

**Planning & Development Committee**  
Wednesday, July 19, 2017 – 5:30 p.m.  
**1<sup>st</sup> Fl. Council Committee Room – City Hall**  
-Minutes-

**Present:** Chair, Councilor Paul Lundberg; Vice Chair, Councilor Melissa Cox; Councilor Gilman

**Absent:** None.

**Also Present:** Councilor Orlando; Councilor Memhard (entered the meeting at 5:36 p.m.); Gregg Cademartori; Chip Payson

The meeting was called to order at 5:30 p.m. Upon the arrival of Councilor Memhard there was a quorum of the City Council.

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 and place a flush mount vault in sidewalk for service to Main Street #382 – To be conducted as a Public Hearing (Cont'd from 06/21/17)*

This public hearing is opened at 5:30 p.m.

Those speaking in favor:

**David Fwelling**, Specialist 2 Construction with Comcast explained that there is a request to service a customer at 382 Main Street (Domino's Pizza) which requires 214' +/- "path/trench" from a pole at the intersection of Main Street and Eastern Avenue and placing a 17" x 30" flush mount vault in the sidewalk. Highlighting the Comcast plan (on file), he said it shows that Comcast is doing their best to not disrupt the street's painted bicycle path and to stay off to the side of the road as much as possible on this highly travelled roadway.

**Those speaking in opposition:** None.

**Communications:** None.

**Councilor Questions:** None.

This public hearing is closed at 5:31 p.m.

**Councilor Lundberg** noted that there is a memo from the Public Works Director from which conditions are incorporated into the permitting motion (on file). **Councilor Gilman** expressed her appreciation for Comcast's consideration to city's facilities such as the bicycle paths on its roadways.

**MOTION:** On a motion by Councilor Gilman, seconded by Councilor Cox, the Planning & Development Committee voted 3 in favor, 0 opposed, to permit Comcast of Connecticut/Georgia/Massachusetts/New Hampshire/New York/North Carolina/Vermont LLC to install one (1) 4 (four) inch PVC conduit 214 feet +/- from Pole #5970 on Eastern Avenue to continue to the sidewalk at 382 Main Street and to place a 17" x 30" flush mount vault in the sidewalk to service a customer at 382 Main Street including the necessary sustaining and protecting fixtures as shown on, "Proposed Comcast Underground Conduit Plan to Service 382 Main Street, Plan of Land in Gloucester, MA, dated May 25, 2017," with the following conditions:

- 1.) Notification to the Department of Public Works 72 hours in advance of the proposed work. A construction schedule will be prepared by the applicant for review and acceptance by the Department of Public Works;
- 2.) Proposed excavation may only occur during accepted road opening and construction season, 15 March – 15 November. No winter construction shall be permitted.
- 3.) In the absence of a detailed construction plan, the Department of Public Works requests: all proposed conduits and appurtenances shall be placed so as to cause minimum conflict with existing underground utility services.
- 4.) The existing sidewalks are cast-in-place concrete and the City of Gloucester will only accept full panel pours.
- 5.) All excavated trenches shall be patched flush with the surrounding asphalt using hot mix asphalt binder at the end of each work day to minimize pedestrian hazards. Asphalt shall be applied in two lifts of 2-inches, totaling 4-inches.
- 6.) Final paving shall be full width (curb to curb) paving in accordance with Department of Public Works specifications.

2. *PP2017-004: Petition by National Grid to install 5 ft. 3 in. service conduit in the public way on Railroad Avenue from Pole 3474 to private property– To be conducted as a Public Hearing*

**This public hearing is opened at 5:33 p.m.**

**Those speaking in favor:**

**Peter Glynn**, representing National Grid, explained that National Grid proposes to install five feet of conduit to service #22 Railroad Avenue which is from a pole through the sidewalk at the customer's request. He said currently the address is serviced through overhead lines. This action will take the lines through a conduit under the sidewalk and will also move the meter further back on the building, he noted. He said that only one panel of the sidewalk will be disturbed and assured that everything will be put back.

