

City Council Workshop
April 28, 2014
6:30 P.M.
South Portland City Hall Council Chambers

Councilors Present

Gerard Jalbert, Mayor
Linda Cohen
Thomas Blake
Patricia Smith
Michael Pock
Maxine Beecher
Melissa Linscott

Staff Present

Jim Gailey, City Manager

MINUTES

Mayor Jalbert opened the meeting and welcomed all in attendance. He reminded folks that members of the public are invited to comment on each item as it comes before the Council for a period of no more than two (2) minutes. All questions or concerns would be made through the Chair and if they wished to address the City Council they would be asked to please raise their hand and upon being recognized would state their name and address for the records.

- 1. Amending Chapter 27, “Zoning,” Regarding Zone Texts and Zone Map Changes Creating the Main Street Community Commercial (MSCC) and Thornton Heights Commercial (THC) Districts**
- 2. Amending Chapter 21, “Police,” Establishing a Sex Offender Residency Restriction Ordinance**
- 3. East Broadway Crash Data Review**

1. Amending Chapter 27, “Zoning,” Regarding Zone Texts and Zone Map Changes Creating the Main Street Community Commercial (MSCC) and Thornton Heights Commercial (THC) Districts:

Jim Gailey explained that this request is brought forward by the City to rezone an area along Main Street into two new zoning districts. The first is the Main Street Community Commercial (MSCC) District and the second is the Thornton Heights Commercial (THC) District. The purpose of the MSCC zone is to provide a higher density, mixed residential and commercial hub within the Thornton Heights neighborhood. This is a destination business district that effectively balances pedestrian accessibility and safety with the need to maintain vehicular mobility. It is a mixed-use center providing services to the surrounding neighborhood as well as to Main Street motorists. The purpose of the THC zone is to provide a higher density residential and commercial services zone that allows a broad range of retail, commercial, service, entertainment, and hospitality uses in an auto-oriented environment. Staff previously brought forward the two zones at a City Council workshop. At that time staff heard of concerns around height, density and parking ratios. The original proposal of prohibiting extended

stay motel/hotels was also discussed. As a result of the subsequent discussions between City Council, Planning Board, the Comp Plan Implementation Committee, and staff members, several revisions have been made to the current proposal.

*Removed the length of stay requirements from the definitions of hotel and motel. (The definitions drop out of the amendments as they end up not being changed at all.

* Removed the special exception use in the MSCC zone (strip along Main Street) for retail and restaurants open 24 hours per day. (This was a Planning Board recommendation at its February 25th workshop.)

*Reduced the maximum height limit in the MSCC from 4 stories to 3 stories (left the 50' height limit in place in case someone wants to do a pitched roof, for example). This will reduce the height, but also reduce density.

*Reduced the maximum height limit in the THC from 8 stories to 6 stories and from 96' to 70'. Again, another change that would reduce density on the property.

*Brought the MSCC zone boundary back to the existing LB zone line for the St. John's Church property. If someone is interested in a proposal that requires all or more of the lot to be included in the MSCC, that person can bring forward a request for rezoning at a later date.

*Removed the option of approving 1.25 off-street parking spaces per person for multi-family residential as opposed to the regular standard of 1.5 required spaces.

These revisions required a new Planning Board public hearing, which was held on Tuesday, April 22, 2014. By a vote of 4 -1 (Hagan opposed, Laidley absent, District At- Large vacant), the Planning Board recommended approval of these amendments.

Attached is a copy of the Planning Board report. Tex Haeuser was at Monday's meeting to present the proposed changes and how they address concerns raised by the City Council.

Tex Haeuser, Planning Director discussed the current goals of the Comprehensive Plan as well as the history, zoning issues, expanding the plan, neighborhood centers and increasing foot/bike transportation. He further discussed three areas in the city that are being discussed, Main Street, Meetinghouse Hill and the Knightville area. He further discussed the following areas:

- Maintain City Tax base/reduce growth in property taxes
- Job increases
- Maintain Population/Demographic diversity
- SMART Growth (80% lot coverage)
- Update requirements – Auto areas meet with new design standards, green space, and no new check cashing businesses, etc. as there are currently there
- Graphics (modeling)
- Showed photos of what it might look like on some buildings with changes, hotel/motel problems and ways to solve them differently

He added that they had previous discussions on this, meetings, Workshops, Planning Board meetings and now City Council Workshops. He added that the Planning Board discussions looked at lots in particular and added that they can be flexible on how the plan is implemented here. He compared different lots in the area and where they may be more appropriately placed in this area.

