



# CITY OF CONCORD

## REPORT TO THE MAYOR AND CITY COUNCIL

FROM: Matthew R. Walsh, Deputy City Manager – Development

DATE: November 22, 2024

SUBJECT: Ordinance amending the Code of Ordinances, Title IV, Zoning Code, Chapter 28, Zoning Ordinance to revise certain provisions approved in Ordinance #3168 on August 12, 2024

### **Recommendation:**

1. Accept this report; and,
2. Set the attached Ordinance amending the Code of Ordinances, Title IV, Zoning Code, Chapter 28, Zoning Ordinance to further revise certain provisions which were previously modified by Ordinance #3168 on August 12, 2024 pertaining to conditional use permits for obstruction of the State House Dome and maximum height limitations in certain portions of the Central Business Performance District and Opportunity Corridor Performance District, as well as to amend other additional sections of the Zoning Ordinance as recommended by the Planning Board as discussed herein for public hearing on January 13, 2025.

### **Background:**

On August 12, 2024, the City Council adopted Ordinance #3168 which modified various provisions of the Zoning Ordinance. Specifically, Ordinance #3168:

- Established a provision which allows for development projects within the Central Business or Opportunity Corridor Performance Districts to apply for a Conditional Use Permit to obstruct the State House Dome;
- Clarified existing Conditional Use Permit provisions concerning the ability to exceed the 45' height limit for occupiable space for those buildings within portions of the Opportunity Corridor Performance District generally located between Loudon Road, Storrs Street, I-93 and Hills Avenue, up to a maximum height of 80'; and,
- Created a new provision which established a new Conditional Use Permit to allow those buildings within the Central Business to exceed the 80' height limit, up to a maximum height of 90'.

These revisions were precipitated by a request from Ciborowski Associates to facilitate the redevelopment of property located at 34-42 and 44-56 North Main Street know as Phenix Hall, the former CVS, and E&P Hotel.

At the conclusion of its public hearing and adoption of Ordinance #3168, the City Council referred Ordinance #3168 back to the Planning Board to review and consider potential additional amendments as suggested in an August 6, 2024 letter prepared by Elizabeth Durfee Hengen, which was endorsed by the Architectural Design Review Committee (of which Ms. Hengen is co-chair), as well as other public testimony received during the City Council's August 12<sup>th</sup> public hearing.

**Discussion:**

On September 18, 2024 and October 16, 2024, the Planning Board held joint work sessions with the Architectural Design Review Committee and City staff to review additional potential amendments to the aforementioned provisions.

On November 20, 2024, the Planning Board held a public hearing on the attached proposed Ordinance. **At the conclusion of the hearing, the Board voted unanimously to recommend that the City Council adopt the attached revised Ordinance.**

Proposed deletions to text are shown in ~~struck through~~ font. Additions are shown in ***bold italic*** font.

A summary of the Planning Board's recommended changes to the aforementioned zoning provisions which were previously adopted by the City Council by Ordinance #3168 on August 12, 2024 are as follows:

- 1) **Article 28-4-1,(g)(2) "Dimensional Standards" (State House Dome Obstruction Conditional Use Permit):** This article allows for buildings to obstruct the view of the State House Dome within the Opportunity Corridor and Central Business Performance District upon approval of a conditional use permit by the Planning Board. It was previously approved by the City Council on August 12, 2024.

The attached proposed revisions further modify the Ordinance adopted by City Council on August 12, 2024 as follows:

- i. A definition has been added to the Glossary defining "Development Program"; and,
- ii. References to the City's Architectural Design Review Guidelines and Main Street Design Guide have been incorporated into the Ordinance.

- 2) **Article 28-4-1,(g)(5) "Dimensional Standards" (Building Height Conditional Use Permit in the Opportunity Corridor Performance District).** This article allows for buildings to exceed 45' height limit, up to maximum of 80' within those portions of the Opportunity Corridor Performance District located easterly of Storrs Street between Loudon Road and Hills Avenue upon approval of a conditional use permit by the Planning Board. It was previously approved by the City Council on August 12, 2024.

The attached proposed revisions further modify the Ordinance adopted by City Council on August 12, 2024 as follows:

- i. Section 5(c) has been rewritten for improved clarity;
- ii. Original language in Section 5(e) has been deleted due to changes in Section 5(c). Further, language has been added requiring the Applicant to demonstrate sufficient water pressure exists to support a building taller than the 45' height limit.

- iii. This article now incorporates references to the City’s Architectural Design Review Guidelines and Main Street Design Guide into the Ordinance.
- 3) **Article 28-4-1, (g)(6): Dimensional Standards (Building Height Conditional Use Permit in the Central Business Performance District)**. This article allows for buildings to exceed 80’ height limit, up to maximum of 90’ within those portions of the Central Business Performance District which are located westerly of Storrs Street and easterly of State Street upon approval of a conditional use permit by the Planning Board. It was previously approved by the City Council on August 12, 2024.

