Agenda Item #11

Meeting of September 7, 2016

South Portland City Council
Position Paper of the Interim City Manager

Subject:

ORDINANCE #1-16/17– Amending Chapter 27, "Zoning," regarding Nonconforming Residential Lots. Passed First reading on August 1, 2016 and referred to the Planning Board for Public Hearing. ROLL CALL VOTE. Passage requires five (5) affirmative votes.

Position:

At the July 25, 2016 City Council workshop, the issue of residential development on nonconforming lots of record was discussed. The Planning Director presented two potential options: keep current ordinance provisions allowing infill development, but with certain improvements (i.e. reconsider minimum lot size, correct inconsistencies in language related to density, require Planning Board review, etc.), *OR* revert to the pre-1990 system of sending property owners with such lots to the Board of Appeals for variances. Many property owners, developers, and realtors attended the meeting and expressed concern about a change in policy restricting these developments, and expressed frustration about projects currently held up in the pipeline.

As part of a recent Superior Court remand related to a development on a non-conforming lot at 79 Thirlmere Ave., it was found that the Zoning Ordinance contained language inconsistent with longstanding policy regarding development of non-conforming lots, and the matter was sent back to the City to be addressed. Until the ordinance language is amended, it would likely compel the Planning Board to deny all applications for residential construction on non-conforming lots. When this became apparent, City staff chose to temporarily suspend receipt of applications until the broader issue of development on non-conforming lots was addressed by City Council.

At the July 25 workshop the City Council met to discuss the issue, and at that meeting the majority of the Council expressed support for an ordinance amendment that would allow new projects to proceed under the same regulatory environment that has existed for the past several decades, for a one-year period, to provide time for a thorough review of the current policy. The proposed ordinance amendment was intended to clarify that the development of a non-conforming lot of record pursuant to Sec. 27-304 does not need to comply with net residential density and minimum area per family requirements, and that unimproved nonconforming lots of record may be aggregated for purposes of determining

whether the proposed development requires Planning Board review and approval under Sec. 27-304(g).

Following the July 25 workshop, the first reading of the ordinance amendment was passed by City Council on August 1, 2016. However, at that meeting it was further amended to require that any project application that had not received final unappealed action as of July 25, 2016, would be compelled to comply with the net residential density and minimum area per family requirements. Essentially, the amendment would create a fix for every project past and future (during the next year), except for a window of time that leaves the development at 79 Thirlmere Avenue (currently under appeal) without a remedy.

The Planning Board held its public hearing on August 23, 2016 and by a vote of 6-1 (Dowling) sends a positive recommendation to the City Council for passage of the Zoning Ordinance amendments, however with the deletion of "…and shall be required to comply with the net residential density and minimum area per family requirements." under section (h) Applicability date and sunset clause. In effect, this change maintains consistency in the policy looking both back and forward in time. Included in the Council meeting packet is a copy of the Planning Board Memorandum to City Council and other supporting documents.

City Staff have also thoroughly discussed and considered this issue, and we agree with the Planning Board's version of the amendment. However, during the past month staff has also conducted a review and analysis of residential development in each of the City's neighborhoods, including historic development patterns, determining the mean and median lot sizes in existence, and the Planning Department has crafted a comprehensive proposal for the City Council to consider at a future workshop. An example of this work (map of single family lots and density) is included in the Council's meeting packet. We believe staff will be able to make recommendations that would largely address most of the concerns that have been expressed by the City Council. Rather than move forward with a temporary solution, we hope the Council might also consider a pause, and allow staff to present their solution at a future workshop.

Regarding the Planning Board recommendation, we have consulted with Corporation Counsel on whether this change is substantive and would require a new first reading. It is not, and the City Council may vote on either version of the ordinance amendment under second reading at the September 7, 2016 meeting.

Requested Action:

Council move to postpone Ordinance #1-16/17 until October 3, 2016.

Donald H. Gerrish

Interim City Manager

Planning Board Memorandum to the City Council

Subject: Proposed Zoning Amendments for Nonconforming Lots of Record

PLANNING BOARD RECOMMENDATION

At its August 23rd meeting, the Planning Board voted 6 - 1 (Dowling) on a motion to send a positive recommendation to the City Council for Ordinance #1-16/17 Chapter 27 Zoning as presented with the deletion under section (h) Applicability Date and Sunset Clause of the phrase "and shall be required to comply with the net residential density and minimum area per family requirements" as follows:

> (h) *Applicability date and sunset clause.*
>
> Notwithstanding the provisions of 1 M.R.S.A. § 302 or any other law to the contrary, the amendments to this ordinance evidenced by City Council Ordinance #1-16/17, when enacted, shall apply to any applications that have not received final, unappealed action prior to January 1, 2016, except that any application submitted prior to January 1, 2016 and that has not received final, unappealed action as of July 25, 2016 shall be required to undergo Planning Board review and approval pursuant to Sec. 27-304(g) ~~and shall be required to comply with the net residential density and minimum area per family requirements~~. The amendments to this ordinance evidenced by City Council Ordinance #1-16/17 shall expire one year from the date of enactment, unless the City Council enacts an ordinance providing otherwise.

INTRODUCTION

The City Council requested a recommendation from the Planning Board on a set of text amendments it developed to the nonconforming lots provisions of the Zoning Ordinance. The Council passed the proposed amendments at first reading, with a revision, on a 5 – 2 vote (Blake, Fox).

The overall issue being considered is a review of the City's policies regarding the construction of homes on grandfathered lots of record lots less than the minimum lot size in area. This issue had been on the Council's list of possible workshops for the last year and a half. A recent Superior Court decision on an appeal of a building permit granted for a home on an undersized lot in Thornton Heights provided an extra dimension to the issue, but the main impetus was a desire on the part of the Mayor and others to have the nonconforming lots policy reviewed comprehensively. The Council will be engaging in this larger discussion over the coming months as well as taking the short-term action represented by the proposed amendments sent to the Planning Board.

NOTICE

Public hearing legal notices for the Planning Board hearing were published in the Portland Press Herald on August 8 and 15, 2016. Notice of the hearing was also posted at City Hall on August 8th.

CORRECTING THE ORDINANCE TO ENABLE CONSTRUCTION ON NONCONFORMING LOTS WHILE THE LARGER POLICY ISSUES ARE DECIDED

In order to obtain approval to build a home on a nonconforming lot of record, a number of standards laid out in Sec. 27-304 must be met. In all cases involving building on undeveloped parcels, the current provisions require meeting the space & bulk regulations of the zoning district in which the lot is located, except for the minimum lot area and minimum street frontage requirements. This is a carry-over from 1990, which is the second-to-last time the nonconformance provisions were amended (they were most recently updated in 2007). However, as cited in the Superior Court decision, and as up to now never considered, this means that the maximum net residential density and minimum area per family standards also have to be met. Note that the Superior Court decision is not final, but any party unhappy with the decision cannot appeal the decision at this time because the court remanded the specific matter to the City, and a remand order is not a final judgment that may be appealed to the Maine Supreme Court.

