

PLANNING AND ECONOMIC DEVELOPMENT COMMITTEE REPORT

MARCH 19, 2002

A meeting of the Planning and Economic Development Committee was held on Tuesday, March 19, 2002 at 7:00 p.m. in the Aldermanic Chamber

Chairman Brian S. McCarthy presided.

Members of the Committee present: Alderman Scott A. Cote, Vice Chair
Alderman Kevin McAfee
Alderman Timothy B. Nickerson
Alderman Lori Cardin

Members Not in Attendance:

Also in Attendance: Alderman-at-Large Paula I. Johnson
Alderman-at-Large David W. Deane
Mike Lowe, Nashua City Planning Board
Kathy Hersh, Director, Community Development
Mike Yeomans, Deputy Planning Mgr., Community Devel.

COMMUNICATIONS - None

UNFINISHED BUSINESS – RESOLUTIONS – None

UNFINISHED BUSINESS – ORDINANCES

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O-02-07

Endorsers: Alderman Brian S. McCarthy
Alderman-at-Large Frederick Britton
Alderman-at-Large David W. Deane
Alderman-at-Large Steven A. Bolton
Alderman-at-Large James R. Tollner
Alderman Marc W. Plamondon

AMENDING THE ZONING ORDINANCE TO PERMIT DAYCARE CENTERS BY
SPECIAL EXCEPTION IN THE AIRPORT INDUSTRIAL ZONE

-
Mike Yeomans

Two weeks ago we met to briefly discuss the pending ordinance. We asked for a little more time to see if we could put together some conditions of approval, which would be suitable to locating these types of daycare facilities in the airport industrial zone. We also mentioned that we should

discuss potentially the change in the park industrial zone since they are already allowed there by special exception as well. I apologize for not getting this information to you sooner. We just finished it up this afternoon. We feel that this is a good stop gap measure with the intent being that we have an opportunity to really look at the permitted uses in the variance zones at such times that we do our zoning ordinance and subdivision ordinance amendment, which is coming up very soon. We will be hiring a contractor within the next few weeks to begin that process, and we will have a chance to take a look at that.

We are proposing to add a new section, which 16-231. This has not been reviewed by Legal so the number here may change depending on legal review and the language may need to go under legal scrutiny. What we have here tonight is a working document to give everyone to have the opportunity to see where we are going (copy on file in City Clerk's office).

Last time we talked about the concerns about this particular use in the AI zone. The first one begins to list to delineate where in the AI zone we would and would not have these. If you look to the map (referred to a map set up in the chamber) ... tape inaudible ...

Chair McCarthy

I had a couple of questions on the criteria – first is do we want to say anything about the placement of the outside play area with regard to parking lots and the general building orientation?

Mike Yeomans

I think generally speaking we have done a number of these types of facilities over the years, and it seems like when the applicant brings in the proposed site plan that they have sited these things based upon their needs with the way the school is set up. I don't feel real concerned that needs to be specified. It seems like when the facility is brought into us they have very specific ideas of where they need to go and what kind of fencing and security requirements they need to meet. It is really site specific to each one of them. I am not too concerned about that.

Chair McCarthy

The other one was if it is a principal use we require a designated drop off and pick up area, but we don't if it is an accessory use. It would seem like that is the case where we really want to make sure that the drop off traffic is separated.

Mike Yeomans

The thought process on that was that if you have a franchise type of provider they will come in with their particular site plan, their building layout, and the drop off will be designated, the parking will be separated – it will be very planned versus if we have a facility with an existing office building you will not have that – you will have a front door – so the thought being if it is an

accessory use as part of like an office building and the daycare is being provided for the people who work in the building the car will simply park and the kids will be brought in with the parents rather than dropped off. We are trying to differentiate between one that is generally open to the public where people will be driving in dropping off and then driving in later on picking up versus someone who will be there working.

Chair McCarthy

Do we know for ones like – for example the one that is in the building down on Taro Boulevard, is that open to the public or only to people that are in that building?

Mike Yeomans

That I don't have any information on.

Alderman Nickerson

That is actually open to the public as well.

Chair McCarthy

We don't know for those what kind of percentage of public versus local traffic they have?

Alderman Nickerson

I don't know what percentage, but I know it is a fairly large percentage public.

Chair McCarthy

It seems reasonable to me that even as an accessory use if you will have it available to the general public we would want to make sure that there are appropriate drop off facilities to keep that traffic separate from the building traffic.

Alderman McAfee

Isn't that one of the criteria that the Zoning Board looks at – since it is a special exception it will go in front of them, and they would make sure that ...

Chair McCarthy

That is what we are doing is establishing the special exception criteria for ...

Alderman Cote

Could you help me understand Item 4 again because it speaks to the accessory use of the space -- It may not use more than 40% of leaseable floor area of a multi-tenant building provided the remaining tenants are office, church, or education use at the time of occupancy --

Mike Yeomans

There are a couple of issues with that. The first is use and having what we were trying to avoid were incompatible uses -- based upon our discussions with some of the daycare providers, we are looking at who their neighbors are as an important element of how they chose to site their facility. We're trying to avoid the warehouse approach where you don't know who or what is in the building next to you. Based upon our discussions, if it were in an office environment the primary purpose of the office building would be -- say it is a software developer or such -- the daycare element was as an accessory really to the office, which is the principal use in doing whatever they do there -- so we did not want the daycare to consume the building and drive out the rest of the tenants -- if it is being offered as a service to the people in a particular office -- that sets some limits on how much area they can occupy as well as help to control to the extent possible who the other tenants are in the building -- these are the ones that we thought would be the least incompatible with that type of use for a daycare provider

Alderman Cote

It is not unusual though to have daycare provider functions within large corporate settings that may involve any number of different functions. The Timberline Corporation is a great example of that down towards the seacoast where right at their operational facility -- their campus actually -- they have as part of one of their main buildings a very large daycare operation. That is not only an office environment, but also is a manufacturing environment and a whole number of different things, and it works. I toured it -- it works quite well for them. What I would hate for us to do is limit ourselves or the ability for an upstanding member of the corporate community coming in and wanting to set up shop here -- having space be available for example at a space like that. It would be perfectly fine. Yes, it makes a lot of sense that you will not have a daycare center at a foundry sort of environment, but you may have that in perhaps a few other environments than what you have listed here. I am worried about whether or not we're cutting some groups out.

Mike Yeomans

Well, this is our first shot -- that is why we are here, so any contributions I don't think we will find objections to. We certainly do not want to limit opportunity. What we were trying to do was reduce exposure -- that was the intent.

Mike Lowe

... tape inaudible ...

next to high traffic areas – none of our are next to or adjacent to roadways – also no cross-access. ... tape inaudible ... you have to make sure that there is no cross access through the daycare center to some other facility especially if it is a high traffic area.

