

**MINUTES**

**PLANNING BOARD  
and  
BOARD OF ADJUSTMENT**

**WORK SESSION**

**PORTSMOUTH, NEW HAMPSHIRE**

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

**7:00 P.M.**

**JUNE 23, 2010**

**PLANNING BOARD MEMBERS PRESENT:** John Ricci, Chairman; Donald Coker; John Rice; Anthony Blenkinsop; MaryLiz Geffert; Cindy Hayden, Deputy City Manager, and William Gladhill, Alternate

**PLANNING BOARD MEMBERS EXCUSED:** Paige Roberts, Vice-Chair; Eric Spear; City Council Representative; Richard Hopley, Building Inspector and Norman Patenaude, Alternate

**BOA MEMBERS PRESENT:** Charles LeBlanc, Chairman; Arthur Parrott; Tom Grasso; Robin Rousseau; Carol Eaton; Charles LeMay and Alain Jousse

**BOA MEMBERS EXCUSED:** David Witham; Vice Chairman; and Derek Durbin

**ALSO PRESENT:** Rick Taintor, Planning Director; Lee Jay Feldman, Principal Planner

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Chairman Ricci called the meeting to order and had the Board members introduce themselves. He then turned the meeting over to Rick Taintor, Planning Director

**I. CURRENT ZONING ORDINANCE ISSUES AND POTENTIAL CHANGES**

Mr. Taintor put together a brief PowerPoint presentation to show some of the changes they made with the new Zoning Ordinance (ZO) and also to show the large number of non-conforming properties in the City which leads to a large number of variance applications. As the Planning Board is thinking of doing some tweaking of the new ZO they felt it would be a good time to have a joint discussion.

Mr. Taintor stated that the Planning Board adopts the Master Plan, recommends the ZO to the City Council, and adopts its Subdivision Rules and Regulations and Site Plan Review Regulations. The City Council enacts the ZO. The Planning Board applies and interprets the ZO for uses that are subject to Site Plan Review (commercial uses, and residential uses with more than 2 dwelling units) or Subdivision Review. There are also some specific uses in the Zoning Ordinance that require a

Conditional Use Permit. Meanwhile, the Board of Adjustment grants variances when all of the statutory criteria are met, grants special exceptions as provided in the ZO, and decides appeals from administrative decisions.

Some items which were adopted in the new ZO are:

- Statements of purpose for zoning districts: Several people felt this was missing from the old ZO and that it would help in making decision.
- Revisions to some yard and open space regulations: The previous regulation allowed more things to happen in yards. They now define yards and open space to only be used for landscaping and screening and not for any impervious surface.
- Flexible development:
  - Revised standards for Residential Planned Unit Developments (which haven't been used very much). They are now easier to use and better protective of the City.
  - New Gateway Planned Development option for the Route One corridor. There has been discussion of expanding the Gateway District to other commercial corridors in the City.
  - The proposed provisions for Continuing Care Retirement Communities would also fall into this category if enacted.
- Wetlands:
  - Consolidation of the tidal and inland wetland regulations in order to provide a consistent approach to both types of wetlands. Previously, the Planning Board authorized activities in inland wetlands and buffer areas by Conditional Use Permit, but similar activities in tidal wetlands and buffers required variances from the BOA. The regulations had been enacted at different times by different boards and for some reason had not been coordinated with each other. The new ZO allows activities in the tidal areas by Conditional Use Permit instead of requiring variances.
  - Enhanced management standards for wetland buffer areas to further protect wetlands.
- Small Wind Energy Systems: This new section was created in response to a new State law and was based on a model provided by the State. It provides standards for small wind turbines.
- Off-street parking:
  - New provision that any required off street parking cannot be provided in a front yard or between a principal building and a street. This is something that the BOA will be hearing requests for variances from because they have already heard concern about this. However, this is part of the effort to improve their urban design of commercial corridors, to bring buildings closer to the street, having parking either to the side or behind the buildings and generally to promote a more walkable community.
  - Changes to the downtown parking requirements, including substantial reductions to the parking requirements in the Downtown Overlay District. Many building are now required to provide much less parking than they would under the old ordinance but they also added an increase in the amount of the payment in lieu of providing required off-street parking spaces. Those were principally for restaurant use and that has been reduced by the City Council as an interim measure. The Planning Board has appointed a Downtown Parking Focus Group to look at downtown parking standards and the Planning Board will be discussing this at their July meeting.

