

**MINUTES OF
JOINT WORK SESSION
PLANNING BOARD AND HISTORIC DISTRICT COMMISSION
PORTSMOUTH, NEW HAMPSHIRE**

CITY HALL, MUNICIPAL COMPLEX, 1 JUNKINS AVENUE

6:30 P.M.

AUGUST 1, 2013

MEMBERS PRESENT: Planning Board: John Ricci, Chairman; Anthony Blenkinsop, Vice Chairman; Nancy Novelline Clayburgh, City Council Representative; David Allen, Deputy City Manager; John Rice; William Gladhill; Karina Quintans; Colby Gamester; Richard Hopley, Elizabeth Moreau, Alternate and Jay Leduc, Alternate

Historic District Commission: Joseph Almeida, Chairman; Tracy Kozak, Vice Chairman; Esther Kennedy, City Council Representative; Richard Katz; John Wyckoff; George Melchior; Dan Rawling, Alternate and Reagan Ruedig, Alternate

MEMBERS EXCUSED: n/a

ALSO PRESENT: Rick Taintor, Planning Director; Nick Cracknell, Principal Planner

.....

I. WORK SESSION

A. The proposal by **Maplewood & Vaughan Holding Company, LLC, Owner**, for property located at **111 Maplewood Avenue**, to construct a 4-story mixed use building with commercial use on the 1st floor, 71 residential units on the 2nd – 4th floors, and parking spaces on the ground level. This proposal is currently the subject of applications to the Planning Board for Design Review and Site Plan Approval, and an application to the Historic District Commission for a Certificate of Approval. Said property is shown on Assessor Plan 124 as Lot 8 and lies within Central Business A, Historic, and Downtown Overlay Districts.

Planning Director, Rick Taintor said this was the first Planning Board Design Review consideration since the regulations were adopted in March, and because it had also been under review by the Historic District, it was recommended that the two boards meet together to discuss their overlapping jurisdictions.

Mr. Taintor did a PowerPoint on the Objectives of HDC, and the Site Plan Review Objectives, noting that some of them overlap with some differences. Generally the Planning Board looks two dimensionally at what is on the ground, while the HDC looks more holistically at how the building works within context; but both boards have a responsibility to preserve and enhance the historic and cultural character of the City.

Mr. Taintor said the term Design Review is from the State Statute, and it defines two types of pre-application phases. One is the Preliminary Conceptual Consultation Phase to review a basic concept to

identify any issues before it goes further in the process. He said no one had applied for a Preliminary Conceptual Consultation yet. The key difference between the Preliminary Conceptual Consultation and Design Review is that the Design Review is more specific with design and engineering. The key to getting a project vested from zoning changes is in following a specific sequence. A project proposal can be vested from a zoning change if the Public Hearing Notice for Design Review goes before the Planning Board before the notice of a public hearing for a zoning change goes to the City Council. This was adopted at the request of the development community.

Mr. Taintor said Lisa DeStefano, and the team for the Maplewood and Vaughn project came before the City Council to request a change to the regulations that would allow a developer to get a Planning Board public hearing, and become vested before any pending zoning changes went through. The Planning Board then adopted that change and adopted the Design Review process. It is not a building design review, but rather a more defined site plan review.

Councilor Nancy Novelline Clayburgh asked if the City Planning Department Staff or the Planning Board does the approving of the Conceptual Consultation phase. Mr. Taintor said both phases are non-binding, and there is no approval for either. The Conceptual Consultation phase is simply a process of review, which the Planning Board could refer to the Technical Advisory Board, but it would still need to get to the Planning Board at some point.

Building Inspector, Rick Hopley asked if the Conceptual Consultation phase vests a project, and Mr. Taintor said it does not. He said a project has to be at a certain level of development for Design Review to consider it for vesting, and a simple sketch used for the Preliminary Conceptual Consultations would not be adequate for Design Review.

HDC Chairman, Joe Almeida asked what happens to projects if approval takes a long time – would they have to wait it out? Mr. Taintor said according to State law, once a proposed zoning change has been advertised for a public hearing for the second reading at the City Council, then no building permit can be issued that does not conform to that proposed zoning change. In order for a project to move ahead, it would have to meet the existing zoning ordinance as well as the proposed zoning, such as the current height limit of 60' in Central Business B District, and the proposed zoning height limit of 45' or 3½ stories, whichever is less. Another option is for the HDC to grant a Conditional Use Permit request to allow them to build above the 45' limit; however, the Planning Board has not formally created the Conditional Use terms yet because they have to give the applicant the opportunity to develop in conformance with the proposed zoning. Chairman Almeida asked if they should behave as though the new height limit zoning had passed, and Mr. Taintor said yes, they should apply both the existing and the proposed zoning for any project that wants to go forward after the second reading of a public hearing at the City Council for proposed zoning change.

