

Planning & Development Committee
Wednesday, June 21, 2017 – 5:30 p.m.
1st Fl. Council Committee Room – City Hall
-Minutes-

Present: Chair, Councilor Paul Lundberg; Vice Chair, Councilor Melissa Cox (arrived 5:32 p.m.); Councilor Sean Nolan (Alternate)
Absent: Councilor Gilman
Also Present: Councilor Orlando; Gregg Cademartori; Chip Payson; Chris Sicuranza; Matt Coogan

The meeting was called to order at 5:30 p.m.

1. *PP2017-003: Petition by Comcast to install one 4" PVC conduit 214' +/- across from Pole #5970 on Eastern Avenue to continue to the sidewalk at 382 Main Street & place flush mount vault in sidewalk for service to Main Street #382 – To be conducted as a Public Hearing*

This public hearing is opened at 5:32 p.m.

As a representative from Comcast was unable to be present for this public hearing, the public hearing is continued to July 19, 2017.

This public hearing is continued to July 19, 2017.

2. Special Events Applications:

- A. Request to hold Around Cape Ann 25K Road Race on September 4, 2017 & Request to hold Run the Goose Road Race on September 4, 2017 (Cont'd from 06/07/17)

Councilor Lundberg advised that all Special Events Applications are first vetted by the Special Events Advisory Committee (SEAC) and final permitting for a Special Event rests with the Planning & Development Committee. He mentioned a concern about directing runners at the foot of Cherry Street that had previously been expressed by Councilors.

Councilor Cox noted a concern was expressed by Councilor Gilman that at the intersection of Cherry Street and Poplar Street in order to ensure runners go up the right-hand side of the roadway so they don't crowd the left lane, and said it is important that someone be stationed there to direct runners. She said this doesn't require a police detail.

Tim Flaherty, Executive Director of the Cape Ann YMCA expressed his understanding of the request and would see that the matter was handled appropriately.

MOTION: On motion by Councilor Cox, seconded by Councilor Nolan, the Planning & Development Committee voted 3 in favor, 0 opposed, to permit the Cape Ann YMCA to hold on Monday, September 4, 2017 the 25K Around the Cape Road Race and the 7K Run the Goose Road Race with the following conditions for each race:

1. **Certificate of Insurance:**
A Certificate of Insurance naming the City as an additional insured party is on file with the City Clerk's Office.
2. **Road Closure Plans & Routes:**
Routes for races are as shown on maps or plans on file as approved by the Special Events Advisory Committee. Applicant must have Police/Fire Department approval of any road closure/traffic plans 30 days before event, including any police details. Roads to be closed are to be marked with signage directing the public as to the duration of the closure and alternate routes. Any substantial changes, as determined by either the Police or Fire Chief or their designees to the route or related to safety issues will require Council approval.
3. **Refuse and Comfort Stations:**
All refuse and recycling due to this event must be removed by the organizer. Any portable toilets (with two handicap accessible) are to be provided and maintained by the organizer, placed the evening before the event or early on the day of the event and removed by 9:00 p.m. the day of the event.
4. **Emergency Services** are as determined by City EMS Director.

5. **Staffing:**
Event staff is to have cell phones and to wear distinct shirts. A list of event staff and cell phone numbers is to be submitted to Police, Fire and DPW Departments.
6. **Notification to Immediate Abutters and Businesses to Race Course:**
Written notice shall be made by event organizer at least seven days in advance of the event to function halls, motels and hotels and other businesses along the route.
7. **Responsibility of the Cape Ann YMCA:**
Failure to comply with any conditions above and any conditions placed on these events by the Special Events Advisory Committee may result in permit revocation.

B. Request to hold the Magnolia Farmers Market June 26 through August 30, 2017

Councilor Nolan spoke for Lisa Ramos who was unable to attend the meeting who would have represented the Magnolia Library, sponsors of the Magnolia Farmers Market. He highlighted that this event is planned as the year before -- the only change is instead of starting at 3:00 p.m. the Farmers Market will start at 4:00 p.m. so that the road closure is less impactful to local businesses. The event works well for the neighborhood, he said.

MOTION: On a motion by Councilor Nolan, seconded by Councilor Cox, the Planning & Development Committee voted 3 in favor, 0 opposed, to permit the Magnolia Farmer's Market on Mondays from June 26, 2017 to August 30, 2017, from 4:00 p.m. to 7:00 p.m. Lexington Avenue is to be closed from Norman Avenue to Flume Road with appropriate signage posted at either end of Lexington Avenue advising motorists of alternative routes. A Certificate of Insurance naming the City of Gloucester as Certificate Holder is to be on file with the City Clerk's office no later than June 26, 2017 or in lieu of a Certificate of Insurance a letter from the city's Chief Administrative Officer stating that the city is responsible for the insurance. The following conditions apply:

1. Applicant is to notify all abutters of the closed area of Lexington Avenue in advance of the events;
2. Applicant is responsible for providing adequate trash receptacles and for removal of same;
3. Applicant has agreed to make Magnolia Library bathrooms available to the public;
4. All vendors, except those excluded by state law, are to obtain city vending permits prior to June 26, 2017 from the office of the City Clerk.
5. That the Magnolia Farmer's Market must have two or more farmers primarily selling products grown, produced, or raised by farmers present in order to constitute a "Farmer's Market" in keeping with the Mass. Department of Agricultural Resources Policy for Mass. Farmers' Markets and with the definition in the Code of Ordinances, Chapter 11.