To understand the difficulty meeting these two additional standards creates, think about the Residential A zoning district. In the "A" zone, the minimum lot size is 12,500 sq. ft., the maximum net residential density is 4 dwelling units per net residential acre, and the minimum area per family is 10,000 sq. ft. There is a rough correlation between these figures. The 12,500 sq. ft. minimum lot size is 29% of an acre. The density limit of 4 units per net residential acre is 25% of an acre. The 10,000 sq. ft. minimum area per family is 23% of an acre. The difference between the numbers appears to be related in part to an expectation that a certain amount of land generally gets deducted—for wetlands, steep slopes, etc.—as part of the net residential acreage calculation, so the density was set to be a bit less than the minimum lot size.

Why in the first place are there the density and per family standards and not just the minimum lot size? These standards became necessary when the City, approximately in the mid-1980's, adopted the cluster housing provisions—Sec. 27-1501 & 1502—in which homes or attached dwelling units are allowed to be grouped in closer proximity than normally permitted to enable the preservation of open space. Clustering was considered acceptable, but the City did not want to allow more units than would otherwise have been allowed. Hence, the density limit.

Now consider that a typical nonconforming lot of, say, 6,500 sq. ft. works out to a residential density of 6.7 dwelling units per acre (43,560÷6,500). So it is virtually impossible not to exceed the density limit of 4.0 dwelling units per acre and the ceiling of 10,000 sq. ft. per

family.[1] The attached map of Lots Containing Single-Family Homes provides an overall comparison of actual lot sizes and density versus those required by ordinance.

In order to provide a time-limited correction to this problem while working out the larger nonconforming lot policy issues, the City Council asked Corporation Counsel Sally Daggett to develop the proposed amendments (to which the Councilors made some revisions at the first reading public hearing). As well as the existing exclusion for minimum lot area and street frontage, the amendments:

- add maximum net residential density and minimum area per family as exceptions to meeting the space & bulk requirements of the zone in which the lot is located.
- make explicit that two or more abutting unimproved lots of record in common ownership may be aggregated to form a single larger lot that has 5,000 square feet or more of lot area and 50 feet or more of street frontage without the need for Planning Board review (but still having to meet the standards under 27-304(f)).
- make the changes above applicable to applications that have not received final, unappealed action prior to January 1, 2016.
- require, however, that any application submitted prior to January 1, 2016 that has not received final, unappealed action as of July 25, 2016 has to undergo Planning Board review and must comply with the net residential density and minimum area per family requirements.
- establish that the amendments shall expire one year from the date of enactment, unless the City Council enacts an ordinance providing otherwise.

PLANNING BOARD MINUTES

The following are the draft minutes from the Planning Board hearing:

Item #3. PUBLIC HEARING – Zoning Text Amendment Request – Nonconforming Residential Lots of Record – City of South Portland

The City Council is requesting a land use recommendation from the Planning Board to consider proposed amendments to Section 27-304 of the Zoning Ordinance relating to nonconforming residential lots of record.

T. Haeuser introduced the item. Overall, there is a problem in part of the City's zoning ordinance that has become apparent and a correction has been proposed. The Council passed the proposed amendments

[1] An exception might be the case of a large developed lot abutting an undeveloped lot of record in the same ownership. If the developed lot was unusually large, then the area of the two lots together might be enough for an undersized vacant lot to be built on and still meet the density standards. Such would be the case of a developed lot of at least 15,780 sq. ft. abutting a 6,000 sq. ft. lot of record in the same ownership. The two together would add up to 21,780 sq. ft., which is half an acre and therefore is sufficient for 2 dwelling units at 4 units per net residential acre. However, it is doubtful any lot combinations of this sort exist in South Portland.

with revisions during the hearing and is now looking for a recommendation from the Planning Board. Council's second reading hearing is scheduled for September 7th.

The issue being considered is a review of the City's policies regarding the construction of homes on grandfathered lots of record less than the minimum lot size in the area. As a result of an appeal of a case at 79 Thirlmere, an appeal went to Superior Court and was ruled in favor of the appellant and was sent back to the City on a remand. As a result, City staff was not able to process applications for nonconforming homes. At Council hearings, many people spoke of being "in the pipline," waiting for the ordinances to get cleared up so they can proceed. Council decided they wanted to do something immediately as well as in the long term. They had a first reading on the set of amendments and made an amendment to the way it was drafted. They are now looking for the Planning Board's recommendation.

He showed a map of lots containing single-family homes (with a comparison of actual lot sizes and density versus those required by ordinance). Once staff had this map, they were able to look by neighborhood at lot sizes. He showed a table displaying the City's neighborhoods and the lot sizes in the Residential A and AA zones. In the A zone, the minimum lot size is 12,500 SF and in AA It is 20,000 SF. In many neighborhoods, it is actually substantially less. Citywide, the overall median lot size is 7,500 SF. There are many lots in the City that are nonconforming. He pointed out a Thornton Heights neighborhood, where black lines show the original subdivision and red lines show the current lots. Most original lots are 30' by 100'; parcels made up of two 3000 SF pieces can be seen. To meet the minium lot size of 12,500 SF you need five of the older grandfathered lots of record. This is what it's like in many areas of the City.

He showed the Nonconformance article of the zoning ordinance, explaining the different sections such as Nonconformance Generally and Nonconforming Buildings and Structures. Section 27-304 is Nonconforming Residential Lots. There are standards in subsection (f) that apply to all nonconforming lots of record. Subesection (g) is additional requirements if the lot is less than 5000 SF or has less than 50' of street frontage—this is what the Board is familiar with.

He gave a brief history, stating that it used to be that the rules were dependant on the date the lot was recorded. In 1990, the City Council amended the nonconformance provisions to create an exception to the merger clause and had the standards as mentioned above. The critical standard was that each building must comply with the space and bulk regulations of the zoning district of which the lot was located not otherwise established by the subsection. This carried over to 2007, when there was a Zoning Improvements Committee that took another look at nonconformance. There was a problem with too many nonconforming lots going to the Board of Appeals and getting variances. The Zoning Board of Appeals has a limited set of criteria they can use so some of the outcomes were not what people wanted. The Committee developed what they have now; instead of going by the year the lot was created, there are different cases with the significant difference that lots less than 5000 SF or less than 50' of frontage come to the Planning Board.

The problem posed by the Thirlmere case had to do in part with the space and bulk requirements. From what carried over, it says that apart from having to not exceed 28' in height, etc., the other space and bulk requirements apply, primarily meaning setbacks. This turned out to be not correct because there are more than just setbacks in space and bulk requirements. In A and AA, there are also standards in space and bulk for maximum net residential density; a maximum of four units per acre and 10,000 SF minimum family area. The decision said that the application for the Thirlmere case should have come to

the Planning Board; it should not been able to avoid coming to the Planning Board by aggregating a couple of lots that were less than 5000 SF. It was also said that they are not meeting maximum net residential denisty of four units per acre and the minimum area per family. The problem is that you can't. If you are going to allow people to build on nonconforming lots with a minimum lot size of 12,500 SF, you can't also say you have to meet maximum net residential density of four units per acre, which comes out to 10,890 SF. The difference between 12,500 and 10,890 SF is about two lots in the City—it's nonsensical and was an oversight. This is what the proposed amendments tonight are intending to take care of.