**Those speaking in opposition: None.**

**Communications: None.**

**Councilor Questions:**

**Councilor Cox** asked if there were plans to replace this particular pole. **Mr. Glynn** said he checked the integrity of the pole noting mild exterior damage to one side of the pole. The pole is intact, relatively new and should be okay, he added.

**This public hearing is closed at 5:36 p.m.**

**Councilor Lundberg** noted that the DPW Director had forwarded his memo with recommended conditions (on file) which have been incorporated into the permitting motion.

**MOTION: On a motion by Councilor Cox, seconded by Councilor Gilman, the Planning & Development Committee voted 3 in favor, 0 opposed, to permit National Grid and Verizon to install 5 feet of 3 inch service conduit from pole #3474 to private property at 22 Railroad Avenue including the necessary sustaining and protecting fixtures as shown on, "Petition – City of Gloucester 22 Railroad Avenue, Gloucester, MA, Work Request 24063567 dated 7/15/2015," with the following conditions:**

- 1.) **Notification to the Department of Public Works 72 hours in advance of the proposed work. A construction schedule will be prepared by the applicant for review and acceptance by the Department of Public Works;**
  - 2.) **Proposed excavation may only occur during accepted road opening and construction season, 15 March – 15 November. No winter construction shall be permitted.**
  - 3.) **In the absence of a detailed construction plan, the Department of Public Works requests: all proposed conduits and appurtenances shall be placed so as to cause minimum conflict with existing underground utility services.**
  - 4.) **The existing sidewalks are cast-in-place concrete and the City of Gloucester will only accept full panel pours.**
  - 5.) **All excavated trenches shall be patched flush with the surrounding asphalt using hot mix asphalt binder at the end of each work day to minimize pedestrian hazards. Asphalt shall be applied in two lifts of 2-inches, totaling 4-inches.**
  - 6.) **Final paving shall be full width (curb to curb) paving in accordance with Department of Public Works specifications.**
3. *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 on a non-conforming lot and a building height in excess of 35 feet*

**Councilor Lundberg** advised that the Committee is in receipt of a letter from the applicant's attorney for 28 Sleepy Hollow Road, asking to withdraw the Special Council Permit application as this matter didn't need to come before the Council by a determination of the Building Inspector.

**COMMITTEE RECOMMENDATION: On a motion by Councilor Cox, seconded by Councilor Gilman, the Planning & Development Committee voted 3 in favor, 0 opposed, to recommend that the City Council permit the withdrawal of 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 on a non-conforming lot and a building height in excess of 35 feet without prejudice.**

**This matter is closed at the Committee level. The public hearing will be opened on the matter, application withdrawn and then closed.**

4. *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 07/05/17 from cancelled P&D meeting)*

**Councilor Lundberg** said the last time this matter was discussed substantively no vote was taken as the Committee requested to hear from the Zoning Board of Appeals (ZBA) and obtained the pertinent Planning Board minutes (on file) of June 1 and a summary of the June 15 minutes (on file). He said there is a memo from the ZBA (on file) dated July 13 (on file). He noted that the Planning Director had pointed out to him that the substantive discussion by the Planning Board on these amendments took place at the June 1 Board meeting. He said the Committee is now ready to analyze and discuss the Planning Board recommendation pursuant to CC2017-009.

