

PLANNING AND ECONOMIC DEVELOPMENT COMMITTEE

OCTOBER 19, 2004

A meeting of the Planning and Economic Development Committee was held on Tuesday, October 19, 2004 at 7:02 p.m. in the Aldermanic Chamber.

Chairman David Rootovich presided.

Members of the Committee present: Alderman Kathryn D. Vitale
Alderman David MacLaughlin
Alderman Richard LaRose, Vice Chair
Alderman Robert G. Shaw, Jr.

Members Not in Attendance:

Also in Attendance: Alderman-at-Large Brian S. McCarthy
Mike Lowe, Planning Board Liaison
Christopher Hodgdon, Nashua Chamber of Commerce
Jay Minkarah, Economic Development Director
Roger Houston, Director/Manager, Planning Department
Stephen Williams, Director, NRPC
Gordon Leedy, Vanasse, Hangen, Brustlin, Inc.
Brad Whitney
Richard Kane, Flatley Company
Steve Michon, Mt. Auburn Associates
Beth Siegel, President, Mt. Auburn Associates
Larry Lesieur, Maynard & Lesieur

Chairman Rootovich

I have a request for the committee. I would ask for a motion to take out of order R-04-134.

MOTION BY ALDERMAN SHAW TO GO OUT OF THE REGULAR ORDER OF
BUSINESS TO TAKE UP R-04-134
MOTION CARRIED

R-04-134

Endorsers: Mayor Bernard A. Streeter
Alderman-at-Large Brian S. McCarthy
Alderman David MacLaughlin
Alderman-at-Large James R. Tollner
Alderman Kathryn D. Vitale
Alderman Lori Cardin

Alderman Marc W. Plamondon

Alderman-at-Large David Rootovich

CONTINUING SUPPORT FOR COMMUTER RAIL AND SUPPORT FOR TRANSIT
ORIENTED DEVELOPMENT AT AN APPROPRIATE TRAIN STATION LOCATION

IN

SOUTH NASHUA

MOTION BY ALDERMAN LAROSE TO RECOMMEND FINAL PASSAGE

ON THE QUESTION

Chairman Rootovich

This evening we do have two individuals; we have Mr. Steve Williams who is the Director of the Nashua Regional Planning Commission and Gordon Leady who is the consultant from V.H.B. who will give us a presentation before we ensue any more discussion.

Both the N.R.P.C. and V.H.B. provided the committee with a presentation on the Commuter Rail (a copy of the slide show is attached hereto and made a part hereof).

MOTION BY ALDERMAN LAROSE TO HOLD R-04-134 IN COMMITTEE

ON THE QUESTION

Alderman LaRose

This was a nice presentation. There are a lot of questions that are circling in my mind. I think you were right in that this would be a nice presentation in front of the full Board. I would like more time. I am not ready to vote on this.

Alderman MacLaughlin

I am not entirely uncomfortable with the idea of holding it because a lot of this is new information for the committee. First I want to say thank you to the presenters because at last we have what appears to be a concept growing to move this project forward, and we are getting away from the hand wringing over the fact that Congressman Bass is reluctant to do much at this moment at least from my point of view to confirm that the federal money will be in play although ultimately I think the Congressman will come around.

The one thing that I have easily picked up on working in this proposed district as I do I know that the businesses there are as eager as the residents and the commuters there to move forward on commuter rail. A lot of these companies both large and small are located in other areas. A lot of them including my own employer they do operations out of Boston strictly because they are held hostage to the fact that there isn't enough space and there aren't enough proposed sites to site their regional operations anywhere but Boston. It is either New York as is my employer or it is Boston with many others. There are enough players in that corridor I am sure that filling that office space would be very

appealing because right now a lot of the regional personnel spend their time stuck in that traffic trying to get from one location to the other, and they burn up a lot of travel time and a lot of valuable time. If anything I think they would streamline their operations and I think find this very appealing.