Councilor Ester Kennedy asked for clarification for the public's understanding that they were looking at the Conditional Use Permit. Mr. Taintor said they were doing two things - first, they were continuing the Planning Board's review of Design Review for 111 Maplewood proposal, and invited the HDC who were also involved with the project for quite awhile. Secondly, they would be looking at building height limitation and the process for a Conditional Use Permit, and would not actually be talking about the Conditional Use Permit application for 111 Maplewood because it was a work session.

Councilor Kennedy asked about the legal ramifications of two boards coming together for discussion at the same time, and if one board might influence another Board. Mr. Taintor said it was a work session

with no action taken, and it would be good to have communication between the two Boards so they both could fully understand the issues presented. There would be no legal issue as they were not having a formal public hearing.

Deputy City Manager, Dave Allen added that they were not specifically discussing the Conditional Use application for 111 or taking a vote, and they were already vested anyhow because their application was submitted prior to the new height ordinance proposal.

HDC Commissioner, Richard Katz asked if an HDC applicant proposed a building that exceeds 45' or three stories, could a majority of the HDC grant approval if they felt it was justified. Mr. Taintor said they could with a Conditional Use Permit, and they would discuss those conditions further during the second half of the meeting.

Mr. Taintor said the Planning Board had not seen the plans the HDC has seen. He displayed aerial and ground floor site plans of 111 Maplewood Avenue, at the former Portsmouth Herald building area. Principal Planner, Nick Cracknell said the HDC has had at least six work sessions and a couple of public hearings on the project. The building as shown on elevations was of a 4-story building or 3¾ depending on the top floor, which has sloped glazed windows with the intention of minimizing the volume and height of the building. The curved segment with 2-stories along Raynes and Maplewood Avenue would have a metal finish, and the rest would be brick, with a tower element on each end.

The second plan shown was from Vaughan Street to give sense of scale, and the third plan looked on the back of the building on Vaughan Street from the new parking lot. The parking area on the back would have a cover, and elevated deck with very few spaces opened to the sky. The Portsmouth Herald building is a two-story building, and the building looks taller as the grade drops from Maplewood Avenue to Vaughan Street.

The next elevation showed the area between the proposed building and the Portsmouth Herald building, and what it would look like with the existing 2½ story historic building on Maplewood Avenue. Mr. Cracknell said both boards had some question about the dumpster enclosure that was brought up in the TAC meeting whether trash would be removed by rolling totes onto the street weekly or if a trash removal truck would be allowed to pick up on site. Brick sidewalks would surround the entire site with brick walkways leading into the building. There would be many streetscape improvements to the entire area.

Mr. Taintor went on to discuss topics that TAC looks at that are different from what the Planning Board looks at when reviewing the same site. The applicant provides traffic studies for the City to review. They address issues like solid waste removal, especially for restaurant use, and try to determine how to get the dumpsters off the streets. They hope to reconstruct the easements at the intersection of Raynes and Maplewood as part of the overall development. There is also concern about drainage from the site going out to Green and Russell Streets by the RR tracks, and the DPW is reviewing and discussing the storm water and sewer infrastructure in street with the applicant. Another development on 233 Vaughan is moving forward, and they are trying to coordinate which utility upgrades would be done by the developers and which would be done by the City. As Mr. Cracknell pointed out, the land slopes down from Maplewood towards Vaughan and they are interested in how grade changes will affect drainage off the area. Also, the current 100-year flood plain is at the edge of the property, and they are concerned about rising sea levels and how that would affect development in the area. There is also 250' State Shoreland buffer cutting across the property so there will be some local and State permitting required.

Planning Board member, John Rice asked if the parking was underneath the building, and Mr. Taintor said it was. There would be a U shaped upper floor and a deck on the back of the second floor. The only parking spaces open to the sky would be six spaces in the rear.

Councilor Novelline Clayburgh asked if there would be enough spaces to accommodate uses in the building, and Mr. Taintor said the overall site provided just enough spaces for the residents in the building because zoning does not require commercial uses to provide parking spaces. The applicant said they would come up with a strategy to manage this so residents can use spaces during the evening and businesses during the day, but it is going to be a challenge.

Mr. Taintor said both boards share a number of issues such as height, overall building mass, scale in relation to surrounding development, pedestrian accommodations, open space, and long-range vision for the area. There have been six work session and a couple of HDC public hearings, and some informal TAC work sessions, and they are scheduled to come back at the end of August, but they are at the very beginning of the Planning Board discussions.

Mr. Taintor said he has always been concerned with letting applicants go to both boards at the same time, and letting one board get too far ahead of another board. The ability for an applicant to go through Design Review earlier in the process could be quite helpful to prevent issues and delays as have happened in the past, as was the case with the 233 Vaughn project which was approved by the HDC, but did not get through the Planning Board and had to go back to the HDC. However, it seemed like the Design Review process was not soon enough in that case considering they received variances from the BOA. From the applicant's point of view, it seemed unfair that a zoning change affected them; but it is State law that they had to go before the Planning Board for some kind of review before they could be vested, and that is the reason they are having continued discussions on the issue. Councilor Kennedy asked if the applicant for 111 Maplewood had been eligible for Design Review, and Mr. Taintor said they were as they filed for Design Review prior to posting of the proposed amendment.

