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: March 9, 2020
Time: 5 p.m.
Location: City Council Chambers
212 Main St., Northampton, Massachusetts

1. **Meeting Called to Order and Roll Call**

2. **Public Comment**

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**
   History:
   - Referred to Legislative Matters (LM) and the Planning Board (PB) - 11/21/2019
   - Positive recommendation with amendments, PB - 01/09/2020
   - Public hearing opened and continued to 3/9/2020, LM - 2/10/2020

   Documents:

   Public Comment from Steven Goode.pdf
   19.173 Text of Section 9.3.pdf
   19.173 Memo from CMisch.030220.pdf
   19.173 350-12.3_Significant trees.pdf
   19.173 Special Permit Criteria for 7 or more units.pdf
   19.173 An Ordinance to Allow Change from One Conforming Use to Another - w-PB amendments.pdf
   19.173 An Ordinance to Allow Change from One Conforming Use to Another without a

Finding.pdf

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

Legal notices published February 24, 2020 and March 2, 2020 per M.G.L. Chapter 40A, Section 5.

A. 5:30 P.M. **19.178 Zone Change Petition to Rezone 3 Wright Avenue from URC to GB**

History:
- Referred to Planning Board (PB) and Legislative Matters (LM) - 12/5/2019
- Public hearing held, City Council adoption recommended by PB - 2/13/2020

Documents:

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

B. 5:40 P.M. **20.004 An Ordinance to Rezone Nine Conz Street Parcels from NB to CB**

History:
- Referred to Planning Board (PB) and Legislative Matters - 1/16/2020
- PB public hearing held, City Council adoption not recommended because design guidelines not in place [note: an ordinance has since been brought forward to change CBAC map to include Conz Street parcels rezoned to CB] - 2/13/2020

Documents:

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

C. 5:50 P.M. **20.005 An Ordinance to Amend the Zoning Map on Old South Street and Clark Avenue**

History:
- Referred to Planning Board and Legislative Matters - 1/16/2020
- PB hearing held, City Council adoption recommended - 2/13/2020

Documents:

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

D. 6:00 P.M. **20.006 An Ordinance to Amend Zoning Map to Add New Smart Growth Overlay District at Laurel Street**

History:
- Referred to Planning Board (PB) and Legislative Matters (LM) - 1/16/2020
- PB public hearing held, PB recommends City Council adoption - 2/13/2020

Documents:

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

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

A. Minutes of February 10, 2020

Documents:

02-10-2020_Committee_on_Legislative_Matters.pdf

6. **Items Referred to Committee**

   A. **20.014 An Ordinance Relative to Parking on Bridge Street**

      History:

      - Positively recommended by Transportation and Parking Commission - 1/21/2020
      - Referred to Legislative Matters (LM) - 2/6/2020

      Documents:

      20.014 An Ordinance Relative to Parking on Bridge Street.pdf

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

      Documents:

      20.024 An Ordinance to Change CBAC Map to Include Conz Street Lots Rezoned to CB.pdf

7. **New Business**

8. **Adjourn**

Contact B. Dwight at bdwight@comcast.net or
(413) 262-6710

City of Northampton

Laura Krutzler <lkrutzler@northamptonma.gov>

Fwd: Support for zoning change for non-conforming lots

Carolyn Misch <cmisch@northamptonma.gov> Wed, Feb 12, 2020 at 9:53 AM
To: laura Krutzler <lkrutzler@northamptonma.gov>

For Leg Matters

Carolyn Misch, AICP

Assistant Director
City of Northampton Office of Planning & Sustainability
210 Main St, Room 11
Northampton, MA 01060
413-587-1287
cmisch@northamptonma.gov
www.northamptonma.gov/plan

---------- Forwarded message ---------
From: **Mayor of Northampton Mass.** <mayor@northamptonma.gov>
Date: Wed, Feb 12, 2020 at 9:51 AM
Subject: Fwd: Support for zoning change for non-conforming lots
To: Carolyn Misch <cmisch@northamptonma.gov>

Hey Carolyn-

The Mayor received this feedback from Steven Goode yesterday about these proposed changes.

~Court

Office of Mayor David J. Narkewicz
City of Northampton
210 Main Street, Room 12
Northampton MA 01060
413-587-1249 phone
413-587-1275 fax
www.northamptonma.gov

---------- Forwarded message ---------
From: **Steven Goode** <doubleplusgoode@gmail.com>
Date: Tue, Feb 11, 2020 at 6:47 PM

Subject: Support for zoning change for non-conforming lots
To: <mayor@northamptonma.gov>

A neighbor made me aware of the proposed changes recorded here:
http://archive.northamptonma.gov/WebLink/DocView.aspx?id=683566&dbid=0&repo=CityOfNorthampton

I wanted to express my support for the changes. Allowing owners to take steps to incrementally increase the density of Northampton is sensible.

Thank you,

Steven Goode
20 Aldrich St.

City of Northampton, MA
Friday, January 31, 2020

Chapter 350. Zoning

§ 350-9.1. Nonconformity by initial enactment or amendment.

The provisions of this section apply to actions in connection with nonconforming uses, structures, and lots as created by the initial enactment of this chapter or by any subsequent amendment thereto. The above sentence shall not apply to landscaping, sidewalks, and parking requirements within any commercial district. Any change of site within such district that triggers site plan approval or entails a change of use requires that the site come into compliance with the ordinance with respect to parking lot layout, landscape screens, plantings, buffers and curb cuts, unless it is impossible to meet these standards. In all cases, there shall be some landscape buffer between the public right-of-way and off-street parking lots.

§ 350-9.2. Extension and alteration.

A. This Zoning Ordinance shall not apply to structures or uses lawfully in existence or lawfully begun, or to a valid building or special permit issued before the first publication of notice of the public hearing on this chapter or to any other exemptions in accordance with MGL c. 40A, § 6. The ordinance shall apply to any change or substantial extension of such use, to a building or special permit issued after the first notice of said public hearing, to any reconstruction, extension or structural change of such structure, and to any alteration of a structure begun after the first notice of said public hearing to provide for its use for a substantially different purpose or for the same purpose in a substantially different manner or to a substantially greater extent. Notwithstanding the above, nothing in this section shall be construed to allow a change of a nonconforming use to a new, nonconforming medical or retail marijuana use.

B. A finding, as used in this chapter, requires that the Zoning Board of Appeals determine that a change, expansion or alteration to a preexisting nonconformity will not be substantially more detrimental to the neighborhood than the existing nonconforming nature of the structure, lot and or use. The Zoning Board may impose conditions as part of approving a finding.

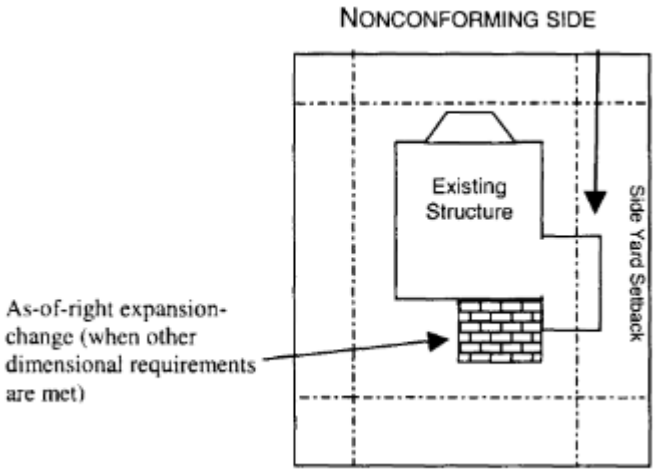
C. Applications for findings, as allowed in this chapter, shall follow the same procedural requirements as special permit applications; however, a finding shall be granted upon the vote of a simple majority of the Zoning Board of Appeals.

§ 350-9.3. Change, extension or alteration of legally preexisting nonconforming structures, uses, or lots.

Legally preexisting nonconforming structures, uses, or lots may be changed, extended or altered as set forth below, except as noted in § **350-9.2A** above. If a use is not eligible under one subsection, proceed to the next subsection.

A. A preexisting nonconforming structure or use may be changed, extended or altered:

(1) As-of-right if the expansion/change itself meets all the dimensional and use requirements of the current zoning.

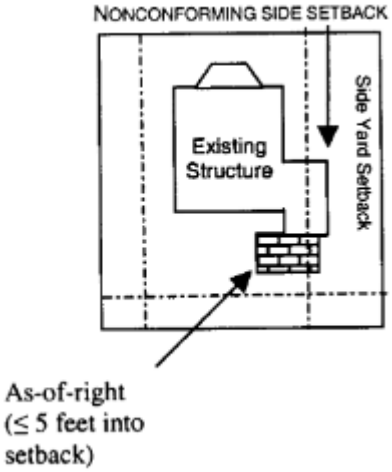


(2) As-of-right in a residential district, when said change is from a preexisting nonconforming use to a conforming residential use, and there are no changes to the exterior of the structure or lot and no new nonconformities are created by such change/conversion.

(3) As-of-right when said change or alteration is limited to rebuilding a single- or two-family home destroyed by fire or other natural disaster within two years of the disaster. Reconstruction must either meet the current zoning requirements or fall within the same footprint and height of the destroyed home so as not to expand the nonconforming nature of said home.

(4) As-of-right when said change or alteration is limited to rebuilding any other building not more than 50% destroyed by fire or other natural disaster when the change is limited to rebuilding or replacing the structure within the preexisting footprint and height of the existing structure or within an area and height that conforms to all dimensional requirements and all construction occurs within two years of the disaster.

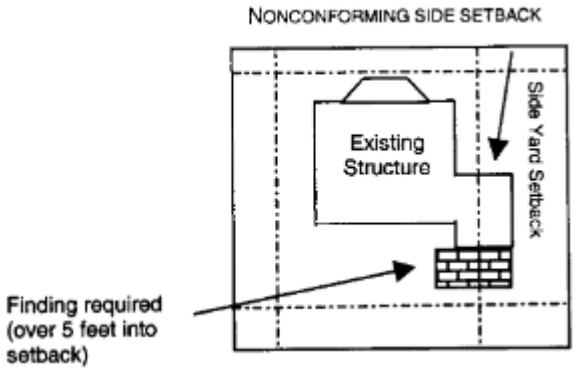
(5) As-of-right, if the expansion (vertical or horizontal) is for a residential use and does not extend either further than five feet into a required setback or further than the existing nonconforming structure, whichever is less and such extension does not create any new zoning violation (such as further reducing a setback or open space).



(6) As-of-right, if the expansion (vertical or horizontal) is for a residential use and does not extend either further into a required setback than the existing nonconforming structure, and such extension does not create any new zoning violation (such as further reducing a setback or open space), and the applicant provides written evidence satisfactory to the Building

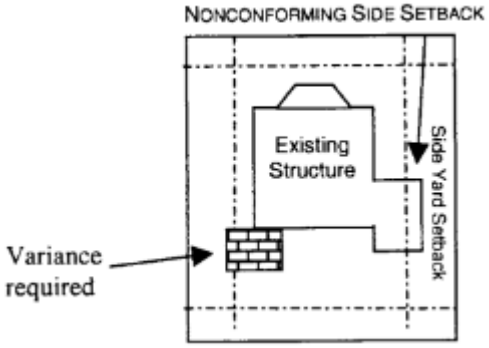
Commissioner that all owners of all parcels within 300 feet of the subject property have no objection to the expansion.