I think that the commuters at this point they are going to have a very strong reminder as we move into the holiday season that we can't just continue to the moment back that there is nothing going on with commuter rail other than the excitement of the possibility of it. We relied very heavily on that court case, and I think in the meantime we didn't do something like this. I applaud your effort and your presentation, and I think that whatever it takes to get the Board comfortable with moving this thing forward is a wise thing to do. The public is with us already. I know that because I am hearing from them every day not only at the Pheasant Lane Mall but also in the neighborhoods, which I have spent a lot of time in recently. Whatever we can do to encourage proposals to consider and then ultimately position ourselves to make some decisions sooner rather than later would be a very good thing for commuter rail development. Thank you.

Jay Minkarah

I have several comments.

Chairman Rootovich

I will allow some dialogue. The motion is to hold and the dialogue should be on the motion.

Jay Minkarah

I am sorry.

Chairman Rootovich

Please go ahead.

Jay Minkarah

My comments are general they are not on the motion to hold. If that is inappropriate...

Chairman Rootovich

Go right ahead please.

Jay Minkarah

I wanted to go back to a couple of initial points. I think one of the things I wanted to go back to was something that was said very early on emphasizing the importance of this legislation. Although it doesn't itself involve any appropriation, it doesn't create any law, it is critical that if the city's desire is to keep this project alive and moving forward that the city send the signal to the appropriate state officials and to the federal officials that the city is behind this project and is committed to raising the

required local match. I say that because there is no one else to raise the local match so if not us then no one, no one that we can see.

I also would like to emphasize that it isn't Steve Williams of the NRPC's project. It is our project. Steve is here and has been working with us on this project – when I say us I mean the staff as well as the Mayor's office, in looking at the alternatives that are before us for coming up with the funding. We focused on transit-oriented development and on the TIF concept. Maybe there are other ways to go about that concept, but principally because once again other than simply the city moving forward and appropriating the funds we don't see another option that is a viable option. The purpose of having VHB go through the analysis that you saw with a development scenario, and that is also something I would like to emphasize – what you saw; the development scenario, where it was located and what it was comprised of is purely conceptual – the numbers are purely conceptual – they are only to illustrate the point that a transit oriented development is viable, is feasible that could raise sufficient revenue to support the local match. It is not to say that we want to do that necessarily that particular proposal even in that particular location. These are what really we have come up with. These are the best alternatives I think that we can come up with to move this project forward. Again if it is our wish to move it forward the most important thing is that statement needs to be made. Quite frankly it needs to be made one way or the other.

To make one more point to what Steve said earlier although it is certainly not my intent to rush this committee or the Board, we don't have an infinite amount of time. We do in the relatively near future need to make what statement that we are going to make.

Chairman Rootovich

Thank you. I too want to thank Mr. Williams and Mr. Leady for putting this together. It is the first time that I have seen a conceptual plan like this in detail along with the financials. I really appreciate that. I would also encourage the President of the Board, Alderman McCarthy, to possibly have a presentation to the full Board of Aldermen. I think that this project, because of the complexity, the TIF program, and the amount of money that is involved, I clearly would like to hear from some of my fellow colleagues – ask some questions and get their feedback before this committee votes. I think it is a major project that is facing us and I think it is important that they get involved as well. I would ask you to do that.

Alderman Shaw

I am not certainly inclined to support the motion to hold, and I actually appreciate Alderman MacLaughlin's comments that this is something that there is a lot of interest in moving forward, and it seems to me that we could still – I guess it is not clear to me that waiting another 2 or 4 or 6 weeks to keep it held in committee is necessarily going to benefit us. Maybe I am not clear on procedurally having a presentation before the full Board, but I guess I am inclined to support the motion and get it back to the full Board and allow for a presentation at that time after already endorsing it at the committee level. Thank you.

Alderman McCarthy

First with respect to having a presentation before the Board I am happy to do that, however, I would hate for us to get into the mode of always repeating ... tape flipped ... on this issue is when it is sent to committee to attend the committee meetings and see the presentation. I will do it, but I would encourage the Board in general to go to committee meetings.

I also wanted to ask a question. We are talking a lot about development particularly of retail and office space in the Exit 1 area, which as we have discussed at some length in the recent weeks has some of the last large amounts of developable industrial land in the city. I happened to notice that Mr. Kane is in the audience, and I wonder if we could prevail upon him to comment on behalf of his employer as to how they feel about the prospect of having a commuter rail station and what that would mean to the development of that parcel.

