



## Joint Meeting of the Planning Board and City Council 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 8, 2021, Time: 7:00 pm**  
**Virtual Meeting**

1. **Meeting Called to Order and Roll Call:** At 7:01 p.m., Legislative Matters Committee Chair William H Dwight called the joint meeting to order. On a roll call, the following Legislative Matters Committee members were present: William H. Dwight, chair; Gina-Louise Sciarra, vice chair; Rachel Maiore and John Thorpe.

**Present from the Planning Board:** George Kohout, Chair; Marissa Elkins, Melissa Fowler, Christa Grenat, Chris Tait, Alan Verson, Janna White and David Whitehill. Samuel Taylor was absent.

Also present were Councilor Jim Nash, Office of Planning and Sustainability (OPS) Assistant Director Carolyn Misch, Conservation, Preservation and Land Use Planner Sarah LaValley and Administrative Assistant Laura Krutzler.

Councilor Dwight explained that, unlike the last meeting which was a public hearing, this is a deliberative discussion with members of both the Planning Board and Legislative Matters for purposes of making a recommendation on the proposed ordinance changes before them. Because of the breadth and depth of the zoning, members called this meeting to enable them to form more fully-formed opinions as they render their decisions.

He explained the process he would follow in conducting the meeting. People will be able to make public comments in public comment but not to participate in the deliberative portion of the meeting. He asked those present to please offer new information if they have it but to please not repeat what was already said.

There will be two votes at the end of the meeting. If positively recommended, the ordinances will be introduced at City Council. The council itself will then deliberate and vote and that will be another opportunity for people to speak.

2. **ANNOUNCEMENT THAT MEETING IS BEING HELD BY REMOTE PARTICIPATION AND AUDIO/VIDEO RECORDED**

Councilor Dwight announced that the meeting was being audio-video recorded.

3. **PUBLIC COMMENT**

Councilor Dwight opened the floor to public comment Ms. Misch asked if there was a limit to public comment and Councilor Dwight said he wanted to limit it to half an hour.

**Jackie Ballance** said she wanted to speak briefly to the ordinance on the agenda regarding demolition review. She spoke to the Historical Commission about this matter with a request that the city be required to notify abutters whenever a demolition permit is applied for in a residential area. Everyone she has spoken to since then 100% agreed it seemed like a common courtesy to let people know about big changes like a demolition next door. It might be good news if it's an eyesore and a danger; it might be bad news but either way it seems like neighbors have a right to know when something as momentous as a demolition is coming up.

She spoke to a city councilor who told her he thought councilors might be in agreement with such a reasonable request and willing to make it an amendment to this administrative order. Another councilor told her she thought neighbors were already notified, but that is not the case.

**Sue Lofthouse of 15 Stoddard Street**, Northampton resident and member of the Urban Forestry Commission informed members that the forestry commission submitted a letter. She read excerpts as follows:

"Northampton's seven-member Urban Forestry Commission (UFC) endorses the goal of affordable housing, but we unanimously oppose the two-family by-right amendments in their current form. If enacted, these amendments will likely have detrimental impact on our urban forest. Most trees in the City are on private property, and will be affected by these relaxed restrictions."

She said she believed any two-family by right package ought to reference the significant tree ordinance language for operational execution. In particular, the detailed language related to tree replacement and mitigation is missing. As a member of the commission, she couldn't support it because she couldn't see how parts of it would work. Forestry Commission members have a list of technical, operational needs that are open and many questions about the tree language.

"Because the pandemic has interfered with usual procedures, the UFC was not involved in drafting these proposed amendments and did not give input prior to their public presentation. We therefore respectfully request a referral of the proposed two family by-right amendments to this Commission so we have the opportunity for an appropriate review and comment prior to submission of this package for a vote. We would greatly appreciate the ability to work with the Office of Planning and Sustainability on a package of zoning changes that strikes a balance between the goal of affordable housing and the value of preserving our trees."

"The UFC strongly believes that the goal of affordable housing can be reconciled with the goal of preserving our tree canopy. The City's trees mitigate stormwater runoff, cool the City during hot summers, and sequester carbon. They are integral to the City's goal of achieving carbon neutrality by 2050. As important-

ly, they further create our sense of place. Reconciling these goals will take some work. We are eager to do this work, but a referral to our Commission is needed.”

She asked them to please refer to the letter and thanked them for their careful consideration.

**Debra Bercovitz of 41 Warner Street** said she wanted to address two things on the agenda. She missed the Historical Commission meeting about why the last part is being removed. City records for the most part don't date houses before 1900 so it requires a significant amount of research to actually know what people are looking at. She wrote a letter to Ms. Misch and some others last week and the response she got from Ms. Misch misinterpreted what she was saying. She was not saying she believes that the number of residents who attend a commission meeting should impact the decision but that, when members of the public are invested in a demolition application, they are often able and willing to get more information about the historic nature of the building in question. What's happened is people don't know about it and only find out when it is being demolished. This seems like a pretty significant oversight. Especially with the language being struck in the last section, they don't actually have a comprehensive record of every property in the city. She thinks members of the public would be happy to assist the Historical Commission with that.

Secondarily, she is very supportive of affordable housing and understands the goals of the city. She learned today there is going to be another project like the other ones in Bay State. Her concern is particularly about the addition of this possible second house behind. Even though there's going to be another level of review, the potential density when they're already seeing the effects of zero lot lines and smaller house lots is incredibly concerning to her. She doesn't feel confident as a resident that decisions will be made to not always grant that second house. When she looks at the properties around her, one house can become six really quickly. Until they have some of the other zoning worked out in terms of relooking at zero lot lines and smaller lot sizes and, without adequate design standards, she is objecting to the scale of what is possible.

