

## CITY COUNCIL STANDING COMMITTEE

**Planning & Development**

Monday, December 6, 2010 – 7:00 p.m.

Kyrouz Auditorium – City Hall

**Present: Chair, Councilor Joseph Ciolino; Vice Chair, Robert Whycott; Councilor Greg Verga****Absent: None.****Also Present: Councilor Paul McGeary; Councilor Ann Mulcahey; Councilor Bruce Tobey; Attorney Suzanne Egan; Gregg Cademartori; Rick Noonan; Attorney Lisa Mead; Mac Bell****The meeting was called to order at 7:03 p.m. There was a quorum of the City Council.****[NOTE: The 12/01/10 P&D Meeting was postponed until 12/06/10 due to a City-wide power outage.]****1. Continued Business:**

- A) COM2010-026: Request from 1907 LLC and Pavilion Mercato LLC re: BirdsEye Mixed Use Overlay District (“BMOD”) Zoning Proposal (Rezoning #2010-003) (Cont’d from 11/17/2010)

**Councilor Ciolino** stated there will be a review of the [zoning] process [before the Committee] and tie it all together this evening; with no public comment but offered that there would be an opportunity for comment at the City Council public hearing on this matter. For the record, he clarified a statement he made at the last regularly scheduled P&D Committee meeting that at no time were there any closed door meetings with the P&D Committee taken place amongst them or with the applicant. The overlay amendment to be discussed this evening was a result of a request he made to Suzanne Egan, General Counsel, to write an amendment that allows for mixed uses through a special permit. Tonight they would discuss and compare the Birdseye Planned Unit Development (PUD) overlay, the Planning Board recommendations and the mixed use overlay district and then make recommendations to the City Council. **Attorney Lisa Mead**, representing the applicant, Pavilion Mercato LLC stated at the last P&D Committee meeting they had received a copy of the revisions as proposed by the P&D Committee and asked for time to review it as to how it related to the original proposal from the proponent and the Planning Board recommendations. Upon the Birdseye team review they made a direct (a five-page comparison submitted and on file), side-by-side comparison of what was submitted by the proponent in its last draft form presented at the last P&D meeting of 11/12/10; and the City Council draft. She expressed her concern from a zoning amendment perspective was that she believed that what was being proposed by P&D is so different in “fundamental” character, identity that it was a new zoning amendment and not a change in what was proposed by the applicant. Their hope was to go through what the City Council proposed and what the proponent had last provided and speak to those parts that are the same and those that are different and try to work on those differences.

She made note of the purposes Section 5.25.1 was in keeping with what they proposed and reflects changes suggested by the Planning Board. The 5.25.2, the Overlay District itself, map establishment and applicability are the same or similar, and she felt in “conformance” with the Planning Board recommendation. In 5.25.3, the Uses, she felt there was a significant difference “in some respects”. The Committee allows in their zoning in the P&D proposal all uses allowed by right to be allowed in the overlay district. Based upon the Planning Board recommendation, there were some uses allowed in the underlying district which wouldn’t be appropriate for an overlay district because they were “incongruent” uses proposed. They omitted and disallowed certain uses that would be allowed by right. They also made other uses, given the density being requested, allowed by special permit and in addition those allowed by right that would be “congruent” to be continued.

The new special permit uses are the same except for the omission of the live/work concept, which she contended was at the “heart” of what their proposal is; the idea that there can be different kinds of housing allowed in this district is “significantly important” as they are trying to use space differently,

“You can’t just say everybody is going to live in something that might be 1500 sq. ft. or 1000 sq. ft. when in fact you may have a live/work space where the live space is 500 sq. ft. or 700 sq. ft.” The idea was to allow some flexibility, feeling that was a “significant difference”. The requirements for residential uses, Section 5.25.3.3 is “essentially the same” as proposed by the proponent, the covenant and affordability; the prohibited uses were the same except for what she had previously commented on, those things incongruent with the proposed overlay district. She gave the example of a contractor’s yard would not be allowed because it would not be congruent with the mixed use approach that was provided. She believed that those kinds of uses, a drive-through facility as an example, the Planning Board also recommended be “culled out” of the by right uses.

