Planning & Development Department

Tex Haeuser
Planning Director

To: Don Gerrish, Acting City Manager
City Council Members

From: Tex Haeuser, Planning Director

Cc: Planning Board Members, William Laidley, Chairman
Joshua Reny, Assistant City Manager and Economic Development Director
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Jim Katsiaficas, Esq.
Steve Puleo, Community Planner
Jim Thomas, City Assessor

Date: September 22, 2016

Re: **Comprehensive Recommendations Regarding Minimum Lot Sizes and Nonconforming Lots of Record**

Summary

This memo contains the following recommendations. Taken together, they would result in a more rational division between the classification of lots as conforming or nonconforming, and they would preserve an ability to build on nonconforming lots while tightening the requirements to do so. Fewer nonconforming lots will be allowed to be developed under the proposed amendments than is true today, and the degree of neighborhood compatibility will be improved.

1. Reduce the Residential A zone minimum lot size from 12,500 sf to 7,500 sf.
2. Create a new zone, Residential A-2, that keeps the existing minimum lot size of 12,500 sf for the A zone portion of the Country Gardens and Highland neighborhoods.
3. Leave the 20,000 sf minimum lot size Residential AA zone as is for the Stanwood Park and Highland neighborhoods.
4. Create a new zone for the Loveitt's Field and Ocean Street neighborhoods, Residential AA-1, that reduces the 20,000 sf minimum lot size to 12,500 sf.
5. Continue to use a maximum net residential density of 4 dwelling units per acre and a minimum area per family of 10,000 sf for the Residential A and AA zones and also for the new Residential A-2 and Residential AA-1 zones. At the same time, make explicit that maximum net residential density and minimum area per family are only applicable to new subdivisions.
6. Require all nonconforming lot applications to obtain Planning Board approval.
7. Prohibit basements for nonconforming lots in combined sewer areas.

8. Codify Planning Board authority to consider the existence of an abutting developed lot in the same ownership in reviewing nonconforming lot applications.
9. Require a 12-foot separation of new buildings on nonconforming lots from existing buildings.
10. Remove the ability to adjust lot lines in the development of nonconforming lots, even if doing so results in less nonconformity.
11. Prohibit easements for buildings or parking on abutting lots in the development of nonconforming lots.

Introduction

In connection with ongoing policy discussions regarding the construction of single-family homes on nonconforming lots of record, the City Council has requested, in addition to temporary, short-term actions, a comprehensive approach to improving nonconforming lots provisions in the Zoning Ordinance and better matching them with current realities and objectives of the City.

I previously have provided background information about the nonconforming lot provisions in Sec. 27-304, their evolution and history, issues related to how they are working, the fundamental problem caused by imposing minimum lot size requirements grossly larger than the sizes of lots in existing single-family neighborhoods, and the dilemma posed by the Thirlmere court case.[1] This memo addresses the minimum lot size situation and recommends a package of amendments that taken together would preserve the value of nonconforming lots of record for their owners while at the same time improving outcomes and providing more compatibility between infill homes and surrounding properties.

Comprehensive Plan on Lot Sizes

The need to review lot size regulations was addressed in the 2012 Comprehensive Plan. In the Land Use Goals and Policies section of the Plan, it says:

> The City's established residential neighborhoods are one of its major assets. These neighborhoods offer a range of residential environments and housing styles. Currently the City's zoning regulations make many of the lots and homes in these neighborhoods nonconforming with respect to lot sizes and setbacks due to outdated requirements.[2]

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[1] See: binder with information on nonconforming lot construction since 2007; May 18 memo on *Policies Related to the Treatment of Single-Family Residential Parcels that are Nonconforming with Respect to Lot Size*; PowerPoint *Nonconforming Lots Presentation 7-25-16*; and, August 26 *Planning Board Memo to City Council on Proposed Nonconforming Lots Amendments*.

[2] 2012 South Portland Comprehensive Plan Update, p. 6-8.