Richard Kane

As Alderman McCarthy mentioned we have probably the last major tract of land left in the southeast quadrant of the City of Nashua. As you know it is zoned park industrial use. If in fact the train station were available I am sure it would be a benefit to us in trying to attract potential tenants or users to that site. It is certainly from our standpoint something we would be very supportive of. Thank you.

Mike Lowe

I have just one reason why I think you should hold it. I haven't seen the actual cost to the city of the condominium units. I have seen how much money it brings in, but as far as I can figure out they are applying it towards the TIF, but if those 200 or 150 units have children in them for schools you are talking 300 kids and a lot of bucks. Right now it is around \$7,000 a child to educate a child in this city each year. You are talking somewhere in the vicinity of \$2.1 million. That is the only thing I see. Everything else seems to be fine.

Alderman Vitale

On the motion to hold, I don't have any problem voting on it or holding on it for that matter, but if you do hold it I would like to know exactly what you see would take place going forward that would be our timeline to get it back before this committee to vote on it.

Chairman Rootovich

It would be my intention and hopefully the President of the Board would schedule a meeting prior to our next meeting, get any feedback from our fellow colleagues, ask Mr. Williams to come back along with Mr. Leady to answer any further questions. I would like to get the slide presentation Mr. Williams as soon as possible so I can go over those questions myself. I have questions as Mr. Lowe has. I need time to gather my thoughts and get those questions ready in a respectable way and get those answers to them. I will say this that I will not support to recommend final passage this evening. I am asking to hold it for one meeting. I am asking to – I am sure that Mr. Minkarah will be willing to answer some questions for me. I will support the motion to hold at this time.

Alderman McCarthy

I just wanted to comment on Mr. Lowe's point about school age children. I think the numbers in there were 150 dwelling units. That type of development in our analysis for the impact fee study the numbers we came up with for school age children was around .19 school age children per unit, which would give us a number that is closer to 25-30 school children in an area that high. I am not even convinced it would be that high if I look at the densities in some of our other condominium developments. That impact is significantly smaller when we look at it from a city perspective than .. the proposal would be 300 and even our single-family homes only have a multiplier of .74. At the absolute worst 150 units would provide about 100 school children, and frankly in those style units 20 is probably a more reasonable estimate than 100.

Chairman Rootovich

Is there any further discussion on the motion to hold?

MOTION CARRIED

Brad Whitney

May I ask a question to the people on the ...

Chairman Rootovich

It is not the time Mr. Whitney. This is a committee meeting right now. We are not involved in land use. I am sure they will answer your questions off line.

MOTION BY ALDERMAN LAROSE TO RETURN TO THE REGULAR ORDER OF BUSINESS

MOTION CARRIED

DISCUSSION

- Mt. Auburn Associates gave an update on Economic Development Strategic Plan.

COMMUNICATIONS - None

UNFINISHED BUSINESS – RESOLUTIONS - None

- UNFINISHED BUSINESS – ORDINANCES

o-04-19

Endorser: Alderman-at-Large Brian S. McCarthy
AMENDING THE PLANNING AND ZONING ORDINANCES OF THE
CITY OF NASHUA IN THEIR ENTIRETY

Discussion Topics Include:

Article III. Zoning Districts and Supplemental Use Regulations.
Division 11, Nonconformities

Article IV. Procedures. Division 1, Generally

Chairman Rootovich

This evening we will continue with zoning. We are on Division 11, which is non-conformities, which continues on page 216 in your books. Roger do you have an opening statement pertaining to this before we continue? Any major changes at all or any interpretations you wish to discuss before we continue?

Roger Houston

Thank you Chairman Rootovich. Yes I have a couple. This division there are some formatting changes from existing ordinances. There are a lot of non-conforming sections that are in different sections in the existing ordinance. This section takes all of those from existing ordinance and puts them in one section so if you are dealing with non-conformities or a lot of people refer to them as grandfathered uses, structures, lots, the grandfathered situation that exists. State law is this section I know Corporation Counsel for the city looked at it as well as the land use consultant. The committee looked at it. It is generally split out differently than the existing section in that the non-conformities are – there are specific sections; non-conforming uses, then there is a section on non-conforming structures, lots, abandonment, and parking.

