

**Town Council Special Meeting
Minutes
October 10, 2012**

The meeting was called to order at 7:00 pm.

Roll Call

Councilors Farber, Payne, Pierce, Rodden, Varney and Orestis were present and answering roll call.

Councilor Mahoney was absent.

Councilor Farber asked to remove item 3 from the agenda. There were no objections.

Item 1 Order to authorize the sale of the Pleasant Hill Fire Station property and the exchange of certain abutting property in connection with buyer's plans to use the property.

Councilor Rodden moved the order; Councilor Pierce seconded. Motion carried 6-0.

Item 2 Adopt an amendment to the Zoning and Site Plan Review Ordinance to revise the time limits for the West Falmouth Crossing Master Plan.

Councilor Pierce moved the amendment; Councilor Farber seconded.

Councilor Farber asked if the Council needed to revisit this in 2018, even if the two remaining lots are developed in the interim. She was concerned with the existing buildings.

Ethan Croce said it expires only in relation to any undeveloped lots in the development. If both lots are developed, the issue of the expiration of the master plan will go away on its own.

Motion carried 6-0.

Item 3 Resolution to oppose Falmouth Referendum Question #1 and continue METRO bus service.

Removed at Councilor Farber's request.

Item 4 Workshop on a proposed amendment to the Zoning and Site Plan Review Ordinance regarding tenant footprint limitations in SB1.

Mr. Croce discussed the October 4 memo from Community Development Director Amanda Stearns that detailed the changes that have been made to the proposed amendment subsequent to the previous Council discussion. A new use table has been drafted, which clearly outlines permitted and conditional uses, as well as the allowed ground floor sq. ft. limits, which have been increased from 30,000 to 50,000 sq. ft. Grocery stores would remain at 60,000 sq. ft., and several uses, including hotel/motels, wireless towers, outdoor storage and sales, outdoor eating areas and public utilities are not subject to limits. The language

was changed to make it clear that the Wal-Mart site plan approval is exempt as long as they pull their building permit and begin construction within one year of their site plan approval, which was recently reapproved by the Planning Board. The Code Enforcement Officer would determine the sq. ft. of any tenant space, drawing from the information in the town's files. Language regarding the reconfiguration of existing tenant space was changed for clarity, allowing some flexibility for existing tenant space to be reoccupied and rearranged within the existing building footprint. New definitions were added and the use "grocery/retail" was added to other districts.

Councilor Farber asked if adding the "grocery/retail" use to all districts would cause the 60,000 sq. ft. footprint limit to apply to other districts. Mr. Croce said no, the footprint limitation would still only apply to SB-1. Currently grocery stores are included under "retail and service establishments". If the new "grocery/retail" use was not added, specifically to the WFC district, the Hannaford store would become non-conforming.

Mr. Croce said that, in response to comments at the Planning Board's public hearing, language was added to clarify that the amendment would include existing tenant space that was currently vacant. He said that the proposed limitation applies to ground floor tenant space only; the size of buildings or tenants is not restricted by this ordinance.

Councilor Farber asked what the difference is between having "substantive review" and "site plan approval".

Mr. Croce said that once a project receives substantive review, it would be protected from any ordinance changes that are either proposed or adopted between that review and final approval. Whether a project has reached that threshold is determined by the Planning Board.

Councilor Payne thought that state statute was passed recently in response to projects that had received substantive review and then were derailed by opposition. Mr. Croce confirmed that statement.

Mr. Croce spoke about a concern raised by a Planning Board member that the amendment would place a size cap on uses that are allowable in other districts without size limitations. He pointed out that commercial uses in residential districts are conditional, and the BZA would have to make a finding that those uses were in conformance with, among other things, the bulk and scale of the surrounding neighborhood. There are criteria that go above and beyond the typical site plan criteria in those situations.

Councilor Rodden said the original amendment allowed office buildings up to 30,000 sq. ft. in SB-1; currently the footprint is only 20,000 sq. ft. The changes that have been made allow office space up to 50,000 sq. ft. Mr. Croce said that was correct.

Councilor Farber asked about a letter received today from the attorney for the shopping center. She wondered if the Council should discuss that at this meeting.

Councilor Pierce said since the memo only arrived this afternoon, she has not had sufficient time to review it.

Councilor Payne moved to waive the rules to allow the attorney for the shopping center to discuss the memo submitted earlier today; Chair Varney seconded. Motion failed 4-1 (Rodden; Pierce abstained). A waiver of Council rules requires a unanimous vote.

Councilor Farber suggested changing the language in the use table to "ground floor tenant area". She pointed out that they have not discussed "below ground" tenant space and whether that would be treated as ground floor or second floor.

