

**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.

OCTOBER 8, 2009

MEMBERS PRESENT: John Ricci, Chairman; M. Christine Dwyer, City Council Representative; 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 and Norman Patenaude, Alternate

MEMBERS EXCUSED: n/a

ALSO PRESENT: Rick Taintor, Planning Director;

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I. REVISED ZONING ORDINANCE

- Review proposed Zoning Ordinance, Zoning Map, and associated ordinance changes
 - Zoning Ordinance dated October 8, 2009
 - Zoning Map dated October 8, 2009
 - Amendments to City Ordinances:
 - Chapter 11, Article VI: Comprehensive Plan Information (Referrals to Planning Board)
 - Chapter 11, Article VIII: Site Plan Review
- Vote to recommend ordinance changes to the City Council

Mr. Taintor indicated that the Planning Board had received the revised Proposed Zoning Ordinance, a Memo listing out the most recent changes, the two proposed non-zoning City Ordinance changes, along with a Memo listing the next steps in land use regulations.

They started with Mr. Taintor's October 6th Memo.

Pages 6-7 Section 10.233 Incorporated new statutory criteria for granting variances (unshaded portions of Sec. 10.233.20 through 20.233.40) and

additional wording to emphasize/clarify intent (shaded portions of sec. 10.233.31, 10.233.32, 10.233.50 and 10.233.60).

Attorney Griffin noted that the ZO included the specific criteria for Special Exceptions but not for variances so they incorporated the statutory criteria in this section. The Legislature has voted a change in these criteria, effective Jan 1st, so they are recommending that the ordinance be adopted on a January 1st date, to avoid any confusion on the statutory criteria.

Page 13-15 Section 10.410 Added “Purpose” statements for zoning districts.

Councilor Dwyer felt this was great but hoped that “Gateway” on page 14 captures the spirit and underlying purpose of how they got there (transit-oriented, mixed-use affordable housing with density). Mr. Taintor stated he will revise that. Ms. Geffert suggested in MRO and MRB adding reference to live/work space as Art Speak wanted a more prominent reference.

Page 20. Section 10.440 Eliminated distinctions between “with function facilities” and “without function facilities” for historic preservation buildings and museums (see note below regarding page 107)

In the previous draft, he had “with function facilities” and “without function facilities” as subcategories and he never really defined that. Instead, he took it out of this section and added it on page 107, saying that you can do certain things as accessory uses in any zoning district, and in the Mixed Residential or Business Districts you can also do these periodic events.

Page 49 Section 10.516.30 Revised illustration of “corner lot vision obstruction”

The graphic is not regulatory but hopefully it makes the regulation clearer.

Page 59 Section 10.590 New illustration of separations between nonresidential uses or lots and residential uses or districts.

This is an illustration showing all of the setbacks between certain types of non residential uses. In some cases it is between the structure and a residential district, in some cases it is between the use and the residential district, and in some cases it is between the lot and the residential district. Also, in the table above this illustration for the sale or leasing of motor vehicles is 200’ between the use and the residential district. This was previously changed to 500’ but they are now back to the existing regulation as it would have put almost every existing auto dealership out of business.

Page 78-79 Section 10.636 Revised/expanded wording concerning application for rehearing and appeals of HDC decision.

There was confusion about HDC appeals so the wording was expanded and clarified. Mr. Blenkinsop referred to page 43 about when an application may be made and asked if that was the date it is put in the mailbox or some other date? Mr. Taintor stated this was taken verbatim from State statute so he assumes it is the date you actually submit the application. Mr. Taintor will change the wording to clarify and be more specific. There have been clarifications in the law about the 30 days.

Page 83 Section 10.665 Revised/simplified provisions for variances from Airport Approach Overlay District regulations

This was cut down by several paragraphs to make it clearer, which did not change the meaning.

Page 107 Section 10.820 Revised wording concerning permitted accessory uses for historic preservation buildings and museums

This was discussed above.