Planning Board Alternate, Beth Moreau said she would like to hear how the project evolved through the HDC work sessions. Chairman Almeida said the first two times the proposal came before the Commission they had a very heavy agendas, it was late, and they had a limited amount of time for review, but the following work sessions were very involved and they touched on all of these issues. Chairman Almeida said he could not speak for all commissioners, but generally, the issue that gave them the most trouble was height, mass, and scale; and while they are not in unanimous agreement yet, most of their questions have been answered, and he believes there is a comfort level among most of the commissioners. In reviewing the scale, height, mass, and dimension requirements, they saw this project could have been built to the zero lot line in this zone. The maximum dimensions were 95% and they are now at 35%. They only required one variance regarding access to the parking lot in the rear, and the rest of the parking was within the limit.

HDC Commissioner, John Wyckoff said the initial building proposal had five stories with one continuous, rectangular mass divided by different materials so it looked like three or four different buildings, giving it a "PortWalkien" look. Mr. Wyckoff said he thought it was a good way to divide a big building, and would work on the PortWalk, but it could get repetitious, and they wanted to see a different look. Since then a section has been set back 25' from the lot line and the building has gone from five to four stories. The height, mass and scale was reduced by angling the fourth floor down, using darker materials, and adding a four story center entrance "tower". Some have said it has an

industrial look like a mill building, but it still looks like a very modern building. Additional discussions about the flat front retail space evolved into two projecting show case bays coming out three to four feet in the front. The building still has symmetry except for the rounded portion to soften the look as seen coming across from the causeway.

Chairman Almeida said they spent a lot of time on the pedestrian experience around the building. They referenced the proposal in context to the developments on Vaughan Street, and some left over single story buildings in the area that were to be taken down. They also looked closely at the parking garage on the Raynes Avenue side, which initially had vent cages looking in. They updated the design to extend the retail space further down Raynes Avenue, and it now includes window displays for visual interest to avoid a four story blank wall, or a wall with mechanical vents.

Chairman Ricci asked Mr. Taintor if he had drawings to show where the HDC started and where they are now. Mr. Taintor said he did not.

Councilor Kennedy said she found it interesting to see that the surrounding development was part of the shared issues, as she did not know the Planning Board had that purview. She said she had shared some pictures of the nearby cemetery with the HDC, noting that it is a very historic neighborhood with historic houses across the street. Members of the public contacted her with their concern that the massing and height may not be appropriate. She said they need to be careful and consider the nearby houses and surrounding neighborhood.

Planning Board member, William Gladhill pointed out that the criteria for Design Review criteria says the purpose is to “preserve and enhance historic and cultural character” during site plan review. Mr. Gladhill said he saw that as an overlap within HDC, but some of the Planning Board members have not felt this development preserves and enhances the historic and cultural character of the City. Mr. Gladhill asked if there would be more meetings to clarify the objectives and criteria to avoid asking developers to go back and forth between the two boards.

Mr. Taintor said it is important to identify issues that overlap, understand them, and address them earlier in the process, therefore would be helpful for the Planning Board and the HDC to get together sometimes to discuss development projects. The City’s point of view is to respond to developers to get their projects vested earlier, and the point of view from the State statute is to have the Planning Board review projects before they get too far. The statute is clear that the Planning Board Design Review is necessary for vesting. Chairman Ricci asked for clarification that applicants would have to request a public hearing, not a work session, and Mr. Taintor said that was correct.

Councilor Kennedy also asked for clarification that it is up to the developer to choose which board they want to go to first and that they can go to both at the same time. Mr. Taintor said that was correct, and they always could.

Mr. Taintor said the Design Review is non-binding and the vote of the Planning Board is not to say they approve the project, but just to say the Design Review is over and then the applicant can move forward with Site Review.

Mr. Katz asked how the Planning Board handles public comment. Chairman Ricci said they welcome public comment during public hearings, but they typically do not allow public comment during work sessions so they can stay on task. Chairman Ricci said they do however, make exceptions on occasion when a big question keeps coming up, and they allow developer to clarify the question for the public.

Mr. Katz said the HDC had a public hearing on this application and before the vote during public comment, one person said he got the feeling they had already made up their minds. Mr. Katz said they were in work sessions for over a year, but it was only when a plethora of applications appeared that a swelling of public opinion manifested itself. M. Katz went on to say that public comment used to be allowed during work sessions, and he thinks the public would feel more connected to the process if it was still allowed. Chairman Ricci agreed that they could allow it when appropriate. Mr. Katz said civic involvement can be messy and they often go into the wee hours of the night, but they have to contend with it, and be accommodating to the public. Chairman Ricci said public comment is encouraged at any public hearing that comes out of a work session. Mr. Katz said that is a problem when work sessions continue over the course of a year. By the time they get to public hearing for public comment, a project is pretty much set the way it is going to be and the discussion is almost over.

