



Joint Meeting of the Planning Board and the Committee on Legislative Matters and the Northampton City Council

Members:

Councilor William H. Dwight, Chair
Councilor Gina-Louise Sciarra, Vice Chair
Councilor Rachel Maiore
Councilor John Thorpe

MEETING AGENDA

Date: April 23, 2020

Time: 7 p.m.

Location: Virtual Meeting

Join virtual meeting: [Teleconference LINK](#)

- 1. Meeting Called to Order and Roll Call**
- 2. Public Comment**
- 3. Approval of Minutes of Previous Meeting**
 - A. Minutes of March 2, 2020 and March 9, 2020**

Documents:

[03-02-2020_Committee_on_Legislative_Matters.pdf](#)

[03-09-2020_Committee_on_Legislative_Matters.pdf](#)

- 4. 7:00 P.M. Public hearing on proposed zoning change**
Public hearing notice published April 9, 2020 and April 16, 2020 in the Daily Hampshire Gazette per M.G.L. Ch. 40A, Section 5.

Documents:

[Public Hearing Notice for 4-23-20 Joint PB-LM Meeting.pdf](#)

5. Items Referred to Committee

6. New Business

7. Adjourn

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Committee on Legislative Matters and the Northampton City Council

Members

Councilor William H. Dwight, Chair

Councilor Gina-Louise Sciarra, Vice Chair

Councilor Rachel Maiore

Councilor John Thorpe

MEETING MINUTES

Date: March 2, 2020, Time: 7 p.m.

Location: City Council Chambers, 212 Main St., Northampton, Massachusetts

1. **Meeting Called to Order and Roll Call:** At 7 p.m., Chair Dwight called the meeting to order. On a roll call, the following councilors were present: Councilor Dwight, Councilor Maiore, Councilor Sciarra and Councilor Thorpe. Also present were City Councilors Karen Foster, Alex Jarrett and James Nash, Administrative Assistant Laura Krutzler and the members of the Charter Review Committee.

The main focus of the meeting is to discuss the report and executive summary of the Charter Review Committee (CRC), which worked all last year through 19 public meetings discussing possible modifications to the city charter, the equivalent of their constitution - a document that dictates how they govern themselves, Councilor Dwight explained.

2. **Public Hearing on Charter Review Committee Recommendations**
 - A. **Presentation by Charter Review Committee Chair Stan Moulton and Vice Chair Sam Hopper**

Councilor Sciarra moved to open the public hearing. Councilor Maiore seconded. The motion passed unanimously 4:0 by voice vote. The public hearing was opened at 7:02 p.m.

Councilor Dwight opened the floor to general public comment.

Zane Lumelsky of 20 Hampton Avenue, Hampton Court Apartments, noted that his ward councilor, John Thorpe, came to a meet and greet last week and a couple of issues came up. When the city does things for homeowners, often renters aren't included. Councilor Thorpe informed him that the senior rebate program does include renters, so that's good. The example he's aware of is that, when the planning department notifies abutters within 200 feet, it only notifies owners of record. For a recent hearing on a new development to be built adjacent to Hampton Court, the owner got notification but no one in his five-story apartment building with 70 units was aware of the hearing. His suggestion is for that, for anything that involves renters or homeowners, renters should be considered. It is more work for the planning department, but he doesn't think it is too onerous to send a letter to each resident who is an abutter.

Another resident who was not able to be in attendance tonight has been advocating for food trucks, Mr. Lumelsky shared. He said he didn't know if this topic is addressed by the charter.

Everything he's mentioned so far would *not* meet the threshold for inclusion in the charter, Councilor Dwight advised. The issues he's mentioned would be the subject of ordinances and, therefore, on the plate of the City Council, he said.

Northampton High School students and Youth Commission members Noah Kassis, 17, and Dahlia Breslow, 15, spoke in favor of the charter provision that would take the next step toward lowering the municipal voting age to 16. They are hearing strong support and he wants to thank the City Council, Mayor and everybody who's been so supportive of this measure so far, Kassis said. They really believe this is the best way to promote civic engagement among young people and among all people, actually, since families in countries which have done this have greater turnout.

Delia Martinez said she received a letter from Ward 2 Councilor Karen Foster. She has lived there for 20 years. She has been to all the meetings with the exception of one regarding what's going on. She was a little uncomfortable because, in all the years she's been coming to city meetings, for the first time, questions were not answered properly. At Leeds Elementary School, two older men were asking questions and it was frustrating how the Mayor just wouldn't answer the questions.

She punched through the website to see how much more money she would be paying in taxes due to the override and it was almost \$355 more a year, plus \$208 more for the Community Preservation Act. Her question was whether that was going to be every year and he would not answer it. It's her understanding that if the taxes go up over \$500 the first year, the following year it will be \$500 more on top of that; that every year it's going to be \$500 more. She was not the only one asking, she said.

Councilor Dwight clarified that tonight's agenda is about the charter, not the override. He directed her to her ward councilor, Karen Foster, for more information. They can't discuss the override because it is not on the agenda, he explained.

In a letter she received, she saw the voting age is proposed to be reduced to 16, Ms. Martinez continued. In other countries, if you are not a certain age, you don't vote. She is concerned because, while it is nice that young people are interested in the political process, there is always a financial aspect to everything they vote on. She thinks they should be cautious because adults have worked really hard and are financially responsible for the people in their household. She is concerned that young people may think something is okay but it is their parents who will be responsible for paying for it.

"We adults are the ones who dish out the money for everything," she observed.

She also couldn't understand extending the right to vote to non-citizens. In other countries, if you're not a citizen you don't vote. She doesn't understand that thought process. "I just want an explanation, that's all."

Councilor Dwight said she might find the presentation helpful in that respect. One of the important terms to consider is not necessarily citizens but residents, he suggested. They are offering residents the opportunity to vote within the community to determine the governance of their community.

However, they cannot assure that everyone who is a non-citizen owns property and pays taxes, Ms. Martinez pointed out.

Councilor Dwight offered the historical perspective that, over a hundred years ago in the United States, only property owners were allowed to vote and, in fact, only male property owners. In addition, people were considered property, namely slaves. That has since changed, by his reckoning, for the better. The rationalization is that whether someone owns property or not, they should have the opportunity and be entitled to vote on the governance of their community.

She understands that but was thinking about money, since some voting questions require money to be paid. Some non-citizens do not have the opportunity for paid employment since it requires licensing, etc. and so are limited to low wages. It is just a thought, she presented.

Some people besides herself also asked if they could see how CPA money is spent, Ms. Martinez said. She wondered how they could get access to this information.

Councilor Dwight informed Ms. Martinez that the Community Preservation Committee (CPC) holds posted meetings at which it votes on all CPA proposals. Whenever the CPC approve funds, the appropriation also comes before the City Council for approval.

CHARTER REVIEW COMMITTEE PRESENTATION

Councilor Dwight introduced the chair and vice chair of the Charter Review Committee (CRC), Stan Moulton and Sam Hopper.

Mr. Moulton thanked the City Council for taking up the CRC's recommendations so quickly in the new year. He stated his intention to talk about the process the committee used to come up with its report and some of its guiding principles. Ms. Hopper will present specific recommendations.

The CRC report consists of an executive summary and annotated recommendations. Both documents were approved unanimously 9:0. In fact, with the exceptions of a few abstentions, all the committee's recommendations were approved unanimously, he reported.

Their work was guided by consideration of outstanding issues carried over by the most recent study committee, guidance from the Mayor, other city officials and department heads, written and verbal testimony from members of the public and their own review of the existing charter. The group held 19 meetings between February and December – all with opportunity for public comment - for which extensive minutes are available. They held three public hearings – one on election issues, one on appointment vs. election of the city clerk and the third to review their recommendations. During the last hearing in October, the committee heard extensive testimony about extending voting rights in municipal elections to noncitizens. While most people who spoke were Northampton residents, they also reached out to outside subject matter experts such as Voter Choice Massachusetts on the issue of ranked choice voting and the Massachusetts City Clerk's Association on best practices for selecting a city clerk.

At all hearings, the committee heard near-unanimous testimony on the major topics considered. They believe the strength of the report results from the breadth of topics considered, the weight of the recommendations (particularly those on the expanded electorate) and the unity of their members. Again, all votes were unanimous with the exception of a few abstentions, he reiterated.

There are several issues they believe deserve further study, particularly those related to equity and transparency in municipal government. These can best be addressed by future charter amendments or perhaps some other remedy, he proposed. They appear at the end of the summary.

The report is not a document that is inseparable, he stressed. The City Council can adopt whatever recommendations it wishes as it moves forward and can actually add recommendations.

Ms. Hopper stressed that the city can also amend the charter again at any time. She reviewed the CRC's major recommendations as follows:

Expanding the electorate

- 1) Lower voting age for municipal elections to 16. One of the arguments is that young people are working and paying taxes and a lot of things they vote on at the municipal level directly affect young people, such as decisions related to public schools.
- 2) Adopt ranked-choice voting in an attempt to be more representative
- 3) Approve mailing ballots for municipal elections to all registered voters
- 4) Remove the need to cite a specific reason for absentee voting. Now, certain conditions must be met to vote absentee; this would allow anyone to exercise that option.
- 5) Approve extending voting rights in municipal elections to non-citizens in the community. A lot of noncitizens participate in Northampton's community and economy; they work here, pay taxes and send children to public school, Hopper pointed out. Municipal voting directly affects them, but right now they don't have a voice. This is another way to expand the electorate and make sure the residents of the community are heard.