Public Comment Opened: The following residents and affiliates with Bet Ha'am commented on Agenda Item #1.

Lisa Munderback 23 Coach Road and Chairperson of the Bet Ha'am Board of Trustees.

Rob Schreiber Planning Board, Zoning Implementation Planning Committee, Comprehensive Plan
Terrace Avery 32 Pond Road felt that current concerns should be met.

Jane Slogan Bet Ha'am member, had concern with green space and what the charge here would be regarding the building.

Rosemarie De Angelis Pleasantdale had concern with a Dunkin Donuts possibly going in at the green space location.

Craig Piper Comprehensive Plan Member and Landscaper.

Craig Goras Comprehensive Plan Member/Maine Mall Manager would like an opinion of what would go in there.

Victoria Morales Thirlmere Ave. was in support of zone change for a new Main St. corridor.

Joan Caldwell Member of Bet Ha'am had concern for plans and would like them to look at other areas in South Portland.

Joe Pie 367 Summit Street felt that this was a beautiful building.

Martha Martenson 37 Thirlmere had concern for plans.

Jamie Broder Cumberland asked them to consider what is guiding their decisions.

Taylor Hamlin 15 Thirlmere Ave. had concern for this change.

Gloria Carter 12 Aspen Ave. had concern for the building here, and felt that time is running out for them and felt the need to change this.

Jeremy Moser has been a member of Bet Ha'am since 1996 and had concern for a change to this site.

Philip Carter 12 Aspen Ave. re-zone support.

Rachel Burger 17 Churchill had concern for a Dunkin Donuts coming in.

Sharon Newman Fort Road had concern with discussions regarding Dunkin Donuts.

Francis Lorello Froswick Ave. need a plan for all.

Peter Stanton 20 Deake Street did not like the idea of a drive through in areas that is trying to create a community.

Lee Broder Cumberland asked to be flexible.

Jerry Sherry Cape Elizabeth

Jason Reynolds 52 Thirlemere Ave. had traffic concerns with the placement of a Dunkin Donuts on that lot.

Erin Keff Portland member of Bet Ha'am discussed a park.

Public Comment Closed:

Mayor Jalbert asked about clearing up deeded restrictions, etc.

Jim Gailey explained that there was a deed granted for the green space for the length of 10 years ending 12/31/205 at which time Bet Ha'am could have the option to purchase but had nothing planned for this.

Councilor Beecher was part of the Comprehensive Plan Committee as well as Zoning Implementation Committee which they focused on people, the future and worked very hard on this. She further discussed the concern of a 24 hr. Dunkin Donuts at St. John's Church, zone changes on the Main St. corridor and the friendly neighborhood of people and businesses. She added that the Comp. Plan intention was not to block Bet Ha'am building at all.

Councilor Pock added that he is a new member on the Zoning Implementation Committee and he was in support of the zone change. He felt that it was getting a little crazy regarding the green space

issue, and this lot not being used. She further discussed a change in the zone issue and not having the Dunkin Donuts if this changed so this would not be held as leverage.

Councilor Cohen felt that this was a very hard decision, that times have changed and circumstances change and that the Council needs to make the best decision possible. She felt that she could not see a six-story building going in on this spot but did feel that the zone change would be a great idea.

Jim Gailey explained that they would have drafts of what would be proposed to go in there and it could be two stories maximum, if larger was proposed they can look at restrictions as well.

Councilor Linscott discussed the zoning issue, the parcel and the possible Dunkin Donuts going in this area as well as re-zoning Main Street and having information up-to-date. She further discussed design standards that are in place as well as supporting the zoning proposal here.

