

**MINUTES
OF
REGULAR MEETING**

**PLANNING BOARD
PORTSMOUTH, NEW HAMPSHIRE**

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

7:00 P.M.

JULY 23, 2009

MEMBERS PRESENT: John Ricci, Chairman; M. Christine Dwyer, City Council Representative; Anthony Coviello; Anthony Blenkinsop; Cindy Hayden, Deputy City Manager; and Norman Patenaude, Alternate

MEMBERS EXCUSED: Paige Roberts, Vice Chairman; Donald Coker; John Rice; Richard A. Hopley, Building Inspector; and MaryLiz Geffert, Alternate

ALSO PRESENT: Rick Taintor, Planning Director;

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Chairman Ricci called the meeting to order and read the hearing notice into the record.

I. PUBLIC HEARING

A. A public hearing is convened to solicit public comment on the Draft Revised Zoning Ordinance, dated June 11, 2009 and the Draft Revised Site Plan Review Regulations, dated April 24, 2008. Copies of these documents are available for public inspection in the Planning Department, the Public Library, and on the City's website (www.cityofportsmouth.com).

Chairman Ricci indicated this was the second of four public hearings on the revised Zoning Ordinance.

Planning Director Rick Taintor advised the public that the City now has a site on the City's webpage which states how people are able to submit comments on this document. He then gave a powerpoint presentation on the draft Revised Zoning Ordinance.

The presentation gave information on the context and background of the Zoning Ordinance changes, the process that was followed, focus on major changes, Zoning Map revisions and Site Review Regulations.

He explained how the Zoning Ordinance is connected with State law, Federal law, the City's Master Plan, Planning Board Regulations and other City ordinances. The City Council, Planning Board, Conservation Commission, Historic District Commission and Board of Adjustment are Boards that have responsibilities relative to land use. The major distinction in the whole land use system is between the Zoning Ordinance and the Site Plan Review Regulations and he explained the differences between the two. The Zoning Map shows how the City is divided into zoning districts. There are base districts and there are overlay districts. A key aspect of the Zoning Ordinance is the use regulations which are done through a Table of Use Regulations where columns across the top are zoning districts and rows down the side are uses that are defined or described in the Zoning Ordinance. The other

major part of the Zoning Ordinance is the dimensional and intensity regulations. He displayed an illustration of front yard, side yard, building height, coverage, etc, which is how the Zoning Ordinance regulates intensity. He explained Floor Area Ratio (FAR) which allows for more flexibility.

Mr. Taintor displayed a sample Site Plan which would be presented to the Planning Board and would be the next step for review of specifics such as traffic review, landscaping, stormwater management, etc. It is important to remember there are tiers of review.

For background purposes, in 2005 the City revised its Master Plan and identified four areas of priority: downtown vitality, improvement of some major corridors, supporting a diverse community and protecting resources and encouraging sustainability. The last major Zoning Revision was in 1995 and since then there have been incremental revisions which have made the Zoning Ordinance complex and sometimes hard to use. There have been new Federal and State Laws that have been adopted which the City must respond to. New laws have been adopted on wind energy systems, telecommunication cell towers and workforce housing. More recently the City has added the Downtown Overlay District which prohibits residential uses on the ground floor of a good portion of the Central Business District to encourage economic vitality of the area and the Residential Density Initiative/Planned Unit Development (RDI-PUD) was adopted in 2007 to provide a means to increase the residential density of a site where a good proportion of the site are residential affordable units. Also, in 2007 restrictions were added to height limits to the Central Business A district.

This revision process started three years ago in 2006. The Planning Board has had over 60 meetings, including 45 Planning Board work sessions, 8 meetings with the City Council, 12 meetings with other municipal boards, a number of referrals from the City Council and they finalized the revised Site Plan Review Regulations in 2008.

The key objectives of the Zoning Ordinance are to promote sustainability, balance flexibility with predictability, balance resource protection with private property and economic development, use common sense and make the ordinance more user-friendly. They have added more tables and defined more terms and highlighted them in the new ordinance. He reviewed the 15 sections of the ordinance.

To promote sustainability they focused on low impact development, LEED rating program, limiting impervious surfaces, they introduced reserved parking areas and shared parking areas. They made changes to the wetland protection regulations, adapted lighting regulations for "Dark Sky Friendly" fixtures and simple things such as promoting the use of rain barrels. He also talked about sustainability in relation to the building codes.