It is set up a little different – it is more formatting. There was one substantial change under restoration for both uses on page 218 and for non-forming structures – the committee felt that one-year was not enough time for restoration. They increased it to two years to give more time to the landowner or business to restore a use after a major disaster such as a fire or earthquake or something like that.

Chairman Rootovich

Again, we will go through several sections. If there are any comments, questions, issues with respect to purpose? Section 16-300 and 16-...

Brad Whitney

I wanted to comment on the second paragraph of Division 11. It says that the .. I will read my statement to the committee...the final sentence of the second paragraph on non-conformities it says "This Article reconciles the interests of landowners in these situations with the City's duty and authority to implement the Master Plan." I am a landowner in these situations. I feel that according to the New Hampshire practice on Article 674:2 Master Plan that the City does not have the duty or the authority to make existing uses, lot depths, and open spaces non-conforming with the rest of the downtown Main Street neighborhood. The proposed code states the D2 district's purpose is to promote the goals, objectives, and strategies as part of the city's downtown Master Plan yet the D2 district without any authority is promoting goals that don't exist in the Master Plan for downtown as reasons for its purpose.

I believe this is in violation of State Law and D2 should be deleted from the proposed Land Use Code and be the same as the abutting D3 district from Main Streets downtown business districts. The purposes, the goals and the purpose don't match the goals of the Master Plan, and I believe it is the city's responsibility to act in accordance with the Master Plan and not introduce goals that the consultants wrote. It is said that in keeping with the goals of the Master Plan, and yet they have diverged from that. Thank you.

Chairman Rootovich

Mr. Houston do you have any comments?

Roger Houston

Not really other than the fact that section is not really a part of the ordinance that is italicized is there for informational purposes. Also for informational purposes both consultants of the city's downtown Master Plan consultant and the city's Land Use consultant did meet on a couple of different occasions about the downtown Master Plan and how it should be expressed in this ordinance.

Jay Minkarah

I was going to try to avoid getting into a lot of wording, but since we already did, in the first paragraph under purpose, I would suggest keeping the first paragraph and taking the first sentence of the second paragraph – bringing it up and then eliminating the rest if that makes sense for these reasons – the second paragraph starts with the sentence “This Article also addresses non-conforming situations relating to subdivision or site plan regulations.” Which is true. This is one of the things I think that we have talked about a lot that in adopting new regulations for say landscaping or parking we're not affecting existing sites that have already been developed.

If you look at the second sentence it says “These situations typically arise in the context of approved but unbuilt applications.” That is actually not true. The grandfathering provisions of the ordinance do protect existing built sites from changes in subdivision and site plan regulations not just unbuilt. The next sentence relating to reconciliation of landowners' interests or the Master Plan harmonizing and various things – those are all kind of nice statements, but they really don't add much. They don't encompass the reasons why we have nonconforming clauses and yet they leave out many types of circumstances. I don't think they really add much, and I suggest just eliminating those words. In other words end it at “This Article also addresses non-conforming situations relating to subdivision or site plan regulations.”

Alderman McCarthy

I actually respectfully disagree. I think the last sentence of the second paragraph is the crux of the issue that we are trying to resolve. It is always the balance between the landowners' rights and the goals of advancing the city's Master Plan that causes these situations to occur. If that were not a fundamental part we wouldn't have this section.

Alderman MacLaughlin

I would say I also agree with President McCarthy's view about that because quite clearly it sort of unites the intro with the rest of everything that follows. I think it is important to keep it. Thank you.

Chairman Rootovich

Are there any further comments? There being none 16-300 and 16-301 – Applicability and Generally

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Roger Houston

On 16-300 just for the consultant's edification Article should be Division.