Mayor Jalbert asked if a Dunkin Donuts could actually be build at St. Johns right now with the current zoning. (yes they could but it would take time for approvals)

Councilor Blake was not in favor of having a drive-thru of any kind and felt that there is not need for them. He felt the need to slow down on this, work and focus on one area at a time, first the Main Street corridor area and added that he was in support of creating a park, keeping the green space as it has always been there, and not allowing a business to take this space over. He felt that the City needed to honor their commitment made to Bet Ha'am and did not agree with increasing zoning and had concern with density which he also did not agree with from the City Planner Tex Haeuser. He did not support the zone proposal and did not want to change part of the whole city neighborhoods, so he was in favor of keeping the green space for a park and no on the zone change.

Councilor Smith thanked all of the people who came out to speak on this item and she added that she had high hopes for re-developing Main Street. She discussed the Comprehensive Plan and felt that she needed to see this plan as it is hard to find the best answers here. She asked about the park and what the issues are as this could be a thing of beauty if it could be made into a real park but it never happen. She further discussed shaping of the city, open space and keeping the balance here. She felt the need to ponder more options now, gathering more information and find the best of a human scale development.

Discussion ensued on deeded restrictions which can control what is being built on a property or anything that occurs to the property, Main Street, use of this green space and some of the motels in this area become horrendous, slum-like places which need to be cleaned up.

Mayor Jalbert discussed the clean-up of this area; re-develop the area, zones, selling properties and supporting the change and density not being an issue for him. He asked for direction from this point.

Jim Gailey added that the Council may want to wait a few more weeks as it appeared not all were on board for the zoning vote.

Councilor Linscott had a question on a particular zone and if they could build on 80% of the land? She also asked about the process of applications and could they do this now?

Tex Haeuser discussed going from 10-24 units in an areas, design standards, modest changes and restrictions on buildings.

Councilor Beecher discussed design standards guidelines.

Councilor Cohen was in support of moving ahead with the zone change.

Councilor Pock asked what happens with a delay and felt that they could move ahead with both items.

Jim Gailey explained that an application could come in and the process could start with the current zoning status, he further discussed looking at the MSCC Zone alone first then followed by the THC zone. Discussion ensued on height, 6 stories being allowed, and deed restrictions as well.

Councilor Linscott asked about the process and applications and how they do this.

Sally Daggett Corporation Counsel discussed the process, a substantive review for the process; she discussed adding provisions that are applicable to March 10, 2014.

Tex Haeuser explained that 30 days from the submission of the application it goes onto the Planning Board agenda.

Councilor Blake discussed the MSCC Zone being applicable to March 10 as well.

Councilor Beecher would like to see them moved together, getting this done, and working on it and have both come forward on May 19. She further discussed how to prevent a tear down of St. Johns.

Sally Daggett discussed a retroactive date of March 10, 2014 and zone changes.

Councilor Blake felt that these are two separate items.

Councilor Cohen was ok with May 5 and taking time if needed being two separate items.

Councilor Linscott was ok with May 5 and keeping them separate.

Councilor Pock agreed with moving on this and splitting them.

Councilor Smith was ok with moving on it and was ok with May 5 but keeping the tow zones separate.

2. Sex Offender Residency Restriction Ordinance: Jim Gailey, City Manager explained that in 2009 the Maine Legislature enacted a law that allows municipalities to enact residency restrictions on certain sex offenders within certain limited parameters. It replaced a prior law that prohibited municipalities from enacting ordinances of any kind on this topic. The current law is the result of months of negotiations between the Maine Municipal Association, the Department of Corrections and the Maine Coalition Against Sexual Assault (with some technical assistance from the Attorney General's Office.) The resulting State enabling statute, 30-A M.R.S.A. § 3014 (copy attached), in effect balances the DOC and MECASA's position of not supporting any residency restrictions and the MMA's position of retaining local control over this field.

The statute is an express limitation on municipal home rule authority. In other words, a municipality may only adopt a local ordinance that restricts the residency of certain types of sex offenders in strict compliance with the statute. The proposed ordinance has been drafted with the statutory requirements in mind. The ordinance can only apply to persons convicted of serious crimes (Class A, B or C) against children under age 14 and can only prohibit residency of such persons to a maximum distance of 750 feet surrounding the real property comprising a public or private elementary, middle or secondary school or up to a maximum distance of 750 feet surrounding the real property comprising a municipally owned or state-owned property that is leased to a nonprofit organization for purposes of a park, athletic field or recreational facility that is open to the public where children are the primary users.

