

**PLANNING BOARD
PORTSMOUTH, NEW HAMPSHIRE**

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

6:00 PM

January 25, 2024

WORK SESSION

MEMBERS PRESENT: Rick Chellman, Chair; Greg Mahanna, Vice-Chair; Joseph Almeida, Facilities Manager; Beth Moreau, City Councilor; Members James Hewitt, Paul Giuliano, William Bowen, Alternate

ALSO PRESENT: Peter Stith, Planning Manager; John Denton, City Councilor

MEMBERS EXCUSED: Jayne Begala, City Manager Karen Conard, and Alternate Andrew Samonas

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Chair Chellman stated that Item B., Solar Panel Zoning Amendments, would take place at a future joint work session with the Historic District Commission.

I. CITY COUNCIL REFERRALS

A. EV Charging Station Zoning Amendments

[Timestamp 11:22] City Councilor Josh Denton said he was the Councilor who drafted the zoning amendment and was also the City Council representative on the Sustainability Committee. He said more and more people wanted to purchase electric vehicles but that it was highly dependent on whether they felt comfortable about how they could charge those vehicles. He said there were three levels of chargers. He said a Level 1 charger plugged into a wall socket, and a Level 2 charger charged into a charging station for 8-12 hours. He said Electrify America was an organization who came to Portsmouth in 2017 to install Level 3 chargers, which only took a half hour to charge a vehicle, at the local Walmart but were told by the City that the transformer would take up 2-3 parking spaces, which was too much space under the City's current ordinance. He said Portsmouth citizens with EV vehicles had to drive to Seabrook to use Level 3 chargers. He said Electrify America would soon install accessory EV chargers near the Kittery outlets, which the ordinance addressed. He said the ordinance also addressed primary use EV charging. He said a typical gas station made money either from their convenience store or their auto repair shop and the gas was just an accessory use. He said the City's ordinance covered residential and business EV Levels 1, 2 and 3 and accessory or primary uses. He said the amended ordinance would help citizens who wanted to install EV chargers and that he welcomed any feedback from the Board to go back to the City Council with.

[Timestamp 17:14] Mr. Hewitt said he was curious about the Planning Department's selection of zones where Level 3 was allowed. Mr. Denton said they were his selections and that he looked at a map because he knew the ordinance would go to the Planning Board. Vice-Chair Mahanna said that

was based on non-technical planning from a convenience point to make more sense to a lay person. Mr. Almeida asked if the current language in the ordinance required the installation of Level 3 chargers to go before the HDC because the illuminated transformers with advertising were structures. Chair Chellman agreed. Mr. Almeida asked if the Board was proposing to change that language. Chair Chellman said they had not defined Levels 1, 2 and 3 chargers but the definition of a service station including selling electricity, and if a Level 3 service station were to be placed on a street like Islington Street, it would be subject to the HDC's review. Mr. Owen asked what the factors were that would make the Board approve or deny where the Level 3 chargers would go and whether it was an interaction with housing. Chair Chellman said that was a technical issue. Mr. Denton said a benefit of it was not just for homeowners but also for tenants because most renters had no access to EV charging stations and there was little incentive for landlords to install them.

[Timestamp 22:35] At this point in the meeting, Effie Malley from the audience spoke and said she was on the Sustainability Committee. She said the Climate Action Plan would come out the following month and that transportation was a key part of reducing greenhouse gases and that electric vehicles played a crucial role. She said she drove her TESLA to Seabrook to charge it, which was time-consuming. She said the Planning Board had a responsibility to move the issue along and help those with electric vehicle drivers so that they didn't have to drive several miles away to charge vehicles. Mr. Hewitt asked if Seabrook was different than Kittery. Ms. Malley agreed and said the one in Kittery was Electrify America.

[Timestamp 24:40] Mr. Almeida asked why some of the language in the ordinance was struck and how it might be compensated another way. Chair Chellman said it was about principal and accessory uses. He said a principal use came from the primary use of a property that got its principal approval from the Planning Board if it was required, or just a building permit. He said most of the revenue for gas stations came not from the gasoline they sold but from a land use perspective that took up most of the site and generated the most activity. He said a property might have a large building that didn't get used much but had 500 trucks going in and out in the front, so the more active use would be considered principal than the more passive use in the back. He said an accessory dwelling was a building that was smaller than the main house. As an accessory use, he said Level 1 would involve putting a few plugs in the garage to plug the car in and should not need any permits other than meeting electric codes, and that Level 2 was the same thing as hooking up a dryer. He said the Board needed to discuss Level 3 and issues between accessory v. principal uses. Related to that, he said, was the difference between a special exception Conditional Use Permit and permitted uses v. non-permitted uses. Mr. Almeida asked why Section 10.8.70 struck out all that language. Mr. Stith said the section stated that 'there shall be no more than two 40-ft wide curb cuts or access points on an abutting street'. He said the ordinance allowed one driveway per lot but did not allow two new driveways without a variance. He said the Planning Board thought that was contradictory. He said the ordinance also did not allow any vehicles that weren't in operative condition on the site for more than 14 days. It was noted that several projects were approved for EV chargers that had not been built yet. Councilor Moreau said the Board had to be careful about changing the zoning for EV charger locations, especially Level 3s, because they could be destructive to a residential property.

