

**Planning & Development Committee**  
Wednesday, January 3, 2018 – 5:30 p.m.  
**1<sup>st</sup> Fl. Council Committee Room – City Hall**  
-Minutes-

**Present:** Chair, Councilor Valerie Gilman; Vice Chair, Councilor Jen Holmgren; Councilor Lundberg  
**Absent:** None.

**Also Present:** Councilor LeBlanc; Councilor O'Hara (entered the meeting at 6:11 p.m.) Jim Destino; Gregg Cademartori; Fire Inspector Adam deBrigard; Francis Wright; Chris Sicuranza

The meeting was called to order at 5:30 p.m. Matters were taken out of order. Upon the arrival of Councilor O'Hara there was a quorum of the City Council.

1. *Application of Edward C. Ackerley for the storage of explosives at 200R Magnolia Ave., Assessors Map 197, Lot 17, per MGL Ch. 148, §13 & GCO Ch. 8, Sec. 8.1 "License for Storing Inflammables*

**Edward Ackerley**, 16 Walker Street, applicant for a License for Storing Inflammables for the storage of explosives at 200R Magnolia Avenue with a business address of Kondelin Road explained the following to the Committee: Storage of his business' explosives has been stored in Salem but that compound is now closing. People whom he purchases the dynamite from are closing the storage area because he's the only one left. He said he is looking to store the dynamite at his property on Kondelin Road, with an address that is really Western Avenue. He pointed out that the storage would be at the rear of his property. He would then work out of that locale daily.

**Councilor Holmgren** said she understood there is a lot of insurance involved for this storage of dynamite. She said if for some reason product isn't used for a while does it degrade and become more dangerous, and if that is the case does the applicant have plans to remediate. **Mr. Ackerley** said it takes years to degrade but they use their stock up quickly.

**Councilor Gilman** noted in Mr. Ackerley's application it wasn't clear where exactly the dynamite will be stored, and how it will be secured. **Mr. Ackerley** explained that it is just a little less than 500 feet to the closest building from the magazine storage which is the building where he has his office in the single purpose building.

**Fire Inspector Adam deBrigard** explained that the applicant's property is two different levels and described the property's topography as having essentially two levels with the initial access from Kondelin Road. The magazine storage is on a flat cliff base which is accessed via up a gated dirt road. Two magazines will store Type II dynamite, he noted. The whole area is cleared out, about the size of a football field up to a backdrop of boulders and ledge. He reported that he signed off, after an "informal" meeting on the site to determine what the storage situation is. Present at the informal site visit was a representative of the State Fire Marshal's Office and an agent of the U.S. Dept. of Alcohol, Tobacco & Firearms. The only element lacking was that none of the attendees to the informal site visit had laser gauge to take a reading for the setback from Mr. Ackerley's building to the magazine although **Mr. deBrigard** advised the Committee that it was adequate. During the site visit it was evident, he pointed out, that the entire property including the surrounding topography and all the dangers or security that goes along with storing explosives before Mr. Ackerley started his permitting process were examined. He advised this was a landlocked parcel with city property on the other side, and the closest building was Mr. Ackerley's own building with the rest comprised of woods, rocks and boulders.

**Councilor Holmgren** asked if there would be fencing, video cameras and other security measures in place. The property is gated already and a security fence will surround the magazines with a direct alarm, **Mr. Ackerley** assured.

**Councilor Lundberg** asked what the process of the city's role is as the city's ordinance is "light" on this subject. **Fire Inspector deBrigard**, reiterated that there was an informal site visit comprised of himself, an inspector from the Mass. State Fire Marshal's Office, and an agent of the U.S. Dept. of Alcohol, Tobacco & Firearms (ATF). Upon the completion of that site visit, he reported that Mr. Ackerley received the necessary signatures from the state on the licensing application. The next step is when this matter comes before the Council who makes the licensing determination. He said that once the Council approves the license, then that approval goes to the state; then a representative from the State Fire Marshal's Office comes back and looks at the actual set up, fences, cameras, and the inspection of the magazines, to ensure everything is correctly in place and clears the license. From there, either the ATF agent comes out at the same time or separately. Once the state feels all factors are in good order they'll issue all the proper permitting, he said.

**Joanne M. Senos**, City Clerk advised that at the request of the Chair, she called the state on its explosives licensing process. She reported it is a simultaneous process and was as described by Mr. DeBrigard -- first needing tentative approval and then the application is filed with the city for land use. Mr. Ackerley would receive an approval

by the State Fire Marshal's Office for a user certificate. She said that once the city grants a license then that office will do the final inspection. There are rigid requirements with the state to store these inflammables, she pointed out. She explained that the Committee can condition the license so that all State permits from the State Fire Marshal and ATF are placed on file with the City Clerk, and require Mr. Ackerley to provide proof of passing State and ATF inspections annually. **Mr. DeBrigard** reiterated Ms. Senos' statement that this is type of license is heavily regulated and that there are spot and annual inspections.