The dimensional requirements, she added, the draft of the P&D Committee proposal dated 11/22/2010, the P&D Committee “strives to adopt” the dimensional requirements of the Central Business (CB) district for residential uses which in a mixed use project would apply the most restrictive of those dimensional requirements namely multi-family housing according to the zoning ordinance. It would require significantly increased setbacks, given the height, “even under the P&D requirement”. The density as expressed in the multi-family dimensional table requirement in the CB district would “drastically” change what was proposed on the project before. Her comparison table shows the height in the recent draft of the proponent’s proposal was 76 feet at the ground level which was measured in accordance with the zoning ordinance. The proposal was 69 feet from P&D which significantly reduces the floor area issue.

The proponent provides for tiered development of the site with the setbacks as required in a Marine/Industrial (MI) district which would be limited by the requirements in the design that there are pedestrian access, view corridors, and “things of that nature”. P&D Committee requirements would apply the setbacks of the CB district and maximum height in the CB district on a multi-family project is 30 ft.

There is an exception, which she felt the language needed work in Section 5.25.4.1 that says, “The dimensional requirements of the Central Business district (CB) shall be applicable, except for the reconstruction of preexisting buildings may be reconstructed to the same form as previously existed. Provided the new structure is within the same footprint, does not exceed the size of the existing footprint of the preexisting building or conforms to the dimensional requirements, whichever is greater, twenty five percent of the structure may have the same building height not to exceed 69 feet, unless otherwise permitted by the special permit granting authority.” She thought based on their prior conversation, you can rebuild on the same footprint to a height of 69 ft. for 25% of the building. There was conversation that it was not really the intent of P&D Committee was but that you could move the footprint around the site so long as it didn’t exceed the existing footprint. She didn’t feel it was clear in this.

Lastly, there was a “significant difference from what was proposed by the proponent”. With the design criteria proposed, the P&D Committee and City Council have “significant control” over design of any structure. The building height limitation is different. The density differences, if applying the CB district depending on how many square feet a proposal is gets 40-64 housing or hotel units under the P&D proposal “as opposed to” getting 150,000 sq. ft. – 180,000 sq. ft. of residential development in the project of either hotel or multi-family under the proponent’s proposal. The building height limitation, she thought the P&D proposal was not consistent with the Planning Board recommendations. Those recommendations said that it can apply the special permit to exceed the height; but they understood the need for additional height and should be some guidance provided in the zoning. The off street loading and parking requirements are the same except the proponent’s proposal was more limiting than P&D’s proposal. The proponent’s proposal requires all parking to be on site; and the P&D proposal allows them to take advantage of the exception to use the municipal lots. The design criteria and the use requirements, the proponent proposed that there needed to be a 25%/75% mix on site; that there needs to be at least 25% commercial and couldn’t exceed 75% residential. “You could go less than that;” but that it required a mix of uses on site. That same requirement “doesn’t exist in the P&D proposal.” There could be either all residential or all commercial. In the design criteria there are none in P&D proposal; and in the proponent’s proposal there are “significant design criteria”. She explained the purpose was to provide guidance to a developer as well as the City Council so that everyone knows what they would be judged on when they submit a proposal, “so there is direction before a significant amount of money is spent.” The

design criteria speaks about building design and location, landscaping, open space, pedestrian connection, view corridors, and beach access. In all of those, the Planning Board's recommendation thought the language in the proponent's first proposal was "too loose" and didn't require enough "clear" direction to any applicant; so that was changed to include "shall" and "will" as opposed to "if possible". She felt the biggest difference was the application process, the permitting process. P&D proposal used the existing Major Project Special Permit by the City Council, site plan review by the Planning Board, and any special permits from the City Council for waivers for the height and setbacks and density provisions in the event the applicant requests for those to be waived. She again pointed out this was "significantly different from the Master Plan and the PUD process; and "provides for a lot of questions on behalf of an applicant" when they go before the City Council "not knowing whether or not" there are criteria that would allow them to have greater height, less setbacks and more density. While those special permit provisions in the City's zoning ordinance and dimensional tables, an overlay district of this size, "it doesn't provide any guidance prior to an investment." The permitting process presented was a PUD, which has a Master Plan review process and then the special permit review process. She contended these were the proponent's issues; feeling they were significantly far apart in some aspects and others that are not. She further contended there are two major areas that need work which she hoped they could work on them as it is referred back to the City Council and the Planning Board to try and address the concerns of the P&D Committee as well as the proponent of the zoning amendment.

