

Codes and Ordinances Committee

Councilor Peter Lachapelle, Chair
Councilor Elaine Lauterborn, Vice Chair
Councilor Ray Varney
Councilor Robert Gates
Councilor Derek “Mac” Kittredge



AGENDA

CODES AND ORDINANCES COMMITTEE

Of the Rochester City Council

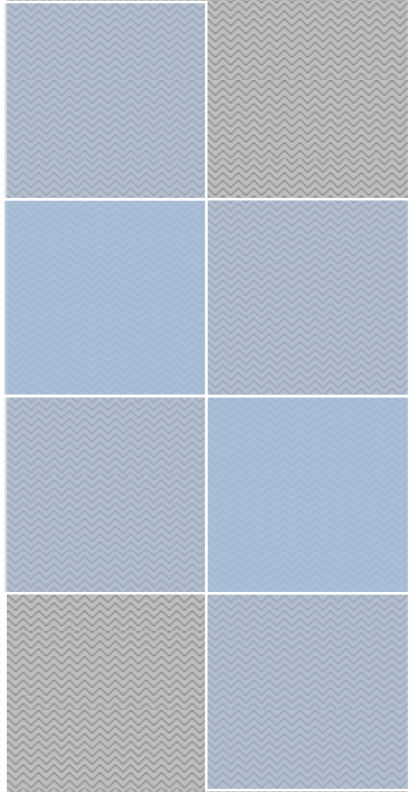
Thursday March 27, 2014

City Council Chambers

31 Wakefield Street, Rochester, NH

7:00 PM

- 1. Call to Order**
- 2. Public Input**
- 3. Chapter 42 Discussion**
- 4. Other**
- 5. Adjournment**



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Responses to Councilor Hamann's Questions on Chapter 42 Amendments

1. Do the Planning Board members anticipate a significant increase in the amount of new non-conforming lots and structures that will further challenge city planning, property owner's development, and code enforcement resources in the future? If so, request the pertinent information be provided for review by the Council.

No, Article XXX, Nonconforming Property addresses this issue and it is no different than what currently exists.

2. In the proposed Chapter 42 ordinance are there any rezoned parcel(s) that will give the appearance of being "spot zoning" areas and become possible costly litigation for the City? Clearly, the trend for this type of litigation is increasing. If so, request the pertinent information be provided for review by the Council.

No, not in the opinion of the Board or staff. This is not the rezoning of a small area and the use does not differ measurably, markedly, or substantially from the surrounding land use. The Planning Board also believes that this is in the general interest of the City.

3. Did the Planning Board consider the negative impact on City revenue from real estate taxation due to anticipated abatements as a result of down zoning of parcel(s) in the proposed Chapter 42 ordinance? If so, request the pertinent information be provided for review by the Council.

The Planning Board does not consider these amendments as having a negative impact on City Revenue. They believe it will have a positive impact. Nobody has a crystal ball that says this area will go down and this area will go up and therefore predict values. We cannot determine who will file abatements and which will be justified.

4. The decision of the Planning Board members to withdraw the "Neighborhood Mixed-Use District" from the "Commercial District" severely reduced the amount of property available for commercial development in the future. Should some of the property parcel(s), specifically those located immediately adjacent to existing commercial property have been removed from the Neighborhood Mixed-Use District and rezoned commercial? If not, request the pertinent information be provided for review by the Council.

I am not exactly sure which area he is referring to or what the district was changed to so it is hard to answer the question without more information. However, the amendments do not severely reduce the amount of commercial land available for development.

5. Is the proposed Chapter 42 ordinance in compliance with the "Community Revitalization and Arts: A Cultural Plan for Rochester, New Hampshire" document adopted by the Planning Board on October 4, 2010 or a later version? If not, request the pertinent information be provided for review by the Council.

Not exactly sure what is meant by "compliance" with the Community Revitalization and Arts: A Cultural Plan for Rochester, but the amendments are compatible with, and do not deviate from, the plan.

6. Is the proposed Chapter 42 ordinance in compliance with the "Rochester Economic Development Strategic Plan" document adopted by the Planning Board on October 16, 2006 or a later version? If not, request the pertinent information be provided for review by the Council.

Again, not sure what is meant by "compliance", but the amendments are compatible with, and do not deviate from, the plan. The Board believes that these amendments will help follow through with the plan.

