

To: Planning Board Members
From: Tex Haeuser, Planning Director 
Date: November 10, 2016 for Meeting Date of November 15, 2016
Re: **Recommendation to the City Council on Proposed Text Amendments, and an Associated Map Amendment, to the Nonconforming Lots and Residential A & AA Minimum Lot Size Provisions of the Zoning Ordinance**

Introduction

The City Council is seeking a recommendation from the Planning Board on a set of text and map amendments to the nonconforming lots and Residential A & AA minimum lot size provisions of the Zoning Ordinance. These amendments have been developed over the course of a number of workshops and hearings that began last summer.

As summarized in the Chronology below, there initially was an effort by the City Council to enact a temporary or short-term set of amendments to the provisions for nonconforming lots of record (for which I will use NCLRs for short). This was meant to enable most of the applicants wanting to build homes on NCLRs, who due to the Thirlmere court case were no longer able to meet the zoning standards, to move forward with their applications while the Council simultaneously undertook a more comprehensive review of the nonconforming lot provisions.

When the temporary amendments failed to get the necessary number of votes for adoption, the City Council moved directly to the more comprehensive approach. This involved:

- Adding exemptions to address problems raised by the remanded Thirlmere case so that applications for homes on NCLRs could continue.
- Adding and tightening zoning standards for building homes on NCLRs.
- Reducing the required minimum lot sizes in the A and AA zoning districts.

There are two versions of the proposed amendments, the only difference being that the Residential A minimum lot size for the Meetinghouse Hill neighborhood is proposed in Version A to be 6,000 square feet while in Version B it is proposed to be 7,500 square feet. This is discussed more fully below.

The Basic Problem Being Addressed

As has been discussed in previous memos (see Chronology and Document Links below), the main problem behind the issues being addressed is that when suburban style zoning was adopted by the City in the 1960s, with large minimum lot size requirements, it was imposed on the older neighborhoods as well as the undeveloped areas primarily found in the southern and western parts of the City. This instantly made a large number of lots in the established neighborhoods nonconforming with respect to lot size (as well, in many cases, with respect to various setbacks and other standards). As such, it put the City's land use regulations at odds with the existing patterns and characters of many neighborhoods

and created a variety of difficulties for property owners. The currently preferred approach of sending applications for building homes on NCLRs to the Planning Board and not the Board of Appeals overrules the legal requirement that there has to be some mechanism available for owners of nonconforming parcels to be able to build on their lawfully created and recorded lots that predated changes in local zoning.

The proposed amendments come at the basic problem by adjusting the process and standards for NCLR applications and also by amending the minimum lot size thresholds. For lots less than the minimum lot size—the NCLRs—the amendments fix the defect identified in the Thirlmere decision but also for the first time require Planning Board approval in all cases and tighten a number of the standards applicants have to meet. Relative to minimum lot size, the requirements are proposed to be brought in line quite precisely with the existing median lot sizes in each neighborhood for both the A and AA residential zones. This will take a number of properties out of the nonconforming status and make them conforming with respect to lot size. It also will give a few larger properties the opportunity to split off a new house lot in a way that they have not been able to do up to now—even though a neighbor down the street with the same or a less amount of land can create a house lot because the land is made up of one or more NCLRs.

Notice

Public hearing legal notices for the Planning Board hearing were published in the Portland Press Herald on October 31 and November 7, 2016. A public hearing notice was posted at City Hall and mailed on October 31, 2016, to the 6,256 owners of single-family residential properties in South Portland. The public hearing notice was sent via email to the Conservation Commission, Planning Board, and City Council. In addition, notice was posted on the Planning & Development website under hearings and as part of a subpage on Nonconforming Lots.

Review

This submission is being reviewed under Section 27-115 (g) Changes and amendments in Chapter 27 Zoning and for consistency with the City's Comprehensive Plan.

Chronology and Document Links

The following is a summary of the events and activities leading up to the present Planning Board public hearing. The documents referenced are too lengthy and numerous to attach, and so they have been included in file set of publicly available documents listed on the Planning Department Nonconforming Lots and Minimum Lot Sizes subpage: <http://www.southportland.org/departments/planning-and-development/nonconforming-lots/>. Hyperlinks have also been added to provide a direct connection to the documents when viewing this memo digitally.

