

**PLANNING BOARD WORK SESSION
PORTSMOUTH, NEW HAMPSHIRE
Conference Room A
CITY HALL, MUNICIPAL COMPLEX, 1 JUNKINS AVENUE**

6:00 PM Work Session

October 24, 2024

MEMBERS PRESENT: Rick Chellman, Chairman; Greg Mahanna, Vice Chair; Beth Moreau, City Councilor; Members James Hewitt, Paul Giuliano, and William Bowen, Alternate

ALSO PRESENT: Peter Stith, Planning Manager; Deputy City Attorney Trevor McCourt

MEMBERS EXCUSED: Facilities Manager Joe Almeida, City Manager Karen Conard, Anthony Coviello, and Andrew Samonas

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Chair Chellman called the meeting to order at 6:00 p.m. Alternate Mr. Bowen took a voting seat.

I. Co-Living Use

Developer Mark McNabb and Deputy City Attorney Trevor McCourt were present. Chair Chellman said Mr. Bowen looked at the 2017 Master Plan to see if there was support for the concept of co-living use and found support for encouraging micro units and smaller housing units that had the spirit of co-living in mind. He said the City had an ordinance about boarding houses that might also need to be modified, which Attorney McCourt would discuss. Councilor Moreau asked if boarding house licensing had to get renewed. Attorney McCourt said it was an annual renewal but minimal. He said the City Clerk handled the renewal process and that it was in the same category as hotels, inn, and transient uses. Mr. Bowen asked if there was a history of single residency occupancy (SRO) in Portsmouth and what provisions prevented SROs. Attorney McCourt said if it wasn't listed, then it was prohibited. Mr. Hewitt said he thought the only zoning that allowed boarding houses was the General Business District. It was further discussed.

[Timestamp 17:58] Attorney McCourt reviewed the list of items. He said he did some research into the previous litigation regarding boarding houses and that the nature of it was far from what co-living units were but were lessons to be learned in terms of administration and challenges. He said the issues presented to the City were all related to the tenants and the lack of City Staff's ability to get in touch with someone to remedy the related problems. He said the permitting system exists to provide a point of contact. He said one of the provisions of the consent decree with the Brewster Street boarding house was that there be someone on site 24 hours a day to act on behalf of the property owner. He said that was one issue, and he asked if there were other things the City Council wanted the City Staff to be monitoring on an ongoing basis and if they could ensure that the owner was complying with the ordinance. He said it seemed logical that it would be through a permitting system. He said there should also be ongoing compliance with the number of beds, the kitchen contents, and so on which went through more of a site plan review phase. Vice-Chair Mahanna said it was a great list. Chair Chellman said Board should get

through as much of it as they could. He noted that a lot of the items were enforced nationally, especially if there was a lot of unoccupied office space.

[Timestamp 23:20] Chair Chellman said he added other topics to discuss, such as a new label for a boarding house and its scale and location, whether it should be different if it was downtown, and the conversion of existing buildings vs. new construction. He said he thought the definition of family was outmoded and not appropriate for this type of use. Councilor Moreau said they were almost like co-habitation pods and that the Board could talk about numbers, like how many people would be sleeping in each of the bedrooms. Chair Chellman said another factor to think about was the correlation between the number of people living there and the amount of community space. In terms of a label, he said it might be a marketing consideration. He noted that citizens thought the term pods sounded like storage. Mr. McNabb said the term co-living was nationally recognized and used in other models, so he suggested sticking with that. Vice-Chair Mahanna said the number of bedrooms could be defined. Mr. McNabb said he found that having no more than 10 people in a pod sharing a kitchen was a good threshold. In terms of the number of people, he said a 120 sf lot was like having a 12'x10' room per person. He said international building codes (IBC) and fire codes regulated all that, and he recommended that a co-living plan be subject to the reviews of the international building code, fire code, and the City. He said the limiting of pods was appropriate so that there weren't 40 rooms off one kitchen, but he said the number of pods in a building should not be limited. He said existing buildings vs. new buildings was also an issue because the zoning never considered existing buildings due to their limitations. He said J. J. Newberry was a deep and long building and couldn't handle micro apartments and could only do co-living units. Chair Chellman said that was a problem was converting office space buildings because they were deep.