Mr. Taintor said it is a good point that the public would benefit from a formal invitation. The Planning Board tends to concentrate on public hearings, which are open to public comment, and work session are rare, but work sessions take up a huge amount of the Historic District Commission's time. He said he always felt it would be good to open a public hearing every couple of months to allow the public an opportunity to speak during work sessions that extended over several months.

Chairman Almeida said the HDC begged for public input for years. Only one person came to speak during two years on the PortWalk I & II projects, and possibly the Marriott. What was unique about this year was that they had never seen such a workload. This month they had 24 hearings, and over three meetings that lasted around six hours each, and they've had several six hour meetings that started early in the year. The idea that they could properly accommodate public comment would mean they would have to have ten hour work sessions, so they gave people as many opportunities to write letters in hopes they would be more to the point, instead of feeling rushed and nervous at the podium, so now the public is getting in the habit of writing letters. He said they received 60 letters on this project, so public comment became better and more efficient.

Councilor Novelline Clayburgh cited the example of changing the project to 45' or 3½ stories, and encouraging the developers to have a pitched roof rather than a flat roof to be in keeping with the houses across the street. She asked if they could be that specific in requiring a pitched roof. Chairman Ricci said that is more the HDC's jurisdiction. Chairman Almeida said the commissioners like different styles and are not always unified in their opinions. It is not as cut and dried as Planning Board or BOA. Chairman Ricci described the difference as the HDC debates beige, and the Planning Board debates black and white. Chairman Ricci said the HDC has a difficult job. Councilor Novelline Clayburgh said she saw amended plans to change from a flat roof to a pitched roof for the Connie Bean, and it look so much better now.

Councilor Kennedy said she wanted to continue with Mr. Katz' idea of allowing public input at an earlier stage. She said they need to determine at what point there is a timeline on projects that the HDC must hear, and when do they say they are full for the month they need to go to the next month. She said she knew they have been inundated with applications, but still believed there was time to hear each them. She said the biggest complaint she hears is that people do not get to speak until a project has already been in the works for nearly a year. Chairman Ricci said the Planning Board is procedural, with more public hearings and fewer work sessions, whereas the HDC is more passionate, and has more time consuming work sessions. Councilor Kennedy said perhaps it would be better to have the HDC meet with the City Council to discuss the matter.

Mr. Taintor said it might seem that the Planning Board has fewer and more concise meetings, but they also pre-screen applications through TAC for an initial staff review that sometimes gets extensive. The last phase of PortWalk had four work sessions, and four public hearings at TAC before it got to the Planning Board.

Mr. Rice said while they were discussing preserving historic and cultural character, and whether a building is or is not contributing to a sense of place, they had not mentioned that this building site had already been cleansed of its historic vestige. The Portsmouth Herald building was not respectful of the graveyard and across the street. The new Vaughan Street project leans toward a more modern architectural design, which may not be a bad direction for that block. Mr. Rice wondered if they had gone as far as they could go considering the environment it is in and it is an okay to move in a more vibrant direction.

HDC Commissioner, George Melchior said he passes through that area all the time, and was excited there would be a new development going in. However, he understood that abutters have issues that need to be addressed, and wondered if being open for so long, and concern for it not being open anymore had exacerbated the issues. He said he also wondered if there is City had standard schedules for projects, and how long the HDC was expected to spend on the project, which is one of the largest in the City. A lot of effort and time had been spent on the project, and wondered if the time had been exceeded.

Chairman Ricci said he felt the HDC does not have a timetable and it takes as long as it takes. Mr. Wyckoff said whether the HDC has their criteria in front of them, and whether they make approvals or not, it is still very subjective, and people will make personal judgments on their decisions. At this point, the HDC probably would not be looking at 111 Maplewood any more; they just need to hold a public hearing before passing it on to the Planning Board who will make changes no matter what the HDC does, as was the case with PortWalk. The HDC approved the building, but the Planning Board wanted to change the pedestrian experience, and it changed completely. Phase III is now larger than when they approved it. The single story on Maplewood became even smaller. Mr. Wyckoff said he was not criticizing, but it seemed like proposals should spend more time in front of Planning Board than before HDC.

Chairman Almeida said how much time they spend on a project varies. Up until recently, they gave a project as much time needed to get a project right. Some projects have had ten work sessions, however the Congress Street project only went through four work sessions. However, they know they could be more efficient in the work session process, and there have been discussions on time limits.

Mr. Melchior asked they thought it would help expedite things if projects went to the Planning Board first. Mr. Gladhill said the former Connie Bean Center went to the Planning Board first and he said he felt it should go to HDC first but the other members disagreed. Now the HDC is making changes that will change the Site Plan approval. Mr. Gladhill said some larger projects especially need to go back and forth between boards simultaneously rather than go before one board to completion, and then on to another board.