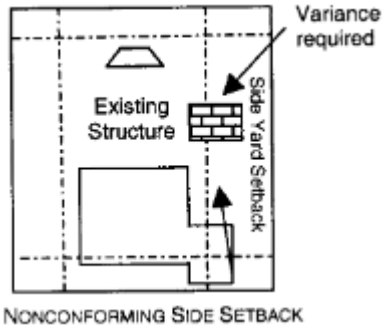
(7) With a finding from the Zoning Board of Appeals so long as the change does not involve a sign (see § **350-7** for signs) and § **350-9.3A(5)** above does not apply and when the expansion extends (vertically or horizontally), but does not increase the nonconforming nature of the property and does not create any new zoning violation (such as further reducing a setback or minimizing open space).



(8) With a finding, in accordance with § **350-9.2**, for a proposed change of use.

(9) With a variance, for any use except for a single- or two-family, when said change, extension or alteration will create any new violation of the present zoning requirements or if change is an expansion of preexisting nonconforming retail use.



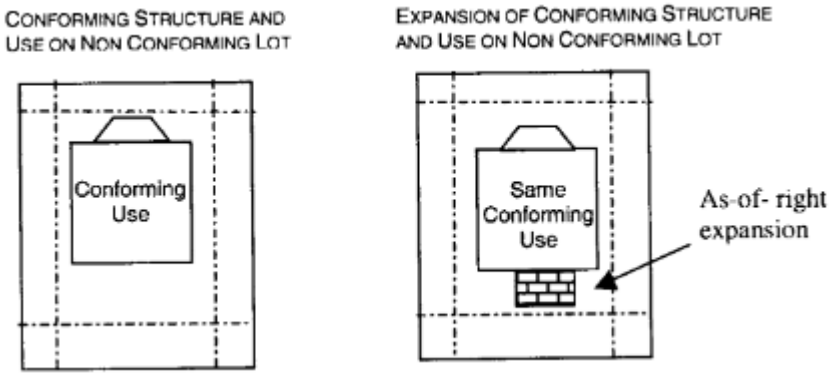


(10) With a special permit for a single- or two-family home when the Zoning Board makes a finding that the change which includes new zoning violations (such as reduction of open space, new setback encroachments or further encroachments into the setback, etc.) will not be substantially more detrimental to the neighborhood than the existing nonconforming single- or two-family structure.

(11) With a combination of a finding and variance when applicable.

B. A conforming use on a preexisting nonconforming lot: A conforming use on such a lot may be changed, extended or altered:

(1) As-of-right to the same conforming use in a conforming structure, which meets all the dimensional, and density provisions of the current zoning, except for lot size, frontage, or depth and when the lot size, frontage, and depth requirements do not change.



(2) With a finding from the Zoning Board of Appeals when said change, extension or alteration is to a different conforming use which requires the same or less minimum lot area, minimum lot width and frontage, minimum lot depth, setbacks, and parking than is required for the present use (and lot does not fully conform to the present zoning requirements for the proposed use).

(3) With a variance to a conforming use which requires a larger minimum lot area, minimum lot width or frontage or minimum lot depth than is required for the present use or creates any other new zoning violation.

(4) With a combination of a finding and variance when applicable.

C. A preexisting nonconforming lot may be changed, extended or altered:

(1) As-of-right if such change, extension or alteration to the lot does not increase the nonconforming nature of the property, only brings the lot into total conformance with the zoning requirements in existence at the time of said change, extension or alteration, or adds to the lot.

(2) As-of-right whenever a group of adjoining lots in common ownership is separated or the ownership of one or more lots changed, if each of the lots will conform to all provisions of this chapter, or if the lots are residential lots and each lot contained a principal residential structure at the time the adjoining lots came under common ownership and no changes were made to the structures or lots during the time in which the lots were commonly owned, in a way that increased the nonconforming nature of these lots.

§ 350-9.4. Single-lot exemption for single- and two-family use.

Any increase in area, frontage, width, yard or depth requirements of this chapter shall not apply to a vacant lot for single- and two-family residential use, which:

A. Has at least 5,000 square feet of area and 50 feet of frontage; and

B. Is in an area zoned for single- or two-family use (A special permit must be obtained if one is required.); and

C. Conformed to existing zoning requirements when the lot was legally created, if any; and

D. Is in separate ownership prior to the City Council vote which made the lot nonconforming, and has maintained its separate identity.

§ 350-9.5. Abandonment and discontinuance.

Any nonconforming use of a conforming structure and/or lot which has been abandoned or discontinued for a continuous period of two years or more shall be deemed extinguished and shall not be reestablished. For purposes of this section, the abandonment period shall not be considered broken by temporary occupancy, except when such temporary occupancy is for a period of 60 or more consecutive days and when said temporary occupancy involves the exercise of nonconforming use.

Planning & Sustainability ▪ City of Northampton

resilience | regeneration | design | conservation | placemaking | mobility | accessibility | community development | historic | zoning | GIS | agriculture

Carolyn Misch, AICP, Assistant Director ▪ CMisch@NorthamptonMA.gov ▪ 413-587-1287

TO: City Council Committee on Legislative Matters
FROM: Carolyn Misch, Assistant Director Office of Planning & Sustainability

DATE: March 2, 2020

RE: Ordinance 19.173 (Zoning Amendment to Non-Conformities) & Review of Public Comments February 10, 2020

As a follow up to the initial public hearing held by Legislative Matters, I would like to reiterate the key components of the proposed ordinance:

1) Creates consistency:
   a. Within 9.3-See attached (B) ordinance showing other sections of 9.3 where non-conformities are allowed by right in situations where <u>all other</u> zoning compliance is being met.
   b. Within other parts of the zoning where the codes encourage infill in existing neighborhoods (where many nonconformities exist due to the fact that lots were built prior to existence of zoning.)
   c. Eliminates a barrier and back door denial of the very projects that are encouraged throughout the rest of zoning.
2) Maintains development review of projects. This will not eliminate review criteria spelled out in the special permitting and site plan review sections. (see attached-C)
3) Provides a clear review path for all lots, ensuring that they are treated more equally.
4) OF NOTE: Frontage and depth are 2 of the components that can be non-conforming. There are several districts in Northampton that have no frontage or depth requirements. Thus is it neither inconsistent to allow these to be redeveloped by right nor does it make it impossible to utilize such lots.

Below are comments/issues raised on February 10, 2020 and staff response in italics below:

- Take your time on this ordinance because there are hundreds & hundreds of properties affected

  There may be many non-conformities within the city. However, only a small subset of all nonconformities are being addressed by this subsection of 9.3 B2. Other sections apply in other situations—see attachment B with all of 9.3 -

- Complaints raised about issues surrounding a single project (trees, parking, structure size, location, carports). Concern that the Board does not see the project the same way as the abutters.

  These are special permit criteria not related to pre-existing non-conformities. The rules would remain and the Board is charged with evaluating all aspects of a project. Further, given that

there are unique lots in parts of downtown that do not fit neatly into the confines of the zoning (non-conformities), the Board must evaluate these lots with discretion in a way that simple parcels on conforming rectangles are not evaluated. 9.3 is distinct and should not be used to counter or remove the ability for other Boards to look at this.

- Maintain the prohibition on reusing non-conforming lots as another check against development (eg to protect trees for climate resiliency)

  The zoning ordinance addresses specific issues related to tree replacement and tree protection (see attachment D) as well as traffic mitigation, design etc. These are site plan issues that have specific requirements elsewhere in the code. The city should be transparent about what development requirements are necessary to obtain permits for the public, for neighbors, for applicants, for the press. Creating back-door impediments through use of non-conformities diminishes the effectiveness of an open and transparent process.

- We need to create a streetscape and that is the biggest issue (Graves Avenue as a standard)

  Graves Avenue was never determined to be the model for the City. Regardless, streetscape standard review is a project review issue performed by the Planning Board. The Board is charged with evaluating all sites and has the discretion to consider lots that do not fit neatly into the design standards –especially those lots that predate the recently created standards. The ability to reuse parcels that do not fit into the neat package of a rectangle along a new street makes Northampton the varied and high value City that it is. Many residents have said this is why Northampton is unique. Not every home, building, parcel looks like every other one. It is not Disney and it is not a uniformly planned development like many newer communities and new subdivisions.

  Under the Special permit review, the Board must consider alternatives to strict adherence with the streetscape standards and whether there are other ways to meet this. The site plan review and special permit criteria review by the Board is an important tool that allows for creative reuse of a parcel to provide necessary housing for people of a broad range of incomes. It allows property owners to afford to stay in their homes as their family situations change, offering them means of income to maintain their homes.

  Interestingly, Graves Avenue has parcels that do not meet the minimum frontage requirements and these would be barred from changes by this ordinance if it is not modified.

- No Proponents were present-

  As you know, most people only show up to public meetings when they oppose something and not when they are comfortable with something. Further, social media is an effective tool to encourage opponents to come out. That does not mean that this is representative of the majority of the community

- These are "Bad Lots" and lots that "should not be used":

  These lots are functioning, viable lots that have been in existence for 10-50-100 years and were established based on the functionality of the times in which they were created. Zoning is a system to develop uniform standards for NEW lots to establish perfect rectangles along the

street. Many of the lots that predate 1975 are not perfect rectangles nor do they all meet the elements that are currently in the zoning.

Northampton has different frontage and depth standards in different districts and in some cases does not require any frontage. (see attached examples)

- Finally, the Committee was asked to consider a finding standard instead of allowing non-conforming lots to be allowed to be redeveloped by right.

If the Council were to consider that as an alternative, Legislative Matters might discuss either:

1) Require a Finding, with detailed review criteria for the ZBA for parcels that do not otherwise trigger a Planning Board review. Specifically, this would include any project that does not result in the construction of more than 6 new parking spaces or a project that does not involve the new construction of 2,000 square feet of floor area.

Or, a more restrictive approach, not recommended by staff, would be:

2) Require a Finding for construction of up to 6 units. This would result in applicants being asked to obtain two permits. One from the Zoning Board of Appeals and a second one, which is currently already required, from the Planning Board for Site Plan Review.

   Given that special permit is a much more detailed and difficult permit to obtain, staff would not recommend that a second Zoning Board permit for those projects that already trigger a special permit. These are projects that result in 7+ units.

In either scenario, staff would recommend that if a Finding were required for the modification of a use on a pre-existing non-conforming lot that the ZBA's review be defined and focused on the change as it relates to the non-conforming element. This creates clear guidance for the public, property owners, and prospective buyers and/or project proponents of what to expect in a hearing instead of leaving a vague standard that currently exists in 9.3 for a Finding.