Removing obstacles to run for elected office – i.e. - removing the phrase 'candidate for reelection' from ballots.

Recommending changing to an appointed vs. elected City Clerk. Committee members did not hear any objection to this, she noted.

Extensive clarification of language in the section Temporary Absence of the Mayor and revision to Section 3-9 Vacancy in Office of Mayor. Existing language could be construed to require appointment of an acting mayor if the mayor went to Boston for the day, Ms. Hopper observed. With technological advances like cell phones and email, communication with the mayor can be readily maintained even when he is not physically present. In addition, the CRC changed language in Section 3-9 to allow a mayor-elect to take office immediately following the November election if the incumbent Mayor left before the end of the term.

CRC members also made seemingly small changes to extend School Committee provisions to employees of Smith Vocational and Agricultural High School. Northampton is the only municipality out of 351 in Massachusetts with two school districts. To recognize its proper status, the CRC added the requirement that SVVHS representatives be invited to the budget presentation at the start of the budget season and changed the method of filling vacancies to be consistent with how they are filled on the School Committee.

Similarly, the CRC changed some language with regard to filling vacancies on the trustees of Forbes Library to give remaining trustees the authority to choose a replacement. And, members changed language with regard to the independent audit to stipulate that it be a three-year contract.

And, while the CRC did not think some issues warranted charter amendments, they did recommend that they otherwise be addressed. For example, members sent a letter to the mayor requesting that annual departmental budget reports include more robust reports of departmental activity.

Also, they spent a lot of time discussing outreach and participation in general to under-represented communities. Based on their conversations, they think this warrants a bigger, city-wide study. Finally, members recommended having election-related information printed in languages other than English.

Members asked questions and offered comments. Councilor Sciarra noted that a downside of mailing ballots in advance may be that they might not reflect last-minute changes, such as a candidate dropping out. CRC members acknowledged this possible drawback but suggested it is outweighed by the potential benefit of increased participation.

Councilor Dwight asked Bob Voorhees if he considered ranked choice voting a mechanism to address this.

The ability to rank one's preference would provide an opportunity if candidates were to drop out, Mr. Voorhees confirmed. In municipal elections, where 20% registered voter turnout is considered a groundswell, a lot of their recommendations were geared toward encouraging participation, he stressed. To his mind, in weighing the pros and cons, the advantage of encouraging participation greatly outweighs the disadvantage that some of these unusual situations may present.

In response to a question from Councilor Maiore, Ms. Hopper confirmed there are no significant funding obstacles to mailing the ballot. City Clerk Pam Powers wasn't alarmed by the cost of the proposal.

This provision was actually proposed by the City Clerk, Mr. Moulton said. As Ms. Hopper said, she is not concerned about the cost. The mailing of ballots does not compel anyone to vote early, he clarified.

She has been hearing consternation this week from people who voted for someone who was no longer on the ballot, Councilor Sciarra volunteered.

With regard to the city clerk being elected vs. appointed, Councilor Jarrett asked if there was discussion of who should appoint the city clerk. There are a number of municipalities in Massachusetts where the city council appoints the city clerk, he noted.

The CRC made the recommendation that the appointing authority be the Mayor, Ms. Hopper responded. One of the reasons is that the city council would be nine bosses while the Mayor is just one. Also, it is consistent with the process for other appointments.

In Easthampton, the city council makes the appointment, Councilor Dwight advised. It was discussed and considered whether that would be appropriate in Northampton as well. One reason offered in support is that the clerk would not feel the pressure of an elected official with agency over him/her. However, there was concern that this could be amplified with councilors in that, if one goes rogue, he or she could also apply pressure to the clerk. . . The council serves as a check against a mayor behaving badly because the mayor's appointment is subject to the council's confirmation. There is no corresponding check against a council behaving badly, so it was considered more difficult to manage.

Another reason for having the mayor appoint and the city council confirm is that this is the process for appointment of other major department heads in the city, Mr. Moulton added.

Ms. Martinez asked if there is a term limit for an appointed clerk, and Councilor Dwight said no.

Councilor Jarrett clarified that the city council's only power is in its initial approval of the clerk. If the city clerk began behaving badly by doing something to benefit the Mayor in the next election, for example, it would not have the ability to intervene.

"As long as it is within the letter of the law, there is not much recourse the council has," Councilor Dwight agreed.

Councilor Thorpe asked if there are other states or municipalities that have extended voting rights in municipal elections to non-citizens.

There are no states, but there are some municipalities – San Francisco and scattered others - Mr. Moulton said.

Councilor Dwight expressed his understanding that there is a proposal in state legislature to consider the state-wide granting of residential voting rights to noncitizens.

Members heard concern about the protection of non-citizens' personal information and concluded that responsibility for the privacy of this information belonged to the residents themselves, Ms. Hopper added.

Regarding removal of the phrase 'candidate for reelection' from the ballot, Councilor Sciarra pointed out that this language is retained in revised wording for filling vacancies on the School Committee and trustees of Forbes Library

If the decision is made to universally remove the phrase, it will be struck from these sections as well, Ms. Hopper clarified. They did not take out this language in new sections in case the overall removal of 'candidate for re-election was rejected, Mr. Moulton added.

Ms. Hopper said she would like to make a public comment as citizen Sam rather than as a member of the CRC. They talked a lot about under-represented communities. She is a mixed race woman, and it was a very painful discussion. From what happened at charter review and what she experienced, she would strongly recommend that if any committee or the council takes this on, that folks be ready to be fully vulnerable and to have honest discussions. She will own up to saying she was not ready to be vulnerable and say some of these things before, but she is now. As a mixed-race woman who served on a committee, when they talked about race it was very painful.

Councilor Maire asked if there was any scenario that would have made it less painful, such as a facilitator.

Her suggestion is just to really lay it out on the table and make sure those involved are comfortable enough to have honest conversations, Ms. Hopper shared.

It's worth noting that the two people chairing the committee account for the depth, breadth, scope and sensitivity of the work that was done, Councilor Dwight volunteered. In other hands, it might not have gone

so well. The issue Ms. Hopper mentioned was a discussion fraught with preconceived notions and misconceptions, he acknowledged. It becomes particularly difficult when the community identifies itself as progressive and informed. It made the conversation more difficult in some respects.

He served on this committee as the council representative. It was an honor, and he was very impressed with the process, impressed with the product and impressed with the citizens who participated, Councilor Dwight continued. The thrust of the whole discussion was how they could make their governance more successful, more inclusive, and more appropriate to everyone equally and fairly, which is why it is a work in progress. He for one is more than comfortable and proud to actually send this forward to the state to see if it signs off and agrees with the recommendations. If it implements these things, they will be a leader in the state and will set a high water mark. Hopefully, others will follow.

Councilor Sciarra strongly thanked the CRC for the section on expanding the electorate and expanding voter rights in Northampton. She takes extreme issue with the idea that people need to be land owners to have voting rights. She really appreciates their efforts and strongly believes that everyone who is a resident of Northampton should have the same rights.

Of all the things said in all of the meetings, the presentation by the Mayor's Youth Commission was astoundingly impressive, Mr. Voorhees volunteered. In light of low participation and all they are trying to do to encourage people to not only vote but to participate in their governance, the likelihood that students who choose to vote are going to be at least as informed as he is, is great. The students who testified were just so well-informed, so well-spoken, so mature and responsible, he doesn't see how they can deny them the opportunity to participate.

Councilor Thorpe said he attended almost all of the meetings. He thanked Sam Hopper for her honesty in addressing under-represented communities. He has sat in on many discussions on race and under-represented communities and agrees it needs to be looked at further.

Councilor Sciarra moved to close the hearing. Councilor Thorpe seconded. The motion passed unanimously 4:0. The hearing was closed at 8:01 p.m.

This doesn't require a recommendation because it's already been recommended to the council, Councilor Dwight observed. The council president thought it was important that the public have one more opportunity for input. There will be another opportunity when it comes before the council before being sent on to the Mayor for filing with the legislature.

New Business

None.

Adjourn

Councilor Sciarra moved to adjourn. Councilor Maiore seconded. The motion passed unanimously 4:0. The meeting was adjourned at 8:02 p.m.

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Committee on Legislative Matters and the Northampton City Council

Members

Councilor William H. Dwight, Chair

Councilor Gina-Louise Sciarra, Vice Chair

Councilor Rachel Maiore

Councilor John Thorpe

MEETING MINUTES

Date: March 9, 2020, Time: 5:00 pm

Location: City Council Chambers, 212 Main St., Northampton, Massachusetts

1. **Meeting Called to Order and Roll Call:** At 5 p.m., Chair Dwight called the meeting to order. On a roll call, the following councilors were present: Councilor Dwight, Councilor Maiore, Councilor Sciarra and Councilor Thorpe. Also present were Administrative Assistant Laura Krutzler, Office of Planning & Sustainability Assistant Director Carolyn Misch and City Solicitor Alan Seewald.

Councilor Dwight announced that the meeting was being audio and video recorded for broadcast by Northampton Open Media (NOM).

2. **Public Comment**

Councilor Dwight opened the floor to general public comment.