**Councilor Ciolino** stated, "From the City's point of view, what makes those three acres...the Birdseye property, any more special than any other three acres in the CB or MI district that all this special treatment needs to be applied;" and asked Attorney Mead for an explanation.

**Attorney Mead** responded she didn't feel this was special treatment; that it was an adoption of a new form of zoning. She suggested they only need to look at the Planning Board recommendations to "justify" why one could look at an overlay district for this area. For the MI area, these particular parcels are bordered on both sides by residential which is not the same in the rest of the district. There is no deep water port from this parcel as opposed to most all of the rest of the MI district; as well as the "significance" of the connections to the beach area also. It was pointed out in Fort rezoning studies and other studies in the City that this is a unique area. She believed it was "not about this property but about using the zoning to benefit the City to allow some development in a different way" than had been done in the past. She didn't know if that meant it was special treatment. She thought it meant they were using "the tools that the statute" provided them.

**Mac Bell**, the proponent, showed pictures of the property at 33 Commercial Street from 1985 and listed statistics on jobs from that time to present. He felt the Birdseye proposal was suggesting that they have the opportunity to work together to create an "economic engine." Their objective from the beginning was to create a zoning consideration as allowed under the zoning laws by the Commonwealth for any parcel two acres or greater to create vitality for commerce for downtown; to replenish the population downtown. Their approach has been an open dialog towards scale. They proposed that they have clear cut boundaries in order to invest significant amounts of money in reapplying to the special council permit process. They hope to then talk about density, aesthetics and variety of opportunity or liability as the Council sees it.

**Attorney Mead** noted in the October 8<sup>th</sup> Planning Board memo to the Council, "The Board acknowledges the testimony of the applicant that the property does not have deep water access, and is not subject to the State's Designated Port Area regulations and is flanked by existing residential and mixed uses. Therefore, from a planning perspective evaluation of the zoning in the area is appropriate...." and contended that was why they [the proponent] were appropriate to be there.

**Councilor Ciolino** asked that the area is going to be zoned MI with the overlay of the CB.

**Mr. Cademartori** stated, "That is not what was proposed. It would remain MI with some of the dimensional tables for certain uses to be applied as overlay for that area as it is written."

**Councilor Ciolino** then asked were those dimensional uses from the CB district and was CB the most liberal.

**Mr. Cademartori** confirmed that; and CB was the highest density district, believing that was why it was chosen, unless a new dimensional table was generated which he believed was included in the draft that

wasn't discussed that the applicant submitted at the second P&D meeting. There weren't any dimensional density standards in the PUD ordinance as proposed by the applicant. Not having one, what has been proposed by the P&D Committee was to use the CB district.

**Councilor Ciolino** asked whether through the Special Council Permit a great deal of this could be done through that permitting process.

**Mr. Cademartori** thought to be consistent with Planning Board recommendation which he felt sounded a bit like it was being used both ways, their response was to a specific proposal that was in front of them. However, at the same time what was impressed back to the applicant was additional specificity as to what those design standards would mean. The Planning Board was supportive of being very specific about what needs to be included in the proposal to gain a special permit. The special permitting process that the City has allows the exploration of a lot of aspects of a project. Because of "the uniqueness of this area" they were looking at and the density proposed, the applicant was very specific in what the community benefits might be from a project. He thought some could be lost if left to a special permit process. He further thought if they were going to introduce areas in an overlay form, there are usually some additional standard of applicability. He clarified that he "wasn't saying that either necessarily hits the mark", but that there was a lot of focus in the PUD ordinance on very specific attributes a project "might have to be held to" or include that wasn't necessarily stated in the general special permit process.

**Attorney Suzanne Egan, City Solicitor**, clarified one of the recommendations of the Planning Board was that the zoning ordinance provides that any special permit application in this district go through the major project review and also the site plan review. "Although the applicant states that there are no specific requirements or view within this mixed use overlay district, what it does do is refer it back to the major project review of the City Council under Section 5.8 and down to the site plan review." One of the issues the Planning Board had with the design criteria proposed was that it was vague. It said, "To the extent that is feasible." That was the criterion that was used. She explained instead of taking that language out, she sent it back to the major project review and the site plan review that all other projects within the City to this extent have to comply with. "It is in there."