- Signs:
  - New sign districts to have more refined control over sign types and sizes. They revised the computation of sign area and this will probably be coming to the BOA as it is more stringent. They are including more of the sign area for free standing signs than in many cases was included before. So, the regulations are stricter but they are meant to even the playing field between a pole sign and a monument sign.
  - Revised regulations for sign illumination.
- Variance criteria:
  - The statute on variances was revised on January 1, 2010. Knowing that was coming, the Planning Board incorporated those new standards in the ZO and tried to have more clarity about what the variance requirements are.
  - The key finding is that there have to be “special conditions of the property that distinguish it from different properties in the area.”
    - Whether other properties in the neighborhood have conditions similar to those requested (e.g., setbacks or lot areas less than required; or signs taller or larger than allowed) is irrelevant to the variance.
  - They are trying to give more guidance to applicants and let them know that they need to bring a much stronger case and really be clear about the uniqueness or special conditions on the property before submitting an application for a variance from the ordinance:
    - “Whether surrounding properties violate a provision or standard for which a variance is requested shall not be a factor in determining whether ‘the spirit of the Ordinance would be observed’ by the granting of a variance.” (Section 10.233.50)
    - “The existence in the surrounding area of conditions that are similar to the proposed nonconformity shall not be a basis for the granting of a variance.” (Section 10.233.60)
- Zoning standards and existing conditions:
  - “Where this Ordinance contains a more stringent requirement or higher standard than is reflected by existing conditions, it shall be deemed that the intent of the Ordinance is to promote compliance with such requirement or conformance to such standard rather than a continuation of existing conditions.” (Section 10.233.50) The idea is to encourage an evolution over time to a desired state, rather than the continuation of existing conditions.

Regarding inconsistencies between zoning standards and existing conditions, Mr. Taintor noted that many lots and structures across the City are nonconforming because of zoning changes that were made between 1966 and 1995. Lot areas, required yards and required frontage were increased and there are some very extreme examples in areas including the South End, Lincoln Avenue, and the Islington Street corridor that were all developed either prior to zoning or under previous zoning when standards were much different. Atlantic Heights is a very special type of situation where it was developed as a model community with very specific design standards. The 1950s and 1960s subdivisions of Elwyn Park, Pannaway Manor and Maple Haven have substantial nonconformities. As an example, the minimum lot area for Elwyn Park is now 15,000 s.f., but when it was initially subdivided (under the 1951 Zoning Ordinance) the lot area requirement was only 4,500 s.f.

There are two different ways to resolve such inconsistencies:

- Should a particular neighborhood or area evolve to conform to the standards in the Zoning Ordinance?
  - Examples are off-street parking standards where they are requiring parking to not be between the building and the street. They are trying to get a different model going.
  - The Gateway District is also an example where they have special standards designed to encourage buildings to be more pedestrian oriented and have a higher quality of urban design than simply a low building behind a long parking lot.
- Should the Zoning Ordinance or Zoning Map be changed to reflect existing conditions?
  - The Board has had experience reviewing a variance on Sagamore Grove, which finally went to the City Council for a zoning change and a change was made to address that issue. The Board did its job by holding the line on zoning and pushing the issue up to the policy makers.

Several neighborhoods around the City have been looked at for concentrations of nonconforming lots. Mr. Taintor presented maps of the Elwyn Park and Maple Haven neighborhoods showing very extreme nonconformance in lot areas. Atlantic Heights showed a problem where a property owner who wants to do something that is consistent with how the area was planned and developed has to go to the Board of Adjustment. The fear has been that reducing lot size would result in increased densities; however, in the neighborhoods that are completely developed this fear is unrealistic.

