

City of portsmouth virginia



ZONING ORDINANCE REVISION KEY ISSUES REPORT

JUNE 2008

CLARION



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PART I. INTRODUCTION

1. PROJECT DESCRIPTION AND SCHEDULE

A. Introduction

In July 2006 after adoption of the *Destination 2025 Plan*, the City retained Clarion Associates, a zoning, planning, and growth management consulting firm to undertake the zoning ordinance revision project. Clarion is being assisted by Wallace Roberts and Todd (WRT), the Visual Interactive Communications (VIC) Group, and McGuireWoods in the effort. WRT is a national planning firm known for its comprehensive plans and design work; they were the firm that assisted the city in its preparation of the *Destination 2025 Plan*. WRT will assist Clarion on design and form-based work in the zoning ordinance update. The VIC Group is a known for its high-quality, visually interactive computerized codes. They will assist in converting the new zoning ordinance into a web-based, visually-interactive computerized code after its completion. McGuireWoods is a law firm who serves as legal counsel to Virginia local governments on land use and zoning issues. They will serve as legal counsel to the Clarion team in the ordinance revision effort.

Shortly after the ordinance revision effort began, the city, as a matter of policy, decided to move forward with the Destination Portsmouth project. Destination Portsmouth is a new implementation-based initiative designed to sustain the city's renaissance and integrate the planning functions of the city's various departments. Some of the tasks in the initiative include development of a new downtown master plan, a master transportation plan, corridor studies, and the integration of form-based concepts into the city's zoning ordinance revision. One of the key aspects of the project is the "re-branding" of the city's zoning ordinance into a new user-friendly, forward-looking document that includes all the best aspects of today's modern form-based codes. This report details how the city's current ordinance will be modernized to create a framework for the integration of form-based regulations.

The zoning ordinance revision project includes identification of city goals and challenges, exploration of possible solutions, and numerous opportunities for community input.

The zoning ordinance revision project consists of a comprehensive review of the city's development regulations and processes, identification of challenges facing the city in terms of its development patterns, exploration of solutions that will result in desired development patterns, and revision of the city's current development regulations to incorporate form-based concepts to help ensure the establishment of desired development. Success with the project requires careful consideration by the city's citizens, elected and appointed officials, city staff, and development community. The initial steps in the process have already occurred, and the following sections set out the proposed process and schedule for the completion of the ordinance revision project.

B. Work Program and Schedule

The work program for this zoning ordinance revision project involves ten tasks within four phases. They are:

(1). Phase I: Project Kick-Off (completed)

- Task 1: Document Review, Initial meetings, Reconnaissance
- Task 2: Visual Preference Survey

(2). Phase II: Challenges and Solutions Identification (current phase)

- Task 3: Key Issues Report
- Task 4: Public Discussion of Proposed Solutions

(3). Phase III: Ordinance Drafting¹

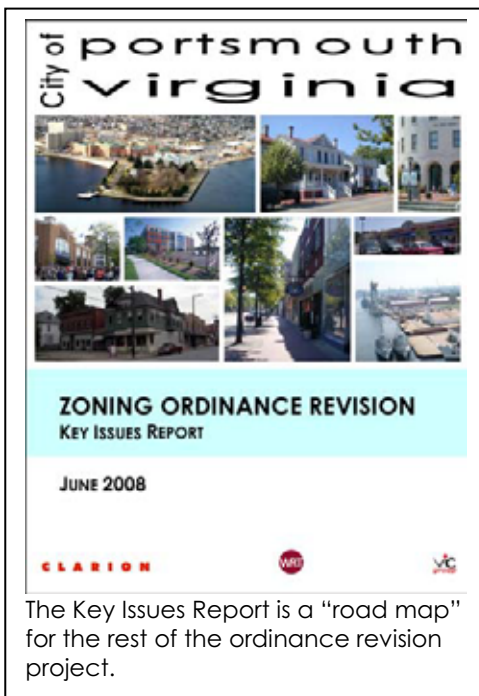
- Task 5: Public Review Draft of Ordinance & Illustrations
- Task 6: Design and Form-based Provisions

(4). Phase IV: Public Consideration and Adoption

- Task 7: Adoption Draft of Ordinance and Zoning Map
- Task 8: Public Hearings
- Task 9: Final Ordinance Preparation
- Task 10: Ordinance Computerization

Phase I: Project Kick-Off, includes two tasks that are completed. **Task 1**, the initiation of the project, involved an overview of the *Destination 2025 Plan*, current regulations, and other relevant city documents; a two-day visit by the Clarion team to the city, at which there were: discussions with city staff, interviews with review board members, citizens, developers, and other stakeholders; meetings with appointed officials; and a reconnaissance of the city. The focus of the interviews and meetings in Task 1 was on what worked and did not work in the existing code, and the general goals for the revision project.

Task 2 of the project involved the preparation and administration of a Visual Preference Survey. As part of this effort, the Clarion team prepared a series of 23 images and administered the survey to the City Council and the Portsmouth Development Council Committee in October 2006. The purpose of the survey was to gain input on city officials' design and development preferences for the community so as inform the development of specific design standards for inclusion in the zoning ordinance revision project. The survey included a series of images illustrating a variety of development conditions and then options for how they could be dealt with in Portsmouth. Both images of existing city conditions and images from other communities depicting alternative approaches and best practices were included. The results of the Visual Preference Survey are integrated into the



¹ NOTE: The current scope of work does not contemplate changes to the city's current sign standards. It is our experience that modifications to signage standards are best undertaken after adoption of the new ordinance. Updates to signage regulations are normally controversial, and can result in delays in ordinance adoption. We suggest the city delay making any substantive changes to the sign standards until the city adopts the new ordinance.

recommendations of this Report. **Appendix D** contains a detailed analysis of the survey results.

In late 2007, the city underwent a series of changes in policy direction (including the development of the Destination Portsmouth project). In February 2008 the Clarion team returned to the city to discuss the goals of the for the Destination Portsmouth project, the policy direction to incorporate form-based provisions in the new zoning ordinance, and to discuss how these policy changes would be incorporated into the zoning ordinance revision process. This report reflects the changes in policy direction discussed in February 2008.

This **Key Issues Report** is one of the two tasks in Phase II, Challenges and Solutions Identification. This report serves as a “road map” for the project, and does several things. In the **Key Issues Section** (Part II) it synthesizes the strengths and weaknesses of the current regulations, identifies the community's goals or major themes that need to be addressed by the ordinance update project. The issues identified in this portion of the report are derived from the interviews and research conducted in Phase I of the project (and the policy direction provided in early 2008). The Key Issues Section serves as a basis to frame community discussion about what structural/procedural and substantive modifications need to be made during the ordinance update. It also proposes a series of possible solutions to address identified challenges for the city's consideration. Additional discussion with the community regarding the ways to address project challenges is proposed to take place during a public hearing and a public open house proposed during Task 4.

In the **Annotated Outline section** (Part III), a detailed outline of the new zoning ordinance is provided, if the solutions identified in the Key Issues section are pursued. The section involves an article-by-article outline of the new code, and a textual explanation of the purpose and nature of each article and section in layperson's language. The outline explains how the issues identified in the Key Issues section could be addressed in the new zoning ordinance.

Task 4 involves presentation of this Key Issues Report to the elected officials and then a public open house intended to give city residents a chance to “weigh in” and comment on the range of identified challenges and proposed solutions. Input and information gathered during Task 4 is used to refine the project before drafting of the new zoning ordinance begins.

Phase III (Tasks 5 & 6) of the project involves the process of ordinance drafting, review, and revision of proposed development regulations. The new ordinance is a substantial rewrite of a majority of the city's current zoning ordinance, along with the addition of new provisions. Because the new ordinance will include a substantial amount of new information, **the draft is produced in three manageable sections** or modules consisting of related articles of the zoning ordinance. The design and standards described in Task 6 of

this report are prepared during these drafting efforts. The template for the new ordinance is consistent with the Annotated Outline portion of this report and any other directions provided to the Clarion team during Task 4.

Tentative Project Schedule:

Late Summer 2008

Presentation of Key Issues Report
Public Open House 1

Fall 2008

Module 1 Preparation

Winter 2008

Presentation of Module 1
Module 2 Preparation

Spring 2009

Presentation of Module 2
Public Open House 2
Module 3 Preparation

Summer 2009

Presentation of Module 3
Public Open House 3
Prepare Final Draft

Late Summer 2009

Presentation of Final Draft
Public Open House 4
Prepare Public Hearing Draft Version

Adoption Process

VIC Version Created
(2-3 months after adoption)

After a draft of each of the three modules is prepared for public review, it is presented by the Clarion team to a steering committee² and the elected officials at workshops. In addition to these workshops, after completion of Module 2³ and Module 3, the Clarion team conducts **public open houses** to introduce the public to the new zoning ordinance drafts, and to receive comments and input. Comments and information received during the workshops and public open houses are then assembled and used by the Clarion team to complete a consolidated final draft version of the entire zoning ordinance.

It is expected the Clarion team will then conduct a series of public information and discussion sessions on the final draft version of the zoning ordinance with citizens, the steering committee, and elected officials.

Finally, after the draft ordinance is reviewed and discussed by the city (and the citizens), it is finalized and prepared for the adoption process during **Phase IV: Public Consideration and Adoption (Tasks 7-10)**. After the public hearing process is complete and the new ordinance adopted, Clarion prepares a final version of the document for the city. Part of the final version includes the digital Visually-Interactive Code (VIC) version developed during **Task 10**.

C. Related Efforts

While work on the zoning ordinance revision has progressed, Portsmouth has undertaken other planning and regulatory initiatives relevant to the update that must be considered when identifying key themes and new regulations for the zoning ordinance. Primary among these is the Destination Portsmouth project, and a series of important revisions to the current zoning ordinance. Each is highlighted below.

(1). Destination Portsmouth

Destination Portsmouth is a recent planning initiative undertaken by the city to ensure the community's vision, established in the *Destination 2025 Plan*, is incorporated into and carried out in the master planning efforts of the various city departments under a single umbrella document. The central goals of the project are to sustain the city's renaissance and focus on integration and coordination of implementation efforts. To ensure these goals are achieved, the project includes preparation of a new downtown master plan, transportation plan, park and recreation plan, neighborhood revitalization component, housing element, zoning ordinance, and several other planning initiatives.

One of the key ideas identified for sustaining the renaissance is the use of form-based regulations and concepts in the new zoning ordinance. Form-based regulations are a method of regulating development to achieve a specific urban form. According to the Form Based Codes Institute, form-based codes create a predictable public realm by controlling



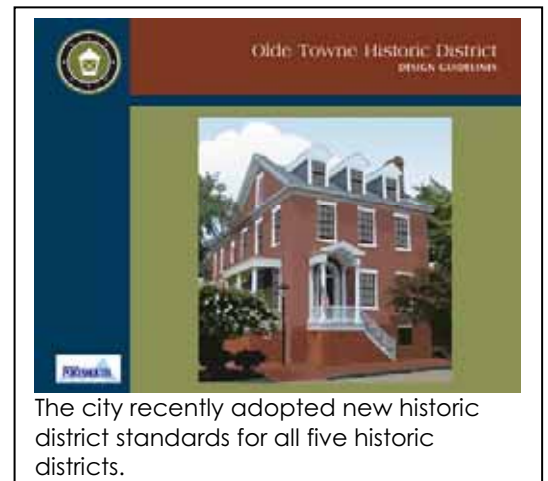
One aspect of the Destination Portsmouth project is the integration of form-based standards that focus on the appearance and function of buildings, not just the uses that may take place within them.

² The Steering Committee is expected to be the same committee assembled for review and guidance of the other projects related to the Destination Portsmouth project, like the Downtown Master Plan and the Master Transportation Plan.

³ At the public open house for Module 2, input is received for Modules 1 and 2.

physical form, primarily, and land use secondarily. One of the key differences in form-based regulations and conventional zoning is the relegation of regulation of use to a secondary position over form. In our experience, we have come to realize that use still matters and should be addressed in some fashion by zoning regulations. The goals of form-based regulations (like many other planning initiatives and the *Destination 2025 Plan*) is to reinforce the best elements of Portsmouth's character, revitalize and encourage reinvestment, and encourage the creation of mixed-use centers and compact, walkable neighborhoods. Given the policy direction established in Destination Portsmouth, one important objective in the zoning ordinance update is to incorporate form-based concepts and form-based regulations. As explained in Part II: Key Issues and Part III: Annotated Outline, this will be done in a number of ways. They include:

- A re-structuring of the zoning districts in a way that:
 - While placing less emphasis on use, recognizes that use still matters;
 - Allows more use-mixing; and
 - Builds on the best elements of the city's built character.
- Ensuring infill and redevelopment in residential districts is consistent with existing neighborhood character through reliance on contextual dimensional standards for lots and building setbacks.
- A greater emphasis on nonresidential form by adding building form standards (e.g., shopfront building, workplace building, civic building, etc.) that are applied in concert with some of the city's zoning districts.⁴
- Recognition of the importance of the public realm and pedestrian orientation through inclusion of new development standards that address sidewalks, street trees, pedestrian and vehicular mobility, and public gathering spaces.
- A better calibration of the city's design standards related to parking, landscaping, and open space to recognize and address the differences between urban and suburban contexts, like land costs, land availability, and density.
- Establishing traditional form-based regulations for the High Street and London Boulevard corridors that join downtown with the midtown area.⁵



The city recently adopted new historic district standards for all five historic districts.

⁴ The building form standards prepared for the nonresidential districts may differ from other form-related standards prepared for the downtown or key corridors under separate efforts. The building form standards prepared as part of the zoning ordinance revision process will be more general than the form standards anticipated in the downtown and key corridor areas.

⁵ This effort is being done by a different consultant concurrent with the general revision of the zoning ordinance. The work efforts are being coordinated; upon completion of the form-based regulations for the corridors, they will be incorporated into the new zoning ordinance.

(2). Historic District Revisions

Prior to beginning the zoning ordinance update project, the city contracted with Fraiser Associates to review and revise the historic district regulations in the current zoning ordinance. The scope of these modifications includes establishment of a new Historic Preservation Commission (with removal of the existing two Commissions of Architectural Review), revisions to the city's certificate of appropriateness procedures and requirements, removal of provisions allowing conversion of existing single-family dwellings identified as historic into multi-family structures, new standards for designation of a historic district, and new civil penalties for failure to follow the historic district provisions. The effort also includes the development of new design standards for each of the separate historic districts. The new zoning ordinance will incorporate these adopted historic district regulations into its text either by reference or with only minor formatting-related changes.



The Victory Crossing Business Park area
(Victory Blvd. & Interstate 276).

(3). Mixed-Use/Employment Center (MX/EC) Zoning District

The city recently developed and adopted a mixed-use (MX/EC) district and associated standards for new development in the district. The first area to utilize these new mixed use district regulations is the group of city-owned parcels known as the Victory Crossing Business Park. The standards require consideration of how buildings and site features look and function prior to establishment of the district. WRT, in coordination with Clarion Associates, prepared the draft version of these standards. These new mixed use district

regulations will be included in the new zoning ordinance.

(4). Gateway Corridor Manual

The city recently completed a final draft version of the Gateway Corridor Manual. It is a long-range planning document that sets out analysis and recommendations for corridor and gateway improvements within the right-of-way along ten key corridors in the city. The manual includes a wide variety of recommendations for how the city can strengthen the public realm in each of the corridors (e.g., street section widths, on-street parking, sidewalks, streetscaping, street furnishings, and other public amenities). The new zoning ordinance will coordinate regulation of private lands with the guidance in the manual.

(5). Other Code Revisions Since Project Initiation

The city continues to process text amendments to the current zoning ordinance such as the W-1 district standards, provisions addressing nonconforming lots, and revised subdivision provisions. The new zoning ordinance will include all text amendments adopted prior to delivery of the Adoption Draft of the new zoning ordinance described as Task 7 in the previous section.

2. REPORT ORGANIZATION

As discussed earlier, this Key Issues Report is the Clarion team's initial evaluation and diagnosis of ordinance update issues and a series of recommended solutions. It is primarily intended to crystallize the most important themes or issues that need to be addressed in the zoning ordinance revision effort, the rationales underlying each theme, and then discuss and identify solutions (in Part II: Key Issues and Part III: Annotated Outline).

The report is organized into four main parts: Part I: Introduction, Part II: Key Issues, Part III: Annotated Outline, and Part IV: Appendices.