7. Did the Planning Board members utilize the "Outlines of Proposals" document regarding zoning concepts for "Residential Districts" as presented by the Strafford Regional Planning Commission in year 2013?

Not sure what document Mr. Elwell is referring to nor the desire of the Planning Board to utilize any document from the SRPC.

8. Did the Planning Board members utilize the resources of the American Planning Association/American Institute of Certified Planners (AICP) and/or other professional organizations in their formulation of the proposed ordinance?

The Planning Board is not required to utilize the resources mentioned above, but I am think that through their interactions with the Planning Staff there may have been influences from the resources mentioned.

9. In reviewing public comments both oral and written received on the proposed Chapter 42 ordinance during Planning Board meetings, did the Planning Board members always consult with the Chief City Planner for his recommendation prior to making their rezoning decision? If not, why not? One of my constituents points to parcels Map 0115-0055-0000 and Map 0115-0092-0000, whereby this did not occur.

No they did not and they are not required to.

10. In developing the proposed Chapter 42 ordinance were there any instances whereby the Planning Board members consulted the City Attorney on any parcel(s) during their deliberations prior to establishing the rezoning designation(s) of those parcel(s)? If so, request the parcel(s) be so identified and the pertinent information be provided for review by the Council.

No, to the best of my knowledge the City Attorney was not consulted and there was no need to at the time. If the City Council wishes to consult with the City Attorney, they are welcome to do so.

11. In retrospect, are there any parcel(s) that the Planning Board members now believe the Council should request legal counsel regarding the rezoning of those parcel(s) prior to adoption of the ordinance? If so, request the parcel(s) be so identified and the pertinent information be provided for review by the Council.

Not that we are aware of at this time.

12. Do the Planning Board members and/or the Chief City Planner have any reason to believe there are any legal issues other than those regarding individual parcels that must be reviewed and resolved prior to adoption of the ordinance? If so, request the pertinent information be provided for review by the Council.

None that we are aware of at this time.

13. Do the Planning Board members and/or Chief City Planner believe there are any parcels whereas "what is on the ground now" does not fit the proposed zoning classification being assigned to that parcel(s) in the proposed ordinance, e.g., Commercial District vs. Neighborhood Mixed-Use District? One of my constituents points to parcel Map 0115-0092-0000, whereby this is the case.

This is a matter of opinion for each individual Board member and if there were any they were brought up during discussions. This is a consensus document and you will not please everyone.

14. During the Planning Board's formulation of the proposed Chapter 42 did the Planning Board members solicit comments from the Building, Zoning and Licensing Services Department, Economic Development Department, Historic District Commission, Rochester Economic Development Commission and others? If not, why not? If so, request their comments be provided for review by the Council.

Yes they were solicited and are still being solicited.

15. Do the Planning Board members and/or the Chief City Planner believe the proposed ordinance maximizes the potential for responsible commercial development by rezoning parcels adjacent to existing commercial parcels as commercial also? One of my constituents points to parcels Map 0115-0055-000, 0115-0056-0000, 0115-0057-0000, and 0115-0058-0000 as potential commercial opportunities if rezoned as commercial parcels in the proposed ordinance instead of Neighborhood Mixed-Use. Yet another possibility for responsible commercial development adjacent to existing commercial parcels are parcels Map 0115-0092-0000, 0115-0093-0000 and 0115-0094-0000.

Again, this is a matter of opinion and the Planning Board and the Chief Planner believe it does. These opinions can change in the future and the ordinance can as well.

Responses to Councilor Varney's Questions on Chapter 42 Amendments

1. DENSITY RINGS -Explain the purpose and the benefit to the City (if any) of “density rings”. The proposed density ring overlays appear to increase density in existing residential neighborhoods. Which density will be used and when?

The purpose is to allow a greater density for parcels located within the rings so that the greater density can be concentrated within area centers (Rochester, Gonic, and East Rochester). As written in Article XIX-B(8) if you are within the rings or bisected by them, the density is 5,000 square feet for minimum lot area and minimum lot area per dwelling unit. If you are outside the rings that area changes to 7,500.

2. ACCESSORY APARTMENTS - Explain why the single family residential zone (R1) should allow apartments and apartment dwellings as proposed by “Accessory Apartments”. This will result in rental units in the R1 zone where they are now prohibited.

Not all accessory apartments will be rental units. Some may be in-law apartments separate from the single family dwelling. Accessory apartments are also limited in scope under Article XXIII. Accessory apartments are usually a way for a homeowner to make some additional income to help pay their mortgage, their taxes, child's education, or just a nice vacation. They are not for business or investment purposes.