Mr. Rawling said he also thought the HDC members and applicants would benefit from stronger guidelines and standards for the HDC.

.....

B. The proposal to amend the Zoning Ordinance, Sections 10.531 (Table of Dimensional Standards – Business and Industrial Districts) and 10.535 (Exceptions to Dimensional Standards in the Central Business Districts). The proposed zoning amendment would (1) reduce the maximum structure height in the Central Business A and Central Business B districts to 45 feet or 3 stories, whichever is less; and (2) authorize the Historic District Commission to grant a conditional use permit to allow an increase in building height above the new height limit subject to specific conditions.

Chairman Ricci said it was determined at the last Planning Board meeting that they felt differently about the amendment than the Council did so the City Council referral to the Planning Board, and the Planning Board recommended amendment was included. The Planning Board felt it was the perfect time to discuss the changes with HDC, as well as the criteria for the HDC granting a Conditional Use Permit.

Mr. Taintor presented two handouts with the original referral from the City Council and the amended one from the Planning Board, as well as another handout with comments on the proposed zoning amendment from Carla Goodnight with CJ Architects, and Chris Erickson from Eport Properties. The City Council referral was in response to community concerns over the height of new buildings. It is not a new issue, in 1995 there was a proposal to reduce height in the CBA zone to a flat 40' and they amended the zoning ordinance to create set backs, and different levels of density for public benefit. They had a discussion last fall, which resulted in another amendment to change the height of buildings in the CBA and CBB Districts. Mr. Taintor said this would potentially be an interim measure in the Downtown core until Form-Based Zoning (FBZ) is adopted in December, which would replace the current proposal. However, the new height amendment would remain for some areas of CBA and parts of the CBB Districts that are outside of the FBZ areas, and there would need to be some thought given to those areas for the longer term, especially the Northern Tier.

The current building height standards of 60' were last changed in 1982, but the market did not start catching up until the last ten years beginning with the Hilton Garden Inn, and the Marriott PortWalk II and PortWalk III that started pushing up against those height limits. Except for Congress Street, most of the older historic buildings downtown are below 60' in height. The Form-Based Zoning study showed that an across the board "one size fits all" approach with a flat 50' in the CBA district and a flat 60' across the CBB district doesn't recognize the variations in the existing buildings downtown, and doesn't contribute toward preserving the historic character of the Downtown. Nearly all the properties within CBA and CBB are also in the Historic District, and the HDC is already dealing with height. The current default setting starts at 60' and gets pushed down lower, whereas this zoning amendment would allow them to start lower, and work up where appropriate. Older buildings usually have pitched roofs and new buildings are built with flat roofs to maximize space.

Mr. Taintor went through a presentation going through the Key points of the proposal that would reduce the "by-right" building height in the CBA and CBB districts to the lesser 45 feet or three stories. However, the HDC would have the authority to allow greater height with a Conditional Use Permit if the building will not be taller than surrounding buildings, or the increased height would provide significant and direct benefits to the City. The Planning Department staff recommended changes to allow 3½ stories to encourage a variety in rooflines so long as the building height does not exceed 50'/60', even with a Conditional Use Permit. The staff also recommends a clearer definition of "story" and "half story".

The Planning Board had two key questions during the initial discussion at the July 18, 2013, meeting. Firstly, should the height limit be the same in the CBA and CBB, or should the CBB limit remain the

same at 45' or go higher to 50'. Secondly, what significant and direct benefits should be considered for increased height? Some suggestions were off-street parking for the public, public open space, and exceptional design. Mr. Taintor said the matter had been referred to the Planning Board and they wanted to include the HDC, as they would be making these decisions under Conditional Use.

Chairman Ricci said this City Council referral request came before the Planning Board the previous month and they opted to postpone it until the August 15, 2013 meeting. Mr. Taintor said the City Council scheduled a public hearing on Monday, August 5, 2013, but postponed until their August 19, 2013 meeting pending receipt of the Planning Board recommendations.

Chairman Almeida said the sentence "provided that at least one of the following criteria apply" did not make sense to him, and he recommended they strike it completely because the conditions seemed weak and were clouding the issue. Chairman Ricci said the Planning Board had the exact same discussion. Planning Board Vice Chair Blenkinsop said there would be no standards if it were removed completely, and there would be nothing to guide them. Chairman Almeida said he did not think it was thought out well enough. Chairman Ricci said he struggled with whether it would be enforceable, and they were hoping to get some constructive suggestions. Chairman Almeida said the buildings causing controversy are much wider than they are tall with sites two to six acres. The height of these buildings requires a huge dissection from the HDC. They are not looking for more power over height, but rather are looking for more clarity. Chairman Ricci said they knew it is not perfect so were trying to get to a tiered approach, and would like constructive criticism.