C. Request to hold the Fishtown Horribles Parade July 3, 2017

Al Kipp of the Fishtown Horribles Parade Committee explained that the parade is being held as usual with the same route from 6:00 p.m. until the parade is over. It was advised all necessary paperwork is with the City Clerk's office, and that a final updated vendors list is to be submitted by the Fishtown Horribles Parade Committee to the City Clerk's office prior to the parade date. The Committee noted two new conditions, #7 and #8 as requested by SEAC and incorporated into the permit as follows:

MOTION: On a motion by Councilor Cox, seconded by Councilor Nolan, the Planning & Development Committee voted 3 in favor, 0 opposed, to permit the Fishtown Horribles Parade Committee to hold the Fishtown Horribles Parade on Monday, July 3, 2017, and to close affected City roadways from 6 p.m. to 9 p.m. with the following conditions:

1. **Certificate of Insurance:**
A Certificate of Insurance naming the City of Gloucester as an additional insured party is to be filed with the City Clerk's office on or before June 23, 2017.
2. **Road Closure Plan:**
Police Department and the Fire Department approvals of the plans for the Fishtown Horribles on July 3, 2017 have been received through the Special Events Advisory Committee. Roads to be closed are to be marked with signage directing the public as to the duration of the closure and alternate routes. Traffic and parking plan and police detail information by the Police Department to be filed

- with the Police Chief. Any substantial changes, as determined by either the Police or Fire Chief or their designees to the route or related to safety issues may require City Council approval.
3. **Refuse and Comfort Stations:**
All refuse and recycling due to this event must be removed by the organizer. Any portable toilets (with two handicapped accessible) are to be provided and maintained by the organizer, placed the evening before the event or early in the morning of the day of the event and be removed by 9:00 a.m., July 4, 2017.
 4. **Emergency Services:**
All requirements of the Gloucester Fire Department EMS must be met.
 5. **Staffing:**
Event staff is to have cell phones and be identified by the public with distinct shirts. A list of event staff and their cell phone numbers is to be submitted to the Police, Fire or DPW Departments.
 6. **Notification of Immediate Abutters and Businesses to Parade Route:**
Notice shall be made by the event organizer by hand or by mail no later than 7 (seven) days in advance of the event to function halls, motels and hotels, and other businesses along the parade route.
 7. **Responsibility of the Fishtown Horribles Parade Committee:**
The applicant is also required to obtain any necessary approvals from the Health Department. It is the sole responsibility of the Fishtown Horribles Parade Committee to ensure that all required documentation is timely filed with the appropriate City departments as indicated. Failure to comply with any conditions precedent may result in permit revocation. Applicant is also required to comply with any requirements made by departments through the Special Events Advisory Committee.
 8. **The Horribles Parade Committee will notify the vendor from the 2016 Fishtown Horribles Parade who is not welcomed back to the city;**
 9. **The Horribles Parade Committee is to provide a vendor list to the City Clerk and the Chief of Police at least one week prior to the event.**
- D. Request to hold Maritime Heritage Day/Schooner Festival September 2, 2017

Councilor Lundberg noted this event went before SEAC for vetting for this signature event.

Councilor Cox asked for an explanation of placement of vendors for the Maritime Heritage Day/Schooner Festival. **Tom Balf**, Director of Maritime Gloucester, accompanied by **Daisy Collinson**, organizer of the Schooner Festival, conveyed that the vendors used to all set up on the Maritime Center's pier but having vendors on Harbor Loop worked well for everyone last year which gave the event a visible presence. He said that it is proposed to have the official vendors on Harbor Loop ensuring access to the Coast Guard, the Harbormaster's Office and Captain Carlos Restaurant (Harbor Loop is closed from 23 to 27). He noted that community partners' non-profit groups would all be under a tent on the pier and the Ardelle & Adventure would be there offering tours at that location as well as any visiting boats tied up to the pier.

MOTION: On a motion by Councilor Nolan, seconded by Councilor Cox, the Planning & Development Committee voted 3 in favor, 0 opposed, to permit the Gloucester Maritime Center to hold Maritime Heritage Day in conjunction with the Gloucester Schooner Festival on Saturday, September 2, 2017 from 8:00 a.m. to 4:00 p.m. at Harbor Loop. Harbor Loop is to be closed to vehicular traffic with the exception of emergency vehicles from 8:00 a.m. to 5:00 p.m. with roadway signs indicating same from 23 Harbor Loop to 27 Harbor Loop. A Certificate of Insurance naming the City of Gloucester as the Certificate Holder is to be on file with the Office of the City Clerk by August 18, 2017. Traffic control during the event will be overseen by the Gloucester Police Department and no police detail is required.

- E. Request to hold the Mother of Grace Fiesta September 10, 2017

Gus MacIntosh, 26 Summer Street, President of the Mother of Grace Club advised the Committee that the Mother of Grace Club Fiesta went before the Special Events Advisory Committee (SEAC). It was noted that plans are changed from the previous year's event, that the event is only one day instead of two.