[Timestamp 32:50] Mr. Giuliano said the principal uses of Levels 1, 2 and 3 were not defined yet. Chair Chellman said the way it was worded by saying that electric vehicle charging was a principal use would be for all three levels, and he had an issue with that, especially for Level 3. Councilor Moreau agreed and said there needed to be different uses for different levels. Chair Chellman said currently a special exception was needed for service stations and they could

include EV charging. Mr. Stith said it was only allowed in four zoning districts by special exception and not permitted anywhere else. Mr. Hewitt said if gas stations were making most of their money off the electricity, he could conceptually only see that a charging station for a principal use would likely be a Level 3 and the accessories would be Levels 1 and 2. He said it would be strange and didn't know if the Board would want a principal use with just Levels 1 and 2 because it would be a parking lot with a bunch of plugs and vehicles would sit there for a long time. Councilor Moreau said if EV charging stations were a principal use, she'd have a hard time permitting them where residential buildings were allowed without someone looking at it. She said Conditional Use Permits for Districts G1, G2, CD4L1, and MRB would be necessary. Chair Chellman said currently Zones GB, G1, Industrial, and BCD4 West could have service stations, and a project that needed a special exception would come before the Planning Board for site plan review but before the ZBA for a special exception. He said the NH Legislature recently gave other boards permission to do the same thing under a Conditional Use Permit, but some people felt it was better to go before one Board and one ordinance and others thought it was good to have the Planning Board and ZBA look at it with different sets of eyes. Councilor Moreau said a getting a variance was a higher hurdle than a Conditional Use Permit. Chair Chellman said an applicant had to show why their property was different than others in the zone in order to get a variance. He said a special exception was very much like a Conditional Use Permit except it wasn't granted by the Planning Board. He said if the Board was going to consider permitting more Level 3 principal uses, they might want to think about more service stations because they were functionally very similar. Councilor Moreau said there would have to be a buffer. Chair Chellman said that would be a Conditional Use Permit. He said Level 3 EV chargers hummed and were significant pieces of infrastructure.

[Timestamp 40:03] Chair Chellman said he did not see Levels 1 and 2 as a principal use anywhere and thought there was no reason to put those in the ordinance. As for accessory uses, he said he didn't see them as a problem. He said if the Board stated that Levels 1 and 2 could go anywhere as an accessory use and nowhere as a principal use, then that part of their work load was done. He said Section 11.9 would be changed to a Level 3.

[Timestamp 40:54] Mr. Almeida asked why a large housing development wouldn't want Level 3 chargers. Councilor Moreau said it was allowed as an accessory use to an apartment building or shopping center. Chair Chellman said that needed to be clarified and that it wouldn't cause problems with the residents unless the humming and shielding issues were taken care of. He said there should be criteria in the Conditional Use Permit that addresses noise. It was further discussed. Chair Chellman said the current technology was quiet and that they could add that specification in a regulation. Councilor Moreau said decibel levels could be approved.

[Timestamp 48:47] Mr. Giuliano asked if accessory uses for Level 3 stations would be prohibited in any of the mentioned zones. Chair Chellman said Level 3 might be considered similar to service stations as a Level 3, which was allowed in four zones by special exception, so if the Board followed that logic and said they could put the stations in those four zones via a Conditional Use Permit, they would come up with criteria. The issue of Level 3 stations in the SRB as a conditional use and whether they charged for the service was discussed. Councilor Moreau said she thought it depended on the property's size. Chair Chellman said the Board could put in a provision on the residential areas if there was a certain size or distance from the unit itself. He said he felt that Level 3 should be an accessory to other commercial uses, like Walmart and grocery stores. He said there were four zones where service stations were allowed by special exception and that the Board could stick with that same logic for principal uses. Several Board members agreed. Chair Chellman said they just had

to figure out the conditions, a few of which would be sound and screening, and he said there might be code issues as well due to high voltage.