**Frank Wright**, ZBA Chair, explained that the primary concern of the ZBA on the present amendments as structured provide for no neighborhood input at all. The closest the amendments come to consideration of neighborhood concerns is the requirement that the Building Department certify complaints issued against the subject building in the last five years. It was suggested that the Building Inspector would likely show that his files when it comes to neighborhood complaints more often than not there aren't any write ups. The ZBA has learned, he indicated, having done a number of similar permittings, that it is surprising to hear the claim that this eliminates the burden on effected landlords/building owners, that it is difficult for them because the ZBA handles these types of cases one every other month which are permitted promptly with no issues on zoning violations, dimensional non-conformities. For a building of three- or under dwelling units, the ZBA also issues the necessary Special Permits. The ZBA has is a two-step process which it doesn't consider burdensome. By sacrificing neighborhood input, values and concerns for the sake of an unknown number of non-conforming building owners/landlords, it is tipping the scales in their favor to the detriment of the city, he said. If some kind of scheme is to be developed, where these owners could be induced to be more forthcoming, **Mr. Wright** said he is willing to work to rewrite the amendment that would guarantee neighborhood input. It was noted that an earlier draft said that appeals could be taken from the Zoning Administrator to the ZBA was “in error.” If the Zoning Administrator acts as the Special Permit Granting Authority (SPGA) the only appeal that can be taken from his decision is to the Superior Court. He said it means that neighbors are shut out of any discussion on their concerns, and if they want to pursue the matter, the burden is on them to go to Superior Court and bear that cost. The demographics of the situation are that it isn't a reviewable situation. The ZBA has found that many times people have complaints but don't move on them. They're dissatisfied with the situation and are too worried to put their name to a complaint with the Building Department and instead “put up with things.” **Mr. Wright** recounted that many times when the ZBA conducts its hearings -- neighbors stand up and complain about parking problems, loud parties, etc. The ZBA will ask the person testifying if they registered their complaints with the Building Inspector, and oftentimes the response is that they'll relay that they didn't want to put themselves in a difficult position.

**Mr. Wright** said all the constraints found in Sec. III of the Zoning Ordinance that pertain to setbacks, building height, adequacy of parking, are by merit. He enumerated that statute if someone wants to build something or legitimize something that is “sitting in the front yard,” the ZBA has to issue a variance. He said that the dimensional tables are long and detailed and broken down by various dimensional concerns -- side yard, back yard, etc., and zoning district, that shows what is required for each district's setbacks. He suggested that in order for these amendments to be a complete package they have to do something about the non-conforming. He suggested that they put in the R-5 & R-10 districts (dimensional tables) asterisks that say, for instance, that you must have 10 feet in the front yard unless you're the owner of an illegal building looking for amnesty but was not sure that would be appropriate to the Zoning Ordinance language. Only the ZBA can give variances, neither the Zoning Administrator nor the City Council.

**Mr. Wright** then read from the July 13 memo under item #4: “At present the ZBA and City Council make critical discretionary decisions relating to impact on affected neighborhoods, and under Chapter 40A any zoning relief given must be by vote of a supermajority, further ensuring that the decision will not be lightly made. We (ZBA) question the wisdom of concentrating all such authority in one individual, especially where the demographics of the affected zoning districts virtually guarantee that there will be no further review of the decision.” He said one of the ways to reconcile these amendments and the ZBA's purview is that instead of a Zoning Administrator that they could appoint or the Council, a Zoning Administrator not vested with as a SPGA. He said, instead, this position would act as a master that certifies to the ZBA or the Council that the six criteria have all been met. That eliminates the processing time of these matters to one narrow issue -- is the neighborhood being served well by the amnesty.

**Councilor Orlando** asked if the idea is to appoint someone who is vested with certain authority but wouldn't include Special Permit granting. That position would review all the documentation, certify as an expert in the field then the matter goes to the ZBA for a public hearing. **Mr. Wright** said, "Yes." He suggested that in the "worst case" that report would go to either the City Council or the ZBA depending on what is indicated by the findings.

Speaking to the affordable housing aspect of the proposed zoning amendments, **Mr. Wright** said that his sense of the affordability system in place mostly depends on good faith and the mission of non-profit organizations such as Action, Inc. that they won't start inserting surreptitiously market rate apartments into an affordable housing project. He said he wasn't sure who enforces this requirement, but if they start with a group of people who have been breaking the law for a number of years, in order to ensure those apartments remain affordable it would be another expense to the city. There are some minor drafting issues also contained within the memo, he noted.

