

SPECIAL CODES AND ORDINANCES COMMITTEE

Of the Rochester City Council
Thursday March 27, 2013
City Council Chambers
31 Wakefield Street, Rochester, NH
7:00 PM

Committee Members Present

Councilor Peter Lachapelle, Chair
Councilor Elaine Lauterborn, Vice Chair
Councilor Ray Varney
Councilor Robert Gates
Councilor Derek "Mac" Kittredge
Mayor Jean

Others Present

City Manager Fitzpatrick
Jim Campbell, Chief Planner
Councilor Larochelle
Councilor Walker
Councilor Keans
Councilor Hamann
Councilor Collins
Councilor Gates
William Elwell, Resident
Michael Provost, Executive Director
Of Rochester Main Street
Lucien Levesque, Resident
George Pelletier, Resident
Louis Archambault, Resident
Ric Perreault, Resident
Ken Billings, Resident
Don Gilbert, Resident
Frank Chiaramitaro, Landlord
Francis Bruton, Attorney
Richard Lundborn, Norway Plains
Kent Melchior, Resident
Lyndon Rickards, Resident
Mona Perreault, Resident
Gregg DeNobile, Resident

MINUTES

1. Call to Order

Councilor Lachapelle called the Special City Council meeting to order at 7:03 PM. Kelly Walters, City Clerk, took a silent roll call. All Committee members were present.

2. Public Input

William Elwell, 281 North Main Street, addressed the Committee concerning the proposed Chapter 42 re-zoning amendment. He stated that Carriage Hill is located on the corner of McDuffee Street and North Main Street. This parcel of land is, and always has been, assessed as being a property with a warehouse. This area is currently being proposed as

Neighborhood Mixed Use. He said the area does not meet the criteria for Neighborhood Mixed Use; however, it does meet the criteria for the Highway Commercial Use. He distributed material to backup his conclusion and a transcript of the Planning Board meeting in which this matter was discussed. *This can be found as an addendum to the Codes and Ordinances packet dated for March 27, 2014.*

Mr. Elwell spoke about four residential lots located on North Main Street between Carriage Hill located on McDuffee Street and Claire Street. He pleaded with the Planning Board to rezone these lots as Highway Commercial. He submitted a letter written by Mary Ellen Humphrey, Economic Development Specialist, supporting his request to rezone parcel #0115-0055-0000 to Commercial Us. The letter supported rezoning additional lots in the area too. He hoped the City Council would review this entire area carefully.

Michael Provost, Executive Director of Rochester Main Street, spoke on behalf of the Rochester Main Street board. He said the Special Downtown Review provisions have been left out of the final draft of Chapter 42 and the board strongly felt these provisions should be retained with the final proposal and making the downtown area more welcoming for existing and potential business owners.

Lucien Levesque, 10 Letourneau Street, addressed the Committee about the proposed rezoning of North Main Street [near Letourneau Street]. A petition was presented to the Planning Board with the intent of keeping this portion of North Main Street as Residential (1). He stated that this is a real safety issue. Traffic is a problem now and will continue to be a problem with the development of the Strafford Square Roundabout.

George Pelletier, 119 Walnut Street, addressed the Committee about keeping the Chesley Hill Road Development [Mitchell Property] as Residential (1). He wished to clarify that there had been no mention about rezoning this area until a developer purchased this property and requested this lot be rezoned to Residential (2). He stated that the Chesley Hill Road residents have been told not to worry about this development because 91 high-end rental units would be developed; however, the reality is that anything that is considered acceptable to Residential (2) would be open for development.

Lew Archambault, 224 Chesley Hill Road, addressed the Committee on behalf of Gregg DeNobile. He stated that Mr. DeNobile has not received an answer to his question about the definition of Section 8 Housing. What is it?

Mr. Archambault stated that the Attorney representing the Chesley Hill Developer mentioned that they had entered into a verbal agreement with the Planning Department. What is this status of this agreement? *This question was addressed by Mayor Jean later in this set of minutes clarifying that there is no such verbal agreement.*

Mr. Archambault requested to know what spot zoning is.