MOTION: On a motion by Councilor Cox, seconded by Councilor Nolan, the Planning & Development Committee voted 3 in favor, 0 opposed, to permit the Mother of Grace Club to hold its annual Mother of Grace Fiesta on Sunday, September 10, 2017 from 1:00 p.m. to 9:30 p.m. at 48 Washington Street.

Additionally, the Planning & Development Committee hereby permits a procession by the Mother of Grace Club to commence on or around 2:00 p.m. on Sunday, September 10 and to conclude on or around 2:45 p.m. on a route from 48 Washington Street and returning to 48 Washington Street requiring rolling street closures as directed by the Gloucester Police Department. As traffic control during the procession will be overseen by the Gloucester Police Department, no police detail is required.

3. SCP2017-004: Commercial Street #33, Map 1, Lot 22 in the MI District for an Open Air Parking Space Permit pursuant to GZO Sec. 2.3.6.1 & GCO Sec. 22-153 -- This matter returned to the P&D Committee from City Council meeting of 04/25/17 pending Legal Counsel advice (Cont'd from 05/03/17)

NOTE: At the April 5, 2017 P&D Committee meeting the Committee heard from the applicant and voted to move SCP2017-003 forward to the Council with a positive recommendation. During the public hearing objections were heard from a purported representative of the Beauport Gloucester Hotel which called into question the right of the property owner to lease the property to the applicant, William Mondello in order to obtain a Special Council Permit to operate an Open Air Parking Lot at 33 Commercial Street. The matter was returned to the P&D Committee by the City Council. After a discussion at the Committee's May 3 meeting, the matter was continued to this date in order to give all parties time to work out their differences.

Chip Payson, General Counsel, reviewed that there was an application that was submitted to the Council and upon this application reaching the Council level it was learned that there was another agreement that may have been at issue so that the permit and prior agreement had overlapping times. Since that time there have been developments and introduced Attorney Lawrence Kaplan of Goodwin Proctor, LLP, Boston and John Cunningham of Cunningham & Cunningham, Gloucester, MA, representing Beauport Gloucester and Sheree Zizik respectively and asked that they update the Committee.

Attorney Lawrence Kaplan, Goodwin Proctor, LLP, Boston, MA, said that his firm has filed a lawsuit in Land Court not just regarding 33 Commercial Street and regarding another property. He said his client has a signed enforceable easement to park vehicles on 33 Commercial Street from the hours of 5:30 p.m to 3:00 a.m. on weekdays and all day Saturdays, Sundays and holidays at no cost to Beauport and is in common with tenants and occupants (of 33 Commercial Street), with assigned spaces. He said the signed easement is enforceable at no cost. He advised since that agreement was signed his client has been asked to make large payments to park there even though the agreement is that they don't have to pay to park vehicles at 33 Commercial Street. His firm filed suit on Beauport's behalf in Land Court. They (owners of 33 Commercial Street) have said that if his client doesn't make the payment, that they would lease 33 Commercial Street, possibly to someone who will run a parking lot. He said that is contrary to his client's rights to use the property. If in the end a license for a parking lot is issued is no different than if they leased it to someone and allowed them to use it all. He said he would check with his associate who does the litigation whether he thinks they have this covered or have to go back to court and enjoin the use of the parking lot because of their rights under the easement.

Nick Fay, Associate of 1907 LLC, owner of 33 Commercial Street, said while they don't believe this is an issue for the Committee, that it is a Land Court issue, they found that the easements and documents Attorney Kaplan referenced, that there is a "significant piece of language" omitted that is for "unused and unassigned parking spaces." Beyond that, it is a legal matter being worked out between private parties; he said that phrase "unequivocally" leaves the door open for the assignment and use of those (parking) spaces. To the extent that this is the business of this Committee, which 1907 LLC doesn't believe it is, he asked the Committee to review the parking permit application on its merits and put aside the issue between private parties. He pointed out that the owner operates the Walgreens Plaza, and the parking is managed there, as well as operate a valet service at the Walgreen's Plaza for the Veteran's Administration Clinic. The ongoing maintenance security for that lot and this lot at 33 Commercial is good for the tenants, a public use and whatever agreement they are able to work out with the hotel. They look forward to a positive and constructive resolution. He said they have offered a parking management agreement as is case with all 1907 tenants and common practice in real estate investments and not considered "outside the norm" of any real estate operation. He asked the Committee view this matter on its individual merit and let the private issue remain a private issue.

Councilor Lundberg said the Planning & Development Committee recommended to the Council on the application and went to the Council for the public hearing. The Council will deliberate on this matter on Tuesday, June 27 and will make its vote then.

Councilor Cox noted Mr. Payson reviewed the documents and asked his opinion. **Mr. Payson** said this is not something the city should be involved. He explained there is a sufficient document that promises the spaces to the

hotel 1907 LLC then turned to another entity and promised the spaces at 33 Commercial Street who came before the city asking to use the parking lot at 33 Commercial Street (as an Open Air Parking Lot). He said in his opinion the city should not approve the application as it is a risk for the city legally. He pointed out that the city can allow the applicant to withdraw his application and bring it forward once the legal issues are solved. He said that his recommendation to the Council is that they not approve this Special Council Permit.

Mr. Fay said they agree with General Counsel that this is not an issue of the city and denying a permit on the basis of a private matter would be “frivolous and beyond the scope of the application.”