**Chip Payson**, General Counsel, said it is helpful to understand that this is statutorily created, that the parameters of what the Zoning Administrator can and can't do. He pointed out that under MGL Ch. 40A, §13, it says that the ZBA, "may delegate some of their powers and duties." He said to the degree that the Chair of the ZBA was referring to what those powers and duties might look like, the statute empowers the ZBA to do that. He also noted that the statute also says that, "any person aggrieved by the decision or order of the Zoning Administrator ... may appeal to the Board of Appeals." He said there isn't a requirement that they go to Superior Court. Bobrowski's Handbook of Mass. Land Use and Planning Law said that, "The Zoning Administrator may serve the following functions where such powers are delegated by the Board of Appeals: 1) to hear administrative appeals pursuant to 40A, §8, 2) to decide applications for special permits, 40A, §9, and 3) to decide petitions for variances, 40A, §10. He pointed out that this is a statutory construct utilized in other cities and towns in the Commonwealth, suggesting perhaps not as much as it could be, and that there is guidance. If a position to be created this way, he suggested it not be called a Zoning Administrator because it has statutory significance. He said that there is flexibility in what the ZBA can do what the Zoning Administrator can do to potentially achieve what Councilor Orlando has suggested.

**Councilor Orlando** said in working group meetings with city staff – Jim Destino, CAO; Bill Sanborn, Building Inspector; Nancy Papows, Principal Assessor; Max Schenk, Assistant Health Director; and several others, and talked about if a Zoning Administrator decision has to be appealed. They wanted to put something into the amendments to ensure the appeal went to the ZBA, but he pointed out that it is by operation by law that it goes to the ZBA and therefore it didn't require enumeration in the amendments. He said that the idea is that if the Zoning Administrator position is to be created with authority vested by the ZBA, they are as a Zoning Administrator to grant Special Permits and a variance, that the ZBA can have the oversight of that position, invest them with that authority. He pointed out that if a mistake made or appeal made it goes to the ZBA. He said that should allay the concern as concept is the same but that the Zoning Administrator is conducting the public hearing, noticing the abutters and taking testimony because they are a SPGA. **Mr. Wright** acknowledged the Councilor's statement but said that the issue is that there are only six criteria that are to be satisfied to obtain amnesty, and says nothing about testimony and neighborhood consideration. He said that under this ordinance that would be immaterial and the Zoning Administrator could make the determination that it is unnecessary. He noted that if a concerned neighbor comes to the ZBA, they have to file for the appeal and carry the burden to convince the ZBA that the Zoning Administrator is wrong. He pointed out that all the ZBA can do is look at those six criteria because there is nothing enumerated about taking further testimony. He said that was why the master concept is better because then the matter goes to public hearing before the ZBA. If neighbors do show up they will have the authority at the ZBA to take in their concerns before issuing a Special Permit. He gave an example of neighborhood parking issues that may be in play because of the illegal apartment(s) which when heard provide the opportunity to work with the neighbors and the project proponents to ameliorate the situation. He gave the example of a Bass Avenue property where extra parking was instituted because of just such an issue.

**Councilor Orlando** said that the amendments overlay the already existing portions of the Zoning Ordinance. He said that Sec. 1.8.3 applies because it is a Special Permit and those six criteria apply. He pointed out that, just because it isn't written into the amendment doesn't mean it doesn't happen. There isn't nullification of the requirements -- they are still there, he said. Speaking to the dimensional requirements, he said that the applicants already have an existing apartment in an existing building, and there would be no setbacks to inspect. These buildings exist, units exist within them. Parking is addressed as this is not adding to the dwelling units that already exist. He gave the example if there is a permitted two family dwelling is zoned, with a third unit to be made legal, and that the third unit is designated, have someone already living there, parking there, and there's been no complaints for five years, nothing changes. He said that it all stays the same. The Zoning Administrator will send a notice and concerned neighbors can tell him their concerns. He reiterated that just because something isn't enumerated in the amendments, he assured it does exist.