Claudia Lefko of Ward 3 commented that Ward 3 residents have had a lot of zoning issues, been to a lot of zoning meetings and lost a lot of zoning cases. She thinks one of the issues that concerns them always is the fact that the infill policy the city has adopted has the possibility to change the character of the city and the neighborhood they live in. People who choose to live in a semi-rural community find themselves instead in a denser, more urban community. Her neighborhood is denser because it has a number of urban projects, including the Lumberyard. She doesn't think it occurs to people that some people live in a place because of the nature of the place, and it is changing in front of their eyes. For her personally, she didn't want the Lumberyard because she thought it was going to have a terrible impact. She would now say she was maybe wrong to oppose the Lumberyard because it has brought diversity to the neighborhood, but projects coming into town like the one proposed on Pomeroy Terrace are upscale. She would say projects that specifically address affordable housing in a big way should be viewed favorably.

She mentioned the need for infrastructure repairs and improvements such as sidewalks to accompany housing development. "As we bring more and more people into town, the infrastructure is crumbling beneath us," she observed. City officials can't build more housing and bring more people into the city unless they have a plan to address infrastructure problems, she pointed out.

Amy Ben Ezra of Northampton told councilors she doesn't have a problem with infill. She came from a place where there were a thousand apartments in a square block and she loved it. For her, the issue is the compatibility of the size of the project to the space and what's around it. She also wants the city to be thinking of affordability and thinks projects should be needs-based; i.e. – based on a need for senior housing.

"I don't want to see more housing for wealthy people; there's plenty of that here," she maintained.

That's an underpinning of her concern about the whole effort. The portrayal of Sustainable Northampton and what type of building was going to occur talked a lot about accessory apartments and one or two units. The projects being proposed are 10 units, 15 units, etc. That's very different from what people understood and supported and encouraged their councilors to support. It feels a little like, 'dare I say, a bait and switch' and is very concerning, she commented.

There being no more general comment, Councilor Dwight moved to the first item on the agenda.

3. Continuation of Public Hearing (from February 10, 2020)

Public hearing notice originally published January 27, 2020 and February 3, 2020 per M.G.L. Chapter 40A, Section.5.

A. 19.173 An Ordinance to Allow Change from One Conforming Use to Another without a Finding

Councilor Sciarra moved to reopen the public hearing from February 10, 2020. Councilor Thorpe seconded. The motion passed unanimously 4:0 by voice vote.

The hearing February 10th ended with a councilor request to continue, Councilor Dwight reminded. The councilor was concerned that he needed more information before going into deliberations and that the process was moving too fast.

He referred to a memo provided by Ms. Misch addressing comments/issues raised at the February meeting.

She doesn't have a presentation per se but would be happy to answer questions, Ms. Misch said.

Councilor Thorpe asked if the proposed ordinance would remove an all-permit review.

As the ordinance currently stands, if a proposed change of use on a nonconforming lot requires additional parking or lot size, the project cannot move forward, Ms. Misch advised. Right now there is no way to change to an allowed use on a nonconforming property that might require more parking. The proposed change is to eliminate the current prohibition [in Section 9.3 B (2)] and allow projects to move forward. There are many factors that trigger other reviews, mostly by the Planning Board. She cited the fact that new construction of 2,000 square feet or more for anything other than a single family home triggers site plan review (SPR) by the Planning Board as an example. Likewise, if something triggers a special permit, that permit requirement is still in place.

Councilor Thorpe said he sees a potential alternative to this ordinance was presented to require a finding with detailed review criteria for projects that don't otherwise require Planning Board review.

Ms. Misch confirmed that one way to keep some review would be for projects that don't trigger other types of review to still go to the Zoning Board of Appeals (ZBA) for a finding. The zoning ordinance could also maintain ZBA review for projects that also require Planning Board review, but this would result in overlapping review of items such as tree replacement, traffic mitigation, lighting, etc.

Councilor Thorpe expressed his understanding that zoning allows differences in density based on a project's proximity to commercial centers. He asked for examples.

Northampton has business districts such as the Central Business (CB) district downtown and a General Business (GB) district outside of town up King Street, etc., Ms. Misch presented. For residential districts, the city has Urban Residential A (UR-A), UR-B and UR-C, core neighborhood districts mostly around the downtown area and Florence center and between Northampton and Florence. The residential districts have different levels of allowances for the types of residences allowed. UR-C allows the highest density of residential development. UR-B is the next tier with single-family, two-family and three-family residences allowed and multi-family by special permit but not the multi-family, mid-rise residential buildings allowed in UR-C. UR-A currently allows only single-family homes.

The city also has Rural Residential (RR), Suburban Residential (SR) and Water Supply Protection that strictly allow single-family lots.

Councilor Thorpe asked how this would impact the Sustainable Northampton Plan.

Planners feel it is consistent with zoning changes they have made over time to implement that plan, Ms. Misch said. Planners have created detailed development standards for the neighborhoods surrounding downtown and Florence center for the purpose of creating housing in areas where there is known demand which are accessible by biking and walking short distances. Because they have been developing standards for UR-C and UR-B districts, such standards exist in core neighborhoods with more nonconforming lots than areas built out later in time. Some of those nonconforming lots are right where they are trying to encourage development. Since they are getting tripped up by the existing prohibition in Section 9.3, it is a signal to them that they need to change this zoning because it is inconsistent with larger goals.

If they were to amend this zoning ordinance, Councilor Maiore asked about the specific project neighbors are concerned about. Since she knows the developer has withdrawn without prejudice, she asked how that process would resume.

For any project starting out new, a developer would present an application to the building department, Ms. Misch explained. The application would then be reviewed to see what permit path is available to allow the project to move forward. If councilors were to adopt the change as presented, building officials would say that, although the lot is nonconforming, under the rules just adopted, the size of the project means it goes to the Planning Board. If councilors amend the ordinance and keep the ZBA path as a requirement, building officials would look at a project like Dewey Court and say it needs ZBA review and Planning Board review.

Councilor Sciarra asked Ms. Misch to generally explain the jurisdiction of the ZBA vs. the Planning Board.

For the most part, the ZBA reviews projects that fall under Section 9.3 relative to nonconformities. For example, if a house violates the setback requirement, changes to that structure would require ZBA review. The ZBA looks at change to the nonconforming structure with the standard of whether the change is

substantially more detrimental to the neighborhood. The ZBA's review is very project-specific and even site specific. The ZBA also has limited special permit review for signs. ZBA members do very little review of site plan technical details.

The Planning Board review is very much about the function of the site, such as how traffic moves on the site. The board reviews projects to see if they meet standards in the zoning ordinance for elements such as traffic mitigation, lighting, etc. Broadly, the Planning Board looks at the totality of the function of the site.

She confirmed the Planning Board's review involves a public hearing.

PUBLIC COMMENT

Councilor Dwight opened the floor to public comment.

John McLaughlin, Esq. spoke representing Mark Moggio. Mr. Moggio has the support of many of his neighbors on Dewey Court, and they are very much in opposition to the change to the existing ordinance with respect to the finding, he presented.

He referred to handouts submitted to the committee. He thinks there is a 500-lb gorilla in the room that they aren't talking about, he shared. The city is saying, 'Don't worry, you don't need a finding because you're going to have site plan review for smaller projects and special permits for larger projects' The problem they see with that is some of the definitional sections of the existing bylaws. The city defines a dwelling unit to include a kitchen so little units that don't have kitchens aren't considered apartments. This doesn't take into account the trend toward co-living. Dewey Court has little dwelling units that share a kitchen. Northampton zoning regulations only require a maximum of two parking spaces per dwelling unit. If six units shared one kitchen, zoning would only require two parking spaces. That is part of the problem here.

They don't want to get rid of the finding until there is more comprehensive thought given to the definition of a housing unit, he suggested. The parking requirement was appropriate when the norm was a single-family home, but with co-living, almost every bedroom can be expected to have a car. People need cars; there is no T to get to work. Maybe they are underestimating the amount of parking to lower the carbon footprint, he acknowledged. However, they are not lowering the carbon footprint, they are moving it to another location outside of the developer's property and onto the city streets. The real problem as he sees it are the city's parking regulations. It seems as if there are even some anomalies within the parking regulations. One section of the code states that a parking space is required for every 1,000 square feet while another section states one space is required for every 500 square feet, he noted.

Councilor Dwight said he understood the attorney to be making a case predicated on parking concerns. He asked how retaining the ZBA finding would afford him protection.

Right now the city says 'don't worry about it, we'll take care of it with special permit and site plan review.' But if someone has a little lot, it is something nobody could ever build on. When a lot has no frontage it is a real detriment. With a finding, neighbors can go to the ZBA and say this is a terrible lot, but they've been using it for years as a house. Now they are putting in a 30-unit apartment building and that's going to be horrible for parking.

Councilor Dwight pointed out that ZBA members are going to make rulings predicated on the rules as they stand.

His people need the findings, otherwise, they're suffering from the Planning Board regulations, Attorney McLaughlin insisted.

Attorney Seewald interjected to say he thinks there is a disconnect here. The intent of a finding is a very cursory look at a particular existing use and particular use proposed. It doesn't get into parking. If it is a large project, then it will go to the Planning Board for a more granular review. That is where the issue of adequate access will be addressed. The finding doesn't do that; it's a generic, cursory review of whether there is substantially more detriment to the neighborhood. With all due respect, Attorney McLaughlin is complaining more about the very specific requirements under the ordinance than he is about removal of the finding. The same two-car rule will be in place whether the finding exists or not, he pointed out

However, his clients need a finding, Attorney McLaughlin responded. He referred to a hypothetical situation where a developer wants to change the use of lot from a single-family house to 30 units. The ZBA can say 'no, this is going to be substantially more detrimental, the traffic is going to be terrible,' he asserted. Take that away and the developer is able to proceed.