Chronology

“NCLR” = Nonconforming Lot of Record

Date	Activity	Summary
February 5, 2016	Deane v. City of South Portland	Superior court vacates Board of Appeals denial of the Deane appeal of the building permit issued for 79 Thirlmere under the Nonconforming Lots provisions and remands to the City for further proceedings. See Thirlmere Decision here .
Spring, 2016	“The Blue Binder”	Staff members provide City Councilors with an inventory (street view, location map, property card) of the 102 single-family homes built on NCLRs from 2007 to 2016. See http://www.southportland.org/departments/planning-and-development/nonconforming-lots/ for multiple entries.
July 25, 2016	City Council workshop	City Councilors begin reviewing policies on NCLRs, in part because they had been intending to for some time anyway, and in part due to the Thirlmere case which had the effect of preventing new applications for homes on NCLRs from moving forward. See Council Workshop - 7-25-16 - Position Paper and Background Materials here . Consensus for moving forward with immediate amendments to “free up the pipeline” of waiting applicants and, at the same time, to start a more comprehensive review of policies for both nonconforming lots and minimum lot sizes.
August 1, 2016	City Council First Reading	First reading on amendments to exempt applications for homes on NCLRs from the maximum net residential density and minimum area per family standards and to allow NCLRs to be aggregated in order to exceed the threshold below which applications require Planning Board approval. Would only apply to projects not finally acted upon by January 1, 2016 and would sunset a year after enactment. See City Council First Reading - 8-1-16 - Position Paper and Background Materials here . Passed 5 – 2 (Blake, Fox) with an amendment removing the above exemption for applications not decided by July 25, 2016.
August 23, 2016	Planning Board hearing	See Memo to the PB - 8-23-16 PB Meeting - re Council One-Year-Fix Nonconforming Lots Amendments here . Positive recommendation to the City Council (6 – 1, Dowling) of the proposed amendments but with deletion of the Council’s amendment that removed the min. density and max. family area exemptions.
September 2, 2016	Staff comprehensive recommendations memo	See Planning Director Memo to the City Council 9-2-16 here . Included a GIS analysis of single-family house lot sizes by neighborhoods and zones and a proposal for reducing minimum lot sizes.
September 7, 2016	City Council Second Reading	The proposed “temporary” amendments failed (1 – 6, Cohen for). See Council Second Reading and Action Materials - 9-7-16 here .
September 22, 2016	Second staff comprehensive recommendations memo	See Planning Director Memo to the City Council 9-22-16 here .

September 26, 2016	City Council workshop (Part One)	City Councilors reviewed staff proposals for fixing the Thirlmere case issues, but otherwise tightening the NCLR provisions, and reducing the minimum lot sizes in the A and AA zones for most neighborhoods to 7,500 sf and 12,500 sf (would have required the creation of two new zoning districts, A-2, and AA-1). Councilors generally approved but did not see why, as we have the data, the minimum lot sizes couldn't be tailored to the existing pattern (i.e., median single-family house lot size) for each neighborhood. See 9-26-16 City Council Workshop here .
October 24, 2016	City Council workshop (Part Two)	City Councilors reviewed draft amendments that, based on the previous workshop, now included tables of minimum lot sizes for each applicable neighborhood. Also new was a provision for NCLRs requiring a minimum of 35 feet of street frontage when there are abutting NCLRs in the same ownership (unless the Planning Board finds that the average street frontage of neighboring developed NCLRs is 35 feet or less). In addition, the 25% landscaped open space requirement was changed to 25% vegetated and permeable, or naturally impermeable, open space. See 10-24-16 City Council Workshop here . The Councilors authorized moving forward with two versions: Version A, in which the proposed minimum lot size for the Residential A zone in Meeting House Hill is 6,000 square feet, and Version B, in which the Res. A Meeting House Hill minimum lot size is 7,500 square feet—but is identical to Version A in all other respects.
November 15, 2016	Planning Board hearing	The Planning Board will make a recommendation on Version A and Version B of the proposed amendments to the City Council. See attached.
December 5, 2016	City Council first reading	Tentative schedule.
December 19, 2016	City Council second reading and action	Tentative schedule.
January 9, 2017	Amendments become effective.	Tentative schedule.