Vice Chair, Anthony Blenkinsop said the reason the Planning Board postponed was to have a joint meeting with the HDC to determine what factors they would take into account if the HDC was allowed to grant a 10' or 15' height increase to a building. Chairman Almeida said the quality of the design and materials, whether the building engages pedestrians at the sidewalk level. Chairman Ricci asked him to define quality, and said they wanted to augment and implement a document that would give the HDC some authority.

HDC Commissioner, Dan Rawling said pass a height limit law rapidly would not achieve what needs to be done because the issues the HDC has been looking at have not been so much to do with height, but scaling elements as the buildings relate to the neighborhoods. He said they need to define what they want to see as part of language instead of number of feet to the height. For instance, taller buildings could have set backs based on street widths, and street lines. They could limit the number of buildings with flat roofs to encourage a more varied building type. Some of the qualifying elements to break up the scale of larger buildings would be to alternate flat and gable roofs, allow active uses on flat roofs like penthouses, roof gardens and roof decks, symbolic identity towers that would provide distinctions.

HDC Alternate Reagan Ruedig said she agreed with Chairman Almeida and Commissioner Rawling that they may not need the height restriction. She said the HDC spoke with the City Attorney, and were told they have the right to discuss and restrict height as part of mass and scale considerations. She said she understood the City Council and the Planning Board attempting to make the battle easier with developers, but as much as they would love more guidelines, the battle involves more than building height. She said there are so many different ways to determine appropriateness, building by building, and just as Form-Based Zoning was being studied, it would require than establishing a few sentences in the course of an evening.

Chairman Ricci said those were the kind of comments they needed to report to the City Council.

Chairman Almeida said they needed to be careful with the language because certain elements on buildings such as the steeple on the North Church would not be allowed. He said in general he was not against the idea of lowering the allowable height as long as the HDC still had the authority to grant an increase in the height because it would completely handicap the HDC if that lay with another commission. Chairman Ricci said that was the reason the Planning Board originally said the height for the CBA should be 45' or three stories because the CBB allowed 60' and they felt a gradual change would look better.

Mr. Katz said they had a discussion with the Planning Board some time ago on the direction the Northern Tier would take. They said they would explore new design considerations, they would loosen up the inner City criteria, and it would be an opportunity to expand. He said his reaction to this amendment was that it was precipitous and needed to be explored further. He said they needed to reexamine what they want the northern tier to be. If they considered the context of the cemetery and houses, then this site would be highly inappropriate. However, if they looked toward the riverside, they would see areas that would be expanded and this project would look completely appropriate. Mr. Katz said they should look at the context is and then draw the perimeters.

Mr. Wyckoff said he agreed with Mr. Katz. There seemed to be a perception of a problem by a limited amount of people, and it was poorly conceived ordinance that came out too fast. He said he thought they were in a good position with the way the zoning ordinance was and changes would cause a more work for all of them.

Chairman Ricci said he was initially under the impression that the HDC wanted some action taken, but they appeared to be comfortable with the 50' and 60' ordinance as it is so long as applicants are willing to work with them. The Planning Board just needed to know if it was broken and needed fixing or if they needed to leave it alone.

Mr. Cracknell said he had a slightly different perspective in his role as Planning staff to the HDC. He said most buildings in the CBB and CBA are well below 50' and 60', even on Congress Street, leaving Fleet Street and going toward Maplewood, but most of the buildings in Downtown are nowhere near that height. The question is if the people of Portsmouth want more 55' and 60' buildings finding their way into all the CBB and CBA neighborhoods. A footprint and volume issue has been brought before the City Council, the HDC and the Planning Board. Most of the Downtown development applications coming before the City in the last five years start at the maximum height, and the HDC is perpetually put on defense. It is difficult for the HDC to start out every project that high. He has not witnessed many buildings that have come down significantly in height in the last year or so. Most of the larger buildings such as 111 Maplewood Street, 175 Market St, 58 and 77 State Street, or 88 Wright Avenue are within 85 – 90% of theoretical height of the HDC and often surrounded by buildings that are significantly shorter. It has taken a year or more with many hours and months of meetings to get it right when a building needs to be significantly shorter and smaller. The HDC has been inundated with these applications, and have been holding at least three meetings a month for the last three to four months, late into the evening. It is not fair to anyone to hear an applicant at 11:00 at night.

Mr. Cracknell went on to say the criteria and standards for the ordinance that was written 30 years ago are just as vague as what they are putting forth tonight with this amendment. The question to be asked is if the status quo really works for Portsmouth. When considering Conditional Use, he said it would be helpful to look at elements such underground parking, which would be a huge benefit to the City if

a developer could afford to do it. They could consider other reasons like whether there is accessible parking, pocket parks, set backs for plazas that would benefit the public, or repurposing surface parking lots that were left from the Depression and Urban Renewal. Another consideration would be to consider mitigation strategies, and the economics of historic preservation, including views to the steeple or to the water. He said he felt it was worth seeing if there were ways to augment the language for standards and criteria for a Conditional Use Permit. He said sometimes it is hard to get it right with the language that is on the books, and he would like to work on making the language work and the process better to see if they could be more efficient, and perhaps only have twenty meetings a year instead of thirty.

