

City Council Workshop

Agenda Item #1

September 25, 2017

Defining the Role of the Planning Board

Councilor Rose requested this item for workshop back on May 23, 2017. Staff has not prepared a proposal as this item appears to be an initial discussion on how the Planning Board currently functions vs. ideas on how it could/should function in the future.

Attached please find the following information to assist in your discussions:

- Charter language relative to the Planning Board
- Code of Ordinance language relative to the Planning Board
- Code of Ordinance language relative to zoning amendments
- Narrative and infographic from Councilor Rose

Planning Director Tex Haeuser – whom the Charter designates as “the regular technical advisor of the planning board” – will be in attendance. Members of the Planning Board have also been notified of and invited to this workshop discussion.



City Manager

ARTICLE VIII. PLANNING AND ZONING

[Sec.] 801. Planning board.

There shall be a planning board organized and empowered as by state law.

[Sec.] 802. Zoning ordinance.

There shall be a zoning ordinance as provided by state law.

[Sec.] 803. Board of appeals.

There shall be a zoning board of appeals organized and empowered as by state law.

[Sec.] 804. Director of planning.

There may be a planning director appointed by the city manager. He shall be the regular technical advisor of the planning board, may also be designated its executive secretary, and shall have such other authority, duties and responsibilities under the direction and control of the city manager as the city manager may require and establish.

DIVISION 5. PLANNING BOARD*

* **Cross reference(s)**--Planning director, § 2-9; subdivisions, Ch. 24.

State law reference(s)--Planning board, generally, 30 M.R.S.A. § 4952.

Sec. 2-112. Established.

Pursuant to section 801 of the city charter, a planning board is hereby established.

(Code 1966, § 2-12-1; Ord. No. 7-80/81, 7-21-80)

Sec. 2-113. Composition and quorum.

The planning board shall consist of seven (7) members, all of whom shall be residents of the city. There shall be no more than three (3) members from any one voting district. A quorum shall consist of a majority of appointed members.

(Code 1966, § 2-12-2; Ord. No. 12-73, 4-2-73; Ord. No. 7-80/81, 7-21-80; Ord. No. 15-13/14, 5/5/14 [Fiscal Note: Less than \$1000])

Sec. 2-114. Municipal officers to appoint members.

Appointment to the planning board established herein shall be made by the municipal officers.

(Code 1966, § 2-12-2)

Charter reference(s)--Municipal officers defined § 202.

Sec. 2-115. Terms of office.

The terms of office of the members of the planning board shall be three (3) years except that initial appointments after the date of this amendment shall be such that the terms of office of no more than three (3) members shall expire in any single year.

(Code 1966, § 2-12-2; Ord. No. 7-80/81, 7-21-80; Ord. No. 11-82/83, 4-20-83)

Sec. 2-116. Duties generally.

The duties of the planning board shall be as set forth in the applicable state statutes and city ordinances. The planning board may adopt written rules and regulations to govern its meetings and to aid in carrying out its duties as prescribed by state statute and city ordinance; provided, such rules and regulations shall not be inconsistent with any such state statutes or city ordinances.

(Code 1966, § 2-12-3; Ord. No. 7-80/81, 7-21-80; Ord. No. 17-84/85, 3-18-85)

Sec. 2-117. Meeting, agenda.

The planning board shall meet each month for the purpose of conducting its business and holding public hearings. No item of business or plan shall be in order to be placed on the planning board agenda unless such item or plan shall have been submitted to the planning director not less than fifteen (15) days prior to the date of such meeting.

(Ord. No. 6-74, 5-20-74; Ord. No. 9-76, 5-13-76)

Secs. 2-118--2-120. Reserved.

conditions which become legally nonconforming as a result of the adoption or amendment of this Chapter subject to the nonconformance provisions of Article III.

- (b) The regulations specified by this Chapter for each class of district shall be minimum requirements and shall apply uniformly to each class or kind of structure or land.
- (c) Land within the lines of a street on which a lot abuts shall not be considered as part of such lot for the purposes of meeting the area requirements of this Chapter notwithstanding the fact that the fee to such land may be in the owner of such lot.
- (d) No part of a yard, or other open space, or off-street parking or loading space that is used to meet the requirements of this Chapter for a building may be used to meet the same requirement for any other building unless specifically provided for in this Chapter.
- (e) When a lot of record at the time of enactment of this zoning ordinance is transected by a zoning district boundary the regulations set forth in this Chapter applying to the larger part by area of such lot may also be deemed to govern in the smaller area beyond such zoning district boundary but only to an extent not more than thirty (30) linear feet in depth beyond said zoning district boundary.

Sec. 27-113. Conflict with other ordinances.

Wherever the requirements of this Chapter are at variance with the requirements of any other lawfully adopted rules, regulations, ordinances, deed restrictions or covenants, the most restrictive or that imposing the higher standards shall govern.

Sec. 27-114. Separability.

In the event that any section, subsection or any portions of this Chapter is declared by any competent court to be invalid for any reason, such decision shall not be deemed to affect the validity of any other section, subsection or other portion of this Chapter.

