

MINUTES

**PLANNING BOARD
PORTSMOUTH, NEW HAMPSHIRE**

CITY HALL, MUNICIPAL COMPLEX, 1 JUNKINS AVENUE

7:00 P.M.

OCTOBER 31, 2013

MEMBERS PRESENT: John Ricci, Chairman; John Rice, Vice-Chairman; Nancy Novelline Clayburgh, City Council Representative; David Allen, Deputy City Manager; Richard Hopley, Building Inspector; William Gladhill; Colby Gamester; Elizabeth Moreau, Michael Barker and Jay Leduc, Alternate

MEMBERS EXCUSED: n/a

ALSO PRESENT: Rick Taintor, Planning Director

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I. OLD BUSINESS

A. Proposed amendments to the Zoning Ordinance to implement form-based zoning in the downtown area. The proposed amendments include:

- (1) Inserting a new Article 5A – Character Districts, as set forth in the draft ordinance consisting of proposed ordinance text (dated October 4, 2013), and proposed illustrations, maps and tables; and
- (2) Making conforming amendments to other sections of the Zoning Ordinance (dated October 3, 2013), including Sections 10.410 (Establishment and Purpose of Districts), 10.420 (District Location and Boundaries), 10.640 (Downtown Overlay District), 10.1230 (Sign Districts) and 10.1520 (Definitions – Terms with Specialized Applications).

(This item was postponed at the October 24, 2013, Planning Board meeting.)

The Chair read the item into the record. He explained that the public hearing had been closed and it was only Board discussion at this meeting.

Mr. Taintor stated that the Agenda refers to the previous version because this matter is continued from last week's meeting. He handed out a new revised version to the Board members. If the Board decides to move forward and recommend this to the City Council for adoption it would essentially be the same motion that was recommended in last week's staff Memo and just changing the date to October 31st and with whatever amendments they may propose. The second part, the conforming amendments, is unchanged. He also provided the Board members with a one page list of revisions that were made from last week. These revisions are based on comments by the City Council a week ago and the Planning Board public hearing last week, as well as comments from the members of the Planning Board and the HDC. The consultants have also done some grammatical corrections.

One type of changes are for clarification and consistency. They have completely re-written the first section of the text, not to make any substantive changes, but to address concerns that came up last week at the public hearing about the denseness of the text and how it was difficult to understand. They have re-written a lot of the language in an attempt to make it easier to understand. They tried to emphasize that the Character District Zoning supersedes zoning unless there is a conflict where the Zoning Ordinance would hold. There were questions about off street parking regulations, which continue to apply, however, the special requirements for building heights in the CBA and CBB districts do not apply. By cross reference they have tried to identify the key items that people were concerned about.

In terms of the Regulating Plan, there were some color issues that they have tried to adjust. They changed legends to be more consistent. They corrected the numbers about façade glazing and percentage of building frontage that has to be windows. There were some references in the yard type tables that were corrected. They corrected the map references for the frontage types. In response to comments of City Councilors and speakers last week, they added a maximum height in feet to match the minimum height in stories. They felt it was simpler to add the height in feet and it is mostly close to or below the current height limit. Big differences are the block on Congress from High Street to Fleet Street which is already largely above 45' and the Portwalk blocks that are being built now and will not change to be less than 60' so they are just reflecting reality. Otherwise everything is brought down below the 60' height limit that previously existed and most is below the 45' height limit. It varies from area to area, which is the point of Form Based Zoning.

In terms of civic spaces, there was another colored chart, 5A5120, which was a two page spread. Previously there were some minimal size requirements for all of these areas and they took away the minimum size requirement for many of them. Civil Buildings are primarily churches and there is a clarification that they are exempt from the dimensional standards. That is because a building like the North Church cannot comply with dimensional requirements around it. They also clarified that a change from one civil use to another can occur by right. Changed from a civil use to non-civic use requires a change in the Regulating Plan. Under Building Uses they are clarifying that uses for each Character District refer back to the Existing Use Table. They also took some definitions out of the definition section because they relate to Architectural Design Guidelines and one of the things is they have taken the Architectural Design Guidelines out of the text of the Ordinance and put them in a separate document.

