

MINUTES

**PLANNING BOARD
WORK SESSION
PORTSMOUTH, NEW HAMPSHIRE**

CITY HALL, MUNICIPAL COMPLEX, 1 JUNKINS AVENUE

7:00 P.M.

SEPTEMBER 13 2012

MEMBERS PRESENT: Paige Roberts, Vice Chairman; Nancy Novelline Clayburgh, City Council Representative; John Rice; Anthony Blenkinsop; William Gladhill; David Allen, Deputy City Manager; Richard Hopley, Building Inspector; and Brian Groth, Alternate

MEMBERS EXCUSED: John Ricci, Chairman; MaryLiz Geffert;

ALSO PRESENT: Rick Taintor, Planning Director

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I. WORK SESSION

A. Review of Zoning Ordinance Table of Uses and Zones to expand where assisted living facilities can be located.

Vice Chairman Roberts turned the Work Session over to Planning Director Rick Taintor. Mr. Taintor stated this was a referral from the City Council. The request was for the Planning Board to consider other zoning districts beyond where assisted living facilities are currently allowed. One aspect of this is not as simple as looking at the different districts, because they have to look at the permitting process and dimensional or intensity regulations. Many of their districts are geared towards a particular use such as single residences so once you insert a different use in you have to look at all of the other different aspects of development.

He put together a package of reference materials for their review. Pages 2 and 3 are definitions related to assisted living from the existing Zoning Ordinance for (1) assisted living facility which can be broken down into assisted living center or assisted living home; (2) assisted living unit, which is a unit within an assisted living facility or continued care retirement community; (3) congregate care facility and (4) continuing care retirement community, are not in the current Zoning Ordinance Use Table but there is a definition to refer t and (5) residential care facility, which is a broad term which includes around the clock skilled nursing. Page 4 is the Existing Use Table breaks down the districts and shows in which zones these facilities are allowed. He bolded the zoning districts where either assisted living facilities or residential care facilities are allowed in some way. In the residential zoning districts from Rural to Garden Apartment/Mobile Home, the smaller type of facilities are allowed. Essentially, an assisted living facility for five or fewer residents or a nursing home or hospice for five or fewer residents are all permitted in all of the residential districts subject to the same dimensional requirements as any other residential use. Moving over to MRO and MRB, the same standards apply except in those districts a residential care facility for more than five residents is also allowed by

Special Exception. Moving to the business districts, CBA, CBB, GB, B WB, those are the only districts where an assisted living facility with more than five residents is permitted in our zoning. We actually have facilities in the City that are non-conforming with this. The Mark Wentworth Home, for example, has more than five residents and is in a residential district.

Ms. Roberts asked if those existing facilities would fit under the current definition of assisting living facilities. Mr. Taintor confirmed they would.

Mr. Taintor continued with the OR district which also allows a residential care facility, or essentially a nursing home, with more than 5 residents by Special Exception.

Mr. Rice wondered how they would clearly differentiate between a congregate care facility and a CCRC. Mr. Taintor explained that the CCRC would have to have multiple levels of care and must work up from independent care to assisted to nursing. The key difference is having all three levels of care.

Mr. Taintor referred to the map he prepared. The red areas reflected where assisted living centers are now allowed and include the Route 1 corridor, the west end around Brewery Lane, the traffic circle and outer Market St. One thing they may want to consider is if they would not want to have Assistant Living Facilities in the single residence districts. That would segregate the seniors and handicapped from the rest of the community.

Mr. Taintor discussed intensity of use. Page 5 and 6 outline the dimensional and intensity standards for the different districts. The larger facilities are not allowed in any of the residential districts and they may want to consider allowing assisted living facilities in the residential districts but they should look at intensity of use. They do a lot by Special Exception in all residential districts with the assisted living facilities with five or fewer residents, which corresponds to a single residence home. When you move up to a larger facility you move to the GB, Gateway and business districts and there are larger lot requirements in general. One item that is important to think about is in the areas where they allow these uses they do not have any restriction on the density of the uses. When they look at the residential use table, in addition to the lot area there is also a lot area per dwelling area requirement. The GB and Gateway there is a lot area requirement of an acre but on residential density requirement because the assumption is that there are not going to be free standing residential units.