Mr. Taintor gave examples of how the Master Plan goals have been incorporated into the Zoning Ordinance. One goal was to protect neighborhood character and residential conversion was an issue. Another goal was to improve commercial corridors and they have created a Gateway District. They have changed some of the jurisdictional areas for wetlands and introduced management performance standards for the buffer areas to protect natural resources. They have created minimum standards for open space, they are trying to balance flexibility for front yard exceptions, they have addressed off street parking and the location of parking facilities and have addressed drive through regulations.

In regard to resource protection and sustainability, they have decreased the jurisdictional area from one half acre to 10,000 s.f. and they are including vernal pools. They are looking at tidal wetlands along the North and South Mill Ponds and will look to Best Management Practices to address stormwater protection and vegetation management. For Site Review they are encouraging the reduction of impervious surfaces, pedestrian and bicycle circulation, dark sky friendly lighting, and create landscaping and screening standards.

Mr. Taintor talked about the introduction of the Gateway District for the Lafayette corridor. There will be a Gateway District and within that a Gateway Planned Development. The Gateway District would

go from the Rye Town line to Route One. One of the goals of the Master Plan was to redevelop commercial areas that are comparable with the quality of site and building design of the downtown area. The objectives are to encourage mixed use development, enhance character of corridor development, expand moderate-cost housing opportunities, incorporate pedestrian/bicycle access and circulation and the efficient use of transportation infrastructure.

Sign regulations are another area of the Zoning Ordinance which address sign types, the area of signs, the height and setback of signs and the way that signs may or may not be illuminated. Six sign districts are proposed and to completely revise the sign regulations by looking at them on a district by district basis.

Mr. Taintor stated that another major change is revising the way the City regulates parking in the downtown area. The current regulation is very complex and was created in 1977. They are now proposing changes and their objectives are to continue the flexibility that exists, to promote public shared parking, discourage surface parking lots and to simplify the regulations. In the long term it will be a good idea to separate the financing of parking from development permitting.

The changes are to modify the parking regulations in downtown and their goals are to eliminate parking requirements for first floor non restaurant uses, to help support small businesses. They want to standardize the parking requirements based on floor area and they will deduct the first four spaces in order to support the smaller uses. They will update and simplify the in-lieu fee by requiring on-site parking for residential, eliminate the 1997 "baseline" computation and increase the in-lieu fee to 40 – 50% of the estimated cost.

Mr. Taintor pointed out the current Central Business district where the parking regulations currently apply and they are proposing that the Central Business district be reduced in size and that the in-lieu fee apply only to the Downtown Overlay District.

They will be working on revisions to the Zoning Map next. They will be proposing to pull the CB District back to Parker Street and to rezone the remainder of the corridor Mixed Residential Business which will change the maximum height of buildings from 60' to 40' and eliminate some uses that might have higher impacts on the neighborhood. Another set of changes deals with a change in boundaries to the Historic District. They are considering an extension down Islington Street to Bartlett Street, an extension down Middle Street to South Street, addition of the corner between Bridge and Vaughan Street and two lots next to the Parade Mall. Osprey Landing is a very complex overlay district which is the result of a court settlement and they have reduced that section. They will look at the area between the Route One Bypass, Bartlett Street, Cate Street and Cottage Street, among other areas.

The Board will continue to look at implementing design review standards and regulations and looking at external regulations, such as the PDA Zoning Ordinance and the Airport Approach Overlay District. They will be looking at non-conforming lots to see if they can come up with new regulations that are sensitive to the historic context of the neighborhoods and one particular area they will be looking at is Atlantic Heights.

The City Council needs to adopt the revised Zoning Ordinance and amend the Planning Board Ordinance and Site Plan Review Ordinance and the Planning Board will adopt the new Site Plan Review Regulations.

The Planning Board will be holding additional public hearings on the Draft Revised Zoning Ordinance on August 6th and September 10th, after which they will make a recommendation to the City Council and the City Council will take it under consideration and act on it.

Chairman Ricci reminded the public that the next public hearing on the Revised Zoning Ordinance will be held on August 6th at 7:00 pm. He then opened up the meeting for public comment and called for public speakers.

Bernard Pelech, resident of Thaxter Road and practicing attorney in downtown Portsmouth. He was present on behalf of several motor vehicle dealers within the City. This proposal would make 12 out of 13 dealerships non-conforming uses and the Ordinance would eliminate any future land available for dealerships. He referred to section 10.592 under Motor Vehicle Related Uses which puts automobile dealers in the same categories as adult book stores, heavy industrial uses and prohibits use one within 500' of a residential district. This is requiring that dealerships will have to go to the BOA for any expansion of uses. He felt 200' would be more appropriate than 500'. Speaking on his own behalf, he felt that the waterfront business district did not represent what is actually there. It prohibits residential uses and those districts are already 50% residential. Regarding the proposed Gateway District, he felt there was more than one way into Portsmouth so why isn't there another gateway district? He stated that Mr. Taintor has done a good job but zoning should incorporate common sense and what currently exists. He felt it was spot zoning to have the Continuing Care ordinance 500' from a hospital and 35 acres. He asked why a Continuing Care facility shouldn't be allowed go on the 10 acre parcel on Lafayette Road across from Elwyn Park? He ended by advising the Board that the auto dealers would be present as a group on August 6th to discuss the 500' setback from a residential district.