Similarly, under Issues and Implications, the Plan states:

> Most new single-family residential development in South Portland's Intown and Main Street areas has been on existing lots of 10,000 SF or less, which in many cases would be considered nonconforming if the lots did not already exist. The City should consider altering lot size and other dimensional requirements in these areas.[3]

There is support, therefore, in the Comprehensive Plan for re-examining the City's policies regarding minimum lot sizes and how they interact with the nonconforming lot provisions.

Revising Minimum Lot Sizes

The focus of the minimum lot size analysis is on the Residential AA and A zoning districts. These are the single-family zones with large minimum lot sizes (20,000 sf and 12,500 sf respectively); the other residential zones have minimum lot size requirements of 7,500 sf or less.

The approach to analyzing lot sizes was to use the City's Geographic Information System (GIS) to develop a map and spreadsheet of lots with single-family homes, by neighborhood. Thanks to work by City Assessor Jim Thomas (parcel data) and Community Planner Steve Puleo (GIS map), this resulted in the map of *South Portland Lots Containing Single-Family Homes*. In addition to the single-family home lots, this map has tables that compare the actual average (mean) and median lot sizes of single-family house lots, by neighborhood, as compared with the ordinance requirements.

From this point forward the analysis uses median lot sizes (equal number of lots above and below when the lots are ordered from smallest to largest) in order to reduce the influence that abnormally large or small parcels can have on the mean.

One can tell quickly from looking at these tables on the map that the actual, existing median lot size does not approach the 20,000 sf required for Residential AA in any neighborhood, and only in two neighborhoods do the median lot sizes approach or exceed the 12,500 sf minimum of the Residential A zone.

A close-up of a portion of the Thornton Heights neighborhood gives some insight into the size of lots in the established neighborhoods. In the graphic entitled *Example from Thornton Heights of Current Parcels (in Red) Compared with the Original Lots of Record (in Black)*, the existing (red) lot lines overlay lot lines from the 1945 Country Club Heights subdivision. Most of the lots in the subdivision are 30' x 100' or 3,000 sf, and it is apparent that many of the existing lots are made up of 2, 3, or 4 of these 3,000 sf lots. In other words, almost none of the existing parcels in this area of Thornton Heights consist of the 5 or more Country Club Heights

[3] 2012 South Portland Comprehensive Plan Update, p. L-8.

lots that would be needed to meet the neighborhood's Residential A zoning minimum lot size of 12,500 sf.

The next step in the analysis is represented by the table called *Summary of Median Lot Sizes, by Neighborhood and Zoning District, for Lots with Single-Family Homes*. The purpose of this table is to look beyond the median lot size by neighborhood to the median lot size for each neighborhood's portion of the Residential A and AA zones. In looking at the distribution of the zones, most of the City's neighborhoods have some Residential A zoning, four neighborhoods have both Residential A and AA zones, and one neighborhood, Loveitt's Field, has only the AA zoning.

What stood out to me from this table were the difference of the Country Gardens and Highland neighborhoods' Residential A median lot sizes from the others, on the one hand, and, among the Residential AA median lot sizes, the split between Highland and Stanwood Park (larger lot sizes) from Ocean Street and Loveitt's Field (smaller lot sizes).

These results led to the two-page table—*Existing and Proposed Residential A and AA Zones, Lot Sizes, and Density*. Based on the median lot sizes and their groupings, this table lays out the following recommendations:

1. Reduce the required minimum lot size in the Residential A zone from 12,500 sf to 7,500 sf. For the 11 neighborhoods affected by this change, the Residential A zone median lot sizes range from 5,999.9 sf in Pleasantdale to 8,505.9 sf in Meadowbrook. This is a tight range with 7,500 sf being very much in the middle.
2. Create a new zone, Residential A-2 (there already is a transitional A-1 zone along part of southern Highland Avenue), for the A zone portion of Country Gardens and Highland. This is necessary in order to keep the minimum lot size for the A zone in these two neighborhoods at 12,500 sf given that their median actual lot sizes are 12,420.2 and 13,418.4 respectively.
3. Create a new zone for Loveitt's Field and Ocean Street, Residential AA-1, in order to reduce the AA minimum lot size for these neighborhoods from 20,000 to 12,500 sf. In this case the spread of the existing median lot sizes is wider—from 8,386.5 sf for Loveitt's Field to13,568.0 sf for Ocean Street. It seemed better, however, to have a single zone with a somewhat wider spread than to further complicate the zoning map with separate zones for each neighborhood.
4. Leave as is the Residential AA zone in the other two neighborhoods, Highland and Stanwood Park, given that their median lot sizes of 20,943.1 sf and 24,641.7 sf are close to the 20,000 sf ordinance minimum.
5. For both the Residential A and AA zones (and the proposed A-2 and AA-1 zones), leave as is the maximum net residential density of 4 dwelling units per acre and the minimum

area per family of 10,000 sf. (These only apply in the AA zone to lots not on public sewer.) Assuming the recommendation below to make explicit that these standards only apply to new subdivisions (including cluster development) is adopted, keeping these values the same has no effect compared to the status quo. Logically, for the two instances above in which lot sizes are proposed to be reduced, there should be a corresponding decrease in the maximum density and minimum area per family requirements for new subdivisions. However, there are few opportunities for subdivisions left, so the point is mostly moot, and it may not be worth adding more changes to the Zoning Ordinance.

Effect of the Zone and Minimum Lot Size Changes

Making the changes described above, which in terms of the new zones is depicted in the *Existing and Proposed Residential A and AA Zoning Districts* map, would have the effect of bringing the required minimum lot sizes for the Residential A and AA zoning districts much closer to the actual sizes of lots with single-family homes in the various neighborhoods in which these zones are located. With the City now largely built out, this is an appropriate time for bringing these values into approximate equivalence. Doing so means that there will be fewer nonconforming lots—the proposed new minimum lot size for the Residential A zone of 7,500 sf compares with 7,359.9 sf for the Residential A zone median lot size across all neighborhoods and with 7,499.9 sf for the City-wide median lot size for all lots with single-family homes. There still will be nonconforming lots—after all, half the single-family lots in the City are less than 7,500 sf in size—and there, therefore, will still be a need for the additional changes to the nonconforming lot provisions described below. But with these zoning amendments there at least will be a better fit between the lot sizes required by ordinance and the sizes of lots found in any given neighborhood, and there will be more confidence that arbitrary rules aren't in use that artificially classify lots that are typical of a neighborhood as being substandard and ineligible for full land use rights.

Recommendations for Revising the Nonconforming Lot Provisions

In addition to the zoning districts and minimum lot size changes, the following amendments to the nonconforming lots provisions of the Zoning Ordinance (Sec. 27-304) are recommended:

1. Extend the requirements for Planning Board review under Sec. 27-304(g) to all nonconforming lot applications. (Currently this only applies to lots with less than 5,000 sf or with less than 50 feet of frontage.) This will bring greater scrutiny to bear on stormwater runoff, compatibility with the surrounding neighborhood, and similar matters. It also will ensure that residents in the neighborhood get a chance to come to a public hearing to air their views and help educate the Board about the neighborhood and the factors that should be considered in applying the compatibility tests. The substantial costs to prepare a Planning Board application and to go through a public hearing are

outweighed by the need to ensure a good fit of homes on nonconforming lots with their neighbors.