There was an exemption from the maximum height of a floor for a mezzanine level and as they don't really have that mezzanine level in Portsmouth they took out the increase in floor height for the mezzanine. They added a provision to the maximum lot width to restrict building footprint to be no more than 10,000 s.f., which was an item that was raised last week at the public hearing. The 10,000 s.f. footprint really isn't meaningful in most cases because they also have the maximum lot width requirement so they would have to have a very long, narrow lot to get to the 10,000 s.f. but there is the possibility so they added this for a measure of comfort. They also added an exemption from that for shared parking with liner buildings.

In response to City Council concerns and speakers last week, they have created Interim Architectural Design Guidelines for the HDC to use when reviewing development. The HDC has requested funding from the City Council to actually go out and do a formal design guideline study, which is why these are being called interim. The HDC is scheduled to discuss this at their meeting on November 16th as this has been referred to them by the City Council.

Mr. Allen asked if they should have a motion prior to the Board's discussion. Chairman Ricci felt they should have discussion first to see if they want any changes.

Councilor Novelline Clayburgh was confused over the municipal districts and the building height. Mr. Taintor confirmed that the Municipal District is subject to its own dimensional standards which state that they are exempt from all height, dimensional and setback regulations.

Deputy City Manager Allen stated that he talked to the City Attorney about that issue and his comment was that a Zoning Ordinance is intended to protect the public good and that by its definition anything that gets done on a municipal property is in the hands of the City Council who, in theory, is protecting the public good. That is the over reaching philosophy behind that.

Mr. Hopley felt that Mr. Taintor and Mr. Cracknell had done a great job on the legal language revisions. He was stuck on the phrase "without limiting the foregoing". That was on Page 2 in the first two sections. Mr. Taintor explained that he was trying to make it as simple as possible. In each section there is a general sentence and a second sentence that leads into a specific list. They wanted to identify some specific provisions that have come up in discussions. He didn't want it to seem that if it wasn't listed, it wasn't covered. Mr. Hopley wasn't sure what it applied to. Mr. Taintor responded that it may be easier to say "such provisions that would not apply include, but are not limited to, ..." Mr. Barker felt that seemed more appropriate. Mr. Taintor stated he would revise it to read "Examples of provisions that shall not apply within the Character Based Zoning area include but are not limited to .."

Mr. Gladhill asked about the bottom of the legends page for the different stories where it says "Attic space with a gable or hop roof". He felt they probably meant to say hip roof. Also, regarding the Interim Architectural Design Guidelines on Page 2, where it read "The Commission may deny approval where proposed building or structure is inconsistent with these guidelines, objectives or the review criteria", he asked, if the HDC is only advisory, how can they deny a Certificate of Approval based on this. Mr. Taintor responded that the Commission can currently deny a Certificate of Approval based on whatever it feels like and this is trying to give some guidance to a denial. On Page 18 of the Ordinance, it says the HDC shall review the development plan for compliance with the guidelines. This is where they decide how far it is mandatory and how far it is advisory. Chairman Ricci liked "advisory" as a guideline. Mr. Gladhill felt that one sentence gives it teeth. Mr. Taintor asked Mr. Cracknell to address this issue.

Mr. Cracknell suggested inserting the word "and" for the word "or". The intent is that it is a composite as it is today. It is meant to be a combined assessment of a project before the HDC. They could add clarification at the end of the sentence to make it clear to the reader that the review criteria are in the Zoning Ordinance.

Mr. Hopley referred to the height graphic, 5A21B. Whenever there is a block that has more than one or two color coded heights, asked how that is accomplished if the block is all one building. Mr. Cracknell indicated that the answer is found on the map, 5A21B, and the footnotes on the lower right, which indicated that when your properties cover more than one building height area, you can go with the highest allocation. Mr. Hopley asked if the double ** start somewhere. Mr. Cracknell felt, in the past, it was supposed to be behind the word "areas" at the very top.