For example, if an owner of a two-family on a parcel that only had 65' of depth instead of the required 75' depth applied to convert the structure to a 6-unit multifamily, the ZBA would be charged to evaluate whether the change from a 2 family to a 6 family was substantially more detrimental to the neighborhood as it relates to depth if 4 more units are added. Thus, the Board would look at the relationship of the structure(s) to the rear lot line and in relation to lots in the neighborhood that might have the required depth and to those others that might not have the right depth were adjacent to a lot that had 75' of depth. The ZBA would not look at the same elements that the Planning Board evaluates like lighting, trees, landscaping parking lot layout. (These elements and more are standardize by the zoning and must be evaluated by the Planning Board)

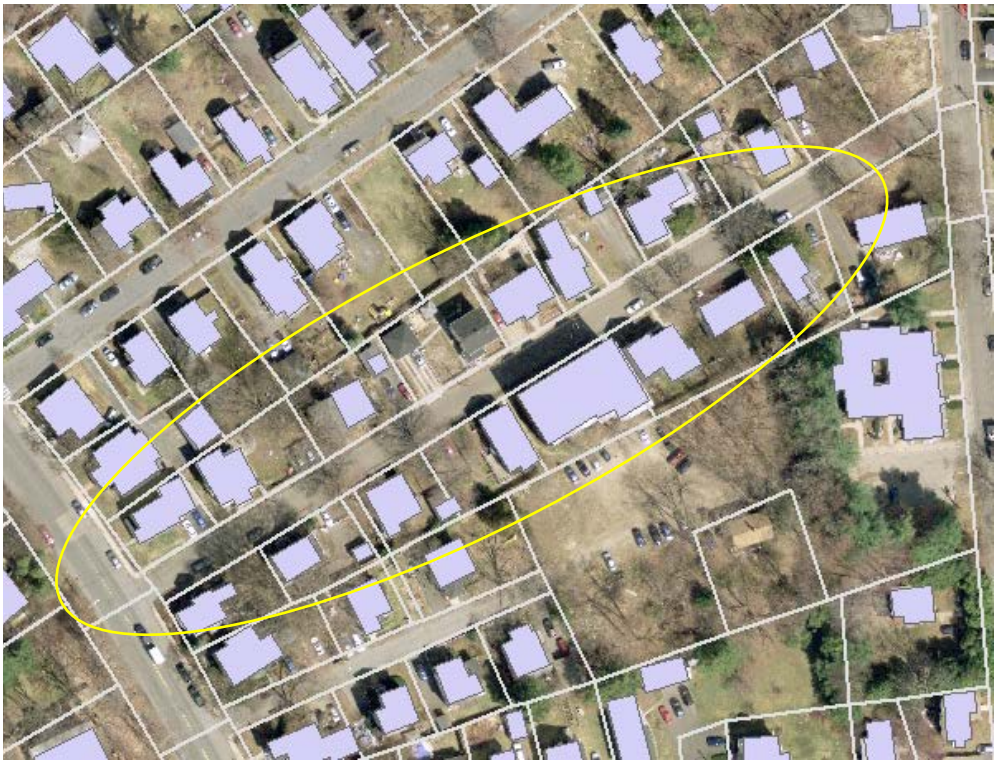
ATTACHMENTS

A. Examples in the City that show non-conforming lots

1) Lots without frontage- but substantial lot size

2) Lots with less frontage and depth but meeting minimum lot size

3) Substantial portion of the street does not meet depth because of the way that it was created.



SEE ATTACHMENTS within Separate Documents:

- B (existing 9.3)
- C(special permit criteria)
- D (significant tree)

City of Northampton, MA
Thursday, February 6, 2020

Chapter 350. Zoning

§ 350-12.3. Significant trees.

A. Legislative findings and intent. The City of Northampton finds that significant trees enhance air quality, reduce noise, reduce energy costs, create habitat, enhance aesthetics and property values, and benefit City neighborhoods. The intent of this section is to encourage the preservation and protection of significant trees during development and redevelopment projects that require a site plan approval, special permit, comprehensive permit, finding, or variance (collectively "zoning relief").

B. No person shall remove any significant tree associated with any site plan approval or any other zoning relief without a site plan approval from the Planning Board (if a site plan approval is otherwise required), or an administrative site plan approval from the Office of Planning and Sustainability if no site plan is otherwise required.

C. The removal of any significant tree after July 1, 2015, or within 12 months immediately prior to such a site plan or zoning relief, whichever is later, shall be subject to this section.

D. The requirements of this section shall not apply to:

(1) Trees located on property under the jurisdiction of the Conservation Commission.

(2) City-owned public shade trees pursuant to MGL Chapter 87.

(3) Trees associated with emergency projects necessary for public safety, health and welfare as determined by the Building Commissioner, Director of Planning and Sustainability, or Director of Public Works.

(4) Trees that are hazardous due to disease, age, or shallow roots, as determined and confirmed in writing by a certified arborist and reviewed by the City's Tree Warden.

(5) Trees affected by work performed by a utility company in maintenance of its rights-of-way or in its maintenance, repair or replacement of infrastructure that is unrelated to a development project requiring zoning relief.

(6) Trees that are approved for removal through special permit by the Planning Board.

(a) The Board may grant a special permit if, after weighing the benefits of significant trees against other community benefits created as part of the project, it determines a waiver of tree replacement to be appropriate and if at least the following standards have been met:

[1] Trees are removed in order to create net zero energy buildings (for electric and thermal use) of up to 10,000 square feet and/or to install 10,000 square feet of ground-mounted PV panels; in addition to providing one or more community benefits, which may include:

[a] Affordable housing units where 50% or more of the units are deed-restricted for affordable housing as defined in this Chapter **350**.

[b] A project that results in permanently protected open space.

(b) Building square footage shall apply to a single building footprint or to the aggregate of two or more buildings. In order to exercise a special permit granted under this section, applicants must present a building permit that has been issued for specific plans showing compliance with the net-zero standard and must construct in accordance with the special permit within one year of the issuance of a building permit. Planning Board special permit to grant a waiver from replacement within this provision is allowed only for the trees necessary to be removed in order to provide the solar access to the building(s) and/or panel array.

E. Any person removing a significant tree that is subject to this section shall satisfy either of the following conditions:

(1) Provide for replacement trees according to the following standards:

(a) Replacement trees shall be noninvasive deciduous or coniferous trees (as defined by the City's Tree List and Planting Guidelines) planted on or off site, as approved as part of a site plan or administrative site plan, or on any City-owned property with approval by the Office of Planning and Sustainability, in consultation with the City Tree Warden, unless such trees are public shade trees as per MGL c. 87, § 1,. Replacements shall be calculated so that for each inch of diameter at breast height of the removed trees there shall be no less than 1/2 inch of caliper diameter of replacement trees.

(b) Replacement trees shall have a minimum of one-inch caliper diameter.

(c) Replacement trees shall be maintained in good health a minimum of 24 months after they are planted as confirmed by the City's Tree Warden. If replacement trees are not found to be in "good health" as determined by the Tree Warden, the trees shall be replaced as directed by the Warden.

(d) Replacement trees shall either be approved street tree species as defined in the rules and regulations regarding subdivision of land or other trees that are hardy in all of the following USDA Plant Hardiness Zones: 6a, 6b, 7a, and 7b.

(2) Pay funds to the City for a tree replacement fund account that, in the Planning Board's estimate, will allow the City to plant new public shade trees on City property in accordance with the above formula.

F. Protection of significant trees during construction.

(1) Any significant trees to be retained and any replacement trees on property where demolition and/or construction activity is planned shall be protected in an area shown on the approved site plan and should follow American National Standards Institute (ANSI) A300 standards for tree care practices.

(2) The protected area shall exceed both the critical root zone and drip-line of each significant tree unless the Planning Board approves an alternate maintenance and tree protection plan submitted by a certified arborist.

(3) A certified arborist shall submit a written letter to the Building Commissioner, Tree Warden and Office of Planning and Sustainability certifying that such area has been so protected in accordance with the site plan.

G. Recordkeeping. The Department of Planning and Sustainability shall collect annual totals of the number and diameter at breast height measurements of significant trees preserved and replaced.

Special Permit Approval Required for the Following Uses by Planning Board Unless

Otherwise Noted:

• Any multifamily or townhouse project creating seven or more units in one or more phases within a

five-year period. Any such project shall comply with the following:

A. Buildings and parking.

1) The first row of buildings along a street shall face the street and add to the streetscape. There shall not be any parking, except incidental to a driveway or roadway, between the first row of buildings and the street. Parking shall be located behind buildings or designed otherwise to minimize view from the public street.
2) The area between the property and the road pavement shall be made to be pedestrian friendly, with sidewalks, street furniture, trees and other vegetation, all of which shall be in conformance with City standards. All landscaping incorporated as part of the applicant's design between the street and the building(s) shall facilitate and enhance the pedestrian use of sidewalks and other areas adjacent to the building. Such streetscape may include rebuilding by the applicant, as necessary, of granite curbs, ADA-compliant concrete sidewalks, tree belts, and drainage improvements incorporating low-impact development standards for any necessary drainage improvements triggered by these changes.
3) Buildings that abut existing residential properties shall incorporate building articulation alongside facades. Building projections shall be incorporated for any side façade that is longer than 30 feet.
4) Front facades shall have setbacks consistent with other buildings within the block or provide a different setback that is necessary to address any natural resources constraints.

B. Streets and roadways.

1) Projects shall connect to all surrounding neighborhoods with bicycle and pedestrian access to the extent possible.
a) For projects that have more than one vehicular access, driveways and roadways shall internally and externally connect to each other and dead-end streets shall be avoided whenever possible. Dead-end roadways and driveways shall never exceed 500 feet and, to the extent possible, must include a bicycle and pedestrian connection from the dead-end street to a street, common area, park or civic space.
b) For projects that have a single vehicular access, such access shall not exceed 500 feet and pedestrian access shall also be provided directly from any street to residential units.
2) The design standards for the length of dead-end streets, protection of natural features, sidewalks, wheelchair ramps, landscaping, utilities, and the construction method and materials for water lines, sanitary sewers, storm sewers, fire protection, sidewalks, private roads and other infrastructure shall be those set forth in Chapter 290, Subdivision of Land. These standards shall apply even for private roadways and driveways that are not part of a subdivision, unless waived by the Planning Board.
3) Driveways and private roadways shall be designed to function as private alleys, or shared streets with pedestrians and cyclists, and engineered to keep speeds below 15 miles per hour, or yield streets with separate sidewalks as shown in the subdivision regulations. Such sidewalks shall connect to sidewalks along adjacent streets.

4) Vehicular access shall connect to surrounding streets as appropriate to ensure safe and efficient flow of traffic within the surrounding neighborhood and to mitigate increases in traffic on nearby streets.

5) Preexisting paths historically used as bicycle and pedestrian trails shall be preserved to the extent possible and marked with appropriate signage.

C. Park space.

1) All projects shall include a park/common area fully designed and constructed to be integrated into the project, which area shall be easily accessible and available for residents of the project. At a minimum, this space shall be 300 square feet or 30 square feet per dwelling unit of buildable land area, whichever is greater.

2) All such space shall be contiguous unless waived by the Planning Board upon finding that it is in the public interest and consistent with the intent and purpose of this section.

D. Environment and energy. Buildings shall meet one of the following environmental standards:

1) Home Energy Rating System (HERS) rating for the building envelope at least 25% lower than the current municipal standard at the time the special permit is requested, but in no event shall the HERS rating be greater than 47 for units of 1,200 square feet or less, and no greater than 41 for units larger than 1,200 square feet. Alternatively, for units of 1,200 square feet or less, the Planning Board may consider a comparable energy standard to the HERS rating of 47 after consultation with the Building Commissioner.

2) U.S. Green Building Council LEED New Construction Gold or Neighborhood Development Gold Certified.

E. Size, access and affordability.

1) Buildings shall meet one of the following standards:

a) 11% of the units shall be “affordable units” as that term is defined in § 350-2.1 of the Code of the City of Northampton; or

b) Contain 25% or more of the units no larger than 1,200 square feet gross floor area.

2) Equal access. All projects shall provide equal access to all building amenities, park and civic space and public entrances to buildings to residents of both affordable and non-affordable units.

F. Internet connectivity. All projects that include infrastructure making internet connectivity available shall do so without differences in quality, capacity or speed to residents of both affordable and non-affordable units.