[Timestamp 32:36] Chair Chellman said the Board had to be more specific about the number of people, so having parameters of the number of bedrooms per kitchen made sense. Mr. McNabb agreed. He said in addition to ten people per kitchen, they also recommended no more than two occupants per bedroom and no more than 10 occupants around communal living. He said he had some information of how that was monitored in Portsmouth, noting that there was a non-compliance part to it and that every time there was a change in tenants, the owner was supposed to apply for a change in use permit, but no one did it. He said the Fire and Inspection Departments said they didn't enforce it for apartments but did for restaurants. He said there was talk of doing it every 2 or 3 years to get a permit required for residential to get the Fire and Inspection Departments into the building, and he thought that was appropriate for a pod. The topic of inspections done on a bi-annual basis was further discussed. Vice-Chair Mahanna said the inspections were expensive at \$250 per year for residential buildings and that Building Inspectors could enforce codes that were already on the books. He said starting with the Fire Department inspections was a good suggestion. Mr. Hewitt said it would be great if Mr. McNabb or the City Staff could come up with a co-living ordinance that exists in another city and see what they liked or did not like about it. Mr. McNabb said he sent his suggestions to Mr. Stith. Mr. Stith said that's how they came up with specific things, like the number of people, parking, and so on. Mr. Hewitt and Vice-Chair Mahanna said they had not had enough time to look at it, and it was further discussed. Mr. McNabb said the goal should be simplicity and didn't think the City should have the requirement to have a change of use permit in the ordinance and then not enforce it. He said that should be removed from the ordinance and replaced with some level of

inspection. Mr. Bowen said the issue was in that particular area and not the whole City, and he thought an inspection could be done at some point in time to ensure that the co-living use was working and not the change in use system. He said another national study was done about economics and advocated something in line with what Mr. McNabb wanted to do. He said there were also issues like pets, storage, and closet space. He said the parking was questionable and that he hadn't see in his research that communities wanted to eliminate parking. He said other cities had parking ratios and required parking. Mr. Giuliano said inspections and permitting were things that would add costs, so he was hesitant to do it. Councilor Moreau suggested doing it every five years. She said the bigger the co-living use was, the more permitting it might need. It was further discussed. Chair Chellman said fire inspections had to be done every year and that the Board had to make sure they did not overregulate what already existed. Mr. McNabb agreed and said if the number of units was under ten, he did not think a person monitoring the place would need to live there, but if it was over ten, then a residential assembly permit and a person living there to monitor it would be necessary. It was further discussed.

[Timestamp 53:30] Chair Chellman asked if there were any highlights that the Board wanted to further discuss. Mr. Bowen asked if the on-site contact would be the same for one pod or five pods. Mr. McNabb said a certain number of units would have one facility with a complex manager living there. Vice-Chair Mahanna asked about the lease terms and whether 30 days would be viable. Mr. McNabb said he was fine with 30 days but thought the leases should be parallel construction to residential and should be whatever the ordinance requires for a one- or two-bedroom. He said he could sublease but not less than 30 days. It was further discussed and decided that it would be 30 days or more with no subleasing.

[Timestamp 57:46] More topics were discussed. Mr. Bowen referred to the plumbing aspect and said there was vagueness about the bathrooms. Mr. McNabb said some people would want a private bathroom and would pay extra for it. He said there was also a big difference between new construction and existing and that building codes limited plumbing codes. He said the most economical and ideal potential was having just a sink and a microwave but thought he would also have a few kitchenettes. The change of use permit was further discussed. Mr. McNabb said if he complied with the use table and didn't need a Conditional Use Permit, it would be just a change of use permit. He said he might decide that he did not want to max out the number of people living in a co-use building. Mr. Hewitt said it was proposed that the zoning would be in the CD4 and CD5 zones. Councilor Moreau said they should start with the office conversions because downtown had little new construction, and if it worked, they could build up. Conditional Use Permits for Gateway 1 and 2 and business use were discussed. Parking was discussed. Mr. McNabb said they didn't have to worry about parking in their downtown location. Councilor Moreau asked if the term sanitation/kitchen would mean a bathroom or a separate washing station. Attorney McCourt said the term sanitation was in the ordinance and he asked if it was just what was required by the building code or something more. Councilor Moreau said she was at the NH Housing Conference and there was a comment made about how the country spent more money on, and devoted more land to, cars than people. She said they thought if people lived downtown and close to public transportation and there were public parking spaces, there should not be parking requirements. She said they were also considering doing studies on microtransit and expanding the different types of transportation. She said in the next two years she wanted to advance public transportation regionally and not just in the City. Mr. Giuliano said

he was in favor of Mr. McNabb's suggestion to limit it for now and see how it worked out and then open it up to more areas of the City. Chair Chellman suggested that the lists be shared and people write their comments for the next work session to discuss.