Sec. 27-115. Changes and amendments.

This Chapter may be amended and its regulations, boundaries and district classifications changed by the City Council by a two thirds (2/3) vote of its entire membership at a regular or special meeting, provided that statutory provisions relating to notice and public hearings are observed in accordance with the following procedures and criteria:

- (a) Amendments may be initiated by the City Council or Planning Board or by any individual, corporation, or other legal entity owning or having control of the property that is the subject of the request.
- (b) All requests for amendments to the text of the zoning ordinance, or for changes in zone boundary lines, or other proposals to change the zoning

map or shoreland zoning map, initiated by other than the Planning Board or the City Council shall be accompanied by a fee as specified in the Schedule of License, Permit, Inspection and Application Fees established by City Council order. The request or proposal shall not be referred to the Planning Board for public hearing unless and until this fee is paid.

(c) No proposed amendments shall be referred to the City Council for consideration until the Planning Board has held a public hearing on that request, notice of which shall be posted in the City Clerk's office at least thirteen (13) days prior to such hearing. The notice must be published at least two times in a newspaper of general circulation in the City of South Portland. The date of publication of the first notice must be at least twelve (12) days prior to the hearing. The notice must be written in plain English, understandable by the average citizen. The Planning Director, or other person designated by the Planning Director, shall prepare and deliver the public hearing notices to the newspaper. All public hearing legal notices published in the newspaper shall be paid for by the applicant. The applicant is responsible for arranging direct payment to the newspaper.

(d) All proposals for change of zone shall include:

Address or exact location of the request.

Name and address of property owner.

Statement regarding existing and proposed land use.

Existing and proposed zone classification.

Statement indicating the developer has the financial ability to complete the proposed development.

(e) All requests for change of zone that propose new construction shall be accompanied by a site plan drawn to scale, indicating, but not limited to, the following:

Actual dimensions and shape of the lot to be built upon.

Size and location of existing and proposed buildings.

Points of ingress and egress.

Parking.

Lighting.

Landscaping.

Sign locations and sizes.

(f) No application for rezoning of an area for the purpose of development in accordance with an architect's plan shall be in order for action by either the Planning Board or City Council unless accompanied by a performance bond in an amount equal to at least twenty-five (25) per

cent of the estimated cost of the development; provided, however, in no event shall the amount of said bond exceed the amount as specified in the Schedule of License, Permit, Inspection and Application Fees established by City Council order. Said bond shall, by its terms, become payable to the City if the applicant fails to begin construction in a substantial manner and in accordance with said plan within one (1) year of the effective date of the rezoning if the rezoning is approved.

- (g) The Planning Board shall review all requests for zoning amendments and related site plans and make its recommendations to the City Council regarding the land use implications of the proposal and its consistency with the City's adopted Comprehensive Plan. If a change of zone is approved by the City Council based upon a site plan, no changes or alterations in the approved use shall be made without resubmitting the proposed changes for approval of the Planning Board.
- (h) If a petitioner fails to begin construction in a substantial manner and in accordance with an approved plan within one (1) year from the effective date of the rezoning, the Planning Board may initiate rezoning to the original zone classification.
- (i) No request for a change of zone shall be considered within one (1) year from the date of City Council denial of the same request.
- (j) Copies of amendments to Article XIII and/or to the Shoreland Area Overlay District depicted on the Official Shoreland Zoning Map of the City of South Portland, Maine, attested and signed by the City Clerk, shall be submitted to the Commissioner of Environmental Protection following adoption by the City Council and said amendments shall not become effective unless approved by the Commissioner; provided, however that if the Commissioner fails to act upon any such amendment within forty-five (45) days after receipt of such amendment, such amendment shall be deemed approved; that notwithstanding 1 M.R.S.A. § 302, as may be amended, such amendment, upon approval or deemed approval by the Commissioner, shall have an effective date retroactive to its effective date under City Charter; and, that such amendment shall govern all applications for a shoreland zoning permit submitted to the City within said forty-five (45) day period if such amendment is approved or deemed approved. Amendments to the Shoreland Area Overlay District depicted on the Official Shoreland Zoning Map shall be shown on said map within 30 days after the approval or deemed approval by the Commissioner of said amendment.

Sec. 27-116. Administrative corrections.

The City Manager, upon written request of Corporation Counsel, is authorized to make minor corrections to the adopted or amended version of this Chapter to correct typographical mistakes or errors in numbering, incorrect references, or punctuation, that do not alter the substance or meaning of the provisions without public hearing by the Planning Board or formal vote of the City Council. The City Manager must provide the City Council, Planning Board, and the general public with at least thirteen (13) days written notice of the proposed correction(s). The correction(s) shall become effective at the end of the notice period unless a written objection is received by the City Manager during the notice period. If a written objection is received,

South Portland Planning Board Roles and Responsibilities: Ch. 27-115(a) and (c) – What do they mean?

prepared for South Portland City Council Workshop 9-25-17 by Eben Rose, Councilor, Dist 3

A non-executive Planning Board drawn from residents provides an important democratic inroad into local governance, but the appointment, roles, and responsibilities of this Board and its members must reflect independence from the Executive Branch in order to realize its promise of being truly democratic. Problems arise when the PB serves as a proxy voice for executive preference, or worse— as an executive-guided amplification of executive preference.