**Kristin Sykes, currently of Bay State Village in Florence but soon moving to Holyoke, MA**, spoke in favor of two-families by right. She has lived here for five and a half years and is having to find a new place to live. She's very committed to Northampton and she and her husband have a business here. Due to the immense housing shortage in Northampton and Florence, which she thinks has been accelerated by the pandemic, she really would love to see more opportunity for people to continue to live here. She thinks there's a real need, especially for those in a lower-income bracket. She believes Northampton is benefited by the diversity of all the folks who are able to live here. She thanked Councilor Jarrett in particular for his advocacy in this effort.

**Reyes Lazarro of 172 Federal Street** said she wanted to strongly support what Jackie Ballance said about doing a better job of notifying abutters. As someone who lives across from a big construction site that may involve further demolition, the lack of notification was pretty damaging. She has been told notification used to happen. In her own experience, she was totally unnotified except for 10 days before anything was happening.

**Bill Ryan of Florence** said he sent a long email today. He has a concern about zero lot line use with the new two-families on a single lot provision of the amendments. He doesn't know that the language he suggested is actually the correct language. He put it in the 'Use Allowed by Right' section of the zoning and thinks the language might actually belong in the 'Site Plan Approval' section for two single-family dwellings on a lot.

He asked members to please read his email. He hopes they will very carefully consider how to go forward with this. He thinks it raises a unique set of problems that really need to be considered very carefully before it's passed.

**Bucky Sparkle of Grove Avenue, Leeds**, reiterated his support for the two-family by right zoning bylaws. He is a civil engineer and has been practicing in many municipalities in Massachusetts for decades. He has seen firsthand what happens to the environment when they go into the woods and farmlands and what happens to the DPW when they extend roads, water and sewer lines to outlying areas. He is a big fan of the concept of infill development, of working with already relatively urban areas as opposed to the woods and trying to concentrate human impact in areas that are already impacted. He is also a fan of being mindful and trying to manage and control development and not have it be too big for any one location. In short, he is for the process the city seems to be moving toward.

**Randy Sailer of Florence** spoke in support of the bylaw and agreed with Mr. Sparkle in terms of adding density to the community. It is a relatively easy way to add housing without adding additional infrastructure which needs to be maintained.

**Johnny Scarborough** said he tends to agree with Debra Bercovitz. Having lived in other areas of Massachusetts where this kind of infill has taken place he has seen detriment to the neighborhoods. It changes everything greatly. Where you had back yards that were nice, you now have big houses closer and closer together. If you like to live in Cambridge, that's what you'll end up with.

#### 4. Approval of Minutes of Previous Meetings

##### A. Minutes of December 14, 2020

Councilor Thorpe moved to approve the minutes of December 14, 2020. Councilor Maiore seconded. The motion passed unanimously 4:0 by roll call vote.

#### 5. Package of Zoning Amendments to Allow Two-Families by Right in All Residential Zoning Districts

- A. 20.163 An Ordinance Relative to Two-Family By Right - Amendment to Definitions
- B. 20.164 An Ordinance Relative to Two-Family By Right - Amendment to URA Table of Use
- C. 20.165 An Ordinance Relative to Two-Family By Right - Amendment to URB-URC Tables of Use
- D. 20.166 An Ordinance Relative to Two-Family By Right - Addition of Subsection to Ch. 350-6
- E. 20.167 An Ordinance Relative to Two-Family By Right - Addition of WSP District Table of Use
- F. 20.168 An Ordinance Relative to Two-Family By Right - Amendment to SR-RR Table of Use
- G. 20.169 An Ordinance Relative to Two-Family By Right - Amendment to Projects Requiring Site Plan Approval
- H. 20.170 An Ordinance Relative to Two-Family By Right - Delete Sections 350-10.10 and 350-10.11
- I. 20.171 An Ordinance Relative to Two-Family By Right - Amendment to Parking Standards
- J. 20.172 An Ordinance Relative to Two-Family By Right - Amendment to SC Table of Use

The joint meeting was a request from Legislative Matters because councilors were deferring to their more learned colleagues on the Planning Board, Councilor Dwight reminded. Because the hearing lasted so long they were really late into the meeting when it closed and the Planning Board had more items on its agenda, so they continued their discussion to today.

Councilor Dwight recognized Ms. Misch as she was proposing some modifications.

When the committees met last month, there was some public comment about different issues and input about potential modifications as well as issues related to whether or not zoning could dictate particular building code requirements for 'by right' projects, Ms. Misch related. In the intervening time, she put together some amendments that would address those comments and sort out issues related to the site plan approval vs. building by right process. Ms. Misch reviewed the changes as follows:

**20.164 An Ordinance Relative to Two-Family By Right - Amendment to URA Table of Use**

For the second of the ten ordinances introduced, the modified ordinance would scratch the provision for 'Two-family less than 3,400 sf total of new construction' under 'Uses Allowed by Right' and just have 'Two single-family dwellings per lot' and 'Two-family' under 'Uses Allowed by Site Plan,' Ms. Misch explained.

**20.165 An Ordinance Relative to Two-Family By Right - Amendment to URB-URC Tables of Use**

Changes to 20.165 relate to Urban Residential B (URB) and Urban Residential C (URC), also striking the same language related to differentiating between two families less than 3,400 square feet total. Originally, the idea was to give property owners a little bit of an incentive to build smaller two-families which didn't trigger site plan review. Instead, site plan approval would be triggered in URB and URC for any construction (other than a single-family home) over 2,000 s.f. and for a two-family when there are two single-family dwellings on a lot.