Deputy City Manager Allen referred to Page 6, under the Procedural Requirements, 10.5A31.13, which requires that construction of any new street or extension or change of the design or alignment of an existing street, and felt this may be an item that is part of a code where they are doing new subdivisions rather than an urban downtown area. Mr. Taintor believed this relates to new developments rather than the City because this would be the only place in the ordinance where the City would be required to go in and modify a regulating or a development plan, and Mr. Taintor felt it could be eliminated. Mr. Cracknell felt the spirit was looking at Portwalk and private ways with City easements. Mr. Taintor suggested adding "private streets". Deputy City Manager Allen asked if there was something that defined what standard they would be building it to. Mr. Cracknell felt that the Subdivision Regulations would prevail if all that was being done was a street. Mr. Taintor felt that was the issue because all of the examples he could think of would be caught by any of the other four items listed in the section. Mr. Cracknell agreed. Mr. Taintor felt they should just take it out.

Mr. Gamester asked if the HDC would still have the Conditional Use Permit. Mr. Taintor confirmed the Conditional Use Permit would no longer be within the boundaries of the Form Based Zoning district. If somebody wanted to exceed one of the height requirements, they would go to the BOA for a variance.

Mr. Gladhill followed that up with a question regarding the section that is 4 stories and the maximum height of 60' is not by right. He asked if the HDC could still ask that it be brought down lower than 60'. Mr. Taintor agreed but in this section they are actually saying what the City's policy is for that block. There would have to be a very strong problem with a design for that to happen because they are saying that this is the proper height for the area.

Councilor Novelline Clayburg asked if it was 60' on Congress Street because those buildings are already there. Mr. Taintor stated it was also, from a context point of view, that there is 120' of right of way separating the buildings so they can actually have a tall building and the tall buildings are historically sensitive. It would be improper to require a smaller building.

Ms. Moreau commented that a lot of the people that spoke last week were concerned they were rushing to do something and she felt they have spent a lot of time looking at what staff has done and by not moving forward they are putting the City at risk. Going forward, this will protect our downtown

Councilor Novelline Clayburgh was having some heartburn over the municipal area where there is no height limit. Chairman Ricci felt this was the least worrisome. They have a municipality governing itself and there would be public outrage if the City was going to build something with an appropriate height. He felt the City was probably regulated more than anybody. Ms. Moreau added that it has been that way for a very long time and so there is no reason to believe there would be any problems in the future.

Chairman Ricci felt staff has done a wonderful job. There is a lot of content but it reads very well.

Mr. Taintor pointed out that they have separated the graphics and the text to make it easier to edit. When they get to a point that they are close to finalizing, they will start merging them together so they don't have to move back and forth in the document.

Mr. Hopley made a motion to:

- A) Recommend that the Zoning Ordinance be amended, by inserting a new Article 5A – Character Districts, as set forth in the draft dated October 31, 2013, with the amendments that were discussed at this meeting by the Board:
- On Map 10.5A21B (Special Requirements: Specific Building Height Requirement Areas), insert “**” at the end of the title to refer to the second footnote, and change “Hop” to “Hip” in that footnote.
 - In Section 10.5A13.31, change “Without limiting the foregoing, the following provisions of the Zoning Ordinance shall not apply within the Character-Based Zoning Area:” to “Provisions of the Zoning Ordinance that do not apply within the Character-Based Zoning Area include, but are not limited to, the following:”
 - In Section 10.5A13.32, change “Without limiting the foregoing, the following provisions of the Zoning Ordinance shall apply within the Character-Based Zoning Area:” to “Provisions of the Zoning Ordinance that apply within the Character-Based Zoning Area include, but are not limited to, the following:”
 - Delete Section 10.5A31.13 (“Construction of any new street, or extension or change of the design or alignment of any existing street.”).
- B) Recommend that the Zoning Ordinance be amended as set forth in the document titled “Form-Based Zoning: Conforming Amendments to Other Sections of the Zoning Ordinance,” dated October 17, 2013.
- C) Recommend that the City Council adopt the “Interim Architectural Design Guidelines”, as set forth in the draft dated October 31, 2013.

Mr. Allen seconded the motion.

