



Town of Portsmouth

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November 7, 2011

Joseph W. Robicheau, President
Honorable Portsmouth Town Council

Re: REQUEST ZONING AND PERMITTING PROCEDURES REVIEW

The Town Zoning Ordinance exists to provide guidance for orderly and controlled development. It is a guide for anyone planning to create or modify property and a guide for the Town to equitably administer development proposals. Developers, businesses owners and homeowners rely on specific procedures to plan and predict when their new project will be able to begin construction or open for business. They have planned commitments to contractors, financing, tenants, landlords and employees that depend on when a project will be ready. The process for securing all required approvals before construction can begin can become uncertain, overly lengthy, costly, frustrating and at times discouraging. If we desire to add valuable commercial property to our tax base and to be "business friendly" a review of the Zoning Ordinance and associated procedures should be conducted to address timing, delays, costs, requirements and functionality.

The current Town of Portsmouth Zoning Ordinance was adopted in 1994. Over the past seventeen years amendments, several worthwhile additions and revisions have added and changed portions. A revision related to residential driveways is currently being progressed by Bob Gilstein and the Planning Board. Parts of the Ordinance need changes that better define and encourage the development goals of the Town. Processes should be streamlined and made much more predictable. Procedures should be of assistance to applicants and not become costly time delays that may discourage continuing with a project or may spell failure for the proposal. Article IX, Section 908 of the Portsmouth Charter includes, "The Town Council shall at least every five (5) years review the Zoning Ordinance and map to determine whether any changes are necessary..." I respectfully suggest that the Council direct the Planning Department to embark on a thorough review of the Zoning Ordinance and associated procedures and responsibilities.

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The Board of Review has scheduled its own workshop "to discuss residential and commercial zoning proceedings and timelines." This is a welcome and excellent step toward airing some expressed concerns. However, it is not the only portion of zoning and permitting procedures that need addressing.

Currently there are four designated zones for commercial development (C, TC-C, LI, HI). It is very unlikely that there will be a need for property to be zoned Heavy Industrial. Some even suggest that opportunities for Light Industry areas are not needed. I think that reducing our inventory of LI parcels may prove to be short sided in the future. With the flexibility of our PUD ordinances, good size LI parcels can also accommodate most desirable commercial development. Should there be more categories of business zones with differing and specific uses? Zones designated for specific areas of Town? Areas zoned for types of activity that consider the types of neighborhoods that exist? Zones that are geared toward adjacent roads and surrounding infrastructure? Middletown has four different business zones plus industrial. Newport has five business zones.

With differing zones for business development there should be a greater basis for uses that are allowed by right. Currently "Article V – Use regulations" indicates many businesses that are allowed as a matter of right when located in a commercial zone. Of the 88 business uses identified in the ordinance, 38 uses are allowed by right in "C" a zone and 27 uses are allowed in an "LI" zone. A later article overrides all the allowed uses by requiring a special permit for all new or expanded businesses on lots over 20,000 square feet or with a building area over 5,000 square feet. This effectively requires a special permit for most business projects. This broad application of requiring special permits contributes to the volume of hearings that must be conducted by the Zoning Board. The result is longer agendas with more commercial hearings that generally take much longer than residential hearings. A special permit hearing adds to the time and upfront costs a business must absorb. The near universal requirement for special permits should be eliminated or at least adjusted to be applicable only to uses that may require special evaluation and/or lots and buildings of much greater size.

Are duplicate hearings with Planning Board and Zoning Board needed for a special permit? Since the PB is advisory in this instance could a staff and technical review suffice? – resulting in savings of time for applicant, staff and the Board.

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Proposals for commercial projects often involve site plans that raise technical issues. A standing Technical Review Committee should review all commercial and industrial applications before any board presentation. It could also be valuable for some residential situations. Having the TRC review all commercial projects introduces an official review by qualified knowledgeable Town staff applying consistent standards. The recommendations of the TRC should be relied on by the boards. Understanding technical issues should not be left to personal interpretation or public opinion during a hearing by non-professionals or allegations from the audience. Having the site planned reviewed in advance by the TRC, with a report to the board, should aid the board and provide a credible reference for answering questions during a hearing. This could allow hearings to move quicker.

TRCs in most communities are chaired by the town planner and include the zoning officer, public works, town engineer and when needed fire and police departments. Here Portsmouth is sorely lacking in that most applications for the Planning Board are not even reviewed by our Planning Department. I have been told, and have done some research, and to my knowledge, Portsmouth is the only municipality in RI where projects are not received through and or first reviewed and commented on by the Planning Department. In my fifteen years of zoning and permitting work in cities and towns in five New England states, I never made an application that did not first go through and be administered by a planning department. The Planning Department should be the focal point for developers, residents and business owners offering guidance and access to regulations that govern development patterns throughout the Town.

