

**PLANNING BOARD  
PORTSMOUTH, NEW HAMPSHIRE**

**EILEEN DONDERO FOLEY COUNCIL CHAMBERS  
CITY HALL, MUNICIPAL COMPLEX, 1 JUNKINS AVENUE**

**7:00 PM**

**June 22, 2023**

**MINUTES**

**MEMBERS PRESENT:** Rick Chellman, Chairman; Almeida, Facilities Manager; Beth Moreau, City Councilor; Members Greg Mahanna, Peter Harris, Jayne Begala and Andrew Samonas, Alternate

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**ALSO PRESENT:** Peter Stith, Planning Manager; Nick Cracknell, Principal Planner; Assistant City Attorney Jane Ferrini

**MEMBERS ABSENT:** Corey Clark, Vice-Chair; Karen Conard, City Manager; Members James Hewitt

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**SPECIAL MEETING 7:00 p.m.**  
*(Continued from June 15, 2023)*

Chairman Chellman called the meeting to order at 7:07 p.m. and stated that Mr. Samonas would sit in for Mr. Hewitt.

**I. PUBLIC HEARINGS – NEW BUSINESS**

- A. The Planning Board will consider a recommendation to City Council to adopt amendments to Chapter 10 – Article 5A – CHARACTER-BASED ZONING, Section 10.5A20, Regulating Plan, Subsection 10.5A21.10 Contents of Regulating Plan, Map 10.5A21B – Building Height Standards, Section 10.5A43.30 – Building and Story Heights, Subsection 10.5A43.33, Section 10.5A43.40 – Maximum Building Footprint, Subsections 10.5A43.41-44, and Section 10.5A45 – Community Spaces, Subsection Figures 10.5A45.10 Community Spaces, Section 10.5A46.20 – Requirements to Receive Incentives to the Development Standards, Subsections 10.5A46.21-22, and Article 15 – DEFINITIONS, Section 10.1530 – Terms of General Applicability, of the Ordinances of the City of Portsmouth.

Chairman Chellman read the recommendation into the record.

**SPEAKING TO THE APPLICATION**

Principal Planner Nick Cracknell was present to review the amendments that addressed the issues raised at the previous meeting.

[Video timestamp 9:31] Mr. Cracknell said there were concerns about the building footprint size, including the amount of workforce housing, the percentage, the minimum size of the unit, and whether the ordinance should more clearly reference the Master Plan. He said the community space types were also discussed that included three that were in the original amendment as well as shared streets and community buildings and related clerical issues. He said the in lieu payment for small projects was removed, which meant that projects like the Brick Market that now required 30 percent community space would only require 10 percent. He said each of the three incentives had requirements for workforce housing, noting that Section F for the first incentive for the large building footprint got deleted and was put back in.

[Timestamp 13:36] Mr. Cracknell said Chairman Chellman suggested a change to the municipal properties code, noting that in the past there has been confusion about whether the City land use boards had jurisdiction when the City owned a piece of property but leased it to a third party that may or may not be a government property. He said the RSA made it clear that the City's land use boards do have jurisdiction for a private use of a public property and that it may need to be amended. Chairman Chellman said the exclusion was for governmental use and, if the Board was in agreement with it, it would be a separate recommendation to the City Council from the other recommendations on Section 5.A. Mr. Cracknell said it might be a separate vote to send to the City Council to start the rezoning process and that it was outside the scope of what had been sent to the Board from the City Council. Chairman Chellman said it could be a split vote.

[Timestamp 15:42] Mr. Cracknell said a topic that was not discussed at the May 25 work session was that for projects with more than five dwelling units, at least ten percent of the property will be assigned as community space and the workforce housing requirements will be met. He said small projects with five or fewer units did not have to meet the workforce housing requirements. Ms. Begala noted that Part E in the Maximum Building Footprint section was added back in. She asked what the State law referred to in the sentence: 'For projects with over five dwelling units, at least 10 percent of the building units will be workforce housing units in compliance with State law'. Mr. Cracknell said it referred to workforce housing. It was further discussed. Ms. Begala said the original 800 square feet of workforce housing was now reduced to 600 square feet and thought it should remain at 800 square feet to meet a quality of life for a family of three or four. It was further discussed. Mr. Cracknell suggested 700 square feet due to the downtown economics and the impact on a developer to provide workforce housing. Chairman Chellman said he had suggested having two types of units, one for rental and one for sale.