Chair McCarthy

I think that was the purpose of the specification of dedicated pickup and drop off facilities is so that you have an isolation of the daycare facilities from surrounding uses from a vehicle access standpoint.

Alderman Cote

I am really not sure that we should get caught up in too much of those sort of details because the state licensing requirements for daycare centers are actually very specific in terms of not only the playground issues that you had raised about the size of it and how much sq. footage that is required per child that is within the space – it is a very comprehensive guideline that they have. There is even very specific information in there about what Mr. Lowe had mentioned about being next to offensive things that are occurring. I think that they cover that on the state level in terms of getting a license. They have to get a license if they are going to be some sort of an operation that has the responsibility of caring for children outside of a home environment. I am more concerned about should we focus our efforts on looking at what would be permissible use in the AI zone.

The other question I would have is how does this compare against commercial daycare centers that are permitted in other zones throughout the city. Is this much different than what is permissible elsewhere?

Mike Yeomans

Certainly we wouldn't have the same concerns in the business zones. This is really focused on the industrial zones. You are absolutely right. I think a better way to approach this is to look at the table of uses in terms of what we allowed in our zoned districts rather than looking at it from this approach, but I think we saw this as a temporary approach to solve some immediate issues with the long term goal of looking at the table of use – that is the best approach, no question.

Chair McCarthy

That brings up some other questions – your statement that we wouldn't have the same concerns in the business zones – the way this is written you can only be an accessory use with office space, which I assume precludes being an accessory use to for example a warehouse. Is it any different to be an accessory use at Delta Education than it is to be an accessory use at Home Depot? I suspect there is criteria here that are crying out to be applied everywhere.

Mike Yeomans

That is the difficult task in these kinds of situations because you can equally find almost as many exceptions as you can problems. That is a fair question – especially it is an occupied space. I think what we are looking at – our thought process on this was that if you have a warehouse type of facility you may have a number of things in there, which may not necessarily want to have a large group of people immediately adjacent to so it is tougher to move the kids out in a quick manner than it is to move adults out. We have a warehouse on Capital, which part of the roof caved on last year as a result of some heavy snows – they have chemical storage in that particular building – if we say yes we could probably be okay with a warehouse then that is a case where it is full of chemicals and we wouldn't want that to be one of the kinds of places where we would want to have that type of use.

Alderman McAfee

In a warehouse facility would you have enough employees to merit a daycare?

Chair McCarthy

It depends on the warehouse.

Alderman Cote

Interestingly enough if you provide an opportunity in Nashua we'll certainly have the opportunity to find it. The Southern New Hampshire Services for years had run a daycare center right along side of the warehousing project for the WIC program – good size warehousing component for food and services for women and children that were involved in that program and they had a 90 child daycare center immediately next to it. They have since moved down off of East Hollis Street – Allds. It is the same arrangement.

Mike Yeomans

That is a very interesting point. Donnalee Lozeau came in to meet with us and we talked about that particular problem. As we mentioned the last time that we were here as part of their services they have a food distribution program so they need a warehouse. Their client group is more oriented toward the inner city – the type of services that they offer and part of their food program is really a critical part of that. As a consequence they need to be in a warehouse – that is just part of what they do. What is interesting about the Spring Street facility is she was telling us that the reason that they had to move is because they started getting really bad odors into the daycare center there from the new neighbor that moved in – when they set up shop there it was unoccupied and over the course of a couple of years they did have a new tenant move in next door and they started getting some pretty bad stuff coming through the system and it was necessary for them to find a new location.

Kathy Hersh

Can I clarify that – I got that story slightly differently – I didn't get the impression that was why they moved, but when they took the kitchen – the first thing that they did was relocate the kitchen equipment – they had a big fan that they always used, and when they stopped the fan that is when they realized the amount of odors. I'm not sure how much it had to do with exactly why they moved, but that was definitely an issue once they stopped using the fans. She was the one that really was quite concerned about the mix of uses and was helping us to try to come up with a way of providing daycare in certain environments, but making sure that it was safe.

Mike Yeomans

Donna Lee's comments were that if they had a chance to do it over again they would be in a single occupant building. That was her input into this based upon her experiences at the Spring Street facility.

Alderman Cote

The Spruce Street site actually had far more functions added other than just the WIC program. There was a window manufacturing distribution component that wasn't far from them within the same complex – a number of industrial uses. It does kind of speak to the issue of the table of uses and what we should be doing pretty much broadly across the city.

Mike Yeomans

In that case, if my recollection is correct – they were a use variance. The people who are there were permitted uses – that was them that were a non-permitted use. Again, based upon their needs for warehouse space at the time that is what they had to go with. Since then they have relocated to another warehouse, but it is their own building, and they are the sole occupants of it. It seems like it will work out well for them.

Chair McCarthy

My reaction to the last discussion is that perhaps what we ought to do is instead of necessarily delineating exactly the uses that can be collocated with a daycare have that be a criteria of compatible uses that the Zoning Board can look at when they look at the request for exception. Also, I guess I would apply this to the commercial zones as well as to the industrial zones. The intensity of our commercial zones in most cases is greater in almost any aspect you think of than our industrial zones – there is more traffic, more dirt, etc. It seems like this is a really good set of criteria and we should be applying them to daycares. There is almost nothing in there that is specific to what happens when you put it in an industrial zone, it is when it is co-located with anything that is not just surrounding residential uses.

Mike Yeomans

Over my time here we have done a number of these types of facilities, and they have all been stand alone buildings, they have all had designated drop off areas, controlled access, designated parking areas, etc. I am not aware of any functional problems with them whatsoever. I think as a choice I think we are there pretty much within their own site plan, review process – the kinds of facilities that are being brought into us I think are meeting this criteria.

I think there was one in a shopping mall and I think it was a number of years back, and I don't know if they are still in there or not, but that is a case where they had occupied a commercial retail space similar to the karate studio and some of the other schools that occupy retail space and offer a service rather than retail product. Those are the ones that would be difficult to do. If they were an otherwise permitted use then I guess they would have to get a variance from the special exception criteria – that would tend to be a little more difficult to do. I think we will have to put some thought into that one for sure.

Chair McCarthy

Would it make sense to leave it as a permitted primary use and an accessory use by special exception so that only in the mixed cases would we need to have that level of review?

Mike Yeomans

I guess that is a great question. It is really hard to think in a vacuum without having something specific to review. I am not sure how to answer your question. It is really that they are very site specific kinds of issues and they may have a situation where they could actually be in a retail area and have an area that was very quite and pretty much out of the way so they would not raise those concerns because they could get the kids in and out safely and would not necessarily want to prohibit that.