Councilor Lundberg said when they reopen the continued public hearing at City Council on June 27 the Committee will make its report and the Council will deliberate. **Mr. Payson** said as General Counsel in his opinion it is about risk. He pointed out these are not “isolated” incidents, but interconnecting matters. He said that if the city “steps into” this matter and approves the Special Council Permit, that the Council has now entered into a dispute between private parties which opens the city up to liability. He added that the private parties need to solve this, and once solved, the applicant can come back before the City Council and then the Council can make a determination. **Councilor Cox** noted that this was why she asked for this time to resolve this issue among the private parties at the Committee level but is not the case. She recommended so that there is no loss of application fee that the application be withdrawn until the matter is satisfied in Land Court.

Councilor Orlando asked about ownership interest because that’s what is in dispute, and as a Council can they even take up a question like that because they can’t grant relief to someone who doesn’t own the property.

Councilor Lundberg said the Council has an application for a Special City Council permit before them and is where the Council will resolve this matter.

The matter of SCP2017-004: Commercial Street #33 public hearing will reopen at the City Council meeting on June 27, 2017.

4. SCP2017-008: Sleepy Hollow Road #28, Map 257, Lot 3, GZO Sec. 1.9; Sec. 1.10.1(a)(1); Sec. 2.4.4(a) and 3.1.6(b) for a non-conforming residence in a non-conforming lot & a building height in excess of 35 ft.

Councilor Lundberg advised that the attorney for the Applicant, Deborah Eliason, has asked that this matter be continued to July 19, 2017 which was received in writing and placed in the Committee files.

This matter is continued to July 19, 2017.

5. SCP2017-009: River Road #36, Map 24, Lot 11855, GZO Sec. 1.8 re: Use Table Special Permit for an Art Gallery NOTE: Assessors Map and Lot Number according to Certified City of Gloucester Abutters Report on file) is Map 118, Lot 55

Mr. Anthony Pagnotti, owner of 36 River Road, asked to be permitted to open an art gallery within the current confines of his property in a storage area with his studio above and wants to make that storage area into an art gallery.

Councilor Lundberg noted that the application states that there would be art displayed and sold from another artist on display. **Mr. Pagnotti** said the artist is from Rockport. He said the storage area proposed to be converted to an art gallery is small at 9 feet by 13 feet. He noted his property is across from the Annisquam Market and Marina which is very busy in the summer, and expressed hope that some of the business would overflow to his gallery. He noted his intent to be open three days a week. **Councilor Lundberg** said there are six criteria under GZO Sec. 1.8.3 that the applicant has to respond to which he listed and asked for Mr. Pagnotti’s comments on the six criteria he listed. **Mr. Pagnotti** said he had no comments on the criteria.

Councilor Cox reviewed with Mr. Pagnotti the plot plan for Mr. Pagnotti’s property submitted with the application. She and the Committee reviewed with Mr. Pagnotti where parking was off street, and Mr. Pagnotti confirmed that the parking is for “at least” two cars, and that he would park his personal vehicles on the street. **Councilor Cox** said she didn’t think that parking scheme satisfies the criteria of “Traffic Flow and Safety.” She said there has to be enough parking for Mr. Pagnotti’s vehicles and for the vehicles of gallery visitors off street. **Councilor Lundberg** said that the traffic flow and safety being negligible and the off-street parking is not enough. Councilor Cox said they can’t predict what kind of increase in traffic there would be because of the art gallery on River Road and there has to be enough parking for his vehicles plus visitors to the gallery and she had a problem with this. Councilor Lundberg said the additional traffic in the summer to a roadway that is already difficult would become untenable. As a result of some public safety issues on River Road, he pointed out that parking spaces were eliminated further down River Road due to making it difficult for emergency vehicles to get through. **Mr. Pagnotti**

said that he anticipates that restaurant goers would visit his gallery. **Councilor Cox** said that people at the restaurant parked in their lot can't stay in that lot to shop at his art gallery. She noted the secondary artist is not domiciled at 36 River Road which is also another requirement that the artist live and produce art at that domicile and has to be taken into account as well. Councilor Lundberg said this is before the Committee to recommend to the City Council and that there will still be a public hearing where Mr. Pagnotti can make his case to that body.

Mr. Pagnotti confirmed for Councilor Nolan the proposed art gallery would be on the ground level of a two-story building on the property at 36 River Road.

COMMITTEE RECOMMENDATION: On motion by Councilor Cox, seconded by Councilor Nolan, the Planning & Development Committee voted 0 in favor, 3 opposed, to recommend that the City Council grant a Special Council Permit (SPC2017-009) under the Gloucester Zoning Ordinance, Section 1.8, and 2.3.6(4), Other Principal Uses, for Arts, crafts and sale of art or crafts if made on premises, for 36 River Road, Assessors Map 118, Lot 55, Zoned R-20, to the owner and applicant, Anthony Pagnotti, to operate a gallery for the sale of art objects, which is found to be in harmony and purpose of GZO Sec. 1.8.3 with the following conditions:

- 1) **The art gallery is to be located on the residential premises of 36 River Road where the applicant resides and within the structures currently in existence;**
- 2) **The art to be offered for sale at the gallery shall be limited to the artwork created by Anthony Pagnotti;**
- 3) **The parking for gallery visitors shall be entirely off-street as shown on plans submitted to and approved by the City Council;**
- 4) **The granting of this permit is restricted to the applicant and current owner Anthony Pagnotti and shall expire when the applicant ceases to operate this gallery as approved.**

This Special Council Permit application will be advertised for public hearing.