Public Comment

[Timestamp 54:45] Elizabeth Bratter of 159 McDonough Street said the only thing about EV regulations that could currently be found in the ordinance was Chapter 7, Article 18, Parking Regulations. She said EV stations and solar could be added to the land use ordinances under Article 9, Special Uses. She said many of the charging stations in abutting neighborhoods were already in violation of Article 10.13.3220. She noted the different voltages, amps and costs of each level and said the cost factor often decided whether the buyer would want to install a Level 3 station. She asked if Portsmouth's infrastructure could handle Level 3 EV charging stations and suggested that Eversource or the DPW be consulted before doing any permitting. She said she spoke to the NH Department of Transportation and the NH Public Utilities Commission and discovered that there are no NH laws that have kept pace with the technology and it was mostly unregulated in NH, unlike Maine. She said she was told that NHDOT was working on fast-charging stations along major NH corridors. She said it was important to consider putting some ordinances in place to match what other cities had done. She said a Level 3 station could be placed near the edge of downtown and Level 2 stations could be installed in town but not too close to residences. She also suggested that the Board consider insulated fencing, security, internal or external lighting, and locations for Level 3 stations.

[Timestamp 1:1:35] Chair Chellman discussed the situation in Methuen where there were automated robot battery swap stations that took two hours to charge a vehicle. He said compatible batteries were necessary and that Methuen treated them the same as Level 3 chargers. He said the Board should think about it, and it was further discussed. Mr. Hewitt referred to the economics of the Level 3 charging stations and asked if Portsmouth or any town foresaw an explosion of it or if economics inhibited Level 3 stations. He said it was confusing why there were so few Level 3 stations. Chair Chellman said he thought it was economic because the issue wasn't only the charging station but also the maintenance. He said there might need to be additional subsidies to get the charging stations rolling. Councilor Moreau said the City was supposed to be getting funds for chargers and that it was at a very high cost. Chair Chellman said that brought them back to the accessory to get customers on site, as opposed to a principal where all one did was charge. He said some stations were in the middle of nowhere and that it would make sense to have them in conjunction with other uses instead of being isolated. The noise was discussed. Vice-Chair Mahanna said 45 decibels would be an appropriate level of noise for chargers. Chair Chellman said the Board had to find out if the chargers hummed only when they were operating or all the time. Vice-Chair Mahanna said there was a lack of regulation in New Hampshire for selling power and asked how a charger that had a credit card use instead of an app would be classified as a utility. He said another complicating factor was whether the electrical grid could handle all the Level 3 chargers. Chair Chellman said that could be addressed from a land use perspective if it was something that should be permitted.

[Timestamp 1:14:45] Chair Chellman said the accessory use issue was settled with Levels 1 and 2, meaning that there would be no principal use with Levels 1 and 2. He said the principal use for Level 3 with battery exchange would be the same where service stations were currently allowed. He asked whether a Conditional Use Permit should be required instead of a special exception. Vice-Chair Mahanna and Councilor Moreau said they preferred the Conditional Use Permit. Chair Chellman asked if they should change service stations to Conditional Use Permits at the same time to be consistent. Mr. Almeida said a gas station was vehicle-related, and if they're serving vehicles and they're simply keeping up with vehicle technology, he wondered if additional language had to be

considered. Chair Chellman said it was an accessory use and was already allowed. Chair Chellman asked if the Board wanted a Conditional Use Permit instead of a special exception for EV charging stations, which would mean Planning Board approval instead of the ZBA. The Board said they preferred a Conditional Use Permit. Chair Chellman said they would have to work on the conditions. Councilor Moreau said she would be careful about having Level 3 accessory uses in residential/mixed use areas. Chair Chellman said they should only be in commercial areas. Vice-Chair Mahanna said if it was next to a big mixed-use project, it should be placed at a distance. Chair Chellman asked how the Board would feel about it being in a parking structure downtown that wasn't municipal. Councilor Moreau said she thought it would still need a Conditional Use Permit.

[Timestamp 1:20:13] Referring to the comment about Pease in Section 10.450, Mr. Stith said the Planning Board should not propose any changes to the PDA uses because the PDA had to make that decision. He said the Council could make a recommendation to the PDA to consider adding Level 3 EV stations but that the PDA wouldn't want them as a principal use.

Chair Chellman said some progress was made and that there was some homework to do. He said he would schedule a date and time for a meeting with the HDC to discuss the solar panel amendments.

B. Solar Panel Zoning Amendments

The solar panel zoning amendments were postponed and will be discussed with the Historic District Commission at a future date.

II. ADJOURNMENT

The work session adjourned at 7:30 p.m.

Respectfully submitted,

Joann Breault
Planning Board Recording Secretary