City of Northampton
MASSACHUSETTS

In the Year Two Thousand Nineteen

Upon the Recommendation of Mayor David J. Narkewicz and Planning & Sustainability

An Ordinance of the City of Northampton, Massachusetts, providing that the Code of Ordinances, City of Northampton, Massachusetts, be amended by changing Section 350-9.3 B1& 2 to be consistent with other sections of 9.3.

Be it ordained by the City Council of the City of Northampton, in City Council assembled, as follows:

Amend as shown

§350-9.3 Change, extension or alteration of legally preexisting nonconforming structures, uses, or lots.

Legally preexisting nonconforming structures, uses, or lots may be changed, extended or altered as set forth below, except as noted in § 350-9.2A above. If a use is not eligible under one subsection, proceed to the next subsection.

B. A conforming use on a preexisting nonconforming lot: A conforming use on such a lot may be changed, extended or altered:

(1) As-of-right to the same or different conforming use in a conforming structure, which meets all the dimensional, and density provisions of the current zoning, except for the pre-existing non-conforming dimensional elements. ~~that are pre-existing non-conforming such as lot size, frontage, or depth~~ [AS1]~~and when the lot size, frontage, and depth requirements do not change.~~

~~**(2)** With a finding from the Zoning Board of Appeals when said change, extension or alteration is to a different conforming use which requires the same or less minimum lot area, minimum lot width and frontage, minimum lot depth, setbacks, and parking than is required for the present use .(and lot does not fully conform to the present zoning requirements for the proposed use).~~

Renumber subsequent subsections based upon the deletion above.

City of Northampton
MASSACHUSETTS

In the Year Two Thousand Nineteen

Upon the Recommendation of Mayor David J. Narkewicz and Planning & Sustainability

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

An Ordinance of the City of Northampton, Massachusetts, providing that the Code of Ordinances, City of Northampton, Massachusetts, be amended by changing Section 350-9.3 B1& 2 to be consistent with other sections of 9.3.

Be it ordained by the City Council of the City of Northampton, in City Council assembled, as follows:

Amend as shown

§350-9.3 Change, extension or alteration of legally preexisting nonconforming structures, uses, or lots.

Legally preexisting nonconforming structures, uses, or lots may be changed, extended or altered as set forth below, except as noted in § 350-9.2A above. If a use is not eligible under one subsection, proceed to the next subsection.

B. A conforming use on a preexisting nonconforming lot: A conforming use on such a lot may be changed, extended or altered:

(1) As-of-right to the same or different conforming use in a conforming structure, which meets all the dimensional, and density provisions of the current zoning, except for the elements that are pre-existing non-conforming such as lot size, frontage, or depth and when the lot size, frontage, and depth requirements do not increase based on the proposed change.

~~**(2)** With a finding from the Zoning Board of Appeals when said change, extension or alteration is to a different conforming use which requires the same or less minimum lot area, minimum lot width and frontage, minimum lot depth, setbacks, and parking than is required for the present use .(and lot does not fully conform to the present zoning requirements for the proposed use).~~

Renumber subsequent subsections based upon the deletion above.

Etheredge & Steuer, P.C.
ATTORNEYS AT LAW
64 GOTHIC STREET
NORTHAMPTON, MASSACHUSETTS 01060

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▲Also Admitted in California

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ed@noholaw.com
ss@noholaw.com

November 18, 2019

RECEIVED
NOV 20 2019
CITY CLERKS OFFICE
NORTHAMPTON, MA 01060

Ryan R. O'Donnell, City Council President
City of Northampton
210 Main Street
Northampton, MA 01060

RE: 3 Wright Avenue
Zone Change Petition URC to UB

Dear Council President O'Donnell:

On behalf of Gretna Green Development Corp., owner of the property at 3 Wright Avenue (39A-019-001) and the enclosed Petition For A Zoning District Change signed by ten registered voters for the City of Northampton, pursuant to G.L. c. 40A, §5 to initiate an amendment to the Northampton Zoning Map.

The requested change to the Zoning Map is to include the property at 3 Wright Avenue in the abutting GB zoning district from its current regulation in the URC zoning district. The property at 3 Wright Avenue is presently a vacant lot. The owner, Gretna Green Development Corp. owns the abutting property at 118 Conz Street (Map 39A, Lot 20) which is occupied by its tenant, NETA. The lots have "merged" for zoning purposes.

Gretna Green wishes to develop the lot as additional parking for the property at 118 Conz Street operated by NETA and requires the zoning district change to apply for site plan review for additional parking for NETZ.

Your earliest action to move this process forward is much appreciated.

Sincerely,

Edward D. Etheredge

EDE/kap

cc: Carolyn Misch, Sr. Planner
Councilor James Nash

GRETNA GREEN DEVELOPMENT CORP.
One Monarch Place, Suite 2500
Springfield, MA 01144

October 30, 2019

Ryan R. O'Donnell, City Council President
City of Northampton
210 Main Street
Northampton, MA 01060

RE: 3 Wright Avenue
Zone Change Petition URC to UB

Dear Council President O'Donnell:

Gretna Green Development Corp. is the owner of the property at 3 Wright Avenue (39A-019-001), and pursuant to G.L. c. 40A, §5 by this letter requests the Northampton City Council to initiate an amendment to the Northampton Zoning Map.

The requested change to the Zoning Map is to include the property at 3 Wright Avenue in the abutting GB zoning district from its current regulation in the URC zoning district. The property at 3 Wright Avenue is presently a vacant lot. The owner, Gretna Green Development Corp., owns the abutting property at 118 Conz Street (Map 39A, Lot 20) which is occupied by its tenant, NETA. The lots have "merged" for zoning purposes.

Gretna Green wishes to develop the lot as additional parking with the property at 118 Conz Street which is operated by NETA and requires the zoning district change to apply for site plan review for additional parking for NETA.

Your earliest action to move this process forward is much appreciated.

Sincerely,

Paul C. Picknelly,
President and Treasurer

PETITION FOR AMENDMENT
OF THE ZONING MAP

To: Northampton City Council
Northampton Planning Board

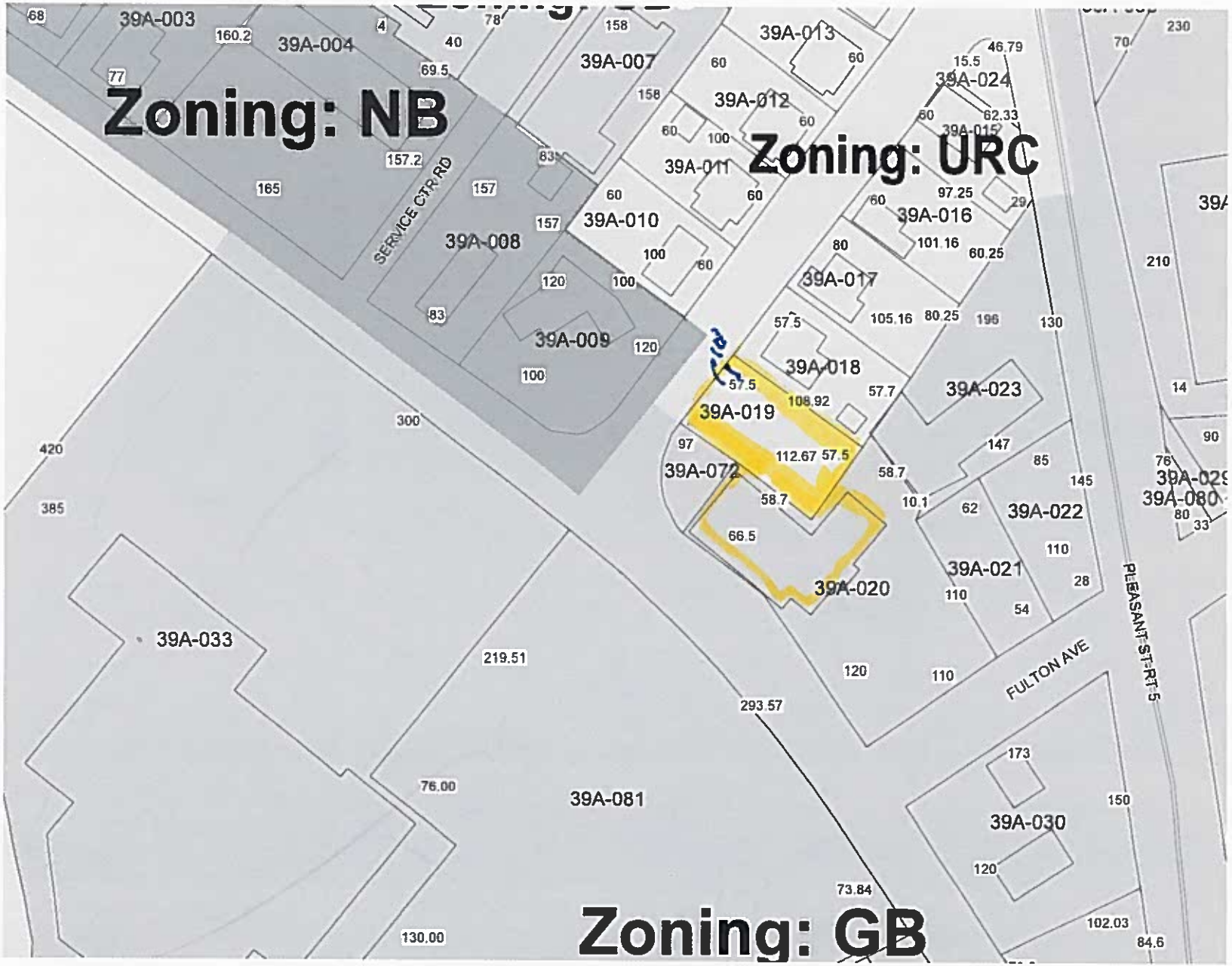
Pursuant to G.L. c. 40A §5, ten registered voters in the City of Northampton, petition the City Council to change the zoning district for the vacant lot at 3 Wright Avenue from the current zoning in the URC district to the adjoining GB zoning district.

"To amend the Zoning Map of the City of Northampton
to include the property at 3 Wright Avenue, Map 39A, Lot 19 in the
GB zoning district (change from URC) to match the
adjoining Conz Street property owned
by the same owner Gretna Green Development Corp.
in the GB zoning district".