**COMMITTEE RECOMMENDATION: On a motion by Councilor Holmgren, seconded by Councilor Lundberg, the Planning & Development Committee voted 3 in favor, 0 opposed, to recommend that the City Council grant a license under GCO Ch. 8 "Fire Prevention and Protection," Sec. 8-1 "License for storing inflammables, MGL. Ch. 148, §13 and 527 CMR 1.00 for storage of inflammables at 200R Magnolia Avenue, Assessors Map 197, Lot 17, owner Edward C. Ackerley, specifically to store two (2) magazines of 2,200 lbs. of Class 1.1 explosives conditioned as follows:**

- 1. That annual proof of inspections by the State Fire Marshall's office and the Bureau of Alcohol, Tobacco & Firearms is provided to the City Clerk.**

This matter will be advertised for public hearing.

- 2. SCP2017-012: School House Road #2, #3 and #4, Map 262, Lots 14 & 37 and Gloucester Crossing Road #7, Map 43, Lots 4 & 5 for a Special Permit under the Mixed Use Overlay District pursuant to GZO Sec. 5.29 (including Major Project under GZO Sec. 5.7) and Sec.'s 5.29.10 and 5.11.8 (Cont'd from 11/08/17)**

**Councilor Gilman** announced that because the city's consultant was unable to attend this meeting due to unforeseen circumstances, her report at this time is anticipated to be given at the Wednesday, January 17 P&D Committee meeting. She noted the presence of **Attorney Deborah A. Eliason**, representing the Fuller Mixed Use Venture, LLC. **Councilor Gilman** said that the time would be confirmed after the meeting based on the consultant's availability.

This matter is continued to January 17, 2018.

- 3. CC2017-046 (LeBlanc/Orlando/Nolan/Gilman): request per GZO Sec. 1.11.3 "Informal Planning Review" GZO Sec.'s 3.1.6, 3.2, 3.1.8, 5.2 and 5.8 (Cont'd from 12/06/17)**

**Gregg Cademartori**, Planning Director advised he'd had some discussion with Councilor LeBlanc and Councilor Gilman before this Council Order came before the Committee, but hadn't spoken to former Councilor Orlando or Councilor Nolan, also co-sponsors, to date on their thoughts for the direction in which they thought this informal planning review should take. He said he had a brief discussion with Planning Board at their Dec. 21, 2017 meeting on this matter. He advised he understood the context of the Order is related to height exception applications received in the past by the Council, specifically in coastal areas. Also he noted there's been some reaction to proposals for construction in these areas in general and touched upon whether the Council feels there should be additional controls in place; better definitions to facilitate development in these areas with a similar set of opinions on the Planning Board -- are they looking to make matters clear for applicants and enable development in some of these areas or are there additional concerns the Councilors want addressed and captured in the Zoning Ordinance.

**Councilor LeBlanc** acknowledging he put in the Council Order and had asked Councilors Orlando, Nolan and Gilman if they wished to join him as co-sponsors. He said that the basis for the Council Order goes back to several Special Council Permits over past couple years in height exceptions starting not from ground elevation but from nine feet up at least for first floor elevation. There are situations that are by right with homes in flood zones are destroyed they could rebuild on the property and will have to be raise the structure in order to house utilities off of the ground elevation up. He pointed out that there needs to be some exceptions in certain areas in such cases. For homeowners on the Annisquam River, in East Gloucester, and other waterfront properties of the city, should a fire or storm event occur, they'd have to raise their house starting fresh automatically and have to come to the Council for a special Council permit for a height exception because of it. If there had been a 4,000 sq. ft. house originally what happens then. It is a reality, and it will happen, he said. Recalling a recent unsuccessful Special Council Permit related to a property in Ward 4 he noted the Council had leeway because it was a new project, but they have to look at what happens when the situation is by right. When such applications come before the Council, he said, there is some

difficulty in the fact that not all the Councilors work in the trades/real estate development and don't necessarily understand the particulars of schematics, design, of topography and elevations. He briefly described how some of the different styles of blueprints can cause confusion for Councilors in assessing a Special Council Permit application. He suggested the Planning Board or the Zoning Board of Appeals members might be more seasoned in such matters than the Council and through those Boards may be the better path to permitting for such matters.