"You should not change the finding unless you also start looking at the parking regulations," he maintained. Comprehensive thought should be given to these issues. He voiced objection to getting rid of finding provisions that all other communities have. "You've got to be able to look at the past use of a bad lot and compare it to the new use," he insisted. If they get rid of it, they're leaving residents to the discretion of the Planning Board to their detriment, he maintained.

Amy Ben Ezra acknowledged that issues of zoning and special permits are extremely, extremely complicated with an enormous learning curve. She has spent dozens and dozens of hours trying to understand this, trying to follow the rules. She has concerns because she doesn't know if members of the Planning Board and ZBA, as well-intended as they are, have put in as much time learning this as they have. They don't get training on traffic, traffic safety, drainage, etc., she alleged. There are so many things to know to understand the positive and negative consequences of a development.

The other thing that's concerning to her is that the special permit process is very subjective. It is guidelines; it is the seven points. Frontage is a law. The special permit process as it exists right now is very vague; it's very subjective, and it lends itself to being manipulated. She acknowledged board members are desirous of doing the right thing but, if they have limited training and understanding of the issues, all they have left is to turn to the staff member for advice. It seems to her that essentially they vote pretty much as Ms. Misch advises. That means the one person that is not elected there has seven votes. "They don't know enough to make a really informed choice," she alleged.

People also had their minds made up before the meeting began, Ben Ezra charged. "It was already a done deal," she observed. That doesn't feel very democratic to her and it didn't feel very respectful. People concerned about traffic were told that they already had an 'F' level of service so what if they were an 'F'.

She thought they were perceived as being against infill and against density and dismissed as 'a bunch of NIMBY's.' At this point, all that's left is a lot of nonconforming lots. They are facing climate change; it's getting warmer and they're getting more and heavier rain. Where's all that water going to go? She asked. We have a really decayed infrastructure. Buildings themselves prevent drainage.

People are going to have cars, she stressed. What's going to happen is there's not enough room on the street, people are going to circle looking for parking. The city is going to end up having to build more parking lots because it's not demanding that the developers put it on their tab to provide parking or to extend the frontage. If this developer had extended the frontage by building a road into his property, he would have met the 50-foot frontage requirement.

She feels like neighbors have the right to hold onto this frontage issue while the city addresses some of these other issues including training their own committee members.

Ben Ezra reiterated her concern about the subjectivity of the special permit process, noting that residents and board members often disagree on whether projects meet special permit criteria. "I'm not feeling a lot of reassurance in using the special permit process as this thing that's going to be there for us when we get rid of the frontage issue because it's so arbitrary," she complained.

She is asking that the whole issue of getting rid of the frontage issue just be slowed down. Leave it there while the city and others look at these issues. Once a developer builds something on a lot, "it's there."

She is asking to slow the whole thing down and really look carefully at all of these issues. She is not sure there is such a crisis of housing that they urgently need to change this.

Councilor Dwight asked if anyone had new testimony that had not previously been shared.

Mark Moggio ditto'd everything Ben Ezra said. The ordinance as it is now doesn't work for the city but there can be variations to it and he really hopes the city does a good job of coming up with a variation. This is going to be happening more and more with projects and development in town; i.e. people being frustrated with the special permit process if the ordinance isn't worded properly and the ZBA is done away with completely. He expressed the opinion councilors need to do some soul-searching on this issue.

There being no new information, Councilor Sciarra moved to close the public hearing. Councilor Thorpe seconded.

Councilor Dwight said he believed two-thirds of the people present were there for other hearings, so he proposed moving on to the other scheduled hearings rather than beginning deliberations immediately. The committee will deliberate on individual ordinances following the public hearings, he indicated.

4. **Public hearings on proposed zoning changes**

A. **19.178 Zone Change Petition to Rezone 3 Wright Avenue from URC to GB**

Councilor Dwight inadvertently skipped over this agenda item and took up 4B out of order. He came back to 4A afterwards.

B. **20.004 An Ordinance to Rezone Nine Conz Street Parcels from NB to CB**

Councilor Sciarra moved to open the public hearing. Councilor Maiore seconded. The motion passed with 4 Yes, 0 No by voice vote. The hearing was opened at 5:55 p.m.

Ms. Misch pointed out the properties in question on the map/diagram. The nine parcels are currently zoned commercial -Neighborhood Business (NB) - and the proposal is to rezone them to Central Business (CB).

The proposal went to the Planning Board February 13, 2020, Ms. Misch reported. It went before the Planning Board without an expansion of the Central Business Architectural Committee (CBAC) map and associated guidelines. The Planning Board had a lot of discussion of whether it was appropriate to separate the design guidelines from the CB district. Previously, whenever there was an expansion of CB district boundaries, planners made a parallel recommendation for expansion of the CBAC map so that new developments would be viewed through the lens of CBAC design guidelines.

The Planning Board voted not to move the zone change forward because the architectural guidelines were not in place. The Office of Planning and Sustainability (OPS) has since introduced an ordinance to expand the CBAC map to include the rezoned parcels, which is on Legislative Matters' agenda later in the meeting.

On the heels of adoption of the Sustainable Northampton Plan there was a proposal to extend the CB district all the way down Conz Street, Ms. Misch reminded. At the time, there was some concern by former City Councilor David Murphy about CBAC guidelines not being appropriate for that section of Conz Street. As a result, the zone change just went to the edge of Paradise Copies and no further. It is something the city has been looking at for many years and it is in that context that they have brought it forward now.

Also, there is a use proposed at the WWII club that doesn't fit the NB district but would be allowed in CB.

Kate Zdepski of Northampton said she and three others own the house at 14 Fruit Street, less than a five-minute walk from the WWII club. The location of the WWII club was a very positive factor in their choice to buy a house there. As a local person, she has never had any noise trouble from existing activities there and she is a librarian. She supports the proposed zoning change to the parcels on Conz Street because she feels it will allow the WWII club to continue doing 'very wonderful things.'

She has lived in Northampton for 10 years and has been a part of Friday night karaoke at the WWII club for at least five years, Ms. Zdepski continued. Friends who visit make sure to structure their visit to include a Friday night at the Deuce. The place isn't just about routine; the WWII club has consistently gone above and beyond when it comes to supporting the community in times of need, and it has allowed her to be more connected and civically engaged. She mentioned some of the positive activities of the club. In 2016 on practically no notice, they donated space for an impromptu fundraiser following the tragedy at the Pulse nightclub. There's a lot going on there and what makes it so great is it's a short walk away. It is important to her to find more and more things that she can get to by bus or by walking for environmental sustainability reasons. She has spent months trying to find ways to keep this establishment alive, and, after reading about the proposed buyers' plans and hearing from workers at the club, she really believes this rezoning is the best answer.

Ace Tayloe of Northampton identified himself as a co-owner along with Kate Zdepski of Fruit Street. He seconded what Zdepski said about the WWII club. As many are aware, the club is up for sale. Signature Sounds, the prospective purchasers, intend to continue all the things the club is doing and keep it as an entertainment venue and community center. Without a purchaser, the club closes and his property and his neighborhood loses value. He can't personally speak to how loud it gets for direct neighbors but he's never been disturbed by noise carrying or departing patrons. He's honestly more inconvenienced by the Senior Center, which is not exactly a raucous venue. There have been no registered complaints for over a decade at the club and none at all for the purchasers. Any claims otherwise are uninformed at best and, possibly, slanderous. As someone whose property abuts the CB zone on Conz Street, he hasn't encountered any wanton building out or unreasonable noise. CB zones as evidenced are already part of the nature of the

neighborhood and, as mentioned, the property in question behaves in a similar way already. He would support protections for the existing sidewalks and clear ways of contacting the licensing commission should problems arise. But un-evidenced fear should not be the reason to deny this rezoning. He wants to see the legacy of the WWII club continue here in his neighborhood where it began.

Amy Cahillane of Northampton, the Executive Director of the Downtown Northampton Association (DNA), said she wanted to speak in favor of the zoning change in part because of the emotional pull and in part because, as executive director of DNA, she hears with incredible frequency about empty store fronts and the departure of Northampton businesses for Greenfield and Easthampton. She feels this zoning change presents them with the opportunity to fill a storefront that would otherwise be vacant in a zoning area that already has a significant business and commercial component. She would hate the city to make a decision that would chase away this prospective purchaser and leave another empty storefront downtown.

Megan Zinn said she is here to support the zoning change on Conz Street that would allow Signature Sounds to buy the WWII club and operate it as a music venue. They have a very long track record of providing diverse entertainment (the Green River Festival, the Parlor Room, etc.) that enrich communities while also being responsible to them. It will allow Northampton to preserve this great community center which might otherwise be vacant and continue to serve the veterans it was created for. The benefits to the city outweigh the inconveniences, she suggested.