Respectfully Submitted

Ten Registered Voters:

Print Name	Signature
Edward D. Etheredge	Edward D. Etheredge
Shelley Steuer	Shelley Steuer
Sharianne Walker	Sharianne Walker
Nancy Reeves	Nancy Reeves
Mary Ann Jenkins	Mary Ann Jenkins
Scott A King	Scott A King
Robert G. Ghazey	Robert G. Ghazey
Rebecca L LaRocque	Rebecca L LaRocque
E. Spencer Gharzy Bates	E. Spencer Gharzy Bates
Frederick Reist	[illegible]
Nicholas Grimaldi	[illegible]
Darrie A. Bluemer	Darrie A. Bluemer


Zoning: NB
Zoning: URC
Zoning: GB
39A-003
39A-004
39A-007
39A-013
39A-024
39A-012
39A-015
39A-011
39A-010
39A-016
39A-008
39A-017
39A-009
39A-018
39A-023
39A-019
39A-072
39A-022
39A-021
39A-020
39A-033
39A-081
39A-030
39A-029
39A-080
SERVICE CTR RD
FULTON AVE
PLEASANT ST-RT 5

City of Northampton
MASSACHUSETTS

In the Year Two Thousand Twenty

Upon the Recommendation of Mayor David J. Narkewicz and Planning & Sustainability

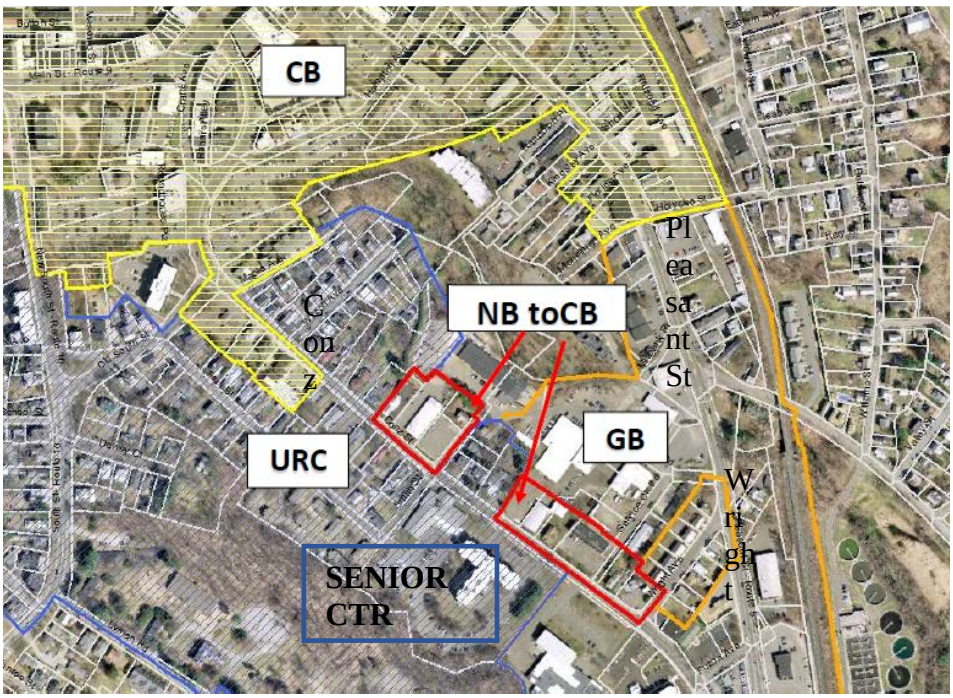
20.004 An Ordinance to Rezone Nine Conz Street Parcels from NB to CB

An Ordinance of the City of Northampton, Massachusetts, providing that the Code of Ordinances, City of Northampton, Massachusetts, be amended by changing Section 350-3.4 Zoning Map to rezone some parcels in Neighborhood Business to Central Business.

Be it ordained by the City Council of the City of Northampton, in City Council assembled, as follows:

Amend the Zoning Map as shown

Rezone Map Id's along Conz Street from Neighborhood Business to Central Business:
32C-102
32C-104
32C-105
32C-131 NB Portion Only
39A-002
39A-003
39A-004
39A-008
39A-009


CB
NB toCB
GB
URC
SENIOR CTR
Pleasant St
Wright

City of Northampton
MASSACHUSETTS

In the Year Two Thousand Twenty

Upon the Recommendation of Mayor David J. Narkewicz and Planning & Sustainability

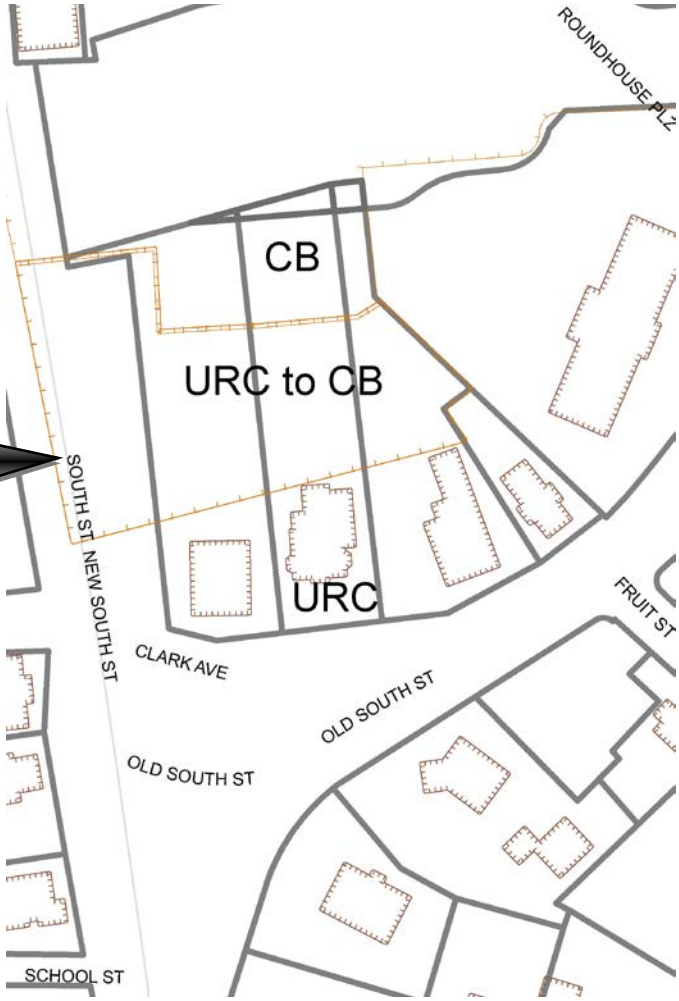
20.005 An Ordinance to Amend the Zoning Map on Old South St. and Clark Ave.

An Ordinance of the City of Northampton, Massachusetts, providing that the Code of Ordinances, City of Northampton, Massachusetts, be amended by amending Section 350-3.4, the Zoning Map, to change the boundary between Central Business (CB) and Urban Residential-C (URC) zoning districts.

Be it ordained by the City Council of the City of Northampton, in City Council assembled, as follows:

Amend
{§ 350-3.4 Zoning Map to expand the limits of Central Business (CB) zoning district behind the first set of homes on Old South Street and Clark Avenue, on a portion of Map ID 38A-222, 223, and 224, as shown below.

This change would keep the homes on Old South Street and Clark Avenue within the Urban Residential C (URC) zoning district but would expand the CB slightly in the rear yards of those homes.}



City of Northampton
MASSACHUSETTS

In the Year Two Thousand Twenty

Upon the Recommendation of Mayor David J. Narkewicz and Planning & Sustainability

20.006 An Ordinance

to Amend Zoning Map to Add New Smart Growth Overlay District at Laurel Street

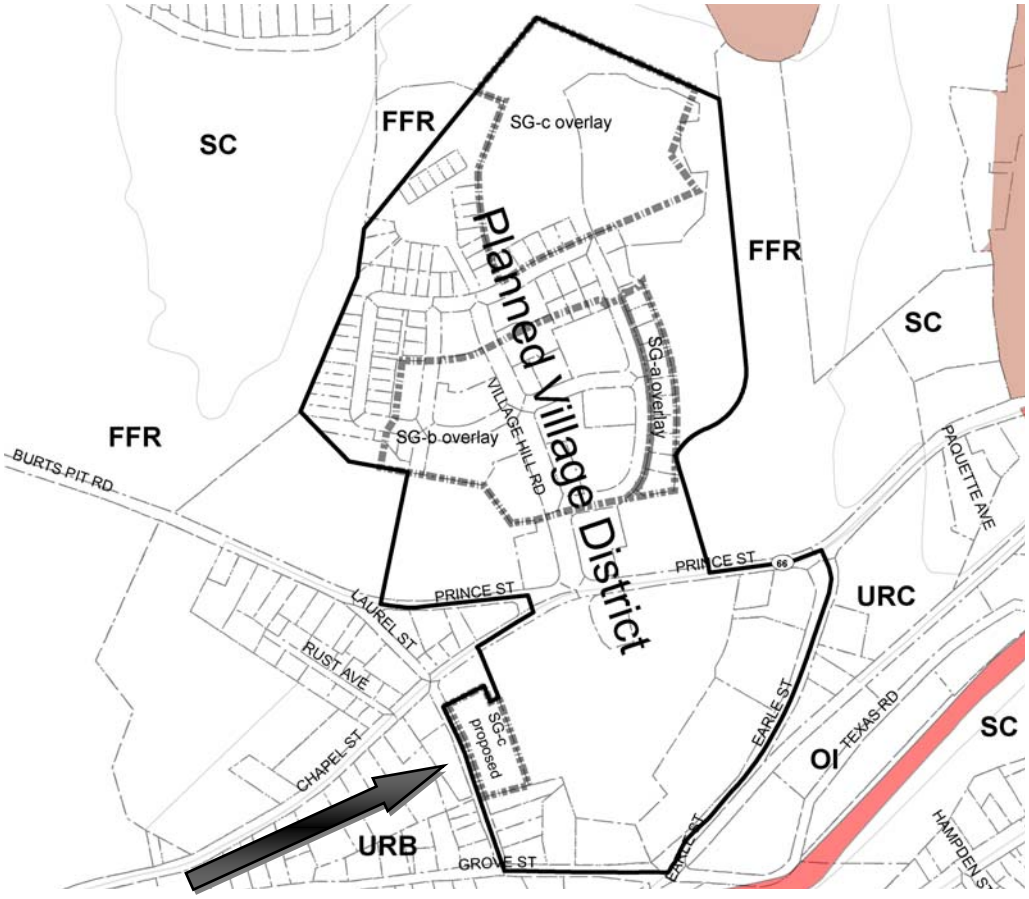
An Ordinance of the City of Northampton, Massachusetts, providing that the Code of Ordinances, City of Northampton, Massachusetts, be amended by amending Section 350-3.4, the Zoning Map, to add a new Smart Growth-c overlay district.

Be it ordained by the City Council of the City of Northampton, in City Council assembled, as follows:

Amend

{§ 350-3.4 Zoning Map to add additional Smart Growth-c overlay district (SG-c), in addition to the existing three SG overlays, overlain on the existing Planned Village District (PV), on Map ID 38A-049-001, as shown below.

SG-c does not increase the allowed density (the existing PV has no minimum lot size, frontage, width, depth, or setback requirements) but does allow Commonwealth Smart Growth Overlay bonus to the City for affordable housing. Map 38A-049 has already been dedicated to affordable housing by the City's State Hospital reuse planning and the resulting state legislation.}



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: February 10, 2020, Time: 5:00 pm
Location: City Council Chambers, 212 Main St., Northampton, Massachusetts

1. Meeting Called to Order: At 5 p.m., Chair Dwight called the meeting to order. He explained the procedure he would use in conducting the public hearings. The hearings are to discuss possible modifications to the zoning ordinance – an ordinance related to wireless antennas and an ordinance to allow a change from one conforming use to another without a Finding. When members deliberate, they will be discussing the zoning as it applies generally and not as it relates to a specific project. He expressed the understanding that many of those present were there in connection to a specific project and said this does not preclude their testimony. The committee may vote to forward the ordinance with either a positive, negative or neutral recommendation or continue the hearing if more information is needed.

2. Roll Call
On a roll call, the following councilors were present: Councilor Dwight, Councilor Maiore, Councilor Sciarra and Councilor Thorpe. Also present were City Councilor James Nash and City Solicitor Alan Seewald.

3. Announcement of Audio and Video Recording
Councilor Dwight announced that the meeting was being audio and video recorded for broadcast by Northampton Open Media (NOM).