2. Prohibit homes being proposed for nonconforming lots in combined sewer areas from having basements. The safety valve of tying into the City's stormwater system doesn't exist in combined sewer areas, so preventing homes in these areas from needing sump pumps that potentially could tap into the water table can be accomplished by having the homes be built on slabs without basements.
3. In the case of a nonconforming lot abutting a developed lot in the same ownership, make clear that the Planning Board has authority, similar to its authority in subdivision review, to take the existence of the developed lot into consideration as well as the lot for which an application has been filed. This can help, for example, in ensuring that a proper stormwater plan is created for both lots.
4. Make explicit that the maximum net residential density and minimum area per family standards are applicable only to new subdivisions (including cluster subdivisions). As has been described previously, these standards were never meant or understood by the lawmakers who created them, or by the staff who enforce them, to be applicable to nonconforming lots and would almost entirely negate the ability to build on nonconforming lots if imposed. This is one of those situations where we really can't have it both ways: if the City is going to continue in some fashion to allow the construction of single-family homes on nonconforming lots, we can't also require the lots to meet a density limit based on the conforming lot size standard.
5. Add the 12-foot minimum distance between new and existing principal buildings that currently applies in the G zone to the A and AA zones as well. In this case, however, make the distance requirement applicable to accessory structures—like garages—as well as to the principal dwellings. This is to prevent the few unfortunate situations that have occurred in which a new house on a nonconforming lot meets the zoning setbacks but the existing home of the abutting property in common ownership is left with less than the minimum side yard setback and is too close to the new building.
