

PLANNING AND ECONOMIC DEVELOPMENT COMMITTEE

OCTOBER 17, 2006

A meeting of the Planning and Economic Development Committee was held on Tuesday, October 17, 2006 at 7:05 p.m. in the Aldermanic Chamber.

Chairman Brian S. McCarthy presided.

Members of the Committee present: Alderman-at-Large Steven A. Bolton, Vice Chair
Alderman Richard LaRose
Alderman Mark S. Cookson (7:15 p.m.)
Alderman Michael Tabacsko

Members Not in Attendance:

Also in Attendance: Alderman Daniel L. Richardson
Alderman-at-Large Fred S. Teeboom (7:15 p.m.)
Mike Lowe, Planning Board Liaison

COMMUNICATIONS - None

UNFINISHED BUSINESS – None

NEW BUSINESS – None

TABLED IN COMMITTEE

MOTION BY ALDERMAN BOLTON TO TAKE FROM THE TABLE

O-06-38

MOTION CARRIED

O-06-38

Endorsers: Alderman Daniel Richardson
Alderman Greg Williams
Alderman Mark S. Cookson
Alderman Robert A. Dion
Alderman Richard P. Flynn
Alderman-at-Large David W. Deane
Alderman Michael J. Tabacsko
Alderman-at-Large Fred S. Teeboom

**AMENDING THE ZONING ORDINANCE TO ESTABLISH THE DUTY FOR THE
ZONING BOARD OF ADJUSTMENT TO MAKE RECOMMENDATIONS TO THE
BOARD OF ALDERMEN CONCERNING ZONING AMENDMENTS**

MOTION BY ALDERMAN BOLTON TO RECOMMEND FINAL PASSAGE

ON THE QUESTIONAlderman LaRose

As it states here the Planning Board gave it an unfavorable recommendation. The feeling of the Planning Board is that the Planning Board or any member of the Planning Board already has that authority – can ask an Alderman to sponsor legislation or ask for clarification. We just felt that this was redundant.

Chairman McCarthy

I guess I have very similar feelings regarding the ordinance to the one that was expressed by Mr. Johnson during the public hearing, and sympathize also with the logic of the Planning Board as expressed by Alderman LaRose that there is an ability to give that feedback. There is no requirement that is measurable expressed in the Ordinance. I can't tell whether the Zoning Board is giving the feedback it needs to as part of its duty or not. I guess I don't understand where anything is different after we pass this than before.

Alderman Bolton

Addressing both points – any citizen, which would include any member of the Planning Board, Zoning Board, anyone can make a recommendation to the Board of Aldermen or any individual Alderman for changes to the Zoning Ordinance. To that extent, yes it is redundant, and it doesn't add anything. What I do think it does is reminds the members of the Zoning Board that they do have the ability to do that. It expresses that it is part of what being a member of the Zoning Board is to when they see an issue that they may in fact, they don't have to worry about well is this some kind of abuse of power or separation of power issue – they have a right to bring their recommendations forward.

As far as may or must I think in this case the difference is innocuous. You are never going to say some member of the Zoning Board failed to fulfill his or her duty because they in their own mind had observed something and had not brought it forward. You don't need the kind of definitive standard that you need when you are actually dealing with the dimensional requirements of lot size for example where it is measurable and certain and you make it compulsory.

Basically what we are doing here is reminding, making it clear that no member of the Zoning Board ought to feel hesitant about coming forward when they observe something that they feel could be improved. In that sense, I think may is perfectly fine in this context. As I said it is perfectly fine to have this in there to relieve any doubts any such member would have.

Other than that it is entirely innocuous. It certainly is not pernicious in any way.

Alderman LaRose

If you would allow I would like to hear why the maker of the Ordinance came up with this.

Alderman Richardson

Well in reviewing the land use ordinances, it became quizzical to me that while the Planning Board did have that as its appointed duty that there was no such similar clause in the duties prescribed for the Zoning Board of Adjustment. That is what peeked my interest. Then going back into the minutes of the Planning Board meetings and the Zoning Board meetings, I find that does come up as a question from time to time particularly in the Planning Board, and it

seems to be used in the context that while these are the zoning ordinances that the Aldermen came up with, and we have to live by them. That is not pervasive, but it happens from time to time.