Mr. Archambault stated that it has been said that residents would not be notified of the zoning changes. Is this true? How will this be impacted by Senate Bill 228?

Mr. Archambault stated that Mr. DeNoblie is questioning how this proposed ordinance is in the best interest of the City.

Councilor Lachapelle requested that City Clerk Walters ensure that all of Mr. DeNobile's questions are answered.

Ric Perreault, 159 Chesley Hill Road, spoke about how many times the local police are called to apartment buildings for criminal matters. He spoke against rezoning Chesley Hill Road to Residential (2). He provided information about the general purpose of zoning, which should enhance the general safety, welfare of its community, and wise use of the land.

Mr. Perreault spoke against spot zoning and requested that the Chesley Hill Road Development remain Residential (1).

Ken Billings, 161 Chesley Hill Road, addressed the Committee. He stated that this rezoning process has taken nearly ten years and within this timeframe no proposal had been made to change any part of Chesley Hill Road from Residential (1) to Residential (2), until now; however, now that there is an interested developer, this part of Chesley Hill Road is being proposed as Residential (2). He questioned who is responsible for this change. He spoke about high density neighborhoods and urged the Committee to recommend to the full City Council that all of Chesley Hill Road remain as Residential (1).

Don Gilbert, 75 Chesley Hill Road, addressed the Committee about farming. The new proposal states that a farm must have a minimum of 10 acres. He disagreed that 10 acres of land is necessary for farming activities.

Frank Chiaramitaro, landlord of property located on Rochester Hill Road, addressed the Committee. He spoke in favor of allowing multi-family units on Rochester Hill Road. He has concerns about the density requirements. He questioned if it is appropriate to limit the multi-family units to four-family units in a Residential (2) Zone.

Mr. Chiaramitaro said the density rings bisect parcels of land on Chesley Hill Road and Rochester Hill Road, when this happens to a parcel of land, then the density requirement defaults to the lower of the two density requirements.

Mr. Chiaramitaro stated that the Conservation Overlay District prohibits development on various types of wetlands; however, poorly drained soils can be used to fulfill twenty-five percent of the density requirements and allow buffer zones to be used to fulfill density requirements. Both areas cannot be built upon. He opined that since the land cannot be built upon then it should not be used to fulfill density requirements. He gave an example. He invited the Committee to speak to him about any of his concerns at a later date.

Francis Bruton, III, Attorney for the Robie Family/Rochester Hill Trust, addressed the Committee. He spoke in favor of the Compressive Rezoning as it has been presented.

Attorney Bruton disagreed with Mr. Chiaramitaro's comments about how other communities calculate density requirements. He disagreed with other material presented by Mr.

Chiaramitaro, as well, and distributed information of his findings. He hoped that the Committee would respect the significant effort that the Planning Board has put forth and recommend the adoption of the existing proposed comprehensive zoning ordinances. *This packet of information provided by Attorney Bruton can be found with the Codes and Ordinances Committee packet dated for March 28, 2014.*

Richard Lundborn, P.E., Project Engineer for Norway Plains Associates, Inc., addressed the Committee on behalf of his clients, the Robie Family. He spoke against comments made by Mr. Chiaramitaro and distributed material to the Committee for consideration. He stated his qualifications to speak about poorly drained soils, noting that poorly drained soils are not the same as wetlands. He said the current Residential (2) Zone and proposed Residential (2) Zone would allow elderly housing development by special exception (current) or conditional use (proposed). Lastly, he noted that the actual design, State permits, and the stormwater regulations have the final say on density. The Planning Board has created an ordinance that is in line with other communities in the area, especially with Durham. *This packet of information provided by Mr. Lundborn can be found with the Codes and Ordinances Committee packet dated for March 28, 2014.*

Kent Melchior, 43 Labrador Drive, spoke against the proposed ordinance amendment which would change Labrador Drive from Residential (1), to Neighborhood Commercial. He stated that the residents have provided a signed petition requesting that Labrador Drive remain Residential (1) in this neighborhood. He mentioned that a map had been provided to the Planning Board which shows the amount of wetlands in the particular area proposed to be developed. He spoke against changing Fillmore Blvd. from Residential (1) to Highway Commercial. He added that this is a safety issue as well.