Chair McCarthy

The special exception doesn't prohibit it right; it simply requires that there be a review of those criteria.

Mike Yeomans

It makes another level – a test. If that were to go to special exception criteria for all of them across the board then you would have criteria for which to review on a case-by-case basis. I am not sure that is a bad idea. We are certainly looking at the CUP process, which is a conditional use process. Hopefully we will take a look at that in an ordinance re-write, which basically is sent to a Planning Board to a site plan function rather than a Zoning Board function, and that is really where those kinds of decisions belong – they belong at the site plan level not necessarily at the use plan level. They are otherwise already permitted.

Alderman Cote

Here is an interesting one for you – the World Gym over on Northeastern Boulevard is a permitted use within an industrial zone by I think use variance because it is a private club – there has been some case examples of that that have happened in Nashua so we have that in there, and as a result of it their function is in there, and they offer childcare service within that area for people that are there working out. I don't know if it falls under the category of being a daycare or not, but it is a childcare and you could wonder yourself if there are employees that work there that take advantage of the childcare service that is there. That is within a PI zone.

Mike Yeomans

I was not aware that they offered the service. I would have to assume that they went through all of the licensing requirements necessary to do what they are doing. I just wasn't aware that they were in there. I had no clue.

Alderman Cote

Most of your health and fitness clubs today have childcare service generally within.

Mike Yeomans

I know we had the racquetball club on West Hollis has a very large program for not only people who worked there, but they had a very large daycare program. It was a problem for them because they were always out in the parking lot so they had to rip up a piece of the parking lot in order to give the kids a safe play area. I believe that was a residential zone. That seems to have worked out okay for them. I know it was always a challenge for us to try to regulate this and make sure the site is safe and how the facility is really – is it a healthcare club or a daycare center. That was always really hard for us to deal with. I know the Merrimack Y in Merrimack has a very large daycare. My kids went there for a number of years. That is also part of the Y – it is primarily a fitness center, and that is a very big component of the services that they offer as well. I think there will be times when we will have some cases like that. I think if we have a generalized standard such as your conditional use permit or special exception criteria I think we should be able to deal with those whether they are a permitted accessory use or for a principal use we should be able to deal with that.

Alderman Cote

The only reason why I raise that is because if we do take a look at the table of uses and the ordinance re-write that particular case with the gymnasium with the childcare service offered there it is within its own building block right there next to Boston Billiards Club and then I believe it is Vacuum Systems Manufacturing Company that is a little further down in the same building and then to its left is Teradyne. I know we have used a number of 2,000 feet for this particular example, but certainly all within that striking distance if not certainly less.

Mike Yeomans

The intent of that criteria was really the stone crushing/rock crushing type operations. I wasn't really thinking in terms of emissions, which may be otherwise regulated by federal standards as part of a manufacturing process – it was really the hard core dirty uses, which are allowed in the PI zone especially in quarry operations, materials operations. It was really focused on those more so than an industrial use as part of a manufacturing process. That wasn't the intent. We can certainly work to clean that up.

Alderman Nickerson

Going back to criteria number 4 here – the last four words or so – at time of occupancy – by the way I am reading this I am guessing that if there is not that type of facility or if there is only office, church or educational uses in the other parts of that building at time of occupancy and then they happen to move out and then something does come in – that is certainly possible?

Mike Yeomans

That was part of the problem – you don't know what the future brings. All you can do is at the time of occupancy is really the only time that you can evaluate what is there. You can't tell what will be there. We're in a position of saying now we have a permitted use that cannot go in there because you have another place with that accessory use that is there. That will not fly. I think in the event that they found out that Southern New Hampshire Services if that becomes a problem they would need to re-evaluate whether or not that is an appropriate facility for them to be in.

Chair McCarthy

I think that part of the answer to that goes back to when we do the re-write of the zoning ordinances we will look for a much more comprehensive way of evaluating adjacent uses so that you do have some ability to say that doesn't make sense – you are next door to a daycare where otherwise it might.

Alderman Deane

That is really going to handcuff the building owner for what he can do. If he has a facility in there that is a childcare facility and he has other businesses in there and they leave and he has to pick and choose what he can – now you are dictating to him just exactly what he can do with the rest of that remaining floor space if you are going to abide by this – 40% of leaseable floor space of an area that they can have – basically it will limit what they can do with their own building if the daycare is to remain in that facility right?

Mike Yeomans

Well the intent there was not to limit who can go into a multi-tenant building. Again, after a use

is established they will know who is there – they can't tell who will be in the future. The square footage criteria was to say that if we have – a good example, a 100,000 sq. ft. building if we were to do some kind of standardized gross floor area you could actually occupy a substantial more sq. footage than you could on a leaseable employer so the intent was that if you talk about leaseable area you only have a certain amount of area that you can devote to this use. This use should not necessarily encumber any other future tenants of that building whatever they may be. Ultimately it will have to be a landlord's decision as it is in every decision which deals with renting a property as to whether or not one particular use is compatible with the property or not. Landlords make these decisions all day long with regards to tenants. They will have to look at it and evaluate it. I don't want to be part of that process. I want them to look at that process and see what is appropriate to them.

Mike Lowe

When is a daycare center not an accessory use? In other words if it is 40% - if it goes to 80% now it is the primary use and the other 20% is an accessory use.

Chair McCarthy

We don't allow that case. It can be up to 40% or it can be 100% then it is the primary use.

Mike Lowe

It stops at 40% and then comes back in as 100%?

Chair McCarthy

Right.

Alderman Nickerson

I have a question going back to the draft ordinance. It is stated in here it shall have 50 square feet of fenced outside play area for each enrolled child on said premises. Looking at the state regulations for playground areas as well as the requirements for the National Association for the Education of Young Children, which is kind of the guru of all childcare accreditations, etc. they said that they only need 75 sq. ft. for children on the playground area at that time. The way that this is written here is that you need to have 50 sq. ft. for each child in the entire building. Was that the intent or was it to have 50 sq. ft. for the children on the playground at that time

Chair McCarthy

I don't think we actually changed that did we? That is the way it is listed in the current use table. You are right that it is probably incorrect the way it is written.

Mike Yeomans

That is right. Our daycare section is pretty old. I recognized this 5-6 years ago when I was doing a lot of zoning that is an area that needed to be dealt with. I will tell you how it has been dealt with though. It is usually when the licensing is done at the time of the review that they have to prove that they have x number of sq. ft. out there. It actually limits the number of kids that can be outside at any one time. You typically don't get a huge area – it is not really as applied – it is the number of kids on the playground rather than the number of kids that are enrolled; otherwise you would have acres of grass out there. It needs to be updated, but that is the way it has been dealt with.