Mr. Taintor also wanted to show the Board, only as an example, and the only example we ever looked at for this situation, is for the CCRC that was presented a few years ago. He excerpted from the ordinance that was presented to the City Council, the site requirement and development standards that were presented at that time. This gets into that issue a little bit but it doesn't talk directly about residential density but it was controlling it to some extent with a parking requirement per dwelling unit. In this case it said the site had to be at least 5 acres and setbacks from residential districts were increased.

At the bottom of the first page Mr. Taintor listed questions for them to consider.

1. Which districts are appropriate/inappropriate to zone for assisted living facilities for elderly and disables/handicapped residents?
2. What scale of development should be allowed in each district?
 - a. Building height and bulk
 - b. Setbacks and lot coverage

- c. Number of residents per facility (dwelling unit equivalents)
3. How should assisted living facilities be authorized?
 - a. Allowed use (by right, subject only to standards specified in the Ordinance)
 - b. Special exception from Zoning Board of Adjustment
 - c. Conditional use permit from Planning Board

Ms. Roberts opened the session up for discussion.

Councilor Novelline Clayburgh asked about a lot on Route 1 that was being considered for assisted living. Mr. Taintor indicated it was confusing. She was referring to the lot adjacent to the Armed Forces Reserve Center, opposite Elwyn Park. The issue is that lot is zoned office research and it has been very difficult for property owners in that area to develop under the zoning so the applicant has come before the Board a number of times to allow a zoning change. The Planning Board initially recommended a zoning change that would have allowed a brew pub in that area. It was a master plan of the two large lots and the Planning Board worked with the developer over many months and recommended it to the City Council, however the neighbors objected so the City Council did not approve it. The owner came back again this spring and the Planning Board looked at what they could do to improve the developability and they recommended some easing of lot area and reducing frontage requirements and added some uses, one of which was an assisted living facility. Again concerns were raised so the City Council voted it down again. Therefore, the area never got to the point of being re-zoned and the property owner is still looking for some way to develop the property.

Mr. Taintor was also happy to provide any additional information that the Board may feel would be helpful. This is his "first cut". He hoped to highlight the lots that are over 2 acres but he did not have time.

Mr. Blenkinsop asked if there a critical number of residents you need to make it worthwhile for an assisted living facility. Mr. Taintor responded that there are different types. A commercial type of facility tends to be well over 100 units. However there are other types of assisted living facilities for 5 or 6 residents that may provide really intense assistance and those tend to be for non-profit.

Mr. Hopley felt they needed to be caution about whether a project might need to go for a Special Exception or go before the Planning Board. Looking back on multi dwelling units for 4 or 5 units, they did not used to have to go before the Planning Board and that was very problematic. They need to make sure they are not excluding even the smaller ones from the Site Review process. Mr. Taintor felt it might be larger than 5 units but a good question is whether they want all of these to go to Site Plan approval or is it just a conversion of an existing house.

Mr. Rice referred to what districts are appropriate and they need to think about where they have seen some of these facilities and how they have worked. Riverwoods is immense and is in a rural residential agriculture area, set back from the road. Yet, at the same time, Edgewood is hardly visible to the neighbors and serves an important role in terms of residents having easy access to their family. That is a very important to this whole thing. Residents should be near residential areas but have the set backs so they are sensitive to surrounding buildings. Huntington Common in Kennebunk is way off the road. It is hard to draw a specific line about where these things go but the visual aspects are important so that they do not impact residential areas negatively.

Ms. Roberts wonders how this may relate to form based zoning. It seems like an interesting opportunity. Mr. Taintor felt that in form based zoning they are looking at the downtown historic

section and it would be easy for those facilities to fit into that area. It would be harder to do that type of form base zoning in their residential areas right now. He felt the point they are both talking about is how do they allow development to come in and still protect the neighborhood rather than restricting the use. This might lead to defining buffers based on the size of the facility.