He showed the proposed amendments. He reviewed the changes, shown in blue and underlined in the proposal. A portion of the applicability date and sunset clause (h) is new. The Council is proposing that the amendments to this ordinance, when enacted shall apply to any applications that have not received final unappealed aation prior to January 1, 2016. At the end of (h), it says the amendments shall expire one year from the date on enactment unless the City Council enacts an ordinance providing otherwise. This means that the Council wants to enable applications to go forward for a year without the problem from the two additional standards. It was never intended to have to meet the net residential density for a nonconforming lot. Where net residential density came into the ordiance was, as best they know, under the cluster provisions. At some point in the 80's, the City adopted a zoning tool: cluster development. This means if you have a subdiviosn, you can give the developer flexibility. Instead of requiring each lot in the subdivision to meet the minimum lot size, you can let them shrink the lots or let them attach units. You have preserved open space. When you do this, now you need a density standard in addition to minimum lot size. This was never understood to be any part of nonconformance.

The exception is the last part: "…except that any application submitted prior to January 1, 2016 and that has not received final, unappealed action as of July 25, 2016 shall be required to undergo Planning Board review and approval pursuant to Sec. 27-304(g) and shall be required to comply with the net residential density and minimum area per family requirements."

His recommendation is to not include the exception. One might think that this exception was put in because there is an ongoing case with Thirlmere; it's not finally decided. In a case like that, one might think you shouldn't change ordinances when you have a pending case. The opposite is true here; when you have a remand, the court is giving the City an opporunity to take what action they feel is necessary to correct the problem. Fixing the oridinance is a standard way to do it. At this point, they are pursuing having the 79 Thirlmere property owner come to the Planning Board for an after-the-fact approval. This seems to have been suggested by the court. Fixing the ordinance is a perfectly fine way to do things, too. They don't need to feel that they can't fix the ordinance just because there is a case is going on.

Secondly, it has never the City's policy to require applications for nonconforming lots to meet the denisty and area for family standards. He has never seen any mention anywhere at any time of any suggestion that under nonconformance you are supposed to follow maximum net residential density or minimum area per family. Somehow in the course of the Council workshop and first reading, an assertion to the contrary has become a reason for this exception. It wasn't clear why the exception was put in but it's his sense that a misunderstanding about the policy has happened. To oversimplify, the amendments as written say that everyone who got nonconfomring lot applications approved already are "water under the bridge." Those who have not come forward, or in the "pipeline", will be accomodated for a year while they do a review of the policy. Anyone with a pending application will have to adhere to an interpretation that has never been heard of until now, doesn't make sense, and doesn't work.

This isn't to say that there may not have been errors by either or both the applicant and staff regarding the remanded case that may require action. As for the proposed nonconforming lot amendments, there does not appear to be a reasonable basis for treating pending applications differently from the others.

W. Laidley emphasized that this is a recommendation to the Council from the Planning Board. This is not an approval.

PUBLIC HEARING OPEN

Will Cabana, 25 Ivy St., Portland, hopes to be a South Portland resident soon. The reason he and many people came to the July 25th and subsequent meetings was that they invested a lot of time, finances, and emotions. His parents offered to split their lot to allow him to build on it. At this point in their careers, this is their best and maybe only option to own a home in the city they both grew up in. They contacted the Planning Department and received a letter dated January 19, 2016, giving them the go ahead. Over the summer it came to their attention that building permits weren't being given for cases like theirs. It was a surprise to them. They encourage the Board to recommend the passage of this amendment, as amended further by the Planning Director, to find a fair solution. They don't want to make it seem like they are looking for a special exception or fast track. They did not prepare for the extra financial and time burdens. They are hoping for an immediate action for those "in the pipeline." They may not be able to proceed this year but proceeding next spring is of financial interest to them and the City. He would also like clarification on using terms like "applications" and considering dates, they want to ensure that in a case like theirs where they do not have an application are still met.

Cathy Woodbury, 29 Ashbourne Ct., understands the discrepency and feels that the people who have already put forth applications and have made a financial comitment to building on these lots need to have allowances made. She doesn't like the idea of throwing out the density laws completely and would hate to see South Portland become so crowded. She would like to see accomodations made for people already planning without knowledge of the density laws—they are there for a reason.

Carl Eppich, 295 Pine St. and also owns 291 Pine St., has two children at Small School and bought their house with the lot merged knowing that they could unmerge it. They have gone through that process. He is also a planner. When you create a subdivsion and define the lots, you effectively set the density. Even though the lots were merged, even though he has two lots of record and is going from one house on those two lots to two lots, the density of the neighborhood doesn't change because they are just one addition lot of hundreds. It's not like the City will go from one unit per 5000 SF to 10 units per 5000 SF. He encourages support of the recommendation as further amended and encourages the Board to think of the Comprehensive Plan that supports infill development on these lots.

Noah Smith, 46 Arbutus Ave, doesn't see how net residential density fits grandfathered lots. Near his house he has five grandfathered lots of record. His neighbors may not know that because it looks like an extra large yard. Building lots are worth money—it may be someone's retirement or college funds. He doesn't see how net residential density applies. He's a real estate agent and represents a client who has a grandfathered lot of record and was planning on taking it to the Board. He had a client custom building a house; they went to Sebago Technics and spent $10,000 to get planning done, and when they went to the City for an application they were told they weren't accepting applications. There was no timeline. This was a contract upwards of $600,000. She didn't want to wait for an undetermined amout of time so she

walked away and they lost the contract. He doesn't see how net residential density is going to apply in this situation and it needs to be something that is carefully considered.

Joe Frustaci, 8 Roseword Drive, Cape Elizabeth, is a builder and built on many nonconforming lots in the City. The City has reaffirmed the privilege of building on these lots. As Mr. Smith mentioned, it's an added cost to come to the Planning Board with an application. He supports the amendment except for the last part. He would like more explanation. He believes that was to exclude the exisitng problem on Thirlmere and allow those "in the pipeline" with applications coming forth, if this is granted. He supports the amendments and the changes and asks them to reaffirm property rights and protect those who own these smaller lots.

Pete Plummer, 8 Ashley Rd., wants to share the thought that South Portland is capped out in opportunities for new neighborhoods and the only way the City can grow is to have infill, to have new homes, families, growth, and to increase the tax base. They won't be able to grow and succeed as a community if this amendment isn't passed.

Mark Loring, 5 Woodmoor Rd., said there is a contridiction in the ordinance. He thinks what would solve the problem as far as density goes is to make sure every house meets the setback. He thinks they should eliminate the density requirement, excluding the cluster housing part. He would like to echo Mr. Frustaci, the Planning Board approval on these lots makes it unrealistic for a homeowner to sell or develop them. Many of the requirements on going to Planning Board approval for these lots is that you need a stormwater runoff plan, instrument survey, and a building plan. Who takes the risk? The homeowner may not have the expertise and will they take the risk of spending $10,000-15,000 on engineering? They will say "you can only build this house" where a builder will look at a lot and want to buy it, but has to take the risk of going to the Planning Board and getting approval. They may not be willing to take that risk because going to the Planning Board isn't automatic approval. He think it makes it unrealistic for the lots to be sold for the homeowner if that is required. He hopes they consider removing that part in their recommendation.