6. *SCP2017-006: Great Republic Drive #38, Map 263, Lot 64, GZO Sec. 1.5.3(c), 5.7 "Major Project" and Sec. 5.27 "Medical Marijuana Treatment Centers & Medical Marijuana Cultivation Facilities" (Cont'd from 06/07/17)*

Councilor Lundberg conveyed that this matter would need to be continued to the Committee's August 2 meeting. He advised that the attorney for Happy Valley Ventures has indicated in writing that he would assent to a continuance as the Planning Board had yet to finish its review and deliberations on this Major Project. He noted that the matter wouldn't return to the Planning Board agenda until its July 20 meeting.

This matter is continued to August 2, 2017.

7. *CC2017-009 (Orlando) Request that the Zoning Ordinance be amended by ADDING new Sections 1.5.4.1 "Zoning Administrator" and 5.29 "Certain Pre-Existing Multi-Family Use;" and AMENDING Sections 1.5.1, 1.8.1, 1.8.2, 2.2.1, 2.3.1 re: "Administration and Procedures" and "Use Regulations" (Cont'd from 06/07/17)*

Councilor Lundberg noted that the Planning Board recommended by a vote of 3 in favor and 2 opposed a revised Ordinance from what Councilor Orlando asked for in his original Council Order

Councilor Orlando said there is a lot heard about affordable housing, and is an issue for the city which is raised any time a developer wants to build housing in the city. State law says the city has to reach an affordable housing stock in the city of 10 percent. What this proposal does is to offer a partial solution, he said. He advised there has been one significant change and is a sunset clause for relief in these amendments which is three years. The actual Council Order filed is that GZO Sec. 5.29 is changed to 5.30 because there was something added in the interim as GZO 5.29. This addresses the question of the Special Permit Granting Authority (SPGA) they'd be calling upon to examine these applications. In order to streamline the process and make it cheaper for the applicant so there isn't a deterrent of expense and cost so as not to add costs, a position is being created of a Zoning Administrator.

Councilor Lundberg asked what problem Councilor Orlando hoped to solve by this Zoning Ordinance. **Councilor Orlando** said affordable housing stock problem. One portion of that issue is not counting stock that would be considered affordable by price and dimension because there is no deed restriction. Prices are perhaps where they should be for a one-, two- or three-bedroom apartment, meeting all other requirements but aren't counted because they're not deed restricted so they don't count as affordable housing units. **Councilor Cox** asked why the

units aren't counted that way to which **Councilor Orlando** said the units aren't deed restricted and not classified as an affordable housing unit because of it and can't be counted. **Councilor Lundberg** pointed out these units aren't legal apartments either. This is a solution to a counting problem not a capacity problem, and doesn't increase housing stock. **Councilor Orlando** noted this is about units already in place at least 10 years. One of the restrictions is that the applicant has to prove the unit has been there at least 10 years and in continuous use by providing certificates of rental; Building Inspector Certificates, etc. and in continuous 10 year use on the property. There is currently a mechanism for seeking relief if a property owner wants it, he advised, which doesn't require any affordable housing units to be deed restricted which is one of the things being offered. Owners can seek relief, get their sign offs which is time consuming and expensive and the city wouldn't get an affordable housing unit out of the process. This is a mechanism for a trade, he said, and done in a streamlined process so that applicants aren't paying so much for attorneys and architects to get there.

Councilor Cox said through this Zoning Amendment they'd be asking people to come forward that possibly have illegal apartments, bring them to code and deed restrict them to affordable housing units and asked what is the city giving back. These property owners are getting relief they wouldn't necessarily get, **Councilor Orlando** said. **Councilor Lundberg** asked what the city gets. **Councilor Orlando** said the city gets an affordable housing unit for thirty years which the city badly needs, higher property assessments, more tax revenues and resolving many problems. They get a bunch of problems solved.

Councilor Cox asked how the process is being streamlined – were fees being waived. Councilor Orlando as outlined in the proposed ordinance that he said he had assistance from Attorney Joel Favazza and Attorney J. Michael Faherty, local real estate attorneys, is creating position of Zoning Administrator (ZA) that some cities and towns use as the Special Permit Granting Authority (SPGA), to whom the Zoning Board of Appeals (ZBA) through their authority delegates power to the ZA. He explained that the ZA would hold mini-public hearings as needed and address all of the questions for the significant requirements to “fit into the box” for one of these units. If all the requirements are met, checked, the ZA would have the power to grant that special permit and grant the permit or zoning relief as long as the deed restriction is on the property unit and is in place for 30 years. He said that the benefit to owner is now having a legal unit they wouldn't otherwise have and their property value increases. He described that in turn the city in reassessing property gets more significant value and gets more tax revenue from that property. He reiterated that the city gets a badly needed affordable housing unit to be counted towards its 10% affordable housing stock goal. This solves a counting problem, he pointed out and was one of the matters when round-tableing with key city staff in several meetings about this very issue he got great feedback on this and then from the Planning Board had some suggestions from the ZBA.

