

height is 50' and the maximum coverage is 95%. At four stories it would be 3.8% FAR and at five stories it would be a 4.75% FAR. He displayed examples with different FARs.

The second concept was the human scale. Usually a 1:2 or 1:3 ratio was comfortable for pedestrians. You can deal with this with step backs and heights. Another way is establishing an imaginary plane that the building needs to fit.

He explored different ways to imply different relationships. One extreme idea is to have the building as high as the distance from the street or from the opposite street line. That allows the most building height. Next you could allow a number of building heights with step backs.

The recommended approach is a combination of FAR, step back and open space standards to create a human scale and meaningful open space with building form flexibility.

Mr. Taintor referred to the handout which was a simple ordinance amendment to give one combination of the factors. The part that is missing that the Planning Board talked about is how to design the open space because most lots are abutting the North Mill Pond.

Chairman Ricci felt that the consensus of the Planning Board was that they should focus more on design and less on height as they didn't want to handcuff the designers and didn't want all of the buildings looking the same. He opened the work session up to comments and questions.

Mr. Coviello stated that he doesn't want to mandate a setback and thought they could possibly use a sculptured roof.

Councilor Dwyer referred to the open space discussion and asked about the 5% and 10%. Mr. Taintor explained it was just a talking point as the lots are along pond frontage that has a 50' setback anyways. Councilor Dwyer stated that the lots on the street side would not have 50' setback. Deputy City Manager Hayden felt that the benefit to the public was more important than open space. Councilor Dwyer felt that would bring up access to the open space which they would have to work out.

Mr. Holden felt they must bring into the equation lot area as a lot of these lots are sizeable.

Assistant Mayor Ferrini felt that the step examples were "dead on" and he was very comfortable with it however he would like to see it integrated with incentive. There is not a lot to trade but maybe they could do something with the ratios.

Chairman Ricci referred to item II, E,1 on the proposed amendment and asked if they would want to add in 3.5 for 4 story and 3.5 for a 5 story? Mr. Taintor was not sure they want to choose different numbers. If they went with higher numbers they would want to play with the open space. Chairman Ricci felt it was something to think about.

Councilor Whitehouse felt this was very close to what he would like to see. His only question was with #2 and the setbacks. Do awnings, door swings, and planters count as part of the 10' setback? Mr. Taintor stated that an awning would not be part of the building, nor would the door swing. Planters would be in the right of way and would have City Council jurisdiction.

Councilor Smith believed it was their initial intent to send this request to the best Board to come up with something and he was thrilled with this proposal and he was very happy with the numbers. He did agree that a 5 story building may require a different ratio number. He was glad that it still keeps the maximum at 50' overall. He asked how soon they could expect a draft ordinance before the Council?

City Manager Bohenko responded to Councilor Smith's question, and indicated they have talked about how this would formulate into an ordinance with the Legal Department and Rick Taintor. If there is a consensus tonight, they could bring it back for first reading on February 12th, set a public hearing and get it back to the Planning Board and then get it back to the City Council with a report. Once they get into the second reading they have the ability to make changes after they hear public comment. It would be his suggestion to have something ready to go to City Council similar to tonight's draft, and they will still be able to make their changes.

Councilor Smith felt this pulls in what the Master Plan was looking at.

Mr. Coviello asked if they were in the second reading right now? City Manager Bohenko explained that because there were so many changes, they would re-write this and notice a different public hearing. Mr. Coviello asked about the 30% open space for a 5 story building. Mr. Taintor explained that the idea is a 5 story building with all the same height would result in 30% open space.

Mr. Coker urged the City Council to deliberate this a little further. He has been focused on the unintended consequences and he has concerns about small businesses downtown and he felt that small businesses are being forced out of downtown. He felt this proposed ordinance change would drive costs up and increase rents.

Councilor Whitehouse felt the opposite of Mr. Coker. He felt they should move this along swiftly as there are developers and architects ready to start projects.

Councilor Dwyer believed they have half of it but she felt their original issues were a whole other set of issues so she cautioned the Council about moving forward. She doesn't think they are done. Given their progress she doesn't feel it's unreasonable to continue and finish it.

Chairman Ricci indicated that this is a business district and open space is important. For this to look like a business district there shouldn't be a 10' gap between each building. He is sensitive to open space however he felt this was still a central business district and that point was made clear to him by other Planning Board members at their previous meeting.

Councilor Dwyer felt it was an unusual business district. She agrees with Chairman Ricci and she is not looking for lawns but she would like to see them work with the other items. Chairman Ricci also noted that they have an unusual 50' setback from the waterfront.

Mr. Coker stated that he is uncomfortable with how fast this is going and he urged caution.