Mr. Melchior pointed out that the developer did not want to discuss creating a buffer between the residences and the commercial businesses.

Lyndon Rickards, 58 Labrador, addressed the Committee. He opposed the proposed Neighborhood Commercial Zone for the entrance of Labrador Drive. He listed the permitted uses for Neighborhood Commercial. He added that this zone would allow for a drive-thru service by special exception.

Mr. Rickards requested clarification about the architectural standards. It states that individual non-residential buildings shall not exceed 4,000 square feet; however, 2,000 square feet had also been discussed. He wished to have clarification about which regulation is correct.

Mr. Rickards stated that the Planning Department provided information regarding a question from Councilor Varney pertaining to Conditional Use. Mr. Rickards requested more information about Conditional Use for the Neighborhood Mixed Use, which allows for conditional use, depended upon the size of the building [Article 5 – 3-D]. He stated that all other variances require an appeal to be made to the Zoning Board of Adjustments. He asked the Committee to think about this and questioned how this would benefit the City.

Mr. Rickards spoke against zoning along lot lines, specifically Neighborhood Commercial near Residential (1) Zones. He also spoke against spot zoning and questioned whether all of Councilors Varney and Hamann's questions have been answered.

Mona Perreault, 159 Chelsey Hill Road, attended this meeting to protect her property, as her neighbors are doing, too. She spoke against the density rings. She urged the Committee to follow its "mission statement" which states that the City of Rochester's biggest concern is the overall quality of life. They can achieve this by keeping Chesley Hill Road zoned for Residential (1).

Gregg DeNobile, 146 Chesley Hill Road, addressed the Committee. He requested to have his previous questions submitted to the City Council answered. He stated that this zoning ordinance is going to set the tone for the City for the next thirty or so years and the City Council should think about how this would tie into the "branding of the City" project.

Councilor Lachapelle closed public input at 8:15 PM.

3. Chapter 42 Discussion

- **No Verbal Agreement Between the City of Rochester and the Chesley Hill Developer:**

Mayor Jean stated that a rumor has circulated about the City of Rochester making a verbal agreement with the owner of the Chesley Hill Development. This was spoken about during public input and the record should be set straight. He asked Nel Sylvain, Planning Board Chairman, if he and/or any member of the Planning Board had made a verbal agreement with this developer about rezoning the lot in question to Residential (2). Mr. Sylvain stated that he has not made any such agreement nor has he knowledge of any such agreement. Mayor Jean later asked the same question to Jim Campbell, Chief Planner, and Dan Fitzpatrick, City Manager. Chief Planner Campbell and City Manager Fitzpatrick both replied no.

- **Farms, Farm Crops:**

Councilor Gray stated that a comment made during public input indicated that the proposed ordinance would require a lot size of 10 acres [minimum] for the purpose of farming. Chief Planner Campbell replied that is correct, and read the following proposal from Article 20 and the definition of a farm:

Article 20 – Standards for Specific Permitted Uses:

4. Farm; Farm, Crop

a. Lot Size. The minimum lot size is 10 gross acres for a farm and 5 gross acres for a crop farm.

Article 2 – Definition:

Farm - All uses and activities as articulated in RSA 21:34-a. (Also see "Farmer's Market", "Forestry", "Livestock", "Plant Nursery", and "Roadside Farm Stand").

Councilor Gray asked what the proposed Permitted Use in an Agricultural Zone is for a farm and what farm type activities are permitted for lot sizes less than 5 acres in size. Chief Planner Campbell replied that farm, farm crops, and road side stands, are permitted. There are special exceptions listed as well.

Councilor Kittredge questioned if there is a distinction between operating a commercial farm and farming for your own family's use. Chief Planner Campbell explained that the proposed ordinance links the definition of farming to the State RSA 21:34-a, which deals more with commercial farms.