Chair Varney wondered about overhang on the second floor. Councilor Farber thought that would be allowed as long as the ground floor tenant space met the limit.

The Council consented to adding “tenant” to the use table and clarified that there was no tenant space limits above or below the ground floor.

Councilor Rodden thought 50,000 was too much for office space; she didn’t think it fits into the character of the retail area. They have a business area north of SB1. She wanted to recommend that they keep the office space limit at 20,000 sq. ft.

Councilor Payne pointed out that a retail area of small businesses needs people to shop there. Office use would generate retail activity. Allowing office use of this size would help to reach the density needed to feed the retail shops.

Councilor Orestis agreed; they don’t want to have the entire TD building out there, but he didn’t want to discourage the opportunity to bring in an office into the area.

Councilor Rodden pointed out that, if they allow the 50,000, there would be nothing preventing a building like TD Bank, other than the limit of 2.5 stories. The tenants have said that they are concerned about having a lot of office traffic, since those workers only come out at lunch and an office would take up space that could be used by retail, with shoppers coming in and out all day. Office workers leave at 5pm, and then that space would not generate evening traffic.

Councilor Farber asked for clarification that Councilor Rodden is looking for an office space ground floor limitation, and not limiting office space on the second floor.

Councilor Rodden said that is correct. Currently, the shopping center has office space on the second floor, though they are small offices. She thought the Council has rolled into 50,000 sq. ft. without really talking about it.

Councilor Payne hadn’t heard from anyone that they don’t want office space.

Councilor Farber said that, when she was at FEIC, one of the business owners from the shopping center expressed concern about large-scale office space in the area, because it is not an anchor. This person was concerned that there was not a second anchor.

Councilor Payne said they are speaking about one parcel of property at the shopping center, and not public policy. He wanted the developer to be able to determine how best to use the building to make it work. He didn’t want them to assume that they are working with a fixed footprint.

Councilor Orestis asked about the land behind the shopping center; the development of that raw land is part of this amendment, and it may provide the opportunity for mixed uses that would bring in people to contribute to the economy. He didn’t want that to get knocked out of play.

Councilor Farber pointed out that the land between the shopping center and the turnpike spur is in BP; the limits they are discussing do not apply to that land. They do apply to the land between the center and the creek, but there is water back there so there is limited space. She thought the Council has given a lot of thought to the fact that this amendment would apply to more than the shopping center property; it is the whole zone. She felt that part of encouraging mixed use would be to not treat office space on the ground floor differently and allow it to be the same size as retail.

Councilor Pierce was curious as to why the 20,000 sq. ft. cap was placed in the first place. She felt the 50,000 sq. ft. for office space offered more flexibility.

Mr. Croce did some research on the 20,000 sq. ft. cap. The district was established in 1987, and that limit was in place then. He read through the Council minutes and Town Manager’s notes, but could find no supporting documentation for the implementation of that limit.

Councilor Rodden said the MMC building on Bucknam Road has 20,000 sq. ft. on the first floor.

The consensus of the Council was to leave the amendment at 50,000 sq. ft. for ground floor office space.

Councilor Rodden spoke about the 2009 charette; the current owners, as well as the potential buyers, have said that they are not interested in coming forward with a master plan. Having a limit shows what the Council wants to see in the district. The 80 people who were actually at the charette got certain information the 300 people who voted online did not get, so she wanted the Council to be careful of relying on the charette.

Councilor Orestis said a lot of people have said the sq. ft. numbers are “arbitrary”. He researched the issue back to 2005, including the 2009/2010 charette. He said there has been a process behind the development of the number, which has moved forward for a number of years with input from both citizens and business people. The 30,000 sq. ft. limit has received the least input from citizens, and while it is below the input from the public process, it is in the ballpark of what is out there in the marketplace and what is coming from neighboring towns.

Councilor Farber felt this was a process; that work has not been abandoned. Things have changed, a new larger Wal-Mart is coming in, and for many residents she has spoken with that is enough. She didn't think 50,000 sq. ft. is arbitrary, but a result of looking at what retailers are doing in the area and trying to hone in on the interests of both the business and residential communities. She felt this is part of the evolution of the process.

Councilor Orestis said he heard across the board that people do not want big box development. He wanted to make sure they don't scare away opportunities for hotel, movie theater, office space, etc. in the desire to attract small, boutique type retail.

Councilor Pierce pointed out that a 50,000 sq. ft. limit is what Yarmouth has, and most development in the district is around 20-30,000 sq. ft. 50,000 sq. ft. allows more flexibility. There are provisions for a hotel and movie theater. She would like to outline what they want and move forward.