Chair McCarthy

Do you anticipate having an update to the proposed criteria at some point based on the discussion we have had?

Mike Yeomans

Yes, if you're reasonably satisfied at least for the time being that this is going to work for everybody we would simply make these – I have one significant change on item #4. I am not quite sure how we deal with the issue of the manufacturing, but we will have to take a look at that – we don't want to exclude certain things. I am not sure what you want to do about the business zones just yet. Is that something that you would want to deal with in this?

Chair McCarthy

I guess I would be willing to think about if we wanted to include the accessory use criteria to do that. We could of course just go forward with this legislation and then introduce some other piece to...

Mike Yeomans

These are difficult questions. It takes a lot of thought and time to evaluate them to see what does and doesn't work. There is certainly room for improvement. No question.

Chair McCarthy

Then I believe that we should get the criteria that we have specified correct, go forward with this piece, and then we will catch up with the commercial piece in a separate piece of legislation.

Alderman Cote

I think that is the right approach. I think the other thing to recognize too is that daycare

environments are somewhat self controlling. Certainly parents of children are not going to take their children to get daycare service in an environment that isn't going to be acceptable to provide that. I agree with you – I think that is probably the best approach. Mr. Yeomans did mention though that I don't think Legal has had a chance to go through and look at it. I am not sure that is necessary – I assume it is.

Mike Yeomans

We would certainly put it in the proper forum.

Chair McCarthy

Thinking about the timing of things – we have to go to the Planning Board with it. What I would like to do is – the Planning Board meets this week – I would like to get this draft plus whatever comments you have based on tonight's discussion to the Board so that they could take a look at it this week. I am presuming that most of what will come back from Corporation Counsel if anything is you don't want to put that in 231 it needs to be 233A. What I would like to do is try to get it to come back to this committee for approval of the final draft at the earliest possible time.

Kathy Hersh

First of all I want to apologize for coming in late. I was in the meeting upstairs so I missed the beginning of this discussion, but I'm looking over at Mr. Yeoman's notes, and it seems like the majority of the change is really only in number 4 where it talks about just adding the issue of drop off and pick up for use in a building where it is an accessory use. The only other thing would be with respect to the uses in the building. I am not sure if we don't want to just say something along the lines of uses that are deemed to be compatible from a safety standpoint with daycare centers. I am not sure whether or not that is clear enough to be used as evaluation criteria and go forward with that. I am not sure what other issues you are looking for with respect to tonight or whether or not this isn't fairly ready tonight.

Chair McCarthy

I think that was the primary issue. I would feel comfortable with amending it now to match what we have in the draft, sending that off to the Planning Board for comments understanding that we're going to make some change to item 4, and then essentially doing a pro forma approval of that perhaps at a meeting just before our next Board meeting.

Kathy Hersh

I am just saying that I think you probably can amend number 4 right now. I think based on the discussion it is actually fairly simple to amend at this point.

Chair McCarthy

Just change it to remaining tenants are compatible uses at the time of occupancy?

Kathy Hersh

Was there also an issue of the drop off and pick up and that the ... What was the rest of it – the site include the designated pickup and drop off for the daycare center.

Mike Yeomans

Would you like us to do something with the setbacks at this point?

Mike Lowe

If we approve one of these things from the Planning Board's point of view the AI setbacks apply because it is the underlining zoning. I think you almost want to leave it alone and let the setbacks be the AI for the daycare.

Chair McCarthy

I think he is talking about the ones in the PI zone. I would like to fix it, but I am not convinced that it is necessarily an issue. Once you put the outdoor area in there it is really tough to get that number if you maintain 30/20/20 I suspect.

Mike Yeomans

As a practical matter if there is some kind of a smoke, noise, dust, emission, that 30 feet will not make a heck of a lot of difference.

Chair McCarthy

Do you have a proposal for how we should deal with it now?

Mike Yeomans

We just do it out there as a discussion item. Can we let it apply to PI, apply to AI and let it go at that?

Chair McCarthy

If we are going to revisit the issue on commercial zones anyway that is something we could revisit there as well because I suspect just looking at the numbers the setback numbers are worse in the commercial zones than they are in the industrial zones to begin with. Why don't we

hold off and take a look at that then.

MOTION BY ALDERMAN COTE TO AMEND TO O-02-07 TO INCLUDE THE DRAFT SPECIAL CONDITIONS AS OUTLINED IN THE MEMORANDUM PROVIDED TO US FOR SECTION 16-231 DAYCARE CENTERS IN AIRPORT INDUSTRIAL ZONE AND PARK INDUSTRIAL ZONE WITH THE FURTHER AMENDMENT OF ITEM NUMBER 4 THAT WILL READ “IF THE DAY CARE CENTER IS AN ACCESSORY USE, IT MAY NOT OCCUPY MORE THAN 40% OF THE LEASEABLE FLOOR AREA OF A MULTI-TENANT BUILDING PROVIDED THE REMAINING TENANTS ARE COMPATIBLE USES. THE SITE SHALL INCLUDE A DESIGNATED DROP OFF/PICK UP AREA.”

ON THE QUESTION

Alderman Nickerson

Do we want to do something right now with the actual play area or do we want to hold off and wait for that?

Chair McCarthy

I guess I would hold off on that given that we have an interpretation that seems to be working now, and we need to – I think we need a little more thought about what the language change needs to be to make it compatible.

Kathy Hersh

We will be looking at that with the land use regulations update because there are a number of locations in the use table where daycare centers are. We recognize that is a problem.

Chair McCarthy

My personal feeling on some of that is that none of the definitions of the uses in the use table should include criteria for how they are established. We have a number of places where in addition to defining the use it says oh and you have to have 50 sq. ft. of this or you can have these, but by the way they can only be 3 feet long or – those should be criteria that are stated in the ordinance and not

in the definitions. If we want to look at that I suspect we will do another look at daycares fairly soon, and we can take care of it then.

MOTION CARRIED

MOTION BY ALDERMAN MCAFEE TO RECOMMEND FINAL PASSAGE AS AMENDED PENDING A RECOMMENDATION FROM THE PLANNING BOARD

MOTION CARRIED

NEW BUSINESS – RESOLUTIONS - None

-
NEW BUSINESS – ORDINANCES

O-02-13

Endorser: Alderman-at-Large James R. Tollner

AMENDING THE ZONING ORDINANCE BY ADDING A NEW PERMITTED
PRINCIPAL USE, CITY OR NONPROFIT INDOOR RECREATIONAL

FACILITY

ON CITY-OWNED LAND, IN THE PI DISTRICT ONLY

MOTION BY ALDERMAN COTE TO HOLD O-02-13 IN COMMITTEE PENDING
THE PUBLIC HEARING SCHEDULED FOR APRIL 2, 2002, AT 7:00 PM IN THE
ALDERMANIC CHAMBER

MOTION CARRIED

DISCUSSION

Alderman McAfee

I sent an e-mail to you last Friday, and I would like to discuss the policy about use variances that are been directed that they be given unfavorable recommendations. That is why I asked for Director Hersh to come and enlighten us as to how that policy came about, why it is a non-written policy, but it is being followed.