6. Remove the current ability to adjust lot lines of nonconforming lots of record when doing so results in a less nonconforming situation. This means that applicants will have to make do with the current arrangement of lots and lot lines and will not be able to adjust lines to achieve a greater number of homes. In some limited cases, due to the configuration of existing development on abutting nonconforming lots, this will prevent the ability to build a home on a nonconforming lot that would otherwise have been allowed under current rules. The reason for this suggestion is that it sometimes is very difficult to determine whether a revision of lot lines has in fact made a series of lots less nonconforming.

7. For undeveloped nonconforming lots abutting developed lots in common ownership, prohibit the ability of either lot to have an easement on the other lot for a building and/or for a driveway and parking. Each lot should be able to stand on its own in this regard.

Conclusion

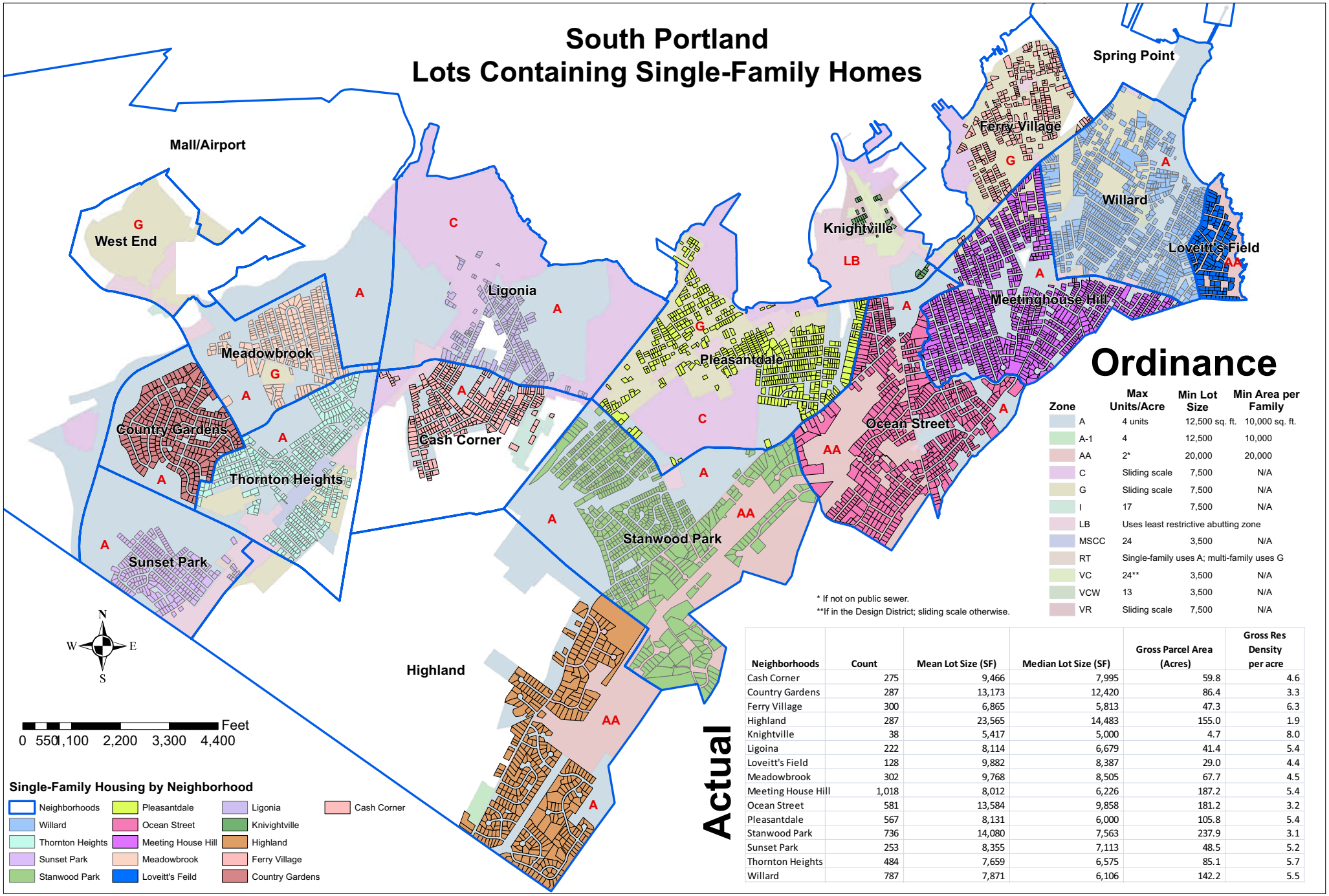
One observation from a resident that has stuck with me came after the resident observed a Planning Board hearing on a sub-5,000 sf nonconforming lot application and compared it with the construction of a home on a nonconforming lot that was larger than 5,000 sf and that didn't have to have Planning Board review. The resident was fairly amazed by how thorough and meticulous the Planning Board was in going over the application in front of them in contrast with the absence of any of that review, other than a drainage plan, for the larger lot. With this in mind, the package of recommended changes to zoning districts, lot sizes, and nonconforming lot provision, if adopted, would bring the minimum lot size requirements into synch with actual neighborhood single-family home lot sizes, would extend the benefits of Planning Board hearings and reviews to all nonconforming lot applications, and would clean up a number of loopholes and contradictions that experience has made apparent.