Jay Minkarah

Moving on to 301 – I will make a similar suggestion. I would suggest taking the first sentence of the second section B and moving it up under A. I will say – I think that part of the text of B conflicts with A and conflicts with what comes next in Section 16-302. It is difficult to understand reading that what you can or can't do. Without going into a lot of detail I would suggest that we simply end the first paragraph under A with "except as specifically provided in this Article no person may engage in any activity that causes an increase in the extent of non-conformity except as specifically provided below. Again the rest of B conflicts I think with what comes after in 16-302 and isn't necessary.

Chairman Rootovich

Is there any further comment?

Brad Whitney

My comment would be for non-conforming lots. I was looking at 16-300 so I will hold off.

Chairman Rootovich

Are there any further comments on 16-300 and 16-301? 16-302 – non-conforming uses – any comments?

Brad Whitney

On number 1 it says "No non-conforming use shall be extended, expanded, or increased except as specifically provided below." Then it says "An existing nonconforming use may expand subject to the approval of a special exception." Extended, expanded, and increased – there are areas of doubt and confusion in my mind in the nonconforming use where an existing business – I don't understand the expanded. Maybe it is explained elsewhere, but if a business – with this word extending does it mean in the building size, the use, or the just the use of it should be expanded? If a person selling a type of product or a type of store and all of a sudden for example way back when radio stores – televisions came in so they all started selling televisions and the businesses changed to accommodate the other

aspects of their expertise. I am wondering if that would be prohibited and expanded – I see a little bit of confusion. Could someone please.

Jay Minkarah

I think there are two different types of if you will expansions or changes that are contemplated – if you were to look at sub-paragraph 3 it talks about increasing the volume, intensity, or frequency of a nonconforming use within its original structure so if you were talking about changes that a business is making in the nature of the product that it sells within an existing building there is one section that addresses that, and then if you turn to the next page you will see that under sub-section 4 it addresses the expansion of nonconforming uses outside of the existing structure. They are both dealt with separately. I think what you are getting at is probably addressed under 3.

Brad Whitney

Thank you. Also in 3-A it says “The increase shall reflect the natural expansion and growth of the existing use’s trade.” I guess that means just the normal growth as you said. Thank you.

Chairman Rootovich

Are there any further questions, concerns, clarifications with respect to 16-302?

Brad Whitney

If a business is a retail and retail economy drops and there is an office that wants to go into that location, the office goes in, and then maybe office is permitted but retail is not, and then the office community dries up and there are a bunch of offices vacant and now a computer sales wants to go into that location – I wonder if that would be in violation?

Chairman Rootovich

I will let either Mr. Houston or Minkarah answer, but I assume that Section B, change of use, would clarify that situation for you. If you read Section B – Change in Use – it is very specific.

Jay Minkarah

Fairly minor, but I guess possibly weighty, under Section 16-302, under (a) Expansion – I am going down to – if you notice under sub-part (3) this refers to basically expansions within an existing building, and it notes that these may increase without requiring a special exception. If you turn to the top of the next page, however, under B., it notes the Zoning Board of Adjustment shall consider. I believe, although Roger you can correct me if I am wrong, I believe that should be Administrative Officer. This is a circumstance where you don’t go to the Zoning Board or a special exception is not required unlike the second under sub-part (4) where it says The Zoning Board because a special exception is required.

Roger Houston

I would like to look at that a little further. That does make sense what Jay says in that particular instance, but as I discovered with this section in particular the way it is written with a lot of different attorneys and different legal interpretations it is written this particular way. This should be asked of the land use consultant and the city's Corporation Counsel.

Chairman Rootovich

Is there anything further on 16-302? Moving along to section 16-303 – Nonconforming Structures – are there any questions?

Brad Whitney

In section 16-303 (a) – generally, “Any nonconforming structure or portion of the structure that has come into conformity shall not again become nonconforming.” That is all well and good, however, as economic situations change the City of Nashua already has experienced problems with industry and changing industrial sections to retail – they want to keep that. Things go in cycles, and if a building that changes to conformity and then they are allowed conformity are in a big slump and they can't rent that property and it becomes a hardship. If a suitable non-conforming use be it retail or light industrial or office space – as long as it is health safety and protective in that sense...

Chairman Rootovich

I think (b) addresses that.