The Police Department has made adoption of this ordinance one of its top priorities for the year.

A copy of the proposed Restricted Property map is also included in the materials. The Police Chief and the Corporation Counsel presented at the workshop and were there to answer any questions that City Councilor had.

Enclosed was a letter from Chief Edward Googins as well as the proposed draft Ordinance language.

Chief Googins had great concern here regarding this matter and would like to have a closer monitoring of sex offenders with a higher level of safety.

Public Comment Opened:

Russell Lunt Brigham Street agreed with this idea, that schools are very close, parks and neighborhoods here in South Portland and it is a good idea to keep a close watch on this.

Public Comment Closed:

Councilor Blake discussed the levels of offense, registering and asked how prevalent this is in Maine.

Sally Daggett discussed domicile vs. residence as well as other areas that have this in place that she know of. There are four in the State of Maine. She discussed State Statute, rules and further discussion on residency with a clear understanding as to moving in and out of an area as well as the grandfather clause.

Councilor Beecher asked about residency and how this is qualified?

Councilor Linscott was happy to see this come forward and was very concerned about this issue. She asked about moving in and out of the areas as well as enforcement issues.

Chief Googins discussed the format of checking in when they move in and how the time period to do this has shortened as well and during this time they would check on any restrictions as well.

Mayor Jalbert felt that everyone was on board to move ahead with this item.

3. East Broadway Crash Data Review: Jim Gailey, City Manager explained that in February, Councilor Blake requested and the City Council received a report on the crash data for East Broadway. It has since been learned the first search did not contain the necessary parameters to pick up the length of Broadway between Cottage and Preble.

On Monday, the Police Chief will make a presentation to the City Council regarding the corrected crash data which has been updated to the beginning of April. The improvements to Broadway were completed in September of 2013. The Chief has run reports for the past three years based on the same time period of September to April of a given year. The Chief had all the 9/13 to 4/14 reports printed off and reviewed them. What he learned is that 11 of the 27 crashes occurred outside the area of the new striping, 10 were at the intersection of Broadway and Cottage and one was at Broadway and Preble. None of the remaining 16 crashes can be attributed to the new striping pattern.

For comparison sake, the Chief also retrieved the accidents for the same time period on the previous two years to see if there was any pattern. From 9/12 - 4/13, 9 of the 29 crashes were outside the area of the new striping, 6 were at Broadway and Cottage and 3 were at Broadway and Preble. From 9/11 – 4/12 11 of the 30 crashes were outside the area of the new striping, 9 at Broadway and Cottage and 3 at Broadway and Preble. As you can see from the data provided, the crashes in the newly striped area for the most recent period (16) has decreased compared to the two previous periods (20 and 19).

Year	Number of Crashes
10/2011 – 2/2012	30 total with 11 crashes outside area (19)
10/2012 – 2/2013	29 total with 9 crashes outside area (20)
10/2013 – 2/2014	27 total with 11 crashes outside area (16)

Included was a memorandum from Chief Googins regarding this item and further discussed this being a check-in on the numbers near Broadway/Cottage/Pickett Streets.

Chief Googins apologized for the incorrect data issue and added that the main reason was driver inattention; he further discussed the enclosed Power Point items including Crash Data Analysis Broadway (between Cottage & Preble) and the breakdown of a two-year study.

Public Comment Opened:

Russell Lunt Brigham Street had concern with speeding and SMCC area.

Public Comment Closed:

Councilor Smith appreciated the work that has been done on this issue and asked if they had tracked any bicycle crashes and how they are calculated if there were any.

Mayor Jalbert agreed that this is an issue and that bicycling can be scary as he has almost been hit.

Councilor Blake discussed driving distraction and how there has not been a lot of change yet with Broadway, SMCC and traffic issues in this area. He further discussed working together and how this would be helpful and suggested a letter to be sent to SMCC regarding this, working all together getting information from them regarding trends with the college, etc.

Councilor Cohen asked about Main Street, the traffic patterns and changes in this area as well.

Councilor Pock asked about numbers.

The City Council Workshop Adjourned at 9:20 p.m.