3. ZERO LOT LINE DEVELOPMENT – This proposal to allow residential buildings up to the side lot line seems counter to historic setback requirements. The threshold for approval is very low using the “Special Exception”. It seems to me that encroachments into the setback should continue to be handled by the Zoning Board of Adjustment as a means of protecting abutters.

These developments are part of Article XXXIII, Conservation Subdivisions, and are approved by Conditional use and Subdivision Review. There are certain conditions that must be met in order to have one approved. This does not mean that all the houses will be next to each other.

4. SPLIT ZONED LOTS – The proposal restricts only the “Recycling Industrial Zone” from extending into abutting zones. This could result in industrial developments extending into residential zones. The existing ordinance restricts extensions into the airport, floodway, conservation overlay, aquifer protection and special downtown districts. This “functions” needs additional restrictions. Did the PB consider eliminating this “feature” entirely?

The proposed language does exclude Overlay Districts and Recycling Industrial. Not sure if the Planning Board considered eliminating this feature entirely, but to the best of my knowledge they have not proposed to do so. also, to the best of my knowledge, the new

zoning districts strictly follow lot lines so there should be no lots that are bisected by district boundary lines.

5. TABLE XVIII-B SALES-SERVICE-OFFICE-INSTITUTIONAL USE – School, K-12 allowed by “Conditional Use” in the R1 and R2 residential zones. The City, County and State can construct a school in any zone since it is exempt from zoning requirements. The concern is with private, for profit schools that could be inserted in residential zones. Did the PB consider how disruptive school operations can be in residential zones?

The use category for a public or private school is currently permitted by right in the residential districts. Since there has not been a big push to build private schools in the residential districts today, there is no reason to believe that this will become a problem with the proposed zoning. There is also an added protection of the use being a Conditional Use rather than a use permitted by right. There are also people that believe that schools should be in residential neighborhoods and not outlying areas.

6. TABLE XVIII-C FOOD-LODGING-PUBLIC RECREATION USES – Allows Lodging, Bed and Breakfast in the R1 zone. Perhaps this could be allowed in the R2 zone where there are likely to be suitable structures but certainly not in the R1 zone. R1 zone should be single family homes ONLY.

B&B's are not a very intensive use and they are required to be owner occupied, limited to a maximum of 6 rooms, and meals are for overnight guests only. On the other hand, this can be considered a commercial use and you may not want to allow it in the R1 District. This comes down to a matter of opinion.

7. TABLE XVIII-C FOOD-LODGING-PUBLIC RECREATION USES – The definition of “Recreation, Park” is vague. It is a permitted use in all zones. Is the intent to allow “pocket parks” with benches etc.? If so it appears the use is open to other more active uses.

Recreation, Park is not a permitted use in the GI, HS, and AS Districts and is a conditional use in the R1 District. It is intended to allow for noncommercial outdoor passive or active recreation for the general public or specific residents of a neighborhood, depending on its approval.

9. CONDITIONAL USE – In the existing zoning ordinance approval by conditional use is referred to in the Conservation Overlay District (after comment from the Conservation Commission), in the eliminated PUD section and once in the Granite Ridge Development District. All other “variances” from the zoning ordinance require approval from the Zoning Board of Adjustment which carries a much higher threshold for approval than conditional use. The proposed ordinance allows approval by conditional use in more than 40 instances. There appears to be an effort to bypass the ZBA in favor of a lower threshold of approval by

conditional use. The ZBA functions to protect abutters and developers equally. How does this extensive application of the conditional use process benefit the City?

The Planning Board also functions to protect abutters and developers. A Conditional Use, in addition to Site Plan or Subdivision review, offers another layer of protection. You do not want to create zoning by ZBA. An effort should be made to not have so many applicants go to the ZBA.

10. Accessory Uses – Breeding Pets – Define “numerous” animals and “frequent” or “regular” breeding.

Should be defined and we can do that.

11. Accessory Uses - Livestock as Pets – You’re kidding.

No, not kidding.