Mr. Rice referred to the height requirement on Congress St/Market Square, where 55 Congress Street is, on the other side of the street. He stated that building has always been considered oversized for the area, among other things, and the other buildings along that particular block are 2 – 2 ½ story buildings. There is a narrow dark corridor down the main drag of Portsmouth and they could possibly have a whole string of buildings that could be 60’ high where the only building currently that height is out of place and always has been out of place (55 Congress Street). He asked what their logic was regarding that. Mr. Taintor asked Mr. Cracknell to address that.

Mr. Cracknell stated that Congress Street has some of the most dramatic differences in building height, regardless of where you are. Even on the Worth block, with the YMCA building sticking up a full 1 ½ floors above the worth building, they have the other block from Chestnut to Fleet with the most variation. Based on the buildings that are out there and the process for removing them, the fact that those buildings are all classified as contributing structures unlike 55 Congress Street, and that fact that the HDC is a major fire wall regardless of what the map says, they would have to have permission to demolish them before they could even talk about the height of a new building. Thankfully, the HDC does not have a history of authorizing demolition of contributing structures. He doesn’t think as a community that the HDC has demonstrated that they do not highly respect focal and contributing buildings. They look at the existing context which is highly variable but at the same time they look at the street cross section and width, which is unlike anywhere else in downtown Portsmouth.

Mr. Taintor noted that was related to Mr. Gladhill's previous question. The HDC is unlikely to authorize demolition of those buildings but if they did, then their plan is to replace the low buildings with high buildings. They would require 4 story buildings and 2 ½ buildings would not be allowed.

Mr. Hopley asked if the legend representing the stories is intended to represent minimum. Mr. Taintor confirmed it is intended to be the target area.

Mr. Gamester proposed a change to the motion to add that the HDC retain their Conditional Use permit process for the Character Base District. If they are going to have numbers and feet at part of the Zoning Ordinance, then he would like the downtown Character Based District height to be regulated by the HDC, rather than the BOA. If they are talking about what they think is proper, block by block and street by street, the next property owner may think something is very appropriate for that spot and they are not necessarily going to need a hardship requirement but they will need something that will add more to that block.

Mr. Cracknell referred to the numbers shown on the map with the new maximum height numbers. He confirmed that the HDC is the permit granting authority today and, regardless of the Conditional Use Permit, before that was adopted in September the HDC was the governor of how much of the height allowance you could utilize on a property. It is no different in this ordinance as it sets the ceilings. The only time the BOA would be involved, like it is today, would be if they exceed these numbers.

Mr. Gamester was saying, for instance, across the street from Portwalk where the 2-story VFW building sits, if someone had a great plan for a 45' building, he felt the HDC should retain the recent power they were given to go above that 40' rather than have to go and discuss hardship before the BOA.

Mr. Taintor felt what is really important about this plan is, in order to do that, they have to amend the Form Based Zoning Regulating Plan and they would before the City Council to do so.

Mr. Gamester withdrew his proposed revision.

Mr. Gladhill, as the Planning Board Representative to the HDC, felt that the Interim Architectural Design Guidelines will help them shorten their work sessions. People can read this ahead of time and learn what to expect before the meeting.

Mr. Barker talked about more variability in height. He understood there was a lot of sensitivity about maximum height but he was unclear why they would require 4 stories in one district. Why not allow more variability in the fuchsia colored area like the downtown has now. .

Mr. Cracknell felt that the assumption was it was not the end of the world if different heights were allowed. The spirit of this is to take the existing focal and existing buildings and to keep those buildings so that the variability that already exists will continue to exist. The streets based on their configuration, width and focal point, are conducive to taller buildings and creating that uniformity over the next 100 years. Those lower buildings are likely to remain and there is no intention in this code to do anything to spawn demolition applications.

Mr. Barker asked if there is a clear vision to have all of the buildings the same height rather than different heights in the downtown district.

Mr. Cracknell agreed with that statement, for the specific block Mr. Barker was taking about. It is one of the few blocks from an urban design standpoint to support taller buildings. It is not the same throughout the district and there is a lot of variability, even in the 100 year plan, let alone coupling on top of that the existing conditions. They are confident variability will be here for the foreseeable future because of the HDC and the pride and recognition that the community has for those historic buildings.

A vote was taken and the motion passed unanimously.

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II. ADJOURNMENT

A motion to adjourn at 7:50 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 20, 2014.