Councilor Cox said it is also safety issue, which **Councilor Orlando** agreed with noting that some illegal units don't have certificates of occupancy; the units may not have appropriate egress; or fire suppression systems in place and people are living in them. An additional benefit, he pointed out, is that these now legitimate units will be safer.

Councilor Lundberg asked why these owners don't do that now. **Councilor Orlando** said it is an expensive process now as it exists.

Councilor Cox said she likes the idea but wasn't seeing the encouragement for these owners to come forward because it is such an expensive process. She suggested that the process might end up being that the owner loses that apartment they're currently getting revenue from because of lack of ability to provide a second parking space, or no second egress, and other ordinance issues, trash removal issues with more than four units a dumpster and a private hauler is required. She said this is a good idea but it needs to give more encouragement -- that if it's just these conditions such as proving the unit has been viable and in use for 10 years, then they need to add more incentive in the form of cutting fees. **Councilor Orlando** said reason for the creation of the position of the ZA is to streamline that process. **Councilor Cox** said the position of ZA is another issue in that positions had to be cut this year because the FY18 budget was so tight -- the city doesn't have the money for this position. **Councilor Orlando** said according to the Administration, that person already exists in city staff that would be vested with that authority.

Councilor Lundberg asked why the ZBA would want to cede this authority to a ZA. **Councilor Orlando** said the ZBA should have the same goals they all have, that of seeing more affordable housing units on the city's rolls. **Councilor Cox** said if they cut that person out because they can't afford them anyway and have the ZBA hear the appeals, with a caveat that the fees can be waived to encourage people to come forward. She said she didn't see people taking this avenue. **Councilor Orlando** said the incentive to do it is not within their control and can do what they can to make it attractive as possible to potential applicants/property owners to make it as attractive as possible adding that he was open to suggestions.

Councilor Lundberg cited that the city just when through Housing Production Plan exercise which was approved after a long, process with a knowledgeable committee with guidance from a professional consultant, which gives a list of strategies; and when the HPP is approved by the state the city will be charged to implement those

strategies, one of which is to change the Zoning Ordinance to make it easier to get affordable housing. He asked why they wouldn't go through that process of having this issue before the Task Force that did the HPP and have them consider this as part of their implementation strategy process. He said that he was on the Planning Board for six years, two years as Chairman; a member of the Planning & Development Committee in his second term now its Chair, and pointed out there is technical issues that are unsolved and the Council can't solve it, and pointed out it takes six votes to pass a Zoning Amendment. He expressed concern that the Planning Board didn't come to a unanimous decision which he said is unusual for a zoning change, and noted two Board members were absent when the vote was taken.

Councilor Cox expressed agreement that they need to think about some of the technical "ins and outs" of the proposed amendment, and suggested perhaps a joint meeting of the ZBA, Planning Board and Planning & Development Committee meeting in a workshop setting may be appropriate. She suggested that Councilor Orlando didn't understand her objection saying that she thought the proposal was a great idea, but that agreed with Councilor Lundberg that it should be in conjunction with the other things. She suggested that in order to get more people to come in to utilize this new process they need to cut the fees somehow and that fee is something they can control but she didn't want to cut any further requirements. **Councilor Orlando** said he wouldn't object to the fee cuts. **Councilor Lundberg** said for them to understand what the right fee would be they'd need to have some further input and well as what is the right mechanism, whether it is the ZA and expressed he was unsure whether they want to add another job to the city rolls when they have a ZBA that if they gave them additional criteria they could then apply that.

Councilor Orlando said the working group he'd mentioned earlier was made up of a cross section of city staff, General Counsel, Chip Payson; Acting Community Development Director, Gregg Cademartori; Assistant Director of Public Health, Max Schenk; Principal Assessor, Nancy Papows, and CAO, Jim Destino. He advised that the original version of the proposed Zoning amendment was changed, and he assured it is something that has been vetted. He said he liked a waiver or reduction of an application fee to entice owners to come forward and would entertain an amendment which they can do as a Council. This is not mutually exclusive with the HPP, and its strategies, and he said he didn't see the downside in making such amendments to the Zoning Ordinance to provide this opportunity to people because there are safer apartments, more affordable apartments and added tax revenues. He pointed out there is a requirement that there can't have been complaints for the past five years. What they're doing taking existing units not counted, making safer and up to spec and counting them for 30 years as affordable housing and landlords get a valuable property and a unit couldn't publically count and now can. It provides mechanism that is less costly for them, he said. He said he didn't want people to spend \$15,000 to \$20,000 just go get relief.

Councilor Nolan said that anyone who has an illegal apartment right now knows it. Egress is a huge issue, be it a basement apartment with inadequate windows; square footage for the second door, etc. They won't come forward if it costs \$20,000 to \$30,000 to make it legal and then charge cheaper rent for affordable housing unit for thirty years. He said there may be some people interested in this and could save some money and give deeded rights. He said he liked the idea of where this proposal is moving towards. Anyone with a safety concern with an apartment won't be changed by spending a lot of money. If they can get 30 people to do something legally and give the city low income housing it is a great idea, even five more people. **Councilor Orlando** said the deed restriction is 30 years and is, essentially the life of a mortgage. The affordable rates being what they are a lot of apartments that will be under those rates currently, he pointed out. He said it wouldn't change much for the landlords with the restriction who are getting the same amount in rent or more. If there is egress that has to be corrected it is adding another cost to the already \$15,000 to \$20,000 to go through the process as it stands now, he reiterated.

