

Section 10.783, Additional Location Restrictions for Certain Nonresidential Uses. The first paragraph was changed from the last version. It has been simplified as a result of their past discussion.

Mr. Taintor advised the Board that next week they will have a discussion on the Business Corridor.

Mr. Holden reviewed the upcoming meetings with the Board.

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II. ADJOURNMENT

A motion to adjourn at 8:05 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 February 19, 2009.