- **Density Rings and the Zoning of Chesley Hill Road**

Councilor Gates asked the audience to raise their hands in support of keeping all of Chesley Hill Road zoned as Residential (1). He stated for the record that many people in the audience raised their hands in support of keeping Chesley Hill Road zoned as Residential (1).

Councilor Varney stated that one of the density rings touches the property [Mitchell Hill] located on Chesley Hill Road. He said if Chesley Hill Road is being proposed as Residential (2), then the minimum lot area is 5,000 square feet vs. the minimum lot area of 6,000 square feet in the current ordinance. This equates to a seventeen percent increase in density.

Councilor Varney stated that the density rings are in direct conflict with the dimensional table. He said if the Chesley Hill Road Development lot remains Residential (1) and the density ring stays in place, the lot size would be reduced from 10,000 square feet to 5,000 square feet, which would mean the potential of 200 new homes in this area.

Councilor Walker asked for the Chief Planner to give an overview of why the density rings are being proposed in Chapter 42. Chief Planner Campbell replied that the idea of implementing density rings was to create a central area of density in the middle of each ring and to have less density on the outer edges of the rings.

Councilor Lauterborn asked if the Planning Board had been in total agreement about implementing the density rings. Councilor Walker replied that the majority of the Planning Board members were in favor of implementing the density rings; however, the Planning Board members did have a debate about the size of the rings.

Councilor Lauterborn stated that the map shows that only a third of the Chesley Hill Development property [Mitchell Hill] is inside the density ring; however, if this location is rezoned to Residential (2) the entire area becomes eligible for the higher density. She said that would defeat the purpose of keeping the high density areas to the core of the density ring.

Councilor Varney stated that the implementation of the density rings over-complicates the zoning process. Councilor Walker stated that it is the same idea as an overlay district.

Councilor Kittredge suggested sending specific issues to the Zoning Board of Adjustment. Councilor Walker spoke against this idea.

Mayor Jean asked about the Residential (1) lots located outside of the density rings and why there is a conflict for these specific lots. All Residential (1) lots are classified as 10,000 square feet with the exception of Residential (1) lots located outside of the density rings, which are being classified as 7,500 square feet. Chief Planner Campbell stated that there is a minimum lot area requirement, which is the minimum acreage required for a single-family home or duplex. There is also a minimum lot area per dwelling unit, which is what most of the density rings were geared toward. The idea is that a proposed lot must first meet the minimum lot area requirement and then, in order to have more than one unit, there is an additional requirement of minimum lot area per dwelling unit. He said having two requirements is a bit confusing; by removing the first requirement of minimum lot area would resolve some confusion and keep the focus on the minimum lot area per dwelling unit.

Recommendation (1) – Removal of Density Rings and Rezone Chesley Hill Road to Residential (1)

Councilor Varney **MOVED** to recommend to the full City Council that the Mitchell Property located on the south westerly end of Chesley Hill Road, which is currently being proposed as Residential (2), be reverted back to Residential (1). He added that all language pertaining to the density rings be removed from the proposal along with the density rings on the map. Councilor Gates seconded the motion. Councilor Lachapelle asked if the motion should be split. Councilor Varney replied no. He explained that if the Chesley Hill Development remains Residential (1) and the density rings are still active, than it would allow “double” the units to be permitted in this area. Councilor Walker reiterated that the intent of the density rings is to make a requirement of the minimum lot area per dwelling unit and by correcting the language the density rings could remain in the proposal. Councilor Lauterborn stated that someone should reword and present the matter to the full City Council. The **MOTION CARRIED** by a 6 to 0 roll call vote. Councilors Kittredge, Gates, Lauterborn, Varney, Lachapelle, and Mayor Jean voted in favor of the motion.

- **Poorly Drained Soils**

Councilor Varney had requested to get a map which indicates where the “poorly drained” soils are located. It seems that the City has a lot of poorly drained soils. He said poorly drained soils are not the same as wetlands. The City should restrict development on wetlands, but not on poorly drained soils. Councilor Walker stated that by restricting development on poorly drained soils keeps the City of Rochester in line with other communities, such as Durham.