**Councilor Ciolino** asked for further clarification on the 69 ft. height and 25%

**Mr. Cademartori** thought it had been "accurately pointed out" that the PUD ordinance required a percentage of commercial or industrial with some use that came from the underlying district, although he noted there are some uses that are allowed in a CB district as well. That specific language is not in the current ordinance. "It at least defined the maximum allowance of residential use. What was also missing was a density standard. Seventy-Five percent couldn't be equated to what that would mean in a project given the density was defined by maximum building height and maximum lot coverage rather than what was more typically done to standard of a quantity of "X" use based on lot area or percentage of lot area." The 69 ft. was a number that he wasn't sure of the genesis; there has also been reaction whether that is appropriate height. He noted there was a recommendation from the Planning Board that height needed to be addressed "in any permutation" of an ordinance and that it probably wouldn't be a project that would be proposed to 40 ft. If they were considering different allowed uses in the area like hotel and residential, how are they treated elsewhere in the community. In most areas, those uses are allowed. They're also in districts that are "complimented" by the allowance of height exception. That was a recommendation of the Planning Board that it may be extended in "whatever form" of an ordinance at the time of the PUD rather than dealing with a maximum height of 125 ft. The 69 ft. was something that came from the "generation of this ordinance" as a way to be responsive that there needed to be some additional guidance to be provided which came in the form of an allowance for the existing height of the building.

**Councilor Ciolino** stated the existing building has height of 69 feet at the tower.

**Attorney Mead** added "above sea level". She clarified that the major projects review process and submission process is similar to site plan review and talks about what has to be submitted and talks about the information required as part of that submittal. Then there are the special permit criteria that are general to the rest of the ordinance as opposed to design criteria which was what the proposal went through; how the design happens; view corridors and pedestrian access. She contended that kind of specificity was not in the current zoning ordinance and why there were significant differences between

the design criteria and what was in the ordinance itself. In response to the Planning Board comments and the document the P&D received at their last meeting, they went through and provided that specificity and “removed the more general language and very clearly requires certain things that were by choice before.” She thought it important to look at what was submitted; some the Planning Board concerns with not enough specificity had been addressed in the review. She thought it was a matter of making sure it was addressed in the ordinance.

**Attorney Egan** noted the Mixed Use Overlay District (MUOD). She noted the first change is the purpose. In the Planning Board recommendation, it was noted that the purpose to provide investment opportunities for the PUD overlay district was not necessarily appropriate for the zoning under the zoning act. It was removed from the MUOD. It was also noted by the Planning Board that the purpose it states is to provide a range of housing choices “for individuals and households of diverse incomes”. Within the PUD overlay district are requirements for inclusionary zoning which was not applicable and put it back into the overlay district to make sure they kept that purpose in and put in the inclusionary zoning provision. There were a couple of issues the Planning Board had with definitions that were provided in the PUD overlay district. The first was an issue with the live/work residences. The Board was concerned about monitoring with regards to the definition of a live/work residence in order to meet that qualification; there was a question as to how that would be enforced. She clarified that part of the definition was to live within the PUD district but that would require somebody in the City to enforce it “to knock on doors to ask people if they were working in order to make sure they complied with that.” It was deleted. Within the City’s zoning ordinance there is a provision for home occupation; and that is applicable to this overlay district, “if there was an interest or if one of the uses within the district is your work place and your home”. One could get the occupation permit as opposed to a live/work residence which was “essentially unenforceable provision.” The second issue was with regard to the definition of retreating and reconstruction or renovation. The Planning Board found it difficult to also provide permitting on that because those were terms that were not very well defined and was also deleted. If there is a provision in the MUOD which provides for the special permit process within the zoning ordinance that is applicable to this district as well as to others. There is also the dimension table, Section 5.25.4.1, which provides for that. The ability, which was one of the sentences Attorney Mead questioned, it is the ability for a new structure to be reconstructed within the same footprint as it existed provided it doesn’t exceed the footprint (the size). That allows for making sure the building could be reconstructed but not requiring it to be in the same position on the site; there is the ability to reconstruct a building that the design may be more beneficial for the site. They require everything now to be within the same footprint; to “maybe switch it out” and face the ocean. As long as it is the same size it can be reconstructed which is different from the “vague provisions” of the PUD ordinance. The Planning Board also recommended that any new uses should have dimensional and density requirements standards as all other uses in the zoning ordinances. Which was why, she felt, the CB, the City’s most dense district allowed in the City, instead of creating a new district, she went to the density requirements in the CB in an attempt to meet the Planning Board’s concerns. The Board’s concern as to whether or not the overlay district was applicable to other areas, they did not recommend it should be applicable to other areas.