Addressing the first concern in the ZBA memo of the "Elimination of neighborhood input," that there is no sworn testimony, that there's no neighborhood input, he said ignores the construct of the amendments. He acknowledged that **Mr. Wright** pointed out that if there were no complaints in last five years that makes the owner/landlord eligible (for

amnesty) and aren't changing dimensional requirements and parking and the apartment has been in continuous use he asked what are they asking people for. If someone has been bothered by something so badly that they haven't contacted the Building Inspector as to how much the neighborhood is aggrieved and that they would get notice, show up, allowed to give testimony -- that isn't eliminated by concept -- the matter just doesn't go to the ZBA, he said. There has to be a public hearing, he said, and this is a streamlined version. Sec. 1.8.3 requirements that are often addressed have to be addressed by SPGA, is always there and always triggered with a Special Permit. He assured that neighborhood will have input. **Mr. Wright** said that if you list six criteria, they are excluding all others. He reiterated his interpretation of the SPGA and that the only recourse a neighbor might have is to go back to the ZBA again which is a burden. There is no statute where abutters carry the burden of the appeal, and they now have to hire a lawyer. **Councilor Orlando** said all the criteria for a Special Council Permit are adhered to in these amendments and is there by operation of law.

**Councilor Orlando**, referring to item #4 in the ZBA memo, "Vesting of permit granting authority in one individual, without meaningful review" said that is opinion based. The Zoning Administrator's 'package' and "mini-public hearing" will be comprehensive with testimony, sworn affidavits and information from appropriate city departments is significant and meaningful. He cited that criteria will be created by the ZBA which is the next step once these amendments are and passed by the Council. He addressed Item #5 "Enforcement of Affordability Requirements. **Gregg Cademartori**, Acting Community Development Director and the city's Planning Director said that it would be his office that would enforce and that folks have to file affidavits about their tenants, lease agreements and so forth. **Councilor Orlando** said that if they violate those provisions, they are violating their Special Permit, and the city can take action which **Mr. Cademartori** confirmed that his department can take action as to the affordability violations. **Councilor Orlando** said that the idea that these amendments haven't been vetted by city officials he took issue with. He reiterated that there was a working group that including the Building Inspector, the Planning Director, the Assistant Health Director, the Principal Assessor, the CAO, General Counsel who addressed many of these issues in two to three meetings, two Planning Board meetings with members of the ZBA present.

**Councilor Lundberg** said that he didn't consider that there was a working group on this matter, expressing his understanding that Councilor Orlando convened meetings with department heads. He said the Committee has a proposed ordinance before them, the actual ordinance language. He cited that the Council has a memo from ZBA saying that there are significant issues; a split decision vote by the Planning Board of 3 in favor, 2 opposed, 2 absent. He said there isn't consensus on this proposal. What the Council would get from a working group properly represented by the city departments who come to the City Council and say that they now have a consensus of all interested parties on this issue -- we (P&D and the Council) don't have that. He said that was the basis for his concerns on the proposed amendments