Mr. Taintor showed maps analyzing the reduction in the number of nonconforming lots with reductions in required lot area. The Department will refine this analysis and look at frontages and setbacks in addition to lot area. They will come back with neighborhood specific zoning which protects the community character in each neighborhood which is different within the City.

Mr. Taintor felt that Sagamore Grove was an interesting case. They found that every single lot of the six lots they were looking at violated at least two dimensional requirements so it didn't make sense. The waterfront business had a much lower density requirement than the Single Residence B. Therefore, although they didn't eliminate all of the nonconformities, they reduced the number of potential variance requests in that area. The new single residence district now matches the zoning across the creek.

The Sagamore Grove rezoning raises the question of what the City has left for Waterfront Business property. There are two clusters – one in downtown where none of the lots meet any of the requirements of zoning, and Sagamore Creek where lots do meet some of the requirements of zoning. Maybe they need to think of some regulations like an overlay district so that they don't treat both areas the same. Mr. Taintor would welcome any thoughts regarding this.

They have not had any applications come in for the new Gateway District but they expect some major retail development soon. That district replaced the General Business District along Lafayette Road, and is intended to encourage mixed use development, to enhance the character of development, to allow for moderate cost housing be developed by allowing a mixed of residential and non-residential uses, to incorporate bicycle and pedestrian access and to use the existing transportation infrastructure along Route One efficiently. There is no reason to have a very low density development along a very high density corridor. Like the General Business district, the Gateway district has some allowed uses

and specific dimensional regulations. They reduced the minimum front yard and have imposed a maximum front yard so that the buildings can't be set back more than a certain distance from the street. There is also an optional type of development called the "Gateway Planned Development" which allows for a higher intensity of development (including the option of mixed residential/nonresidential use) with increased design standards and environmental standards. The idea is to encourage a better development by providing incentives, including allowing mixed use development.

In the process of developing the Zoning Ordinance, they worked with the Planning Board and the City Council and they used some visualizations showing how corridors had been developed in other areas of the country.

Mr. Taintor stated there was a large focus on wetlands and environmental quality, but that there are some small minor uses that may not require a Conditional Use permit or a variance:

- Small sheds and generator pads
- Boathouses, docks, sheds, etc.
- Review by independent wetlands scientist - specify that Planning Director may require
- Terminology – clarify "use" vs. "activity"

Zoning Amendments under consideration regarding signs:

- Freestanding signs in the Historic District
- Add some exemptions for directional signs and projecting signs and flags
- Public, educational, historic and institutional signs
- Parapet vs. wall signs
- Projecting signs – maximum projection over sidewalk
- Sign area – aggregate
- Sign area – freestanding signs
- Signs on more than one façade of a building
- Special Event signs
- Definition of "internal sign"

Zoning Amendments under consideration (miscellaneous):

- Number of dwelling units per structure (currently no more than 8 allowed)
- Building height – rooftop appurtenances
- Accessory structure setbacks in CBA/CBB districts
- Historic District – mechanical equipment
- Roof-mounted wind turbines – height and setbacks
- Yards and off-street parking setbacks
- Noise standards – emergency generators for residential use
- Definition of "outdoor lighting"
- Definition of "street"

Mr. Taintor indicated that was what the Department had found so far. He looked forward to tonight's discussion with both boards to find out what the issues are relating to the Zoning Ordinance.

Chairman Ricci felt there are many changes that will have a drastic and dramatic impact to the BOA. The developed neighborhoods that are all nonconforming were very interesting. He asked for questions and clarification.