Vice Chair Blenkinsop said he thought those comments were well made from a planning perspective, but rather than fight to get the height down, he wanted to know what factors the HDC would consider in determining if a building should be higher.

Mr. Katz said he disagreed with Mr. Cracknell. He said they signed up for the task and he felt this amendment should have more study rather than trying to make their job easier with dubious results. They needed to ask questions like what they would want the Northern Tier to look like, and what the economic ramifications of this amendment would be. Mr. Katz asked what they would do about the developers who already have plans and cannot make it work on 3½ stories and 45'. Could they be taken to court?

Mr. Gladhill said the amendment was not lowering building heights, it just asked what the benefits for a higher building would be. Mr. Katz asked how that was different from what they were already doing, and Mr. Gladhill said it was a more formal way of asking for justifications.

Chairman Almeida said what Mr. Cracknell said was said well. He appreciates that people think this language will help them and perhaps it would, but he feels the last sentence would hinder rather than help them.

Mr. Cracknell said they would need to re-write it to include criteria and standards. Chairman Almeida said of all things that are before the City, it is not acceptable to kick this around for another six months. If the goal is to get the HDC off the offensive on applications, then they should just scratch the problematic language, reword the criteria and standards as necessary, and move forward.

Mr. Wyckoff said this was the fifth amendment they have had in the past year, asked how many times they would rewrite zoning, and asked when Form-Based Zoning was coming.

Chairman Ricci said he was hearing them talk about problems with height, mass, and scale, and if the HDC wanted to do something about it, then he thought they should approach the issue methodically, but he said he didn't want the changes to have unintended consequences. He said the HDC is detailed and the Planning Board is thorough and that is what makes Portsmouth a well-managed and desirable place to be, but he did not want it to be an impediment.

HDC Vice Chair, Tracey Kozak said a moderate reduction in overall height would probably be fine in most areas because they do not have many 60' buildings in the central historic area, and it would take a few months off large applications. However, there would be a problem with not defining story height and a 3½-story limit, which would result in very tall floors. The floors in most of the historic district have shallow floors. She said the way the proposal set height restrictions from one place to another, for

example from Market Street down to Ceres Street, which is lower, would skew the overall appearance, and they need to be measured from street level.

Chairman Almeida said he wanted to make sure that the Planning Board knew the HDC understood that this amendment and meeting was to help them. Clearly, there is a problem about height for some people, and if adopting some of the proposed language could be used as a tool for the greater good of the City, then it would be best to accept it.

Chairman Ricci said their task tonight was to hear what the HDC issues were and everyone threw out some good examples. He said he did not want to rush it through, or drag it out, but felt they would all be in more agreement if they took another month.

Chairman Almeida asked his commissioners if they could come to a consensus about striking the conditions. Chairman Ricci said the Planning Board had talked about CBB going to form 45' or 3½ stories and wondered if 50' and four stories would be better so there would not be such a dramatic difference.

Councilor Kennedy said the amendment did not come from the HDC but rather came from the public that wanted to help the HDC. Many people are aware that there are buildings in these areas that are much smaller, in the 35' range. She said she is not fearful of odd building heights, but issues still need to be addressed, and she thought there should be conditions. However, this was the first time many of these ideas were put forward and she was not sure there was enough time for people to process them. She suggested they schedule another work session and bring in some written recommendations after taking some time to think about it more.

Chairman Ricci asked Mr. Taintor if there would be a way that Board members could funnel comments to the Planning Board so they can get a consensus to avoid a multitude of unproductive notes. Mr. Taintor said that made sense. However, he said they should discuss Councilor Kennedy's suggestion to hold another work session with the City Manager because there would be a scheduling issue since the next Planning Board meeting was scheduled on August 15, 2013, and the City Council meeting was scheduled for August 19, 2013. The longer they waited, the longer the 45', 3½ story limitation would be in effect so they wanted to move forward and get a formal vote at the August 18, City Council meeting. They could send their comments to Mr. Taintor or Mr. Cracknell to make a formal recommendation.

Chairman Ricci said they did not want to get in a reactionary mode and rush through, and said procedurally they could postpone their recommendations until their next meeting. Mr. Taintor said the Planning Board could postpone, but then the City Council would need to reschedule.

Mr. Gladhill said there was an application before the HDC in August that was asking for a Conditional Use Permit, and they would need to use the criteria and standards, so they would need to understand the language.

Ms. Moreau said she also wanted comments on height and stories as well as comments on conditions.