**Councilor Cox** highlighted that the city doesn't have the money in its budget for the Zoning Administrator, and asked what would happen if the idea, a three-year idea (referring to the sunset clause on the ordinance amendments), if they keep the same process in place now, with the exceptions that are proposed to encourage the illegal use to stop and get affordable housing on the books. She said that's the goal -- to eliminate (illegal apartments) and add (affordable housing units). She pointed out that if they eliminate the Zoning Administrator and allow the ZBA conduct their business but have this caveat of if apartments are illegal during this particular period of time, the requirements are there for a public hearing, neighborhood input, notices, the same as being done now, but allow for the elimination of the application fee and the consideration of the things outlined in the amendments -- that if the unit(s) have been in place for 10 years with no complaints, etc. She indicated that this proposal is trying to make what could be an easy idea very complicated. **Councilor Orlando** said eliminating application fee(s) to encourage people to come forward he would support. He said the current system for seeking such variances and the like, from his perspective, is onerous and expensive. He said the idea is to streamline the process to make it cheaper; eliminate need for an attorney and/or architect; and is a way to take a new "influx" of work so it won't be backlogged on the ZBA's docket. He pointed out it is hoped that with these amendments that a lot of people will want to do this and get properly permitted and zoned and would be something that wouldn't have to take a long time to get through. He said this isn't about stripping authority. **Councilor Cox** said it isn't so much about eliminating authority, but was considering it solely from a budget standpoint there isn't the money to hire a Zoning Administrator. **Councilor Orlando** said the Administration would vest the authority in someone already on staff. **Councilor Cox** emphasized that the city staff is already overburdened with responsibility. She said she would like to keep the ZBA responsible for this process, but try to eliminate "some of the hurdles" to legitimize these apartments. She asked if it was possible to eliminate the Zoning Administrator, keep the power and authority with the ZBA and public hearing aspect. She expressed her concern with investing one person with so much power in the city. She said that it was more appropriate for such matters to be taken up by a board of seven individuals to offer different opinions. She also expressed concern that the Building Department files might not have all that was necessary to show complaints on a particular property. **Councilor Orlando** said he was hesitant to eliminate the Zoning Administrator as it eliminates the "entire purpose" and adding back the expense they are trying to eliminate. She said there are other ways to eliminate costs while still keeping the current structure intact. She said she liked

Councilor Orlando's idea of encouraging owners/landlords to come forward and legitimize illegal units, but didn't like the concept of a Zoning Administrator reiterating that she didn't want to vest that much power to one person.

**Councilor Gilman** said the Committee can now put aside Item #3 in the ZBA memo (Appeal from the zoning administrator's decision) as General Counsel has said that the appeal would be with the ZBA and not the Superior Court. **Mr. Cademartori** said he didn't necessarily agree in that then there would be a conflict within MGL Ch. 40A, highlighting that §17 talks about where an appeal of the SPGA goes and pointed out that this is a "unique scenario" where they're suggesting that a Zoning Administrator would be that SPGA. He said that there aren't a lot of examples, as it says that any SPGA it goes to Superior Court. **Mr. Payson** pointed out that §13 governs Zoning Administrator says when a Zoning Administrator serves as an SPGA that an appeal of that decision goes to the ZBA, and the section specifically addresses the Zoning Administrator. He said consistent with Mr. Cademartori's statement that everything else in terms of SPGA is governed by another part of the statute. **Councilor Orlando** added that this creates a plausible scenario to appeal because they don't have to go to Superior Court.

**Councilor Cox** asked if an aggrieved party has to file an application with the city and pay a fee to appeal a decision. She was told that they did, and said, "No." **Councilor Orlando** suggested that fee could be waived as well. **Councilor Lundberg** said at issue is the Committee can't waive the fees -- they can't rewrite the Zoning Ordinance, in that it is what it is, and that the three Councilors of the Committee aren't qualified to do that and add and delete language. He said a working group is. He added that it was why he was concerned by deficiencies, and that they shouldn't be having an argument about state law at P&D. He added that this draft proposed change to the City's Zoning Ordinance is not yet ready for a P&D and Council vote.

**Councilor Gilman**, referring to the ZBA memo of July 13, Item #2, "The blanket annulment of all the Zoning Ordinance's dimensional and off-street parking requirements," said that as to dimensional requirements there is nothing to change. They're only thinking parking is an issue, but she said there could be dimensional issues interiorly that could be a fire code problem such as too many units with not enough exits. They're only going by what neighbors are seeing from the outside, and expressed concern that perhaps there was a need to also look closely at what is happening dimensionally on the inside, the appropriate due diligence. **Councilor Orlando** pointed out that to be eligible for this type of relief there has to be a certificate of rental of dwelling with sign-offs from the Building Department and those concerns would be addressed by such a certificate. He said this is not for people building new units that this is about apartments that have existed 10 years.