Mr. Blenkinsop felt the gateway district makes sense for this. It abuts residential districts and it encourages mixed use. There may be some concern they would be putting these facilities out where they are not around residential areas but if the Gateway was to be developed in the way they intended they could be early seed developments to get the residential elements into the Gateway District. Mr. Taintor mentioned that the vacant pad at the old Yoken's site might be a good spot for one.

Mr. Groth asked about the difference in the different type of facilities. The difference between a facility where the need for medical attention is high vs. where it is low creates a need for a walkable environment. The Gateway offers retail nearby but it is not a walkable environment. He is trying to figure out the distinct differences and who the residents will be. Mr. Taintor felt that was important and one thing about these facilities is that an assisted living facility is often thought of as a facility for seniors but it is not restricted to seniors. Many are typically developed for seniors but they can also include non senior handicapped disabled as well. An assisted living facility means that at least one or three of their daily living needs requires assistance but do not require skilled or medical care. These people tend to be largely ambulatory or mobile but need some type of assistance during the day, either with preparing food or dressing. The level of intensity is important for the walkability requirement.

Ms. Roberts stated that Mr. Groth raised two points that she had been thinking about. When they were talking about the Borthwick proposal, they felt that proximity to a hospital or medical facilities was relevant. Mr. Taintor responded that they have Edgewood and Mark Wentworth which seem to function fine. Proximity to a hospital is probably not a priority.

Councilor Novelline Clayburgh mentioned that when the City Council talked about this they had representatives from Sunbridge and Edgewood. They were concerned about new construction because there is no legal requirement that any new facility has to take Medicaid and both of those facilities do take Medicaid. They are afraid that new assisted living facilities that do not have to accept Medicaid patients will be harmful to Edgewood and Sunbridge as they will not have to subsidize the Medicaid patients. They are living in a community where they do not have any Medicaid beds for the elderly. She also remembered City Attorney Sullivan saying you cannot make a facility accept Medicaid patients.

Ms. Roberts indicated that speaks to one of her concerns with the Borthwick proposal where they had the economics tied to the demographics. She would like to meet the needs of the residents of the City rather than people with extraordinary wealth from out of state. She felt that was a very important point.

Mr. Taintor felt that one way to get that information would be to do a market study of the demand for assisted living facilities to determine whether there is a shortage. If they found that there was a demand for it that would not be a problem because even if the existing people move out there would be a waiting list for people to move in.

Mr. Rice wondered if you approve new assisted living facilities, could you require that a certain percentage of the beds would have to take Medicaid. Mr. Taintor clarified that was what Attorney

Sullivan said you couldn't do but that could have an affordability element. Mr. Rice was sure there are waiting lists at all of the current facilities.

Ms. Roberts agreed that there is a real need for market analysis for this area, meaning the seacoast.

Mr. Gladhill asked why do Sunbridge and Edgewood have to take Medicaid patients. Councilor Novelline Clayburgh was unsure.

Councilor Novelline Clayburgh added that the City Council also discussed the baby boomers and that the number of people looking for assisted living facilities and nursing homes will increase. Mr. Rice agreed. He also felt that they should not be on busy streets so that seniors can get out and walk around. Mr. Gladhill felt they should also be incorporating green space as parks and walking areas.

Mr. Hopley felt that they need a certain amount of land and there's not much land anywhere in Portsmouth. Mr. Taintor stated that they are talking about assisted living and not a huge facility like Riverwood. They allow facilities for 5 or fewer residents in all of their residential districts by Special Exception. The economics may not work in Portsmouth because the land values are so high. He believed they are probably talking about is assisted living centers for 6 or more residents which are now only allowed in the General Business, Gateway and business districts.

Mr. Blenkinsop felt that it must come back to a profit and making more money than they pay out. Therefore they would probably see the bigger assisted living centers but there doesn't appear to be any large parcel of land in Portsmouth. Places like the Gateway may not currently seem appealing but if you look at the purpose behind the Gateway it could be a very interesting part of their vision for that area.

Mr. Taintor felt that one big question that needs to be addressed is how big does the facility need to be if someone is going to create one now, how much land will it require and where is that land.