Chairman LeBlanc felt the City needs more overlay districts. They had a case from the South End where they needed to look at how structures are placed on the ground and an overlay district may handle that (for areas such as Atlantic Heights, Elwyn Park, etc.) Mr. Jousse agreed and felt that each area within the City has its own particular make-up. The overlay areas would have to be clearly delineated. Mr. Taintor found it interesting that going back to the old Zoning Ordinances, the Single Residence District that existed in 1951 not only had a 4,500 s.f. lot size but it allowed a residential building to be 35' high if it was right on the front lot line and up to 55' high if it was set back.

Ms. Rousseau stated that when she goes by Southgate Plaza she sees are a number of freestanding signs at the entrance which look tacky. She wondered if they can address that as it is an important gateway development. The business owners must feel that people can't see their signage which is up high so they are putting little freestanding signs up. Mr. Taintor believed that some were created via variance some time ago as there are individual businesses on separate lots such as the 99 Restaurant and the bank. Mr. Taintor felt they had good Zoning Ordinance regulations but it was the variances that cause the problems. If the signage in that area was consistent with zoning, you would not see a problem there. It does bring up the question of whether they look at a sign request on what is out there now or what the Zoning Ordinance says. The Planning Board would like to see much more adherence to the standards. Along a couple of business corridors in Haverhill they don't have a sign over 15' and in Santa Barbara they are all monument signs, no higher than 4'. The City feels if they want to move in a certain direction and expect that over time every single lot along the highway will be redeveloped for new use, then as those new uses come in that is the time to impose new sign standards. Ms. Rousseau also hoped that they meet the needs of the business community as well to allow them to advertise their business in a reasonable way.

Mr. Jousse also went to Sedona, AZ, and he was impressed because all of the signs were monument signs, no more than 8' – 10' high.

Chairman LeBlanc always brings up the rationale that they don't want to look like Revere. There are so many and they are so high that they become invisible and you ignore them.

Chairman Ricci referred to Ms. Rousseau's question about A-frame signs. He went by Southgate and there are little temporary signs emulating everywhere and it's a shame as they have done such a nice job on the entranceway. Mr. Taintor responded that they do not allow those unless they meet the freestanding sign requirement, other than for a special event. He added that a lot has to do with enforcement and manpower. The City just doesn't have the resources to deal with those. Ms. Rousseau thought it would be good if the City could contact the business owners at Southgate to see why that is happening.

Mr. Taintor felt that business owners often feel that bigger is better, and will push the envelope regardless of the allowable sign height or sign area. Deputy City Manager Hayden stated that City staff responds to issues as they are reported to them and, now that the freestanding signs at Southgate have been brought to the City's attention, staff will look at that problem.

Mr. Parrott stated that quite often a representative from the sign company will come to a meeting and indicate that the sign has to be a certain size to be seen at a certain mph and the Board doesn't have anything to counter that. Mr. Taintor has a number of references on sign size vs. sign setback. The other aspect is if you bring buildings closer to the street, the signs can get smaller. Mr. Parrott was concerned that they have nothing to counter the testimony of a sign expert. His personal sense is that the maximum height they allow now is too high. Mr. Taintor stated that one thing that is a key factor is the angle of the driver looking over the roof of the car in front of them. Mr. Parrott felt that signs are a particular aggravation to the Board. Everyone always wants a sign bigger than the one up the road and it's self-defeating. Deputy City Manager Hayden felt it might be helpful to have a staff memo for individual cases or some sort of a general report. Mr. Parrott felt they need something they could look at, in general, to see how a particular sign presentation applies and adapts. They don't have a baseline. Chairman LeBlanc felt if the standards were quoted in their memo, then they would have something to counter the experts with. Mr. LeMay felt that the sign regulations came from somewhere so maybe they could confirm where they came from.

Ms. Eaton thought that one of their best arguments is there have been many changes in the Zoning Ordinance and the Board should support them more and have that vision for the future. When someone talks about a variance which really is a re-zoning of a lot, the sign basis too comes from a lot of long-standing looks that they have done and she assumes that sign has been sized that way because of where it is and how fast someone is driving past it. So, if you have a complaint, go back and look at the zoning rather than ask for a variance. Mr. Parrott felt that it seems to be automatic that when a new business comes in they automatically come in for a sign variance. Ms. Eaton felt it was very important for the Board to have that vision of what the future could look like. She was in Rockville, Maryland this weekend in a planned community and it was striking and it was a thriving community. There will be growing pains to get there but as a Board they need to look forward.