4. Approve Minutes of January 13, 2020 Organizational Meeting
Councilor Sciarra moved to approve the minutes of January 13, 2020. Councilor Thorpe seconded. The motion passed unanimously 4:0.

5. Public Comment
Councilor Dwight opened the floor to general public comment.

Christine Nolan of Northampton thanked councilors for serving the city. Their decisions are important to the City of Northampton and alter lives, she observed. She is speaking in opposition to the relaxing of zoning laws that may negatively impact residents while enhancing the efforts of developers. Her understanding is

that the city wants to make development easier to accomplish in the interest of infill and density, and that makes developers happy. But the city also has a responsibility to consider the good people who are neighbors of these developments. Residents who have been city dwellers and taxpayers for decades; many of them are here. Councilors don't hear from them that often because, in general, they have felt secure that the city is watching out for them - the homeowners. She is sorry to say that that safety is eroding. She urged them not to relax the zoning laws. She wants them - their public servants - to have their backs and to continue to weigh and evaluate carefully each and every building project that comes before them. No two are the same no matter the size, nor will the impact be the same.

Mark Moggio of 445 Spring Street in Leeds said he wanted to ask that the committee this evening really weigh its vote carefully or not vote this evening. This isn't an 'all or nothing' ordinance, he suggested. He has sent emails to each and every one of them today and would like them to look at those emails closely. There are some great alternatives that could be a middle-of-the-road way to do this, instead of cutting out part of this ordinance, particularly having to do with parking, the size of parking lots, etc. He said to please look over those emails and delay a decision.

"Let's take our time" and really think this through, he urged.

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

5. Public hearings on proposed zoning changes

Councilor Dwight noted that public hearing notices were published on 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 Dwight read the version of the ordinance as amended by the Planning Board.

Councilor Sciarra moved to open the public hearing. Councilor Thorpe seconded. The motion passed unanimously 4:0. The public hearing was opened at 5:13 p.m.

Councilor Dwight said he would begin by hearing from proponents.

Senior Planner Carolyn Misch gave a Powerpoint presentation. She began by emphasizing that no matter what happens to the ordinance tonight, the Special Permit criteria for seven units or more will not change. The Sustainable Northampton plan was adopted in 2008. She reviewed the plan's guiding principles, including supporting vibrant downtowns and walkable communities and creating transportation and housing choices. She noted that any land use plan is a policy document intended to guide public and private actions. The idea behind the plan is that regulations should match up to the plan so that it is a tool for implementation purposes.

Ms. Misch summarized Northampton's zoning history. Zoning is a land use tool that directs growth, a way of dividing up the community into geographic areas where different uses are allowed. It dictates the types of uses and where they're allowed and might include things like parking, open space, lot size, landscaping, etc. The first zoning ordinance was adopted in Northampton in 1926 around the time zoning was being adopted throughout the country. Northampton was already built out quite extensively by that time, and it was very rudimentary when first adopted.

From 1926 to 1975, they continued to build as a community. In 1975, 'modern zoning' was adopted. Another 50 years of development had taken place, so, at that time, language was added to spell out how to address nonconformities; i.e. - existing development that did not meet current standards.

After the Sustainable Northampton Plan was adopted in 2008, a committee was established to look at the zoning in place and make changes to more readily match policy documents and goals for the city moving forward. That committee was charged with making clear rules to direct development and removing impediments to projects that met those rules. The idea was to be very clear about the types of projects that could be developed and what Northampton wanted as a community. On the heels of that, between 2011 and 2013, zoning amendments related to residential development were adopted meant to achieve greater sustainability in the way the community functions and to address goals for protection of environmentally-sensitive areas. It was a long, deliberative process to come up with applicable criteria, and they haven't even finished the work started in 2011 - 2013 in terms of trying to match zoning to the city's goals and objectives. Section 9.3 B2 is sort of a relic of the treatment of pre-existing nonconforming structures that was set up in state statute and mirrored in local zoning. It is really inconsistent with the way planners have tried to establish clear standards in modern zoning since it rejects projects that may meet current standards yet don't comply with the finding criteria. The hard stop of not allowing uses other than single-family homes to move forward if they were pre-existing nonconforming was reflective of zoning in the 60's and 70's when, even in the downtown area, multi-family homes were discouraged. Zoning used the provision of required parking as sort of a stand-in for saying, "we don't want more dense development."

Section 9 deals with nonconforming structures, uses and lots; it's not just the little subsection in front of them. It's remained substantially the same since the 1970's and was established long before zoning contained specific criteria for new development. Zoning now has requirements like open space and buffers, traffic mitigation, tree replacement and protection, landscaping and lighting, etc. specifically for multi-family housing adopted in more recent years. Design criteria were created through lots of planning, lots of thought and lots of time by community members.

The idea is to allow change on older nonconforming parcels so long as they continue to meet new standards adopted by City Council related to two-family, three-family and multi-family homes. The purpose of the amendment is to make zoning further consistent with the city's approach since 2008 to match plan goals and not have an effect on other review processes already in place but not duplicate those or create another impediment to reaching the goals the city has established.

Ms. Misch reviewed a flow chart for projects. Anything over 2,000 square feet that is not a single-family home automatically triggers Planning Board review, she advised.

At the conclusion of her presentation, Councilor Dwight opened the floor to comments from opponents.

Nancy Denig of 34 Dewey Court said she wanted to respond to the very first caveat presented by Ms. Misch; i.e., that the proposed change doesn't change special permit criteria for projects under seven lots. [Editor's note: Misch actually stated that special permit criteria for projects ***over*** seven units would not change.]

The neighborhood they are concerned with in particular is Dewey Court, but they are aware this change will affect other properties in the city. They looked at the project from the point of view of special permit criteria. She'd be comfortable with various things if she sensed that there was an awareness that the project does

not meet special permit criteria. She wrote a letter summarizing how the project does not meet special permit criteria only to be told each criteria either did not apply or meant something else. “I’m not assured at all that special permit criteria are going to protect the quality and character of our neighborhoods.”

John McLaughlin, an attorney representing Mark Moggio, spoke in opposition. Mr. Moggio has the support of almost all his neighbors on Dewey Court and has heard throughout the city from other neighbors in opposition to proposed projects, he related.

This is not an issue of property owners vs. renters and not a question of property rights or property values, he observed. The development “is going to hurt everybody in the neighborhood” whether they rent or own, he claimed. The issue pertains to development that will increase on-street parking which is already bad and cause traffic problems that are already bad.

They are here because he filed a law suit on Dewey Court claiming that the developer received a finding he should never have received. The case is now being held in abeyance while the parties see what happens with the law. Obviously, if they change the law, he is going to lose the lawsuit.

Ms. Misch talked about finding statutes being ‘relics.’ Just so they know, every city around has finding ordinances and they would be the only city without them; they would be an anomaly, Attorney McLaughlin pointed out.

Some nonconforming lots are worse than others, Attorney McLaughlin noted. The lot on Dewey Court has zero frontage and only has access to the road through the pavement into it.

They are proposing doing away with findings altogether, he presented. The law has been that if someone is using a lot that is nonconforming and changes it, it can’t be made substantially worse. Also, to qualify for a finding, the new use can’t be more intensive. He can understand their wanting to take some of those elements out. Many towns don’t have the ‘substantial detriment’ rule *and* that it can’t be more intensive.

It is not innovative to simply say ‘yes’ to every developer. [By removing the finding requirement], they are not giving the ZBA the power to look at every situation and decide whether a huge apartment building is a good use or not. With a finding, local government has more power to protect the neighbors.

This relates a lot to parking, he continued. Right now if someone comes in for a special permit they are going to deal with parking based upon what are truly antiquated rules - the parking regulations. The type of developments now on board are apartments within apartments. Each one of those bedrooms – on Dewey Court 30 bedrooms - are potentially separate units. They are going to have 30 cars there. When planners look at the regulations for special permits, they are going to say developers meet the regulations when the reality is much, much worse because each of the bedrooms is a separate apartment. It looks like some of the developers are saying, ‘Look, they do this in Boston . . . they do this in Brooklyn’. If it works there, why can’t we do it here?

The main reason it doesn’t work here is that, here - like it or not - people are going to bring their cars. They don’t in downtown Boston.

With the new law being proposed, someone could come in on a horrible lot, build an entire apartment complex, get a special permit based on outdated parking regulations and it would be ruinous for the

neighborhood for on-street parking and traffic. The ZBA would no longer have the ability to say, “No, that doesn’t work.” The ZBA has more power than the Planning Board would on a special permit, he contended. He can understand they might want to take out some of the language, but there is no reason at all to take away the power of their own board to make decisions. To say, “No more findings,” Northampton would be an anomaly in the area and it would set them up for development that would hurt everybody, he stressed.

He doesn’t think they are here because of any city plan, they’re here because he brought the lawsuit, he concluded.

Councilor Jim Nash of 18 Montview Avenue noted that the project is in his ward. Part of why they’re here is that, when people don’t like a development, they look for a lever to push on to stop it. Over on North Street they saw it around wetlands, here on Dewey Court they are seeing it around the frontage issue.

He was part of the Zoning Revision Committee that made recommendations to the Planning Board. “Our zoning is super developer-friendly,” he asserted. By and large, they worked to make sure zoning is very developer-friendly so that infill could happen. One theme committee members really stuck to throughout their discussions was the idea of streetscape. He pointed to Graves Avenue as a model of the dimensional guidelines adopted for the Urban Residential C (URC) district. Buildings are close to the street, there is a sidewalk and tree belt, and it is walkable. This is reflected through all the different urban residential districts, he pointed out.

With this particular project, they’re here today in his mind because the guidelines they worked very hard on for over two years for projects creating seven or more units were not really adhered to through the planning process. When he looks at the proposed plans, he doesn’t see granite curbs, he doesn’t see sidewalks and he doesn’t see a relationship between the structure and the street. Thus, they have people pushing back and they have found a lever. It does make sense to him to remove this check in the process but it doesn’t because they’re here today because of what he views as a misapplication of zoning to start out with.

He knows he has a number of constituents in the room and they’re thinking about Dewey Court. But this applies to numerous properties. St. John’s Cantius Church, a project approved a few weeks ago with a 10-foot setback, got a finding for condominiums proposed by O’Connell Development. It is zoned Central Business (CB) which requires a 30-foot setback. What’s dawning on him is that, since it’s CB, what if the owners want to go from residential to retail and make Thornes II there? If developers are allowed to just switch uses, how are they going to stop that?

He is going to be very leery as they move forward about all of the ramifications across the city.

His last point is that Dewey Court did not need to go to the ZBA, he continued. All they needed to do is create more street scape. If they extended the street, created sidewalks and created a cul-de-sac, they could have gotten 50 feet of frontage. With a cul-de-sac on the roadway, they could get 16 units; they could get the townhouses in there. They didn’t need to go this route; they could have done it by right. Maybe they couldn’t have proposed the building they have right now, but there was another way to do this.

He asked Attorney Seewald to explain in plain English 350-9.3 B1 and B2.

Ms. Misch is here to explain the changes as they are not legal issues, they are zoning changes, Attorney Seewald noted. However, as he understands 9.3 B1, prior to this proposal, a change from one conforming

use to another that required additional elements such as parking was not possible. The real estate they have is all the real estate they're ever going to have, so it's treated differently in the law than other forms of property, he explained. For example, the ability to convey property in perpetuity has been struck down by the courts. Similarly, uses that can never be changed are disfavored because times change and people need to be able to change uses. What is being proposed is allowing changes from one conforming use to another conforming use as long as the new conforming use conforms to dimensional requirements applicable to it other than the elements in which it is already deficient.