In Urban Residential A (URA), there was still a hanging reference to accessory dwelling units (ADU's), Ms. Misch added. The idea is to replace the concept of ADU's so it is necessary to eliminate the term throughout the ordinance.

**20.166 An Ordinance Relative to Two-Family By Right - Addition of Subsection to Ch. 350-6**

In 20.166, the change involves adding text in **A. General Standards (1)** to state that the fossil fuel-free heating system requirement applies to a new two-family or two single-families ***“that trigger Site Plan Review.”*** It is safer to say the Planning Board has jurisdiction to require an additional element under site plan review than for 'by right' development, she explained.

Also, in **C. Design Standards for Two-Family and Two Single Family structures on a Lot**, the recommendation is to add to the table that the Build-to-Zone is "Not applicable for additions to existing structures or lots where existing structures do not meet this criteria."

Also, for 20.166, under **4) Screening**, where tree replacement is triggered for the removal of trees over 3" in caliper, the wording, "a variety of shade trees from the City's Tree List and Planting Guidelines" replaces existing wording in response to a request from the Tree Warden.

**20.167 An Ordinance Relative to Two-Family By Right - Addition of WSP District Table of Use**

For the Water Supply Protection (WSP) District Table of Use, under "Uses Allowed by Right," she has eliminated the reference to ADU's and clarified that Two Single/Two-Family dwellings on the same parcel require site plan review.

**20.168 An Ordinance Relative to Two-Family By Right - Amendment to SR-RR Table of Use**

For Suburban Residential (SR) and Rural Residential (RR) tables of uses, again, the modification is to remove the distinction that a two-family over 3,400 square feet triggers site plan review and remove all references to ADU's either by right or by special permit.

**20.169 An Ordinance Relative to Two-Family By Right - Amendment to Projects Requiring Site Plan Approval**

Her recommendation would be not to vote on this one but to take it out because this is the section that creates an exemption from site plan approval for two-families under 3,400 square feet. The idea is not to create a second threshold for two-families over 3,400 square foot but to continue to require site plan approval for all new construction of any kind over 2,000 square feet other than a single-family home.

**20.171 An Ordinance Relative to Two-Family By Right - Amendment to Parking Standards**

There were some tweaks of the language to Parking Standards. The first modification attempts to make the language about where parking should be allowed a little bit clearer. The idea is to direct parking to the side or rear of the structure and not between the structure and the street and to limit the total width of pavement between the structure and the street. URA, B and C districts were built out in the city before the advent of cars so parking in front of the house is not as prevalent. A graphic was also added to illustrate the concept.

**DISCUSSION**

Member Verson asked if there are any restrictions on the square footage of second dwellings in the proposed amendment.

There is no cap, Ms. Misch said. In RR, SR, WSP and URA, the second unit can now only be 900 square feet. This package would lift that cap. Since two families are already allowed in URB and URC, effectively it doesn't change anything in those districts.

David Whitehill expressed his understanding that there are existing restrictions on open space that still restrict the amount of lot coverage.

Ms. Misch confirmed that no other dimensional requirements - open space, setbacks or other dimensional requirements - are proposed to be changed.

Councilor Dwight referred to Ms. Misch's response to the Urban Forestry Commission (UFC). Because the clock is ticking, the UFC's request to send the ordinances to them for full review complicates matters, he noted.

Any zoning amendment gets assigned to committee but certainly doesn't go out to every committee in the city before the City Council takes action, Ms. Misch reminded. She had a meeting with a sub-committee of the UFC to go over the zoning and explained that, for the most part, where two families are not currently allowed, this ordinance will trigger site plan review. Under site plan review, a lot of other development standards come into play, including a requirement to submit an inventory of trees on the property over 20" in caliper which are then subject to the tree replacement requirement in the zoning. The UFC wanted to make sure the tree replacement requirement is triggered or pulled into this, which it *is* if site plan review is triggered. On top of that, there is additional tree replacement required for any two family that doesn't apply to any other development in the city. For the addition of a second unit on a property, there is a one-for-one tree replacement requirement for any tree over three inches (3"), which is much smaller than the tree replacement formula in Section 12. This doesn't apply to any other kind of residential or commercial development. This was to address the concern about cutting trees.

They have addressed the issues raised in the memo, she concluded. For the most part, these ordinances will be triggering site plan review which addresses a lot more than just trees. Of course, the timeline for review also comes into play, she confirmed.

Councilor Maiore asked if the replacement tree had to be of the same species or have the same amount of carbon sequestration as the tree removed.

The requirement is that it must be on the list of trees, Ms. Misch clarified. Nowhere in the ordinance do they require the calculation of carbon sequestration for tree removal.

Councilor Maiore asked if cutting down trees for solar is subject to the tree replacement requirement.

If in the process of adding a second unit developers remove trees more than 3" in caliper, they can plant trees on that list, which includes taller trees vs. smaller trees. There are solar-friendly trees that can be selected. As part of site plan review, one of the requirements is to show that the roof is going to be constructed with the capacity to hold solar panels or oriented to be able to have solar and that the roof can carry the load. Developers don't have to install solar but have to show that the structure is solar-ready.

There are instances where they actually do take carbon sequestration values into consideration, Councilor Dwight noted. It came up for the ordinance related to large-scale solar arrays.

They don't have that calculation for residential development, Ms. Misch clarified.