Chairman LeBlanc thought Ms. Eaton brought up a point worth discussion. Regarding the meeting where the BOA negated the parking issue for the restaurant proposed to go in downtown, Chairman LeBlanc, who was the lone person to vote against it, felt that the main reason the parking fee was established was to help the transportation infrastructure of the City and by them turning around and negating that particular issue they opened the door for everybody else. He was not sure that everyone on the Board was aware of the history of that parking fee. There is a reason why things are in the Zoning Ordinance. Mr. Coker urged the Board to read the report coming out from the Downtown Parking Focus Group. The intent was not met. Looking at how many parking spaces were created, it was a miniscule amount. Mr. Taintor felt this was somewhat similar to Sagamore Grove. An issue came to the Board and spurred broader issues and led to the re-zoning of Sagamore Grove. In the case of the downtown parking, it led to a total rethinking of downtown parking regulations. So things may change in the next few months depending on what the Planning Board does as a result of receiving and reviewing this report from the focus group. One of the options being recommended is to eliminate downtown parking requirements altogether which was the case up to 1995.

Deputy City Manager Hayden indicated that the parking report will be before the Planning Board at its July meeting and she felt they should let them discuss it and then let the BOA know what the Planning Board recommends.

Ms Geffert sees the BOA as being a reflection of what is working and what is not working in the Zoning Ordinance. She asked if there has been a change in type of applications that have come before them since January 1<sup>st</sup> or are there certain pockets of the Zoning Ordinance that always seem to be the subject of zoning requests.

Chairman LeBlanc indicated they have had a lot of requests for sheds and vertical expansions. Otherwise it has been similar to what they have had all along. Ms. Geffert asked if the sheds were due to yard setbacks or lot coverage. Mr. Jousse indicated it could be either or both. Ms. Geffert asked if they are seeing them from particular areas. Chairman LeBlanc felt they were coming from across the City and are usually for the back of the lot. Ms. Rousseau felt it might be helpful to distinguish between a temporary shed structure and a permanent attached structure and maybe allow for more leniency on a temporary structure. Mr. Taintor stated they allow for additional allowance based on size rather than on temporary. Ms. Rousseau felt if it was a temporary structure it may be removed at some point and perhaps they can allow more leniency. Mr. Taintor asked what she meant by a temporary structure. Ms. Rousseau explained she meant a typical Sheds USA structure which is not attached and may be right on the land without a foundation. In some communities they distinguish between a temporary shed structure and a permanent attached structure and allow leniency for temporary structures. Chairman LeBlanc felt some sort of a temporal perimeter would have to be set up whereas sheds tend to stay where they are until they rot. Ms. Geffert thought that something not built on a foundation might matter if they are close to a wetland but from a zoning perspective she was not sure there was a difference between setting it up on cinder blocks. Ms. Rousseau indicated it would be a temporary variance for the time that person is living there. Chairman LeBlanc stated there are no temporary variances. Ms. Rousseau felt they could allow for that leniency in how they write the regulations. The Town of Durham has different language for temporary vs. permanent structure.

Mr. Blenkinsop asked if the Board usually grants variances for sheds and what factors they use. Chairman LeBlanc indicated that Atlantic Heights is a different area and there is something unique about it because the property lines go through the middle of the buildings. Mr. Blenkinsop felt that was true in a lot of neighborhoods where lots are really small and putting a shed in the middle of the backyard seems illogical. Chairman LeBlanc responded that they usually look at lot coverage and the rear and side setbacks. If a lot has a 30-40% building coverage where the maximum is 25% and they want a shed in the back corner, they tend not to grant those requests. However, if there is some mitigating circumstance and lot coverage isn't as great and it is away from the lot line a little bit then they are usually allowed.