[Timestamp 1:11:21] Mr. Bowen said Wells, ME and similar places had seasonal rooms for people who worked in the tourist trade, and he asked if there was any incentive for that in Portsmouth. Mr. McNabb said he kept some of his properties off the market and rented them for three months or so, but the marketplace wouldn't do that because yearly rentals were desired, so there were a lot of people living on couches and in basements. He said allowing co-living units would allow someone to have seasonal living. Leases were further discussed and it was said that J-1 (cultural exchange students) and part-time employees would benefit well from co-living uses.

II. Hanover Street Zoning

[Timestamp 1:16:43] Property owner Steve Wilson, Deputy City Attorney Trevor McCourt, and citizens Robin Husslage, Elizabeth Bratter, and Nicole LaPierre were present. Chair Chellman said Mr. Wilson's design review approval was received in July, and then Mr. Wilson filed an application for a variance because all the properties were in the Downtown Overlay District (DOD) and the plan going before the BOA had a different scale and was a better fit for the neighborhood. He said he didn't want to focus on the past but wanted to find the best solution for 2024. Mr. Stith said that it was requested at the previous work session to have a timeline and a comparison of the character district, so he provided the dimensional requirements and a max of where each of the districts were in the City. He said they had a follow-up memo from Mr. Wilson and that the variance request would be on the BOA's November agenda.

[Timestamp 1:20:45] Mr. Wilson said he owned the property and came up with a plan that illustrated the current zoning but then realized that there could be a better plan based on input from the Board and the neighbors. He said he applied for a variance to eliminate the necessity of business use on the first level, and now there were only two proposed stories in the building and a vacant parking lot in front. He said he could eliminate the commercial ground-floor commercial space if he agreed to have all residential, so he was providing all the parking on site and intended to use the ground floor for it. He explained it further and said it would allow him to go away from orientation for retail and face four of the units toward Rock Street with a better setback. He said the buildings were now two stories with a short third floor. He described the surrounding context. Attorney McCourt cautioned the Board about getting to the merits of the pending application vs. considering the zoning amendments on its merits. Mr. Stith said Mr. Wilson had not filed his site plan application for the new plan yet. Chair Chellman said there were neighbors who submitted a request to change the zoning in that area.

[Timestamp 1:34:04] Ms. Bratter said the zoning request was for the property between Hill Street and Foundry Place and that the neighbors were asking that the DOD and the North End Incentive Overlay District be removed because it was the Islington Creek area that started at Bridge Street. She said they requested CD4-W zoning, which would allow Mr. Wilson to not require as many variances for his project. Mr. Stith said he had not reviewed it under CD4-W. Ms. Bratter said the use applied because it was less intrusive on the residents. She said she didn't

know before that the CD4-W could be applied in any characteristic area and thought CD4-W should become its own zone because of the uses.

[Timestamp 1:39:22] Ms. Husslage agreed with Ms. Bratter and said continuing CD4-L1 across would also address the new design. Mr. Wilson said they would comply with either of the zones except for the minimum lot area per unit, so that would cut the size of his project in half and be more in line with the neighborhood. He said most of the houses in the neighborhood did not conform to CD4-W or CD4-L1. Ms. LaPierre said the area being improperly zoned was an injustice. She said Mr. Wilson's project was a separate issue because he was vested, and whatever he built would need variances. She said the neighbors were looking toward the future and trying to correct what was not previously corrected. She said she agreed with Ms. Bratter and Ms. Husslage but didn't think it was intended to be about Mr. Wilson. Chair Chellman said Mr. Wilson had an application that was approved at design review, so he thought it was relevant. Mr. Wilson said he intended to cooperate with the neighborhood's needs by having a new design that required new zoning. Mr. Giuliano said it sounded like the Board was facilitating the meeting of the Islington Creek neighborhood and didn't think Mr. Wilson needed the Board's input. Chair Chellman said the City Council asked the Board to look at a proposed zoning amendment for the area, and it got them away from spot zoning. He said whatever the Board made for a recommendation to the Council could be CD4-W or something new that lists the uses of CD4-W but didn't have a lot size component.