Report Structure:

Part I:	Introduction
Part II:	Key Issues
Part III:	Annotated Outline
Part IV:	Appendices

A. Part I: Introduction

This section, Part I: Introduction, contains three subsections:

- * **Project Description and Schedule** outlines the work program and schedule for the zoning ordinance update project
- * **Report Organization** explains how this report is organized; and
- * **Context** provides relevant background and context for the Key Issues and Annotated Outline portions of the report.

B. Part II: Key Issues

The **Key Issues** portion of the report includes a discussion of the challenges facing the city as identified by the interviews and research conducted during Tasks 1 and 2, and suggested solutions. These challenges include issues like the need to address the large number of nonconformities, the need to protect neighborhood character, the need to modernize the city's regulatory approaches, and the need to make the zoning ordinance more user-friendly. The Key Issues portion of the report identifies five major areas or challenges that need to be addressed by the zoning ordinance revision. They are:

- * Making the code more user-friendly;
- * Streamlining the development review procedures;
- * Modernizing the districts and uses;
- * Focusing on the community's form; and
- * Encouraging redevelopment that is compatible with its context.

In addition to a discussion of the key issues or challenges facing the city (in terms of its development regulations), the section also proposes a range of solutions or techniques to address the challenges. These proposed solutions are provided as a means of stimulating discussion during the worksession with the City Council and the public open house with the citizens to be conducted in late summer of 2008. Based on the input received during Task 4, the range of issues and associated solutions may be modified prior to the commencement of drafting in Task 5.

C. Part III: Annotated Outline

The Annotated Outline portion of the report presents a detailed, article-by-article outline of the new zoning ordinance if the goals and suggestions in the Key Issues section are implemented. The Annotated Outline provides significant detail on the potential form of the new ordinance, its structure, and the contents of each article. The ultimate form, structure, and contents of the new zoning ordinance will depend on the solutions to the city's challenges identified by the elected officials and citizens during Task 4 of the project.

In addition to information on the possible form and contents of the new ordinance, general commentary is provided, where appropriate, to explain the purpose or rationale behind the organization and substantive changes being suggested.

D. Part IV: Appendices

The Appendices consists of five sections that provide additional analysis, background, examples, or more detailed explanation of concepts and issues discussed in the Key Issues or Annotated Outline sections. **Appendix A** includes the *Destination 2025 Comprehensive Plan* Compliance Evaluation Matrix, which identifies all the relevant land use and planning-related policies from the plan and how they could be addressed in the new ordinance. **Appendix B** is a matrix of the primary sections in the current zoning ordinance, and how this material could be carried forward, modified, or deleted during the re-write process. **Appendix C** is a comparison table comparing the range of uses in Section 40-43 of the current zoning ordinance against a set of simplified uses proposed for the new ordinance. **Appendix D** includes the results and analysis from the Visual Preference Survey. This information was used as the basis for identifying the goals and developing the recommendations in Part II: Key Issues. **Appendix E** is an example of page formatting techniques for the graphic display of zoning districts.

3. CONTEXT

Today is an interesting and challenging time to live in Portsmouth with the development and redevelopment opportunities available to city residents, the resurgence of residential development in areas such as New Port, the increasing prominence of the city as an entry point for container cargo, and the continued interest in redevelopment within the downtown.

It is equally an exciting time for the city to be updating its zoning ordinance. The recent adoption of the *Destination 2025 Comprehensive Plan* and the initiation of *Destination Portsmouth* heralds a new day in Portsmouth where increased attention is being focused on development/redevelopment and positioning the city to improve upon its quality of life, livability, and education and economic well being into the 21st century.

One of the primary goals of the zoning ordinance revision is to implement the comprehensive plan's recommendations as they relate to land use, and *Destination Portsmouth's* goals of using form-based regulations and concepts in the new zoning ordinance.



Aerial view of the Portsmouth area.

A. Historical Development

Portsmouth is one of the communities within the Hampton Roads area of Virginia. It is located at the confluence of the Elizabeth River, the James River, and the Chesapeake Bay, and serves as one of the primary deep water ports in Hampton Roads. It is surrounded on three sides by water.

Portsmouth's history dates back to the early 1600's. The land was first surveyed in 1608, and in 1620 the future site of Portsmouth was recognized as a suitable shipbuilding location by John Wood, a shipbuilder, who petitioned King James I of England for a land grant for what is today the City of Portsmouth. The area was soon settled as a plantation community.

The community of Portsmouth was established on 65 acres of land in 1752 by William Crawford, a wealthy merchant and ship owner. The community was constructed on a grid street pattern proximate to the wharves in the modern-day portion of the City known as Olde Towne. Due to its prominent location at the mouth of Chesapeake Bay, and its deep water port, the area prospered. In 1787, the Naval Shipyard was built, triggering more industrial development and a need for more housing. The influence of the United States Navy on the city continued to grow in the early 1800s; the US Naval Hospital was built in the 1830s.

The early 1800s also brought a greater number of educated professionals and a higher quality of public amenities to the community. Portsmouth was incorporated as a city in 1858. The city's deepwater port continued to strongly influence its development through the 19th century. The waterfront was developed with maritime, naval, and commercial uses, and a diverse mix of one- and two-story single-family homes and shops were built in adjacent areas (modern day Olde Towne). Industrial uses continued to prosper in areas to the south of the city's core.



Aerial view of the Naval Hospital.

In the first half of the 20th century, military activities associated with World Wars I and II significantly influenced development in Portsmouth, resulting in pre-war expansion of industrial and ship-building capacity as well as rapid expansion of new housing for the employees working at the shipyards and military installations. During this period, there were several good examples of traditional neighborhood development, including Park View adjacent to Olde Towne, Cradock (near the naval shipyards), and Truxton. These areas functioned as independent

neighborhoods with alleys, good examples of period architecture, and locally-serving commercial uses, with each community establishing its own unique sense of place.

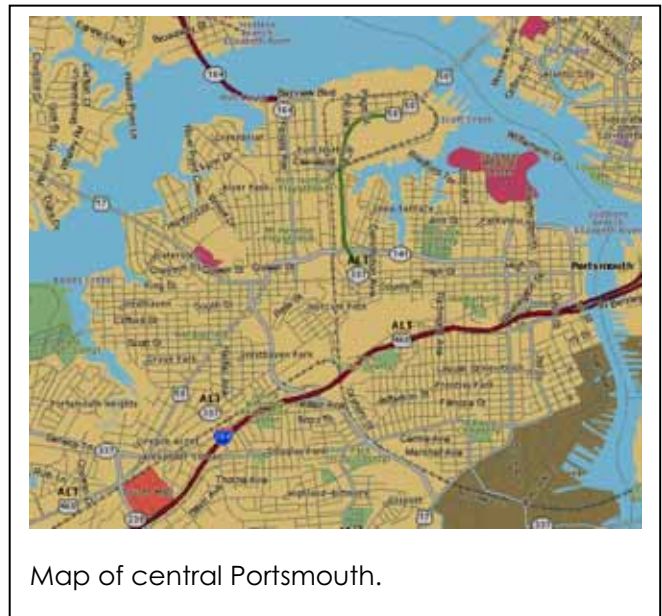
In the second half of the 20th century, the automobile and related transportation system improvements allowed Portsmouth residents to move still farther from the city center and industrialized areas south of the downtown until growth could no longer continue because of natural (water) or artificial limits (other cities).

B. Portsmouth's Development Patterns

Today Portsmouth's development template is well-established. Because the city is surrounded on all sides by water or other units of government, it is **fairly compact** – about 34 square miles in size.

It is blessed with a **wealth of waterfront lots, waterfront views, access to the water, and a deepwater port.**

Portsmouth is also a **built-out community**.⁶ The downtown, which is vibrant and active, is located close to the waterfront, and enjoys a fine-



Map of central Portsmouth.

⁶ According to the *Destination 2025 Plan*, there are only 1,600 acres of vacant land (7.5%) in the city. Consequently, redevelopment will play a big role as the city evolves into the future.

grained street system of small blocks established in the 1800s. Interstate 264, which bisects the city’s center, forms a natural break between the downtown and the primarily industrial districts to the south.

The central core (composed of the city-center, the Elizabeth River waterfront, and the industrial complex south of downtown) is ringed with a series of residential neighborhoods that were established as the street system was extended from downtown, during the 1900s. These neighborhoods are connected by a web of major street corridors that are arranged in a loose hub and spoke pattern centered on the downtown. The corridors are lined with commercial uses arranged in an auto-oriented configuration of single-use strip malls and stand-alone retail establishments. They also connect each of the city’s five historic districts, which include Olde Towne, Park View, Cradock, Truxton, and Port Norfolk.⁷ In most cases, single-family neighborhoods back up to the commercial uses lining these corridors.

The highest density office and government uses are concentrated in the downtown area along the banks of the James River. The military-naval-ship-building and repair complex which was established along the city’s southeastern border next to the Elizabeth River during the first half of the 20th century is still thriving.

Most of the land in the city (27.5 percent) is occupied by low-to-medium density single-family detached development, primarily located in neighborhoods around the city’s western and southern sides. As expected, the character of residential development becomes more suburban in nature with distance from the city center. Higher density residential uses occupy six percent of the city’s land uses, and are focused within the downtown and the five historic districts.

The majority of the residential development is single-use in nature,⁸ using the automobile as the primary mode of transportation, and making pedestrian and alternative forms of transportation more difficult to integrate into the urban fabric.

There is **little commercial and office use in the city relative to residential development.** Just over three percent of the city’s land area is occupied by commercial, mixed, and office

Land Use	Acres	Percentage
Heavy Industrial	1,361	6.19
Light Industrial	667	3.04
Institutional/Public	1,166	5.31
Commercial	680	3.09
Mixed-Use	111	0.05
Office	33	0.02
Federal Government	4,129	18.79
Multi-Family Residential	1,046	4.76
Single-Family Residential (High Density)	267	1.22
Single-Family Residential (Low/Medium Density)	6,044	27.51
Mixed Residential	443	2.02
Preservation/Open Space/Park	763	3.47
Transportation	3,601	16.39
Vacant	1,651	7.51
Uncategorized	12	0.01
TOTAL	21,974	99.38

Land Use Table from *Destination 2025 Comprehensive Plan*.

⁷ Each of the historic districts are primarily residential in character, except for Olde Towne in the city center, which has a mixed-use character with residential, office, and retail uses.

⁸ Exceptions to this are the city core, which includes a variety of vertically-mixed structures, and the historic neighborhoods like Port Norfolk that include nonresidential uses in close proximity to residential development.

uses (versus 33 percent in residential uses). Mixed-uses and offices are focused primarily within the downtown area. Light industrial and commercial uses dominate the major transportation corridors in the city.

In addition, **many of the commercial and other nonresidential lots and buildings are underutilized** – either vacant, developed with low-rise single-tenant uses, or not developed in a way that takes full advantage of their available development potential. In addition, some of the nonresidential lots along the city's primary transportation corridors contain outdated or marginalized uses (such as the strip shopping centers along George Washington, Victory, and Churchland Boulevards).

Relative to other cities, however, Portsmouth has a **strong industrial base** associated with the naval shipyards, Port of Hampton Roads, and various defense contractors, and is also **well served by road and rail transportation**.

Also of relevance when considering the city's existing development patterns is the fact that there is a **large amount of government and tax exempt land in Portsmouth**. A large portion of the land (more than 18 percent) is owned by tax-exempt federal agencies (such as the Navy). When these facilities are combined with other tax-exempt lands (e.g., schools, churches, etc.), over half of Portsmouth's total assessed valuation is exempt from ad valorem taxes. While this type of development has and continues to play an important role in the city's life, it also places constraints on the community's tax base, and makes it important to encourage nonresidential (commercial, retail, and office) and mixed-use development in the future.

There is also a **high degree of land use nonconformity** in Portsmouth today, and other potential land use conflicts that the current zoning ordinance does not address very well. Over the years, a series of rezoning and annexation decisions (such as those in Churchland or Brighton Park) have resulted in numerous single-family residential lots that do not conform to the minimum dimensional requirements or setbacks in the current zoning ordinance. This has resulted

in almost 40 percent of the city's properties being nonconforming – meaning in many instances that the property owner has to prove "hardship" and receive a Variance Permit at a public hearing before being able to redevelop or improve their properties. In addition, the current zoning ordinance does not include some of the more modern tools to address the diverse character in many of Portsmouth's neighborhoods. The age and development patterns in many of these neighborhoods create the potential for land use conflicts as nonresidential uses have developed next to or been subject to encroachment by residential uses. Tools found in the ordinances of some other similar communities include flexible dimensional standards, performance-based buffering systems,



Residential and nonresidential uses in close proximity.

conservation overlays, and tools to address nonconforming site aspects. Without the tools necessary to ensure proper transition between incompatible uses, land use conflicts are inevitable.

Over the past 30 years, growth and development in the city have slowed. There are multiple reasons for this. In 2003, Portsmouth began preparing the *Destination 2025 Comprehensive Plan* to position the city for a renewed degree of growth and development into the 21st century.

C. Destination 2025 Comprehensive Plan

The *Destination 2025 Comprehensive Plan* was adopted by Portsmouth in 2005. It includes a Vision Statement for the city that is developed for the purpose of improving quality of life, livability, and education and economic well being. It is based on four key aspects:

- * Ensuring a high quality learning environment;
- * Maintaining quality neighborhoods with diverse housing choices and access to services;
- * Promoting a healthy economy through a high quality of life and well-educated workforce; and
- * Developing a sense of place that reflects the city's history, downtown, and waterfront environment.

Given the city's present development patterns and conditions, the *Destination 2025 Plan* identifies a number of policies to position the city for a renewed degree of growth and development in the 21st century. They focus on:

- * "Raising the bar" on the quality of new development;
- * Encouraging mixed-use, pedestrian-friendly land use patterns in the city;
- * Strengthening stable neighborhoods, preventing further decline in transitional neighborhoods, and encouraging redevelopment in targeted neighborhoods;
- * Development of design guidelines to address transitions between incompatible land uses;
- * Ensuring that available lands are targeted for their highest and best uses;
- * Maintaining and strengthening viable land uses;
- * Targeting obsolescent uses for reinvestment or redevelopment;
- * Improving visual character of gateway corridors; and
- * Encouraging development of activity centers.



Aerial view of the Portsmouth waterfront.

More detail on the *Destination 2025 Plan* policies and FOCUS areas is listed in the Plan Compliance Evaluation Matrix included as **Appendix A** of this report. The matrix identifies

the policies and action strategies identified in the plan that are relevant to the ordinance update effort; it also identifies provisions that could be included in the new ordinance to implement the action strategies of the plan.

D. Destination Portsmouth

Destination Portsmouth is an umbrella effort that got underway in late 2007 that seeks to integrate the planning efforts of all city departments. The project is the primary motivator behind the new policy direction to incorporate form-based aspects in the new zoning ordinance. In response to the project's desire to sustain the city's renaissance and integrate implementation efforts, the new zoning ordinance will provide a set of regulations that address development form and provide a framework for subsequent form-based coding efforts.

E. Zoning Ordinance Revision

While the *Destination 2025 Plan* was completed in April 2005, and the Destination Portsmouth effort is ongoing, the Portsmouth Zoning Ordinance has not been systematically updated since its adoption in 1988. Instead, over the years, the regulations have been the subject of many incremental revisions. While many of the individual amendments may have been clear when adopted, over the years the repeated affect of ad hoc revisions have made the structure and language of the regulations difficult to use, interpret, and understand.

In addition, the current zoning ordinance does not incorporate the city's planning and development goals as spelled out in the *2025 Destination Plan* and Destination Portsmouth. For example, the plan calls for the development of design guidelines and other techniques to address transitions between incompatible land uses. Aside from the vegetative buffer types in Section 40-73, the current ordinance has little in the way of addressing the interface between incompatible uses. The current code also offers little in the way of use mixing or development standards that address how buildings relate to one another.

Recognizing the importance of implementing the goals and policies of the *2025 Destination Plan* and now Destination Portsmouth, Portsmouth initiated a comprehensive revision of the zoning ordinance. The revision effort commenced in July 2006, and is expected to be completed in late 2009.

PART II. KEY ISSUES

This re-write project represents the first comprehensive update of the Portsmouth Zoning Ordinance since its adoption in 1988, though a number of targeted revisions have been made over the past decade. This key issues section explains the challenges identified during the first phase of the zoning ordinance revision process as well some potential solutions for the community's consideration.

As stated in the Introduction, Tasks 1 and 2 of the zoning ordinance revision involved review of the *Destination 2025 Plan*, recognition of the on-going Destination Portsmouth process, review and evaluation of the current regulations, a series of interviews with key staff and stakeholders, and interviews of City Council and Portsmouth Development Council members through a visual preference survey.