The Planning Board also looked at the use clusters and the notion of retreating which allowed for uses to be changed within the PUD without any review of any special permitting authority; they recommended against those mixed use clusters. In the MUOD, all the mixed use clusters were removed and the ability to change a use without review was also removed. The MUOD brings it back to the existing zoning rate that they have that all other properties within the City must comply with. The Planning Board had an issue with regard to the design criteria and recommended that site plan review and the major project review be applicable to this district which she stated was in there.

With regard to height, the Board recommended that the height exception language be included in the overlay district and is in the proposed ordinance; there was some issue and acknowledging that the existing building has a 69 ft. tower and 25% of the building to go up to 69 ft. There is a provision in this ordinance that states that provided the preexisting building went up to 69 ft.; if another building on the lot was reconstructed, they would not also be allowed to go up to 69 ft. The off street parking didn’t have a

recommendation except to note that the proposed PUD did not allow them to comply with Section 4.1 and was taken out. The proposed PUD allowed for a 15 year time period from when the Master Plan was approved and the filing of a special permit. The Board felt it was too long. That was changed by having the same criteria as they have for all special permits which must be exercised within two years. There is no special provision for this district; the special permitting provisions apply. She noted the site design criteria in the PUD, and was not in the MUOD proposal such as the view corridors. One of the issues with the site design criteria was the Board found it needed to be stronger. She thought the purposes of the MUOD still say to provide view corridors. She questioned the definition of a "view corridor". It was never defined and stated it "essentially defined a window from the street to the ocean." Within the City's site plan review process, they can look at it then which is part of the ordinance, and didn't feel anything further needed to be added in a zoning ordinance on it. She tried to simplify it as asked by the P&D Committee and to look at the Planning Board's recommendation and "pull out pieces" that seemed relevant and consistent with the Planning Board recommendation.

**Attorney Mead** expressed concern of skipping "a whole step." They received the initial response from P&D and understood that despite their asking for a simpler document they got a longer document; but within their document there were a number of items that were addressed that Attorney Egan raised, which, following a long meeting that she had with the City Solicitor prior to the last P&D Committee meeting, she made "a number" of changes. She gave the example that the document they received on November 12<sup>th</sup> eliminated use clusters; redefined the retenancing and reconstruction; it defined view corridors and what was required; it defined what pedestrian corridors were and what was required. It applied the inclusionary zoning requirements. It made reference to lowlands requirements as the Planning Board recommendation required. As the Board recommended and acknowledged the criteria they wanted included from the major site plan review, she contended they had already agreed to and submitted in the prior draft. While they didn't include the site plan review, in concept, it is part of the master plan and PUD review process. They included the major project review criteria and submission requirements. She went back to a number of items Attorney Egan pointed out, which she stated had been included in their last draft in much greater detail, making for a longer document, than had been required previously. She didn't think they were very far apart. She reiterated that the two major areas of concern have to do with the dimension table which she thought if they included it within the overlay district; it will make clearer to all. She explained they are looking for in this zoning, they think that would be a good tool to have a "clear expectation" of what can be reviewed and what should be submitted, "as opposed to saying the general requirements of view corridor and this is what you should submit which flies in the face of the argument of the Planning Board and Attorney Egan's saying it is too general." She felt they defined it, making it very clear and didn't think they're that far apart; that dimensional table should be in there, an item to be discussed; and then similarly on the review process whether it is a PUD process or the site plan review or the major project review. "They are significant and do provide major changes to the zoning." She didn't think that they're "that far off" on the rest because the last draft they submitted addressed all of those items.

**Attorney Egan** stated the P&D Committee asked for a more simplified version; and the Planning Board also recommended any zoning district have a special permit criterion in it. Although this property is unique to a certain extent, she believed it was not so unique that having a completely different set of zoning criteria of any other property in the City. They have had mixed use projects, noting the shopping plaza, Gloucester Crossing, and development in the City often, under the City's zoning ordinances. They have major project review, site plan review, a special permit granting authority. She explained what she did, taking elements from P&D and the Planning Board recommendations, was to come up with a proposal that can go forward consistent with the City's zoning ordinances. She found the PUD drafts to be lengthy and "very unique" to that parcel which raised some concerns for her.