Thank you.

Attachments

1. Map: *South Portland Lots Containing Single-Family Homes*.
2. Graphic: *Example from Thornton Heights of Current Parcels (in Red) Compared with the Original Lots of Record (in Black)*.
3. Table: *Summary of Median Lot Sizes, by Neighborhood and Zoning District, for Lots with Single-Family Homes*.
4. Table: *Existing and Proposed Residential A and AA Zones, Lot Sizes, and Density*.
5. Map: *Existing and Proposed Residential A and AA Zoning Districts.*

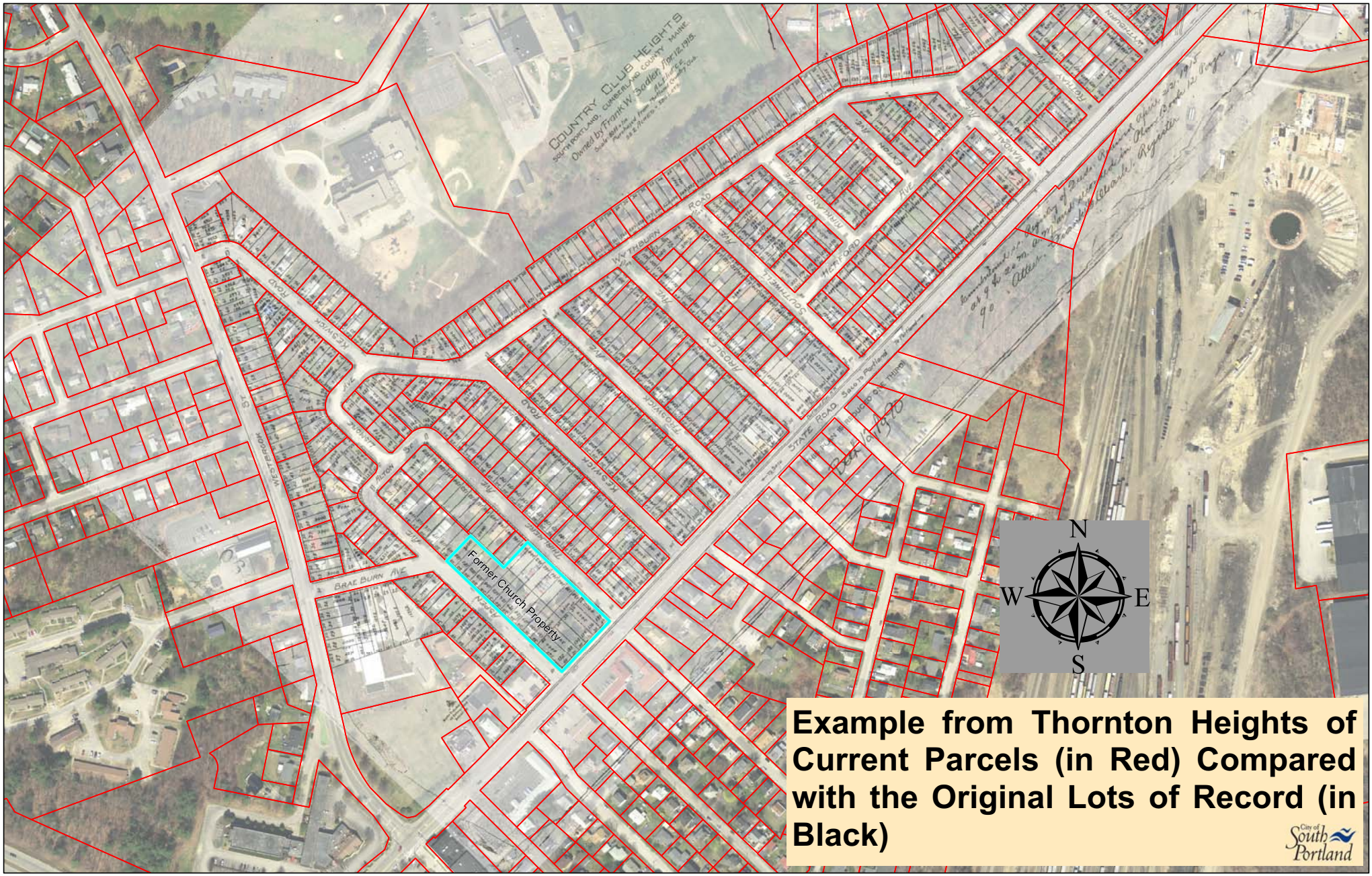
South Portland
Lots Containing Single-Family Homes



Zone	Max Units/Acre	Min Lot Size	Min Area per Family
A	4 units	12,500 sq. ft.	10,000 sq. ft.
A-1	4	12,500	10,000
AA	2*	20,000	20,000
C	Sliding scale	7,500	N/A
G	Sliding scale	7,500	N/A
I	17	7,500	N/A
LB	Uses least restrictive abutting zone		
MSCC	24	3,500	N/A
RT	Single-family uses A; multi-family uses G		
VC	24**	3,500	N/A
VCW	13	3,500	N/A
VR	Sliding scale	7,500	N/A

* If not on public sewer.
**If in the Design District; sliding scale otherwise.

Neighborhoods	Count	Mean Lot Size (SF)	Median Lot Size (SF)	Gross Parcel Area (Acres)	Gross Res Density per acre
Cash Corner	275	9,466	7,995	59.8	4.6
Country Gardens	287	13,173	12,420	86.4	3.3
Ferry Village	300	6,865	5,813	47.3	6.3
Highland	287	23,565	14,483	155.0	1.9
Knightville	38	5,417	5,000	4.7	8.0
Ligoina	222	8,114	6,679	41.4	5.4
Loveitt's Field	128	9,882	8,387	29.0	4.4
Meadowbrook	302	9,768	8,505	67.7	4.5
Meeting House Hill	1,018	8,012	6,226	187.2	5.4
Ocean Street	581	13,584	9,858	181.2	3.2
Pleasantdale	567	8,131	6,000	105.8	5.4
Stanwood Park	736	14,080	7,563	237.9	3.1
Sunset Park	253	8,355	7,113	48.5	5.2
Thornton Heights	484	7,659	6,575	85.1	5.7
Willard	787	7,871	6,106	142.2	5.5