Ralph DiBernardo, Islington Street. He thanked the Board for their time and for listening. He was present to speak against the Continuing Care Facility proposal. He has attended all but one meeting on this subject. He realizes this is not site specific but he will use the Borthwick proposal as an example. He finds the proposal elitist as it will not provide any workforce house and the cost to move into the project would be more than people in Portsmouth can sell their house for. Last week, Chairman Ricci explained that this proposal was not site specific but included other sites of the City. Therefore, it did not require abutter notification and there was no abutter notification. It was then voted to add this section to the overall Revised Zoning Ordinance. Therefore, if the change is not site specific and it does not benefit a specific developer, he does not understand why Donald Coker was asked to recuse himself from the hearing. It concerns him because it sets a precedent that effects future deliberation by the Board on this proposal. His concern is the section that deals with right of way and access. He had asked David Holden about the two access requirement and he was told that no development required a second access and it was not uncommon to have a development with one access and a number have a second gated emergency exit. He asked if this is the beginning of requiring all developments to have two accesses? That would nullify decisions of the T&S and TAC committees that they have made in the past. He doesn't see why this section is so rigid and felt it should be worded to allow other City Boards to make decisions on public safety. The developer stated time and time again that they had no interest in having an access from Islington Street. He felt they need to rethink and rewrite the section regarding two public accesses.

James Boyle, Toyota dealer on Greenleaf Avenue. He stated he was the most environmentally friendly car dealer in the City. He did not want the Board to think he was making a negative comments towards natural resources however decreasing the inland wetlands, they are increasing the wetland buffer zones which has a decreasing property value and a decreasing tax value. He was involved in a lawsuit over a man made ditch on his property and the Court ruled in his favor. He felt if something is natural and on his property he understands protecting them. He felt that the Planning Board should adopt the State's regulations, consider eliminating any City level enforcement and streamline the development process.

T. J. Murphy, 1483 Islington Street, which abuts the Borthwick Village proposal. He is not against the project as he would rather see residential than an office park. He questions the whole spot zoning issue and doesn't understand why they don't consider this spot zoning. He questioned Mr. Taintor

regarding his slide which displayed the area applicable to the Continuing Care project. He asked if they have done traffic studies for Islington Street so they can understand the impact?

Mr. Taintor explained the site must be 35 acres and there are a number of parcels that can be grouped together to become 35 acres and comply with the requirement.

Mr. Murphy asked where the Islington Street entrance would be and he doesn't understand why they need it. He would be against WBBX Road being used as it would be dangerous and his house is on the corner. There are a lot of good spots in Portsmouth where they could have Senior Housing and he felt the old building behind Store 24 would be perfect.

Dan Rawling, 411 Middle Street. He reviewed the Table of Dimensional Standards and the determination of lot area for dwelling units and number of residential units on each lot. He handed out a chart that he did up which would result in a higher density of units in the area and which would create more open space and this type of development would be more affordable. He encouraged the Board to look at creating greater density allowances.

Margo Doring, 404 Islington Street, in the Apartment zone. She has not seen a new Zoning Map to see if there will be any changes to the Apartment District boundaries. This is a high density area with no parking which is an issue in the wintertime. She would like to see that fixed over time. She understands you can have up to 5 unrelated people in a dwelling. A lot of buildings in the apartment district are single family and a lot of young single people living in them which puts a strain in the neighborhood. Also, when the owner is not a resident, it is usually reflected by the condition of the building. She wondered if other Apartment Districts would open up so that it's not all concentrated in one area.

The Chair asked if anyone else was present from the public to speak on this matter. Seeing no one rise, the Chair closed the public hearing.

August 6, 2009 will be the next public hearing on the Revised Zoning Ordinance. The document is posted on the City's website and can be downloaded. They are scheduling a work session with the Planning Board to discuss Zoning Map changes at the regular Planning Board meeting on August 20th. They will be looking at major changes as well as looking at individual requests.

Deputy City Manager Hayden stated that the public should know, even through all board members were not present, they will receive minutes and any literature received tonight will also be provided to those Board members.

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II. ADJOURNMENT

A motion to adjourn at 8:45 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 August 20, 2009.