12. Accessory Uses - Exotic Animals – I checked with the Humane Society and was informed that New Hampshire prohibits individuals from owning exotic animals You can find the information in the state’s administrative rules - http://www.gencourt.state.nh.us/rules/state_agencies/fis800.html. Basically, NH only allows exhibitors to import or possess most exotic wild animals. An exhibitor is defined as "any person engaged in the showing, displaying or training of wildlife for the purpose of public viewing of the wildlife whether or not a fee is collected, and who possesses, if applicable, a current United States Department of Agriculture exhibitor's permit and/or US Fish and Wildlife Service permit to exhibit." Based on this, an individual would not be able to import or keep an exotic wild animal.

Then with the proposed language we should be all set.

13. Accessory Use – Chickens, Fowl and Other Small Livestock - in residential zones. This will only result in complaints from abutters. We don’t have the resources to police this. As a minimum there should be a 50 foot setback for this activity.

This is not an easy subject and is a matter of opinion.

14. TABLE XIX-A Dimensional Standards – Residential Districts – The additional lot size requirement for lots without City water and sewer has been eliminated and there are significant increases in density in the residential districts. Setbacks and frontage requirements have also been reduced. Why?

The current dimensional standards in the Zoning Ordinance are thought to be too restrictive. Much of the area within R1 and R2 have sewer and water available and can be more dense. If sewer and water are not available then a development will need septic systems and wells.

This will require more land to be dedicated to those purposes and less land for development and will not be as dense.

15. Zoning along lot lines – There are many issues with the proposed zoning map but the proposed practice of setting zone lines along lot lines is faulty. Example: The commercial zone under the existing ordinance extends along Highland Street to a depth of approximately 200 feet on each side of the Street as shown in Figure 1 below. The new proposal is for commercial mixed use zone extending from Highland Street to Salmon Falls Road, Portland Street and Abbott Street. See Figure 2 below. This area is residential. What reason could there be to insert commercial development in what are now R1 and R2 residential zones? The property owner has spoken against this change on numerous occasions.

It is a neighborhood Mixed-Use District (NMU) and not a Commercial Mixed-Use District. The NMU is considered a residential district that allows for small scale commercial activity that will serve the residential neighborhoods.



Figure 1

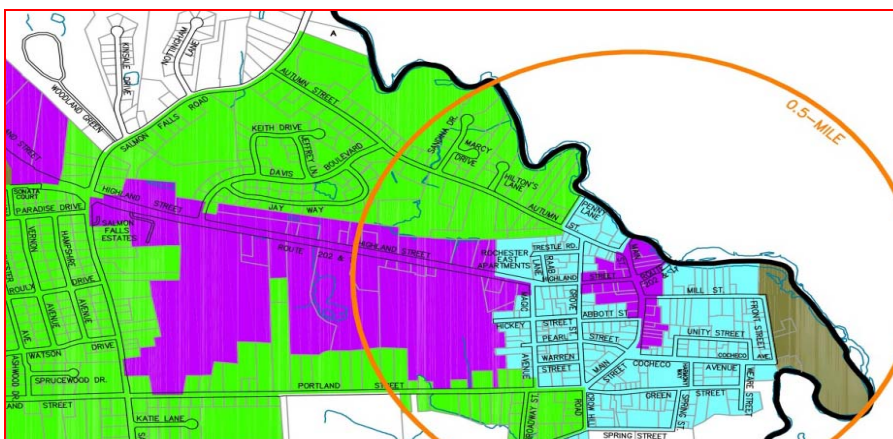
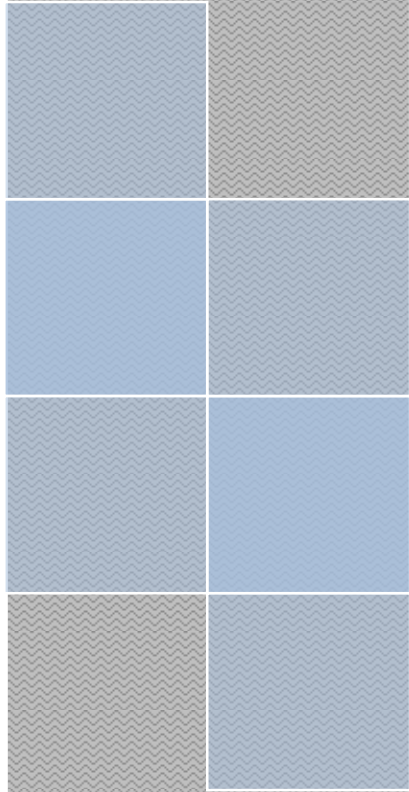


Figure 2



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Councilor Lauterborn's Issues and Concerns Pertaining to Chapter 42.

Forthcoming...