This effort shed light on several challenges facing the city with respect to its current development regulations. They include the need to:

- Make the development regulations **easier to use**,
- Strengthen the emphasis on building form and creation of a stronger public realm,
- Send **clear signals** to the development community regarding the city's expectations for the form and appearance of new development,
- Encourage compatible **redevelopment**,
- **Protect** existing neighborhood **character**,
- **Ease the nonconformities situation** in ways that are consistent with the city's planning and development goals,
- Add **incentives, disincentives, and flexibility** to facilitate desired development patterns, and
- Ensure **consistency** between the development regulations and the city's long range planning documents.

To achieve the city's goals, the new zoning ordinance needs to address these challenges. Part II: *Key Issues*, organizes the challenges identified above into five major themes or key issues. They are:

- Make the Code More User-Friendly;
- Streamline the Development Review Procedures;
- Modernize the Districts and Uses;
- Emphasize Development Form; and
- Encourage Redevelopment that is Compatible with its Context.

As part of each section, the challenges or problem is identified, and then some potential solutions highlighted. The Annotated Outline in Part III, which outlines the potential structure of the new zoning ordinance, is based on addressing these challenges with the suggested solutions. Additional

Key Issues to Address:

- 1. Make the code user-friendly**
- 2. Streamline development review**
- 3. Modernize the districts and uses**
- 4. Focus on development form**
- 5. Encourage compatible redevelopment**

consideration and discussion with the city's elected officials and residents is needed before the range of potential solutions can be finalized.

1. MAKE THE CODE MORE USER-FRIENDLY

A frequently-expressed criticism of the current zoning ordinance is users find it difficult to navigate and understand. Generally, interviewees agreed the structure and format of the current regulations frustrates users and city officials alike – even longtime users. These comments are typical in many of the code updates in which we are involved where the community's development code is not modernized. Interviewees and city staff identified a number of “user-friendly” problems with the current zoning ordinance, including:

- The lack of diagrams and illustrations;
- The SIC-based approach to uses (and the lengthy use tables that result);
- The lack of a detailed table of contents and cross-references;
- Article divisions that are not intuitive;
- Development standards that are scattered throughout the ordinance; and
- Information on review procedures that is disbursed across numerous articles.

Increasing User-Friendliness

- Improve structure and organization
- Clarify review standards
- Improve format and use more graphics
- Computerize the code

There are a number of changes that can be made in the update to improve the user-friendliness of Portsmouth's new zoning ordinance. They are set forth below. The primary goal of these suggestions is to create a user-friendly document that presents the regulations in a more straightforward and efficient manner.

A. Improve Overall Structure and Organization

There is significant room for improving the organization and structure of the existing regulations, which will make the document more “user-friendly.” For example, in the current zoning ordinance the various development review procedures are included in many different sections. Parking standards are found in two separate sections; definitions are located in numerous places; there are three separate articles for different required permits (Chapter 40-8: *Use Permits*, Chapter 40-9: *Group Housing Permits*, Chapter 40-10: *Excavation Use Permits*); and there is a separate article for amendments and rezonings (Chapter 40-7). Not all zoning districts and overlay zoning districts are included within Chapter 40-3: *Zoning Districts*, such as Chapter 40-4: *Historic Districts* and Chapter 40-61: *Localized Alternative Sign Overlay Districts*. These issues and many others can be addressed by making adjustments to the new ordinance's structure.

(1). Revise Ordinance Structure

To make understanding and navigating the regulations easier, we suggest the **city re-organize the new ordinance** into a more logical hierarchy of regulations, based on the procedural and substantive relationships of the various ordinance provisions. For example, all procedures and administrative entities should be consolidated into an administrative article. Zoning district regulations should also be consolidated into one article. Development standards should be consolidated, and their

applicability to different types of development clarified. We also suggest the definitions section be relocated to the last article of the new code (instead of placing it at the beginning of the document), since it typically serves as a supplementary reference tool rather than as a primary source of regulatory information. The sidebar titled “Proposed Ordinance Structure” illustrates the proposed code structure.

Proposed Ordinance Structure

Article 40-1: General Provisions

Article 40-2: Administration

Article 40-3: Zoning Districts

Article 40-4: Use Standards

Article 40-5: Development Standards

Article 40-6: Nonconformities

Article 40-7: Enforcement

Article 40-8: Definitions

(2). Consolidate Procedures into One Chapter

Some of the review procedures in the current zoning ordinance are located in Article 14 (Administration and Interpretation), but most are found in disparate parts of the zoning ordinance, requiring the code user to page from article to article in order to find all relevant provisions. For example:

- Amendments to the ordinance and rezonings are located in Article 7: *Amendment and Rezonings*;
- Group Housing and Excavation Use Permits are found in Articles 8 & 9, respectively; and
- Review procedures for Certificates of Intent and Certificates of Appropriateness for development in the historic districts are found in Article 4: *Historic Districts*.

The modern trend in zoning and our recommendation is to **consolidate all procedural provisions** into a new Administration article. This enables the user to locate all procedures and standards governing the review of each type of application for development approval in one place. In addition to consolidation, it is suggested that a summary table be developed that lists all procedures and the review responsibilities of associated review and decision-making bodies. An example of this table is included in Part III of this report on Page 61.

(3). Consolidate, Refine, and Update Definitions

Many of the current definitions are scattered in several sections in the existing zoning ordinance. In addition, there are inconsistencies in definitions, and a number of definitions are imprecise and poorly worded. These inconsistencies make the zoning ordinance difficult to use and interpret. We recommend consolidating all definitions into one article so it is easy for a user to find the meaning of terms in one place and to reduce the chance of redundancies or conflicting definitions. We suggest **relocating the definitions** to the last article of the new zoning ordinance, since it typically serves as a supplementary reference tool rather than a primary source of regulatory information.

We also recommend the new code include new definitions of key terms, as well as the updating and modernizing of existing definitions, as appropriate. For example, terms such as buffer, xeriscape, and nonresidential condominium all need definition. All use types identified in the code should also be defined.

Finally, all definitions should be reviewed for imprecise and poorly worded language and be written in plain English.

B. Clarify Development Review Standards

Many of the development review standards in the existing regulations are in need of revision and clarification. Standards that are unclear invite different interpretation or application and create uncertainty for development applicants as well as staff and the public. Development standards should clearly **establish the community's goals** for the development of a project. If unclear or uncertain, unnecessary debate may occur over the standards applied to an individual project, and the result may be a development that is inconsistent with the community's goals. Ideally, this dialogue should take place in the context of adopting generally applicable standards. Once clear, objective standards are included in the ordinance, they can be applied in a consistent manner to each project that comes up for review.

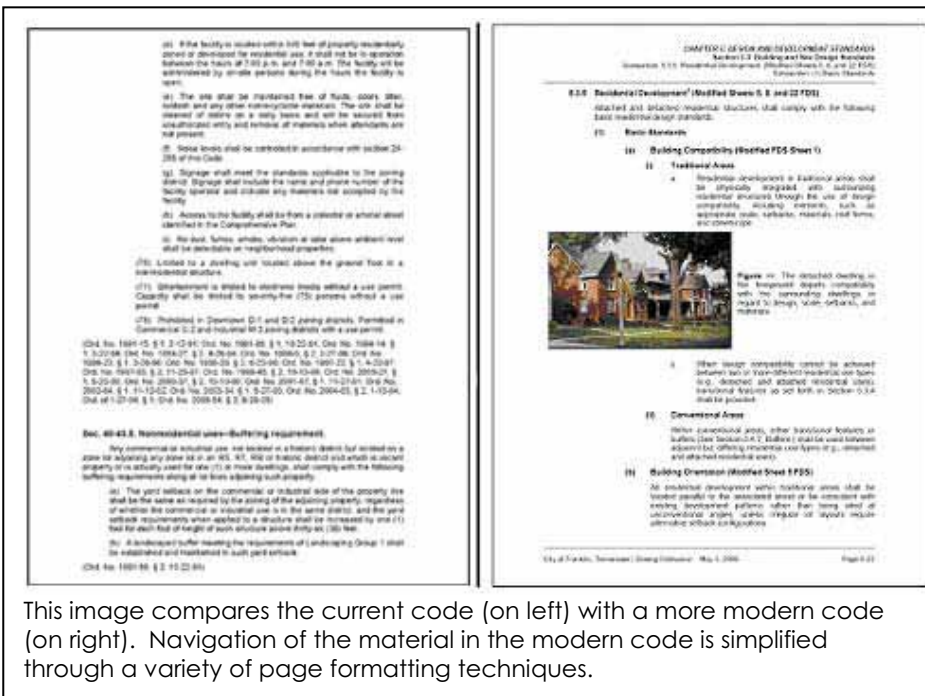
During the update process, all review standards for all types of development permits should be reviewed, and where appropriate, clarified and brought into conformance with the planning and development objectives of the *Destination 2025 Plan*, as well as other relevant community goals (such as improving development quality).

C. Improve Format and Use More Graphics

Over the years, experience has taught that the way a development code "looks" or is formatted affects its "user-friendliness." There are a number of formatting and related suggestions that can be applied to the city's new ordinance that improve its "user-friendliness."

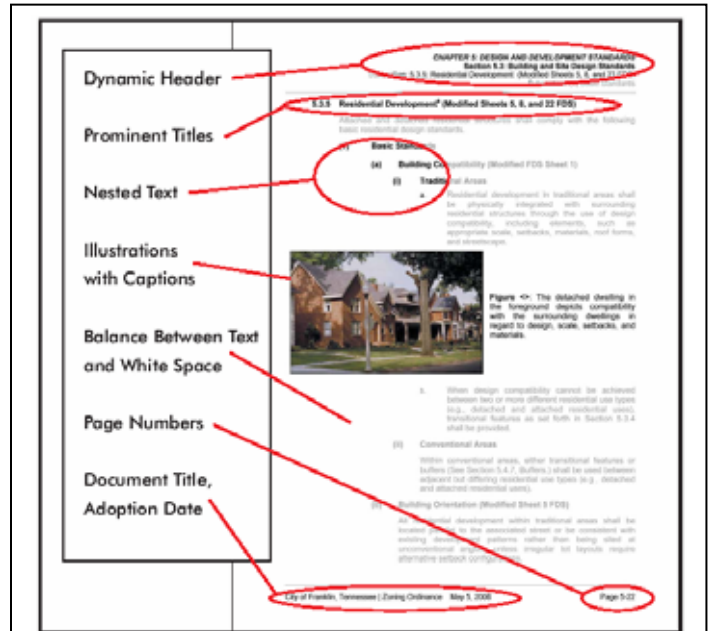
(1). Improve Page Layout

To better organize the procedural and substantive issues addressed in the new zoning ordinance, we suggest the new document use a hierarchy of articles, as well as a hierarchy of section headings and font types and sizes to **illustrate the relationship of the procedural and substantive provisions.** In addition, it is recommended separate section and subsection headings be used to provide "guideposts" that distinguish provisions by topic and purpose. For example, the development standards article (proposed Article Five) might contain a section on Landscape Standards (Section 40-5.3), with subsections such as Vehicular Use Area Landscaping (Section 40-5.3(4)) and Perimeter Buffers (Section 40-5.3(5)), and



other sections as applicable. The image below provides an example of this hierarchical structure on a page in a development code prepared for another community.

In addition to structural changes, the current ordinance would benefit from a more **robust cross-referencing system**. The current regulations have few cross references between relevant standards and procedures. Use of cross references makes an ordinance more “user-friendly” because cross references assist the user in identifying the relevant regulations that apply to the particular use, development permit, or development proposal. The current zoning ordinance includes a table of contents with articles and divisions, but it does not include a more detailed content list for each article. A more effective referencing



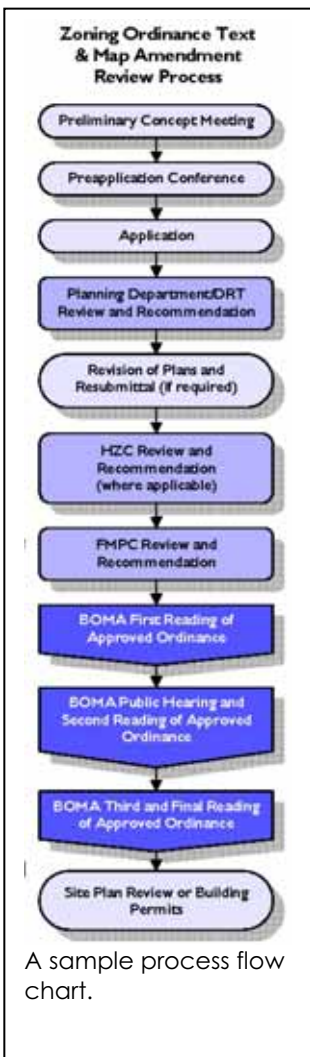
Today’s modern codes use a variety of techniques to orient the reader like page headers, nested text, illustrations, chapter-based page numbers and other techniques.

approach includes a detailed master table of contents at the front of the ordinance that summarizes each article, including section and subsection numbers, as well as page numbering references. **Separate tables of contents** should also be created for each article. We also recommend using page numbers that correspond to the articles (e.g., page 1-1, 1-2, etc.) so that the city can amend individual articles and keep pages sequentially-numbered without renumbering the entire ordinance. In addition, a general index should be prepared with headings and cross-references that will serve as guideposts to direct the user to the particular item the user is interested in.

(2). Illustrate Key Concepts

Another way to make an ordinance “user-friendly” is through illustrations, graphics, flowcharts, and tables. The old adage “a picture is worth 1,000 words” is certainly true when communicating zoning concepts. Illustrations, graphics, flowcharts, and tables are all helpful in making an ordinance “user-friendly” because they convey information more concisely (and in many instances more clearly), eliminating the need for lengthy, repetitive text.

We recommend the new ordinance add illustrations and graphics to help **explain complex concepts and summarize detailed information**. There are a number of places where new illustrations might be appropriate in the new ordinance. Graphics can be very helpful in illustrating required measurements (e.g., how to measure height). They can also be used to illustrate preferred design concepts, such as parking space dimensions, parking lot landscaping, and other landscaping and screening standards.



A sample process flow chart.

Flow charts are not used in the current regulations, and we have found flow charts add clarity to specific procedural requirements and timelines, as well as to the interrelationships between procedures

Another technique for improving the readability of regulations is the use of **summary tables to convey information** concerning development standards as well as procedural requirements. The current zoning ordinance contains some summary tables. They are used, for example, to illustrate dimensional standards and permitted, special exception, and prohibited uses allowed in each of the zone districts. In our experience, summary tables not only present key information more succinctly, they are immensely helpful in eliminating repetition and inconsistent terminology. They reduce the number of pages required to convey the same information, while allowing the user to compare information easily – for example, how a certain use is treated in different districts. Additionally, tables are much easier to update than separate textual lists of information.

Summary tables can convey large amounts of information quickly and also allow comparisons.

TABLE <>: TABLE OF ALLOWED USES												
P = PERMITTED S = SPECIAL EXCEPTION A = ALLOWED IN PD DISTRICT BLANK CELL = PROHIBITED												
USE CATEGORY	USE TYPE	ZONING DISTRICT									ADDITIONAL STANDARDS	
		RESIDENTIAL			NONRESIDENTIAL				PLANNED DEVELOPMENT			
		RSF	RTF	RMF	DC	RC	M C	C C	CN	PD-R		PD-C
RESIDENTIAL USE CLASSIFICATION												
Household Living	Multi-family Dwelling			P		P		P		A	A	164.03-01(A)(1)
	Single-family Dwelling	P	P	P	P	P	P	P		A	A	166.05-02
	Two-family Dwelling		P	P	S	P	P	P		A	A	164.03-01(A)(2)
	Townhouse			P	P	P		P		A	A	166.05-03
Group Living	Residential unit over nonresidential use			P	P	P	P	P		A	A	
	Family Day Care Home	P	P	P		P	P	P		A	A	164.03-01(B)(1)
	Group Day Care Home	P	P	P		P	P	P		A	A	164.03-01(B)(2)
	Rooming House			P		P		P		A		164.03-01(B)(3)
INSTITUTIONAL USE CLASSIFICATION												
Schools	School, Private	P	P	P	P		P	P		A	A	
	School, Public	P	P	P	P		P	P		A	A	

The new ordinance should build on and improve the summary tables in the existing zoning ordinance, and include additional summary tables where they provide the user with a simpler, more understandable presentation of information.