[Timestamp 23:41] Mr. Mahanna said there were three incentives: one for building with underground parking, one for Overlay Districts, and one for parcels with one acre or more. He said the third incentive was missing in the section. He referred to the workhouse definition 'for a four-person household, five percent of any proposed for-rent dwelling use within development of at least two units, whichever is greater'. He said the term 'whichever is greater' was missing from Incentives 1 and 2. Mr. Cracknell said the difference between the first two incentives and the third was that the third required housing and workforce housing, and there was no opting out for a small project under five units. Mr. Mahanna said they should all match up because all three were definitions of the requirement and thought the term 'whichever is greater' should be common among all three.

*Mr. Mahanna moved to change the 600 square feet to 750 square foot, seconded by Ms. Begala. There was consensus among the Board, but no vote.*

Chairman Chellman said State law didn't regulate size but just specified qualifying income levels, which was what defined workforce housing. He said the units for sale and the units for rent were separate calculations based on median income levels. It was further discussed. Mr. Cracknell said the best solution in respect to the third scenario, the lots over one acre, was to strike the text that says 'or at least 3 units, whichever is greater' and 'or at least 2 units, whichever is greater' for consistency. It was decided that 750 square feet would be the first amendment to the first section. He suggested dealing with the rounding aspect by rounding up to the next whole number or rounding down if it was below .5. Mr. Cracknell said in Paragraph G, they decided to clearly reference the goals, objectives, and strategies of the Master Plan to help guide the Planning Board and the applicant to determine whether the CUP should be granted.

[Timestamp 29:55] Mr. Cracknell reviewed Part 2, Density Incentive within the Overlay Incentive Districts, and said the amendment on community space dealt with small projects of five units or less, as previously discussed. Ms. Begala asked about the section that allowed a lot to be located adjacent to or within 100 feet of a pond, brook or river. Mr. Cracknell said it meant that the lot owned the land within 100 feet of the North Mill Pond. He said the way the code was written and would remain with the amendment was that the community's preference on those lots that front on the pond was a greenway, and it was further discussed. He said halfway through that paragraph, the multi-use path would be allowed to be located within 50 feet of the waterfront. He said it was more focused on workforce housing and expanding the community space options than going into the wetland, which was a conversation for the Planning Board and the Conservation Commission. Chairman Chellman said the Planning Board would have a workshop with the Conservation Commission about it. Councilor Moreau said the topic of keeping buildings at least 10 feet away from the greenway was discussed at the previous meeting and asked if that should be added into the section. Mr. Cracknell said he would think about it. Mr. Cracknell said the 600 square feet in that section would be amended to 750 square feet to be consistent. Ms. Begala suggested stipulating the minimum width and maturity of the trees in the community space options. Mr. Cracknell said that would go through TAC and site plan review but that the tree size regulations could be amended. Mr. Samonas asked what type of consideration was involved if a property like 53 Green Street came back with a different development proposal that didn't include a greenway. Mr. Cracknell said it currently was an as-of-right increase in building height and was different because it was an incentive that was guaranteed and a developer's option. Mr. Cracknell said the phrase '50 feet of the waterfront' could be amended to have added to it 'at least 10 feet from the building'.

[Timestamp 40:44] Mr. Cracknell discussed the third incentive, the Density Incentive for Parcels over One Acre in Lot Area. He said there was a concern at the work session from the Board and the public about the language of a 50,000 sf building and that it would be removed from the amendment. He said the developer would have either the 20,000 sf or the 30,000 sf, and the 40,000 sf if they used the underground parking option. Referring to Mr. Mahanna's previous point, he said mixed-use buildings would be mandated to have workforce housing. He proposed striking out the phrases 'or at least 3 units or whichever is greater', and in the case of the rental, 'or at least 2 units or whichever is greater'. Ms. Begala said the additional story used to be 10

feet but was now 15 and asked why that extra five feet was needed. Mr. Cracknell explained that the mechanicals in buildings were different now and that the maximum building code for height sometimes didn't work for the size of the building and a possible mezzanine. It was further discussed. The public observation deck minimum of 500 square feet was also discussed. Mr. Cracknell suggested an amendment to the end of Section A by including a sentence that repeats the linkage to the Master Plan. Mr. Cracknell said the next step was to update the Master Plan and create specific plans for particular areas in Portsmouth to talk about specificity rather than goals and objectives. Chairman Chellman said CUPs gave the Planning Board a lot of discretion without additional guidance, and since the Master Plan was a Planning Board process by Statute, that was why the Planning Board could help enumerate what it would do with the discretion and how it would use it, which would require public input. He said when the Master Plan was done the last time, CUPs were a lot newer, but now the Planning Board knew that the Master Plan was more important. Mr. Cracknell summarized that the amendments to the section was the reference to the Master Plan, to clean up the 'lesser or greater than' for the workforce housing units, and to change 600 square feet to 750 square feet.