**Councilor Gilman**, noting that the subjects she was about to raise related to the Council Order for research and review by the Planning Director and for the Planning Board, and perhaps General Counsel to consider, were her own and didn't reflect that of the rest of the Committee which were: suggested general benchmarking of a coastal planning concepts from such communities as Oak Bluff, Falmouth, Duxbury, and Kingston. Highlights in the Coastal Management Technical Manual summarizes best practices in Massachusetts and could they learn from their findings; a review on the number houses and legal boundaries and empty lots in coastal areas and understand what the city is facing and be able to visualize that. Specific to GZO Sec. 3.1.6 a comparison of best practices -- consider what is a definition "substantially detrimental for obstruction of views;" "overshadowing of other properties" and height being consistent with neighborhood character, noting that some municipalities may have defined those terms. Review possible imposition of maximum square footage -- is it two, three, four times the original square footage. Other considerations: When there is 1,400 sq. ft. home, and it is damaged or demolished for the purpose of building new, and the owner wants to increase its size possibly nine times the original structure size and the property is big enough to support such an increase without seeking variances before the ZBA, consider case law as to whether abutters have a right to a view or don't and should they eliminate statement under Sec. 3.1.6. Could the Council consider adding a requirement under Sec. 3.1.6 that the developer have a meeting with abutters prior to the Council public hearing to head off any neighborhood issues and help to smooth the path for permitting projects. By way of explanation it was noted that the City of Boston requires ward meetings to discuss this type of detail so when a special permit comes to the Council it is already vetted in the ward and as a result is closer to getting approval. It was noted this requirement could fall under the Zoning Ordinance Appendix A, Rules of Procedure. And finally, should part of this review consider the pros and cons where property owners of waterfront properties cover their entire lot with a home and are then unable to even park cars on their lot.

**Councilor Lundberg** said that viewing the section of the Zoning Ordinance that informal review falls under; in general there is a proposed amendment with the informal planning determination. In this case the Council doesn't have a proposed amendment, and what they're asking the Planning Board to do to is to have an informal review of these issues and the items Councilor Gilman enumerated. Councilor Gilman pointed out that this process at some point could generate an amendment(s) to the Zoning Ordinance through Councilors' Council Orders.

**Councilor LeBlanc**, commenting on Councilor Gilman's suggestions for the Board's review under the Council Order request said that is much more than was anticipated under this Council Order. Some of that may make developers and a person such as himself just to rebuild a home damaged in a storm event to have to "jump through more hoops," rather than less. He pointed out this is just about flood plain properties and an attempt to take a portion of the burden off the Council for permitting because the Planning Board and the ZBA are more experienced and better versed to handle such matters. He reiterated that it's difficult for the Council to make an educated decision and at the same time balance the needs of their constituents as well as the dictates of the FEMA flood maps, reiterating that Councilor Gilman is proposing was beyond the expected scope of the Council Order. **Councilor Gilman** said she's simply looking for some "shaping" of the Zoning Ordinance moving forward.

**Mr. Cademartori** said the Planning Department can provide some factual information as to how many properties are impacted. There are 71 properties currently not built on in the "V" (Velocity) zone, and of those, 30 are tiny lots that will never be built on. The issue is not large, he pointed out, but once they move into the existing built environments in the flood plain there are issues as how they treat that. He said they can look at what the impact is. If a homeowner rebuilds and must go up due to FEMA flood map regulations, it is a consideration of should the homeowner be put through a too rigorous process under those conditions. There is an operating ordinance and he advised that some of these matters should be directed to General Counsel for review. He suggested there be some outreach with those Councilors who signed onto the Council Order. He also reminded the Committee that there will be a legal review of the Zoning Ordinance undertaken in 2018 that may highlight some of the anomalies brought forward this evening.

**Councilor Holmgren** suggested that the results of this review could be splintered into several Council Orders in the end. She reminded the Committee they have an obligation to look at the effects of climate change. She expressed appreciation for the effort but wants to remain friendly to developers as well so that the city maintains a positive business environment while balancing the needs of its residents.

This matter is continued to March 21, 2018.

4. *CC2017-057 (Orlando/LeBlanc) Amend GZO by ADDING a Footnote “I” to Sec. 3.2.1, inserting into the CB column, & to ADD same footnote as Footnote “h” in the CB column for Sec. 3.2.2 re: affordable housing (TBC 02/07/18)*

This matter is continued to February 7, 2018.

A motion was made, seconded and voted unanimously to adjourn the meeting at 6:20 p.m.

Respectfully submitted,

*Dana C. Jorgensson*

Clerk of Committees

**DOCUMENTS/ITEMS SUBMITTED AT MEETING:**

- **List of suggested Zoning subjects for possible Planning Board exploration related to CC2017-046 (LeBlanc/Orlando/Nolan/Gilman): request per GZO Sec. 1.11.3 “Informal Planning Review” GZO Sec.’s 3.1.6, 3.2, 3.1.8, 5.2 and 5.8 as submitted by Councilor Valerie Gilman**