We also advise presenting dimensional standards – such as minimum lot area, setbacks, and height limitations—in a highly graphic format with the associated zoning district information. An example of this proposed approach to the depiction of dimensional standards within the context of zoning district regulations is included as **Appendix E**.

Finally, other summary tables will be added, where appropriate. For example, other summary tables might be added to address parking standards, landscape and tree protection standards, lighting standards, and other regulations.

D. Code Computerization

Another modern tool many local governments across the nation are using to improve the “user-friendliness” of their development code is the interactive, computerized code that can be accessed on CD-ROM or the city’s website. Computerized codes have become a common feature on several community websites and can greatly assist in presenting relevant information to the community, quickly and easily. The city’s current zoning ordinance is available on the Internet through the Municode website, but it is difficult to use and navigate and does not support the use of images, cross references, or other user-friendly graphics that are found in modern codes.

To ensure the new Portsmouth code takes advantage of the most current web-based technology, once the new ordinance language and images are adopted by the City Council, the Clarion team will begin preparing the digital version of the code with the Visual Interactive Communications Group (VIC Group). VIC has developed a graphically driven, interactive format specifically designed to present the type of complex information typically included in a development code: a dynamic table of contents, keyword index, full text search, bookmarking capabilities, and hypertext links for defined terms, cross-references and illustrated commentary.

The illustrated commentary feature means that design standards and key topics can be explained in a dynamic, highly visual manner (e.g., photographs of appropriate and inappropriate screening of mechanical equipment).

Examples of digital codes prepared by the Clarion team are found at the web pages of the following communities:

Town of Cary, North Carolina:

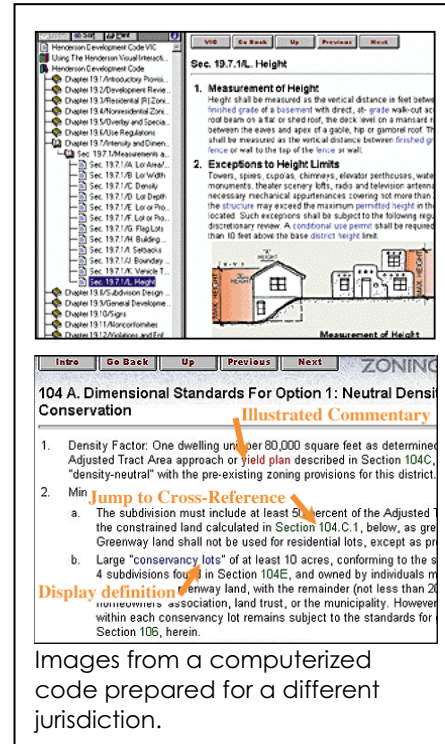
<http://vic.townofcary.org/>

City of Rock Hill, South Carolina:

<http://www.cityofrockhill.com/development/Rock%20Hill%20VIC/>

City of Henderson, Nevada:

<http://24.234.185.162/vic/>



Images from a computerized code prepared for a different jurisdiction.

2. STREAMLINE REVIEW PROCEDURES

One of the primary issues covered in the interviews with city staff and stakeholders during the project initiation meetings was the need to revise the development review procedures to increase efficiency and create more transparency in the process. The interviews and analysis of the current ordinance identified a need to structure the new zoning ordinance in ways that help potential applicants understand what they *can* do or develop instead of what they *cannot* do. In addition, our independent review of the current development procedures suggests the city consider adding provisions that allow for more flexibility in the administration of the new ordinance.

Numerous goals in the *Destination 2025 Plan* call for the inclusion of new development and design standards to foster compatible redevelopment, promote pedestrian orientation, and raise the bar for development quality (See **Appendix A.**). *Destination Portsmouth* calls for incorporation of form-based concepts and form-based regulations in the new code. Implementation of these policies and goals requires a series of changes to the city's development procedures, including new review procedures to allow increased flexibility (administrative adjustments) as well as refinement of existing procedures such as the development plan process to clarify (and send clearer signals regarding) the city's development goals and expectations. In addition to creating a framework for review of developments, in accordance with these policies, we suggest the new code procedures also provide increased transparency to the development community and affected local residents.

Streamlining Development Review

- Establish a set of common review procedures
- Modify some existing procedures
- Add new procedures
- Use an Administrative Manual

A. Establish a Set of Common Review Procedures

One of the best ways to streamline the development review process while adding greater predictability is to include a **set of common review procedures** that address review requirements relevant to all applications for development permits. This new section establishes the rules that take the development applicant from the beginning of the development review process to the end. The types of procedural issues addressed include:

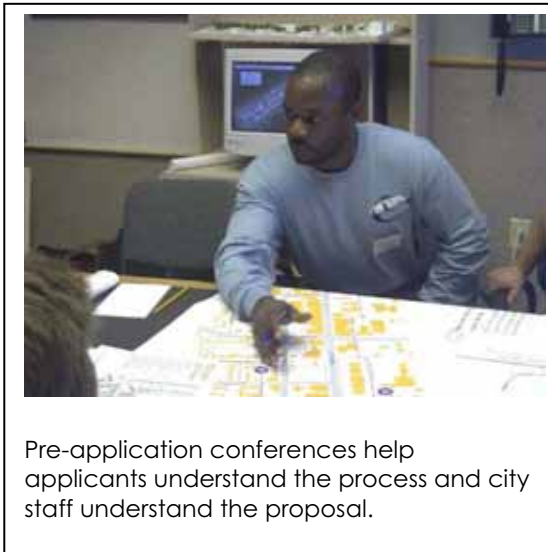
- * Who has authority to submit applications;
- * Pre-application conferences;
- * Application submittal and fee requirements;
- * Rules governing preparation of the staff report;
- * Public notification and public hearing requirements;
- * Deferral and withdrawal of applications;
- * Review and approval (including the imposition of conditions on approval);
- * Notification of the applicant regarding the decision; and

- * Lapse of approval.

We recommend the common review procedures include three new sections not included in the current zoning ordinance. They are sections governing: a pre-application conference, neighborhood meetings, and how applications are determined "complete" and ready for processing and review by the city. Each of these procedures is discussed below.

(1). Pre-Application Conference

Based on the information from our interviewees, it appears that today in Portsmouth, obstacles in the development review process are occurring, in part, because applicants do not understand procedural or substantive review requirements, or are unaware of other related issues about application submission. Our experience is that requiring a pre-application meeting between a potential applicant and staff, especially for a more complex development proposal, is an **effective way to expedite the development review process**. Encouraging potential applicants to meet informally with staff to present conceptual plans for development and get staff input prior to submittal of an application helps address issues and procedural requirements before significant time and expense are invested in the processing of applications.



Pre-application conferences help applicants understand the process and city staff understand the proposal.

We recommend the common procedures section of the new zoning ordinance establish a standard procedure for a pre-application conference between the applicant and staff. This provision would clarify what types of development applications are subject to the pre-application conference, the purpose of such meetings, and the effect of such meetings (i.e., discussions are not binding on the city and processing times do not start until a formal application is submitted and accepted). We suggest pre-application

conferences be mandatory for rezonings, variances (zoning and subdivision), preliminary plats, special exceptions, and development plans related to nonresidential or multi-family development of ten or more units. In addition, we suggest the Planning Director or Zoning Administrator (depending on who has review authority) be authorized to waive the requirement for a pre-application conference when the proposal is expected to have limited or no impact on adjacent lands.

(2). Neighborhood Meeting

Neighborhood meetings are used by an increasing number of local governments throughout the country to provide a framework for a development applicant to get together on a more informal basis with neighbors/property owners surrounding a proposed development to (1) **educate the neighbors** about the project, (2) **hear neighbor concerns**, and (3) hopefully **resolve these concerns**, if appropriate. The timing and requirements for neighborhood meetings vary from community to community.

In some communities the neighborhood meeting is optional. If the applicant decides to (or is required to) proceed with the neighborhood meeting, parameters

are established in the ordinance about how notice is to be given and how the meeting is conducted.

In other communities, neighborhood meetings are required to be conducted prior to submission of an application. In still other communities, the neighborhood meeting is required to be held prior to completion of staff review of the application.



Neighborhood meetings give adjacent land owners the opportunity to hear about a project prior to an application and provide comment.

Still other communities do not mandate a meeting, but allow the Planning Director to require an applicant to conduct a neighborhood meeting prior to completion of the staff report on the application if the development proposed is likely to generate a certain level of impact on adjacent lands, roads, or public facilities.

We believe the most appropriate time to conduct a neighborhood meeting is either before the application is submitted or before the staff report is prepared on the application. This is so because usually at this stage of the development review process, positions about the proposal are not taken, "lines in the sand" are not

drawn, and an honest and good faith discussion about development issues related to the project can occur between the applicant and interested neighbors. Regardless of the timing, we suggest the city reserve the right for the Chair of the review board reviewing an application to require a neighborhood hearing prior to or during a public hearing if a development proposal is expected to cause controversy or have considerable impacts on adjacent lands.

We strongly recommend that if a neighborhood meeting requirement is included in the new zoning ordinance, it establish procedures for how the neighborhood meeting is conducted. The procedure should require:

- Written notification of surrounding property owners and affected neighborhood organizations be provided within a reasonable period of time before the meeting;
- The meeting(s) be held in close proximity to the affected neighborhood or property, or at a convenient location;
- At the meeting, the applicant explain the development proposal, provide neighbors an opportunity to ask questions, provide comments, and voice concerns; and
- Encourage informal resolution of any outstanding issues.

Some provisions also require that a written summary of the neighborhood meeting(s) be prepared by the applicant and made part of the application. One other issue for the city to consider is the desirability of staff attendance at neighborhood meetings. If the city decides to have staff attend, their role should be limited to observation and explanation of review procedures. **City staff should not facilitate the meeting** or answer any questions regarding the specific development proposal.

(3). Completeness Determination

One problem in the city's current review process that emerged during the interviews with stakeholders and city staff was that the review process for development applications was beginning before evaluation of an application

Criteria for Determination of Completeness

- Application form complete
- Fee included
- Minimum number of copies provided
- Submitted within review schedule timeframe
- Ownership information complete
- All required preliminary steps completed
- All necessary supporting information provided (including maps, site drawings, and analyses)
- Attestation of correctness by applicant

occurred to determine whether or not the application included the basic application submittal materials needed for staff and the advisory and decision-making bodies to conduct an adequate review of the application. In a number of instances, this resulted in the need to delay application reviews, re-notice public hearings, or make substantial modifications in staff reports.

We recommend the new zoning ordinance include a subsection authorizing the Zoning Administrator or Planning Director (as appropriate) to review submitted applications to determine whether they are "complete." The Zoning Administrator is responsible for review of applications for "by-right" approvals (e.g., type I development plans, zoning compliance permits, temporary use permits, etc.) and the Planning Director reviews applications requiring legislative decisions (e.g., rezonings, preliminary plats, special exceptions, type II development plans, etc.). Only "complete" applications should be formally accepted for review and action by the city. The provision would be applicable to all development applications, and would state that the processing of an application by the city **does not begin** until after a formal determination that the application is complete. Applications are "complete" when they contain all the relevant and appropriate application submittal requirements and the required fee.

Typically, city staff should need no more than five working days to review and make such a "completeness" determination. The provision would also establish rules for a deficient application, including a specified period within which a revised application must be submitted or be considered withdrawn. A provision for re-submittal fees after a certain number of incomplete applications is also suggested to deter multiple deficient submittals.

B. Modify Existing Procedures

Even though there was little comment from those interviewed regarding the need to modify any of the existing procedures in the current zoning ordinance, we suggest there is room for improvement. Several of the city's existing procedures would benefit from modification. These modifications are described below.

(1). Revise the Development Plan Procedure

Section 40-172 of the current zoning ordinance sets out the site development plan process. The section includes basic information on submittal requirements and traffic analysis requirements, but contains little in the way of process description or criteria for review. We recommend the development plan process be treated like any other procedure and be supplemented with clear information regarding applicability, review procedures, review standards, amendment, and expiration.

In addition to these changes, we suggest the new ordinance identify two types of development plan review. The first, which is reviewed administratively by professional-level staff (the Planning Director) is called the Type I review. The second, Type II review, would be reviewed and decided by the Planning Commission, as authorized by the Virginia statutes.

The Type I development plan would be used in cases where, in the opinion of the Planning Director, the proposed development plan complies with all ordinance requirements, applicant-sponsored conditions, and where relevant, applicable

master plan requirements. This procedure would also apply in cases where an administrative adjustment is needed and could be approved concurrently. The key criteria or qualification for designation as a Type I plan is that the proposed development plan, as prepared, meets or exceeds all code requirements (including all applicable design and development standards). The faster review times associated with administrative review act as an incentive for applicants to comply with code requirements.

There may be situations where an applicant does not wish to comply with all code requirements as written, may wish to seek some form of reduction or waiver to required standards, or may differ with the staff opinion in terms of a development proposal's level of compliance with code requirements. In these cases, an applicant may apply for (or the Planning Director may require) a Type II development plan process where the development plan is reviewed by the Planning Commission. This process allows some deviations or departures from ordinance requirements as a means of accommodating flexibility. The procedural language spells out the types of ordinance requirements that may be modified, such as dimensional standards, building form standards, landscaping or parking standards, as well as the types of requirements that may not be waived or reduced (e.g., where a use is permitted, the review process associated with a use, Chesapeake Bay protection provisions, etc.). The Planning Commission would have a set of separate review criteria for review of Type II development plans that address how the proposal would achieve better overall conformity with the city's development goals than would result under



Type II development plans or plans that do not conform to the city's standards are allowed, but require Planning Commission review.

strict adherence to the development regulations as written.

One other aspect of the type II development plan review process is the requirement for the provision of **compensating public benefits** in cases where an applicant seeks to waive or reduce the minimum requirements of the code. Compensating public benefits are aspects of the proposed development that are not required, or that exceed the code's minimum requirements, and are offered voluntarily by an applicant in recognition of the request to depart or deviate from some other code requirement. For example, an applicant may wish to provide more off-street surface parking than is allowed for a particular use. In such a case, the applicant would be required to undergo a type II development plan process and propose one or more compensating public benefits as a part of the request to depart from the city's maximum parking standards. Compensating public benefits could include aspects such as increased landscaping, additional open space, LEED certification, provision of preferred uses, affordable housing, or other aspects. We suggest the new ordinance include a menu of compensating public benefits that may be incorporated into the type II development plan review process.

In addition to these changes, we recommend increased use of the zoning compliance permit (See Page 27.) as a **review process for** consideration of how **new single-family or two-family detached dwellings** (that are currently exempted from development plan review) comply with any applicable requirements in the new zoning ordinance. We also suggest the zoning compliance permit be used as the primary means of review for applications seeking a change of use in an existing

building with no substantial modifications or alterations (subject to the sliding scale for nonconforming site feature compliance described on Page 53).

(2). Delete the Housing Use Permit Process

Article 9 of the current zoning ordinance requires almost all multi-family uses obtain **housing use permit** approval from the City Council. We suggest most or all multi-family uses be authorized as by-right uses (particularly within the downtown, in an activity center, in a high-density residential district, or when associated with a nonresidential use in the same structure). These uses would be subject to a series of multi-family building form requirements as well as transitional design standards when adjacent to single-family uses.

If there is reluctance to remove the housing use permit altogether, then we suggest its applicability be modified to apply only to larger developments (e.g., of more than 100 units) or to multi-family uses in specific residential districts instead of throughout the city. This change would substantially reduce the number of multi-family uses requiring a use permit.

(3). Delete the Excavation Use Permit

Article 10 includes provisions for an **excavation use permit**. We recommend this procedure be removed and use-specific standards be developed and applied administratively to excavation activities, as is done in many other zoning ordinances.

(4). Clarify the Interpretation Process

Section 40-173 identifies the standards for interpretation of the zoning map, but is unclear who makes these interpretations. It is suggested the **interpretation** procedure be made more formal and broadened to address all interpretations of the zoning ordinance and the zoning map. The Zoning Administrator should be identified as the city staff professional responsible for making quantitative interpretations (related to numerical standards), and the Planning Director should

be the staff professional responsible for interpreting the qualitative aspects of the zoning ordinance (intent provisions, design and appearance issues, etc.). A person requesting such an interpretation would have the right to appeal the interpretation to the Board of Zoning Adjustment.

(5). Establish a Zoning Compliance Certificate

The intent of the current certificate of compliance is to ensure that a proposed development plan within the D1 or D2 Districts is consistent with the zoning ordinance and the recommendations of the Downtown Design Committee. Section 40-62 addresses certificates of compliance for signage. It is unclear if any other forms of development are required to obtain a certificate of compliance.