Member Verson said he has a major reservation about the proposed ordinance. He thinks any ordinance adopted by the Planning Board or City Council needs to be looked at through the lens of the impact on affordability of housing. He is afraid this ordinance will have a negative impact on affordability by virtue of eliminating any restriction on the size of a second dwelling unit. Clearly, the cost of housing is to some extent affected by the supply. But more than that, since there seems to be an almost insatiable demand in Northampton for large and expensive houses, it's impacted by the size of the dwelling. He thinks what will happen is that people, when they have the legal right, will build 2,500 to 3,500 square foot houses which will sell for half a million dollars. He thinks they have the opportunity to restrict the size of the dwelling which will necessarily push down the price. If they say it must be limited to 1,100 square feet, smaller two-family houses could be built and sold at a lower rate. He doesn't understand the benefit to the public of eliminating the cap altogether. It seems to him that it is opposed to the objective of affordable housing.

He thinks they ought to look at having a cap of 1,100 square feet or whatever it is and extend it down to URB and URC. There's no reason someone in those zoning districts should be able to build a house that will sell for half a million dollars, have four or five bedrooms and two or three cars and have all sorts of negative impacts on the community. He thinks it's going in the exact wrong direction and that it's inevitable it will have negative consequences.

Chris Tait asked which zones have two-families by right.

Right now, zoning only allows two-families by right in two zoning districts, URB and URC, the core districts around downtown and Florence center, Ms. Misch advised. They allow 2<sup>nd</sup> units as part of a single-family home that are called accessory dwelling units (ADU's) with the additional restriction of a 900 square-foot cap and an owner-occupied requirement for one of the units, either the principal or the accessory unit.

The proposed zoning triggers site plan approval, a different permitting process from special permit. Technically, under municipal law, site plan approval means the use is still allowed by right but property owners need to go to the Planning Board to address technical requirements such as lighting and landscaping.

Special permit is a discretionary process. This ordinance would not create a special permit process for any second unit that would be added.

Going back to the public hearing a couple of weeks ago, Ms. Misch emphasized that the two-family by right ordinance by itself isn't intended to be an affordable housing ordinance, namely, a subsidized affordable housing ordinance. It is a part of a package of four ordinances to address a whole range of housing and to open up more housing opportunities to address supply and demand issues. They don't have enough incentives to address housing that is attainable for people of different income levels.

So, yes, people can build a duplex that is 3,500 square feet or 7,000 square feet total. Those two units may not be affordable for everyone but they are more affordable for some people than a 7,000 square foot detached single-family house out on Sylvester Road, she pointed out.

As part of the four-pronged approach, one proposal *would* be designed to create an incentive to create smaller units. That would be another way to target a part of the market. They want to also allow larger units, she stressed.

Chair Kohout thanked Member Verson, saying he can appreciate where he's coming from with the reference to McMansions. He thinks that's what they have heard from residents of the Bay State neighborhood, that everything seems to be those 'over the top' houses. That's one end of the pattern they'll see, but the other end are residents who have built small units, one to house a mother and father and one to house a son with special needs. He thinks the hope is that a lot of those situations may now lend themselves to the parameters of this ordinance and that they will see smaller homes by residents who live there and not all development by out-of-town developers.

"Well, good, let's encourage more of them by having a cap," Member Verson responded.

Councilor Dwight referred to the amorphous nature of the term 'affordable.' There is actually a HUD standard for affordability. The houses Member Verson describe as being on the higher end do not qualify as such but the definition of affordable would change for every single person here. It's not a useful term for the most part. He expressed his understanding that the HUD standard is 80% of area median income (AMI). As Ms. Misch said, this is part of a package. Maybe if it were more strategic this wouldn't be the leading measure.

ADU's are different from two-family houses, he added.

Member Grenat asked if accessory dwellings could be built and put on the market for sale and how that would happen if it's all on one lot.

Ms. Misch said yes, the owner could create a two-unit condominium. The idea of having one term for a second unit is essentially to create more flexibility for people if they want a unit that's over 900 square feet and to eliminate the ownership requirement.



They want to get out of the monitoring of who owns what and who's moved out and drawing straws for whether there's a tenant in there. The idea is to allow that kind of flexibility. If someone needs to rent their home for a time, they're not going to be penalized for that. But more importantly, it's to allow flexibility in creating different housing types.

Councilor Dwight acknowledged Councilor Nash's hand but reminded him that the parties are deliberating and not accepting input at this point. He invited observers to turn off their cameras to allow him to see fellow members.

Chair Kohout said he didn't want to move beyond this thread but wanted to make sure to get clarity about the item brought up in public comment around the demolition delay process.

That doesn't relate to two-family ordinances but is coming up later on Legislative Matters' agenda, Ms. Misch advised. The city doesn't require notification of building permit issuance to the public and a demolition permit is just like any other permit.

Councilor Maiore commented that it would be easier to consider this if they had the whole picture of the other ordinances in the pipeline. She tends to agree with Member Verson. Having no cap, she thinks they know those larger units aren't going to be affordable by a lot of people's standards. They have an opportunity to navigate that, she suggested.

Planners are saying there's going to be mixed units - different tiers of attainability - but what's to guarantee that? She wondered. It seems like it's going kind of the opposite way especially with remote work being standard and urban refugees from more expensive areas coming in. She doesn't know how they could guarantee it won't just all be unattainable housing without a cap.

The ordinances need to stand on their own, Ms. Misch asserted. They are trying to create a number of different options. It's very much an equity issue. They have restrictions in a large part of the city that say, this area is only for single-family homes, we don't want anything else there. This has a long history in segregation and racism and she thinks it is time for the city to address this. Why are we creating these enclaves where only people in large single-family detached homes on large lots can live? She asked rhetorically.