Brad Whitney

B says any non-conforming structure may be altered and that conforming use extended throughout the altered portion, provided that any resultant alteration shall not cause the structure to violate the dimensional and density regulations of the district in which it is located. What I am saying is that if it is vacant and there are no people who want to rent it for the conforming use due to a slump in the economy it cannot go back to a non-conforming use. I think it could be a hardship in areas of the city with the future competition.

Alderman McCarthy

This touches the heart of why we have the zoning regulation in the first place. The purpose of the regulation is to lay down those uses that we think are compatible in various zones. In theory that usage table will have the things in it that should be there. If I have a property that has been nonconforming and I bring it into conformance and the property next door to it is built identically to the conforming use over here why should then this land owner be exempt from future application and the land use code when economic times change? What you are hearing is basically an argument that says the economy has changed so throw the zoning code out entirely. That is the crux of the purpose of having this book is to promote orderly development. We have made provisions for that with things like putting in the CI zone to allow for properties where it is appropriate to change from industrial to commercial and back again when necessary. To simply say we are just going to allow any building to

take on any use because the economy gets tough at times is to basically gut the entire intent of having orderly development in the first place.

The adjacent landowner is then never guaranteed of the protection of the values of the investments he makes in his property. That is particularly a sore point if the adjacent use is residential, but you have the same problem with industrial and commercial users.

Jay Minkarah

I think perhaps we could look at making the wording a little clearer, but I believe that Section 16-303 refers to structures that are nonconforming because they don't meet the dimensional requirements and doesn't relate to the use. In other words this is just talking about structures that are nonconforming because they don't meet a setback. It is the prior section that we just looked at that dealt with the use of a particular building and structure. I realize that I think the introductory sentence is a little bit confusing, but that is the intent I think of this not uses.

Alderman Shaw

I appreciate your comments Jay, but I am not sure it really is confusing when you realize the title of the section. I wanted to ask specifically in section (e) where it does talk about determination that a structure is unsafe. Would that be where we actually issued basically a code enforcement violation where we cite an actual one year time period after deeming a structure to be unsafe – I am wondering what the actual process would be that would create that timeline.

Roger Houston

Generally speaking that would be if there is a fire or natural disaster or whatever happens then it would be the fire department and the building department would look at the situation and determine whether or not the building is safe or unsafe or whether it is habitable. It would go through a different process for condemnation or the landowner or insurance company would then remove the structure and then rebuild it.

Alderman Shaw

I was interested in the deterioration or condemnation kind of thing. I think some of the other situations cited are probably a lot more straightforward. I would like to hear more about something that is in that less obvious – a structure that has been let to be in disrepair for years. Where does it actually go into a state of that unsafeness. Certainly condemnation I guess would be one point where that would essentially I guess kick in.

Chairman Rootovich

We have one of those now at Almont Street. My whole life I have never seen anything like that.

Alderman McCarthy

Alderman Shaw's question brings up a couple of related questions if I could to Mr. Houston. Do we Roger actually revoke certificates of occupancy when we find a structure that has become unsafe?

Roger Houston

We actually go through a condemnation process, and I think as part of that process the Certificate of Occupancy or use can be revoked by the city.

Alderman McCarthy

Do we have a review process when a structure is damaged by fire to do that automatically?

Roger Houston

I don't have all of the details on that because it doesn't happen that frequently, but yes there is a process in place and that process is essentially it is reviewed, and usually by outside structural engineer if it is a structural issue. If there are other issues it is a cooperative effort between usually the Fire Rescue and the Building Safety Department.

Alderman McCarthy

It occurs to me that what typically actually enforces safety of structures is whomever the insurance carrier is that insures it who relies on us having to issue a Certificate of Occupancy typically to issue a liability policy. It seems like something that is sort of unrelated to the nonconforming issue, but something that we ought to be careful about as to where we have Certificates of Occupancy and keeping them up to date with regard to making sure structures are safe that are certified.

Alderman LaRose

I am a little confused. On the same page, 218, up above on (c) restoration, it talks about nonconforming use, damaged by fire or other natural causes – you have two years to fix the damages and then under (e) under unsafe structures, it talks about natural deterioration or destruction by fire or other acts of God – usually a flood, and you only have one year. What is the difference? I don't understand why under one it talks about restoration you have two years and something that says unsafe structure you have one year, but under both the conditions would be because of flood or fire.