We suggest a variety of modifications to the certificate of compliance procedure, including renaming it to a **zoning**



The zoning compliance permit procedure could be used as the process to ensure residential infill is consistent with its surroundings.

certificate of compliance procedure, including renaming it to a **zoning**

compliance certificate (ZCP). The ZCP would serve as the Planning Department's last check prior to issuance of a building permit to ensure proposed development complies with all the applicable requirements of the zoning ordinance as well as any conditions of approval.

The ZCP would also serve as the procedure for review of certain developments that are exempted from development plan review, such as new single-family or two-family homes, or changes of use proposed within an existing building (provided there are no changes in building footprint or site requirements like required parking, landscaping, or building form requirements).

(6). Use the Building Permit Process for Sign Permits

Finally, we suggest the building permit process be utilized for the issuance of sign permits. It is somewhat unclear from the current zoning ordinance if specific sign permits are issued for signage. Regardless, we suggest the building permit process be used as a way to **reduce the number of different permits** and help standardize review procedures.

C. Add New Procedures

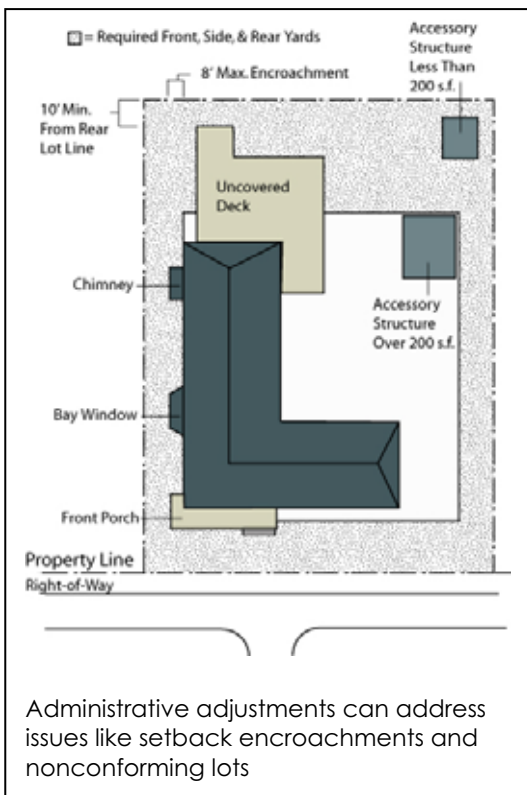
In addition to changes in some of the current review procedures, we suggest the city consider including two new procedures in the new ordinance. They are administrative adjustments and temporary use permits. Each is discussed below.

(1). Administrative Adjustment

One tool many communities use to streamline development review is an administrative adjustment. The administrative adjustment allows development applicants to request minor variations from development standards that are reviewed and decided administratively (by the Planning Director) instead of going through the more time consuming variance or special exception process. Examples of such standards could include requests to provide more off-street parking than the allowable maximum, minor reductions in dimensional standard requirements for lots or setbacks, or other minor variations from design or development standards for nonconforming lots or structures.

The Code of Virginia allows the Zoning Administrator to hear applications for variations to building setbacks (as opposed to the Board of Zoning Appeals), provided that the criteria for deciding such applications are consistent with state requirements. We recommend the city consider requests for reductions or deviations from required building setbacks and similar development standards through the administrative adjustment process (along with designation of the Planning Director as the Zoning Administrator for the purpose of review of administrative adjustment applications) to streamline development review of these types of minor variations.

To limit the Planning Director's discretion to approve administrative adjustments, it is also suggested that specific objective standards be included in the regulations to ensure administrative adjustments are approved under the

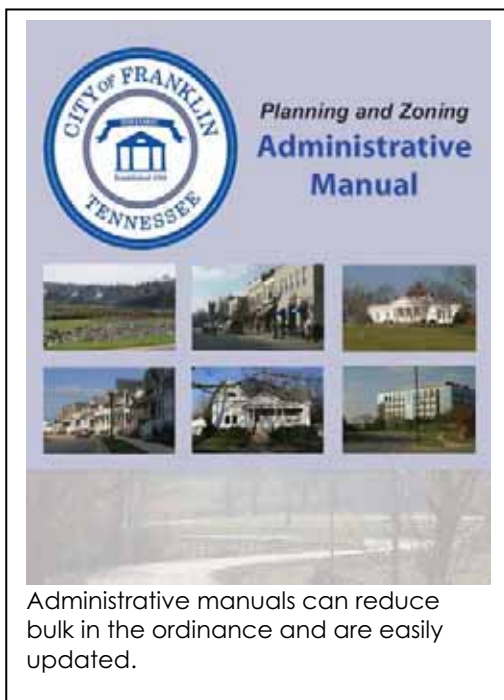


appropriate circumstances. As an important note, under the Code of Virginia, an applicant or adjacent property owner would be able to appeal the Planning Director's decision on an administrative adjustment to the Board of Zoning Appeals.

(2). Temporary Use Permit

Temporary uses are uses not ordinarily permitted in a zoning district but which may be carried out for a specified limited duration only. They include such uses as produce stands, temporary retail sales, construction trailers, sales trailers, temporary trailers used to house preexisting uses that will be continued during construction, and special events on private lands. Local governments require temporary use permits and standards to allow the community to evaluate a proposed temporary use to determine if it might create a health or safety impact, and then impose conditions to address these concerns. We suggest the city consider adding a temporary use permit in the new zoning ordinance to ensure temporary uses are consistent with city development goals and to address any health and safety concerns.

D. Use an Administrative Manual



The existing zoning ordinance includes many sections listing application submittal requirements like those in Section 40-105.2 related to site development plans. We suggest the submittal requirements be removed from the regulations, and set forth in an administrative manual that may be updated relatively easily, and without formally amending the ordinance. Other materials that should be removed from the regulations to a separate administrative manual include application fees and schedules for the processing of applications.

A separate administrative manual, or "user's guide," while not a part of this project, can also be a useful tool for explaining to the public how the review of development applications is conducted in Portsmouth, and can suggest ways for the public as well as neighborhoods to monitor development activity. The city's current development guide serves as a good foundation for this type of manual.

Another relevant example is Arlington, Virginia's *Administrative Regulation 4.1* document. This document includes information on all aspects of the city's site plan submittal and review process, including information on submittal requirements, plan specifications, and even a "LEED scorecard" which sets out the city's minimum LEED requirements and credit incentives. Portsmouth's development guide should be supplemented with this kind of information, and modified to serve as an administrative manual for all development review processes.

3. MODERNIZE THE DISTRICTS AND USES

The heart or foundation of a zoning ordinance is its zoning districts and allowable uses. A review of Portsmouth's current zoning district regulations demonstrates they are in need of revision and modernization. The zoning district structure is not well organized and is located in more than one article. In some cases, the districts overlap in purpose, the types of allowable uses, dimensional standards, or all three of these aspects. The current districts provide little opportunity for use-mixing to occur, particularly the residential districts, and they fail to reflect modern development trends related to use classification. Finally, they need to better reflect current community planning and development goals identified in the *Destination 2025 Plan*, and Destination Portsmouth project, like the need to encourage:

- Building form in addition to use;
- Moderate-density, walkable neighborhoods with nearby neighborhood-serving commercial;
- Mixed-use growth and employment centers;
- Greater attention to how buildings relate to their sites and to one another; and
- Less reliance on strict dimensional and bulk standards (that has resulted in numerous nonconformities).

In order to address these concerns and accomplish these objectives, we recommend the new ordinance:

- Consolidate overlapping districts;
- Eliminate obsolete districts, except where they are needed to accommodate existing development;
- Create new modernized districts and refine the remaining districts to address and accommodate new development trends and practices, and the city's planning and development goals;
- Increase opportunities for use-mixing;
- Allow for a wider variety of residential building types in the moderate and high density residential districts;
- Establish mixed-use higher-density activity centers;
- Increase opportunities for the establishment of traditional neighborhood development;
- Update the use provisions to incorporate a new use classification system and a simplified range of uses;
- Add new provisions for accessory and temporary uses; and
- Promote strategic uses.

These suggestions are discussed in more detail below.

Modernizing the Districts and Uses

- Consolidate and modernize the current zoning districts

- Adopt contextual standards in residential areas

- Update the use provisions

- Add standards for accessory and temporary uses

A. Consolidate and Modernize Districts

Review of the current zoning ordinance demonstrates there is a significant amount of overlap in the current district line-up. The current ordinance includes 11 different single-family districts, but only two multi-family districts. Many of the single-family districts have similar setbacks, and only differ in terms of density or minimum lot size. The current ordinance includes Planned Office Park (POP), Commerce Park (CP), and Business Park (BP) districts, each intended to accommodate office uses in a park setting. There is a waterfront (W-1) district, along with two downtown districts (D1 & D2), each of which is further divided into the same eight sub-districts. There is an M-1 industrial and an M-2 industrial district with very little difference in purpose, allowable uses, or character. We recommend **many of these districts be consolidated and renamed** in the update to minimize the overall number of districts and ease administration of the ordinance. The proposed zoning district translation table below identifies which zone districts are proposed for consolidation. It also lists some new districts that are discussed in subsequent sections.⁹

PROPOSED ZONING DISTRICT TRANSLATION TABLE	
DISTRICTS IN CURRENT ORDINANCE	PROPOSED DISTRICTS IN NEW ORDINANCE
RESIDENTIAL DISTRICTS	
Residential RS-400	Neighborhood Residential (NR)
Residential RS-300	
Residential RS-150	General Residential (GR)
Residential RS-125	
Residential RS-100	
Residential RS-85	
Residential RS-75	
Residential RS-60	
Residential RS-50	
Residential RT-75	Urban Residential (UR)
Residential RM-60	
Residential RM-75	
Residential Mobile Home RMH	
Office Residential OR-75	
BUSINESS DISTRICTS	
Neighborhood Commercial (C-1)	Mixed-Use (MU) [NEW] [1]
General Commercial (C-2)	
Commerce Park (CP)	Live/Work (LW)

⁹ NOTE TO STAFF: The new mixed-use district is proposed to address existing lots with C-1 or C-2 designations that are located outside of an activity center. Based on discussion with the staff, the master-plan process set out in the MX/EC district will be the procedure for review of development inside an activity center. In some cases, this approach could confound redevelopment on small lots inside a neighborhood activity centers (since there is a master plan requirement). To address this situation, we recommend that development or redevelopment on lots of ½ acre or less in the NAC district be allowed to proceed under the Type I or II development plan processes instead of the need to prepare a master plan. Finally, we suggest the new ordinance include a master-planned overlay district to accommodate master-planned development outside of an activity center.

PROPOSED ZONING DISTRICT TRANSLATION TABLE	
DISTRICTS IN CURRENT ORDINANCE	PROPOSED DISTRICTS IN NEW ORDINANCE
Business Park (BP)	
Industrial (M-1)	
Industrial (M-1-R)	Industrial (IN)
Industrial (M-2)	
MIXED-USE DISTRICTS	
	Neighborhood Activity Center (NAC) [NEW]
	Community Activity Center (CAC) [NEW]
Mixed-Use/Employment Center (MX/EC)	Regional Activity Center (RAC)
	Corridor Form (CFB) [PLACEHOLDER]
Planned Unit Development (PUD)	[DELETED]
Planned Office Park (POP)	
SPECIAL DISTRICTS	
Waterfront (W-1)	Downtown (D) [with sub-districts]
Downtown (D-1)	
Downtown (D-2)	
Historic Residential (HLB)	Historic (H) [composed of 5 sub-districts]
Historic Limited Office (HLO)	
Historic Limited Business	
Preservation (P1)	Preservation/Government (PG)
United States Government (USG)	
OVERLAY DISTRICTS	
Residential Opportunity	[DELETED]
Traditional Neighborhood	
	Master-Planned (MPO) [NEW]
	Neighborhood Conservation (NCO) [NEW]
<p>NOTES:</p> <p>[1] In cases where a lot designated as C-1 or C-2 is located within a designated activity center (as depicted on the City's future land use map), the lot will be re-designated to the appropriate activity center district designation.</p>	

(1). Consolidate the Residential Districts

RESIDENTIAL DISTRICTS	
DISTRICTS IN CURRENT ORDINANCE	PROPOSED DISTRICTS IN NEW ORDINANCE
Residential RS-400	Neighborhood Residential (NR)
Residential RS-300	
Residential RS-150	General Residential (GR)
Residential RS-125	
Residential RS-100	
Residential RS-85	
Residential RS-75	
Residential RS-60	
Residential RS-50	
Residential RT-75	Urban Residential (UR)
Residential RM-60	
Residential RM-75	
Residential Mobile Home RMH	
Office Residential OR-75	

The current ordinance includes 14 residential zoning districts, a large number even for a city of Portsmouth’s size. In many cases, the single-family districts have been established to accommodate lot size and density patterns within existing platted subdivisions. The new ordinance seeks to **dramatically simplify the residential district line-up** by establishing three different residential districts in the new zoning ordinance that are based on the general character of development and development patterns (lot sizes, setbacks, heights, etc.)

To address potential nonconformity problems, we recommend the application of **contextual dimensional standards** to lots containing single-family and lower density residential uses (i.e., seven units or less) within the residential districts. Under this approach, we suggest removal of existing setback, lot width, and lot size standards, and reliance on new provisions that require new development and redevelopment to be within **125 percent of the average** for lots on the same block face. We also recommend a maximum lot coverage standard be maintained to ensure lots are not 100 percent impervious. Setbacks and other dimensional requirements for multi-family buildings of eight or more units will be addressed as use-specific standards.

In addition to the current range of residential building types, the new ordinance should introduce a variety of **new building use types** like mansion apartments, live/work dwellings, as well as the possibility to accommodate low-intensity neighborhood-serving commercial and personal service uses (like video stores, dry cleaners, small restaurants, day cares, etc.) in addition to the limited office uses already allowed in some residential districts.

(2). Refine Business Districts

BUSINESS DISTRICTS	
DISTRICTS IN CURRENT ORDINANCE	PROPOSED DISTRICTS IN NEW ORDINANCE
Neighborhood Commercial (C-1)	Mixed-Use (MU) [NEW] [1]
General Commercial (C-2)	
Commerce Park (CP)	Live/Work (LW)
Business Park (BP)	
Industrial (M-1)	Industrial (IN)
Industrial (M-1-R)	
Industrial (M-2)	
NOTES: [1] In cases where a lot designated as C-1 or C-2 is located within a designated activity center (as depicted on the City's future land use map), the lot will be re-designated to the appropriate activity center district designation.	

The current ordinance **lacks some base zoning districts that are typically found** in the codes of mature, built-out urban communities. For example, even though there is an Office Residential (OR-75) District, it accommodates office uses only – not other non-commercial uses such as churches or government buildings, and no multi-family uses or limited mixed-uses. Other communities utilize an Office and Institutional zoning district that accommodates offices, institutional uses, multi-family, and mixed-uses in a single district. We recommend the new ordinance include a new Live/Work district that includes the planned office districts and accommodates institutional uses, high density multi-family uses, and mixed-uses.

As a means of accommodating mixed-uses, we suggest the city establish three new activity center districts, but we also recommend a new mixed-use district be established to accommodate existing nonresidential developments located outside of designated activity centers.

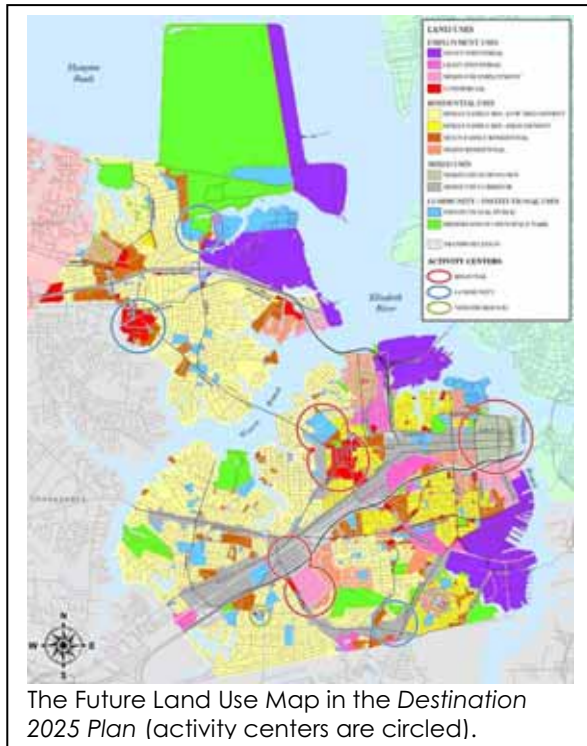
All three current industrial districts are consolidated into a new single industrial district as a means of simplifying administration of the ordinance. One additional recommendation is the application of new building form standards to all nonresidential uses, as discussed in more detail on Page 39.