The territory over which the PB can claim independence from Executive control is, at minimum, (1) over “soft parameters” that accompany site plan review, and (2) as a double check on an applicant’s compliance with “hard parameters”.

“Soft parameters” include aesthetic judgments such as “fit with neighborhood” or impacts of a special or exceptional use on a particular site (as opposed to any other site) within a neighborhood. These are circumstances in which a public hearing held by the Planning Board can expand the reach of public input into such matters. PB members are well advised in site plan reviews to limit their judgment to the narrow scope of these soft parameters.

“Hard parameters” are more directly measurable. These include, for example, setbacks, lot size, building height, sufficient drainage plan, and demonstrated ability to cover the costs of a project to its completion. These should be reviewed by executive staff primarily and draw on their professional expertise, but the PB can serve as a panel review— a second set of eyes checking for typos, as it were— to ensure that the application is indeed in order and that the project meets all of the requisite standards.

In either case, the burden is on the Planning Board to provide a rational basis for rejection within the confines of Code and other applicable laws. This is a very limited role for the PB in site plan review, and this is the bulk of the PB’s work.

Occasionally, the PB is called into service to review proposed zoning amendments as required by State law. Here is where our own code and existing/historic practice are internally inconsistent and in need of clarification.

Ch. 27-115(a) states that amendments may be *initiated* by the Planning Board [*emphasis added*]. But since members lack access to the agenda, it is not clear how this is possible. The PB is, as a practical matter, not empowered to initiate anything. The role of the PB could be made more expansive than what it is now; it could be more of a legislative and executive advisory body on city planning generally, and could initiate projects or policies that it could then forward to the Council for formal deliberation much like other standing committees are free to do. Currently, however, executive control of the PB agenda makes any PB-initiated amendment requests serve instead as Executive requests that are selectively pre-screened by the PB. This makes the PB a tool of executive staff— a citizen board camouflaged to appear somehow responsive to voters. Is the PB empowered to be

the gatekeeper of Executive requests that come before the Council? Tool or gatekeeper—is either their proper role?

Ch. 27-115(c) states that, “No proposed amendments shall be *referred* to the City Council for consideration until the PB has held a public hearing on that request...” [*emphasis added*]. This poses a dilemma since zoning amendments are essentially policy decisions that can only be made by the democratically elected Council and approved by 2/3 majority. While public hearings help achieve the widest possible involvement by citizens as required under state law (30-A MRSA §4324), South Portland’s PB review of proposed amendments has not always been managed with public engagement as its focus. What’s more, Council-initiated zoning changes must necessarily be exempted from this requirement as written since the Council cannot both *initiate* a zoning amendment and *refer* it to the PB *before* considering it.

The narrow purpose of this workshop is to find ways to amend this language (Ch. 27-115 [a] and [c]) to be more clear and internally consistent, and in so doing:

- (1) to evolve a broader critique of inherited PB practice,
- (2) to better define the PB’s role (particularly as separate and distinct from the executive staff and from the Council) as a democratic inroad, and
- (3) to improve the economy of PB volunteer time by ensuring that they are not asked to exceed their narrow quasi-judicial scope and attempt to duplicate Council’s or executive staff’s respective roles.

An infographic and germane passages from Code are included in this packet to aid discussion. Planning Board members past and present may be in attendance to share their experiences and insight. Authority and inspiration for local use of Planning Boards can be found in 30-A MRSA §4312 Findings, Purpose, and Goals (<http://legislature.maine.gov/statutes/30-a/title30-Asec4312.html>).

I look forward to an earnest and enlightening discussion of what we each think about these roles and responsibilities beyond “if it ain’t broke, don’t fix it”. Democracy is broke. It is always broke, and it is always our job to fix it. Let’s go!

South Portland Planning Board roles and responsibilities: A question of accountability

prepared for South Portland City Council Workshop 9-25-17 by Eben Rose, Councilor, Dist 3

A non-executive Planning Board drawn from residents provides an important democratic inroad into local governance, but the appointment, roles, and responsibilities of this Board must reflect independence from the Executive Branch and a greater degree of accountability in order to be truly democratic.

At the same time, PB members are not elected and are not in any way accountable to the Councilor who nominates and Council that appoints them.

The PB is subject to open meeting laws and its members' written communication is responsive to FOAA requests, but they are not assigned a City email account.

Their narrow role is more quasi-judicial than legislative.

As such, they should not be lobbied...
...or should they?

Authority of the PB flows from the democratically elected City Council in these four ways:

- members nominated by elected Councilors
 - appointed by Council majority
- } more democratic
- ...but nominations are rarely contested
 - general expectation that reappointment requests are uncontested
- } less democratic

South Portland's Planning Board has taken on a broader role than as a purely quasi-judicial body and has been elevated to an advisory role in legislation, but without the accountability that elected officials possess and without the autonomy that other standing committees possess.