Roger Houston

I also noticed that too and that is something we need to talk to the land use consultant and the committee about. That may need to be a two-year provision in that as well.

Alderman LaRose

I guess if it is a structure that has been deteriorating because of lack of maintenance and things like that I wouldn't have a problem that you made the owner have to fix it within one year, but if it is a fire or an act of God it seems to me that it is the same thing as the restoration. That is just my personal

opinion.

Chairman Rootovich

Where does that property on Almont Street fall in as an example?

Roger Houston

Are you referring to the one with a blue ...

Chairman Rootovich

Where the roof consists of a blue tarp.

Roger Houston

I can't really speak to that. I know that is under an enforcement action right now. I don't know where that is at the moment.

Chairman Rootovich

I am just wondering if that would fall under something of this nature.

Roger Houston

I believe it does not, but that is in the hands of Corporation Counsel and our enforcement department at the moment.

Richard Kane

I think the difference between the 1 year and the 2 year – you can have a building that is damaged by fire or the natural cause, but not be unsafe – maybe uninhabitable, but it is not unsafe and a danger to the public. My guess is one of the reasons you may be doing the 1 year to 2 year is that when you have an unsafe structure where you potentially have kids going on or vagrants going into the building and it is a safety hazard you would want it restored more quickly.

Roger Houston

I do know that there was some discussion that existing code has it in one year for restoration as well just for edification. That is an issue and that certainly is a policy issue as to how much time you want to give. I know the committee felt under restoration two years was sufficient. I don't recall the discussion on unsafe structures. I don't know if anyone else on the committee recalls that.

Mike Lowe

I was on the committee. It was exactly as the attorney stated it – being a building that is unsafe..

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Chairman Rootovich

Mr. Kane is an attorney?

Mike Lowe

Basically as Mr. Kane has said an unsafe structure is different from a structure that needs restoration. You don't want people going into an unsafe building. In fact it should be marked as an unsafe building. Thank you.

Alderman Shaw

I think that conversation helps clear things up. I am just thinking still for everyone's benefit that if we can somehow maybe work – even if it is just to work the wording a little bit so that it doesn't take 8-12 people to figure it out like it seems like we are doing right now – that might be helpful.

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Chairman Rootovich

Point taken. Are there any further questions or concerns with 16-303? Moving on to 16-304 – nonconforming lots – any questions?

Jay Minkarah

On the next page under paragraph 3, it makes a statement – “When the use proposed for a nonconforming lot is one that is conforming in all other respects but compliance with the applicable setback requirements, etc. the applicant may request a variance ... anybody can request a variance from any portion of the zoning ordinance. It is not something that we enable by any provision. I wonder if we might consider saying rather than request a variance that be a special exception. It is a situation where it is a conforming use in every other respect, but a dimensional requirement – it might be a special exception that we consider.

Brad Whitney

Under 16-304, D2 section – the proposed D2 district would make three of our properties, which are now conforming those lots would become nonconforming lots and in that D2 district there would be 7 nonconforming lots under 100 foot depth. I have drawn this plan here and the blue on my left hand is the Nashua River and the large street – the streets are in yellow, and the nonconforming – lots that you see in orange are less than 100 foot in depth. There are a considerable number of them along Main Street. I think it is discriminatory to take a small section that is among a big neighborhood of lots along Main Street that are less than 100 foot depth and to declare that this small section should have to have a minimum of 100 foot depth lots. It is not in keeping with the neighborhood and the directions of the Master Plan – it said that the goals should be in keeping with the Master Plan. It just shows you all of the lots downtown that are less than 100-foot depth – there are over 40 here just along the Main Street and the business area. I would like you to consider that it is a hardship and a select area that is not in keeping with the downtown.