(3). Add New Mixed-Use Districts

MIXED-USE DISTRICTS	
DISTRICTS IN CURRENT ORDINANCE	PROPOSED DISTRICTS IN NEW ORDINANCE
	Neighborhood Activity Center (NAC) [NEW]
	Community Activity Center (CAC) [NEW]
Mixed-Use/Employment Center (MX/EC)	Regional Activity Center (RAC)
	Corridor Form (CFB) [PLACEHOLDER]
Planned Unit Development (PUD)	[DELETED]
Planned Office Park (POP)	

One of the major policy goals in the *Destination 2025 Plan* is to establish a series of activity centers at key locations in the city like downtown, mid-town, and several

smaller-order neighborhood centers. The new zoning ordinance will **incorporate a three-tiered structure of activity center districts** that may be established by the city in accordance with the future land use map in the comprehensive plan.



The Future Land Use Map in the *Destination 2025 Plan* (activity centers are circled).

These three districts are intended to be the primary areas of mixed-use development in the city and are expected to accommodate both horizontal and vertically-integrated mixed-uses comprised of nonresidential and residential uses.

The **Neighborhood Activity Center** district is intended for small-scale low intensity neighborhood-serving commercial uses in close proximity to medium and high density residential uses. The district accommodates lower density residential uses like two-family homes, townhouses, mansion apartments, live/work units, and residential units over nonresidential uses. The **Community Activity Center** district is intended for larger-scale more intense commercial and personal service uses that are located along major streets and cater to groups of neighborhoods. This district would accommodate all the forms of residential available in the NAC district along with multi-family uses. The **Regional Activity Center** district is intended for the most intense forms of commercial and residential development that serve the entire city (for example, shopping centers over 100,000 square feet, large single-tenant retail stores over 50,000 square feet in size, and the most intense areas of nonresidential and mixed-use development). The city adopted a Mixed-Use/Employment Center (MX/EC) district

last year that accommodates mixed-use developments like the one proposed in Victory Village. We recommend the MX/EC district be translated into the Regional Activity Center district.

New development and redevelopment within an activity center would be subject to review and approval of a **master plan** as is currently done in the MX/EC district. However, small lots (½ acre or smaller) within a neighborhood activity center would not be required to submit a master plan, but would be subject to either the type I or II development plan review process.

The city is also working with another consultant on the establishment of a form-based district for the High Street and London Boulevard corridors that will be incorporated into the new zoning ordinance when it is adopted. Finally, the city’s current planned development districts are not recommended for inclusion in the new ordinance as they are limited in the amount of use-mixing they can accommodate.

(4). Add New Special Districts

SPECIAL DISTRICTS	
DISTRICTS IN CURRENT ORDINANCE	PROPOSED DISTRICTS IN NEW ORDINANCE
Waterfront (W-1)	Downtown (D) [with sub-districts]
Downtown (D-1)	
Downtown (D-2)	
Historic Residential (HLB)	Historic (H) [composed of 5 sub-districts]

SPECIAL DISTRICTS	
DISTRICTS IN CURRENT ORDINANCE	PROPOSED DISTRICTS IN NEW ORDINANCE
Historic Limited Office (HLO)	
Historic Limited Business	
Preservation (P1)	Preservation/Government (PG)
United States Government (USG)	

The new ordinance seeks to establish **three new special districts that consolidate groups of districts** from the current ordinance. We suggest establishment of a single downtown district that includes the W-1 Waterfront district and the various downtown sub-districts (but not the Olde Towne historic district). The second special district includes the series of five historic districts that have been recently revised by the city. We recommend a single new historic district be established that includes the provisions for each of the five historic sub-districts (Truxton, Cradock, Park View, Olde Towne, and Port Norfolk). Finally, we recommend a new consolidated Preservation/Government (PG) district to accommodate these uses.

(5). Remove Some Overlay Districts

PROPOSED ZONING DISTRICT TRANSLATION TABLE	
DISTRICTS IN CURRENT ORDINANCE	PROPOSED DISTRICTS IN NEW ORDINANCE
Residential Opportunity	[DELETED]
Traditional Neighborhood	
	Master-Planned (MPO) [NEW]
	Neighborhood Conservation (NCO) [NEW]

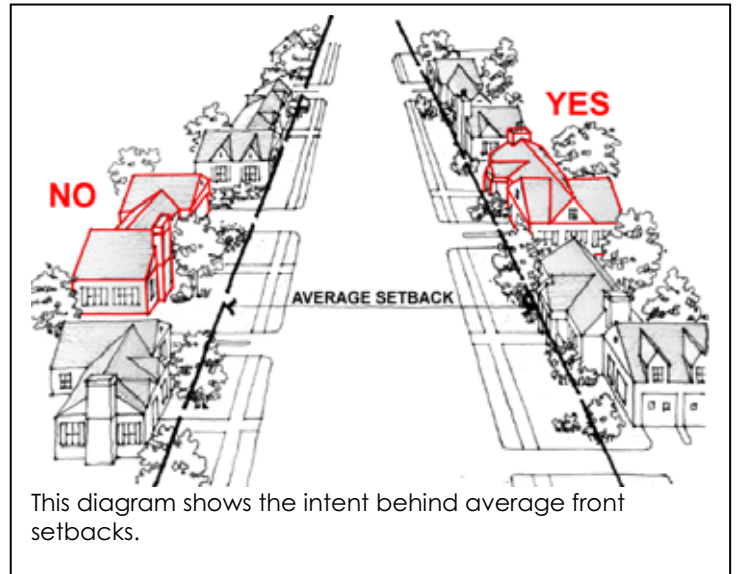
The current ordinance includes a few obsolete overlay districts which should be deleted in the update. Section 40-45.7 establishes Residential Parking Districts, which are residential areas that prohibit the parking of commercial vehicles on public streets. Section 40-46 allows the establishment of Parking Overlay Districts that offer increased flexibility in the provision of required parking. Operation and enforcement of these standards has proven difficult, and city staff suggests **these districts be removed in favor of revised parking and use standards.**

Section 40-48 establishes the Residential Opportunity District, an overlay district that allows proposed residential uses on vacant lots to deviate from the base district dimensional standards through issuance of a Special Exception Permit. We suggest this concept be addressed through the neighborhood conservation overlay district approach detailed on Page 53.

We also recommend adding two new overlay districts. The master planned overlay district is proposed as a means of allowing master planned developments in areas outside of activity centers. The district standards require preparation and approval of a master plan as part of the zoning approval process. The neighborhood conservation overlay district is proposed as a framework for the accommodation of distinct neighborhood conservation overlay districts intended to preserve local character and context (See Page 53 for more details.).

B. Adopt Contextual Standards in Residential Districts

One of the largest challenges facing the city today is the fact that up to 40 percent of the existing lots or sites do not conform to the current ordinance's dimensional standards. This is so for a variety of reasons: the city's age, residential areas that pursued "downzonings" in an attempt to influence property values, and the modifications made to the ordinance after many of the areas of the city were platted. This situation has become a disincentive to redevelopment in many parts of the community as homeowners must undergo the variance process for the most simple variations from the current code's dimensional requirements. (requests that must be made just to add a deck, porch, or a basic renovation to a home). In addition, as discussed in the section on modernizing the zoning districts, one of the project goals is



to consolidate the residential districts in an effort to streamline and simplify the ordinance. When districts are consolidated there is often some concern that consolidation will yield unintended results and additional nonconformity issues might emerge. We recommend a variety of modifications to address this situation, including:

- * **Removal of minimum setbacks** in the residential districts for many residential use types.
- * **Removal of minimum lot sizes** in the residential districts in favor of new regulations that control maximum lot coverage and density.
- * New requirements for development to maintain setbacks that are consistent with 125 percent of the **average setbacks** for similar uses on the same block face (unless an administrative adjustment is obtained).
- * The **flexibility** to request or require type II development plan review (by the Planning Commission) and provision of compensating public benefits in cases where an applicant does not wish to maintain average setbacks, or in cases where the existing context can not be determined (due to vacant land), or where the Planning Director believes the existing conditions are not desirable, and should not be maintained.
- * Requirements for some **multi-family use types to comply with use-specific standards** that address issues such as minimum building separation from lot lines when adjacent to single family development and other potentially incompatible uses.
- * Requirements for nonresidential buildings to comply with **building form standards** when located within a residential district.

C. Update the Use Regulations

The use standards in a zoning ordinance are important because they identify which uses go in which districts. While the current zoning ordinance utilizes a modern approach to setting out the use standards through a series of summary tables organized by groups of

similar districts (e.g., all the residential districts or all the commercial districts), there is room for great improvement in how the new ordinance addresses land uses. The current code relies on lengthy lists of uses based on Standard Industrial Classification (SIC) codes, which is complex and does not accommodate the addition of new uses (like Internet cafes or convenience stores with restaurants). The current code includes little in the way of use-specific standards, or standards that apply to a particular use regardless of the district where it is located.¹⁰ To address these issues and help support use-mixing and greater procedural clarity, we suggest the following changes to the use provisions:

- * Establishment of a **single consolidated use table**;
- * **Remove the SIC-based approach** to use classification;
- * Replace the SIC-based approach with a **three-tiered structure** of use classifications, use categories, and use types;
- * Allow a **broader range of building types** and corresponding use-specific standards for residential uses; and
- * Reduce reliance on use distinctions in nonresidential districts (with more **emphasis on building form**).

The *Destination 2025 Plan* calls for the city to **protect and promote strategic employment-related uses** through streamlined permitting and other techniques to create incentives for desired uses. However, the plan does not identify the desired employment-related uses. We will work with the city to identify these uses and ensure they are allowed by-right, as appropriate.¹¹ In addition to simplifying the process for establishment of strategic uses, it is also recommended the new ordinance provide incentives to landowners/developers to develop the desired use types and building form. The types of incentives that may be appropriate will require further discussion with staff, city officials, the review boards, and the Steering Committee.

The following sections discuss these suggested changes to the use provisions.

(1). Removal of SIC-Based Approach

We recommend the current ordinance's Standard Industrial Classification (SIC)-based approach to organizing use types be changed. Experience indicates the detailed SIC classification system provides limited flexibility in addressing use issues as they occur in practice, as well as a poor framework for determining which new uses are appropriate in which districts. We suggest the current SIC classification system be replaced by a three-tiered **use classification system** that adds textual descriptions to clarify groupings of uses at three levels:

- Use classifications (broad general classifications such as Residential, Commercial, and Industrial);
- Use Categories (major sub-groups within Use Classifications that are based on common characteristics, such as "Group Living" and "Household Living"); and
- Use Types (specific uses within the Use Categories such as single-family detached dwelling, multiple-family dwelling, and townhome).

Many communities are moving to this use classification approach due to its more robust structure and flexibility. **Appendix C** of this report provides more detailed information about this proposed three-tiered use classification system, as well as a proposed listing of use types. As part of the conversion to the three-tiered use

¹⁰ There are some key uses, like multi-family buildings, that benefit from these kind of standards.

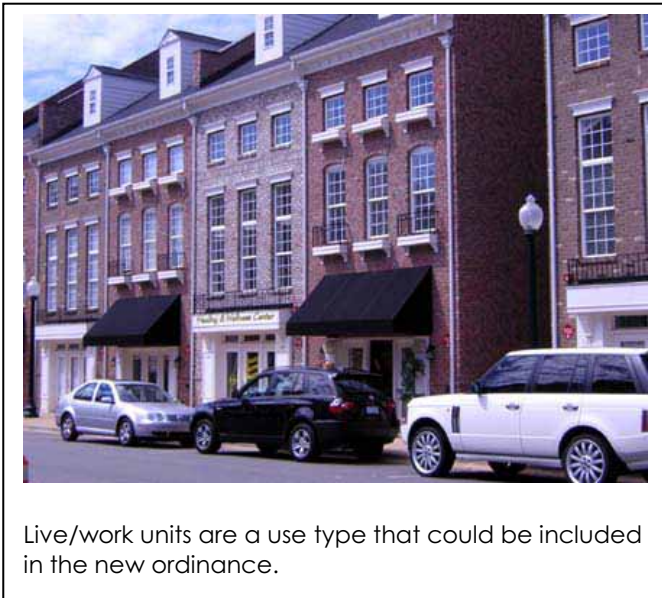
¹¹ NOTE TO STAFF: If possible, please provide some information on these types of uses.

classification system, we also suggest that obsolete uses (e.g., apothecaries) be removed, and new uses (e.g., large retail establishments, internet cafes, etc.) be added.

(2). Establish a Consolidated Use Table

As discussed earlier, there are several different use tables for each group of districts (e.g., residential, nonresidential, downtown, etc.). This makes working with the tables difficult because they stretch across numerous pages and appear identical to one another. For this reason, we recommend the new ordinance include **a single Use Table** that includes all the districts and uses. It is an approach we have used in many of our recent codes, which is a more efficient and user-friendly approach to organizing use standards. In addition to use of a consolidated table, we also suggest a general simplification of the use line-up as described in **Appendix C**.

(3). Allow a Broader Range of Use Types in Residential Districts



Live/work units are a use type that could be included in the new ordinance.

The current zoning ordinance is somewhat limited in the range of different residential use types that are allowed in each of the residential districts. Attached and detached accessory dwellings are allowed in all residential districts, but the regulations limit denser forms of residential uses (e.g., multi-family or attached residential structures). In addition, there are a variety of residential forms (e.g. live/work units, semi-attached dwellings, tri- or quadplexes, and mansion apartments) that are not allowed. The new ordinance should include **a wider range of residential use types in the residential districts**. In addition to a broader range of uses, we also suggest a new set of use-specific standards that address orientation, site layout, and compatibility issues. For example, we recommend a new set of use-specific standards for single family homes that address garage location relative to the front façade plane as a means of limiting garage-dominated streetscapes. We also suggest a set of

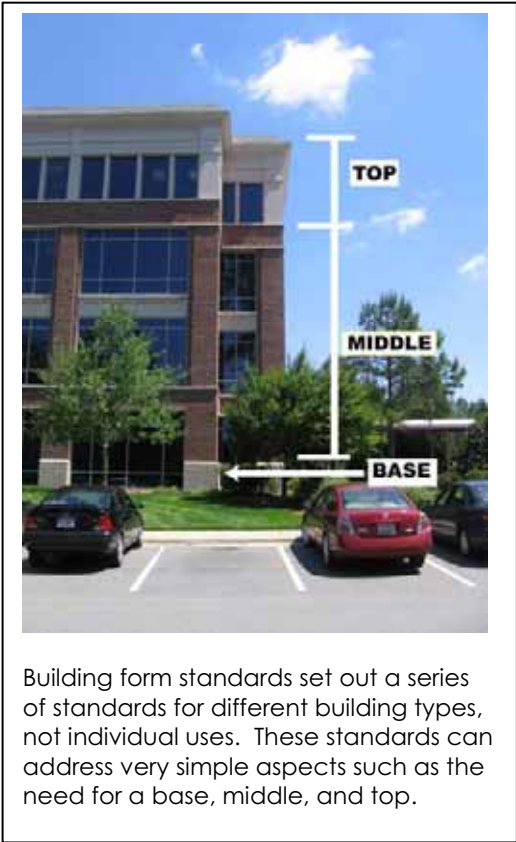
use-specific standards for larger developments such as multiple-building, multi-family development (that address building orientation, open space location, intra-site pedestrian mobility, etc.) and traditional neighborhood development (housing variety, open space placement, use-mix, etc.). These kinds of standards will create more diverse housing opportunities for city residents and help ensure that infill development remains compatible with existing contexts.

One additional issue that should be addressed in the new code is new standards that render existing mobile homes constructed prior to July 1976 (and thus not constructed in accordance with HUD requirements for consistency with the standard building code) as nonconforming uses.

(4). Use of Building Form Standards in Nonresidential Districts

One recommendation discussed in subsequent sections is the establishment of a set of building form standards to address nonresidential development.

We suggest the new ordinance require all or most forms of new or redeveloping nonresidential development to comply with a set of basic development standards keyed to particular building form. For example, the new ordinance may include a set of standards associated with a “workplace” building. The use table would set out a range of allowable building forms (which may include a workplace building, among other forms) for a particular use type in a particular zoning district. See Page 38 for more discussion on these standards.