Chair McCarthy

For the record, I did not receive that e-mail. I was going to talk to you afterwards to figure out where it went. I suspect that the other Brian McCarthy has a very perplexed look on his face at the moment as I often do when I get his e-mail.

Kathy Hersh

There is no policy that we oppose all use variances. The issue I think that is being raised is the fact that we as a planning department and a community development division are reviewing these, and giving staff reports that say whether or not the proposal that is put before the Zoning Board of Adjustment whether or not it meets the criteria for a use variance. That is what we are doing. For example, there have been some recently that have been proposed for use variances that do not meet the criteria for use variances. There is one right now that is before us that we just discussed today that meets the criteria for a use variance and so, therefore, we will be recommending that the ZBA give consideration to the use variance because of what is being proposed.

Alderman McAfee

When you were an Alderman I don't think there was any member of the Board that respected your personal opinion any more than I do, but now that you are the Director of the Community Development Division your personal opinion doesn't mean anything to me. I want your professional opinion.

Kathy Hersh

That's right.

Alderman McAfee

What we always want in that zoning is the facts of the case – it is court of law – it is the facts not slanted as you are deciding – you are already saying that you are deciding or building a case against the use variance.

Kathy Hersh

That is absolutely not the case at all. We are reviewing what is before us...

Alderman McAfee

And deciding whether it meets the criteria or not, and that is the Zoning Board function. It is not your department.

Kathy Hersh

Then why would you hire professionals? Why would you hire people with Masters in Urban Planning with AICPs, with certified planners, why would you hire them if you didn't want their.

Alderman McAfee

Professional opinion.

Kathy Hersh

professional opinion – that is absolutely what we give, it is absolutely the professional opinion, and you can ask anybody in my department or my division – they do not come in and say what stand would you like us to take on this. In fact, if anybody did I would turn around and say I want the best, professional, technical decision made on this. I don't do that. I would never do that.

Alderman McAfee

If you are giving an opinion that is telling the Zoning Board whether or not the information given meets the criteria for a special exception or does not you are in fact not giving them your professional opinion – you have your thumb on the scale – you are loading the dice.

Kathy Hersh

We are doing the analysis ...

Alderman McAfee

You are actually putting another hurdle in front of the application. When an applicant walks into your counter he should have equitability. It should be equal. Now just because of the use variance he has to jump over this hurdle. It is wrong.

Kathy Hersh

It is no different than the Planning Department doing an analysis for you on daycare centers on whether they belong in AI zones or PI zones or anything else. It is what you pay us to do. It is the responsibility of this city to make sure that we make the very best decisions based on the laws that are before us – based on the city laws that are the laws that this Board votes into being, and the state laws and other laws. That is our job. That is all that we do. We do a very objective review and based on the best technical planning, capabilities – that is what we do we review that.

Alderman McAfee

When I sat on Zoning for eight years I was lucky enough to help Mike, and every time there was ever an opinion that was asked of him, and use variances they always gave a report, but all it is -- it is a chronology of what happened to this piece of property and then at the bottom recommendations. If you choose to pass this variance this is what we recommend – that is it. It is not a case being built against the applicant.

Alderman Cote

I think I understand where you are coming from, but at the same time I think the issue is much broader than that in that the staff report on all of these matters I think is very critical from a couple of different perspectives; number one it provides a history as to whether or not the case that is before the ZBA is a case that has been before the ZBA in the past, how it was dealt with, and how it fits into the overall description of the Master Plan, what the intended use variances are in those areas, etc. I really have to believe that those things are important. I think it is more the people that sit on the Zoning Board in terms of what they do with that information as

opposed to that information discoloring the people that are sitting there making those decisions. I hope anyway.

Chair McCarthy

Listening to this discussion – historically there was not much in the way of staff reports given to the Zoning Board on variances until fairly recently. In the last term we had a piece of legislation that would have required that use variances be referred to the Planning Board and in the discussions of that piece of legislation the Zoning Board in fact commented that they would like to have staff reports that address the appropriateness of variances, which I think is what has – that actually started when Mr. Hawk was Community Development Director, but it is within the last year that we started doing that.

Kathy Hersh

When I came into this position the staff had been providing, and I don't know for how long, reports to the ZBA regarding use variances. Richard Dowd who was the Chair of the ZBA when I first started in August called me and came in and sat down and said it would really be helpful to us as the ZBA if we got more analysis of use variance requests in the staff reports and got more guidance from staff with regard to use variances. This wasn't something that we just out of the blue did. This was something that we were asked by the Chair of the ZBA – it turns out that the Chair of the ZBA is no longer on the ZBA. That is what we were asked by the Chair of the ZBA. In fact, we had a discussion about this a few weeks ago I remember in the hallway and each different planner has worked for different communities over the years and every single one of them said in every past place that I have ever worked they have always given opinions on use variances – that this was the only place that they have worked that staff didn't give opinions on use variances up until what we now do. I don't think that this is out of the ordinary, and I am proud of the high technical capability in the Planning Department. You all should be proud of the capability in the Planning Department. Every single one of our planners except for the newest planner has their AICPs and they all have Masters in planning. We should be very proud of that and pleased that we have that capability on our staff.

Alderman Deane

Are these recommendations or are they opinions – you do this like what I have seen come back from the Planning Board?

Alderman McAfee

Can't you see the difference?

Alderman Deane

It is their opinion, but there is a broader situation here where if you get the work and go through it and it doesn't meet the criteria then you give the ZBA an opinion not a recommendation like under no circumstances are you to deal with this or is it – I would see it that if you laid it out as an opinion and not a recommendation – even if you worded your opinion, it is our opinion or it is Community Development's opinion that this and then carry on with why as compared to something that would come back from the Planning Board as favorable or unfavorable. I don't know how that is being done.

Kathy Hersh

I don't have one right in front of me, but that is fine. I wouldn't have any problem with stating that it is the Planning Department's opinion that based on the following criteria that it doesn't meet criteria A, it meets criteria B, it doesn't meet criteria C...

Alderman McAfee

When you do that Kathy you are making the decision for the Zoning Board.

Kathy Hersh

I would hope not.
Alderman McAfee

All you should be doing is giving them a chronological history of the property, surrounding areas, the property

Kathy Hersh

We give an opinion to the Planning Board. We have always given an opinion to the Planning Board. It has never been questioned.