The zoning change essentially acknowledges the existing use of the parcel as the WWII club, which has been a community space and entertainment venue for many, many years, Jennifer Dieringer commented. This is exactly the sort of business they should have downtown; it is what brings Northampton its vibrancy, she proposed. They have the benefit of knowing who the prospective buyers are. They operate the Parlor Room and there has not been a single noise complaint the entire time they have been there. The Parlor Room features local performances, comedy acts, etc. Safe Passage has had many events there, as well as Bridge Street School. The owners have donated their venue to them. The Maker's Market takes place there; local makers and crafters use that space to sell their goods. Jim [Olsen] and Peter [Hamelin] have run incredibly-responsible, large-scale events, including the Green River event and the Arcadia Folk Festival. At Arcadia, they have been behind many efforts to compost and recycle and showcase one of the valley's jewels, Arcadia Wildlife Sanctuary. They will continue this kind of community engagement at the WWII club. They will allow nonprofits who are already having events to continue to use the space. "Peter and Jim are exactly the kind of folks that we want to be running these establishments in our community," she enthused. She urged councilors to approve the zoning change.

Steven J. Connor, current President of the WWII Veterans Association of Hampshire County, said he wanted to let folks know that, unfortunately, they are not going to be able to keep control of the building as it stands. As they were getting more and more in debt, his biggest heartache was what was going to happen to all the community involvement that takes place in that building. They tried to keep that in mind when they put it up for sale. He unfortunately wasn't aware that it wasn't already zoned for what it is doing; they have gotten an entertainment license year after year. The reality is that the building was built because the veterans group had to expand from its former location above a barber shop. In the early 70's they moved down there and built that building. It is a community place – the club has done everything from having benefit dinners after the Fair Street fires to fundraisers for people with disabilities. All of that is supposed to continue in that space. Voice (Veterans Outreach in the Community Engagement) also have monthly meetings there. The group pulls in people from four communities. Mr. Hamelin has said he wants to continue to use the day space for veterans. They don't have the money anymore to run the business and

the bar but if they can have this zoning change it will allow them to continue their work. For him it's about the veterans and making sure they have a gathering place. By rezoning and allowing the sale to go through, that's going to happen. Otherwise, he worries about it being an empty space.

Christopher Carlisle of Leverett, director of Building Bridges, a veterans' initiative, said they have nine sites in Massachusetts and the first site was at the Deuce. With the help of Mr. Connor, they started what began as a not very popular initiative and had enormous interest all around the western part of the state. They now have 50 to 70 veterans every Wednesday for lunch. It's a venue for non-profit agencies to come and make services available to veterans. Beyond that, he asks himself whether he could have started Building Bridges in Amherst. It is no surprise it began in a town such as Northampton; Northampton is quite unique and he hopes they don't take that for granted. He would hope the zoning could accommodate the continued use of the Deuce, because it really is their sort of flagship community that continues to telegraph through the state and beyond.

With regard to the volume of music, Christopher Bigelow of Northampton noted that, as the person who has played the bulk of the music for the past 15 years, the noise impact directly outside has been negligible. The building soaks up more sound than it has any business soaking up. If there is concern about it being operated as a live music venue, he has operated with volumes as loud as he could without driving people out of the building. The last noise complaint he can remember is 2008 or 2009 when they made the mistake of opening the windows on nice days. He would not expect Signature Sounds to have a greater noise impact on Conz Street than he has been having for some time, he concluded.

Jim Olsen of Whately identified himself as one of the proposed buyers of the Deuce along with his partner, Peter Hamelin. The two produce live music events. They have been through this once before when they first moved to town in 2012 and opened the Parlor Room. There was a little pushback from neighbors about having a live music venue. Over the years they have not had any noise complaints. They can ask anyone on Masonic Street – they're good neighbors. They have outgrown the space on Masonic Street. When they saw the WWII Club, they thought it was ideal. They didn't anticipate any zoning issues since it has been used as a live music venue for years. When they do produce larger scale live music events now, they end up going somewhere else like the Shea Theater. They want to stay in downtown Northampton. They think the WWII club is a perfect place. They know they can operate in a responsible manner, be a good neighbor and continue the good work of the WWII club.

Mathieu Tebo of Southampton, identified himself as the treasurer for the WWII club. He is speaking today to ask for their support and wanted to talk specifically about zoning and the issue from the Planning Board.

At the Planning Board, the complaint was raised that they were trying to change zoning without design standards to go with it. As a sole reason not to approve this zoning change, he finds this to be an unnecessary delay. No construction is proposed, so any new architectural design standards would not impact any of the existing buildings. Also, his understanding is that any specific design standard for Conz Street would not apply to this property as 'anomaly' buildings follow a different set of standards.

With regard to value, he just sold a home on Wright Avenue. He bought it before NETA was there and sold it this summer, and it still appreciated in value. There was no adverse effect on property value.

The only thing he is really asking this board to do is to approve this zoning change to allow the transfer of the liquor license the City Council gave them 38 years ago. He understands Northampton has an overage

right now with ABCC with an inability to transfer this license through this sale. There is a possibility Northampton could otherwise lose this license because it is over quota.

Councilor Dwight asked if anyone wished to speak in opposition.

Tetty Gorfine of Northampton stated that, while she is adamantly opposed, she just wants to say that Signature Sounds and what they're proposing to do sounds great. Frankly speaking, she didn't even know until last week that the LGBTQ community relies on the WWII club for a safe space. (She is a member of the LGBTQ community, she volunteered.) What the WWII club offers and what Signature Sounds proposes is great but she is scared to death about it happening on a larger scale and what it's going to do to a mixed residential and commercial neighborhood where noise and behavior associated with alcohol use is already an issue.

The end of her house is 50 feet from the edge of the WWII parking lot. It is not so bad in the wintertime, but she definitely can hear music. In the warmer weather when the windows are open she definitely can hear the music and she can feel that bass.

Saturday evening was an event and the parking lot was so full cars were all the way down Smith Street and into Ralph's. In overcrowded conditions when people park outside the lines of the WWII parking lot, she has a very difficult time getting in and out of her own driveway. The main parking lot is on her side of the street so when people turn alarms on she hears regular beeping. People smoke outside and she smells the smoke and, as the evening goes on, she hears loud talking and sometimes fighting. 60 may be the new 40 but bedtime is still 9 o'clock. The WWII club closes at 2 a.m. She gets woken up regularly because she is feet away. She would just like to ask everyone to take a moment and ask themselves whether they would like to live 50 feet away from a highly active night club that has stated its intention to go on a larger scale than the WWII club.

She bought her house 11 and a half years ago and was naive enough to think the WWII club was a club. When she first bought a house she went before the Planning Board for a psychotherapist office and they put her through the ringer about the volume of patients, where people were going to park, etc.

She is also concerned with the fact that when she went to the Planning Board she was the only person who was an actual abutter on Conz Street or Smith Street. No one was notified on her street; it was by happenstance she found out. On all four sides of the WWII club are houses. It is a combined business and neighborhood area which is how it is zoned. When people ask her if she lives in Northampton she says she lives outside downtown. She said she wanted to suggest a radical idea. Could Signature Sounds find a location that's not in the middle of a residential area? Diva's Night Club and Pearl Street are closed, she noted. She thinks it's great but please, not in a residential area.

Ms. Gorfine read a letter from Mark Chen, the owner of Osaka restaurant. He wanted to make sure she stressed that he's very pro-restaurant in Northampton. He is the owner of the house at 62 Conz Street adjacent to the WWII club.

"Dear Board members, I am owner of the large apartment building at 62 Conz Street adjacent to the WWII club. Several people live in this building and I am concerned about the proposed changes in zoning in our neighborhood. I have asked my neighbor to read this letter to you since I am out of town this month and unable to attend. It is disturbing to me to learn that there is a proposed zoning change to the WWII club. I

also learned that currently and for the past three years this club has not conducted business within the bounds of the zoning laws. There is already a distinct noise level especially in the evening that goes along with this kind of business. Maintaining and protecting the residential atmosphere of this neighborhood is very important. I would not like to see any additional noise and activity in this area. I am also concerned about more drunken behavior that would go along with alcohol use and am also very concerned about the property values. I am therefore asking that the City of Northampton not make changes to the current zoning and require that any business in our residential neighborhood conduct their business in accordance with the actual zoning of this neighborhood. Feel free to contact me with any questions and/or to authenticate this letter. Thank you for your time and consideration, Mark Chen”

Shannon Letendre echoed Ms. Gorfine’s concerns and said her main concern is parking. She has many times had patrons of the WWII club parking on her lawn and in her driveway. If they have a bigger venue, where are they going to park? She asked. She has heard incidents of drunken behavior – police reports are public record - from her house. It’s a residential neighborhood, it’s where people live.

Dick Bart said he has owned the house right across the street at 51 Conz Street for at least 45 years. He is a Vietnam veteran and has been a member of the club many times. It seems that what they’re doing is just on the borderline of not being disruptive. He has a four-family and is certainly concerned about his tenants, his ability to rent and his property values if it becomes a nightclub. These gentlemen have very good references and resumes but could also sell it in a few years. He thinks this would definitely decrease his property values and may make it hard to obtain tenants. This venue is going to be significantly larger from everything he reads and understands. It isn’t about these new owners because he’s asked different people and they’re reputable gentleman, but, he has an investment there and he needs to protect it.

Farnsworth Lowenstein of Northampton commented that, as someone who appreciates Signature Sounds and attends their concerts, there is a fundamental misunderstanding in the phrasing that they want an even bigger venue than the WWII club. Signature Sounds now seats 80. It provides largely acoustic and folk music. The sale of this property to Signature Sounds he believes will greatly decrease the noise and greatly decrease the drunken behavior. They’re bringing a very different style and type of music to the venue. They want to go from 80 people to 120 people, not even bigger than the Deuce.