PUBLIC HEARING CLOSED

W. Laidley asked that the terms be clarified as the start of the discussion.

T. Haeuser stated that Mr. Cabana asked if this would apply in his case and cases like his, and he thinks it does. The wording is that "these amendments shall apply to any applications that have not received final, unappealed action prior to January 1, 2016."

W. Cabana said perhaps it is the lack of commas or placement of "except" in "except that any application submitted prior to January 1, 2016 and that has not received final, unappealed action as of July 25..."

T. Haeuser asked if they've submitted an application and **W. Cabana** said no. **T. Haeuser** said they are okay then. The exception is for the one case, the 79 Thirlmere case.

T. Haeuser said relative to not wanting to see density thrown out, this will be a key topic of Council discussion as they take on the larger issues. Tonight they are focused on the issue of whether or not to provide exceptions for density and the minimum area per family for a limited time. This is also true for

the issues of whether or not a nonconforming application should go to the Planning Board. This will also be discussed by the Council. When you look at the numbers, you can see one option is to try to bring minimum lot sizes more in line with actual lot sizes of the neighborhoods. In regard to Mr. Frustaci, the proposed amendments say that if you can create an aggregated parcel more than 5000 SF, you don't need to come to Planning Board. If you're not aggregating lots and are coming forward for a nonconforming application for less than 5000 SF, you are still coming to the Board. The exception is only for one instance—the 79 Thirlmere. It's an application that has not received final, unappealed action as of July 25, 2016. This would be required to go to Planning Board review and approval and also shall be required to also comply to net residential density and minimum area per family.

L. Boudreau asked if this is what the exception as written by Corporation Counsel is about, not his version.

T. Haeuser said that is the Council's version. His version would keep the part about it needing to go to Planning Board because that was a key focus of the case.

L. Boudreau said the net residential density will be taken out of your version. **T. Haeuser** said yes.

L. Boudreau said the way she understood the question about the application is if you did the work but didn't file the application, does this work for you? This keeps speaking about applications but some don't have an application in.

T. Haeuser said the discussion was in the context of the "pipeline." They want to help those people but don't want to open it up completely. The only practical way to word this was if there is an applicaton or not. For a year, anyone who hasn't filed can come forward and apply and be processed with these exceptions while the Council works on the issue.

L. Boudreau understands but reading it doesn't match what they are trying to say. Everything ties it to having an application or not.

T. Haeuser said there's only one application that hasn't been resolved. Everyone else does not have pending applications therefore they can, if this passes, come forward and receive benefits for a year or until the council decides differently.

K. Carr said it perfectly encompasses those that have not come forward with an application yet as written. The sunset provision puts a beginning and end date on it.

T. Neff asked if the applicability part is necessary. She understands they are trying to carve out that one property for Planning Board review, but if the Superior Court remanded that property for Planning Board review already, why do they need a specific carve out for that property. Why couldn't they just have the sunset clause?

T. Haeuser said there shouldn't be a carve out for that one property; there's no logical basis for that carve out. They are asking the application to come back to the Planning Board and have to meet the maximum net residential desnity—how?

I. Misiuk said it's his understanding that by removing the net density you can remove the carve out as well. If it's remanded to the City and the Board recommends this and the Council approves it, then that property falls within that anyway.

S. Puleo said the aggregation of the parcel is critical. What Mr. Haeuser showed was 3000 SF lots. When you disassemble those aggregated lots, they didn't put a provision to allow them to reaggregate those lots. This amendment does, for that purpose.

L. Boudreau said if that is remanded back to them, they will be using the ordinance that is in place at the time it comes back to them, so they don't need the carve out. It confuses everything.

T. Haeuser said it needs the exception for density and minimum area per family. No nonconforming approval is possible if they have to meet net residential density.

T. Neff said they agree, they were saying that the applicability portion of (h) doesn't make sense, and maybe they can just go with the sunset clause. In general, it seems to be correcting an interpretion that was always longheld in the City but doesn't seem to be making major change. It seems like they are trying to putt things back the way they were. She is in favor with most of the amendments but with some tweaks to (h).

K. Carr asked for a summary of the Council's changes.

T. Haeuser said what he is propsing to delete is what they added.

W. Laidley said the Board has been struggling with this since they got their materials.

L. Boudreau said she could approve it with the deletion of the net residential density and leave (h). She asked Mr. Haeuser if it would be his preference to leave (h) in with the change or to delete (h) because it seems more confusing and redundant.

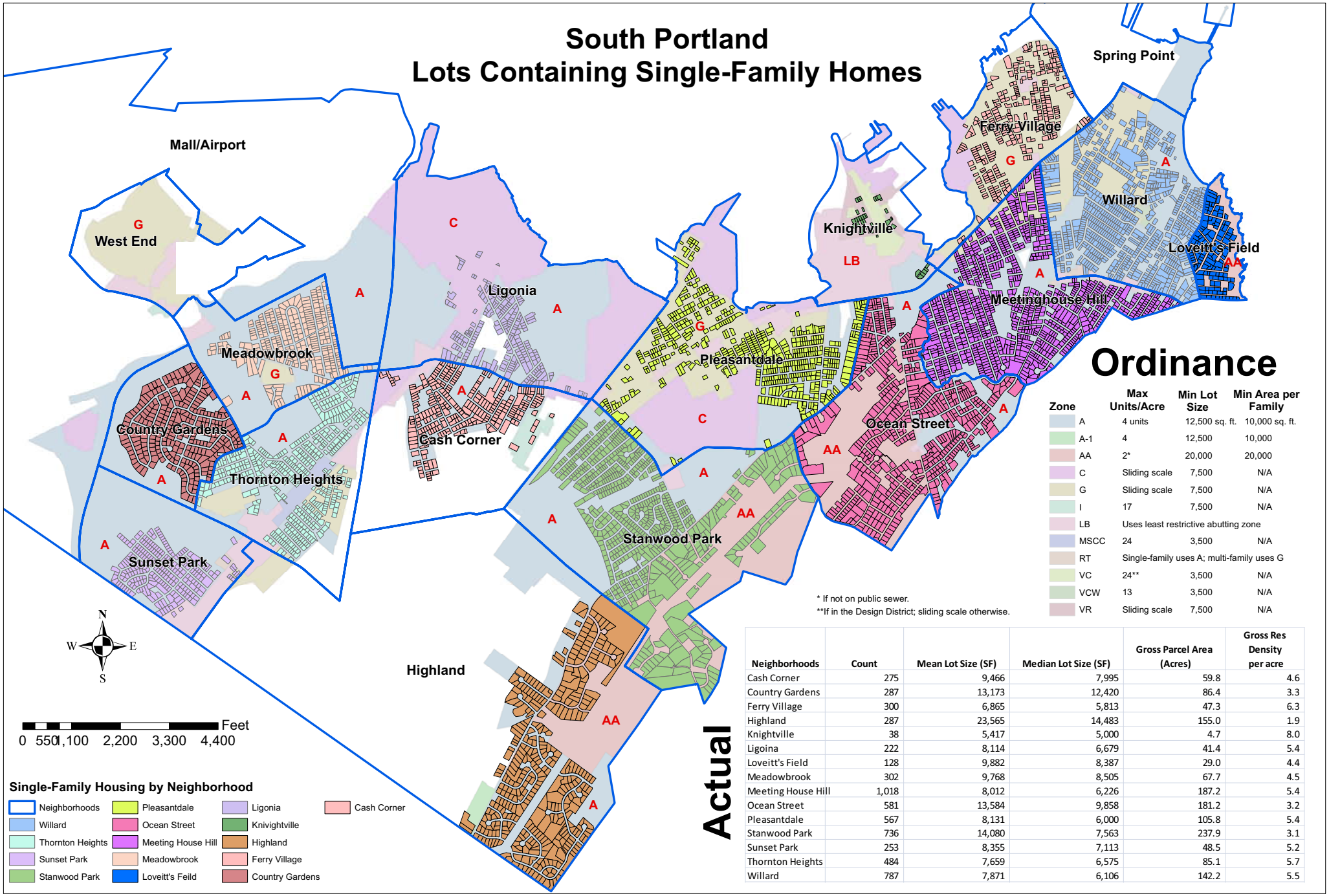
T. Neff said they would need the sunset clause. **T. Haeuser** agreed and said it's difficult enough to recommend against. Even though it makes sense and would be cleaner to just keep the sunset clause, the less change to what the Council has is better in a way. He would recommend keeping it.