Mr. Gladhill asked if anyone has come forward about building one downtown. Mr. Taintor stated that no one has approached them for anything other than the Borthwick proposal. This is to look ahead as the population ages. There does not appear to be a pressing demand from the private sector.

Councilor Novelline Clayburgh indicated that another item they discussed at the City Council was the need for nursing home beds. The Mark Wentworth did away with their nursing home beds. That could be part of the marketing study to determine how many nursing home beds they will need. She felt the demand for that type of facility is going to increase. Mr. Taintor indicated that was part of their discussion when they were discussing the Continuing Care Retirement Community because they had more nursing facilities. He knows of facilities that have been built to a certain ratio and found they needed more nursing beds. That brings in the Medicaid facilities vs. the non Medicaid facilities.

Mr. Groth asked why there aren't bonuses for nursing facilities like there are for housing affordability.

Mr. Rice was wondering if some of the dimensions in SRA, SRB. He wondered if a depth of 100' or 200' were realistic or would they want more. Mr. Taintor stated they would probably add another section to their regulations to increase the setbacks depending on the size of the facility. They might also have a larger open space requirement. It goes back to figure out where land may be available and then figuring out the appropriate coverage, density and setbacks to see if they are compatible with that

neighborhood. They probably are not talking about increasing building height in the residential districts.

Mr. Rice wondered if they would start off with the life style of the assisted living person and work out the land requirements around that and then see what fits. It makes no sense to have an assisted living facility where they would be taking a walk with their walker on Woodbury Avenue. Mr. Taintor felt they should be looking at what the current market conditions are and create a model of what they would want and where they would like to have it. Then they would be limited by the number of potential sites.

Mr. Gladhill felt it was important to consider what the residents prefer for locations and whether they want to be set back from the busy street. Mr. Taintor understood him to be saying that maybe where they have them zoned for now isn't where they should be looking. The areas they are zoned for now are the most intense traffic area in the City.

Mr. Allen asked what the Betty's Dream facility was characterized as. Mr. Taintor felt it was assisted living as most residents can get out and around. It is targeted to a non elderly population rather than seniors. Mr. Allen pointed out that there are consistently issues with them travelling to and from the retail stores and crossing Woodbury Avenue.

Mr. Groth indicated that Riverwoods is one option but there is also a population that wants the ability to be closer to convenience retail or a real neighborhood with parks. Maybe they need to have more than one option.

Mr. Blenkinsop asked how old the existing facilities are. It was believed that the Mark Wentworth was a bequest a very long time ago. Mr. Hopley believed Edgewood was built in the '70's. Mr. Rice did not believe that street was built out at the time.

Councilor Novelline Clayburgh stated that when the City was looking at sites for the middle school they always ask why they cannot go to Pease. Mr. Blenkinsop believed that the State does not want residential at Pease. Mr. Taintor pointed out that it would be isolated.

Councilor Novelline Clayburgh went back to Mr. Taintor's comment about the Yoken's site and asked if he was referring to the lot in the rear that has not yet been developed. Mr. Taintor confirmed that the rear section could easily be developed as a facility. He had hoped when they first filed for Site Review that they would want to take advantage of the Gateway District but they completely ignored that and stuck with the same old drive through bank and drive through pharmacy.

Mr. Taintor felt that they have given him ideas for questions that need to be answered. He needs to learn more about Assistant Living Facilities to see what the economically feasible scales are. If the only thing they can get is 100 units and there is no place they want to put 100 units then that is not feasible. If they find that 20 units makes sense and there are parcels in the City where it would make sense, in nice residential areas, they could focus in on whether there is enough potential to make a zoning change. He needs to find out something more about the economics of these facilities, including demands, more about existing parcels and then he should come back for suggestions on how to amend zoning. He doesn't get the sense that the Board has a strong feeling one way or the other and they are still just talking about it.

Mr. Groth felt it would be helpful to see what different types of facilities look like and how they fit on the site. Mr. Taintor agreed it would make a lot of sense to look at the context of how they fit in. They are only talking about assistant living facilities right now.

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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 January 24, 2013.