Example from Thornton Heights of Current Parcels (in Red) Compared with the Original Lots of Record (in Black)

City of South Portland

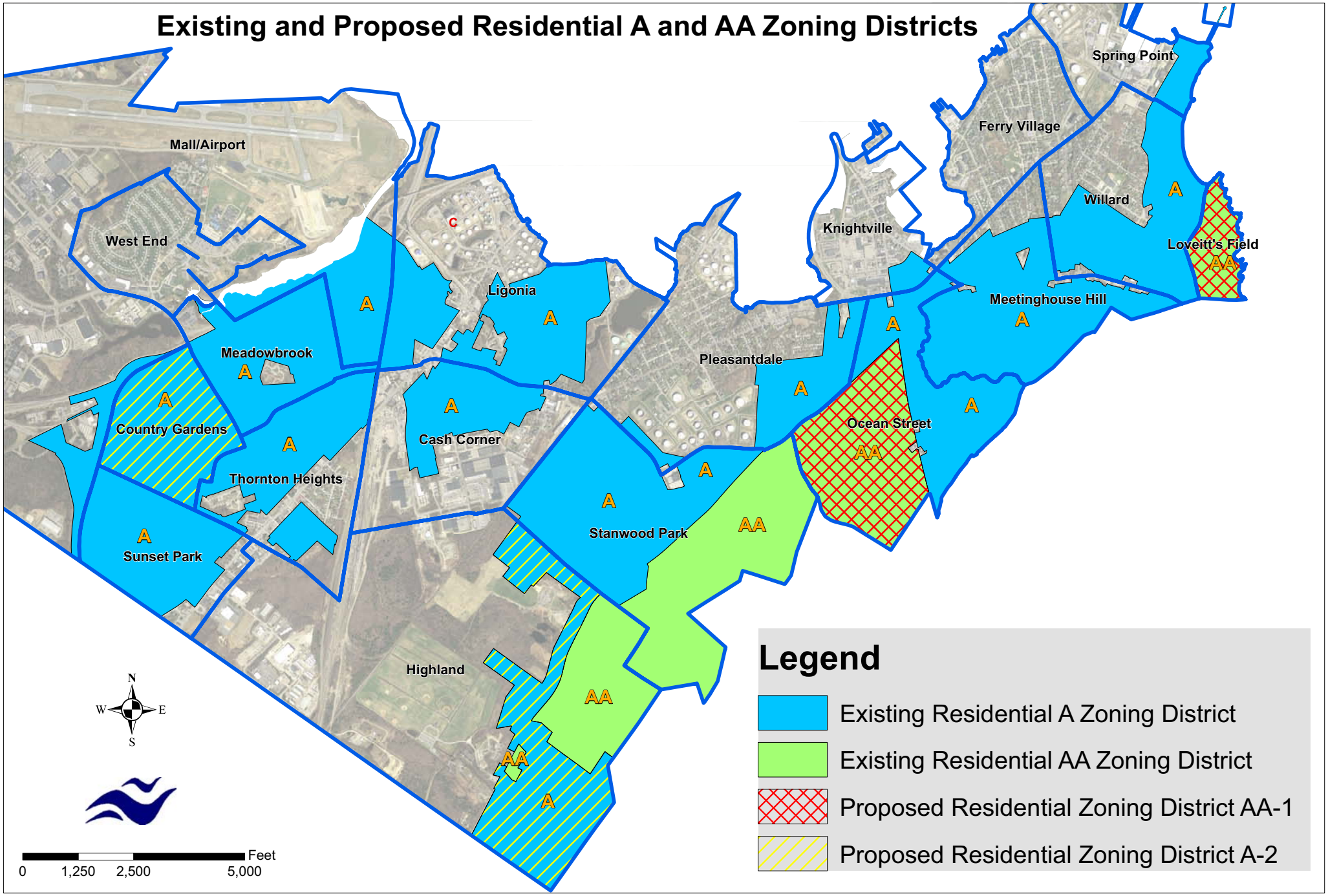
Summary of Median Lot Sizes, by Neighborhood and Zoning District, for Lots with Single-Family Homes