City Manager Bohenko stated that it may sound like it is quick but looking at what has to happen at the Council level, it would be April before the final reading happened. At the last public hearing they learned a lot. Until they have another public hearing they are not going to flush out the opinions of the people that it will affect. He confirmed it can change right up to the third reading. If you allow it to go slowly, it falls away from the priority list and you are back to doing work sessions.

Mayor Marchand agreed with City Manager Bohenko and added that the process allows for Mr. Coker's concern not to rush. Because of the public hearing aspect, they are going to end up introducing something entirely new. The wise thing was to start over. What will also come out during the process is ideas that people have had about the additional heights ideas, ranging from building practices, mixed residential vs. retail, setbacks and additional access to water, or "greening" of buildings. He felt this was a big deal and it will still take a while.

Mr. Will felt that zoning doesn't deal with the present economy but rather deals with buildings that will last decades. The buildings that are in the center of town were built 60 to 200 years ago. The economy fluctuates.

Councilor Dwyer did not believe it makes sense to have a public hearing on something that doesn't have all of the elements.

Assistant Mayor Ferrini stated that if they have something to work with at a public hearing setting, the public will speak and they can write the proposal so that they can add on the additional elements.

Mr. Taintor doesn't have the answer right now. He ran numbers for a 4.75 FAR which still seems reasonable. He suggested open space being meaningful. The complicated part is when you have a site on the water and you want access. He doesn't see a quick way to accomplish that. It may be better to aim a little higher and see if the setback requirements and better open space requirements do a better job of shaping it.

Mr. Coviello disagreed with increasing the FAR from 3.5. The chance of getting a 5 story building would be small. This may be a way to say they don't want to see 5 stories and 50'. He felt most people will go for the 4 story building.

Vice Chairman Hejtmanek agreed with everything that they had accomplished and stated that it strikes him they have provided a framework for a rule but in reality it is already happening in the City. He cited an example of the Westin which is a 60' building but at 45' it starts stepping back. The HDC is very concerned about the mass. He's not sure they have really added a lot and he agrees with Councilor Dwyer that they should be looking for something else if they are going to add the 10' as an incentive.

Councilor Dwyer stated that this proposal doesn't "move her". She felt Mr. Coviello was right about being cautious.

Chairman Ricci asked Mr. Hopley if a typical floor to floor height of 10' practical? Mr. Hopley felt that 10' was on the high side. Mr. Coviello felt that 10' was absolutely possible.

Chairman Ricci felt they have discussed height and step back. He would like to leave with other ideas.

Mr. Will mentioned green buildings and indicated that the long terms costs would be reduced.

Deputy City Manager Hayden felt they were getting off track. She did not believe what was in the current Zoning Ordinance was very good and this is a significant improvement. A green building is a building cost issue.

Mr. Holden felt that they always have a problem with how they use the open space. Maybe they should have open space used as a public benefit for an added incentive.

Deputy City Manager Hayden added that they currently have some open space that can be useless. She would like to see it go forward similar to what has been proposed. This is just one little piece of the Zoning Ordinance re-write.

Chairman Ricci asked if there is an open space component that they are looking at that other towns have used? Mr. Taintor stated he has seen minimum requirements for open space, for example, you can't count strips of a certain width. Maybe there is a way to do extra credit for a continuous lateral connection to the water front.

Chairman Ricci agreed that everyone would probably like to see some open space components that are both flexible and useable.

Assistant Mayor Ferrni asked Mr. Taintor to suggest some other pieces for them to consider other than what has been proposed tonight. For instance, he would like to see when and how waterfront access would change and go into Site Review Regulations. Mr. Taintor felt the question ultimately is what do they want him working on because he doesn't have time to work on the Zoning Ordinance Re-Write project while working on all of these little pieces.

Mr. Coker asked for clarification on the process. The City Council brought forward the 40' ordinance for a first reading and that started the clock ticking on the 40' height. The Planning Board took the 40' height and decided that was not really the issue and they have added other things. He asked if the clock was still ticking on the 40' height or has this evolved enough to make that a moot point. Attorney Sullivan confirmed that the 40' height ordinance is still before the Council and is in effect for 120 days. Whether this process has progressed in another direction to the point where the City is headed in a different direction is a decision for the City Council to determine. If they do not act within 120 days, then it is no longer in effect.

Councilor Dwyer felt it may not be that difficult to add something about meaningful open space but have water access come at a later date. Mr. Taintor felt that by putting something broad enough, it will fall within the scope and give them something to work with.

Mr. Coviello would like to move ahead with this proposal. He felt it was hard to offer incentives for height and they should look at other incentives such as parking.

Chairman Ricci indicated it was time to wrap up their session and he asked for a consensus for direction.

City Manager Bohenko stated that staff seems to have a good understanding of what to craft for the first reading. They will provide copies to the Planning Board. He thinks they should take the good work that has been done, frame a first reading and bring it to the City Council.