Page 146 Section 10.1112.30 New off-street parking requirement for live/work units

Some of these are quite restrictive, which is not what they intend to do, but they want to make sure whatever the size of the live/work unit is and how many employees are there, that they have enough parking to support the non-residential area. They are proposing one space per 500 s.f. in the Central Business District for upper floor space so it seemed appropriate to use it for live/work also. Councilor Dwyer felt the parking requirement was inappropriate to require 2 spaces plus one space per 500 s.f. Mr. Taintor felt it they jumped ahead to pages 212 and 213 it would become clearer.

Page 212-213 Article 15 New definition of “live/work unit” (based on Building Code)

In the Building Code a live/work unit shall not exceed 3,000 s.f. of gross floor area and the non-residential area shall be between 10% and 50% and the Zoning Ordinance is proposing between 25% and 50% of the gross floor area. They need to decide what they mean by live/work unit. Councilor Dwyer felt there are two different kinds of live/work units because they are looking for people who would not have people come in to work. She has imagined the live/work unit would be just for the individual living there. Mr. Taintor felt they can say no non-residential employees. Mr. Hopley added that he can change the Building Code to match the Zoning Ordinance so they are the same. Deputy City Manager Hayden felt that was a good solution and change it to say no non-residential workers. Ms. Geffert felt they only care about parking if they have non-resident employees. She is concerned about saying a live/work space can't have any non-resident employees. Mr. Taintor felt the question was whether they wanted to have these uses that are 3,000 s.f. allow non-residential employees or are they letting things in that aren't what they are really targeting. Mr. Coviello suggested not adding an additional parking space until they go over 1,000 s.f. Mr. Hopley asked what type of units Councilor Dwyer envisioned for the live/work units. Councilor Dwyer described them as a multi floor building that has a variety of spaces in it of different sizes that are typically sized for a couple or a single. Maybe a conversion of a mill building. Mr. Hopley indicted that there might be conflicts with the building code but they can work that out. Mr. Coker felt they should say no employees at all as that is where the impact on the parking begins. Deputy City Manager Hayden suggested that they try it with no employees and see how it works. It was the general consensus of the Board to proceed with no employees. Mr. Hopley thought the intent is focusing on the safety end of things and how much of the non-residential activity is going to be spread about the building. If they are trying to limit where the non-residential hazard is, they could probably do some exclusions for mezzanines, for example.

Page 204 Article 15 Revised definition of “family”

This came about because of concerns raised about overcrowding in the Islington Street area. They are not trying to be overly restrictive but rather are trying to be fairly inclusive. They are saying it is people living together as a single housekeeping unit; an individual or two or more individuals who are related; or two or three individuals not related and any of their dependents that are related to them. This new definition is a little more flexible and gets away from the five unrelated persons. Councilor Dwyer wasn't sure that the dependents needed to be related. Maybe they could exclude dependents or formal guardianship as this is a very sensitive issue. Mr. Taintor indicated that he worked very hard on this definition by looking at many other communities. He can address Councilor Dwyer's concerns. Ms. Geffert agreed it could really complicate things and, for the record, she wanted to be clear that they are not trying to exclude anyone but, rather, are trying to be succinct. It was agreed that they will see how this works.

Mr. Coviello asked about:

Page 18 Section 1.43 More than 8 dwelling units.

Mr. Taintor reminded the Board that he had inadvertently prohibited multi family uses in the CBA, CBB and B districts. He has corrected it and put a special exception for more than 8 dwelling units. Right now they are permitted uses and his only concern was that a few recent proposals, in terms of how they impact parking, have raised concerns but those have been worked out so he will change the Special Exception (SE) to Permitted (P). The Board was in agreement.

There were no further issues with the Zoning Ordinance. They continued with the Zoning Map. Mr. Taintor pointed out that the HDC boundaries had been added.

- 1) New Gateway district is shown along Lafayette Road, replacing existing GB, OR and MRB districts, and expanding into adjacent Industrial districts at Rye town line/Coach Road and Constitution Avenue.

The small type at the corner of Elwyn Road is still labeled MRB. They can go either way on this. Their intent was to take everything that was somewhat business along that district and make it Gateway. The Gateway, which is in red, is currently GB, OR, or MRB except on Constitution Avenue there are three lots that begin with the Municipal District and those are existing industrial zone. They face the back of Southgate Plaza and it made no sense to include them. They talked about including the large industrial site that wraps around the back of Southgate (the back of the Water Country parcel) but they do not want to split up a district at this point.