L. Boudreau motioned for a positive recommendation to the City Council for Ordinance #1-16/17 Chapter 27 Zoning as presented with the deletion under section (h) Applicability date and sunset clause of the phrase "and shall be required to comply with the net residential density and minimum area per family requirements." K. Carr seconded; (6-1) (Dowling).

Attachments

1. Chapter 27 Amendments re: Nonconforming Lots as Amended at First Reading 8-1-16.
2. Interim City Manager's Position Paper for the August 1, 2016 City Council First Reading of the Nonconforming Lots Amendments.
3. Planning Director Memo to the Council 5-18-16.
4. Map of Lots Containing Single-Family Homes (with a comparison of actual lot sizes and density versus those required by ordinance).
5. Example from Thornton Heights of Current Parcels Compared with the Original Lots of Record.
6. Link to SPC-TV Video of the July 25, 2016 City Council Workshop (Item #1 on the agenda): http://vp.telvue.com/preview?id=T00282&video=283817
7. Link to SPC-TV Video of the August 1, 2016 City Council Meeting (Item #11 on the agenda): http://vp.telvue.com/preview?id=T00282&video=284394

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

Planning & Development Department

Tex Haeuser
Planning Director

To: James H. Gailey, City Manager
City Council Members

From: Tex Haeuser, Planning Director

Cc: Patricia Doucette, Deputy Planning & Development Director and Code Enforcement Officer
Sally J. Daggett, Esq.

Date: May 18, 2016

Re: **Policies Related to the Treatment of Single-Family Residential Parcels that are Nonconforming with Respect to Lot Size**

Introduction

South Portland has a relatively long history, and since its original settlement there has been a wide variation in both the size of lots created for single-family homes and in the policies regarding how to treat lots smaller than the zoning minimum lot size requirements. This memo will attempt to review some of these changes in zoning policy, look at the current situation, and make a few recommendations for improvements. The general staff recommendation is that we maintain the current policy structure but make several changes.

Previous Nonconforming Lot Size Provisions

South Portland has had varying rules for nonconforming lots. Initially there were no nonconforming lots. Then, when zoning and minimum lot sizes were adopted and nonconforming lots were created, the rule was that abutting nonconforming undersized lots in the same ownership needed to be treated as if they were merged. As an example, if a person owned two vacant lots side by side, and they each were less than the minimum lot size but when added together would meet the minimum lot size standard, the two lots needed to be considered combined and only one home could be constructed. (However, if the lots were part of a Planning Board approved subdivision, they would not be considered merged.)

In the mid-1970's the nonconformance regulations were changed so that unimproved legally recorded lots of record could be built on depending on the lot size and the date the lot was created:

- Lots recorded prior to 1943 in the Residential AA, A, G, and RF zones could be built on (with a single-family home) if they were at least 5,000 sq. ft. in area and had a minimum of 50' of street frontage.
- Lots recorded between 1943 and 1963 in the AA and RF zones had to be at least 7,500 sq. ft. with 75' of frontage; and lots in the A and G zones again could be 5,000 sq. ft. or more and have at least 50' of frontage.

- Lots recorded between 1963 and 1971 in the AA zone had to be at least 10,000 sq. ft. and have a minimum of 100' of frontage; in the A and G zones it was 7,500 sq. ft. with 75' of frontage; and in the RF the requirement was 30,000 sq. ft. with 150' of frontage.
- Lots recorded between 1971 and 1973 in the Residential A district needed to be a minimum of 12,500 sq. ft. in area with 75' of street frontage.

In 1990 the City Council amended the nonconformance provisions to create an exception to the merger clause to allow undersized lots in the four residential zones (AA, A, G, RF) to be used for single family residences if certain conditions were met. These conditions were:

- It had to be for a single-family detached dwelling.
- There was a height limit of 28 feet.
- Building coverage could not exceed 25% of the lot.
- Each building had to comply with the setbacks of the zoning district in which it was located, except that in the G zone the principal building could comply with the A zone side yard setback requirement or be a minimum of 12 feet from any existing principal building on an abutting lot, whichever was greater.
- Each building had to comply with the space and bulk regulations of the zoning district in which the lot was located not otherwise established by the subsection.
- The principal building had to be connected to a public sewer system.
- The lot had to have frontage on a City-accepted street.
- Building plans had to include pre- and post-construction grading contours and a description of stormwater drainage plans approved by the City Engineer and Building Inspector as satisfactory to prevent soil erosion and stormwater runoff onto public and private property.

As time went on after the enactment of these rules it became evident that contradictions in the way the Zoning Ordinance was written, as well as property takings legal concerns, were allowing owners of lots that did not meet the size limits to go to the Board of Appeals to request lot size variances. The Board of Appeals did grant such variances in approximately half of the cases. This undermined the credibility of the Zoning Ordinance, and, as the Board of Appeals did not have any ability to require design standards, the end result was the construction of a number of homes that were incompatible with the surrounding neighborhood. This gave rise to a certain amount of community concern and consequently was brought to the attention of a group working at that time on a number of zoning changes—the Zoning Improvements Committee.