Chairman Ricci confirmed that the Planning Board will send it to the City Council for first reading and they will continue to work on this and with Mr. Taintor.

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A 5 MINUTE BREAK WAS TAKEN.

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II. PLANNING BOARD WORK SESSIONS

B. Nonresidential Planned Unit Development (PUD) which would function as an overlay in the Office Research (OR) and Industrial (I) Districts;

Mr. Holden indicated that they have had a public meeting on this item but haven't had a lot of time for the Board to talk about it.

Mr. Taintor confirmed that there has been no change since the last draft on November 8th. This provides for a more flexible use of the Office Research area on Lafayette Road. They also looked at other areas in the City that it might affect. They tried to come up with a way to have a transitional area between Office Research (OR) and Industrial (I) districts.

Mr. Holden added that at the end of the public meeting there was a recommendation to get rid of outdoor entertainment. Mr. Coker asked if they could strike D, 3, (e) so that there would be no outdoor entertainment whatsoever.

Mr. Holden felt this seems like a good concept, campus style, moving the building to the front of the lot, traffic in the back, but he asked if there are other uses they can look at?

Mr. Will asked to make some points. His understanding was that the Office Research District is an abutter to residential areas. The unintended consequence is Office Research districts tend to be sited near residential areas. This is a good solution to small industry but maybe it could be broken up into different things. This has a minimum of 10 acres but he could see a small business on 1 or 5 acre. He has noticed over the years, as zoning changes, this will run with the land. A neighbor can be wonderful but the zoning will run with the land and the next neighbor may not be so nice. He is concerned that there is nothing in the Zoning Ordinance about breweries. Later on they should talk about brewery uses in an industrial zone.

Ms. Roberts indicated that makes her wonder whether he has specific concerns about this ordinance other than the specific applicant or developer relative to this ordinance?

Mr. Will felt a minimum of 10 acres is more suited to the present proposal rather than just making the Office Research district more workable. When they recently completed an amendment to the residential density incentive, they broke it up into different zones. He felt that approach may work here and they could have different ideas for 10 acres, 5- 10 acres or under 5 acres.

Mr. Hopley referenced in the Industrial table of the existing Zoning Ordinance there are three Districts – Industrial, Office Research and Waterfront Industrial. Is it the intent of this amendment to take the Office Research column where currently something is allowed by Special Exception, will then become permitted? Mr. Taintor responded that it is the intention as it is a controlled conditional use permit, with no obligation of the Planning Board to approve. Mr. Hopley urged the Planning Board members to look at the current Zoning Ordinance and look at the uses to see what uses they were inviting into the districts. Mr. Taintor stated that only the uses listed in D.2., on the draft on Page 2, are allowed, which would be industrial occupancy, warehousing, food processing or hotel or motel.

Mr. Taintor felt that by definition of a manufacturing use, a brewery was currently allowed in the Industrial district.

Mr. Coviello indicated that he did some work on Cape Cod where it was very expensive to live and they mixed residential with industrial to make it affordable to live there. He felt that met a lot of goals of the Master Plan. Mr. Holden indicated they have played with that but they do not feel this is the place or the model to consider it.

Mr. Taintor referenced minimum size. As they go through the Zoning Ordinance, they should have more flexibility in the Office Research and Industrial districts. 10 acres is still tough to create a campus so he feels the 10 acres is a reasonable minimum.

Mr. Hopley felt that by stipulating that this special provision doesn't kick in until you have 10 acres encourages a large building and with that comes uses you may not want in that large industrial building.

Councilor Dwyer stated that relates to a comment she wants to make relative to the purpose statement as that is the strongest part of this ordinance as they give a vision. She wonders if there are things they can do to address traffic and access concerns early on in the process. She doesn't see where they have addressed the purposes throughout the ordinance.

Chairman Ricci acknowledged a letter from Mary Ellen Maier, of Coolidge Drive, which was handed out to the Board members.

Deputy City Manager Hayden referred to the goal in the Master Plan to facilitate development in this district. She felt the neighborhoods provided good input and they need to consider that. She referred to the uses on page 2 of the draft and felt that 2(b) (Warehousing or distribution operation of non-flammable, non-hazardous materials) and 3(b) (Manufacturing of alcoholic and nonalcoholic beverages) conflict with each other. The neighbors had concerns about products being trucked in and being stored on site and concerns about whether they would be hazardous.

Mr. Coker stated his concern would go more towards odors from a brewery and he felt they had plenty of control in the Zoning Ordinance on that. He did have a concern with traffic. In response, Mr. Holden noted that the existing Smuttynose facility is next door to a residential neighborhood and the City has never had any complaints. But, these are things that need to be considered. Mr. Hopley felt the reason they may not have received any complaints from the existing location is the wind and trees. Chairman Ricci added that when the brewery at Pease is running and it's breezy, you can certainly smell it.