Alderman McAfee

It is not – there is a big distinction between zoning and planning – big.

Kathy Hersh

I am not sure what that distinction is.

Alderman McAfee

The only authority over the Zoning Board is the Superior Court. That is why it is a quazi judicial board. You are not supposed to be slanting these opinions so that they ...

Kathy Hersh

That is the only decision – the only place to go with a Planning Board decision as well.

Alderman McAfee

I don't know how else to make you understand.

Chair McCarthy

Alderman McAfee I would have to say with respect to your comments about stacking the deck against the applicant – they already are by law. A variance is a hurdle that you have to overcome. It is not necessarily true that the city is supposed to take a neutral position on that. The Zoning Board of Adjustment is – the members of the Board have to evaluate in a clear light the opinions of both sides. The opinion that comes from the applicant will certainly be skewed in favor of granting the variance and will include facts that are in the best light for the applicant.

Alderman McAfee

Of course.

Chair McCarthy

The city is in the position of attempting to protect its interests in its zoning code. Compare that to any other judicial proceeding – when we go to court against someone in a lawsuit we don't provide our side of the case in a neutral light. We provide it in the light that is the most favorable to the city, and the plaintiff does the same.

Alderman McAfee

Then why are they not writing opinions for regular variances or special exceptions? That is my point. You are treating the three things differently. There is a different hurdle that you have to hop over for special exception. It has just now been written – it has just been directed ...

Chair McCarthy

Special exceptions are not stacked against the applicant. Special exceptions are ...

Alderman McAfee

When staff writes a negative opinion on those use variances you are stacking the deck.

Chair McCarthy

The deck is stacked already. Special exceptions are predisposed to be granted provided that

the criteria are met.

Alderman McAfee

Last week I spoke to a few members of the Planning Department and they told me that they were instructed to write negative opinions on all use variances. Before they even walk up to the counter they are going to get a negative opinion, and that is wrong.

Chair McCarthy

I have to ask you who told you that.

Kathy Hersh

I would like to know that.

Alderman McAfee

You want to go non-public? If you want to go non-public I would be happy to. I haven't calmed down one bit since last Friday and I would like to get it out of my...

Kathy Hersh

I was going to ask you to ask Mr. Yeomans whether or not he has ever been directed or if he knows of anybody on staff that has ever been directed to give a negative recommendation. Everybody in that place knows exactly what I have said 100 times.

Alderman McAfee

I have hard it from the Zoning Board – people from the Zoning Board that have said that they are not getting much help, and also from ..

Kathy Hersh

I have never talked to the Zoning Board.

Alderman Cote

I am not really certain that this is the appropriate forum to have this level of discussion, but certainly the discussion warrants some discussion. That didn't make any sense, but I am really tired today. There is a difference – I have read a couple of the reports, and of course I have read a fair amount of these in the past when I have been before the ZBA. There is a measurable difference in the report format itself from something that was done last year to the other one that was done on February 17th – the example that was provided. I am interested in

understanding why that format has changed because it does look as though it has changed.

Kathy Hersh

Right. I have asked, and every one of them will tell you I have asked my staff to make the best technical, planning decisions in everything that we do. We do not make political decisions in the Community Development Division or the Planning Department. We make the best-educated technical, planning decisions. That is what we do. The staff reports reflect our best opinion as technical professional planners. That is what it reflects. I actually think that Alderman McCarthy made a very good point. That is the laws that you have put into place, that you vote on say – those use tables say what you believe as the fathers and mothers of our city are the right uses in the right places in this city. If you think that we should be allowing different uses in different places then you can change the use table or you can change the zoning, but there is only certain criteria to get – to qualify for a use variance, and that is very site specific. For example, if there is a site that is an industrial site and it has been used for an industrial site successfully for many years – to change it to a retail site and say that there is a hardship on the site – there isn't a hardship on the site. It has had reasonable use for years.

Alderman McAfee

Kathy you do not understand. That opinion is supposed to be derived at by the Zoning Board period – not by your department.

Kathy Hersh

I'm sorry, but ...

Alderman McAfee

You are not getting it are you?

Kathy Hersh

I am getting it. It is our job as staff to protect the laws that have been put into place and to make the best planning technical decisions for the city for the long term.

Alderman McAfee

Let's decrease with this – you are dismissed.

Alderman Johnson

I have to take exception that the city abides by their own laws because in Section 16.1 the

applicability law – we have not abided by this law in a long time. Mrs. McGrath made a beautiful statement that she says basically – and I can't even paraphrase it, but basically the thing was that for any other person who comes before the Planning Board we would hold that person to the highest standard, but when the city comes before the Planning Board we don't, and that is the case of Stellos Stadium and now of the ice skating rink that is coming into Ward 5. The city does not abide by their own laws. I just asked for a copy of the zoning book again because I guess I have to start reading it – we are the biggest offenders when we talk about anything in this city. It is there.

Alderman McAfee

I have to disagree with you because any project that DPW does there is a 12 step program. There are 12 steps that they must go through and it is the same as with any other independent contractor – it is the same.

Alderman Cote

It does seem to me to be rather unusual that staff has provided a definition of how this particular example of a project doesn't meet the description of a hardship. That is unusual. This clearly says here – it provides the three points of hardship and then there is a statement in here providing the opinion of staff as to how it does or does not meet those particular criteria, and that to me does seem to be even right down to the spirit and intent and everything else. It has always struck me that is something that generally does fall to the ZBA to make that determination. I agree with you 100% that the objective of your staff would be to provide as much relevant information to the ZBA for them to make the best decision based upon the Master Plan and all of those different things, but it is really up to them to determine the interpretation of the hardship issues and all of those issues based upon the information that is provided to them. That has always been my understanding.

Kathy Hersh

I guess that really depends on what you want because for example when I come into this Chamber and sit here with you, I expect that when you ask me a question from a technical planning standpoint you are asking for my best technical opinion as a planner. You are asking for somebody's opinion who works in this environment 40-60 hours a week as opposed to people who volunteer their time and sit on boards and are very dedicated and diligent, but do that a couple of nights a month. I think you would want, if you forgot this amount of professionalism in the city as part of staff that you would want that opinion. You would want that technical opinion and if you disagree with it as a Board then you disagree with it. Whether it is you or the Planning Board or the ZBA you have the final vote and that is fine, but I would think you would want the best technical planning opinions to make the best technical decisions. Isn't that what our goal is? Isn't that what everybody's goal is to make the best decisions for this city?

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Alderman Cote

I don't think we should split hairs on this whole thing. I think the objectives that you are looking to achieve are exactly what it is that this committee has certainly aspired to try to achieve, but the bigger question is whether or not you have provided the technical opinion that you're projecting should be provided or if you have provided something more than that. I think that is the question that needs to be answered. I have only given this five minutes worth of review, but in the five minutes I have reviewed it, it looks like far more than has ever been provided in the past, and it looks like it is a problem.