Also I would like to refer to the next page where it number 4 on page 219. "If the owner of two or more contiguous undeveloped lots with substandard dimensions wishes to build upon one of these lots, the lots must be combined to comply with dimension requirements..." those are undeveloped, but where any nonconforming contiguous lot or lots were held in common ownership or on or after October 14, 1976 they shall not be sold, consolidated or transferred to eliminate the common ownership unless they are sold, consolidated or transferred so as to create a conforming lot of lots where possible... this subsection does not apply to a nonconforming lot if a majority of the developed lots located on either side of the street where such lot is located and within 500 feet of such lot are also nonconforming ... the intent of this subsection is to require nonconforming lots to be combined with other undeveloped lots to create conforming lots under the circumstances specified herein, but not to require and then it drops off – there should be something left to that sentence. It looks like the sentence is incomplete.

Our lots are developed, but if we were to comply to make a developable lot we would have to destroy buildings and investment and it doesn't quite seem right.

Alderman McCarthy

Actually in that paragraph I think it is clear that the paragraph refers only to undeveloped lots. That can be made clearer by adding undeveloped in the second sentence. With regard to the D2 district I thought we had noted when this complaint was raised several meetings ago that the land use consultant should take a look at the depths of properties in the D2 district and see whether there was in fact any reason for the lot depth to be specified as 100 feet and not what is common to the district. Am I correct in that?

Chairman Rootovich

You are correct. You also gave me some of your concerns Mr. Whitney, and those are also going to be looked at. Your point is very well taken. We will need some time for some recommendations to come back.

Brad Whitney

As I understand it the consultants are looking at that 100-foot depth and they are ...

Chairman Rootovich

Correct.

Brad Whitney

... considering looking at whether or not it is necessary? They are making a decision on that?

Chairman Rootovich

This committee will make those decisions. They will forward some recommendations to this committee. This committee will deliberate those particular recommendations and vote.

Brad Whitney

So I should hold my comments until I see the recommendations?

Chairman Rootovich

I would suggest you do that. You have given a lot of recommendations.

Brad Whitney

I am talking about ...

Chairman Rootovich

... both on the record and in writing. Those have been submitted and you need to give them some time to digest that and come back with some recommendations.

Brad Whitney

Thank you very much.

Chairman Rootovich

You are welcome. Are there any further comments? Section 16-305 – Abandonment – are there any questions? Section 16-306 – Parking – are there any questions? Section 16-310 – Appeals – any questions?

Is there anybody in the audience that wishes to comment?

Larry Lesieur

I was just going to say that I just noticed, and I had hoped that it would get taken care of, but I just noticed on the top of these pages going back a little ways that it is wrong on the Article IV. It is saying like Article IV, Procedures Division I, Generally. Starting on the heading on page 214. That doesn't start until page 218. I don't know when they redo the book if they will catch that, but you can see what I am saying starting on page 214 and it carries through to page 220 where it really starts. That is the only comment I have. It seems kind of stupid, but I thought maybe we should point it out because I don't know if they will catch it in the revision. Thanks.

Chairman Rootovich

What is the committee's pleasure? Do they wish to continue on Article IV – Procedures?

At our next meeting we will continue with page 220, Article IV Procedures and we will continue with that until we get through hopefully the majority of it.

NEW BUSINESS – ORDINANCES

O-04-50

Endorser: Alderman Lori Cardin

AMENDING THE ZONING MAP BY CHANGING A TRACT LOCATED EASTERLY OF SPRING STREET AND SOUTHERLY OF FOUNDRY STREET FROM GENERAL INDUSTRIAL (GI) TO GENERAL INDUSTRIAL MIXED USE OVERLAY DISTRICT (GI/MU)

MOTION BY ALDERMAN SHAW TO HOLD O-04-50 IN COMMITTEE PENDING THE PUBLIC HEARING SCHEDULED FOR NOVEMBER 16, 2004 AT 7:00 PM IN THE ALDERMANIC CHAMBER
MOTION CARRIED

DISCUSSION

Chairman Rootovich

The next meeting will be two weeks from today. Next week we have a full Board of Aldermen meeting. That is right it is Election Day. Then the 16th. We will not have one on Election Day

ADJOURNMENT

MOTION BY ALDERMAN SHAW TO ADJOURN
MOTION CARRIED

The meeting was declared adjourned at 9:36 p.m.

Alderman Kathryn D. Vitale
Committee Clerk