The Proposed Nonconforming Lot Amendments

As proposed in both the Version A and Version B amendments, the following are the complete requirements and standards that would have to be met in order to build a home on a nonconforming lot of record. [Black ink items are existing; **red items are proposed.**]

- **Planning Board review in all cases.**
- Neighborhood compatibility standards.
 - Stormwater runoff (applies to all single-family permit applications).
 - Relation to street.
 - Building width.
 - Roof style and orientation.
 - Building height and style (maximum 28 feet).
 - Front façade.
 - Exterior materials.

- 25% landscaped vegetated and permeable (except for naturally impermeable) open space.
- No basements in combined sewer areas.
- Minimum 12' separation from all buildings on abutting lots.
- Minimum 35' street frontage except if the Planning Board finds that the average lot width of neighboring developed single-family lots is less than 35' or if the owner does not have abutting land available to increase the frontage to at least 35'.
- No moving lot lines.
- No building or parking easements.
- Can only be used for a single-family detached dwelling.
- Maximum 28' height limit.
- Maximum building coverage of 25% of the lot.
- Must conform with the space & bulk regs of the zoning district **except for minimum lot area, minimum street frontage, maximum net residential density, and minimum area per family.**
- Must be connected to public sewer.
- Must include a stormwater runoff drainage plan approved by the City's engineer.
- Must comply with Shoreland Zoning if applicable.
- Must comply with Flood Hazard regulations, if applicable.

The Proposed Minimum Lot Size Amendments

The proposed minimum lot size amendments are based on a careful analysis of existing neighborhood patterns using the City's GIS software and data. See, for example, the map included as Attachment #6. The initial staff proposal was to reduce the A and AA minimum lot sizes from 12,500 sf and 20,000 sf to 7,500 sf and 12,500 sf respectively (which involved creating two new zoning districts in order to accommodate several newer neighborhoods where the existing minimum lot size is still the most appropriate). At workshop, however, the City Council members talked about the importance of the unique character of each neighborhood and expressed a preference for fine-tuning the minimum lot size standards to the median existing single-family house lot size of each neighborhood. The proposed minimum lots sizes, therefore, were based on the following:

Residential AA Zoning District		
Existing AA Minimum Lot Size = 20,000 square feet		
Neighborhood	Existing Median Size of Lots in the AA Portion of the Neighborhood (square feet)	Proposed Minimum Lot Size for the AA Portion of the Neighborhood (square feet)
Highland	20,943.1	20,000
Loveitt's Field	8,386.5	8,500
Ocean Street	13,568.0	13,500
Stanwood Park	24,641.7	20,000

Residential A Zoning District		
Existing A Minimum Lot Size = 12,500 square feet		
Neighborhood	Existing Median Size of Lots in the A Portion of the Neighborhood (square feet)	Proposed Minimum Lot Size for the A Portion of the Neighborhood (square feet)
Cash Corner	7,990.3	8,000
Country Gardens	12,420.2	12,500
Highland	13,418.4	12,500
Knightville	7,588.7	7,500
Ligonía	6,700.0	6,500
Meadowbrook	8,505.9	8,500
Meetinghouse Hill	6,160.7	6,000 (Ver. A) / 7,500 (Ver. B)
Ocean Street	7,882.7	8,000
Pleasantdale	5,999.9	6,000
Stanwood Park	6,913.4	7,000
Sunset Park	7,086.9	7,000
Thornton Heights	6,807.5	7,000
Willard	6,007.2	6,000

Potential New Buildable House Lots as a Result of the Proposed Amendments

Discussions of NCLRs naturally lead to the question of how many potentially buildable infill house lots are left in South Portland. This is not possible to answer without a considerable amount of time and effort involving identifying and mapping in GIS all of the City’s original subdivisions, creating a parcel layer out of the subdivisions, and comparing existing lots and houses with the subdivision parcels. We can say, however, that since 2007 there has been an average of a dozen homes per year built on NCLRs. That rate will decrease if the proposed amendments are adopted due to the more restrictive standards involved.

On the other hand, there is the potential, if the proposed amendments pass, for an increase in new single-family homes being built as a result of lot splits—the legal ability to divide a lot in two if each of the parcels meets the minimum lot size for the zone. With the proposed reduction in minimum lot sizes for the A and AA zones, there will be an increase in the number of lots that are at least twice as big as the minimum lot size and, therefore, could potentially be split. The word “potentially” is important here as many of the lots twice the size of the proposed minimum lot size will not be able to be split due to an unfavorable location of the existing home, such that setbacks could not be met, or other factors.