A large part of this is breaking apart the history zoning has played in segregating communities and telling certain people they aren't allowed to come in, whether they are from a different community or a different neighborhood. "Why should we tell people you can move into this neighborhood but you have to be relegated to this small unit that's only 900 square feet?"

"We really need to move away from dictating where someone might be able to live."

There might be a fear that this is going to result in all high-end housing, she acknowledged. They don't know that for sure. At the same time, they're going to create an incentive for smaller units.

Councilor Maiore said she is absolutely supportive of the goal of giving flexibility and increasing housing stock in general but does wonder about having no cap.

David Whitehill presented a couple of points for consideration: 1) There are a lot of complicated dynamics that affect housing affordability. The biggest dynamic in their region, as any realtor can attest, is location. A really nice neighborhood inherently creates high home values because it's a place people want to live. That's the facts of life, unfortunately. He warned everybody about the importance of comparing the choices they have to something realistic. "We don't get to say, do we want to do this or do we want to do the perfect thing I have in my imagination," he cautioned. There's a benefit to everybody in the city even when wealthy people buy houses because they contribute to the tax base, he pointed out. It adds to the general wealth in Northampton that helps everybody. He drew attention to what he considers the "totally false comparison" that there is the big existing 'mother' house and the baby house, and they should cap the baby house. Under current rules, with setback and open space requirements, someone could knock down the existing house and build a 6,000 square-foot single-family home, he pointed out. What this is trying to do is make it a little bit easier for someone to build two 3,000 square-foot homes. There's nothing more affordable about the 6,000 square-foot home that's allowed today.

2) He referred to earlier confusion as to whether the two-family proposal is 'by right.' They are inherently raising the housing price by making it a more complicated development process [i.e. – site plan approval]. More required meetings will pad the cost by 10, 15 or 20%; it increases housing costs, he asserted. They shouldn't create this illusion that developers are like Scrooge McDuck sitting on piles of money. The point is to increase the supply within the parameters of what they have in Northampton, which are lots of really great neighborhoods. "That's what we can do to help housing" apart from affordability and subsidies.

Councilor Sciarra asked Ms. Misch to talk about how open space requirements affect what size can be allowed.

Different districts have different minimum open space requirements for impervious surfaces, Ms. Misch advised. In URA, the minimum open space requirement is 50%. Property owners can build single-family houses as large as they want as long as they don't cover more than 50% of the lot. The same thing would hold true if instead of a 6,000 square-foot single-family house someone built two 3,000 square-foot houses. In SR and RR districts, the open space requirement is a little more. None of that would change.

If someone builds a house behind a house, they still have minimum setbacks and minimum open space requirements.

Northampton has had a population of 29,000 for over 100 years; when Calvin Coolidge was mayor it was 29,000, Councilor Dwight pointed out. Residents have built lots of structures. What happened is there were large houses and, in a period around the 40's and 50's, these houses got divided into multi-families. Neighborhoods have evolved organically; they weren't a product of planning. Planners are trying to create available housing stock. Right now, there is a very big demand. What's being proposed in his mind makes sense insofar as they don't get to dictate every rule and every item; there has to be some flexibility built in.

He does think of it in context of the packages that are coming and in context of the resiliency plan. Their production of carbon and contribution to climate change has to be foremost in their minds. These ordinances create structures that don't rely on fossil fuels. Also, infill development doesn't rely as much on cars. The pressure instead is on schools, existing infrastructure, police response, fire response, etc.

It's a delicate balancing act. For people who spoke in favor, their interest is the opportunity to live in a community they brag on at the same time as they're resistant to others joining them. Their job is to figure

out how to thread the needle to create the greater good for the greatest amount of people. They have to keep in mind what zoning is supposed to do and what it can't do. "We can corral, shape and maneuver affordability, we cannot guarantee it; we cannot embed it in the system," he observed.

When Councilor Dwight talks about threading the needle, he thinks this is an opportunity to do it, Member Verson suggested. "We can produce more housing and, by limiting the size of some of it, we can hopefully impact the cost of it." If they give someone the opportunity to build the half million dollar house, that's probably what will get built. He thinks they would be derelict in their responsibilities to the City of Northampton if they don't use the tools available to them to push the cost of housing down.

"If we don't force them to do it, they won't," he insisted.

David referred to location as being primary, but the size and type of the house is also extremely important. "I see no reason whatsoever that we should not take this opportunity to accomplish that."

Councilor Dwight said he believed the intention of ADU's was to create more affordable housing. He asked if that wasn't the intent of the ADU zoning changes.

Thirty years ago now the zoning ordinance was amended to allow ADU's, Ms. Misch confirmed. She understands it was a bit controversial. Yes, that was a baby step forward to allow additional units. But it doesn't fit everybody; people need different sized homes.

If someone builds an 1,100 square-foot unit and adds 500 more square feet under the same roof, it isn't going to be that much additional cost, she continued. The price per square foot is a lot more for a 900 square-foot unit. They have had that cap; it's not meeting their needs and is still creating this burden or gap in allowing people the choice to live in different neighborhoods. They can't dictate how much it's going to cost. Almost every unit coming on is expensive because of the construction costs. It's not that people are building high-end homes, the cost of building materials has skyrocketed. By continuing to add requirements such as the stretch code, it makes it more expensive. New houses are much more energy efficient.

They saw in the presentation that the biggest source of carbon waste is old buildings, she pointed out.

Back to the range of houses available in the city, he thinks there is always going to be a demand, Chair Kohout commented. He referred to the five building lots in Pine Grove. What they want to do is try to provide other options. They want to provide those options closer to the center of town for those people who demand four bedrooms. He would rather have them living downtown and closer to the urban areas rather than out in Leeds or Florence to manage that growth better.