Councilor Farber pointed out a mistake in the Press Herald article; what is proposed does not preclude a hotel/motel or movie theater from being larger than the 50,000 sq. ft. limit proposed.

Councilor Rodden said the 30,000 sq. ft. number was reached by looking at the businesses they have now, as well as looking at what other towns have. She was willing to move to 50,000 sq. ft. as it was clearly what the Council's overall comfort level is. She thought there was more pushback from the business community because it was clear that action is going to be taken.

Chair Varney was bothered because the current Shaws' is 72,000 sq. ft. and this proposal limits grocery to 60,000 sq. ft.

Councilor Rodden said there is a trend for grocery stores to be smaller, just like big box stores. 60,000 sq. ft. is larger than the regular footprint, recognizing that residents want a bigger grocery store. If something were to happen to Shaws and another grocery tenant moved into that space, they could have the 72,000. Trader Joes in Portland is much less than that; Hannaford is 64,000 sq. ft., and the Whole Foods in Portland is 50,000 sq. ft.

Councilor Orestis said that a typical Whole Foods store is 80,000 sq. ft.; there was a special agreement from corporate to allow a smaller building in order to get into the Portland market.

Chair Varney did not support the limit; she pointed out that the small businesses that are there wanted to be that size and went in without a limit. There are very good ordinances and she wasn't sure they needed to put in a limit.

The Council discussed the procedure moving forward, and whether the amendment would go back to the Planning Board for another public hearing. Mr. Croce spoke with the Town Attorney, who opined that if the discussion at the order is sufficiently germane to the subject matter that was discussed at the public

hearing, there was no need for a second public hearing. Typically if the changes do not make the ordinance more restrictive, no subsequent public hearing would be required. The Council could always decide to hold another public hearing, if they so choose.

Councilor Rodden asked about the input from the Planning Board. They made their judgments based on the 30,000 sq. ft. limit.

Mr. Croce said the Board members were concerned with issuing a recommendation on an ordinance amendment that might change; they were aware of the discussions at the Council level regarding changing the limits.

Councilor Payne qualified that he supported office space at the 50,000 sq. ft. level, but not retail. He pointed out that this is a private investment and this limit is the wrong signal to send. The public process came up with a number to which the property owner agreed; now the number has changed and the property owner does not agree.

Councilor Rodden was frustrated that they are using the 60-90,000 sq. ft. numbers from that discussion; those numbers were used to refer to total building footprint. The 90,000 sq. ft. was for a single tenant building, and 50-60,000 sq. ft. for a building that had more than one tenant.

Councilor Pierce pointed out that the Council never agreed to or voted on anything; that was a working document only.

Councilor Rodden disclosed that she has been asked to speak before the Chamber of Commerce about Route 1. She will not be speaking as a representative of the Council, but representing herself. She wondered how the other Councilors felt.

Councilor Pierce felt it would be difficult to not represent the Council. She was a little uncomfortable with it. The Chamber is welcome to attend the Council meetings.

An order was scheduled for October 22.

Item 5 Order to approve amendments to the Planning Board's Rules of Procedure.

Councilor Pierce moved the order; Councilor Payne seconded.

Councilor Pierce asked if the members who are not voting due to conflict of interest got to vote on who the interim chair would be. Mr. Croce said he could clarify the language that those who had conflicts would not vote on the interim chair.

Councilor Rodden was not clear on the language regarding the quorum.

Mr. Croce explained that the amendment outlines that it will take at least three votes to pass any motion. Four members are required to have a quorum to start the meeting; the meeting could continue with three members if one had a conflict of interest, but it would require a unanimous vote of those three members to approve an application.

Councilor Farber was concerned with having a temporary chair that would have all the powers of the chair.

Councilor Payne suggested additional language that clarified that the temporary chair would be solely for that item or that meeting.

Councilor Pierce moved an amendment of section 3.3 "a temporary Chair shall be elected by a majority of the Board members present at the meeting, *excluding those who have conflicts of interest, for the duration*

of that agenda item or the entire meeting, whichever is appropriate.” Councilor Farber seconded. Motion carried 6-0.

Amended order carried 6-0.

Item 6 Discussion about future Council agendas.

Assistant Town Manager Amy Lamontagne discussed items scheduled for upcoming Council meetings.

Adjourn

Councilor Payne moved to adjourn; Councilor Pierce seconded. Motion carried 6-0.

The meeting adjourned at 8:45 pm.

Respectfully submitted,

Melissa Tryon
Recording Secretary