The Zoning Improvements Committee included:

- Councilor Maxine Beecher, Chairwoman
- Michael Eastman
- Ralph Sama
- Michael Vaillancourt
- Barbara Dee
- Rob Schreiber
- William Arnold
- Gerard Jalbert
- Tex Haeuser, Planning Director
- Pat Doucette, Code Enforcement Officer
- Pat Cloutier, Water Resource Protection Director
- Mark Eyerman, Consultant

The recommendations brought forward by the Committee, which the City Council adopted on 10/1/07, included a variety of changes to the Nonconformance article in the Zoning Ordinance. One of these deals with how porches, decks, and similar building parts that encroach into a setback may be improved. Another adds limits for the voluntary tear-down and reconstruction of a nonconforming building. There are a number of other similar changes. But the Committee's work also included provisions revising the merger and de-merger of non-conforming lots. It essentially did away with tying minimum lot sizes to the period in which a lot was created and said that a lot of record with more than 5,000 sq. ft. and 50 feet of street frontage is considered to be a separate, developable lot that can be built on as long it conforms to the setback, coverage, height, and similar space and bulk requirements of the zone and a set of standards. The standards to be met are the same as the previous ones listed above—e.g., 28' building height, 25% lot coverage, etc.—except a more thorough Drainage Plan is spelled out and the treatment of lots in the Shoreland Zone and flood zones is set forth.

The new (2007) provisions also state that the division of the lots shall conform to the original lot boundaries as described in a recorded deed or subdivision plan unless revised boundaries will make all of the lots less nonconforming with respect to the space and bulk regulations for the zoning district in which they are located.

In addition, the new rules for unimproved lots of record allow a lot with <u>less</u> than 5,000 SF to be developed with the approval of the Planning Board based upon a mini-site plan process to demonstrate that the building will conform to the neighborhood. In addition to a review of potential stormwater runoff impacts, the Planning Board evaluates applications based on any predominant pattern in the neighborhood relative to: the relationship of the principal building to the street; width of buildings in relation to width of lots; roof style and orientation; building height and number of stories; appearance of the wall of the building facing the street; and

exterior building materials. There also is a requirement 25% of the area of the lot must be landscaped open space.

Experience with the 2007 Provisions

An inventory of the single-family homes built on lots less than the minimum lot size for the zoning district in which the lot is located[1] came up with approximately 120 such homes having been built in South Portland since the current nonconformance provisions went into effect in 2007 (there are 102 properties in the previously distributed binders as we did not include lots 10,000 sq. ft. or larger). Of these, 19 were on lots less than 5,000 sq. ft. in area and succeeded in obtaining Planning Board approval. Three other sub-5,000 sq. ft. lot homes were built but did not go to the Planning Board because they had obtained Board of Appeals variances prior to enactment of the 2007 provisions. A number of other applicants for sub-5,000 sq. ft. lot homes withdrew their requests when staff could not support their projects due to water conditions, lack of street frontage, or other difficulties.

Some general observations about the homes built on nonconforming lots based on compiling the inventory include:

- In looking at the location maps, the size of the lots do not appear to be substantially different than those around them in the neighborhood. This in part is due to the fact that the minimum lot sizes imposed on the existing neighborhoods in the eastern part of the City in the 1960's, and still in place today, are substantially larger than the average existing lot sizes.
- The value of the homes appear to range from fairly modest, mostly on the smaller lots, to a number of relatively expensive properties.

That being said, there have been a number of issues with the 2007 provisions, such as:

- Some residents wonder why the careful scrutiny that gets applied to sub-5,000 sq. ft. lots—as a function of going through Planning Board review, having a Planning Board hearing, and having to meet neighborhood compatibility design standards—isn't also applied to the nonconforming lots 5,000 sq. ft. and larger.
- There have been some drainage problems. Early experience with the sub-5,000 sq. ft. lots showed that extra care was needed in areas without separated storm sewers. Residents' drainage systems are not allowed to connect directly to combined sewer lines, so if something goes wrong, like the foundation tapping into a high water table causing a sump pump to run constantly, it's difficult to accommodate the water all on-site. Staff and the Planning Board have made adjustments as a result. One builder, for example, was required to extend a storm line a fair distance to the home site.

[1] Current minimum lot sizes: AA = 20,000 sq. ft; A = 12,500 sq. ft; and G = 7,500 sq. ft.

- While homes on nonconforming lots of any size are required to meet the setbacks of the pertinent zones, there is no provision, except in the G zone, for maintaining a minimum distance from a home on an abutting lot. In some non-Planning Board review cases this has resulted in the new building being uncomfortably close to an existing home.

Staff Recommendations

In general, allowing infill, small-lot residential development, if done with appropriate limits, is part of South Portland's leadership in promoting smart growth and sustainability. By accommodating home development in the City with existing streets and other infrastructure and impervious surfaces, a certain amount of land in outlying communities is left undeveloped (longer) and people are creating less greenhouse gas emissions by driving shorter trips, having fewer new roads built, and so on. Other reasons, like providing a niche in the housing market, ensuring an influx of younger families, and enhancing the tax base can also be considered. In a recent Portland Press Herald op-ed piece, for example, a Stony Brook University professor makes an economic argument for increasing density in urban areas. He says,

> But there is a general realization that local regulations can prevent cities from attaining their full potential. For example, ...with too much regulation, cities fragment, disperse and sprawl into units that are too small to be economically efficient. ...land use obstructionism by NIMBY's...is probably keeping America's flagship cities from realizing their true potential. ... So if the U.S, is going to jump-start an era of infill—a new frontier of urban productivity—government needs to do several things. First, federal and state governments should roll back overly restrictive land-use regulations. ... [Noah Smith, PPH 5/8/16]

Note that the Comprehensive Plan goes so far as to recommend that not only should recorded lots of record be allowed to be developed with single-family homes, but that the minimum lot sizes in the residential neighborhoods should be decreased from the quarter-acre and half-acre minimum lot sizes to lot sizes based on taking an average of the sizes of the lots in the neighborhood. This would turn many lots that currently are nonconforming with respect to lot size into conforming lots, and it would give owners of larger lots—lots that were created larger to begin with—the same ability to split off and sell a lot as their neighbors who are able to do so by demerging smaller unimproved abutting lots.

In conclusion, while generally supporting the existing policies for allowing lots less than the minimum lot size to be improved with single-family homes, the Planning, Code, and Legal staff members do recommend several changes:

1. Extend the requirements for Planning Board review to all single-family homes on lots less than 10,000 sq. ft. in the A and AA zoning districts and to those on lots less than 7,500 sq. ft. in the G district. 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.

2. Prohibit homes being proposed for nonconforming lots in combined sewer areas from having basements. As described above, 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. Alternatively, allow basements but require soil investigations of sufficient thoroughness as to provide overwhelming evidence that the foundation will remain above the water table.
3. Add the 12' minimum distance between new and existing principal buildings that currently applies in the G zone to the A and AA zones as well.
4. In cases where the owner of an existing house creates an abutting house lot by adjusting lot lines so that the lots are less nonconforming than before, require that the existing house lot property, if less than the minimum lot size, be included in the Planning Board review and that it meet all the setbacks of the zoning district.
5. Relative to the standard carried over from 1990 that requires homes built on recorded lots less than the minimum lot size to meet the space and bulk requirements of the zone in which the property is located, confirm that residential density is exempt from these requirements.

Thank you for your consideration of these proposals.