Mr. Coviello felt they might be getting too specific as there might be other sites that are good for a brewery and they seem to be centering in on one single thing. Mr. Coker felt it would be naïve of them not to discuss these things.

Mr. Will stated there are also goals in the Master Plan and he is concerned about decades down the line. How do they keep the conditions running when the "good neighbor" moves on? Mr. Holden stated that is why it's a conditional use permit. Mr. Will felt they are trying to work with one developer and maybe they should look at other ideas where another business would work at another site.

Mr. Coviello felt they were concerned with the restrictions when it abuts a residential district but they can work on an individual basis. He thinks this is a great ordinance.

Councilor Dwyer agreed that a lot of things have been thought out. She feels a lot of people are concerned with the impact of industrial uses that might occur in this district. Maybe they could just look at those uses to address mitigation of any negative impact and they should add to the list on page 4 that at preliminary site approval there are other things they will have to meet, such as traffic and hazardous materials. As it is conditional approval they could address it that way.

Mr. Holden referenced Longmeadow Road that was once zoned as Office Research and they looked at an incubator building. Maybe they could encourage something in Office Research to get their foot in the ground with shared secretarial costs, etc., which could cut the costs.

Vice Chairman Hejtmanek asked about the restriction against non-flammable and non-hazardous materials in warehousing but not in Industrial uses and he asked if the restriction should be there? Mr. Holden explained that they approached it by identifying hazardous uses by the building code. High hazard use (H1, H2) is not treated in the same manner. Mr. Hopley felt that was a point well taken. In Industrial occupancies you get into complex multiple uses in buildings and building and fire codes regulate those uses. It all depends on what is in the building and what quantity is in the building and there can be a broad range. Combustibles, irritants, corrosives, or chemicals that could cause physical or health hazards are regulated. The bigger the occupancy, the larger the quantity they need. They have them at Redhook and Lonza. Vice Chairman Hejtmanek pointed out that neither of those businesses are near residential areas.

Deputy City Manager Hayden indicated that the more she looks at this, she feels the concept of campus is great however the brewery may go away and they may end up with an undesirable use. They need to be careful about what they allow that they really don't mean to. She felt they need to take a closer look at this.

Mr. Will thought there should be a provision for when a residential neighbor also abuts the two lots as that seems to be their major concern. He doesn't believe they should kill it but they should take a closer look at it, especially next to a residential district.

Mr. Coker felt they have always been sensitive to the residents and he does not believe they will ever lose that sensitivity. They have the ability to extract guarantees from the developers.

Deputy City Manager Hayden suggested this is not quite ready and they have had a good discussion but feels they should have their consultant go back and study traffic and high hazardous items and neighbor concerns.

Councilor Dwyer agreed and wondered if they should flip the concept of permitted uses and list what can't be there. It is impossible to imagine all of the possibilities. They know what they want in terms of purpose and know what they don't want. Mr. Holden stated you can have several type of ordinances but in New Hampshire you can't mix up the type of ordinance you have. You can't list things you can't do and also list things that you can do. But, the way to get at it is to use the conditional use permit.

Chairman Ricci felt the Board should move to have staff continue to work on this and there was a general consensus of the Board.

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C. Outdoor Entertainment.

The Department distributed a handout to the Board. Mr. Holden reminded the Board members that this was an intent to regulate outdoor recreation used in the business districts and the industrial districts. The outdoor entertainment is aimed more towards the decks and struggling amateur musicians that are trying to get a gig somewhere. #21 in the original draft was aimed at a whole set of other uses. The one that has been consistently in the Zoning Ordinance and has allowed outdoor recreation on very large lots is #28. When the uses were expanded it was addressed in the Industrial District by #45 which was written in 1975.

He indicated that Staff recommends that they make a recommendation back to the City Council that this ordinance should be amended by striking #28 and #45 and leave #21 in place.

Chairman Ricci asked if they could have a half hour work session on this prior to their next Planning Board meeting? Mr. Holden agreed with that.

Mr. Coker asked what is the definition of outdoor entertainment and where is that definition contained. Mr. Holden responded that it is not in the ordinance per se. They have noise when it comes from air conditioning or if a new deck comes in they can regulate it. This arose from the Malibu Nightclub on Chevrolet Avenue. That was when they put in a restriction on any outdoor entertainment and it has nothing to do with outdoor recreation and everything to do with outdoor entertainment. For example, a deck that is not under these standards is the Ferry Landing, however, The Gas Light is under this ordinance.

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III. ADJOURNMENT

A motion to adjourn at 8:32 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 March 15, 2007.