

Council to study 'big-box' zone laws

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By Gina Macris, Providence Journal Staff Writer

PORTSMOUTH — With nearly 200 people urging it on, the Town Council last night enacted a stop-gap moratorium on large-scale retail development until officials have had a chance to review the town's commercial zoning ordinances.

The move was aimed to block the Target department store chain from building a store at Union Street and West Main Road — but whether it accomplishes its goal is an open question.

Hours before last night's meeting, Target filed an application for a special-use permit from the Zoning Board of Review, according to Town Solicitor Kevin P. Gavin.

Until now, Target's approach to the town has been entirely informal. It has appeared once before the Design Review Board, which issues advisory opinions on building design and related factors in proposed development projects to the Planning Board and the Zoning Board.

The council debated the moratorium for nearly two hours, hearing from three lawyers, a town planner, the town's economic development director, and members of the public before it made a decision.

Town Council President Dennis M. Canario said he was extremely wary of enacting any hastily drafted moratorium.

But Town Administrator Robert G. Driscoll told the council that town officials had been working on the issue for two weeks.

The moratorium, as amended by Councilman Leonard B. Katzman, calls for an eight-week halt to approval of any new retail development larger than 55,000 square feet in three distinct commercial zones in which the frontage passes along heavily traveled, or "traffic sensitive," streets enumerated in the zoning code.

The moratorium covers the proposed Target location at Union and West Main, where the department store chain proposes to build a store covering 136,500 square feet, or 3.1 acres.

The moratorium further directs the town solicitor to put into motion the process of preparing potential amendments to the zoning ordinance, which could be considered by the Town Council.

The language of last night's resolution opens the door to a second moratorium of no longer than six months to allow for any necessary zoning amendments.

Target was not represented at last night's meeting. But opponents to the Target proposal turned out in droves, many of them wearing stickers with a diagonal line — the international traffic and

safety symbol for prohibited activities — drawn through the trademark Target bull’s-eye. The word “No” was also spelled out in English.

Most of them were members of a two-month-old grass roots organization called Preserve Portsmouth, which sprang up in response to the Target’s initial approach to the town.

They packed the Town Council chambers in Town Hall beyond the maximum 140 allowed by the fire safety code.

Fire Chief Jeffrey Lynch ordered some of them out. Rather than have the meeting continued, about 50 spectators contented themselves to watch the meeting through the open first-floor windows of Town Hall.

Mark Liberati, a lawyer for Preserve Portsmouth, said the Target proposal is inconsistent with the town’s comprehensive plan, which intends to preserve the semirural character of the town and speaks of commercial development of a scale that attracts only a local clientele.

“I don’t think anyone would argue that a Target with 3 acres of floor space is designed to serve only the local town,” he said.

He characterized the commercially zoned lot eyed by the department store chain as “spot zoning,” saying it is surrounded by a “sea” of open space and low-density residential areas.

Furthermore, he said, the comprehensive plan says a moratorium is appropriate to stop a flood of applications that might precede a change in zoning.

Gavin, the solicitor, said there is nothing in state law that specifically authorizes municipalities to enact zoning moratoriums such as the one passed last night, but there is no provision that prohibits it either.

He said that the measure the council adopted last night poses a greater risk of a legal challenge than one that waits until specific zoning changes have already been drafted by the Planning Board and are submitted to a public hearing before adoption by the council.