Members discussed how to proceed.

### **STRAW POLL**

Member Verson asked if it made any sense to take a straw poll just on the issue they are discussing. His suggestion would be to limit the size of a second dwelling unit on a single lot to 1,100 square feet. He said he would like to see a provision taken up to extend that to URB and URC, although that's not before them tonight.

Councilor Dwight asked all those interested in pursuing a discussion of a cap on the size of the dwelling unit to raise their hand. Member Verson, Councilor Maiore and Member Grenat raised their hands.

Member Tait said throwing out a number is arbitrary and he would want to have a mechanism for going above that number.

She is not in favor of a cap, Member Elkins said. She thinks in closer in-town areas, the zoning will restrain the size of buildings to some degree, although maybe not as much as immediate abutters would like. There's some constraint on smaller lots as you get closer to town. She agreed 1,100 square feet is arbitrary.

A cap will necessarily omit a whole swath of housing to many, many families because it simply won't accommodate their needs, Member Elkins continued. Also, as a general matter, there is a housing shortage across all strata of housing. They live in a desirable city and housing values and building costs are up and this makes it difficult. It is not just the case that they need housing for working-class folks or even poor folks. Middle-class and upper middle-class folks in this community also need housing that meets their needs. The lawyer in her says that, if by right people can tear down their 1,100 square foot house and build any size house with no Planning Board oversight at all, it makes this debate moot. By right, people can already build much bigger houses that are incredibly inefficient, don't meet their housing needs and are certainly not affordable. This is a way they can influence people's decisions and nudge them toward making different choices that will help the housing stock and have energy efficiencies. There isn't any magic number; she doesn't know what the number is. She thinks they are better off just letting the zoning regulations do their work. "It will come out in the wash," she suggested.

"It will come out in half million dollar houses," Member Verson countered.

It's just simply not the case that every house on the market right now is a 7,500 square foot monstrosity, Member Elkins added. Developers are building what they can and it's not all McMansions.

Councilor Thorpe concurred with Member Elkins. Zoning has been restrictive for so long that they need to increase the housing stock. In regards to affordability, on Pomeroy Terrace the units are 800 square feet and are \$344,000. How many people can afford that? He asked. He is not in favor of a cap and also finds 1,100 s.f. to be arbitrary.

Member White echoed what Member Elkins said and said she is strongly against any cap. They have heard that the population of Northampton is stagnant and the housing stock has actually decreased so they already know that zoning that allows small units to be built by right doesn't get them where they need to go. Her biggest regret is that this adds site plan approval to the proposal, which triggers an extra layer of complication and cost and burden. She is glad in doing so to support the tree canopy and move away from fossil fuels but it is making building two-families heavily more restrictive than it is for single families. She think this is allowing more people to share in what single families are already allowed to do by right.

She commented on the mix of housing on Hancock Street where she lives, noting that she looks at that kind of organic mix of housing as an asset. She would love to see this ordinance go through and is against anything that would make it more restrictive than it already is.

Member Fowler said she is very much in agreement with Members White and Elkins. She is very much in favor of this and very much opposed to a cap. Change is never going to please everyone. Giving folks choice across the board in her mind is favorable. She is in favor of eliminating as much of the red tape as they can to allow for increasing the supply.

David Whitehill said there are a lot of different issues being thrown around. There is a difference between the bulk or mass of housing and the use that happens within a building. They're not really altering the bulk that's allowed on a lot, they're really just trying to loosen up the use that can happen within the building envelope and make it legal to build the kind of neighborhoods Northampton is already full of.

Putting in an 1,100 square-foot cap doesn't force anybody to build 1,100 square-foot housing, it just makes it illegal to build bigger, so not as much housing is built, he pointed out. This bulk/use dynamic goes back to what Carolyn said about the dominance of the single-family mindset and the strength of the status quo bias. It goes to really thinking hard about what people are saying when they say, 'that building is a detrimental use; it's detrimental to the neighborhood.' It's worth really thinking hard about what's really being said there.

Chair Kohout wondered if Planning Board members wanted to get any last questions out to Ms. Misch, then make their recommendations and leave the rest to Legislative Matters. He asked if there are any other questions for Ms. Misch about ordinances.

Regarding Mr. Ryan's question about whether it's appropriate to define what a zero lot line single-family home is, it is already defined in the zoning, Ms. Misch volunteered. There is no crossing of those definitions. They are talking about two-families or two units per lot vs. a single-family home, she clarified.

Mr. Ryan asked what the downside is to clarifying that, even if it is redundant, Councilor Maiore shared.

Ms. Misch said she thinks there's a misunderstanding about zero lot line. It's for single-family homes; it's not relevant to a two-family.

Ms. Misch fielded additional questions from Planning Board members.

### **MINI-SPLIT SYSTEMS**

She has done an extensive amount of research in the last several weeks on the two non-fossil fuel heating system options she is aware of, which are mini splits or ground/water source heating systems, Member Grenat reported. She has been told by lots of suppliers that mini-splits aren't going to be sufficient for anybody as a full-house primary heating system in the dead of winter. She was told that the minimum installation cost of ground source heat is \$35,000, so it's an expensive undertaking. "We're adding layers and we're adding layers that are very expensive," she noted. She hasn't been told by anybody that installs or sells them that mini-splits are going to be great for anybody in extensive cold weather in the middle of January or February. She agrees going fossil fuel-free down the road is important, she just doesn't know if dictating it now with the available technology is the right time.

Someone asked if it could be phased in.