The other area is at the Rye town line, across the first few lots on Coach and past the Wren's Nest, which are primarily industrial or SRB and are proposed for Gateway. They also included the rezoning of the old fire station. He did not have a strong reason either way to include the MRB's in the Gateway. Mr. Coviello felt it should go with Gateway to push it further away from the residences. The Mobile station is Gateway, the Animal Hospital is MRB and the lots next to the new fire station will remain MRB. The Board agreed to make the changes as shown on the map.

- 2) CBB district (and small A district) on Islington Street is changed to MRB from Parker Street south; adjoining CBB district on State Street is changed to MRO.

The CBB has been pulled back to Parker Street. They are proposing that the large Fairpoint parcel should be divided by a zoning line. That will be the only parcel that is cut by a zoning line. MRO is on one side of Islington Street and CBB is on the other side. The intent is to have the lots that face State Street on both sides of the street be MRO. Mr. Coviello stated that in speaking with a realtor recently he was told that the Old Port Traders property value will go down drastically because of the reduced height. Mr. Taintor added that the more important impact is that they will not be able to develop the property without any parking.

- 3) Existing Office Research/Mariners Village (OR/MV) overlay district is replaced with new (and smaller) Osprey Landing overlay district; and underlying zoning is changed to OR, SRB and GA/MH based on existing uses.

On the existing Zoning Map, the area between Portsmouth Boulevard, across Shearwater to the MRP district is shown as the Office Research/Mariners Village District. This is a very complicated overlay district which has an underlying district that is not used at all. The overlay district is separated into three districts: a single family component, an apartment component and an office research component. That was all to implement the Court settlement relating to the bankruptcy of that area. They are proposing to rezone the office research component to office research, to rezone the single family component to GRB, and to rezone the apartment component to GA/MV. There will only be a small overlay district as the Osprey Landing overlay, which is for the affordable housing and rental housing requirements that exist for 40 years from the date of the settlement. These proposed changes are to simplify the district and to have the map show more clearly what is allowed and required.

- 4) Zoning district boundaries at Pease International Tradeport are revised to match the PDA's zoning districts.

The City's districts did not align with the PDA's boundaries. They were able to get a GIS layer from Pease and have adjusted our zoning boundaries to match theirs.

- 5) Historic District Overlay.

The important changes are on the lower right inset including the extension down Islington Street to Jewell Court, the extension down Lafayette Road to South Street, filling in the little "donut hole" on Hanover Street between Maplewood and Fleet Street, and the adjustment of the boundary along Middle Street to follow lot lines. Mr. Hopley questioned whether the district boundary was proposed to extend past South Street. The Board all remembered that it ended at South Street. Mr. Taintor indicated he would change that.

For the record, Mr. Coker asked Mr. Taintor to explain why the Historic District was being expanded and the reasoning behind it. Mr. Taintor felt that the reason was that the HDC wants to protect the important entryways into the historic core. Mr. Coker asked how will home owners be notified of this change, since they will be subject to different rules for working on their homes? Deputy City Manager Hayden indicated that if they were to send notice to the property owners who are effected by the

Historic District boundary changes, they would have to send notices to everyone in the City as they are changing other districts as well and everyone will be effected. So, other than public hearings and public notice, they will find out in the course of making applications.

Councilor Dwyer referred to the three properties that are left out along State Street and asked what the reason was for that. Mr. Taintor stated the reason was that they are divided by a line that was a certain distance from Middle Street. It would not be contrary to what the HDC was trying to do to include those properties in the revised district. The Board felt it makes sense to fill in the section and include the lots. Mr. Taintor indicated he would change that.

Changes to City Ordinances:

- 1) Proposed amendment to Ordinances relating to referrals to Planning Board.

In Article 14 of the current ordinance there are a few pages on items that need to be referred to the Planning Board before action is taken. It is very extensive and does not conform to the City's practice and there are many items they would not necessarily want to bring to them, for example, the use of City owned buildings which goes beyond what they should be doing. They are primarily interested in the acquisition and disposition of real property and plans for construction, alteration, relocation and discontinuance of a public way. The second page of the handout is what is meant to replace the first page and to take the place of what they have in Article 14 of the existing ZO.