Building form standards set out a series of standards for different building types, not individual uses. These standards can address very simple aspects such as the need for a base, middle, and top.

D. Add Standards for Accessory and Temporary Uses

The current ordinance includes very little information on accessory and temporary uses. Accessory uses or structures are those uses subordinate to the principal use of a building or land, located on the same lot as the principal use, and customarily incidental to such use or structure. For example, a stand-alone automated teller machine is considered as accessory to a commercial use and an above- or below-ground swimming pool is typically considered an accessory structure to a single-family home. Temporary uses are uses proposed to be located in a zoning district for a limited duration of time that are not identified as permitted uses. We suggest the new ordinance **establish rules about how accessory and temporary uses may be developed**, as well as new standards and review criteria for these kinds of uses.

4. FOCUS ON FORM

The *Destination 2025 Plan*, *Destination Portsmouth*, and many of those interviewed in Tasks 1 and 2 identified the need to focus on development form and ensure a generally higher quality development throughout the city as an important goal of the update project. As a means of developing a more refined notion of what is meant by “higher quality,” the Clarion team conducted a visual preference survey with the City Council and the Portsmouth Development Council Committee in October 2006 (additional detail about the visual preference survey is included as **Appendix D**). Analysis of the survey results and input received during the project initiation meetings resulted in the identification of eight specific areas where development quality needs improvement. They are:

- The appearance of commercial development;
- The appearance and compatibility of larger multi-family developments;
- The need for targeted single-family development standards;
- The appearance and location of off-street surface parking;
- The city's modest landscaping and tree protection standards;
- The lack of suitable exterior lighting standards;
- The appearance of fences and walls in the city (particularly along streets); and
- The lack of meaningful open space areas.

The following sections detail a range of potential solutions to these challenges. In general, based on this earlier input, policy direction established in the plans, and our own independent evaluation of the city's regulations, we suggest the new ordinance include provisions that focus on improving the form, function, and appearance of new development and redevelopment in the following ways:

A. New Nonresidential Building Form Standards

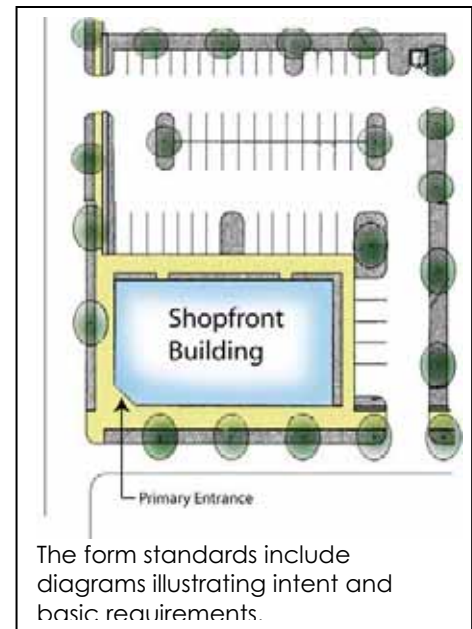
The existing zoning ordinance does not include minimum development standards for nonresidential development. Consequently, quality development in the city often results only through negotiation or landowner willingness. In many cases, where commercial uses are permitted “by right” they often lack many of the basic features that help establish a strong sense of place, pedestrian orientation, and human-scale. This issue was identified by interviewees and by respondents of the Visual Preference Survey as an issue of concern

Focusing on Form

- Use nonresidential form standards
- Establish new residential use and form standards
- Include “green building” standards
- Revise the parking standards
- Upgrade the landscaping and tree protection standards
- Refine the open space standards
- Establish new fencing and lighting standards

that should be addressed in the ordinance update process. The specific concerns identified with respect to existing nonresidential development in the city include:

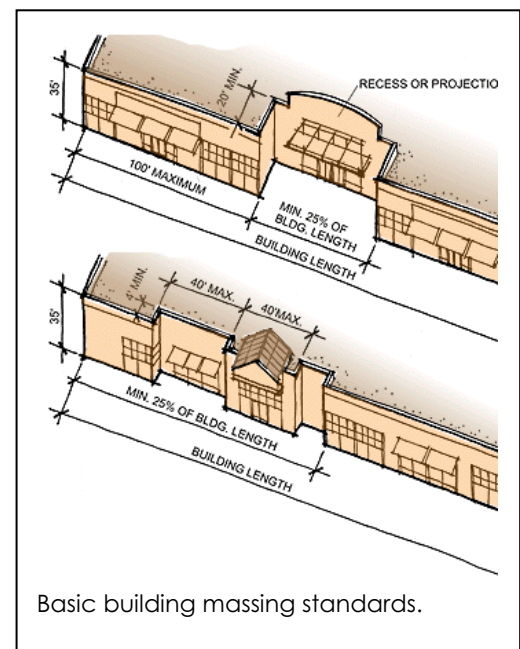
- * Buildings oriented to parking lots rather than to streets;
- * Streets fronted by buildings with blank walls and parking lots;
- * Large buildings without visual breaks in their mass;
- * The mismatch of scale and height between large nonresidential buildings and nearby residential structures;
- * A lack of screening for parking, loading, and service areas; and
- * A lack of controls to ensure the compatibility of nonresidential development located at the edge of residential development.



In many cases, nonresidential development in Portsmouth is oriented to parking lots rather than streets. This is the case even with new developments such as Chandler Commons, which offers attractive architecture and well-designed pedestrian areas organized around parking lots -- diluting the potential pedestrian orientation and sense of place that is created by such mixed-use development.

Many recent trends in land use regulation call for standards addressing how buildings look and relate to the street (and each other) in addition to more traditional regulations related to use and location. Based on its built-out development template, automobile-oriented commercial corridors, neighborhood character, and need for redevelopment, Portsmouth would benefit from a shift in regulatory stance away from its focus on use and dimensional requirements towards **new standards that address basic building form and contextual requirements**. We recommend the new ordinance include a series of basic building form standards applied to new nonresidential development and redevelopment of existing nonresidential development outside of the downtown and new form-based district. These basic building form standards address issues such as:

- * **Orientation to streets** (not parking lots);
- * **Compatibility** in terms of height, bulk, scale, as well as use (e.g., limitation of auto-oriented uses on major intersections);
- * **Pedestrian orientation** (via provision of sidewalks and public gathering spaces);
- * **Functional aspects** (limitations on the amount of parking in front of a structure, screening service areas, etc.); and
- * Standards addressing **façade elements** such as building massing and articulation in areas serving as gateways.



The exact number of different forms will need to be discussed as the project moves forward. At a minimum, we suggest the new ordinance include standards for shopfront buildings, workplace buildings, civic buildings, large-format buildings, and auto-oriented buildings.¹²

Building form requirements are applied to specific uses and may vary based on the district location. For example, a retail establishment might be required to follow a shopfront building form within a neighborhood activity center district, but the same retail use may be able to use the workplace building form in a different district.

We recommend each set of form standards include photographs and illustrations showing the intent of the standards and how they function. Finally, we suggest that the requirements be structured so that an applicant can develop a nonresidential use in accordance with the building form standards via the Type I development plan process, but also have the opportunity to propose an alternative configuration that differs from the building form requirements via the Type II development plan review process.

B. New Residential Use and Form Standards

In addition to the changes described in the previous section on modernizing the districts and uses, we also recommend greater attention be paid to the form and function of residential uses through a set of new use-specific standards for certain residential uses.

(1). New Single-Family Development Use and Form Standards

The city's existing zoning ordinance does not include standards addressing single-family residential development form and function. While there are several examples of new planned developments (like New Port), and older neighborhoods (such as Southhampton) that reflect good design and development practices, the majority of recent residential development suffers from many common problems, such as:

- Visual dominance of the street corridor by garages and driveways;
- Homes that "turn their backs" on adjacent streets bordering the development (reverse frontage);
- Repetition of monotonous facade designs on homes throughout a subdivision; and
- Homes located on low-rise concrete slabs.

To address these concerns, and to implement the goals and policies of the *Destination 2025 Plan* related to residential quality and *Destination Portsmouth* related to the goal of focusing on form, we



Reverse frontage conditions result when homes back up to a public street. This development pattern should be avoided where possible.

¹² NOTE TO STAFF: This is a substantial undertaking, and depending upon the number of building forms prepared, could have a significant impact on the project budget.

suggest the city consider including a basic set of residential use and form standards applied to all new single-family development outside the downtown and historic districts as a means of ensuring more desirable residential areas and a higher quality of life for Portsmouth residents. These standards would also be applied to major renovation or redevelopment of existing structures, where appropriate. For example, in cases when an existing home was being redeveloped, and the redevelopment included construction of a new garage, the new garage would need to comply with the residential use and form requirements.

The proposed residential use and form standards might include:

- Provisions **prohibiting reverse frontage** (situations where new homes back up to roads ringing the perimeter of the development) except along interstates and major streets where new driveways interfere with access management.
- A new set of standards to address **garage placement** and size relative to the primary façade of the dwelling. Such provisions require, at a minimum, garages be behind the front façade plane of the dwelling, and limit the size of detached and semi-detached garages relative to the size of the dwelling's primary façade.
- Provisions to require **alleys** for new master planned residential developments or redevelopment involving one or more blocks where lots are less than 50 feet in width and encourage the use of alleys elsewhere.
- An additional set of standards designed to reduce the automobile-dominance of residential streets by establishing new maximum **driveway width** standards (e.g., 12 feet when in front of a dwelling) and requirements for narrow lots (e.g., 50 feet wide or less) to be served by alleys located to the rear of lots.
- Provisions to require the use of porches/stoops in areas where these features are present on existing adjacent development.
- New standards for **architectural variability** in master-planned communities which require single-family dwellings to have "visibly different" facades, and the application of design standards addressing building massing, articulation, and inclusion of porches and building wings for new dwellings located in historic gateway areas.

(2). New Multi-Family Use and Form Standards

The visual preference survey participants were clear that they preferred multi-family residential housing that incorporates a variety of building materials, conveys the city's architectural character, transitions well to adjacent buildings, and has a strong "curb appeal." The current zoning ordinance has no provisions addressing the form and function of multi-family developments. Based on the



New use and form standards for multi-family uses are an important element of the new ordinance.

input received from the visual preference survey and the neighborhood and housing goals in the *Destination 2025 Plan and Destination Portsmouth*, we suggest the new zoning ordinance include some basic multi-family standards. We suggest the standards focus on the following:

- **Building orientation**, including limitations on buildings fronting surface parking areas in multi-building developments and new requirements for some buildings to front common open space areas.
- Encouragement for new types of **building form**, including triplexes, two-family homes served by a common primary entrance, and mansion apartments (four to seven units located in a single building designed to appear as a large single-family home).
- **Limitations on the size** of multi-family structures within 100 feet of single-family residences, including a maximum building size, maximum building length, limitations on the number of townhouse units in a single building (i.e., six units), and minimum building separations in multi-building developments.
- Building **massing standards** requiring articulations on the front of the building when the length of the front faced exceeds a certain distance.
- New **vehicular use area location standards** requiring garages and surface parking areas to be located to the side or rear of multi-family buildings with six or more units.
- Requirements for each multi-family unit to be served by **enclosed storage** that is within or attached to the unit it serves.
- Application of **contextual dimensional and bulk standards** to ensure multi-family development is consistent with existing neighborhood patterns.

C. “Green” Building Standards

Increasingly, communities nationwide are realizing that good development should be sustainable, or “green”. Sustainability involves the ability of a community to meet the needs of its present population, while ensuring that future generations have the same or better opportunities. There are increasing concerns that as a society we are using resources at a faster rate than we are replenishing them and are creating communities that are not sustainable in the long run. The challenges of global warming, climate change, energy sufficiency, water supply, health, and food security are all related to the sustainability issue. We will review the existing zoning ordinance carefully to identify potential obstacles to sustainability features such as solar and wind power and water conservation, and remove any impediments.

City staff has indicated the desire to include new standards requiring compliance with LEED (Leadership in Energy and Environmental Design) minimum criteria for at least some new developments (e.g., new mixed-use redevelopments, public buildings, or uses requiring a special use permit), along with incentives for all other forms of development to comply with minimum LEED criteria.

Lighting and signage is another potential target area for regulatory enhancement to encourage sustainable



Green roofs can help make cities sustainable.

development. Portsmouth might consider requirements for businesses to extinguish their signage and architectural lighting after business hours. This would help save energy. Business that operates around the clock (e.g., hotels and convenience stores) would be exempt as would on-site security lighting. The city might also consider additional controls on the amount and intensity of exterior lighting.

Throughout the drafting process we will propose a variety of measures to incorporate sustainability concepts into the code. For example, we may be able to draw on the recently published LEED-Neighborhood Development criteria for sustainable site plan regulations. We will seek continuing feedback from the community as to what types of measures will be most appropriate in Portsmouth.

D. Revise the Parking Standards

Many of the comments made by the visual preference survey respondents related to the design of parking and its impact on the pedestrian experience. Similar comments were also made by the interviewees. Vast expanses of unbroken parking lot located between a building and the street interfere with the pedestrian experience and run counter to the development of a sense of place. There are also negative ambient heating and storm water runoff issues associated with parking areas that are not well landscaped.

As part of the update, we suggest comparing Portsmouth's parking requirements with standards recommended in the Institute of Transportation Engineers' Parking Generation Manual, as well as other national standards and recent standards adopted by other local governments. We also suggest the format for the parking standards in the new code be established in tabular form to match the summary use table discussed on Page 20 to ensure consistency and easy cross-referencing. The parking standards table would include every use permitted in each zoning district. We also suggest provisions regarding the placement of off-street parking areas be set forth in the parking standards and differentiated by district, type of street frontage, and type of development.

In addition, to improve development quality and encourage more pedestrian-friendly parking arrangements, we also recommend a variety of other modifications to the parking standards in the update. They include:

- * **Reductions** in the amount of required parking for uses generally, based on "best practices" across the nation;
- * **Additional reductions** in the amount of required parking for uses in downtown and within activity centers;
- * Use of caps, or **limits** on the maximum number of spaces for some/all uses (e.g., retail, office, and multi-family);
- * Greater utilization of parking **flexibility provisions** (e.g., shared parking, off-site parking, deferred parking, on-street parking, etc.) throughout the city through use of an



alternative parking plan concept, which an applicant is allowed to submit to demonstrate adequate minimum parking is available for the development through the flexibility provisions;

- * Requirements that no surface parking be located in front of buildings in the urban areas, and a portion of the required surface parking be located on the **sides or rear of buildings** in the other part of the community outside the urban area;
- * Requirements to break-up large parking lots into “rooms” or “pods” and incorporate pedestrian-friendly features like sidewalks and more landscaping; and
- * Maximum parking space **limits**;
- * Limitations on the amount of **front yard parking** and the parking of commercial vehicles in single-family residential areas;
- * **Prohibition** of parking areas **within required setbacks**; and
- * Provisions for **bicycle parking** facilities (bike racks) and other transit-related facilities.

Many communities across the country are moving towards these kinds of standards as a means to reduce automobile dependency, promote a higher quality visual environment, and help address environmental/sustainability concerns.

E. Upgrade Landscaping and Tree Protection Standards

The city's current regulations include modest landscaping provisions, which apply to all areas in the city, not distinguishing between urban and suburban areas. Most persons interviewed, as well as those participating in the visual preference survey agree the bar should be raised on landscaping standards city-wide.



Site meeting the city's current landscaping standards

We recommend, given Portsmouth's development template and this expressed desire of the community to raise the bar for landscaping, the new zoning ordinance establish new and different landscape standards for two distinct areas in the city: urban areas and the balance of the community. The urban areas will need to be identified on a map. The urban standards would take into consideration the land constraints of the urban and redevelopment context through performance-based screening and perimeter buffer standards, as well as more modest adjustments to interior landscape requirements for vehicular use areas, and foundation landscape standards.

The new landscape provisions would establish

standards addressing:

- * Increased landscaping materials in **vehicular use areas** (including shade trees, perimeter screening, and interior planted islands); in the urban context the perimeter screening standards would be performance-based; New configuration standards requiring large parking areas (e.g., over 100 spaces) to be broken up into a series of “rooms” or “pods” separated by landscaping.
- * Basic **site landscaping** requirements designed to soften building foundations and provide transitions to pedestrian areas for nonresidential and multi-family buildings.