Ms. Misch said she supposes they could put in a date that the paragraph applies. She wouldn't recommend this but the other alternative is to strike that paragraph. She thinks the phasing becomes more complicated.

They could say it becomes applicable in January 1<sup>st</sup> of whatever year. The issue is systems are going in now and they're going to be there for 15 years.

Member Elkins referred to Governor Baker vetoing two years' worth of work on climate bill legislation based on costs. She's persuaded by what Member Grenat tells them in her experience as a builder - that the technology right now does not meet the aspirations.

Christa is right, Councilor Dwight confirmed. Mini splits lose their efficiency when the temperature drops below 14 degrees. In extreme cold, they can't heat an average home. The idea is to do it in combination with super insulation or net-zero types of conservation systems that go beyond the stretch code. Ground source/water source heat pumps will do the trick but their upfront costs are pretty exorbitant and will add considerable cost, as will energy conservation measures. He said he takes everyone's point. It adds a significant cost to anyone developing any of these properties.

Member Verson asked if the planning department has done any calculations of the additional cost of building a house with the additional insulation necessary to allow a mini split to heat it in the winter.

Any new structure has to comply with the stretch code, Ms. Misch reminded. The mini splits going in as retrofits are not functioning the same way/providing the same heat that would be found in brand new construction.

"We know that the cost of a net zero house is pretty high," Councilor Dwight agreed. Part of the calculus of a net zero house is lower subsequent bills. Homeowners pay the initial investment down over a period of time of ownership, he noted.

The ordinance isn't saying that builders have to do net zero construction, Ms. Misch clarified. But any new construction needs to meet the building code and the stretch code necessarily calls for a much tighter building envelope than houses built eight years ago.

Members continued to discuss, with Member Fowler saying she thinks it's important to put [the standard] out there. "We need to set the bar. We have some aggressive goals for resiliency."

This is the way to move the needle, she urged. If they're committed to this aggressive goal, she thinks it's important to put it out there.

David Whitehill commented that, as a building professional, he thinks it's incredibly confusing to put this in zoning. It is not the function of zoning as it is commonly understood by anyone in the building world. There is good reason to do it on a state level given the amount of research needed and the importance of thinking of all the second and third order implications. He thinks it's an incredibly confusing thing to do on a city-by-city basis. He thinks it's a bad idea. He's not saying it's a bad idea in the world, but it's a bad idea to do it piecemeal and in a zoning ordinance.

Councilor Dwight defended the right of the community to include it in zoning. He agrees the problems presented by Christa are spot on. He even appreciates that Member Whitehill feels this is an inappropriate place to put this, but they have no other mechanism or device by which to impose this. He thinks it puts an exclamation point on the fact that they are committed to carbon neutrality by 2050.

If builders are using electricity they are still drawing off the grid. The last she knew, National Grid was not exactly doing hydro fuel, it was still using fossil fuels, Member Grenat noted.

The city is working on community aggregation of electricity that is all green-sourced, Councilor Dwight countered. Everything that comes off the grid eventually will be green-sourced. "We're not going to get there unless we start insisting that we get there, unless we start laying down requirements and demands."

It does impact affordability; that's the biggest problem, he acknowledged. That's the inequity that's built into trying to achieve carbon neutrality. It's not socially just because people who suffer the most due to climate change are also the people who can least afford the adjustments needed to maintain carbon neutrality.

They at least ought to be clear that if they adopt this a certain amount of housing will not get built, Member Verson suggested. "This is imposing something that we're not even sure is technologically possible," he stated. It seems irresponsible to adopt it, he concluded.

It is technologically possible; it's a question whether it's technologically feasible, Councilor Dwight said.

Member Elkins said she disagrees that they have no other place to do this. To David's point, this may not be the place. She is all for it in terms of the goal, and she is also somewhat persuaded that putting a mini split in a new house built to different specifications will fare better.

They do have examples of housing that's been built, Ms. Misch interjected. Basically Jonathan Wright is building only houses with mini splits. Habitat is building them. It's not that it's not possible.

David Whitehill asked if city officials have asked the Attorney General about this because a very similar thing got struck down in Brookline. It seems like somewhat of a moot point because, as he reads it, it's going to get struck down immediately.

The Attorney General has to approve town bylaws but when cities adopt ordinances, they don't go to the Attorney General, Ms. Misch clarified. The city solicitor has looked at this ordinance. He looked at it before it was changed to site plan review. The other ordinances in the legislative process have the same language and they have also been reviewed.

Christa asked if they could amend the ordinance when the price of ground source heating technology has come down. When she reached out to all the builders she has relationships with, none of them were confident they could put a mini split in new construction in a stretch code home and feel confident that in the dead of winter it wouldn't conk out and put out 50 degree heat.

Members talked briefly about options for supplementing the heat from a mini split, such as the possibility of adding baseboard heat powered by solar panels.

If you put it out there, they just have to do it, Member Fowler pronounced.

We're going to develop a law, and the proof will be in the pudding, Councilor Dwight agreed. If a year from now it's so restrictive that no one is taking out building plans, they will have to review it. To Melissa's original point, if they don't create these conditions and terms and express their desires, "we keep punting on this. We will punt over and over and over again on the resiliency plan and everything else."

He is actually very appreciative that Member Grenat brought this up because it is one thing that gave him pause, too. At the same time, he thinks it's appropriate to advance it.

Chair Kohout said he has learned a lot in the last 20 minutes. There's a lot in these nine ordinances they're trying to move forward. He said he didn't know if this piece is a deal-breaker for anyone. It might be more work to pull it out at this point. He would like to move to recommending the zoning amendments with the caveat that they will not be dealing with 20.169.