Unlike NCLRs, it is not difficult to identify lots with the potential to be split—keeping in mind the stress on “potential”—based on being twice as large as the proposed minimum lot size. The following tables

for the Residential AA and Residential A zoning districts provide the maximum possible number of such lots.

Residential AA Zone				
Neighborhood	Proposed Minimum Lot Area (square feet)	# of Lots that POTENTIALLY Could be Split to Make a New House Lot (i.e., = twice the proposed minimum lot size)	Total # of Single-Family House Lots in the Neighborhood	Percent of Residential AA Single-Family House Lots in the Neighborhood that Potentially Could be Split to Create a New House Lot
Highland	20,000	6	375	1.6 %
Loveitt's Field	8,500	15	128	11.7 %
Ocean Street	13,500	27	581	4.6 %
Stanwood Park	20,000	32	736	4.3 %

Residential A Zone				
Neighborhood	Proposed Minimum Lot Area (square feet)	# of Lots that POTENTIALLY Could be Split to Make a New House Lot (i.e., = twice the proposed minimum lot size)	Total # of Single-Family House Lots in the Neighborhood	Percent of Residential A Single-Family House Lots in the Neighborhood that Potentially Could be Split to Create a New House Lot
Cash Corner	8,000	20	275	7.3 %
Country Gardens	12,500	10	287	3.5 %
Highland	12,500	31	375	8.3 %
Knightville	7,500	0	38	0.0 %
Ligonia	6,500	24	222	10.8 %
Meadowbrook	8,500	17	302	5.6 %
Meetinghouse Hill ¹	6,000/7,500	100/58	1,018	9.8/5.7 %
Ocean Street	8,000	51	581	8.8 %
Pleasantdale	6,000	51	567	9.0 %
Stanwood Park	7,000	35	736	4.8 %

¹ The left side of the slash in each case is from Version A of the proposed amendments and the right side relates to Version B.

Sunset Park	7,000	19	253	7.5 %
Thornton Heights	7,000	19	484	3.9 %
Willard	6,000	49	787	6.2 %

Version A is Recommended

Two versions of the proposed ordinances were requested by the City Council based on my incomplete assessment of the potential impact of the reduction in minimum lot sizes. The number of lots with the potential to be split in the Meetinghouse Hill neighborhood under Residential A seemed high compared with the other neighborhoods. A subsequent look at the situation, however, showed that this was due to the fact that Meetinghouse Hill simply is larger than other neighborhoods and the percentage of lots with the potential to be split is not out of line with those of the other Residential A neighborhoods. As indicated below, therefore, the staff recommendation is for Version A of the proposed amendments.

Why Not the G Zone?

The reason only the A and AA zoning districts are being considered for amendments and not other zones, like the G zone, is that it is only in A and AA that the minimum lot size requirements are so out of line with existing single-family house lot sizes. In addition, it is only the A and AA zones that have the maximum net residential density and minimum area per family standards that became a problem with the Thirlmere case.

Comprehensive Plan Support

There is explicit support in the Comprehensive Plan for reducing minimum lot sizes to match existing neighborhood patterns, and there are a variety of references in the Plan that also support infill housing development when it is done in a way to conform to the existing neighborhood character. As such, the proposed change to require all applications for homes on nonconforming lots to obtain Planning Board review and approval brings the nonconforming lot provisions more in line with the Comprehensive Plan. References in the Plan in both cases are attached.

Recommendation

The staff recommendation is for a motion stating that the Planning Board recommends that the City Council adopt Version A (Residential A zoning district minimum lot size for the Meetinghouse Hill neighborhood = 6,000 sf) of the proposed zoning text amendments and the associated amendment to the Zoning Map to add neighborhood boundaries.

Attachments

1. Version A Ch 27 Amends re NC lots & density for Nov 15 PI Bd PH 10-26-16.
2. Version B Ch 27 Amends re NC lots & density for Nov 15 PI Bd PH 10-26-16.
3. Proposed Zoning Map amendment consisting of the addition of neighborhood boundary lines.
4. Nonconforming References in the Comp Plan.
5. Infill Development References in the Comp Plan.
6. GIS Map – Lots Containing Single-Family Homes – used a part of the minimum lot size analysis.
7. Public comments.