[Timestamp 53:52]. Mr. Cracknell said there were no changes to the building footprint section except that the language was reformulated. He said there would still be the 10-foot maximum for community space over street grade if it was on top of subsurface parking.

[Timestamp 54:42] The new community space types were addressed. Mr. Cracknell said more specificity to the pedestrian passages was added to deal with the minimum width -- eight feet if it's less than 75 feet long or twelve feet if it's longer than 75 feet -- and that it couldn't exceed 125 feet in length. He said the observation deck language wasn't amended but that Chairman Chellman changed the wording on the pedestrian arcade by adding the 10-ft width. Chairman Chellman said it would also be open to the adjacent sidewalk. It was further discussed.

[Timestamp 57:12] Mr. Cracknell said he and Chairman Chellman put some language together for a shared street. He said the term 'street' was changed to 'street space' but that it mattered more what got built and how it functioned. Chairman Chellman said they were trying to use a term that stayed away from the Statutes, regulations, subdivisions, and site plan zoning and thinking of something like the Vaughan Mall that one could drive on. Councilor Moreau suggested a multi-modal pathways instead so that they could include every form and have slow pedestrian speeds. Chairman Chellman suggested a multi-modal space. It was further discussed.

[Timestamp 1:06:35] Mr. Cracknell addressed a community space that wasn't discussed the previous week and said he was trying to figure out how something like a post office could find its way back downtown through an incentive. He said it was tricky because of things like apportioning the 'carrot to the stick' and asking if it was only a post office or if there were other uses commensurate with a post office. He said there was also the issue of a post office signing a lease for 20 years and then leaving in five years. He said Chairman Chellman's version was 60 percent for a post office's required community space. He said his version was 25 percent. He said it was something that needed to be further worked on. Chairman Chellman said there were two issues: the post office and the option for it to be another community building. The Board discussed examples of a community building, like a museum or a small police neighborhood substation. Mr. Cracknell said they would have to be reconciled because the code would be

giving up something to get them. Councilor Moreau said there was a lot of legality about private space as community space and how it was defined. She said the post office issue should be set aside and worked on over time instead of rushing it through. Ms. Begala said her vision was a community services NGO centralization building where people in need could get food stamps, dental care, and so on. Mr. Samonas said citizens would gather in the post office downtown and have interactions. He said the space could be half of the proposed 20,000 square feet. He said there could be workforce housing for the residential space but not quasi-subsidized commercial use and that it would be beneficial to tell the developers that those were the City's priorities so that they could tap into those resources to subsidize the leases that they would otherwise be forgetting. He said that would be more appealing than the incentive based use. Mr. Cracknell said it would be highly unlikely to have a 20,000 sf post office downtown and that the Planning Department would have the function of finding subsidies or directing people toward them.

[Timestamp 1:20:03] City Attorney Jane Ferrini said they were all great suggestions but that the Board needed to identify the terms. She said the post office could vacate and asked how that would relate to the benefit it received. She said another issue was that the building would have to be defined as well as its uses. She said the Board could create the definitions of 501(c)(3)'s, charitable uses under the Tax Exemption Statute. She said the definitions were important to show what they were and what criteria was needed to review or approve. She said an amendment could be made to the related paragraph or worked on more and that it was different than a pathway or alleyway because it was a building, structure, and use that had layered analysis involving credits and leases. She asked how the Board would modify that the organization keep their 501(c)(3) status and remain a charitable organization that needs review on a regular basis. She said the Legal Department discussed what they would like to see vetted before changing the language going forward. Chairman Chellman said Attorney Ferrini's point was a good one. He said the idea of reducing the 20,000 sf to 10,000 sf for the post office was fine.

[1:24:35] Chairman Chellman opened the public hearing.