Ms. Geffert asked about lot coverage. When Mr. Taintor is looking at zones where lot sizes are out of whack with what is in the actual area, they should look at the actual lot coverage requirement. She felt lot coverage was a key element and she was particularly referred to the McMansions and some of the massing that happens. Mr. Taintor thought that was very interesting because as you have a smaller lot you will end up with more coverage if you reduce setbacks but he felt you have to temper that with something on the upper stories. You may say the zoning district has a 35' height limit but you have to step back from the lot line once you get above the second story with a peaked roof or something



similar. A lot of communities use something called a “Sky Exposure Plain” which means from the lot line you would angle going up and would keep that open to give your neighbors exposure to the sky. Chairman LeBlanc felt there was also an impact if they reduce lot size requirements and they would have to look at the lot requirements per family. Mr. Taintor agreed there are some strange things in the Zoning Ordinance now that they talked about and didn’t necessarily address in the zoning revision. For instance where a zoning district has a certain lot area and a certain number of units allowed but when you start looking at the lot area for families everything is no longer feasible. That needs to be looked at.

Ms. Geffert asked them to elaborate on what they mean by vertical expansion and whether Mr. Taintor’s comment would help. Chairman LeBlanc felt that it would help. Vertical expansion is not increasing the footprint but by adding a floor you are adding mass and size to the structure and that has direct impact on a close-knit area. Ms. Eaton added that the request is usually for an expansion of a non-conforming structure.

Chairman Ricci was interested in seeing in the next six months how the dynamics of the BOA variances change as a result of the Zoning Ordinance. They spend a tremendous amount of time on signs, for example. He is also hoping they look at the different neighborhoods to see what works and what doesn’t work.

Mr. Jousse indicated that what he would like to see, using Southgate Plaza as an example, is a sign that simply says Southgate Plaza and the physical address of the site. All of the individual businesses would be advertised inside the plaza. People are using GPS now and are usually looking for an address. Ms. Rousseau did not believe that business owners would like that. Mr. Jousse felt it was just like driving through Revere, Mass. He asked how many names you remember seeing when you go from Portsmouth to Logan. Chairman Ricci remembered that Mr. Taintor had a slide in his PowerPoint presentation that showed a multitude of signs in different areas and Mr. Taintor’s point about the Mirona Road sign was very true. They have a massive sign but it’s so high up that no one sees it. The size is not what is important but rather the layout. Bigger is not necessarily better. Input from the BOA to the Planning Board is extremely helpful.

Ms. Eaton stated they are getting a lot of garages with a second floor on top. She felt that was over-massing too. Chairman Ricci point out that that was a case of where they bought the house knowing what they had and suddenly it’s not good enough.

Mr. Jousse referred to parking. He asked if there could there be a provision for new construction parking and another for a change of use parking requirement. He thinks there should be a difference in requirements. Mr. Taintor felt that specific to downtown, they basically eliminated 1<sup>st</sup> floor parking requirements and drastically reduced the upper floors so change of use shouldn’t be an issue at all. The only time a change of use would ever be an issue is if they were going for a non restaurant to a restaurant use. In every other situation you would have a reduction in parking requirements. They will be looking at this. They have had a lot of discussion about the new parking requirements. There is one situation for the small business (a storefront or a 2<sup>nd</sup> floor office) and there is a total different situation for the person who is building a 100,000 s.f. building. Building a small building is one thing but building a larger building that is drawing a lot of traffic in begins to overwhelm the public parking supply and that is where they have to really carefully consider.

Mr. Coker indicated that there was a lot of debate in the focus group about that very issue. It came down to the fact that if a developer is building downtown and not providing parking, you will not get financing from a bank. They felt it was self-regulating. Mr. Jousse agreed with that as if there is no parking he will go somewhere else.

Chairman LeBlanc asked if they could email the parking report to them. Chairman Ricci confirmed they will get it out to the BOA members after the July Planning Board meeting.