Councilor Nolan said at Top of the Harbor, and the Heights at Cape Ann, those rental units are below market value and considered low income housing and not considered affordable housing. He asked is there any way to incentivize these owners to keep the rents at a lower rate and deed restrict some of their units. **Councilor Orlando** said mechanism outlined in this proposal is meant for two-three-four- up to six-housing unit domiciles and that it wouldn't apply to such large housing developments. The idea is that some units that fit into this scheme very well, he added, and this mechanism is a small piece of the puzzle of solving the affordable housing in the city.

Councilor Lundberg highlighted that this proposal doesn't increase the city's housing stock. **Councilor Orlando** said they take units not on rolls and puts them on it. **Councilor Lundberg** urged that this go back to Planning Board and have the Board come back with a unanimous decision. **Councilor Orlando** said this was two separate hearings and ZBA members were present. At the first hearing seven Planning Board members were present and at the second five members were present. It isn't required to have a unanimous decision, he noted. **Councilor Lundberg** said that if it goes back to Board reworked with a unanimous decision it will pass. He said he was troubled not having a clear view because this amendment is as intricate as to what it changes and what the impacts of those changes are and expressed he would be more comfortable with a clear decision of the Planning Board.

Councilor Cox said she understood Councilor Orlando was hoping to move this forward to City Council and asked if he was amenable to try to get a joint Planning Board, P&D and ZBA meeting together. She said that she couldn't attend the Planning Board meetings because of budget meetings. She said she would like to know why there were two dissenting votes. **Councilor Lundberg** added that it was known members of the ZBA were at the Planning Board public hearing, but there is no record in the decision about what their feelings are. He explained that one of the differences between this ordinance amendment and past amendments, is the Council is not the last stop. The ZBA then has to take up the task of appointing a ZA and set the criteria and oversee it; and P&D hasn't heard from them as to how they feel about it. **Councilor Orlando** said the ZBA was at the June 1st public hearing of the Board. Some had some interesting questions. **Mr. Wright**, ZBA Chairman did a memo based on his personal beliefs, **Councilor Lundberg** noted (on file) and said that is an incomplete opinion as it doesn't represent the entire ZBA. When they're changing zoning they want to ensure it is used, effective and everyone signs off on it, he pointed out. **Councilor Orlando** said the working group was important; that the ZBA and Planning Board added to input that prompted changes, but he asked they not send this back to the beginning. **Councilor Cox** said it can be workshop.

Gregg Cademartori, Acting Community Development Director conveyed the following: that everyone began with there is initiative here. Where they are in terms of an accounting and the state mandate --it is a counting issue. They know from experience of ZBA 40B reviews of such applications, many owners and landlords and seeing rents "affordable" rents that their rents are much lower than what the state suggests what the city's affordable rents should be. The issue of counting is that if you don't have a deed restriction the state doesn't look at it. When they look at need identified, there is need, but there is more affordable housing than is recognized. There is an identified need associated with the need for additional units, but they're not "painting the best picture" of what the city's affordable housing stock is and how a unit is qualified to the state. His inviting the ZBA to the Planning Board meeting was because they are integral in the success of this ordinance. If the ZBA doesn't have buy in to the approach of appointing a ZA there will be an issue. Sib Wright, Chair of the ZBA expressed his concern as did other members as they review each additional unit of housing in these districts because of dimensional relief and may go to the Council because of it there are things that come up that they may include as a condition and asked if there was a way to build it in. There was a time, he pointed out, when Gloucester had a multi-family district. A lot of the concern expressed by some Planning Board members and ZBA members was more process oriented not how do they create safer housing by identifying these units and providing a means to get them inspected having safety issues addressed. Some was similar to the questions raised by Councilor Cox as is it enough of an incentive to come forward. The back side is owners get a deed restriction but what if a unit doesn't qualify. Counter of that are those situations where people may not come forward. There is an enforcement side too. The approach piece of how it is to be administered is a good question for the entire Zoning Board. If they don't agree to that then, he said that, "this amendment is toothless," and said that is significant. He discussed with **Councilor Cox** about where is the equity for who has not gone through that process in the 1990's, to 2007 but have a market rate unit. With the point of the affordability piece, this approach is that the "penalty" is a deed restriction for 30 years. **Councilor Cox** said the two processes aren't equal but neither are the requirements. She said that the whole component of the 10 year continuous use is the process here. If I don't have the 10 years continuous then they still have to go through the whole permitting process. **Councilor Orlando** added said that when a 40B project comes sometimes it's friendly sometimes not. There is exposure, and the city's been lucky so far and might not always be the case. This is a mechanism to increase stock and get more control in the future. These are units not being counted at all for anything. It is one affordable unit without the market rate units on the other side.

Councilor Cox discussed the possibility again of a workshop before the Council takes up this matter at a public hearing with the three public bodies involved at one time with **Mr. Cademartori**, saying however, that she was willing to vote on this matter tonight. Councilor Cox said she'd be amenable to receiving something in writing from the ZBA.