Councilor Dwight stressed that while they are hearing testimony about a specific project on a specific lot they are creating an ordinance for the properties specified and not a particular project. Those present may be disappointed by their deliberations but the fact remains they’re creating a general law and not making a decision on the use of an individual property.

Sharon Kubin identified herself as the owner of a house on Conz Street that’s been in her family for 74 years; her children will inherit it. It is not within the area proposed to be rezoned, but zoning in Northampton has a history of creeping. She voiced the expectation that it would creep up the street in the future. She expressed her understanding that CB zoning does not allow residential living on the first floor. She asked if the residential use would be grandfathered if her children inherited the property.

Councilor Dwight said she was touching on the ‘pre-existing nonconforming use’ discussion. She has no problem with the WWII club, she just has a problem with her piece of property eventually getting swallowed up by that bubble. She was here a few years ago when they talked about rezoning all of Conz Street. This house isn’t going anywhere, so she really wants to preserve it for her children.

She asked if a person would be able to live on the first floor in a CB district if he/she had a disability and was not able to live on the second floor.

A new building of a certain type would require an elevator, but ADA requirements do not supersede zoning regulations, Attorney Seewald responded.

Frank Patel of 59 Conz Street said his main concern is parking. A couple of times in the past few years he has seen cars on his property that don't belong to his tenants. He also does his landscaping himself and has seen a lot of beer cans, bottles and cigarettes on his property. It is residential, and he asks to keep it that way. He wants to protect his investment.

Former City Councilor David Murphy said he is the one who brought up the issue of architectural guidelines at the Planning Board. There are two distinct entities, CB zoning and the CB overlay district for design control, he clarified. When this was brought forward initially it was brought forward without design controls.

Planners have talked about going to form-based zoning with different design guidelines. Knowing CB design very well, it was designed to protect Main Street and keep downtown looking like downtown. The further one gets from Main Street, the less applicable it becomes. He thinks the reason it wasn't brought up to begin with is because it doesn't really fit on Conz Street.

He is not concerned with the zone change, he is just concerned about what he's going to end up with for design standards. His motive in raising the question before the Planning Board was to find out what kind of design controls are being considered for the area [not to advocate for imposing current CB design standards on Conz Street].

The Planning Board's solution was to decide to bring the architectural controls that don't actually fit down there down there. He doesn't object so much to the zoning, he stressed. If the venue gets more active he is certainly going to find more bottles in the parking lot and a little more noise at night but he can still do what he's doing.

It's the design controls that aren't appropriate there, and he encourages them to leave them off, Mr. Murphy continued. The initial decision of planners to not include them was probably more practical. Most of everything that is not already CB is residential, and they're the ones that are going to have a hard time. Their first floor uses will be grandfathered, but there are some sites that are buildable and they're not going to be able to put a two-family house there and have residential on the first floor. It's going to affect them more than him. If councilors proceed with rezoning, he encouraged them to leave the design controls off and wait until new ones are developed. If the urgency of a pending sale weren't present, they wouldn't be talking about this right now. They would be taking the time to do the form-based zoning and modify the design district.

"I really don't want to see CB architectural controls coming down Conz Street," he concluded. "Leave that off, I'd appreciate that."

Ms. Gorfine said she had in front of her the special permit application for the WWII club in 2010. It states it has seating at the bar for 65 people. In terms of her math, there's no question it's going to be a larger venue.

Councilor Dwight noted that the cited capacity is for the bar and not the entertainment space.

There being no further public comment, Councilor Sciarra moved to close the public hearing. Councilor Maiore seconded. The motion passed unanimously with 4 Yes, 0 No by voice vote. The hearing was closed at 6:52 p.m.

A. 19.178 Zone Change Petition to Rezone 3 Wright Avenue from URC to GB

Councilor Sciarra moved to open the public hearing. Councilor Maiore seconded. The motion passed with 3 Yes, 0 No by voice vote (Councilor Thorpe stepped out). The public hearing was convened at 6:53 p.m.

Ed Etheredge of Northampton presented. The application is for a zone change under 350 Section 3.4 to change one lot on Wright Avenue from URC to General Business (GB), he explained. The property abuts the lot of NETA and is surrounded on three sides by the GB zone. Gretna Green Development Corp., NETA's landlord, is purchasing the lot to add parking. The Planning Board has already spoken in favor of the zone change, and the landlord has already obtained a special permit for the parking.

Councilor Dwight said he saw Leslie Laurie here earlier. He expressed the understanding that this is NETA's response to parking pressures; they see an opportunity to reduce some of the pressures on surrounding streets by expanding their parking lot.

Since the lots are under single ownership, the two lots will merge under zoning, Attorney Etheredge noted.

The lot in question is currently URC. All that part of Wright Avenue is URC but the lots on Fulton and South Street are GB and the NETA lot is GB, Ms. Misch confirmed. The reason planners didn't suggest at this time that it go to CB is because they are working on a form-based code for downtown and extending CB to the roundabout but treating gateway streets differently than the main street. Given that this already abuts and is merging into a GB parcel, it didn't seem to make sense for it to go to CB.

The first step is finalizing a form-based code for CB and then coming up with proposals for where that district should be expanded. Eventually, the goal is to merge all these into one [architectural design] district but with sub-districts that would be treated differently.

Councilor Dwight asked whether the proposal to rezone one specific property could be considered 'spot zoning.'

He doesn't think it would constitute spot zoning because it is not incongruent with the zoning around it, Attorney Seewald said. The SJC has been very reluctant to find spot zoning as time goes on.

As mentioned, on three sides it's already GB, Attorney Etheredge reiterated.

Councilor Sciarra moved to close the hearing. Councilor Thorpe seconded. The motion passed unanimously with 4 Yes, 0 No by voice vote. The hearing closed at 7 p.m.

C. 20.005 An Ordinance to Amend the Zoning Map on Old South Street and Clark Avenue

Councilor Sciarra moved to open the public hearing. Councilor Thorpe seconded. The motion passed unanimously 4 Yes, 0 No by voice vote. The hearing was opened at 7 p.m.

The affected area is the rear portion of three parcels that are already split-zoned on the other side of the Roundhouse parking lot, Ms. Misch explained. The lots contain multi-family residential structures that front on Old South Street and Clark Avenue. The very rear of the parcels is CB, and the proposal is to pull that line back essentially to the rear of the houses to provide a viable opportunity for development that would front and have access from the Roundhouse parking lot. In this case, planners did not propose to bring along CB design standards because planning for the form-based code is expected to be coming along within six months. Interestingly, the Planning Board did not have a concern about making the CBAC map change here as they did on Conz Street because the front portions of the parcels that would be visible from the parking lot are already CB and so already subject to those design standards. Additionally, residential use is allowed on the first floor in CB as long as the building doesn't front on a public street. Residential is also allowed now in the back portion of buildings zoned CB. The Planning Board deliberated about making a recommendation about this and were not concerned at this time.

Councilor Dwight asked if anyone was present to speak about this issue.

Councilor Thorpe expressed his understanding that the change would keep the homes on Old South Street and Clark Avenue within the URC zoning district.

In response to a question from Councilor Dwight, Ms. Misch explained that planners are looking for opportunities to allow more commercial development downtown in places where it makes sense. There was a concept for a project to develop the back portions of the lots which never came to fruition but started them thinking more rigorously about untapped potential right at the parking lot there.

Councilor Jarrett asked if access to this would be through the Roundhouse parking lot, and Ms. Misch said yes. As part of the redesign and redevelopment of the Roundhouse parking lot the city worked with property owners to consolidate access from the parking lot to one point so there would be shared access for all three parcels. The whole point of redesigning the parking lot was to make it more efficient and create more public parking but, as part of the reconfiguration, they figured out a way there could be access.

Councilor Sciarra moved to close the public hearing. Councilor Thorpe seconded. The motion passed unanimously with 4 Yes, 0 No by voice vote. The hearing was closed at 7:09 p.m.

D. 20.006 An Ordinance to Amend Zoning Map to Add New Smart Growth Overlay District at Laurel Street

Councilor Sciarra moved to open the public hearing. Councilor Maiore seconded. The motion passed unanimously 4:0 by voice vote. The hearing was opened at 7:09 p.m.

Ms. Misch referred to a parcel at the former state hospital currently within the Planned Village (PV) district. The state deeded the property to the Northampton Housing Authority (NHA) for the purpose of affordable housing but took it back because the housing authority didn't build on it in time. The city is in the process of seeking legislation to get it back for affordable housing. It was never part of the overall master plan for the state hospital because it was always assumed NHA would build on it. Since that time, the state has created housing incentives to build affordable housing through what are called smart growth districts. In 2007, the city adopted its first smart growth overlay district at the state hospital, creating what is supposed to be a smoother path for approval. As part of the package, the state gives the city money for each affordable unit created. Planners expanded the smart growth overlay district two years ago by creating a subdistrict c, at the same time creating another overlay on Bridge Street where the Valley CDC is doing an SRO project.

What they are proposing now is to extend the 40R subdistrict down to include a 1.5-acre parcel. It really is not changing the density allowances but rather is to make sure to capture the available 40R resources.