[Timestamp 1:46:06] Vice-Chair Mahanna said it could be broken down into three key things: 1) everything that went wrong in 2019 would not get corrected that night, and Mr. Wilson had already been approved to build something that the neighborhood hated; 2) the process was confusing enough for the Board without looking at it from a residential standpoint; and 3) he thought Ms. Bratter had come up with a 90 percent solution that would give the neighborhood a better product, which Mr. Wilson should consider. Ms. Bratter said the original plan included CD4-L1 because all of Hanover Street was that and the neighbors just wanted protection for the future if someone wanted to demolish a building and put something bigger because of the existing lot. It was further discussed. Chair Chellman asked if the request was for CD4-L1 or CD4-W. Ms. Bratter said CD4-W was for the back lot and everything that abuts Foundry Place, and CD4-L1 was for the front lot to match the rest of the neighborhood. Chair Chellman summarized that it would be CD4-L1 on Hanover Street, it would split zoning to CD4-W from Bridge Street to Rock Street, there would be no DOD or North End Incentive Overlay on top. It was further discussed. Chair Chellman said he didn't mind splitting zoning at the back lot lines. Councilor Moreau said it made no sense that CD5 zoning would be between Brewer and Rock Streets.. Ms. LaPierre said a major concern a lot of the neighbors had was that some of the streets didn't match the zoning.

[Timestamp 1:53:33] Mr. Giuliano asked if the zoning was articulated line by line. Mr. Stith said they didn't receive anything that mentioned CD4-W but noted that there was a July 10 letter that was referred from the Planning Board to the City Council. Chair Chellman said what was being discussed was to change a property to CD4L-1, remove the DOD and North End Incentive, and to change the CD4-W all the way to Bridge Street and move the DOD to Bridge Street. Mr. Wilson said the CD4-W was a new issue to him and didn't think it was appropriate. He said CD4 zoning was viable because the buildings next to him were all built to CD-4 zoning, and CD4-W

was out of character with what was there. He said the only property affected besides his vested property was the Plumbing Supply House that was surrounded by huge buildings. He said CD-W had significantly more restrictions, as did CD4-L1. It was further discussed.

[Timestamp 2:04:28] Chair Chellman asked if the issue was the massing of the buildings or the uses. Ms. Bratter said the most important part for the neighbors was the uses and the massing is less but in line with what was on the chart. Chair Chellman asked how much further the Board wanted to discuss the topic that evening. Vice-Chair Mahanna suggested summarizing the goal for a later discussion, and Mr. Hewitt agreed. Mr. Bowen said they were trying to accomplish a proper transition from the more dense downtown to a less residential area, and he thought the Board should end up with the decision that would have the best development of the property and the smoothest transition to the residential, which was to have it step down, have less mass and lower heights, and the proper uses. Mr. Giuliano said there was a lot of different zoning in that small area and didn't think that it necessarily made sense to do something just because it was available to plug in. Chair Chellman said he was concerned about rezoning recently-approved and under-construction buildings but thought the Board could look at the uses that could go inside those buildings and what they were approved for and could evolve into. He said that was the reason he was focusing more on the west side near Mr. Wilson's property where the one undeveloped parcel was. He said it was complex because it was a transition area. Ms. LaPierre said the issue was urgent because the development in Portsmouth was moving quickly. Chair Chellman said time was needed to get it right. Councilor Moreau suggested narrowing things down by including two options at a public hearing. It was further discussed. Chair Chellman said the Board should come up with two draft options in terms of graphics and writing and then have a public hearing at the end of the year or the first of next year.

III. Other Items

No other items were discussed.

IV. Adjournment

The meeting adjourned at 8:15 p.m.

Submitted,

Joann Breault
Planning Board Meeting Minutes Taker