Neighborhood	Res A Zone Median Lot Size	Res AA Zone Median Lot Size	All Zones Median Lot Size for Lots with SF Homes
Sunset Park	7,086.9	N/A	
Country Gardens	12,420.2	N/A	
Meadowbrook	8,505.9	N/A	
Thornton Heights	6,807.5	N/A	
Ligonia	6,700.0	N/A	
Cash Corner	7,990.3	N/A	
Highland	13,418.4	20,943.1	
Stanwood Park	6,913.4	24,641.7	
Pleasantdale	5,999.9	N/A	
Knightville	7,588.7	N/A	
Ocean Street	7,882.7	13,568.0	
Meetinghouse Hill	6,160.7	N/A	
Willard	6,007.2	N/A	
Loveitt's Field	N/A	8,386.5	
Overall Res A Zone Median Lot Size	7,359.9		
Overall Res AA Zone Median Lot Size		16,580.5	
Overall Median Lot Size for All Lots with SF Homes			7,499.98

Existing and Proposed Residential A and AA Zones, Lot Sizes, and Density

Residential A Zone					
Neighborhoods with Residential A Zoning	**Existing Median Lot Size (sf)**	**Proposed Minimum Lot Size**	**Proposed Maximum Net Residential Density**	**Proposed Minimum Area per Family**	**Zoning District**
			(Exclusively for new subdivisions)	(Exclusively for new subdivisions)	
	Overall = 7,359.9 sf	Current = 12,500 sf	Current = 4 units per acre	Current = 10,000 sf per family	
Pleasantdale	**5,999.9**	**7,500 sf**	**4 units / acre**	**10,000 sf / family**	**Continues as the Residential A zoning district the same as currently shown on the Zoning Map and with the same standards except for the minimum lot size as shown here.**
Willard	**6,007.2**				
Meetinghouse Hill	**6,160.7**				
Ligonia	**6,700.0**				
Thornton Heights	**6,807.5**				
Stanwood Park	**6,913.4**				
Sunset Park	**7,086.9**				
Knightville	**7,588.7**				
Ocean Street	**7,882.7**				
Cash Corner	**7,990.3**				
Meadowbrook	**8,505.9**				
Country Gardens	**12,420.2**	**12,500 sf**	**4 units / acre**	**10,000 sf / family**	**Changes to a new zoning district -- Residential A-2 -- but keeps all its current standards, including the current minimum lot size.**
Highland	**13,418.4**				

Existing and Proposed Residential A and AA Zones, Lot Sizes, and Density

Residential AA Zone					
Neighborhoods with Residential AA Zoning	**Existing Median Lot Size (sf)**	**Proposed Minimum Lot Size**	**Proposed Maximum Net Residential Density**	**Proposed Minimum Area per Family**	**Zoning District**
			(Exclusively for new subdivisions)	(Exclusively for new subdivisions)	
	Overall = 16,580 sf	Current = 20,000 sf	Current = 2 units per acre (if not on public sewer)	Current = 20,000 sf per family	
Loveitt's Field	**8,386.5**	**12,500 sf**	**2 units per acre (if not on public sewer)**	**20,000 sf per family**	**Changes to a new zoning district -- AA-1 -- with the only change being to the minimum lot size.**
Ocean Street	**13,568.0**				
Highland	**20,943.1**	**20,000 sf**	**2 units per acre (if not on public sewer)**	**20,000 sf per family**	**Continues as the Residential AA zoning district with no changes.**
Stanwood Park	**24,641.7**				

Existing and Proposed Residential A and AA Zoning Districts