Then when it comes to the case of the Zoning Board of Adjustment I haven't found an instance where that has been used in the same context. However, again there are always questions that come up whether perhaps various individuals on the Zoning Board of Adjustment would like to see something changed, perceive it as a problem – the provisions for exceptions, approvals, variances, and perhaps feel intimidated to even motion for such a change. I thought, as Alderman Bolton had indicated, that it was reflective of the same language, which was used for the Planning Board in the context that they may choose to in fact make a recommendation to the Board of Aldermen, and it seems like a pragmatic thing to do.

Chairman McCarthy

I guess my understanding difference there is that in New Hampshire the Planning Board has a duty in fact to develop zoning ordinances, and in most towns and many of the cities, the Planning Board adopts the zoning ordinances itself without – well the zoning ordinance has to be adopted by the legislative body, the site and sub-division regulations are adopted by the Planning Board without the legislative body intervening. Nashua has a somewhat unique arrangement by virtue of our Charter, but I think it is clear in state law that Planning Boards have a responsibility to be involved in that ordinance process.

I think it is also clear that in the development of our zoning ordinances when the working group was meeting there were more members of the Planning Board and of the Zoning Board in attendance than there were members of the Board of Aldermen. I think historically at least it is very clear that those boards have the ability to give credible input on how the land use code is developed.

Alderman Tabacsko

I am inclined to support this in its current state. As it has been stated it probably doesn't make a whole lot of difference one way or the other, but I think the argument or the comment earlier about just bringing it to the forefront and putting it on the table that hey if you see something that needs attention let's take a look at it. I don't think that hurts anything. I think that makes things go a little bit smoother. For that I will likely support this.

Chairman McCarthy

The motion before us is to recommend final passage of O-06-38. Is there any further discussion?

MOTION FAILED

**MOTION BY ALDERMAN LAROSE TO RECOMMEND INDEFINITE POSTPONEMENT
MOTION FAILED**

Chairman McCarthy

Alderman Cookson did you vote?

Alderman Cookson

I did not.

Chairman McCarthy

I would actually point out that there is a provision in our ordinances, which requires members of the Board to vote unless they have a declared conflict of interest.

**MOTION BY ALDERMAN BOLTON TO FORWARD TO THE FULL BOARD WITHOUT A RECOMMENDATION
MOTION CARRIED**

DISCUSSION

Alderman McCarthy informed the committee he has submitted to Corporation Counsel three ordinances that had been discussed - one regarding senior housing, one regarding the definition of duplexes, and one regarding dimensional criteria as they exist in neighborhoods. He stated he would make sure the Legislative Office forwards that to everyone tomorrow.

Alderman LaRose remarked what was stated by Alderman McCarthy is a perfect example of why O-06-38 is not needed. He stated Alderman McCarthy had informed him he was working on 3 ordinances on the subject, and he offered to sponsor – he believes that is the process that should be followed.

Alderman Teeboom mentioned he has not given up on an ordinance for definition of character of neighborhood. He has done research, met with Planning Director Houston, Attorney Connell, and spent time at the library doing research. He has found it to be more difficult than he had believed it would be. He went on to cite court cases on the issue. Alderman Teeboom stated he would e-mail a write-up for review. He expressed his thought that the legislation he is proposing may compete with legislation being proposed by Alderman McCarthy.

Alderman McCarthy suggested they would be complimentary. He went on to say “While the court may say it is not necessary to be precise, the problem is the applicant will say otherwise. In fact, if we say the minimum setback is 10 feet the plans that come in will have ten feet, and if the rest of the neighborhood is 20 we don’t have a way to reject that. There is in addition to the general character of the neighborhood argument about does this belong there, there is also a need for providing guidance as to where to place things that is consistent with where they are in the neighborhood to whatever extent we feel that is important.”

ADJOURNMENT

**MOTION BY ALDERMAN BOLTON TO ADJOURN
MOTION CARRIED**

The meeting was declared adjourned at 7:35 p.m.

Alderman Michael J. Tabacsko
Committee Clerk