Kathy Hersh

It is more than what has been provided in the past. It is definitely more than has been provided in the past. It goes right back to the fact that I believe that you want to have the best – to have those technical opinions from staff. That to me is what our job is. If it is not then maybe we should re-look at that too.

Alderman McAfee

When you are in front of the Planning Board and probably this committee great I do – I like your opinions, but when you are up in front of the Zoning Board you just don't try to – it is like undue influence. You shouldn't be doing that. You and I had a conversation a couple of weeks ago. It wasn't last Friday it was a number of – there was a gentleman who was in your department – and you had told me that you felt that use variances should be going through the legislative process rather than the variance process. I don't think we ever discussed that here.

Chair McCarthy

I will respond to that one because that is an issue that has been close to me as a legislator since I have been on this board. Remember that the Zoning Board of Adjustment is a board of adjustment that grants relief. The enabling legislation says if a literal application of the zoning code would induce undue hardship there is a strong test there that says you can't do anything without it. That has been softened somewhat but not much by simplex.

Alderman McAfee

You didn't let me back my point. That was a unilateral decision made by the Director. We haven't had any discussion about getting involved with use variances to see if we could get them through a different process.

Chair McCarthy

We had hours and hours of discussion in the context of the ordinance that was submitted last year before the Planning Board and in a joint session between this committee, the Planning

Board, and the Zoning Board to discuss that issue. There was a lengthy discussion of that ordinance, of the process of variances, of the nature of staff reports, and of what the ZBA ought to be getting for support. I have to say that I am very impressed with the decisions that have been made of late by the Zoning Board of Adjustment. They are, in my opinion, much closer to meeting those criteria for the granting or denial of variances.

When people come in with a variance request to change the dimensional sizes of lots that they haven't created yet – I'm talking about the Broad Street property. That one baffled me. You cannot possibly make a case for hardship that says you have to allow me to create non-conforming lots because I can't use a 35-acre parcel of property without it. That is the kind of thing that we are seeing. In the old days it didn't matter much that we bent the variance criteria all over the place. It does now because these things are not hundreds of feet from the surrounding uses they are tens. That is making a big difference in the way the application of the zoning code affects the people who live around these sites. I think it is incumbent upon us – and remember those laws are the laws that we as the legislative body have put in place to regulate land use in the city. It is up to us to defend them. If they are wrong it is up to us to fix them, and that is what we do with things like the piece of legislation that was before us tonight with rezonings of properties to come up with better solutions than the ones we would otherwise have. We need to continue doing that.

Alderman McAfee

It is odd that we had that discussion and that was the process that those would rather be dealt with that way and then we don't see them. They are still writing opinions to the Zoning Board with no recommendation to us. What Kathy and I discussed – she felt that all use variances should be written as negative and then they should go through the legislative process to be rezoned.

Chair McCarthy

I guess I think that is a simplification of what we have seen. I'm just talking about the use variances that I have seen. Some of them were legitimate grants of relief by the Zoning Board of Adjustment.

Alderman McAfee

My point being when the guy walks up to the counter with the use variance tell him go down to the Legislative Offices and find yourself an Alderman and see if he wants to rezone the property because the Community Development Division is going to blow you out of the water in the Zoning Board meeting.

Chair McCarthy

He has every right to ask for it, but it is the Zoning Board of Adjustment that should be telling him

to seek legislative relief in the cases where it is not a question of relief from undue hardship. That is, in my opinion, a large number of the cases that we see in this city – cases where somebody comes in and says here is a piece of property that is zoned x, I want to do y, and comes in with some really nice pieces of what y would look like on the site and in our zeal to do something good we say that would be a great thing to put there and the problem with that is it dismantles piece by piece our zoning code so that we can't defend it when somebody comes in and says here is a property that is zoned for x, I want to do z and we all say that is a terrible use for that piece of land. The next thing we know we are in Superior Court after an appeal of the Zoning Board decision with the city attorney sitting there saying well in the past we have kind of ignored the hardship criteria because we liked use y and this guy came in with z and we didn't like that. Low and behold the next week we get use z where we didn't want it. The only way to solve that is to protect our zoning regulations, and where it is appropriate change the zoning to change it.

Mike Lowe

First I would like to support Mrs. Johnson's statement. All I have to do is say Roby Park. It did not come to the Planning Board until it was finished and now we are getting from the Zoning Board an unfavorable recommendation to it, which we are going to have to look at Thursday night. I assume we can't overrule the Zoning Board. I don't know why it is even on our agenda.

Chair McCarthy

My understanding is that it is not that you got an unfavorable recommendation it is that they required a variance, which was denied.

Mike Lowe

The variance was denied to build a parking lot, which has already been built.

Chair McCarthy

That will be an interesting situation to unravel.

Mike Lowe

This is true for over near the Boys Club where they built the fields. They were half built before they even came before us. The park on Allds Street I don't think we have ever seen. To say the city doesn't get favorable treatment is – the facts deny it.

Kathy Hersh

I don't agree or disagree with Alderman Johnson and Mr. Lowe. I just want to say that the Roby

park was a dimensional variance and we didn't write any staff report for it. It had nothing to do with us. That was a ZBA who made that determination. From my understanding they are just waiting for more information. I don't know that they actually made a negative recommendation as opposed to saying that it wasn't complete or to their satisfaction and they are waiting for more information. That is not the same as expressed in this discussion.

Mike Lowe

My paper here says that ... tape inaudible ...

Kathy Hersh

That is what my paper said too, but I asked the question, and they said – I asked whether or not they could come back with some amendments to the site plan and they said of course. I don't know why it said exactly denied, but apparently that wasn't ...

Mike Lowe

The way it is stated to the Planning Board, the Planning Board would have to deny it too.

Alderman Cote

Just so Alderman Johnson and Mr. Lowe – I am sure you are very well aware of this, but the specific projects that you have mentioned all fall under the jurisdiction of the Department of Public Works, which has apparently been the greatest offender. The Department of Public Works has a Board of Commissioners. It is Chaired by the Mayor, and the Director of Public Works works for the Mayor. It is not the people sitting around this horseshoe who have had an awful lot to do with those things that have occurred. The appropriate forum I suspect is down the hall to the right to discuss that issue because I don't disagree with much of what you are saying.

Mike Lowe

That wasn't to say Roby Park isn't now ten times better than it ever was.

Alderman McAfee

Concluding remarks – my biggest point is that there is a big distinction when you are talking about opinions to the Planning Board and opinions to the Zoning Board. The Zoning Board is quazi judicial and they should not be given information with undue influence. It is just wrong period. Let's move on.