Mr. Blenkinsop referred to 11.602 A(2) and felt it would be good to add "acceptance" of a public way. Also, in B, add "60 days have lapsed since the referral" to be clearer. Mr. Taintor will make the changes.

- 2) Proposed amendment to Ordinance authorizing Site Plan Review.

The State law authorizes communities to allow Site Plan Review for multi family dwellings including 3 or more units. The City set their threshold at 5 but it was recommended in the Site Review Regulations that they do 3 or more units which requires an ordinance change. He also simplified the language.

Mr. Taintor drafted a memo which listed out the key areas where they should move ahead and he read it into the record:

The revised Zoning Ordinance and Site Plan Review Regulations are the culmination of three years of effort, and dozens of work sessions, meetings and public hearings. The Planning Board has put a tremendous amount of time and effort into this project, particularly over the last several months, and I know that you are all relieved to be at the point of recommending the revised Ordinance to the City Council for adoption. This is truly a major milestone that deserves recognition.

As we have discussed previously, this comprehensive revision of the City's two primary land use regulatory documents is also the first step in an ongoing process. Over the past months a number of issues have been identified that we were simply unable to address in the draft

revised Zoning Ordinance, and we have stated our intention to go back to work on these issues once the major revisions have been adopted. The following is a list of what I believe to be the priority land use regulatory issues that should be addressed in the coming year. I welcome your suggestions for changes or additions to this list.

- 1. Review neighborhood development patterns in areas with large concentrations of nonconforming lots, and propose neighborhood-specific dimensional and intensity standards (e.g., lot area, yards, building coverage, etc.)*
- 2. Review the zoning regulations in Atlantic Heights and propose revised dimensional standards as well as the possibility of a new Historic District.*
- 3. Continue review of potential rezoning of the areas currently zoned Industrial and Office Research between the Route 1 Bypass and Bartlett Street.*
- 4. Review and update performance standards (noise, odor, vibration, etc.) in both zoning and nonzoning ordinances.*
- 5. Consider design standards for development outside the Historic District.*
- 6. Continue review of parking standards and provisions in the Central Business District.*
- 7. Update application fee structures for all land use boards.*
- 8. Consider changes in permit process to clarify relationship between land use permits and building permits.*

Mr. Rice asked that they add new philosophical language for the Historic District to talk about the “sense of place”. Mr. Taintor did add that language in some places but they should also go back and review this again.

Chairman Ricci assumed this is a list that they will continue to add to and will evolve over time.

Councilor Dwyer also wanted to add the potential of looking at a gateway extension to other corridors.

It was with great pleasure that Mr. Coviello made a motion to recommend approval to the City Council the Draft Revised Zoning Ordinance dated October 8, 2009, with tonight’s revisions, the revised Zoning Map dated October 18, 2009, with tonight’s revisions, Article 6, Section 11 and Article 8, Section 11 of the City Ordinance, with tonight’s revisions, and any housekeeping editorial or minor issues identified by staff prior to the final printing. Mr. Blenkinsop seconded the motion.

For the record, Mr. Coker expressed his displeasure of the expansion of the HDC but will support the motion. If it was possible, he would have liked to vote for everything tonight except the HDC expansion.

Mr. Coviello thanked staff, Lucy Tillman and David Holden for the work done to date.

The motion passed unanimously.

Chairman Ricci thanked every Board member for the over 50 meetings they attended. They have devoted a tremendous amount of time to this document. He also thanked the Planning staff.

Deputy Cindy Manager Hayden explained the next steps are to send this along to the City Council for their October 19th meeting where they will ask them to schedule this for first reading on November 16th. They will keep the Board apprised of the City Council schedule.

Mr. Coker asked if the first reading was a formality with no public hearing? Deputy City Manager Hayden confirmed that the public hearing is the second reading. Councilor Dwyer clarified that Councilors can raise issues at the first reading but there is no public input.

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II. ADJOURNMENT

A motion to adjourn at 8:21 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 November 19, 2009.