CITY OF SOUTH PORTLAND

THOMAS E. BLAKE
Mayor

DON GERRISH
Interim City Manager

EMILY F. CARRINGTON
City Clerk

SALLY J. DAGGETT
Jensen Baird Gardner & Henry

District One
CLAUDE V. Z. MORGAN

District Two
PATRICIA A. SMITH

District Three
EBEN C. ROSE

District Four
LINDA C. COHEN

District Five
BRAD FOX

At Large
MAXINE R. BEECHER

At Large
THOMAS E. BLAKE

IN CITY COUNCIL

ORDINANCE #1-16/17

THE COUNCIL of the City of South Portland hereby ordains that Article III of Chapter 27, "Zoning," of the "Code of Ordinances of the City of South Portland, Maine" be and hereby is amended as follows (deletions are ~~struck through~~; additions are <u>underlined</u>):

CHAPTER 27

ZONING

• • •

ARTICLE III. Nonconformance

• • •

Sec. 27-304. Nonconforming Residential Lots.

The following provisions govern the treatment of nonconforming residential lots of record that are described in a deed or subdivision plan recorded in the Cumberland County Registry of Deeds prior to October 21, 2007. These provisions allow for nonconforming lots to be treated as separate lots under certain conditions and to be sold or developed. The provisions allow the development of unimproved nonconforming lots in accordance with the provisions of (f) and (g).

(a) *Separate unimproved nonconforming lots of record.*

An unimproved nonconforming lot of record that is in separate ownership, or is not in common ownership with any abutting lot that has street frontage on the same street, may be developed in accordance with the provisions of (f) without a variance from the Board of Appeals. If the lot has less than five thousand (5,000) square feet of lot area or less than fifty (50) feet of street frontage on a City accepted street, development of the lot must also conform to (g).

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Development of the lot must conform to the space and bulk regulations for the zoning district in which it is located except for the minimum lot area, ~~and~~ minimum street frontage, maximum net residential density and minimum area per family requirements unless otherwise specifically provided for in (f) or (g) or a variance is granted by the Board of Appeals.

(b) *Separate developed nonconforming lots of record*

A nonconforming lot of record that is in separate ownership or is not in common ownership with any abutting lot that has street frontage on the same street and that is developed with a principal building may be further developed or redeveloped in accordance with the space and bulk regulations of the zoning district in which it is located except for the minimum lot area, ~~and~~ minimum street frontage, maximum net residential density and minimum area per family requirements.

(c) *Contiguous developed lots of record.*

Two or more contiguous lots of record in common ownership each of which is improved with a principal building shall be considered to be separate lots and may be sold as separate lots even if one or more of the lots is nonconforming. The division of the lots shall conform to the original lot boundaries as described in a recorded deed or subdivision plan unless revised boundaries will make all of the lots less nonconforming with respect to the space and bulk regulations for the zoning district in which it is located. The division of such lots does not require a variance from the Board of Appeals.

(d) *Abutting unimproved lots of record.*

Two or more unimproved abutting lots of record in common ownership each of which has frontage on a City accepted street and is not improved with a principal building may be built on and/or sold as separate lots without a variance from the Board of Appeals, even if one or more of the lots is nonconforming, subject to the provisions of (f) and (g). The division of the lots shall conform to the original lot boundaries as described in a recorded deed or subdivision plan unless revised boundaries will make all of the lots less nonconforming with respect to the space and bulk regulations for the zoning district in which it is located.

Each lot may be developed in accordance with the provisions of (f). If a lot has less than five thousand (5,000) square feet of lot area or less than fifty (50) feet of street frontage on a City accepted street, development of the lot must also conform to (g). Two or more abutting unimproved lots of record in common ownership may be aggregated to form a single larger lot that has five thousand (5,000) square feet or more of lot area and fifty (50) feet or more of street frontage without the need for Planning Board review and approval under (g); however, development of any such aggregated lot shall be in accordance with (f).

Development of the lot (or aggregated lot) must conform to the space and bulk regulations for the zoning district in which it is located except for the minimum lot area, ~~and~~ minimum street frontage, maximum net residential density and minimum area per family requirements unless otherwise specifically provided for in (f) or (g). The Board of Appeals may not grant variances from the space and bulk requirements.

(e) *Unimproved lot(s) of record abutting a developed lot.*

An unimproved nonconforming lot of record that abuts and is in common ownership with a developed lot of record and that has frontage on a City accepted street may be developed and/or sold as a separate lot without a variance from the Board of Appeals subject to the provisions of (f) and (g). The division of the lots shall conform to the original lot boundaries as described in a recorded deed or subdivision plan unless revised boundaries will make all of the lots less nonconforming with respect to the space and bulk regulations for the zoning district in which they are located.

Each unimproved lot may be developed in accordance with the provisions of (f). If a lot has less than five thousand (5,000) square feet of lot area or less than fifty (50) feet of street frontage on a City accepted street, development of the lot must also conform to (g). Two or more abutting unimproved lots of record in common ownership may be aggregated to form a single larger lot that has five thousand (5,000) square feet or more of lot area and fifty (50) feet or more of street frontage without the need for Planning Board review and approval under (g); however, development of any such aggregated lot shall be in accordance with (f). Development of the lot (or aggregated lot) must conform to the space and bulk regulations for the zoning district in which it is located except for the minimum lot area, ~~and~~ minimum street frontage, maximum net residential density and minimum area per family requirements unless otherwise specifically provided for in (f) or (g). The Board of Appeals may not grant variances from the space and bulk requirements.

(f) *Standards for the development of all nonconforming lots of record.*

The development of any unimproved nonconforming lot of record including lots with less than five thousand (5,000) square feet of area must comply with the following unless otherwise specifically provided for in this section:

(1) The principal building must be a single-family detached dwelling used solely for residential purposes including home occupations;

(2) Each building on the lot shall not exceed twenty-eight (28) feet in height, the height to be measured, notwithstanding the definition of building height in Sec. 27-201, from the peak or highest point on the roof line;

(3) Total building coverage shall not exceed twenty-five (25) per cent of the lot;

(4) Each building on the lot shall comply with the side setback requirements of the district in which the lot is located, except that in the Residential G District the principal building shall comply with the side yard setback requirements of the Residential A District or shall be a minimum of twelve (12) feet from any existing principal building on an abutting lot, whichever produces the greater side yard setback on the lot;

(5) The principal building shall be connected to the public sewer system either directly or via a private sewer which is connected to the public sewer system; and

(6) Building site plans submitted pursuant to Sec. 5-58 of the Code shall include a Drainage Plan meeting the requirements of Sec. 27-1536(e), Standards for a Drainage Plan.

(7) If the nonconforming lot of record is located within the Shoreland Area Overlay District, including the Shoreland Resource Protection Overlay Subdistrict and the Stream Protection Overlay Subdistricts, the lot must be developed, and all buildings and structures located, in full compliance with the water setback requirements and performance standards of those districts.

(8) If the nonconforming lot of record is located within a special flood hazard zone, the lot must be developed, and all buildings and structures located, in full compliance with the requirements of Article IV of Chapter 5 of the Code of Ordinances.