Using Dewey Court as an example, the proposal as he understands it would not be creating any new nonconformities.

A finding is the least stringent review of any review process in the ordinance, Attorney Seewald continued. If a special permit is required, all of the issues about compatibility with the neighborhood, etc. are subsumed in the special permit criteria. It is a much more detailed look at the proposed use. The finding criteria that a project not be *substantially* more detrimental is a very relaxed standard, less exacting and less arduous than the criteria applied to special permits. The argument is that if someone is going through a special permit process, there is no need to go through a finding which is less exacting.

Ruth Von Goeler of Northampton echoed the request for members to take their time making a decision and not rush into this. She is hearing a lot about it being a balance between wanting to make things easier for developers vs. wanting to protect residents. She encouraged the committee to give everybody time to think it through. It's an important zoning change that gives residents a little additional protection.

Lilly Lombard said she wanted to build off what Ms. Von Goeler said. She mentioned the ordinance relative to large-scale ground mounted solar arrays. When it came before LM, it wasn't quite cooked. Thanks to Councilor Murphy who's in the room and Councilor Klein, the parties got together and discussed ways in which it could be tweaked. They have heard from a land use attorney that there are other things they can consider. She worries when she hears from a land use attorney with a lot of familiarity with development in other communities that Northampton is very liberal. "I want us to pause," she confirmed. She encouraged councilors to continue the hearing and take time to consider the options suggested by Mr. Moggio rather than just taking up or down action today.

Ms. Lombard acknowledged they went through a community process to decide how they wanted human settlements to occur, but, "we have to keep evolving and we have to keep learning," she proposed. As someone on the Public Shade Tree Committee (PSTC) who is studying the decline of the tree canopy over time and following scientific research about how critical a tree canopy is for mitigating and building resilience around climate change, one of the things that got her engaged in this project is that it puts at minimum five significant trees at risk. Given what she is learning about the value of their urban shade tree canopy and given how liberal they seem to be about promoting development and limiting disincentives to removing trees, she thinks they need to keep evolving as a community about what infill looks like.

"I don't think the community conversation is over. I think we need to keep talking about what it means to have a climate-friendly, affordable, equitable, safe community in an era of rapid climate change."

Kate Lavoie of Northampton echoed what Lilly and Ruth said. Her concern from what she has heard tonight is that the ordinance change would just be a 'yes or no' vote. She thinks it deserves more discussion and more input from the community. She echoed requests to take a pause.

Farnsworth Lobenstine noted that, in Planning Board, Ms. Misch acknowledged there are hundreds and hundreds of pre-existing nonconforming lots. If there are hundreds and hundreds, he believes they need more time to carefully consider if this proposal really meets the needs of the city. Given the complexities, he suggested they give themselves the ability to consider additional options and gather more information.

Elaine Jandu of Northampton echoed the fact that there are a lot of questions. Nobody feels comfortable with the new ordinance as proposed. She asked councilors to give the discussion more time.

Mr. Lobenstine alluded to some alternative proposals that he didn't think Attorney McLaughlin presented clearly enough. Specifically, councilors could choose to say that three or fewer units not be required to get a finding or that six or fewer units be treated differently than seven or more. Their concern is that the ZBA still be required to review projects of seven or more units, he clarified. This is a way the zoning ordinance could better protect neighborhoods and the town as a whole, he suggested.

The Dewey Court project has been portrayed as a 'Hail Mary' with neighbors using a technicality to prevent it from moving forward, but this is far from the case, Ms. Denig observed. As she said at the beginning, many special permit criteria should be applied to this project. In particular, 75% of the project is within wetland buffer zone, major trees are proposed to be removed and, rather than an ideal street scape, car ports are proposed to back up against abutters. Her view as an abutter would be looking at the back of a car port. Also the character of the building, every single criteria is not met, she contended. It is not one little glitch but a whole series of issues neighbors have with the proposal, she stressed.

Regarding the special permit process, obviously there are glitches with that process as well, Mr. Moggio attested. That's what brought them here; they weren't happy with the way that process went. Because of the finding decision, they were able to stop the project. The special permit process has a lot of glitches and, obviously, is subject to Planning Board discretion. Members take recommendations from planners; they're a volunteer board and not necessarily educated on the criteria. The special permit criteria have a lot of flaws or at least aren't always followed by the Planning Board from what they've seen so far, he submitted.

Councilor Dwight offered Misch the opportunity to respond.

Planners have done extensive work on parking requirements in the last several years, Misch reported. They have looked at data on car ownership, and it is much lower downtown than in outlying areas. This is taken into account in the parking requirements.

Regarding potentially allowing development to move forward with a finding instead of by right, six subsections in Section 9.3 presently allow lots to move forward by right, she pointed out. Adding another layer of review with a finding that is not nearly as detailed as the Planning Board review is really just adding another permit without necessarily adding value. Her suggestion would be requiring a finding for projects that don't trigger any other kind of review.

There has been a lot of conversation in the city about creating new impervious surface and parking that's not going to be used, she continued. She cautioned against requiring more parking in areas where they know they have fewer cars than in other areas.

A lady who didn't identify herself asked if a finding is a public hearing process. Members said yes.

With respect to Northampton being developer-friendly, the goal of the city has been to spell out requirements for development with the understanding that permits will be granted if applicants meet the criteria. Planners are very specific about the criteria they want so it makes it easy [only] if applicants are willing/able to comply, Ms. Misch clarified.

Scott Reinhart of Northampton noted that one thing that kept coming up is that the city has a mechanism in place to allow this to be taken out earlier; i.e. - the Zoning Board of Appeals. Section 350-10.1 (Special permits) lists seven criteria that must be met. Five out of the seven were not met, including parking, traffic, impact on the neighborhood, etc., he contended. When they asked if they could slow this down and review that process, it was a very contentious meeting. If they spell out that developments must meet these seven requirements and then five of them don't count, that's really not very clear, he asserted.

They asked for a traffic study; that was turned down, he asserted. They are talking about putting a huge building - 32 units - at the end of the street, more than the number of houses on the street now. He and his neighbors are not against development, but a three-story, 32-bedroom unit is not responsible for that neighborhood, he observed. That is why they ask that people just slow down and look at the whole picture.

One criteria is that applicants cannot put in a development that is impactful to people with disabilities, Mr. Reinhart added. Several people in the neighborhood are legally blind, himself included. This was brought to the board's attention but was brushed off. It is the middle of the winter, so why can't they get a traffic study? He asked. The traffic study they used is antiquated, he charged.

Before building this "huge monstrosity," he advised 'tapping the brakes.'

Luka Madden of Northampton said she'd like to offer a different perspective. She is a 30-year old professional who works in Westfield and lives in Northampton. All of her friends are also 30-year old professionals, and none of them can afford to rent their own place. They all rent with multiple people and share apartments. This is who is moving into the community. They all have cars because it's not feasible to live in this community without one. She has friends who live at 155 Pleasant Street, a similar development with no parking. They are paramedics who work in emergency services and they often spend 35 or 40 minutes finding parking when they return to their apartment.

With respect to streetscape provisions, the idea is that the city wants projects to be pedestrian-friendly, Attorney McLaughlin explained. With certain lots that are nonconforming, that's impossible. Dewey Court developers are proposing a big concrete box with a sea of pavement in front of it. If councilors could craft some kind of ordinance that would work with a finding, they could do more than say 'yea' or 'nay.'

In the absence of further testimony, Councilor Dwight said he would entertain a motion to close the public hearing. He reiterated that, while the descriptions heard are clearly relevant, they are not talking about Dewey Court. It is a point of reference or case in point.

Councilor Sciarra moved to close the public hearing.

After confirming this would bring an end to public testimony, Councilor Thorpe said he would respectfully move to continue the public hearing. Councilor Maiore seconded.

They could continue the hearing in situ or put it on the agenda for the next meeting, Councilor Dwight responded. He asked Councilor Thorpe his pleasure.

He still has questions, Councilor Thorpe said.

Attorney Seewald cautioned members against considering evidence gathered outside of the public hearing. At this point, the question is whether there is more relevant evidence or facts councilors need in order to deliberate with fellow councilors. If the answer is yes, it is totally appropriate to continue. But if all they have is questions about how best to address this without taking in more facts, that's part of deliberation.

In response to a question about what additional information he seeks, Councilor Thorpe said he'd like to ask more questions of Carolyn Misch and take a look at a future land use map.

Because there is a lawsuit, members have to be very constrained in how they deal with this, Councilor Dwight reminded. All their deliberation has to take place in a public meeting. Conversation outside of the meeting or by serial email is in violation of the Open Meeting Law, he stressed. He expressed his understanding that it is permissible for residents to contact councilors individually and speak to them one on one.

However, councilors are sitting in a quasi-judicial role and should not be gathering evidence outside of these walls, Attorney Seewald countered. "If you want more evidence, bring it here so everyone knows what's being said to you and what the basis for your decisions are," he counseled. If they have questions for Carolyn, she should answer them here.

Councilor Dwight asked Councilor Thorpe to present his questions to Carolyn so she could answer them in public session.

Lilly Lombard asked for clarification as to how residents can engage with their councilors on this.

"You're engaging them now," Attorney Seewald responded. They can't engage them outside of the public hearing because they as citizens have the right to hear all information on which councilors base their decisions. This is for the benefit of the public because they don't want councilors making decisions on information outside of the hearing that the public didn't have the opportunity to address.

Councilor Dwight called the motion to continue to a vote, and it passed unanimously 4:0. The hearing was continued to March 9th at 5 p.m.

People are welcome to send emails to him and other councilors to become part of the public record, Councilor Dwight clarified.

B. 19.125 An Ordinance Related to Wireless Antennas on Street Poles

Councilor Sciarra moved to open the public hearing. Councilor Thorpe seconded. The motion passed unanimously 4:0. The public hearing was opened at 6:35 p.m.

Councilor Dwight recited the history of the ordinance. He read the most recent version as presented by Ms. Misch this afternoon.

Mrs. Krutzler clarified that the version just read is not the one formally before the committee. The one formally before them is the ordinance as referred back to Legislative Matters (LM) by the City Council on October 17, 2019. Therefore, in order to accept the ordinance with amendments as submitted this afternoon, it is necessary for LM to act to approve the amendments.

Councilor Dwight asked Ms. Misch to speak to the version as presented to them today.

This went all the way to the floor of City Council and was referred back to Legislative Matters, Ms. Misch reminded. The intent is to be more specific about the criteria for approval of wireless antennas since the city does not have the ability to deny them. This section would establish criteria for projects within the right-of-way.

At the staff level, they did more research about the types of antennas and different ways they could be concealed and installed and associated design criteria and pulled a lot of from communities that already have 5G. They also went back to the Department of Public Works (DPW) to see how they felt about the expanded text. DPW staff reviewed it and wondered if they should pull out the design criteria and make them regulations and simply state in the ordinance that applicants need to follow the criteria as established through regulations promulgated by the DPW.

The fee for right-of-way access has been reduced to $270 per recommendation of the FCC. A $1,000 fee has been added for antennas to be located on city-owned poles because this places more of a burden on the city in terms of maintenance. A different fee is recommended for the two different scenarios.