- * Performance-based **perimeter buffers** between incompatible uses that specify a varying minimum level of acceptable opacity from grade-level to a height of six feet (this results in the landowner in the urban context to achieve the desired screening/buffering with minimum spaces through more opaque screening techniques);
- * **Streetscape** landscaping (in the form of canopy trees and shrubs) adjacent to major street rights-of-way;
- * **Street tree requirements** in urban areas and pedestrian-oriented locations; and
- * **Screening** (with vegetation or other means) of trash receptacles, service areas, and ground-based mechanical equipment.

We also recommend the new standards include an alternative landscaping plan provision that offers additional flexibility for sites with difficult configurations, sites within urban contexts (e.g., activity centers), or redevelopment areas.

In addition to upgrades of the city's landscaping standards, it is also suggested the city consider new standards to protect and retain existing **specimen or champion trees** on lots where new development or redevelopment is proposed. Specimen or champion trees are the largest and best examples of trees in the city. Typically, there is a minimum size threshold for canopy and understory trees to indicate specimen or champion tree status, and we will depend on city staff to provide us with these minimum size thresholds. These trees are important in maintaining the city's image as a quality destination.

F. Open Space Standards



Plazas and fountains make effective open spaces in urban areas.

With the exception of mobile home parks, the city's current regulations do not include open space standards requiring a minimum amount of open space be set-aside by new development or redevelopment. We recommend the new ordinance require new developments **provide a private common open space set-aside**. The amount of open space to be set aside is controlled by a site's urban or suburban context. Suburban sites might be required to set aside up to 15 percent of the site area for passive and active recreation areas. Urban sites could provide urban amenities such as plazas, fountains, public gathering spaces, roof-top gardens, or even indoor features like an atrium. Open space set-asides in urban areas remain in private ownership, but should be integrated into the building's design and be available for use by the general public. The regulations would also include the ability to

propose a fee-in-lieu of providing on-site open space.

We also suggest the open space standards include new rules governing the quality, configuration, and usability of the open space within more suburban contexts. These standards help ensure open space set-asides become an amenity rather than "leftovers" that are not easily developed. It is suggested that where possible, new open space set-asides should be located to continue or enlarge adjacent open spaces.

Finally, the new open space standards should include provisions for ownership and maintenance of open space. Other provisions ensure that a specified entity, such as a homeowners association, is responsible for maintenance of common areas and improvements.

G. New Fencing Standards

Based on comments received during the visual preference survey in Task 2, we recommend the city consider new fence and wall appearance standards to help it achieve a higher-quality built environment and increase perceptions of safety. Such standards might include **prohibition** of certain types of fencing materials in front and side-yards (e.g., metal slat fencing or chain link fences in front yards and along public streets) except where needed for security on governmental sites; **height limitations** (e.g., up to six feet in residential areas and ten feet in commercial areas); and new standards for **fence or wall appearance**. These standards require fences or walls to include high-quality materials (brick, stone, wrought-iron, etc.) or be screened by landscaping when located within 20 feet of a public street.

H. New Lighting Standards

Exterior lighting and fencing requirements have a significant impact on visual quality and the perception of safety. The current zoning ordinance includes some modest exterior lighting provisions, but lacks any fencing appearance standards.

In terms of exterior lighting requirements, we suggest the new zoning ordinance establish new, measurable standards addressing **glare**, **direction (downlighting)**, **shielding (no exposed lenses)**, **spillover**, **maximum height (to maintain pedestrian orientation)**, and **maximum on-site light levels (in footcandles)** of light to enhance safety as well as address community aesthetic concerns.



This image shows the impact of exterior lighting provisions. The image on the top depicts a common use with no limitations on glare or illumination value. The image on the bottom is the same use with exterior lighting provisions in place.

5. ENCOURAGE COMPATIBLE REDEVELOPMENT

One of the key themes for the ordinance update is how to properly balance land use policies that encourage development and redevelopment in the desired locations in the city while at the same time ensuring this development/redevelopment is compatible with the context where it is located. Portsmouth is a mature, built city with limited vacant land (approximately 1,651 acres according to the *Destination 2025 Plan*). Significant parts of the city were developed years ago, and are prime for redevelopment. While redevelopment is important for revitalizing existing neighborhoods, it can result in negative impacts on property values and investment potential if it produces development incompatible with its context. One of the goals for the new zoning ordinance is to encourage development/redevelopment; however, it is equally important that the new ordinance also ensure any development/redevelopment is compatible with its surroundings.¹³ /

In order to achieve this goal, the new zoning ordinance will need to include regulatory strategies that make development/redevelopment easier to achieve than it is today (from a regulatory perspective) as long as it is compatible with its context -- but more difficult if it is not compatible.

Based on the stakeholder interviews and discussions with staff and our own review of existing regulations, it is clear that one reason redevelopment has been slow is the current regulations frustrate infill and redevelopment. In part, this problem results from previous annexations (as was done in the Churchland area) or rezoning efforts (like those in the Brighton Park area) that applied zoning district designations that rendered many existing residential lots and structures nonconforming with respect to lot area, lot widths, or setbacks. As a result of these earlier initiatives, those seeking to improve their homes through additions, renovations, or redevelopment are forced to obtain one or more variances. This is procedurally burdensome and acts as a disincentive to redevelopment. The new zoning ordinance will address these kinds of issues through the use of contextual dimensional standards in the residential districts (See Page 31.).

Another possible reason why redevelopment is slow to get underway is the lack of flexibility in the district standards. To address this problem, the city recently adopted the Mixed-Use/Employment Center district that allows for additional flexibility. Additional flexibility should be added to some district provisions as a means of fostering redevelopment.

Another strategy critical to the city's long-term viability is to build on the early successes and encourage further redevelopment, densification, and pedestrian-oriented mixed-uses in appropriate areas of the city.

We suggest the new zoning ordinance address these opportunities and challenges through the inclusion of a variety of new provisions, including:

Encouraging Compatible Redevelopment

- Provide more flexibility to redevelop
- Address the nonconformities problem
- Establish a framework for neighborhood conservation districts

¹³ NOTE: The visual preference survey respondents indicated a strong preference for new development and redevelopment that was in character with its surroundings.

- Modification of existing zoning district regulations and development standards to provide **more flexibility to redevelop in appropriate areas**.¹⁴
- Modification of existing zoning district regulations and development standards to provide **more flexibility to develop mixed-uses on lots along the city’s commercial corridors**.
- Addressing the nonconformities problem through a number of strategies that **decrease the number of nonconformities**, allow and encourage re-investment in nonconformities, and provide more flexibility in addressing nonconformities in targeted areas; and
- The creation of **neighborhood conservation overlay districts**.

The following sections include more detailed discussion on the range of possible solutions.

A. Provide More Flexibility to Redevelop in Appropriate Areas

Downtown Portsmouth and the adjacent waterfront are key focal points for the city, and serve as the hub for Portsmouth’s commerce activities. The downtown benefits from its proximity to the James and Elizabeth Rivers and the high quality architecture in Olde Towne (the initial area of development in the city). The area is the hub for offices and where most mixed-use development is located. While it is built up, and certainly one of the more intensely developed areas in Portsmouth, numerous opportunities still exist for greater intensification and redevelopment – something the city wants to encourage.



Low-rise buildings along the waterfront preserve visual access.

However, today, in the downtown and other locations, physical and regulatory constraints make redevelopment difficult.

In order to better organize the regulatory framework for redevelopment and flexibility consistent with the city’s development goals, the following modifications to the current regulations are proposed for the new zoning ordinance:

- * Consolidation of the W-1, D-1, and D-2 Districts (and sub-districts) into a **new single downtown district**;
- * **Expansion of the range of “by-right” uses** in key redevelopment areas;
- * Modest **reductions** to parking, landscaping, and open space standards in redevelopment areas to allow more room from building floor area (as a means of encouraging more redevelopment);
- * **The establishment of higher thresholds for administrative adjustments in redevelopment areas** to permit slightly more deviation in setbacks, building heights, dwelling unit sizes, and other provisions as an incentive for more development;

¹⁴ NOTE TO STAFF: This topic needs additional discussion as the downtown master plan being prepared may already be addressing this issue.

- * **The removal or relaxation of height limits**, but with a requirement for **building heights to step down** towards waterfront areas, to provide more development flexibility yet ensure a certain level of development quality in the city; and
- * The reduction of **building mass on waterfront lots**, to maintain visual and pedestrian access to the waterfront.

B. Addressing the Nonconformities Problem

(1). Use Contextual Dimensional Standards in the Residential Zoning Districts

There are numerous lots within the city that do not conform with the minimum lot size or minimum lot width requirements due to rezonings, annexations, and changes to district standards. For example, the rezoning in the Brighton Park neighborhood rendered all the lots in that area nonconforming with respect to minimum lot size and width. The annexation and subsequent assignment of zoning in the Churchland area created similar difficulties. These kinds of nonconformities create a substantial disincentive to redevelop due to the fact the landowner is required to show "hardship" and gain approval of a Variance Permit at a public hearing before additional development. It has also resulted in the BZA's agendas being inundated with Variance requests from homeowners in these areas for small variations in setback, height, and the like.

To address these problems, two strategies are suggested. One is the use of contextual dimensional standards as described on Page 37. The second is the addition of the Administrative Adjustment as a permit provision that allows minor deviations from the minimum dimensional requirements. (See Page 28 for a more detailed discussion of the administrative adjustment.)

(2). Codify and Refine City Practice and Informal Policies Related to Nonconformity

Article 13 of the current zoning ordinance addresses nonconformities, including nonconforming uses and structures. Based on interviews with city staff, it does not include a number of city practices and informal policies that have been put in place to make the application of the nonconformity regulations consistent with the city's development goals to encourage redevelopment. These practices and informal policies should be codified during the update. They include:

- * Allowing **additions to nonconforming structures** provided the addition does not increase the level of nonconformance; and
- * Allowing **new development on vacant nonconforming lots** if the proposed structure is consistent with the character of surrounding uses; while development that is not consistent with surrounding development in terms of use, form, character, or operational characteristics (as determined by city staff) would be required to obtain a variance.

(3). Broaden Ability To Develop Nonconformities With a Special Exception Permit

Section 40-53.4 of the current zoning ordinance allows nonconforming uses within Olde Towne and Truxton to expand with the issuance of a special exception permit. Section 40-163 allows the conversion of nonconforming residential uses to

other nonconforming residential uses if the conversion does not alter the value of the property by more than 33 percent.

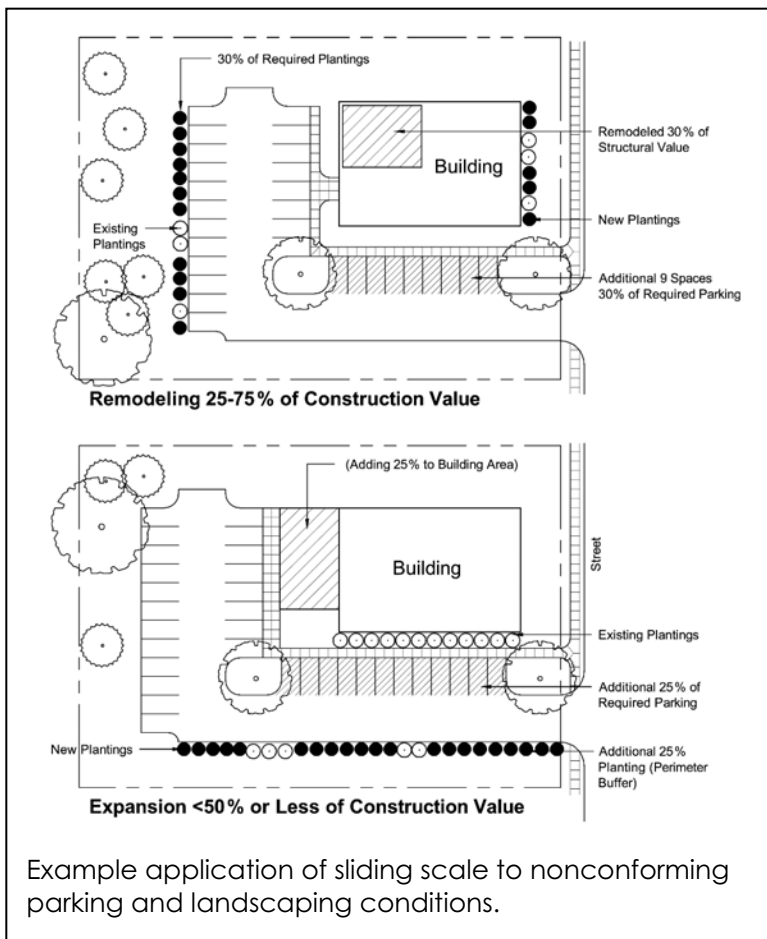
The city might consider broadening these provisions to allow some nonconforming **nonresidential uses to expand** through the issuance of a special exception permit. This would establish incentives to maintain and improve existing nonconforming nonresidential uses, particularly along transportation corridors and gateways where vacant buildings detract from the city's appearance. It is suggested the scope of this provision be limited to certain types of nonresidential uses, or to certain uses within certain districts so as to avoid continuance of nonconforming uses in areas of the city.

As an alternative, the city might also consider raising the maximum replacement value for nonconforming uses from 33 percent to 51 percent. This would allow for more significant reinvestment in targeted areas.

(4). Address Nonconforming Site Aspects

The current zoning ordinance does not address nonconforming site features (e.g., nonconforming landscaping, signage, parking, screening, fencing, design, etc.). It is suggested the new zoning ordinance include a section that addresses nonconformities in site plan elements. It would require that **specified site elements be brought into conformance** with the new regulations based on a sliding scale, when a structure is substantially remodeled, when the floor area of a building is enlarged, or when a use changes.

The standards would also include an important "safety valve" provision that allows for a waiver of requirements in cases where there are physical constraints on the site that prevent



upgrading certain nonconforming elements (e.g., where there is insufficient room to accommodate all required parking spaces).

C. Neighborhood Conservation Overlay District Framework

Neighborhood conservation overlay (NCO) districts are overlay districts developed to implement specific small area or neighborhood plans, which may be an appropriate tool to use in both the traditional neighborhoods and the neighborhoods at risk to improve, rebuild, preserve, and protect desired neighborhood character. Other communities are using NCO districts to replace more restrictive base district dimensional requirements as a means of encouraging redevelopment. A growing number of jurisdictions across the country are using NCO districts as an alternative to historic district designation to protect and maintain the physical features that define the character of neighborhoods without the negative connotations of historic designation.

Flexibility and efficiency are important attributes of NCO districts as compared to historic districts. Whereas the primary purpose of a historic district is to protect the historic integrity of an area (usually by preventing or discouraging demolition and requiring appropriate renovation or highly compatible new construction), NCO districts are more flexible and are based on a pre-approved area or neighborhood plan. NCO standards typically require infill and redevelopment to comply with development standards such as building height, setbacks, roof pitch, garage location and setbacks, front porches, driveway access, street trees, and landscaping. Applications for infill or redevelopment are reviewed for consistency with the applicable NCO standards administratively.

As a means of encouraging redevelopment, the NCO district might make all existing lots in the district conforming (no matter what the size), apply contextual height and setback standards, and relax other dimensional standards - thus, relaxing or providing more

flexibility to the standards of the base zoning district. It is suggested the new Ordinance include a NCO district framework which the City can then use in addition to base district standards, or as a way to apply flexibility to them.

Section 40-48 of the current zoning ordinance includes standards for establishment of "residential opportunity districts" (one is established for the Ebony Heights neighborhood). Residential opportunity districts are overlay districts that may be applied to residential neighborhoods with vacant lots, and are intended to authorize infill or redevelopment to deviate from the "physical development standards" of a base zoning district by a maximum percentage through approval of a special exception by the planning commission. In the case of Ebony Heights, "physical development standards" are

limited to 20 percent departures from the required lot size, depth, width, and setbacks for the RS-75 district (the applicable base zoning district).

We suggest the residential opportunity district option be replaced with the neighborhood conservation overlay. The conservation overlay is based upon a neighborhood plan (which must be prepared for an area and adopted by the city prior to designation as a conservation district), and can be structured to specify more restrictive or less restrictive dimensional standards than would otherwise apply (based on the guidance provided in the neighborhood plan) within a particular base district, and these provisions may be applied administratively. Based on ease of administration and the potential for applying more-refined standards (developed through a public process), we recommend the new zoning ordinance discontinue use of the residential opportunity district and include a **framework for the establishment of new NCOs in areas around the city**. This section would contain the framework for establishment of the individual NCO districts, but each of the individual NCO standards prepared for discrete neighborhoods would be added by the city following adoption of the new ordinance.



Neighborhood conservation overlay districts can help ensure compatibility of infill and redevelopment.