The city uses those resources toward launching projects to address traffic, Ms. Misch noted. Some has gone into the project to redesign Main Street. The city has already had the benefit of using money from the state to balance the new units up at Village Hill.

Councilor Maiore said she is always excited to hear about affordable housing in the works.

For 30 years affordable housing was part of the vision for what's now called Village Hill, formerly Hospital Hill, Councilor Dwight related. Many other places in the state with decommissioned hospitals converted them into municipal golf courses and things like that. Northampton was really adamant about having mixed affordability, creating a concentrated neighborhood that conformed to a smart growth philosophy. By and large, with some gaps, that project was realized. The affordable dimension was never realized to the extent that he personally aspired to and anything they can do to contribute to the affordable housing makes a lot of sense.

The city will not be building the affordable housing, Ms. Misch clarified. The deed will come to the city and would immediately transfer to a non-profit agency to develop housing.

Planners wanted to get the zoning in place because the city has a certain amount of time to spend block grant money and they are running up against the clock. The state has to approve the 40R language and any modifications to it before it can be accepted. She has been trying to get in touch with the person at the state who does these approvals and hasn't heard anything back. The goal is to make sure they are still on track with the state by the time the ordinance gets to council floor.

An audience member asked about the time limit.

The project won't go away, it just means the city can't use block grant funds for the project. Ms. Misch said.

Councilor Sciarra moved to close the public hearing. Councilor Maiore seconded. The motion passed unanimously with 4 Yes, 0 No by voice vote. The hearing was closed at 7:20 p.m.

5. **Approval of Minutes of Previous Meeting**

A. Minutes of February 10, 2020

Councilor Sciarra moved to approve the minutes of February 10, 2020. Councilor Maiore seconded. The motion passed unanimously with 4 Yes, 0 No by voice vote.

Deliberation on 19.173 An Ordinance to Allow Change from One Conforming Use to Another without a Finding

Councilor Sciarra moved to forward the ordinance with a positive recommendation. Councilor Maiore seconded.

Councilor Sciarra asked the difference between a business district and a residential district.

A business district allows non-residential uses and, depending on the type of district, more or less intense commercial uses, Ms. Misch explained. Central Business (CB) is the most intense, allowing the widest

range of uses, the tallest structures and the least amount of setback and frontage. From that perspective, it is the most intensive commercial district. URC allows some very small number of non-residential uses with a residential component (mixed uses) with a special permit from the Planning Board. URA and URB allow no commercial uses other than home businesses.

With regard to the issue of addressing nonconforming uses, Councilor Dwight asked if councilors had any thoughts or comments. What are their objections or concerns and/or why do they think this would make sense? He prompted.

He knows there needs to be a change with zoning not just here in Northampton but across the state, Councilor Thorpe volunteered. He is in favor of the change but is also considering whether it would be beneficial to keep a finding as proposed with detailed review criteria for projects that do not otherwise trigger a separate review. It might be appropriate as a kind of happy medium, he suggested.

She is really struggling with this and is really glad they voted to continue the public hearing, Councilor Maiore reflected. She heard concerns from residents about feeling fast-tracked, and to her there is only gain from looking at this thoughtfully since it is a permanent change. What she sees is a zoning ordinance that is inconsistent and needs to be amended but she also can't deny the repercussions to doing so. She agrees with Ms. Misch that using inconsistency in a zoning ordinance as a kind of check and balance doesn't provide the transparency and clarity she would like to see around development. Providing that check and balance should be the task of the ZBA and the Planning Board who have that skill set and experience. She encourages them to really flex their muscles and use their critical thinking to address the concerns of residents. She recognizes there is a glitch in the zoning ordinance that needs to be amended but doesn't want to deny that there are possible repercussions, she concluded.

They heard some value judgment on lots; i.e. - that some lots are bad or terrible, Councilor Sciarra observed. It seemed an odd thing to say given that the lots were created in a time when there were no zoning regulations. She asked Ms. Misch to talk about her thoughts on that sort of characterization.

She thinks the issue is more about how lots can function whatever their characteristics, Ms. Misch responded. Today, they have very uniform rectangles but that wasn't always the case, so a lot of lots don't meet those standards yet still function. Since they do function now with people going to and from and using those lots, she wouldn't necessarily classify them as 'bad.'

When the Zoning Act was passed in the '70's, there was a lot of debate about what to do with non-conforming lots, and the decision was made to protect them, Attorney Seewald reminded. A process was developed for making changes to nonconforming lots and structures so that they wouldn't be fixed in stone forever. They use the finding mechanism, but the way cases have been decided over the years, the courts have decided to let cities and towns determine how stringent this mechanism is going to be. That's how they got to where they are today, and that's what they are debating – just how stringent do they want to be in Northampton?

Members continued to deliberate, with Councilor Dwight asking Ms. Misch and Attorney Seewald what protections Northampton offers neighbors in the development review process. They've heard from one neighborhood that felt it was not protected in the process, although it did not play out to the end.

In passing the Zoning Act, the legislature decided it was going to be citizens from the community making discretionary zoning decisions, not trained professionals, Attorney Seewald pointed out. The protections neighbors get are notice, the opportunity to be heard and a decision by an unbiased decision-maker. That is the essence of due process, he noted.

His take-away from the neighbor's testimony was concern about a lack of protection and oversight against something that could be construed as being deleterious to the character of the neighborhood, Councilor Dwight related. Zoning does not clearly define the tipping point of what negatively affects the character of a neighborhood, he observed.

Balancing competing interests is what zoning is all about; every zoning decision, somebody loses, Attorney Seewald suggested. Almost every special permit imposes on somebody.

Councilor Dwight agreed it was the nature of governance. The guiding principle is supposed to be the general good. The argument to that point by Attorney McLaughlin is that this renders everyone proximate to a nonconforming property similarly vulnerable and unprotected. As presented by Ms. Misch, the primary parcels this would affect are located in the downtown area, which evolved as opposed to being the product of planning. The subject of virtually every hearing tonight has been trying to make accommodations and adjustments for an antique system and trying to create zoning to facilitate what have been identified as their objectives: to increase density, improve walkability, lower impacts such as emission of greenhouse gases and expand affordability. They're limited in what they can do to encourage affordability in Massachusetts; they can create zoning, that's it. There is no rent control since it is not allowed by state constitution and they can't seize private property and compel owners to rent at what they would consider an affordable rate.

On this issue, he will own that he has no way of knowing what nonconforming properties will be impacted or not, Councilor Dwight acknowledged. The impacts they've heard described are not unique; i.e. - traffic, noise, character of the neighborhood, property values – come up in every proposed project. There has not been a single project in the city of Northampton that has adversely impacted property values. Usually the complaint is the value climbs up too high and affordability becomes the issue. The biggest problem is the desirability of Northampton and people wanting to move in and being willing to pay higher prices for rent. They are very limited in what they can do to control that and zoning is the available mechanism.

They vest an aspect of trust in people who have worked for the city, have a proven track record and have always performed in good faith, and that includes volunteer board members, Councilor Dwight continued. The decision before them is whether to forward the ordinance to the full council with a positive, negative or neutral recommendation. What they decide here does not become law, it is merely a recommendation to the council, he stressed.

"My inclination is to forward this with a positive recommendation," Councilor Dwight concluded.

Attorney McLaughlin asked to be recognized. Councilor Dwight informed him that the committee is in the deliberative phase, and Attorney McLaughlin countered that he heard him asking questions of city staff.

Attorney Seewald stressed that the chair has the right to ask clarifying questions of whoever he'd like.

Councilor Dwight recognized Attorney McLaughlin.

The chair referenced four things he found to be important, increasing walkability, increasing density, minimizing greenhouse gases and affordability. None of those are being improved, he asserted.

Councilor Dwight noted that Attorney McLaughlin was now debating him. The issue of reducing greenhouse gases and reducing the pressure of stormwater run-off on infrastructure is actually addressed by increasing density since superior infrastructure is located in the downtown area, he proposed. As they build up in out-lying areas, those pressures increase because they don't have that infrastructure. With regard to greenhouse gases, they heard from neighbors of the Deuce that they walk and bike where possible and prefer to do that. He acknowledged that not everyone will be so conscientious and that the public transportation system is woefully inadequate. Those competing influences are beyond their control.

If they are going to have increased development in Northampton of any sort, they want to control that density and keep it focused in the downtown area where it will have the least harm, Councilor Dwight asserted. That's the argument for density. He said he understands Attorney McLaughlin's case and does not disagree.

Councilor Sciarra said she understood the crux of his concern to be with the parking regulations, and Attorney McLaughlin confirmed that is the case.

It is great to be aspirational in the Sustainable Northampton Plan but she thinks it's a little disingenuous to say it won't be detrimental to neighborhoods, Councilor Maiore observed. What she sees are reasonable concerns from residents and those concerns not really being addressed in the [development review] process.

Members discussed the option of possibly amending the ordinance as suggested by Councilor Thorpe at the beginning of deliberations to retain the requirement for a finding with detailed review criteria for projects that do not otherwise trigger review. Councilor Dwight confirmed that Legislative Matters has the authority to propose amendments.

If the committee votes as a body to amend the ordinance, she could provide suitable language for the City Council meeting, Ms. Misch volunteered.

Ms. Misch explained the options for amendment as presented in her memo.

Every proposed project proximate to any neighborhood is met with resistance, Councilor Dwight pointed out. It is cold comfort to realize that concerns sometimes abate after development.