Mr. Parrott brought up an issue for long term consideration. All members of the Boards are held to the quasi-judicial standards yet the applicants are held to no standards. Other communities have applicants sworn in. Anyone can stand up and present information that is misleading, false or misunderstood or comes out as a fact when it is really speculation. A common comment from television viewers is that the Board should know when something isn't accurate. Mr. Parrott said they cannot challenge every non-truth even though they do recognize that some statements are false or incomplete. Attorneys also present false information. He feels that swearing people in would discourage this a little bit. It would be nice to have the speakers held to some standard, just as they are.

Mr. Coker remembers one of the first things Mr. Parrott said to him when he joined the Planning Board, which was to pay attention to not what is said but what is not said. There is always a record of anything that is said to the Board and that is actionable in some form or another. When it comes to attorneys, they have a far different standard. Attorneys have misstated law and facts. Mr. Coker brought that to the attention of the City Attorney and there is a strong reluctance for an attorney to bring action against another attorney. He felt it was a matter of enforcement. If someone states they are going to do certain things and if they aren't, the City is very reluctant to press those issues. It would help if the City were more stringent on those kinds of things. Mr. Parrott stated that as Planning Board Chairman, he still has a sharp memory of things that were presented to him when he had visited the site that same day and knew that it was not the truth. Very prominent people make false statements. Mr. Coker felt if the City would withdraw a Certificate of Occupancy or report an attorney to the Board of Bar Overseers they would have a big change of attitude.

Chairman LeBlanc indicated that the Board had a controversial case and there was a question of the veracity of what came before them. He asked Attorney Sullivan about swearing in people and his opinion was that this is a rather cumbersome way to go about it. They rely on the judgment and expertise of the Board members to ferret out untruths. Mr. Parrott felt it was nice to do that when you have the knowledge to do so but he is also not naïve enough to believe that would stop exaggeration or untruths but it might discourage some people who may otherwise just misrepresent things because they feel they can get away with it. Also, the chances of being called on or getting into any serious trouble are pretty much nonexistent.

Mr. LeMay agreed that unless there are sanctions or they are willing to enforce a penalty, it's not going to work.

Deputy City Manager Hayden noted they are spending a lot of time on this issue. She asked if there have been a couple of instances or does it happen regularly.

Ms. Eaton felt that it happens every meeting, it is outright lying and she is sick of it. She feels if they don't have specific expertise, no one is going to know whether something is true or not. Deputy City Manager Hayden indicated this was news to her and she will speak to the City Attorney. At the Planning Board they are hearing more from engineers and professionals and she doesn't believe they have that problem.

Mr. Parrott gave an example that is generic. Within the last year, a vertical expansion was presented as basic dormers which a lot of other houses in the area have. They presented sketches without any measurements, however, looking closer, the dormers were going on the new 3<sup>rd</sup> story they were also putting on. Was that a lie or misleading? To him it was a lie. Mr. Parrott is an engineer and he looks at details. Chairman Ricci understands why it is troublesome. Deputy City Manager Hayden confirmed that staff will look at that.

Deputy City Manager Hayden asked how everyone felt about doing this again. She felt they have had a very useful discussion. Chairman Ricci felt they could see how the changes that the Planning Board spent time and effort revising have transcended to the Board of Adjustment. He thought they could meet every six months. Ms. Eaton felt it was good to hear the feedback from the Planning Board. Deputy City Manager felt they should schedule a discussion about signs and they could see Mr. Taintor's PowerPoint sign presentation.

Mr. LeMay stated it was always helpful to understand the motivations behind the Zoning Ordinance. It's difficult for them to enforce zoning if they don't understand it.