**Councilor Gilman** noted on item #4 of the ZBA memo, "Vesting of permit granting authority in one individual, without meaningful review." Responding to the Councilor's inquiry, **Councilor Orlando** explained that the Zoning Administrator is a position created through the authority of the ZBA that vests certain powers of their choosing. In his amendment, the Zoning Administrator would be a SPGA. He cited that any SPGA, has to have a public hearing and that public hearing would not be quite as formal as Council but would be simpler, notices to neighbors, abutters, would go out and that the public hearing is in front of one person instead of nine which he said was his understanding as to how this is crafted. It is the ZBA with the Zoning Administrator under them with the appeal going back to the ZBA. It is required by operation of law, that if it doesn't happen it is deficient. **Mr. Wright** said it is quite awkward if the Council were to adopt these amendments and then tells the ZBA to run with it. He reiterated the process and all the complexities that go into it from his perspective. He and Councilor Orlando then discussed the changes the amendments would make with **Councilor Orlando** pointing out that the only people who are going to take advantage of the overlaid zoning amendments are those looking to legitimize illegal units and make them affordable units.

**Councilor Cox** reiterated that the city doesn't have the money to pay a Zoning Administrator; that the city's departments are already overburdened and didn't want to invest that much power in one person. **Mr. Cademartori**, asked by Councilor Orlando said that when someone comes across this situation they gather as much evidence as they can to build a case for adding an additional unit. He spoke to testimony at the Planning Board meeting of examples that were given highlighting how years ago recordkeeping wasn't what it is today. Many of these properties are passed down three or four generations and then someone thinks about selling the property. The difficulty he said, is that there isn't a paper trail, and a lender will look in askance that while you may say you have a six family dwelling but legitimately you have a four family dwelling, and then that owner still has to go through the ZBA to legitimize those two additional units. He explained when that happens there is a new dimensional standard and relief has to be granted. The applicant then has to go the Council where some of those issues, parking and otherwise, are raised and folded into the Council process. Some of those issues are minimized in this process when the structure of the building is not being changed and could potentially simplify some of the process.

**Councilor Gilman** pointed out the excerpt of the draft June 15 Planning Board minutes noting that what Mr. Cademartori says in the minutes is that the current draft of the ordinance doesn't address the concerns of the ZBA Chair; however it will mechanically function and did he feel that way now. **Mr. Cademartori** said that as long as the Zoning Administrator is appointed by the ZBA and these duties are provided to them, some of the concerns were raised in the

first hearing, and questions on length of restriction and idea whether this would be an interim ordinance -- there were a few things that were changed but that he can't change that concern. He said it could function; that there is a use schedule, additional criteria under GZO 5.30 (new) but that can it work, "technically." Even if they are diverting to another body of one, it is a process, he highlighted. It all has to be followed as outlined now. **Councilor Cox** said they eliminated the Council, and give it to the ZBA. **Mr. Cademartori** pointed out that two years ago three family dwellings were ceded by the Council to the ZBA. He said that the question of what happens in buildings that aren't being changed externally and what is required for permitting is important and what are the impacts that need to be examined. He said that for a three family dwelling to go to a four family dwelling, the owner has to go to the ZBA for relief and has to go to the Council which can't be done concurrently. It is a long process for doing internal work on a property, he said. He highlighted that the "backbone" of the city's Housing Production Plan (HPP) is that these are safe units and is the number one goal.