Member Fowler moved to recommend nine out of the 10 ordinances to move forward to the City Council (pulling out 20.169) with no substantive edits. Member White seconded. The motion passed 6:2 by roll call vote with Members Verson and Grenat opposed and Member Taylor absent.

Member Elkins moved to adjourn. Member Whitehill seconded. The motion passed unanimously 8:0 by roll call vote with Member Taylor absent. The Planning Board adjourned at 9:40 p.m.

## 7. Items Referred to Committee

### **A. 20.182 An Ordinance Relative to Demolition Review for Historically-Significant Buildings**

What's being presented as an ordinance change is actually pretty simple, Conservation, Preservation and Land Use Planner Sarah LaValley explained. It is basically just a clean-up of things that no longer make sense.

Section 161-6 Administration talks about how appointments are made to the Historical Commission. It's not an appropriate place for discussion of appointments since, with recent changes to the charter, these have all been moved to the administrative section of the city code.

In §161-6B, the Office of Planning and **Development** is changing to the Office of Planning and **Sustainability**.

Section §161-6D required the commission to create an inventory of significant structures built from 1901 to 1939. With the recent change last year to a lookback period up to 1945, this is no long applicable.

Councilor Dwight asked her to speak to Jackie Ballance's concern.

Under the state enabling legislation, zoning ordinances require abutters within 300 feet to be notified of certain activities like variances and special permits, Ms. LaValley explained. It doesn't apply to demolition. Demolition is a general ordinance, not a zoning ordinance. When the demolition ordinance was initially passed, it was important for people to understand that they wouldn't have to pay any additional fees and, if their property wasn't subject to a hearing, they wouldn't have additional delays to their projects.

The vast majority of properties reviewed under the demolition ordinance don't have a delay and aren't even declared significant. It is a two-step process. The first step is declaring a property significant, at which point a public hearing is tripped. At that point, they would put a yellow public notice sign out and post the notice in City Hall and on line two weeks before the hearing. Unless that happens, they do not notify people.



Currently, people will apply for a demolition permit and most people don't even know it is being reviewed by the Historical Commission. The Historical Commission will decide if is significant or not; most of them are not significant. Because there is no fee and no separate application to the planning department, they are not doing any additional notification. That is something they could certainly look at in the future. They are pursuing Community Preservation Act (CPA) funds this round for a historic preservation plan and for the demolition ordinance as well as local historic districts and other tools they could use to protect the city's historic resources.

Councilor Dwight said he doesn't think it is a terrible idea to review the demolition ordinance. It is disruptive to a neighborhood, obviously. He wouldn't be adverse to abutters knowing what they're in for. He can appreciate it might be disturbing to wake up some morning with a large construction crew outside your house.

If a public hearing is required after the Historical Commission determines it meets the significance criteria, planners would post the same yellow sign posted for a planning or zoning hearing, Ms. LaValley stated. If a public hearing is not triggered, there is no other notice. People can sign up on line to see whatever notices the Historical Commission and other committees post.

Many structures just go for demolition through the building department as part of a building permit review, Ms. Misch advised. No building permits are ever sent out for abutter notice, so it is consistent with how that first level of review is treated.

Councilor Maiore said she has no issues with these changes but does feel abutters deserve to be notified. She would like to find a way to bake that in to the process because it seems reasonable.

The demolition review ordinance is the state's model and doesn't carry any notification requirement, Ms. LaValley explained. Currently they couldn't require abutter notification with no application and no way to pay for it. There has never been a requirement of notification for demolition, she advised.

Discussion continued, with Councilor Maiore repeating that she has concerns about abutters not being notified. She would be willing to facilitate notice to her ward residents, she said.

### **DELIBERATION ON TWO-FAMILY BY RIGHT ORDINANCES**

Members discussed and asked additional questions.

Councilor Maiore commented that, with the lingering question of trees and the lingering concern about caps, she doesn't feel comfortable with the 1,100 square foot cap. She supports this package of ordinances and is grateful it is going to the full council so they can revisit those concerns in consultation with their 'think tank' of fellow councilors.

The UFC was concerned that a development by right circumvents the significant tree ordinance and subsequently their review, and Ms. Misch just addressed this, Councilor Dwight asserted. As she pointed out, most will trigger site plan review.

As to Councilor Maiore's concern about the carbon sequestration issue, one of the things he learned was that almost a third to half of carbon sequestration occurs in the root ball. That is why significant trees are more important for carbon sequestration than smaller caliper trees.

He hasn't disagreed with a single argument that was put up against this package. He absolutely understands and recognizes the intrinsic problems and difficulties. The objective is noble and he thinks worth pursuing and staying with. They do have the opportunity to come back and modify as needed. "I personally don't anticipate a land grab that will suddenly occur," he remarked.

What they are trying to do is create a just and equitable system that also adheres to the strictures laid out in the Climate Resiliency and Regeneration Plan, which is aspirational but critical.

Councilor Maiore moved to approve the package of ordinances as amended with a positive recommendation with the exception of 20.169. Councilor Sciarra seconded. The motion passed unanimously 4:0 by roll call vote.

**DELIBERATION ON 20.182**

Councilor Sciarra moved to forward the ordinance to the full council with a positive recommendation. Councilor Thorpe seconded. The motion passed unanimously 4:0 by roll call vote.

**8. Adjourn**

Councilor Sciarra moved to adjourn. Councilor Maiore seconded. The motion passed unanimously 4:0 by roll call vote. The meeting was adjourned at 10:10 p.m.

*Prepared By:*

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