Ms. Rousseau mentioned that she was the only person at the annual Planning and Zoning Conference and she thought that was odd as Portsmouth is one of the largest cities in the State. They update you on case law and Best Practices, and you hear stories from around the State, and they need to hear how we dealt with certain things. Chairman LeBlanc has been going to that conference for several years and felt that some are better than others. Some are a nice social time and that's about it. It depends on the particular presenters at the conference that you are attending and the amount of knowledge which you bring with you. He doesn't feel people have to go every year. Mr. Coker indicated that he has been to 10 conferences out of the past 12-13 years and it is the same presenters year after year and they are the same presenters that show up at the municipal law lecture series also. Sometimes it is interesting but mostly it is repetitious of previous years.

Ms. Rousseau added that every year they do a case law update so that will never be the same from year to year. Mr. Coker asked the BOA if they receive memos from Attorney Sullivan on case law. Ms. Rousseau stated they very rarely receive case law from Attorney Sullivan. Deputy City Manager Hayden felt they can do more with the BOA to provide case law. She added there are often good articles in the Municipal Center magazine too.

Chairman Ricci wanted to start wrapping things up and wanted to make sure everyone had an opportunity to bring up subjects. Mr. Jousse returned to the subject of the less than truthful statements which are made. He felt that maybe if the Chair or a Department representative were to make a statement at the beginning of each meeting indicating that this is a quasi-judicial legal meeting and all statements should be true. Chairman LeBlanc suggested putting that right on the application. Chairman Ricci felt that the Boards can say what they want but if someone is getting paid they will say

whatever they want. He felt Mr. Coker's point about things being on the record is the best thing that can be done. Mr. Coker added it then becomes an enforcement issue and the willingness of the City to step up to the plate for enforcement.

Ms. Geffert felt that what is submitted to the Planning Board is fairly accurate however the BOA is not getting professional plans and they are not clear or accurate. The BOA requirements are tailored for the residents where the Planning Board has more rigorous requirements for submission.

Chairman LeBlanc stated that they deal with large corporations as well as residents and to require a private homeowner to come in with sealed plan is an onerous burden to place on their applicants. Chairman Ricci suggested that maybe they could have a form letter which the applicant should sign saying that all information and exhibit are truthful.

Deputy City Manager Hayden indicated they will have Legal take a look at that.

Mr. Jousse mentioned the section on wind turbines and it only talked about a horizontal axis turbine but the dimensional requirements for a vertical axis turbine are completely different. Mr. Taintor acknowledged that was good to note as they are looking at this section of the Ordinance. Chairman Ricci indicated there is one on the corner of Ocean Road and Route 33. Satellite dishes in the HDC are an issue they also need to review.

Mr. Jousse asked whether they can have more than one home occupation in one home, where a husband and wife both have home jobs.

Chairman Ricci stated that the Zoning Ordinance is not perfect but it certainly is better than it was. He felt these meetings are almost like a company retreat. They should all make notes so that they can share them.

Mr. Coker felt it might be of interest to know the percentage of variances which are granted. Mr. Jousse said it was very high, around 80%. They are probably the highest in the state. Mr. Coker referred to something that Ms. Eaton said earlier, to "stick with what the zoning says." If that were the case, that would become an absolutist thing and that implies they would have no variances. Deputy City Manager Hayden agreed that a lot of things that come before the Board are for things for neighborhoods where no one conforms. Mr. Taintor stated the goal should be to make the zoning closer to reality so that the BOA received fewer applications and approves fewer applications. In the past, Portsmouth has taken the point of view of making zoning almost unrealistic in some ways which forced them to have a high percentage of variance approvals.

Deputy City Manager Hayden felt that Mr. Taintor should look at some frontage and coverage issues and put a report together and then they can get together again.

Chairman LeBlanc felt the overlay district idea would address a lot of these issues. One City official has mentioned that the BOA may be granting a high percentage of variances, but if the citizens of the City didn't like that they would hear about it. They rarely hear that the BOA is doing a bad job and that they are too liberal. And the reason they have 7 people on the Board is so they represent a cross-section of the City.

Chairman Ricci thanked the Boards for coming. Mr. Taintor and staff will put together a report and they will meet again down the road.

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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 September 16, 2010 and by the Board of Adjustment on September 21, 2010.