**Councilor Gilman** said they are close to getting to "yes" particularly if they eliminate the Zoning Administrator and suggested that Councilor Orlando work together with the ZBA because it appeared to her that here are concepts that the ZBA agrees with and that have merit. She pointed out there are some good ideas to make it easier to report more affordable units and have it above board. She asked that Councilor Orlando to tweak his ordinance amendments, and bring it back to P&D with clear amendments to get to yes. **Mr. Wright** suggested that they could likely delegate to one of their members the responsibility of making sure those six requirements are satisfied, and would be their own internal master rather than hiring someone and look at neighborhood requirements which wouldn't be more difficult than most of their cases. **Councilor Gilman** asked that Councilor Orlando incorporate the six criteria under GZO Sec. 1.8.3 into the ordinance amendments as a layperson reading the ordinance wouldn't know of those six criteria.

**Councilor Lundberg** expressed his agreement saying that he wanted the ordinance language to be reworked and presented wholly and not have changes on the fly, so that then the Committee and ultimately the Council can vote. **Councilor Gilman** asked that the matter be continued so that there is time to fully redevelop the ordinance amendment language. **Councilor Cox** suggested there be a workshop to better understand the ordinance amendments and have the ZBA and Planning Board there with appropriate city staff to try to come to consensus. The idea is "brilliant," she said but the single person authority is discomfoting.

**Councilor Orlando** said he would make amendments and bring it back to the Committee. **Councilor Cox** said that for the same three year period, for those building owners who come forward with legitimate dwelling units, the filing fees should be waived to be fair. **Councilor Gilman** expressed her agreement. The Committee said they would need to also know by waiving all these fees what the financial impact would be to the city.

This matter is continued to August 2, 2017

**5. 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 (Cont'd from 06/07/17)**

**Councilor Lundberg** noted that the Committee still doesn't have the necessary paperwork in hand to move this matter forward to the Council and that as a result the Committee would have to continue this matter.

**Councilor Cox** recommended that Councilor Memhard withdraw his Council Order until the proper paperwork is ready. **Councilor Memhard** agreed and made a request to withdraw his Council Order advising that he would resubmit it at a later date.

**COMMITTEE RECOMMENDATION: On a motion by Councilor Cox, seconded by Councilor Gilman, the Planning & Development Committee voted 3 in favor, 0 opposed, to recommend that the City Council permit the withdrawal of 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 without prejudice.**

**6. 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**

**Mr. Cademartori** advised that there is only one community on Nantucket that has any Zoning Ordinance pertaining to "tiny houses." There were specific reasons why it happened which was one person who built a tiny house and was in violation of that Zoning Ordinance. He said there still are some issues from a Building Code perspective and are some movements to get some amendments at the state level. He gave an overview of the challenges of creating an ordinance and what some of the stumbling blocks were. He pointed out that the city would

see a tiny house as a dwelling unit. There are betterment issues as well, he noted. He said there also the point of thinking about accessory dwellings or a second structure on a lot, but still there is the issue of sewerage and betterments in certain sections of the city. He added that this is something worth exploring in terms of accessory use as there can't be two principal structures on a lot. **Councilor Gilman** said an accessory unit would be great for an elderly couple who wants to rent their primary residence out and still live on their property to be able to continue to afford living in the city.

After a discussion on accessory uses and other related matters to the issue of tiny houses, **Mr. Cademartori** said that the HPP is still awaiting state approval, and once that happens there will likely be a reconvening of a working group with the same or new membership with Council, ZBA and Planning Board representation as well as city staff to continue to work on what are the biggest priorities from a housing perspective and work through that process. The HPP implementation strategy will play right into this matter, **Councilor Lundberg** pointed out.

There being no proposal coming from this Council Order, this matter was considered closed by the Committee.

**A motion was made, seconded and voted unanimously to adjourn the meeting at 7:15 p.m.**

**Respectfully submitted,**

*Dana C. Jorgensson*

**Clerk of Committees**

**DOCUMENTS/ITEMS SUBMITTED AT MEETING: None.**