Councilor Lundberg said he won't vote in favor of the amendment as drafted as he remains troubled by split decision and the lack of answers to some of these questions. He said this is an amended ordinance without narrative that discusses these issues, as well as the objections he made previously. **Councilor Cox** asked that they continue this matter. **Mr. Cademartori** said the Committee is in an unusual place in that the Planning Board has had their public hearings, made their deliberations and voted to forward their recommendations, and the Council has a scheduled public hearing to open on June 27. **Councilor Orlando** said is the idea to seek ideas and opinions to seek amendments. **Councilor Lundberg** said it is about seeking unanimity which is the right thing to do. He said it isn't right to proceed on a split decision of the Planning Board where almost half of that Board disagrees with it and isn't right. **Councilor Orlando** pointed out it isn't required to have a unanimous decision. **Councilor Lundberg** said with amending the Zoning Ordinance there should be any dissenting, but be unanimity on the process as this is mechanical and has to be fair to all the citizens. There are people who have gone through the existing process who

will be disadvantaged, but be making it easier on others moving forward. They have to weigh that and haven't had a chance to do so, he said. **Councilor Orlando** pointed out that it isn't something that is forever, as it has a sunset clause which isn't free with the deed restriction. He said the idea is to entice people to do this and come forward but that this isn't free or forever. If they go through the proposed process they still have some kind of penalty as this isn't the exact same process and outcome. **Councilor Lundberg** said they don't have the clarity of vote and the narrative. **Councilor Cox** said that unanimity doesn't bother her but that she doesn't seem to have what she feels she needs to make a good decision. **Councilor Orlando** said there was a long meeting with good ideas and concerns laid out and that he thought he responded to the concerns having gone through the working group process for a month. He said he encouraged the Committee to look at the minutes from the Planning Board and that the ZBA was there mostly and asked questions and made their opinions known. He suggested the Board's vote would have been 5 in favor, 2 opposed had all members been present. **Mr. Cademartori** said they can get a formal opinion from ZBA. **Councilor Cox** said she'd like to hear from the two Planning Board members not there when the Board voted and it is questions about the Planning Board and ZBA input. She said she likes everything about the amendment.

Mr. Cademartori said the issues are things of unknowns of whether someone will take advantage of this ordinance or not and will someone accept a deed restriction and is it practical for smaller projects. This is focusing on creation of units that are not counted and don't really exist, so to speak. The point is trying to address the safety concerns that this would address if someone comes forward, he said and that deference was given to opinions of the ZBA about the framework and whether they were comfortable with one person making a decision. **Councilor Cox** said that is why she wants a ZBA opinion. What is offered is an enticement and whether the property owners take the city up on the offer is not her concern. She said what Councilor Orlando proposed is thinking outside the box and on that merit she'd be willing to vote. What she heard is that they would like a bit more information on the how the ZBA would handle it. **Mr. Cademartori** said the Planning Board recording clerk wasn't able to prepare the minutes from the last two sessions and doesn't know what the time frame is to get them.

Councilor Lundberg said in the interest of getting this right the Committee should continue this matter.

Councilor Orlando encouraged the Committee to read the Planning Board minutes from the two public hearings.

Councilor Lundberg reiterated the P&D Committee doesn't have those minutes.

Councilor Nolan said he likes the idea and supports it.

Councilor Orlando added that while this zoning amendment is narrow in scope, it is and is something worth passing; that if doesn't work it goes away in three years, and if found to be flawed they can change it or strike it.

Councilor Lundberg said the ZBA would appoint ZA and cede authority to that person who becomes a permit granting authority and that he would want their input. **Councilor Orlando** said the ZBA was concerned about losing authority which he said it is rather investing some of their authority to a single entity. **Councilor Cox** asked what the permit cost is for such an application to go before the ZBA. **Mr. Cademartori** confirmed it was \$250.

MOTION: On a motion by Councilor Cox, seconded by Councilor Nolan, the Planning & Development Committee voted 3 in favor, 0 opposed to request that the Zoning Board of Appeals make a recommendation as to how that Board would hand the implementation of this proposed Zoning Ordinance Amendment.

This matter is continued to July 5, 2017.

8. *CC2017-014 (Memhard) Request that private way known as Starknaught Heights be accepted by the City as a public way, and that the name of the street be included in the city's list of public ways pursuant to GCO Sec. 21-1 and Sec. 21-2 (Cont'd from 06/07/17)*

Councilor Lundberg indicated that the Committee has yet to receive the recommendation of the Public Works Director and the Mayor, and there is no layout plan which is the responsibility of the abutters. **Mr. Payson** advised that the statute requires notice of the Council's intention to lay out the road as a public way and action can be taken within a certain period of time.

This matter is continued to July 19, 2017.

9. *CC2017-019 (Gilman) Request review of the feasibility of amending the GZO to allow dwellings under 500 square feet AKA "tiny houses" to be permitted in certain zones*

This matter is continued to July 19.

A motion was made, seconded and voted unanimously to adjourn the meeting at 7:05 p.m.

Respectfully submitted,

Dana C. Jorgensson
Clerk of Committees

DOCUMENTS/ITEMS SUBMITTED AT MEETING: None.