Councilor Varney recalled that the City had already researched how much property in the City has poorly drained soils and it seems that it equates to more than half of the City’s development. He stated that a soil scientist should give an opinion of what is considered wetlands and what is not. Councilor Walker stated that the Planning Department would be willing to eliminate this requirement; however, restricting development on poorly drained soils

had been discussed at great length at the Planning Board level with experts and what is being restricted is the result of that compromise.

- **Labrador Drive**

Councilor Walker stated that he and Rick Healey, Planning Board Member, were against rezoning Labrador Drive to Neighborhood Mixed Use; however, the Planning Board voted in favor of the change.

Recommendation (2) – Labrador Drive and Fillmore Blvd reverted back to Residential (1)

Mayor Jean **MOVED** to recommend to the full City Council that Labrador Drive, currently being proposed as Neighborhood Mixed Use, be reverted back to Residential (1), and that Fillmore Blvd., currently being proposed as Highway Commercial, be reverted back to Residential (1). Councilor Lachapelle seconded the motion. The **MOTION CARRIED** by a 6 to 0 roll call vote. Councilors Lauterborn, Gates, Varney, Kittredge, Lachapelle, and Mayor Jean voted in favor of the motion.

- **Special Downtown District**

Chief Planner Campbell clarified that there is a difference between the Special Downtown District and the requirement for a Minor Site Plan Review. He said that the minor site plan review process includes filing a minor site plan application, paying a fee, and notifying the abutters, whereas the Special Downtown District does not. The Special Downtown District is usually handled by the Planning Department.

Recommendation (3) – Retain the Special Downtown Review Process

Councilor Lauterborn **MOVED** to recommend to the full City Council that the Special Downtown Review Process be retained in Comprehensive Rezoning proposal. Councilor Gates seconded the motion. Mr. Sylvain gave some insight to why this was changed; however, he did not object to the motion made by Councilor Lauterborn. The **MOTION CARRIED** by a unanimous voice vote.

- **Screened-in Dumpsters**

Councilor Lachapelle stated that there is a proposed provision that would require businesses to screen in their dumpsters. He agreed this would aesthetically look great; however, it poses a financial hardship on business owners. He agreed with this requirement for all “new” construction, but not to place this requirement on existing structures. Mr. Sylvain stated this was an attempt to rid the City of unnecessary eyesores. Councilor Lachapelle suggested that this section be reworded. Councilor Walker questioned if the current ordinances require businesses to screen in their dumpsters. Mr. Sylvain replied no. Mr. Sylvain agreed to reword this section and to present it at the next Codes and Ordinances Committee meeting on Thursday, April 3, 2014.

- **Downtown Commercial District**

Councilor Varney stated that the Downtown Commercial District used to reach Strafford Square. Chief Planner Campbell stated that part of the reason this district no longer reaches Strafford Square is that section of the City is now being considered for Neighborhood Mixed Use. He stated that the downtown area used to be split between Business (1) and Business (2), which was two separate districts, and now there is one Downtown Commercial District.

- **Highland Street**

Councilor Varney said Highland Street should be a commercial corridor; however, he pointed out that there is a problem with the way in which Highland Street is being rezoned. He said the commercial zone reaches parts of Portland Street and Salmon Falls Road. He added that there is also a commercial zone reaching Abbot Street. Councilor Walker stated that one of the City Council's concerns with the original Chapter 42 is the fact that there were several properties with split zones. The Planning Board has eliminated all split zones in the new proposal. This is the result of that effort not to split zones. He said this is a residential use with a commercial component and it is limited by size and conditional use. Councilor Lauterborn said regardless of what the original intent of the City Council had been, it is obvious that there are now unintended consequences and the City Council ought to correct the zoning of this area even if means some split lots are needed. Chief Planner Campbell stated that the Neighborhood Mixed Use is classified as a Residential District. The Commercial activity was intended to support the residential areas that surround it. There are many conditional uses that would require a site plan to be reviewed by the Planning Board and any "special exceptions" would require an application to the Zoning Board of Adjustment prior to approval.