### **First-time Speakers**

Elizabeth Bratter of 159 McDonough Street distributed packets to the Board. She said she preferred the term 'multi-modal way' instead of 'space' because she thought of it as a long row instead of a big open space. She said the building footprint stated that there should be a story underneath it, but she was sure that underground parking would no longer fit into that. She referred to Section 10.5A.43.43 for one-acre lots and said it indicated 10 percent workforce housing for three units for sale or rent and 50 percent community space, but in Section 10.5A.46.22 for the Overlay Districts, it stated that it was 20 percent workforce housing and 10 percent community space. She asked if the amount for workforce housing should be greater for the larger lot. She said she thought the density incentive in the Overlay District should be changed to at least 20 feet in width, with a multi-use path parallel to and located within 50 feet of the waterfront and with a 10-ft setback to adjacent buildings. She said the tree calipers should be four inches. She agreed that the 750 square feet should replace 600 square feet throughout. She said the community space for a post office should be a non-profit and scrutinized. She asked if a UPS store could be put in, noting that it was a community business. She suggested a minimum of

years that a community space could be leased or changed and having a dollar value assessed to it and thought there should be a City easement that would help keep the use.

Esther Kennedy of 41 Pickering Avenue asked if the Board was spot zoning. She said she appreciated that the square footage went from 50 to 40 percent but thought it was still the size of a Walmart and could go higher if there were incentives. She said she had a problem with what was a public benefit v. a builder's benefit. She said a garden on top of a building wasn't a public benefit if one couldn't get through Security. She said the discussions about buildings like the McIntyre should focus on what's best for the community and ecological systems. She said she wanted to hear that nothing would ever be built over 30,000 square feet downtown.

Paige Trace of 27 Hancock Street said the preventative measures for the McIntyre Building were almost a little too late and close to what one would consider spot zoning. She asked if it was being pushed through quickly before the McIntyre Building was sold. She said she was glad that the square footage was down to 40,000 square feet but said the minimum square footage for a Walmart was 40,000 square feet. She said the community plans that were part of the McIntyre Building went through at least two iterations that most people didn't know about, including a plan that had a first floor in one of the two buildings that was really two floors, which accounted for the 15-ft ceiling. She said the community plan should no longer be referred to when it came to the McIntyre Building because the building would be a private purchase. She said the community plan that was decided on through charettes was long gone. She agreed that 600 square feet was not a humane place to put a family of four in. She said a 501(c)(3) would exist ten years from now. She asked that the Board create an appropriate size for every one-acre parcel instead of being worried about things like a multi-modal path.

Bill Downey of 67 Bow Street (via Zoom) said his concern was regarding Mr. Hewitt's prior comments about equal benefit and felt that historically Portsmouth got the short end of the stick. He said pocket parks and alleyways behind buildings so that their footprints could be expanded didn't square with him and that he would like to see a better deal defined for Portsmouth's citizens. He said there seemed to be more amenities for the tenants than the public.

[Timestamp 1:46:20] Chairman Chellman said it wasn't spot zoning but a comprehensive amendment that affects multiple properties. He said the zoning applied in different ways because the properties were different sizes and could be recombined into different sizes and shapes. He said there were at least 20 parcels that the Board could address. He said the proposal to downzone someone's property had a whole set of criteria that could apply to notice requirements and so on that the Board had to consider. He said it could be part of the Master Plan process. He said he was concerned about the 45,000 sf building footprint because it tied into building coverage, which was a different definition. He said both had to be looked at in the downtown area and see what the Board and public thought, but graphics were needed to understand it.

[Timestamp 1:48:29] Chairman Chellman said they could advance the 5A amendments that the City Council brought to the Board some time ago and if they did, it could be the amendments discussed that evening with consensus. He said the Board had not achieved a consensus on the post office and the community building section and that they could consider just the post office or both the way they were, with the understanding that he and Mr. Cracknell would work on it

more before the Council meeting. He said another option was to continue it at a meeting the following week. Ms. Begala asked how the Board would limit the size of a building across all character districts, which would be actual zoning changes. She said she felt that the Master Plan should be revisited and would like to hear from a wider group of citizens about their vision for the City. She thought the Board should be looking at what the mechanisms would be to stop the level of massing and infill currently occurring, including doing the assessments required for a Master Plan revision and a possible Growth Maintenance Ordinance. It was further discussed.

[Timestamp 1:53:04] Mr. Mahanna said he was concerned about the downzoning analysis and thought the Board had not been given enough data about the various parcels that would be affected. He said he agreed with the public comment about the McIntyre Building but if that lot was downzoned, the City would get sued. He said it was one thing to say that 20 parcels would be affected but asked how many would be downzoned. He said the public community building was a great idea but needed more details. Chairman Chellman agreed but said the rest of it could be done with a formal recommendation provided that the details would be worked on before the July 10 City Council meeting. Attorney Ferrini said the Board wouldn't be able to work on that language, so technically it wouldn't be the Board's final recommendation. Chairman Chellman said it could be a concept recommendation with a follow-up by Mr. Cracknell and/or himself at the Council meeting to explain the details.