Chair McCarthy

I guess I will repeat my statement that it is for them to sort out the opinions.

Kathy Hersh

I am not understanding what distinction Alderman McAfee is making between the Zoning Board and the Planning Board since both the Zoning Board and the Planning Board have decision making – when a Planning Board make a decision on a site plan and approves a site plan if there is a disagreement on that it goes to court. I know because I have been subpoenaed when I was a member of the Planning Board to go to court so it is not really any different from that standpoint as far as ..

Alderman McAfee

There is a big distinction.

Chair McCarthy

It is different in that the Zoning Board functions as a board that is supposed to impartially review the interests of the landowner and the interests of the community and decided where the line is between them. The Planning Board represents the interests of the community in reviewing site and subdivision plans. It is not intended to be impartial in that function; it is intended to be regulatory.

Alderman McAfee

I will take that comment as a second victory tonight. Thank you.

Chair McCarthy

I understand your point Alderman McAfee.

Alderman McAfee

The Aldermanic Board has authority over the Planning Board. Legislatively we can overwrite those. We just did to gated accesses that the Planning Board cannot say that those have to be open – they can't. The Zoning Board – this Board has nothing to do with that, it is the Superior Court. There is a huge distinction. I just don't know how to make you see that.

Kathy Hersh

Two things – first of all you don't have jurisdiction over a decision of the Planning Board. The Planning Board makes a decision to approve a site plan – you don't have jurisdiction over that. Number two, Alderman McCarthy has clearly stated the role of the ZBA is to weigh the opinion of the applicant with the opinion of the city and make the best decision. If we do not give the – is

that what you just said Alderman McCarthy?

Alderman Cote

You missed a really important part of it though – objectively.

Kathy Hersh

Objectively – absolutely.

Alderman Cote

Impartially I believe it was.

Alderman McAfee

Just the facts.

Kathy Hersh

Absolutely, but it is the same way with the applicant.

Alderman McAfee

I know it's putting you in a bad spot, but just the facts.

Kathy Hersh

Think about how the applicant presents it. We're presenting from an objective standpoint in our opinion.

Alderman McAfee

In support of law you give them just the facts and not an opinion of which the applicant has to fight you – the scales are not equal. It is wrong.

Chair McCarthy

Alderman McAfee I would agree with you completely if there were in fact a set of court rules that were applied to both sides before the Zoning Board of Adjustment. If the Chairman of the Zoning Board of Adjustment when presented with the pretty picture said take it down and put it out in the hall, I don't want to see it, it is irrelevant to the case or when evidence was brought in that said here are the great things that this will do for the community said that is irrelevant, we

don't want to hear about it that would be different. It is up to that board as lay people to be impartial, but they don't function in the same way that a court does. They don't function by the same rules of evidence. They don't get presented with just the facts on the part of the applicant.

Alderman McAfee

No – I'm not saying on the part of the applicant, but on the city – the applicant should not have to fight the city.

Chair McCarthy

Sure he should, that is what the law is.

Alderman Cote

I'm inclined to agree with much of what Alderman McAfee has said just simply in terms of the length of the opinions that have been provided to this particular group. Has there been any discussion with the city attorney in regards to this?

Kathy Hersh

Yes.

Alderman Cote

He has issued an opinion?

Kathy Hersh

I don't know that he has issued an opinion, but certainly if there was a problem with it he would have issued an opinion that we shouldn't have the staff reports – certainly we have talked about it.

Alderman Cote

Staff reports are fine. It is the level of where the staff report goes.

Kathy Hersh

I would be happy to review it, and to see if there – quite honestly we would be happy to shorten the staff reports because certainly they are very time consuming. Like I said we are just trying to provide the best technical information to make the best decisions.

Alderman Cote

I understand, and perhaps what you are doing is completely appropriate. I have never seen a staff report that makes a comment that says that staff believes that the application is more of a benefit to the applicant than to the general public. I have never seen that.

Alderman McAfee

My point.

Chair McCarthy

I would ask that we get some kind of direction from Corporation Counsel as to whether he feels that ...

Kathy Hersh

I would be happy to do that.

Chair McCarthy

Are there any other discussion items?

Alderman McAfee

Looking for that draft copy of the ordinance for the rezoning Majestic Heights off Broad Street and also in addition to adding – I would like to see replacing R9 with R12. You know my feelings on R9 I think coincide with yours.

Chair McCarthy

I took a quick look at it, and I'm absolutely in favor of doing something about the zoning on that piece of property. I guess my suggestion would be rather than create a new strict zone that we do something involving criteria for an overlay on that particular parcel that sets minimum dimension and lot sizes, external buffers on the outside of the property, and within that allows the developer a fair amount of flexibility to lay out the lots the way he wants to.

Alderman McAfee

This is obviously time sensitive because it is in the works. I wanted to get this in front of the committee.

Chair McCarthy

I think we could do that in a way that would be more beneficial to both the owner and the abutters.

Alderman McAfee

If you want to take that home and digest it for the next meeting.

Alderman Cote

I think that is in there. I think what you are asking for is in there because the cluster residential development division 10 16.346 is there, which would allow that flexibility. I believe what Alderman McCarthy is looking for is in there.

Alderman McAfee

Corporation Counsel and I have done quite a bit of work on it.

Chair McCarthy

The concern with inventing a zone is that everybody else with a piece of R18 property will come in and say you ought to make our R18 property R12.

Alderman McAfee

If it is not zoned that way how can they do that? We know the limitations of R9 cause huge problems. I would like to replace R9 with R12 on any open space that is still available in the city. That is my intent. You get another 30 by 100 room on the lot you are at half room for expansion and you don't come before the Zoning Board to put a garage on or a deck.

Chair McCarthy

My suspicion is that we create a lot of non-conforming lots within existing R9 zones if we do that.

Alderman McAfee

Grandfather clause of course would prevail.

Chair McCarthy

I do agree with you that I think where we were headed with that is the right thing to do on that lot. Thinking back to what we did on the two flexible use zones that we passed, which we spent an awful lot of time on the criteria in there, and those addressed some of the clustering provisions in a way that was very beneficial both to the owner and to the ... tape flipped ...

Mike Lowe

When you said it was grand fathered – if you don't grandfather it, it ends up being a taking and then you are in trouble.

Chair McCarthy

The problem is that will be applied to every piece of R9 land.

Mike Lowe

That is the point I was trying to make.

Chair McCarthy

Are there any other items for discussion?

ADJOURNMENT

MOTION BY ALDERMAN MCAFEE TO ADJOURN

MOTION CARRIED

The meeting was declared adjourned at 8:35 p.m.

Scott A. Cote, Committee Clerk