Councilor Gray suggested rezoning just the lots that reach to Portland Street and Salmon Falls Road, back to Residential (1). Councilor Walker stated that it would make some of the development non-conforming and it would pose a hardship on some home owners as well.

Mayor Jean stated that the Highland Street area seems to be an anomaly to the rest of the zoning in the City. He asked if it would be appropriate to insert a lot line on these few properties that would provide for the Highland Street's Neighborhood Mixed Use and Residential (1) behind the line. He added that if the City is requesting the revision then it would make sense for the City to pay for the revision. Mayor Jean stated that this would be exclusive for these particular lots in question. Mr. Sylvain stated that he understood the concerns of the Committee members and he would revisit this location. He agreed to bring back a proposal to next week's Codes and Ordinances Committee meeting.

- **Milton Road**

Councilor Varney cautioned not to set the lot line for Highway Commercial back too far near the scrap yard on Milton Road.

Chief Planner Campbell stated that scrap/junk yards are listed under special exceptions for Highway Commercial. Councilor Varney questioned if a non-conforming use would need to

seek the Planning Board's approval as well as the Zoning Board of Adjustment's approval prior to expanding its business. Chief Planner Campbell replied yes.

- **Dimensional Table for Residential and Agricultural Zones**

Councilor Varney asked why there was such a dramatic difference between the current and proposed Dimensional Table for Residential and Agricultural Zones. He stated that the current requirements for a single family home required a minimum of 10,000 square feet whether one has City utilities [water/sewer] or not. Councilor Gray explained that one must obtain the State's approval prior to installing water/sewer on a property so there was no need for the City to list the requirement of water/sewer.

Councilor Varney stated that there are changes to the setbacks, too. Councilor Walker stated that the changes were made to reduce the restrictions on the property owners. Councilor Gray added that it was intended to be more consistent from zone to zone as well.

- **North Main Street**

The Committee briefly discussed the zoning on North Main Street. Mr. Sylvain stated that by zoning this area as Neighborhood Mixed Use, it would require a Planning Board Site Review for home occupations. Councilor Varney stated that residents have made it clear that they do not want commercial business at the end of those streets near Burger King.

- **Rochester Hill Road**

Councilor Varney asked if the bottom of Rochester Hill Road had been rezoned for Office Commercial. Mr. Sylvain replied yes, and also some Neighborhood Mixed Use. Councilor Varney asked if the area near Benedict's is classified as Neighborhood Mixed Use. Mr. Sylvain replied yes. Councilor Walker stated that this would make all the non-conforming businesses in that area to conforming. Councilor Varney stated that there would be a potential for more commercial use at the end of these streets near Harding Street and Dodge Street.

Mr. Sylvain stated that there is more Office Commercial further south on Rochester Hill Road. Councilor Varney stated that there is a lot of inconsistent zoning in this area and questioned what the Rochester Hill Road corridor should look like. Councilor Walker stated that most of the Rochester Hill Corridor is being proposed as Office Commercial; however, after a lot of testimony from the residents, some areas were reverted back to Residential (1).

Councilor Keans asked why the Office Commercial Zone is so far back near Crocket Street. Councilor Walker recalled that it was a single lot. Councilor Keans disagreed, she stated that there is a dentist office located on the end of the street and there is another lot behind it. There only seemed to be one lot.

- **Setbacks for Raising Chickens in Residential Zones**

The Committee briefly discussed setbacks for raising chickens in the residential zones. Councilor Walker stated that the restriction is that no roosters are allowed and the chickens

cannot be a nuisance to the neighbors, including sound and smell. Councilor Varney suggested looking at this closer.

4. Other

No Discussion.

5. Adjournment

Councilor Varney stated that he believed that the pending matter would require a longer discussion than the Committee has time for this evening. He **MOVED** to **ADJOURN** to meet next Thursday, April 3, 2014, at 7:00 PM. Councilor Lachapelle seconded the motion. The **MOTION CARRIED** by a unanimous voice vote.

Respectfully submitted,

Kelly Walters
City Clerk