An effective TRC will include professional engineering review by Town staff; an engineering perspective looking out for the Town. Here again, Portsmouth is at a disadvantage since we do not have a town engineer. This position would be of much value for the Town and be of great assistance to the boards when addressed by outside engineering consultants/experts. Having professional advice from staff would be a great reference to rely on for the boards. I am sure that having a town engineer would also be of importance to Portsmouth in dealing with waste water and storm water issues, both past, present and future.

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The volume and complexity of proposals has added significantly to the length of agendas for the Board of Review. All this contributes to applicants often being scheduled for consecutive months, some as often as three and even four sessions. Add to this that boards take a month off and the delays can become lengthy and disrupt business plans. The time to complete a hearing adds significantly to costs a business incurs before opening. Time is money. Repeated scheduling of hearings requires the applicant to incur additional fees and expenses for engineers and other consultants. Neighbors and observers that wish to attend a particular hearing must continually be on the alert for each time an applicant is scheduled. Some observers feel that the repeated scheduling of a project discourages objectors from continuing to appear.

The time required to hear each applicant should be of concern. The Board of Review has placed a limitation on the time that will be allowed for presentations. This can force an applicant into multiple appearances. Could lengthier hearings result in dispensing with applicants in fewer sessions resulting in fewer board meetings? It has not gone unnoticed that the boards do schedule additional sessions for lengthy hearings and accommodate applicant's requests. It is also recognized that members of the boards are unpaid volunteers and that some limitations must be made. What are the time parameters that will expedite completing hearings provide better service and not discourage citizens from volunteering to serve?

The majority of required hearings deal with residential properties. Many residential applications that comprise the Zoning Board agendas are often of a more routine nature and meet with little objection by the Board or questions from the audience. Some municipalities have adopted a consent agenda or summary calendar to streamline and expedite hearings. This can be of great benefit to the applicant as well as to the board. It speeds up handling of requests for minor variances for sheds, decks, pools, etc. The minor requests would be dispensed with in one session and the board has more time to devote to other applicants. The board should rely on staff comments and recommendations to identify requests that may be expedited.

Once a board has rendered a decision the written recordable decision should be expedited. Waiting weeks for the formal written decision adds delays in a business moving forward. Having received a decision, an applicant must wait until the decision is published and recorded and then still await expiration of the statutory appeal period before work can begin. Here again the preparation of the

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decision is dependent on the work of a volunteer. What is a reasonable waiting time? The Town should provide needed services to assist in expediting publishing of the official decisions. Here again time is money and delays can become costly.

Allowable lot coverage can be a key determinant in the economics of a project. Greater coverage can reduce the cost per square foot to develop or encourage larger development. Our commercial/industrial zones allow 25% lot coverage. In the "TC – C" zone 35% coverage is allowed to facilitate more density and better use of the land. The Portsmouth Business Park allows 30%. Middletown is considering an increase in lot coverage in some business zones from 25% to 35%. This can increase the potential for development. Land in Portsmouth already has negatives that hamper development and add costs. Land with a greater allowable footprint will be more valuable and produce more return for the town with increased tax value. Adjusting lot coverage in different areas and to accommodate certain uses should be considered.

A review should be made of required fees for building permits and fire inspections. The cost of the fire inspection fees can now exceed building permit fees. Do the costs of both fees reflect the real cost of the activity involved?

Are application requirements adequate? Is too much required? It can be counterproductive to require information that is not needed. Having sufficient and complete information at the time of application for staff to review and comment on should ensure a smoother process during the hearing.

Proposed business projects, be it new building construction or changing uses in an existing building, often have many steps to take before opening. Many of the steps along the way do not seem difficult but taken in total and over a period of time become very costly. This can discourage a venture from going forward or cause the applicant to look elsewhere to locate the business. We want to encourage growth in our business community. The majority of our businesses will continue to be small businesses owned by individuals. The small business owner does not have the resources and time to incur lengthy processes and incur additional start-up expenses. The Town must do its part in fostering and supporting desirable economic development.

There are many highly qualified people in Town and the surrounding area that have extensive experience in matters related to zoning, permitting and related procedures. Many have mentioned particular issues that they feel should be

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reviewed and revisions considered. Input should be solicited from both sides of the hearing room and all participants in the process. Ideas and opinions should be aired to identify what causes delays and inefficiencies for applicants as well as extra work for a board or staff.

I have discussed the need for a review of the zoning and permitting procedures with Bob Gilstein. He supports the idea. I respectfully suggest that the Town Council direct the Planning Department to embark on a thorough review of the Zoning Ordinance and associated procedures and responsibilities and make recommendations for changes that will assist the Town, those who wish to do business here and all citizens that may have a need to seek approvals for development projects. In the end, it is hoped that all will benefit.

Respectfully,

A handwritten signature in cursive script, appearing to read "Bill Clark".

William E. Clark