The attached proposed revisions further modify the Ordinance adopted by City Council on August 12, 2024 as follows:

- i. Section 6(b): Clarifies that no building shall exceed 90’ height from the elevation of South Main Street for that area located westerly of South Main Street between Pleasant and Concord Street. This revision addresses concerns that buildings might be significantly taller due to elevation changes between South Main and South State Street, and use of average grade to calculate building height.
  - ii. Section 6(d). Incorporates identical provision added to the Opportunity Corridor height conditional use permit in Section 5(e). Creates parity between Central Business Performance and Opportunity Corridor Performance districts.
  - iii. Reforms Section 6(e) by using cross reference to revised Article 28-5-48.
  - iv. Reforms Section 6(k) and creates provision whereby the Planning Board must determine that, for those applications seeking to exceed the 80’ height limit which involve the demolition of an existing building, that said demolition *will not result in a significant adverse impact on the historical, cultural, or architectural resources in the community* and further clarifies that the Planning Board may require the Applicant to provide reports, documents or evaluations of the subject property to assist the Board in its evaluation of potential impacts to historical, cultural, or architectural resources.
  - v. Incorporates references to the City’s Architectural Design Review Guidelines and Main Street Design Guide into the Ordinance. Creates parity between Central Business Performance and Opportunity Corridor Performance districts.
- 4) **Article 28-5-48 Central Business Performance District Standards**. During its review, the Planning Board recommended additional amendments to certain design standards for developments located in the Central Business Performance District. These proposed revisions were not part of the original package of ordinance amendment previously approved by City Council on August 12, 2024.

Specifically, these proposed amendments will allow the Planning Board to review, and provide potential relief to, the zoning requirements outlined below via a conditional use permit. This change is beneficial as 1) it will give the Planning Board control over flexibility for these design issues rather than requiring applicants to seek relief from the Zoning Board of Adjustment’s variance application process and 2) giving the Planning Board more control and reasonable flexibility over these design considerations will allow the City to review development applications in a more cohesive, holistic, and efficient manner.

Additionally, some of the changes recommended below are additional “housekeeping” amendments to bring provisions in line with previously adopted amendments regarding conditional use permits for dome obstruction or height exceedances in the Central Business Performance District.

Proposed amendments are as follows:

- i. 28-5-48, (a) “Multifamily Dwellings”: Proposed amendment allows for residential units which are part of multifamily developments to be located on the ground floor of a building provided a conditional use permit is approved by the Planning Board. Case in point are residential units which were added on the ground floor of the Kearsarge Block located at 5-7 South State Street, which required a variance from the Zoning Board of Adjustment.
- ii. 28-5-4, (c) “Parking Lots”: Proposed amendment allows for a surface parking lot to be constructed closer than 100’ from certain streets within the Central Business Performance District provided a conditional use permit is approved by the Planning Board. Case in point is the surface parking lot developed at 32 South Main Street – which is accessed from South State Street - for the Isabella Apartment building, which required a variance from the Zoning Board of Adjustment.
- iii. 28-5-4, (e) “Dimensional Regulations”: Proposed amendment allows for flexibility on certain dimensional requirements in the Central Business Performance District, and is a housekeeping amendment to recognize that applicants may exceed the 80’ height limit in the Central Business Performance District if a conditional use permit associated therewith has been approved by the Planning Board.
- iv. 28-5-48, (f) “View of State House Dome”: Proposed amendment is a housekeeping change to recognize that properties in the Central Business Performance District may obstruct views of the State House Dome if a conditional use permit associated therewith has been approved by the Planning Board.
- v. 28-5-48, (g) “Build to Lines”: This amendment clarifies provisions related to recessing (or stepping back) the front wall of a building 10’ for all buildings located within the Central Business Performance District which are 65’ tall, or taller.

Specifically, the proposed amendment expands the list of street frontages for which this provision will apply. The amendment also gives the Planning Board flexibility on this requirement via the conditional use permit process.

As revised, this provision will apply to all buildings exceeding 65’ in height, whether built to 80’ height limit (which is permitted by right), or for those buildings which secure a conditional use permit to exceed the 80’ height limit.

Case in point is the recently approved 8 story, 80’ tall residential tower approved at 6 North State Street, which was not required to recess the front wall of the building at the 65’ elevation as North State Street was not specifically included in the list of streets where this provision applied.

As such, the amendment better protects aesthetic considerations and pedestrian scale of Downtown while simultaneously providing the Planning Board reasonable flexibility to address unique situations as needed as well as to provide improved opportunity for more unique and visually stimulating designs for those portions of buildings taller than 65’.

- vi. 28-5-4, (h) “Building Entrances at Street Level”: Clarifies that doors for buildings located within the Central Business Performance District may not swing out onto a public sidewalk, park, or plaza unless a conditional use permit has been issued. Case in point is the main entrance into O’s Steak and Seafood from the City’s plaza located at 11 South Main Street.
  - vii. 28-5-48, (i) “Ground Floor Occupancy and Transparency”: This amendment provides reasonable flexibility regarding glazing and uses on the first floor of buildings in the Downtown Central Business District. Specifically, the proposed amendment allows for an applicant to apply for a conditional use permit from the Planning Board to seek reasonable relief from these requirements. Case in point is the new Isabella Apartments building located at 32 South Main Street, which had to secure relief from these requirements via a variance from the Zoning Board of Adjustment.
- 5) **Glossary**: Per public testimony received by the City Council on August 12, 2024, the Proposed amendment establishes a definition for the term “Development Program”. Said definition was not included in the original package of ordinance amendment previously approved by City Council on August 12, 2024.

**Summary:**

At the conclusion of its November 20, 2024 public hearing, the Planning Board unanimously recommended that the City Council adopted these recommended changes to the Zoning Ordinance.

The Board voiced that the proposed amendments are an improvement over those previously adopted by the City Council on August 12, 2024 as these recommended changes provide reasonable opportunity for additional development within the City’s Downtown and Opportunity Corridor while simultaneously providing reasonable safeguards to protect historic, architectural, and cultural resources, as well as standards to protect public health and safety. The Board also believes the attached amendments reasonably address concerns voiced by the public during the City Council’s August 12, 2024 public hearing.

As such, the Planning Board recommends adoption of the propose amendments as presented.