Vice Chair Blenkinsop said everyone needed to be very careful who they copy their comments to, and not run into any right to know issues. Chairman Ricci said they should send their comments directly to Mr. Taintor or Mr. Cracknell and not copy anyone else.

Mr. Wyckoff said they are asking for their opinion yet the majority of the HDC members said they were against it; but the debate continued, and they were asking Mr. Cracknell to write their thoughts out when he had already expressed his opinion as an employee of the City. He said he felt it would not matter what they said that it would pass through anyhow. Chairman Ricci said he vehemently disagreed, and if that were the case, they would have already approved it, and would not have asked for their input; but they did because they see the HDC as instrumental in what they are trying to accomplish in the City.

Vice Chair Blenkinsop said if any HDC member did not like the amendment, they should speak at the August 15, 2013 Planning Board public hearing. Regardless of whether they like the height limit or not, the Planning Board wanted to know what standards were important to the HDC.

Chairman Almeida said he did not want to postpone study it more, and wanted to get on with it. Mr. Ricci said they needed to give them the language that everyone could understand.

Ms. Ruedig said she would prefer language that is more flexible for HDC interpretation such as saying the HDC finds a feature “appropriate” or not. Mr. Ricci said they would need to define “appropriate”, and decide what they wanted to change or if they wanted to leave it alone.

Mr. Katz said he was against Condition #1 because it determined context in a very restrictive sense, and bred more problems, but he thought Condition #2 was workable. Chairman Almeida said he believed the majority of HDC members agreed that Condition #1 should be eliminated. Chairman Ricci said they were working their way back to Conditional Use terms. Mr. Gladhill said he thought the terms “significant and direct benefit” were vague in Condition #2, and standards should be defined better because there were conflicting ideas.

Chairman Ricci recommended listing examples such as pocket parks, pedestrian access, etc. Chairman Almeida said he did not have any problem with vagueness.

Vice Chair Blenkinsop said they might consider a statement that said something like “Within the CBA and CBB districts the HDC may grant a Conditional Use Permit above the maximum structure height of 50’ in the CBA and 60’ in the CBB only if the increased building height will minimize the impact of increased height in neighboring properties and will allow for the provision of significant and direct benefits to the historic and cultural character of the City as determined by the HDC. Such benefits the HDC shall consider but are not limited to...” things like provision of open space, parking, use of scaling elements, gabled roofs, etc. Vice Chair Blenkinsop said they may not all agree on them, but they should identify some issues that would potentially be important to the HDC from a design and historic perspective as a collective.

Mr. Katz said the special and defining character of surrounding properties that include architectural details, height, scale, and mass, facades, roofs, street frontage is already listed as criteria from the HDC ordinance.

Vice Chair Kozak said if they limited the amendment to one condition, then it would be important to make sure they are allowed to increase building height to mesh with surrounding properties.

Mr. Taintor encouraged them to send him their suggestions, and the Planning Department could prepare multiple examples of wording for a revised ordinance from which to choose.

Mr. Cracknell asked Vice Chair Blenkinsop to include the permanent protection of significant view corridors and the restoration or rehabilitation of significant structures.

Mr. Katz said that was contrary to established HDC practice because it has been said views are not protected, and he would hate to see the consequences of that. Mr. Wyckoff said ‘a view’ would depend on where you’re standing and how tall you are. Mr. Cracknell said it would not be used if the case could not be made, but would be an option for an applicant to offer a view easement. Chairman Ricci said all draft language would be reviewed by Legal.

Chairman Ricci said they could all submit suggestions for wording, but it sounded as if they could work with the height limits of 45’ and 3½ stories in CBA and 50’ in the CBB, strike Condition #1 and augment Condition #2. Chairman Ricci said it would be good to have something to support the HDC so the applicants would have to fight for what they want rather than the HDC doing all the fighting, and encouraged HDC members to come and speak at the next August 15, 2013 meeting.

Mr. Wyckoff asked if the City Council make a negative vote, and go through a public hearing for the new wording if the changes were accepted at the August 15, 2013 Planning Board meeting, and they recommended it to the City Council. Mr. Taintor said the Planning Board could recommend in favor of the amendment as referred or with amendments. There would still be plenty of opportunity for amendment. The City Council could then amend the ordinance at second reading public hearing. The public could speak and it could be amended again for a third reading. The City Council can also suspend the rules to amend the ordinance at third reading. Mr. Taintor asked them to send their comments to himself or Mr. Cracknell by August 8, 2013 so they could be incorporated into his recommendation to the Planning Board.

.....
Chairman Ricci announced an article on Portsmouth that was in the August 1, 2013 “NY Times” that was a testament to all the hard work the boards and the City Council does for the City

II. ADJOURNMENT

A motion to adjourn at 8:50 p.m. was made, seconded and passed unanimously.

Respectfully submitted,

Jane K. Kendall
Acting Secretary for the Planning Board

The Planning Board approved these minutes on August 15, 2013.