Councilor Maiore expressed interest in talking about an amendment. Members could make their recommendation conditional upon language being drafted by Ms. Misch and introduced on the floor of City Council, Councilor Dwight clarified.

Councilor Dwight asked the city solicitor which of the three options described is the most fair, just and efficacious.

The process is going to be fair whichever of the three is chosen because people are going to receive notice and have the opportunity to be heard, Attorney Seewald assured. In his opinion, any project that requires a special permit should not be subject to a Finding. They are only talking about projects that have some kind

of nonconformity and are changing to another permitted use that complies with all other requirements except the existing deficiency, he clarified. He has been practicing land-use law for 35 years and has never in his career filed an appeal on a Finding. This is a very rare occurrence.

Discussion continued, with Councilor Dwight referring to the fact that Attorney McLaughlin prefaced his testimony by telling councilors that if they amend the ordinance he loses his case. Prefacing it by that introduction redesigned the landscape. However, they cannot base their decision on the prospect of somebody winning a case, they have to craft a law that serves the entire community.

The fact remains that the ordinance holistically makes sense, he concluded. It has a holistic application that at least benefits the terms and conditions he subscribes to. He believes it has a holistic benefit as opposed to the description of it being potentially the ruination of every neighborhood.

Councilor Sciarra said she didn't want to create a process that is unnecessarily duplicitous. It doesn't make sense for two different bodies to review the same project, she suggested.

Councilors and the city solicitor continued to discuss. Councilor Dwight briefly recognized Amy Ben Ezra, who reiterated her concern about the property not having any frontage. Councilor Maiore proposed the idea of making a neutral recommendation so as to spark a fuller conversation among the full council. Because it is such an important issue, she would like to have a broader conversation.

The motion on the floor is to forward the ordinance with a positive recommendation as written, Councilor Dwight clarified.

Councilor Thorpe moved to amend the motion on the floor to add the stipulation that the Office of Planning and Sustainability be requested to submit language for an amendment to require a ZBA finding for projects that don't otherwise trigger Planning Board review. Councilor Sciarra seconded.

Councilor Dwight called the main motion as amended to a vote, and it passed 3:1 with Maiore opposed. She said she would prefer a neutral recommendation.

Deliberation on 20.004 An Ordinance to Rezone Nine Conz Street Parcels from NB to CB

Councilor Sciarra moved to forward the ordinance with a positive recommendation. Councilor Maiore seconded.

Councilor Dwight asked Ms. Misch about the concern of the nearby property owner that her property could be subsumed by the CB district.

There are only two residential houses on this block proposed for rezoning and those residential uses would be allowed to continue, Ms. Misch confirmed. CB currently allows residential uses on the second floor and in the rear, so it would only be the front portion of a unit that would be considered nonconforming. In discussions about the form-based code, planners have talked about allowing much more intense residential uses in CB zones along this corridor, even on the ground floor, as a mechanism to support commercial growth and expansion. Once they finalize the form-based code, the plan is to allow ground-floor residential uses in this area because it is a portion of CB where maintaining pedestrian vibrancy isn't as important.

Councilor Dwight asked Misch to address former Councilor Murphy's concern about CBAC design standards being applied to this section of Conz Street.

CBAC design standards only apply if owners are making a change to the exterior façade of the structure, Ms. Misch reminded. Different structures are classified by their architectural character. There are design criteria specific to transitional buildings, which is what his building is, and design criteria specific to anomaly building. Transitional and anomaly buildings are treated very differently from themed commercial, which is the standard street façade on Main Street. There are built-in mechanisms to address different styles of architecture. She doesn't share Mr. Murphy's concerns since different types of buildings are treated differently, she concluded.

With regard to the WWII club, everyone assumed this would be a simple transfer of a liquor license but, because the WWII club's license is a club license, it is not, Councilor Dwight presented.

The property's land-use/zoning classification is separate from the licensing classification, Ms. Misch clarified. That is a different complication. It is her understanding that it morphed a long time ago. The club got a special permit for a restaurant use back in 2011 although it hasn't really functioned as a restaurant. It has a muddled history as it relates to zoning, she acknowledged.

The two abutter concerns he heard expressed were that the change in zoning would adversely impact their quality of life, Councilor Dwight related. Abutters didn't argue that it would be a detriment to the neighborhood necessarily since the problems already exist, but they didn't want to see the use expanded. There is already intensive activity in this whole area. He asked if zoning affords them any special protections.

Ms. Misch referred to the noise ordinance. If someone had a complaint about noise, they could make a complaint to the building department.

In response to a question from Councilor Dwight, Mr. O'Connor confirmed that the liquor license is all alcohol and allows service until 2 o'clock.

As to nip bottles and scratch tickets, he would tend to blame the liquor store since customers are not allowed to take bottles out of the venue, Councilor Dwight said.

Councilor Thorpe asked if the capacity of the venue would change.

It is possible that interior renovations could allow a change in the total number of patrons, Ms. Misch confirmed. Capacity is a building code issue. There are no plans to expand the footprint, but anything interior to the structure would be dealt with by the building department and fire department.

Councilor Maiore said she finds Ms. Misch's description of protections for existing residences heartening.

Councilor Dwight called the motion to a vote, and it passed unanimously 4:0 by voice vote.

Deliberation on 19.178 Zone Change Petition to Rezone 3 Wright Avenue from URC to GB

Councilor Thorpe moved to put the ordinance on the floor for discussion. Councilor Sciarra seconded.

The petition essentially allows NETA to expand its parking to handle the parking pressures on the facility, Councilor Dwight related.

He called a motion in favor of a positive recommendation to a vote, and it passed unanimously with 4 Yes, 0 No by voice vote.

Deliberation on 20.005 An Ordinance to Amend the Zoning Map on Old South Street and Clark Avenue

Councilor Sciarra moved to forward the ordinance with a positive recommendation. Councilor Thorpe seconded. The motion passed unanimously with 4 Yes, 0 No by voice vote.

Deliberation on 20.006 An Ordinance to Amend Zoning Map to Add New Smart Growth Overlay District at Laurel Street

Councilor Thorpe moved to forward the ordinance with a positive recommendation. Councilor Maiore seconded. The motion passed unanimously with 4 Yes, 0 No by voice vote.

6. Items Referred to Committee

A. 20.014 An Ordinance Relative to Parking on Bridge Street

Mrs. Krutzler expressed her understanding that Councilor Nash didn't mind if this item were deferred until the Transportation and Parking Commission could make a recommendation on the companion ordinance to create additional long-term parking on Pleasant Street. Members agreed to defer the item to the next regular meeting.

B. 20.024 An Ordinance to Change CBAC Map to Include Conz Street Lots Rezoned to CB - referred by City Council 2/20/2020

Councilor Thorpe moved to put the ordinance on the floor for discussion. Councilor Sciarra seconded.

Councilor Dwight expressed his understanding that Ms. Misch assured them that Mr. Murphy had some means of protection from having to comply with CBAC design standards. He agrees with him that CBAC design guidelines don't belong down on Conz Street.

There are a lot of things owners can do to transitional residential structures that just require staff review, Ms. Misch confirmed. Things that would require CBAC review are boarding up a window, taking off a porch or adding a handicapped ramp. The CBAC makes sure the ramp fits the architectural style of the building.

Councilor Dwight asked if design standards would apply to new windows or vinyl siding.

If the new windows look like the windows being replaced, the change only requires staff review, Ms. Misch said. As for siding, it depends on the existing material. In new construction, the CBAC committee has definitely discouraged vinyl siding. It has to do with whether they are changing the look of the building, she elaborated. If the vinyl siding looks exactly like the clapboards do, it's just staff review.

Councilor Dwight expressed his understanding that the properties would not otherwise be subject to review. For anomaly buildings, the standard is even lower, Ms. Misch added. If owners are closing windows that face on the street, that would trigger a review. But if they are adding more windows, it would not. There are fewer triggers for review for anomaly buildings which are the other types of buildings along the corridor.

Councilor Dwight called the motion in favor of a positive recommendation to a vote, and it passed 3:1 by voice vote with Councilor Sciarra opposed.

New Business

None.

Adjourn

Councilor Sciarra moved to adjourn. Councilor Maiore seconded. The motion passed unanimously 4:0. The meeting was adjourned at 8:53 p.m.

Prepared By:

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Planning & Sustainability • City of Northampton

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Northampton Public Hearings Thursday April 23, 2020

Planning Board with City Council Committee on Legislative Matters, Via Remote Teleconference Hearing

7:00 PM Proposed Zoning Ordinance Amendment to restore and clarify dimensional provisions for uses categorized as “essential services” & “municipal facilities” to be consistent in each district. Specifically add:

- 1) Footnote to Chapt 350 Attachments 4-8, 18, 24 -no minimum lot size, depth, or frontage required for essential services or municipal facilities; minimum setbacks for principal municipal facilities buildings same as other principal uses.
- 2) In 350 Attach 19 - municipal & essential facilities are allowed by right.

7:30 PM Site Plan Major Project by Karen LaVerdiere to construct 5 new units in detached structures with site development at 175 Jackson St, Northampton, Map Id 24A-43.

All permit files viewable by Map ID www.northamptonma.gov/pending Instructions for entering the teleconference hearings will be posted on the meeting agenda 48 hours ahead of the meeting.

Publish date: Apr 9, 16 2020

Bill to: Office of Planning & Sustainability Account #: 71350