(g) *Additional requirements for the development of lots of record with less than 5,000 square feet of lot area or less than fifty (50) feet of street frontage.*

If an unimproved, nonconforming lot of record has a lot area of less than five thousand (5,000) square feet or less than fifty (50) feet of street frontage, development of the lot must conform to the following in addition to the requirements of (f):

(1) Planning Board Approval Required – Development of a lot of record with less than 5,000 square feet of lot area or fifty (50) feet of street frontage may occur only after the proposed development plans are approved by the Planning Board. Two or more abutting unimproved lots of record in common ownership may be aggregated to form a single larger lot that has five thousand (5,000) square feet or more of lot area and fifty (50) feet or more of street frontage without the need for Planning Board review and approval under (g); however, development of any such aggregated lot shall be in accordance with (f).

(2) Approval Standards – The Planning Board shall approve the development of a lot of record with less than 5,000 square feet of lot area or fifty (50) feet of street frontage only if it finds that the proposed design and development of the lot and the buildings and structures on the lot are consistent with the established character of the neighborhood. In determining if the proposed development meets this criterion, the Planning Board must find that the following are met if they are applicable to the location:

(i) If there is a predominate pattern of development in the immediate neighborhood with respect to the relationship of the principal building to the street, the principal building must be located on the lot so that it has a similar relationship to the street as other neighboring principal buildings on the same side of the street. If this requires the building to be closer to the front lot line than the required front yard setback, the building may encroach on the required yard and no variance is required.

(ii) If there is a predominate pattern in the width of buildings in relationship to the width of lots in the immediate neighborhood, the width of the front of the building must be similar to the relationship of neighboring lots on the same side of the street.

(iii) If there is a predominate pattern in the style of the roof and its orientation with respect to the street in the immediate neighborhood, the roof of the building must be similar to the relationship of buildings on neighboring lots on the same side of the street. If the predominant pattern is for the ridgeline of the roof to be perpendicular to the front property line, the portion of the proposed building facing the street must maintain this relationship.

(iv) If there is a predominate pattern in the height of buildings in the immediate neighborhood, the height of the building based upon existing grade must be consistent with the height of the buildings on neighboring lots on the same side of the street. If the predominant pattern is for buildings to have more than one story, the proposed building must have more than one story for the portion of the building facing the street.

(v) The appearance of the wall of the building facing the street must be consistent with buildings on neighboring lots on the same side of the street. If there is a predominant pattern in the immediate neighborhood for these walls to be treated as the front of the building with a front door and windows, the front wall of the proposed building must be treated as the front of the building. If there is a predominant pattern for neighboring buildings to have a front porch, the design of the proposed building must be consistent with this pattern.

(vi) The exterior materials must be visually compatible with adjacent and nearby buildings where a predominate pattern in the exterior materials exists, except where unacceptable materials predominate. This provision shall not be

used to exclude materials that are visually similar to existing materials but are made differently. The determination shall be based upon Sec. 27-1568.H. Materials and Colors.

(vii) At least twenty-five percent (25%) of the area of the lot must be landscaped open space.

(3) Application – The owner of the lot of record or the owner's agent, or other person with right, title, or interest in the property including a valid purchase and sale agreement must make a written application to the Planning Board requesting approval to develop on a lot with less than 5,000 square feet of lot area or less than fifty (50) feet of street frontage. The application must be made on forms provided by the City. The application must be accompanied by the following documentation:

(i) An existing conditions plan prepared by a land surveyor or other qualified professional licensed in the State of Maine and drawn to scale showing the boundaries of the lot of record, any improvements on the lot including buildings, structures, or paving, the location of buildings and other improvements on the abutting lots, the topography and direction of drainage of the parcel, any existing easements, and the location of all utilities on the lot or in adjacent streets.

(ii) A site plan prepared by a land surveyor or other qualified professional licensed in the State of Maine at the same scale as the existing conditions plan showing the proposed improvements to the lot including buildings, structures, paving, landscaping, easements, and utilities.

(iii) Building plans for the principal building and any accessory buildings including, at a minimum, the first floor plan, and elevations for all sides of the building showing the architectural treatment of the property.

(iv) Perspective drawings or photo simulations showing how the proposed building will appear when seen from the street and how it will fit into the streetscape.

(v) A written and visual analysis of the existing character of the immediate neighborhood within five hundred (500) feet of the parcel that is within the same zone focusing on the factors identified in (2). This should include aerial photos and pictures of the existing lots in the neighborhood.

(vi) A written and visual analysis demonstrating how the proposed development of the lot meets the standards of (2).

(vii) A Drainage Plan meeting the requirements of Sec. 27-1536(e), Standards for a Drainage Plan.

(4) Review Process – The review of an application for the development of a lot with less than 5,000 square feet of lot area or fifty (50) feet of street frontage shall occur as follows:

(i) Prior to submitting an application, the applicant must have a pre-application conference with the Planning and Development Department. No application shall be considered by the Planning Board unless a conference has been held. This meeting is intended to provide the applicant with an understanding of the City's standards and procedures and to allow the applicant to familiarize the staff with the proposed development.

(ii) Upon submission and acceptance of an application, the Planning Staff shall place the item on the Planning Board's agenda for consideration.

(iii) The Planning Director or the Planning Board may request a peer review of the design of the development from an architect or other design professional. This shall occur in accordance with Sec. 27-138.

(iv) The Planning Board must hold a public hearing on the application. The hearing shall be noticed and conducted in accordance with Sec. 27-1425.

(v) In acting on the application, the Planning Board may impose conditions of approval on the development. These conditions must relate to the standards of (2). In all cases the Planning Board shall include a condition requiring that the Certificate of Approval and the Findings of Fact for the development are recorded at the Cumberland County Registry of Deeds.

(vi) The development of the property must comply with the approved application including any conditions of approval. If it is necessary to make modifications to the approved plan prior to or during development, the Planning Director may approve such modifications provided they do not amount to a waiver or substantial alteration of the approved plan including any conditions or requirements set by the Planning Board. Any subsequent modifications to the building or site layout or use may occur only with the approval of an amended application by the Planning Board.

(5) Performance Guarantee – The applicant shall comply with the performance guarantee requirements of Secs. 27-1429, 27-1430 and 27-1431, as appropriate.

(h) *Applicability date and sunset clause.*

Notwithstanding the provisions of 1 M.R.S.A. § 302 or any other law to the contrary, the amendments to this ordinance evidenced by City Council Ordinance #1-16/17, when enacted, shall apply to any applications that have not received

final, unappealed action prior to January 1, 2016, except that any application submitted prior to January 1, 2016 and that has not received final, unappealed action as of July 25, 2016 shall be required to undergo Planning Board review and approval pursuant to Sec. 27-304(g) and shall be required to comply with the net residential density and minimum area per family requirements. The amendments to this ordinance evidenced by City Council Ordinance #1-16/17 shall expire one year from the date of enactment, unless the City Council enacts an ordinance providing otherwise.

Secs. 27-305 – 27-400. Reserved.

Fiscal Note: Less than $1,000

Date: August 1, 2016