[Timestamp 1:55:48] Mr. Samonas said he was more concerned with the engineering or schematics of what a 30,000 sf, 40,000 sf, or 50,000 sf building would look like downtown. He said he didn't think anyone could pull that off schematically and conform to TAC and water runoff and lot cover ratios, etc. and still be within the guidelines. He said he ruled out a lot of sites where someone would have to break up the building and divide it or not build it that large. He said with incentives of 5,000 square feet of community space, passageways and so on, all those elements could not be incorporated into the development scheme while still maintaining a 40,000 sf building. Councilor Moreau said they were not downzoning any of what was presented and that the 30,000 and 40,000 sf was currently in the code, and to change that, they would have to do it in a separate process because it would have to be noticed and require a lot more data.

[Timestamp 1:58:51] Mr. Cracknell explained the building footprint and underground parking referred to in Section 10.1530 and said it was a story below grade, which meant that 50 percent of that story had to be below grade and was essentially a basement. He said the community space could sit on top of that. He said there was no downzoning involved and that the only change to the code from a developer's standpoint was shifting from an as-of-right scenario for the incentive in the case of the Overlay District and the large parcels. He said the large footprints already required a CUP, so there would be more balanced decision-making on the incentives by moving all three to the same level of a CUP. He further explained it.

[Timestamp 2:01:59] Chairman Chellman suggested advancing the proposal to the Council as amended that evening up to and including the post office section but removing the community building so it could be worked on more. Councilor Moreau agreed and said she would bring all the amendments to the Council meeting and let them know that a further recommendation of another space being worked on would be added at a later date. It was further discussed.

Chairman Chellman said the post office would be reduced to 10,000 square feet and include a percentage of community space. Mr. Samonas thought that figure should be reduced.

### **Second-Time Speakers**

Paige Trace of 17 Hancock Street said she thought the post office should revert to what was originally written and should be no more than 20,000 square feet. She said it should be the post office's purview as to what size and dimensions they might need.

Esther Kennedy of 41 Pickering Avenue said the updated document came out at 4:00 p.m. that day, which she thought was appalling because there was no opportunity to talk it through.

No one else spoke, and Chairman Chellman closed the public hearing.

### **DISCUSSION OF THE BOARD**

[Timestamp 2:07:00] Councilor Moreau said it was posted for the second reading at the City Council July 10 meeting, and if the City Attorney determined that any changes proposed were material, it would then go to the next City Council meeting, so there would possibly be two opportunities for a public hearing at the second reading. She said the post office percentage would be removed so that it could be worked on at the next meeting. Chairman Chellman said he preferred to keep the post office in. Mr. Samonas said he didn't understand why the UPS was in the public community building category because it was a quasi-government for profit business and a public use. Chairman Chellman said that, from an urban planning perspective, today's post offices were places of public gathering and the benefits of having a post office were many, so it was considered in many jurisdictions as a community or civic building. Councilor Moreau suggested that the public building/community space section be taken out completely so that the Board could start thinking about it as something that is either a government use or a non-profit use with public benefit as determined by the Planning Board. She said they could further define it. Chairman Chellman said that was the reason there were two sections; he said a post office was a specific thing and that they could separate it and work on the other part.

### **DECISION OF THE BOARD**

*Councilor Moreau moved that the Board recommend that the City Council look at Section 10.433, Buildings, Structures, and Land as amended on the first page of the Board's packet and schedule it for a first reading. Mr. Mahanna seconded.*

*The motion **passed** unanimously.*

*The Board voted to recommend approval of the zoning amendments to the City Council as amended, moved by Councilor Moreau and seconded by Mr. Mahanna. The motion **passed** unanimously.*

Ms. Begala said it was an opportunity for the Board to set up a special work session for some of the items in the long list that the Board put together, like the revision process for the Master Plan.



Chairman Chellman agreed and said he had been working on a Scope of Work for the Master Plan consultant that he would share with the Board the next time the issue was addressed.

*Mr. Mahanna moved that the Scope of Work for the Master Plan be included on the Board's July regular scheduled meeting. It was seconded by Ms. Begala. The motion **passed** unanimously.*

## **II. OTHER BUSINESS**

Mr. Cracknell said it was his last meeting with the Board because he had accepted another position, and he thanked the Board members for their support of him over the years. The Board thanked Mr. Cracknell for everything he had done and said he would be sorely missed.

## **III. ADJOURNMENT**

The meeting was adjourned at 9:30 p.m.

Respectfully submitted,

Joann Breault,  
Secretary for the Planning Board