Councilor Dwight asked if anyone else would like to speak

This is a pretty good example of things that have gotten better, Councilor Murphy observed. The original version called for burying equipment in the ground at the foot of the pole. The overriding reason to try not to make this too prohibitive is that it is going to fundamentally change how they do things by providing competition for cable and allowing all kinds of interesting opportunities to use the internet. He thinks this has moved in a positive way. One thing he still and has always found vexing is that it appears that there is a new rendition of the ordinance that has just appeared. He doesn't know if it was in the packet or not but it makes it very difficult in a public hearing environment when a new version is presented and hasn't been circulated. He thinks this is a better version.

He feels a little vindicated for having been the one primarily making this stick around for a long time. He's confident it got better in the process although he's still a little distressed that major changes appeared at the 11th hour.

They don't have a public process at the DPW so there is not a chance for public input on the regulations, he pointed out. He doesn't know what the implications of that could be, whether bureaucrats could potentially change it in a negative way.

There being no further comments, Councilor Sciarra moved to close the public hearing. Councilor Maiore seconded. The motion passed unanimously 4:0.

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

Councilor Dwight noted that it is still necessary to amend the ordinance [to accept the changes as presented by Ms. Misch today]. Councilor Sciarra withdrew her original motion and instead moved to amend the ordinance to adopt the proposed changes. Councilor Maiore seconded.

Councilor Dwight asked Ms. Misch to address Mr. Murphy's concern about DPW regulations not being promulgated by a public, deliberative body.

The city is fairly constrained in what it can do as far as regulating these, Ms. Misch reminded. Given that the city has to grant the permits, the DPW is not be able to unreasonably withhold permission, she indicated. Planners have essentially stripped discretionary language from the ordinance, she noted.

He advised the planning director to remove all discretionary language since he was proposing to be the permit-granting authority, Attorney Seewald confirmed. The first draft contained language such as 'Vaults should be buried, if feasible.' He told Mr. Feiden not to use 'if feasible' if he was going to grant permits administratively. Requirements must be clear and fixed in order to remove subjectivity. Requiring something 'if feasible' implies the kind of discretion that needs to be exercised by a public body, he explained.

He suggested to Ms. Misch today that it would probably be more appropriate for the DPW to issue the permits since they issue related permits such as trench permits.

It's worth noting the Federal Communications Commission (FCC) has given municipalities very little ability to regulate wireless telecommunications, Councilor Dwight noted. It's basically saying, 'these are coming, there's not much you can do about it," other than deciding where to put them on the pole. It is necessary to create rules because there are no rules, he added. It is one of those situations where technology has far outstripped the policies and regulations in place.

Councilor Dwight moved to strike the term '5G' in the second to final paragraph.

Councilor Maiore noted the word 'telecommunications' in Section 350-10.9 D should be replaced with 'facilities' to be consistent with other sections. Councilor Dwight accepted this as a friendly amendment to his motion. Councilor Sciarra seconded. The motion passed unanimously 4:0.

Councilor Dwight called the motion on the greater body of amendments to a vote, and it passed unanimously 4:0.

Councilor Sciarra moved to forward the ordinance as amended with a positive recommendation. Councilor Maiore seconded. The motion passed unanimously 4:0.

C. <u>20.012 An Ordinance Relative to Demolition Review for Historically-Significant Buildings - referred by City Council 1/16/2020</u>

Councilor Dwight read the ordinance.

Conservation/Preservation Planner Sarah LaValley explained that the Historical Commission is simply looking to have the demolition review ordinance apply to every building built in 1945 or earlier.

The demolition delay ordinance was adopted in 2005 to protect and preserve significant buildings and structures by identifying alternatives to demolition, she related. Regulated structures under the current ordinance include all buildings built prior to 1901 and a selection of buildings built between 1901 and 1939. Prior to issuance of a demolition permit, the Building Inspector forwards the application to the Historical Commission for review. Upon receipt of an application, commission members visit the site to evaluate its historical significance. If a structure is determined not to be significant, a demo permit is issued. Findings of non-significance are the majority of decisions issued. There have been 92 reviews in the 15 years the ordinance has been in place, and 75% of those have been findings. If the structure is determined to be significant, a hearing is held. In many cases, demolition is allowed to continue without delay but the commission requests that pictures be taken for documentation purposes.

One reason for the requested change is that some local records were destroyed by fire in the early 1900's, resulting in many buildings being listed as built in 1901 even though they were actually built earlier. By including principal structures built through 1945, the commission will be better able to consider the city's potentially historic resources. The change brings the ordinance more in line with regional and state guidelines of what's considered to be historic. Outbuildings built prior to 1901 will still be subject to review.

Members asked questions and offered comments.

Councilor Sciarra moved a positive recommendation. Councilor Maiore seconded. The motion passed unanimously 4:0

D. 20.014 An Ordinance Relative to Parking on Bridge Street - City Council referral pending 2/6/2020

This item will be continued to the next meeting per request of Councilor Nash, Councilor Dwight advised.

2. New Business

A. Schedule Public Hearing for Charter Review Committee Recommendations

Members discussed a date for a public hearing on the Charter Review Committee's recommendations. They agreed to Monday, March 2nd at 7 p.m. in Council Chambers.

3. Adjourn

Councilor Sciarra moved to adjourn. Councilor Thorpe seconded. The motion passed unanimously 4:0. The meeting was adjourned at 7:18 p.m.

Prepared By:
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CITY OF NORTHAMPTON
MASSACHUSETTS

In the Year Two Thousand and Twenty
Upon the Recommendation of Mayor David J. Narkewicz and the Transportation and Parking Commission

20.014
AN ORDINANCE

RELATIVE TO PARKING ON BRIDGE STREET

An Ordinance of the City of Northampton, Massachusetts. Be it ordained by the City Council of the City of Northampton, in City Council assembled, as follows:

SECTION 1

That the § 312-102 of the Code of Ordinances be amended as follows:

§ 312-102 Schedule I: Parking Prohibited All Times.

Bridge Street [Added 11-17-1988]	~~Both Sides~~ **Southeasterly**	Point 200 feet southwesterly of Pomeroy Terrace center line	Point 300 feet northerly of Pomeroy Terrace center line
Bridge Street	**Northwesterly**	**A point 834 feet northeasterly of Market Street**	**Point 300 feet northerly of Pomeroy Terrace center line**

SECTION 2

That the § 312-109 of the Code of Ordinances be amended as follows:

§ 312-109 Schedule VIII: On-street Parking Meter Zones.

Bridge Street	**Northwesterly**	**A point 436 feet northeasterly from Market Street**	**A point 834 feet northeasterly from Market Street**	**10 hours/Class 3D and Class 4A**

SECTION 3

That the § 312-117 of the Code of Ordinances be amended as follows:

§ 312-117 Schedule XVI: On-Street and Off-Street Handicapped Parking Spaces.

Bridge Street	**Northwesterly**	**Parking space at a point 418 feet northeasterly from Market Street**

City of Northampton
MASSACHUSETTS

In the Year Two Thousand Twenty

Upon the Recommendation of Mayor David J. Narkewicz and Planning & Sustainability

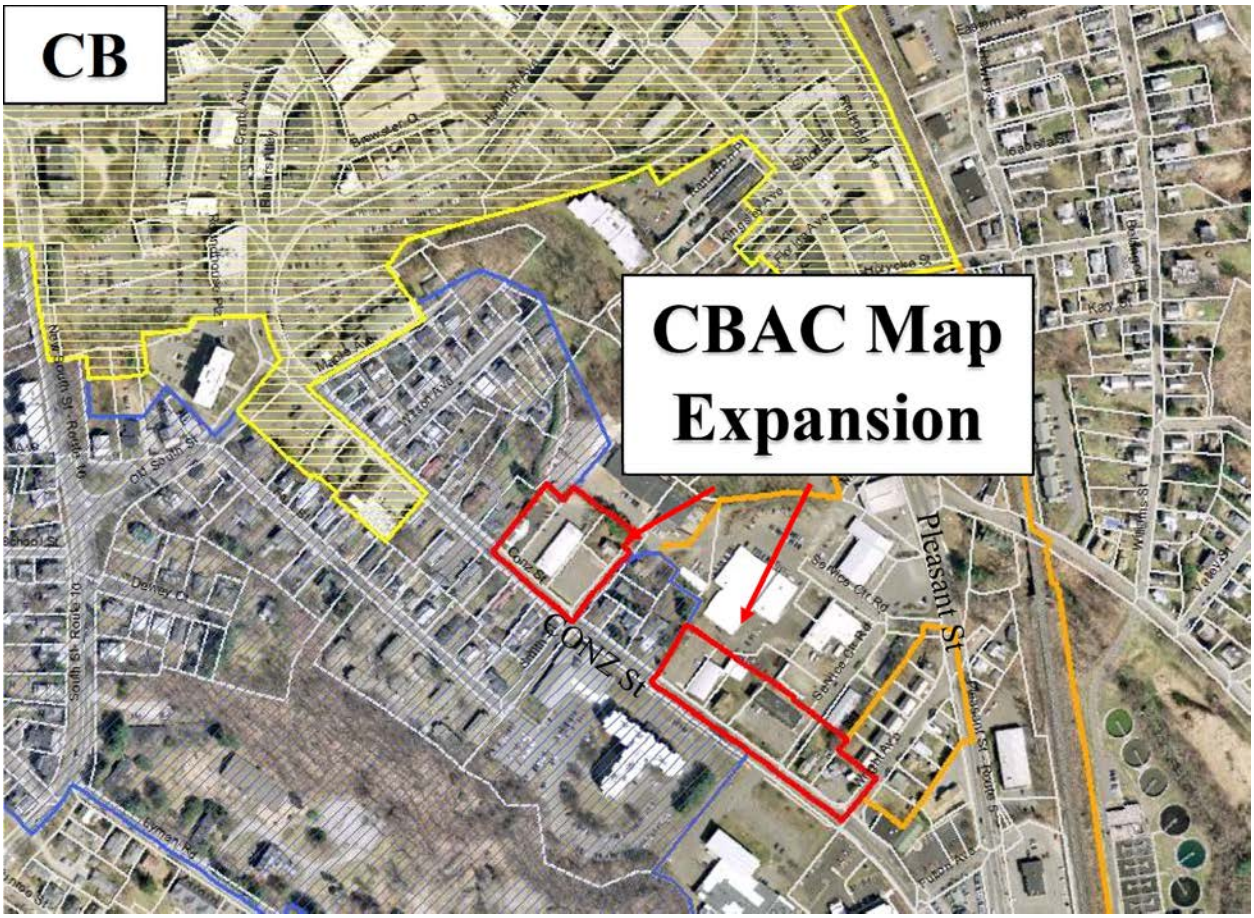
20.024 An Ordinance to Change CBAC Map to Include Conz Street Lots Rezoned to CB

An Ordinance of the City of Northampton, Massachusetts, providing that the Code of Ordinances, City of Northampton, Massachusetts, be amended by changing Section 156-2 CBAC Map to include parcels to be rezoned from NB to CB along Conz Street.

Be it ordained by the City Council of the City of Northampton, in City Council assembled, as follows:

Amend the CBAC Map as shown

Map Id's along Conz Street:
32C-102
32C-104
32C-105
32C-131 Current NB Portion Only
39A-002
39A-003
39A-004
39A-008
39A-009


CB
CBAC Map
Expansion
Pleasant St
CONZ St
South St Route 10
Old South St
Service Ctr Rd
Lyman Rd
Fuller Ave
Pleasant St Route 5
Valley St
Key St
Eastern Ave
Horyoke St
Maple Ave
Victoria Rd
Conz St