**Councilor Ciolino** asked with the proposal in front of P&D did she think she could defend it if it went to court.

**Attorney Egan** stated "yes". She also addressed Attorney Mead's statement that the applicant thinks that what is before P&D was so different from what was proposed originally and advertised originally and was

not the same zoning. She didn't think that was correct. She felt the process that a zoning amendment goes through "is a fluid process". There is a review by the Planning Board with recommendations; a review by the City Council by way of public hearing with public input and with the applicant's input. Within that process a zoning amendment changes. That process is set forth in the statute. In the case law, it provides that abutters or property owners have notice of what the zoning could change to; then that notice is sufficient from the original submittal. As example, say there is a proposal to change something to residential and that is what is noticed. In the process instead of allowing residential use, a gas station is allowed. The court in that instance says it is so different from what is originally proposed, it would have to start [the process] over. What is before P&D that evening is nothing different here; it "just changes" the permitting process and the uses allowed and also restricts to a large degree the dimensional requirements and review process. "What is before the Committee is consistent with what was originally proposed and noticed" and thought they were fine with that.

**Councilor Whynott** asked if the document that they have before them from Attorney Egan could be voted as is by the City Council and is defensible.

**Attorney Egan** stated "yes".

**Councilor Verga** confirmed the document they were referring to was "Mixed Use overlay District" dated stamped 1:21 p.m. November 17, 2010, four pages.

**Attorney Egan** stated that there was a version that was dated November 22, 2010 (distributed to the Committee just prior to their arrival). She noted after the last P&D meeting, the Committee requested she and Mr. Cademartori and Attorney Mead meet to discuss the proposed ordinance. The 11/22/10 four page document was [produced] after that discussion. There were some issues regarding the rebuilding of buildings to preexisting structures. That language was changed; noting the height changing from 76 Ft. to 69 ft.

**Councilor Whynott** understood the issue regarding the 69 ft. with 25% but noted other heights; and asked if it was 40 ft. and then 25% at 69 ft. They would have to come back if they wished to do anything "other than that".

**Attorney Egan** stated the Councilor was correct. They have to comply with existing height requirements of the MI or CB district. There is a provision for this, special exception for the height; within that special permitting process if there is a project put forward requiring additional height and the criteria is met, then the special permit granting authority can allow that. Anything different they want to change later on that doesn't conform to that has to come back to the special permit granting authority, the City Council, in order to change it.

**Councilor Ciolino** stated there is a building that exists now with "a bit of grandfathering going on"; and the tower is 69 ft.

**Attorney Mead** stated she "totally disagrees with Attorney Egan" that this document presented to P&D was a "natural outcome, a progression, of what is submitted." She thought, quoting a zoning case, "it alters the fundamental character, identity of the original amendment" of what it was in the following areas than what was originally proposed: It doesn't require a percentage or mixed use on the site even though it is called Mixed Use Overlay District. The density and number of units that can be put on a site are significantly different. The dimensional controls are significantly different. She suggested that Section 5.5.25.4.1 was "incredibly vague and needs to be worked on". She didn't think "it said if you were a person off the street picking this document up so long as you build the same footprint you can move it around the site. It doesn't say that; it is not clear." She noted the height requirement because they have to apply the MI district is 30 ft., not 40 ft. with the addition because they apply the most restrictive height which is in the multi-family in the CB which is 30 ft. and then you have to come in for a special permit." It is the height of 69 ft., 25% is "significantly different" than what was proposed. The process to get to that point, and the design criteria and requirements, "are fundamentally different" than what is in the P&D proposal. She urged the Committee to have this be reviewed by the Planning Board to see that it relates to the Planning Board recommendations.

**Mr. Bell** stated in these this economic times when banks are shut down for commercial loans, or residential/commercial loans, they know that location is like no other, and of significance; if they were

speaking from a place that Portland, ME; Portsmouth, NH; Newburyport, MA came from that success. The City process was a “huge consideration”. He felt this site was valuable and had great potential to be a catalyst for development downtown and urged the Committee to embrace change; otherwise they are looking at an “obsolete pile of concrete” to be limited in its future potential.

**Councilor Ciolino** stated, in answer to Attorney Mead regarding what they were talking about that evening, “This Committee is going to listen to our Counsel” as her client would listen to her. He differed with Attorney Mead and would “side with our Counsel.” He understood Attorney Mead had to work for her client.

**Councilor Mulcahey** noted two years ago the residents of the Fort had proposed the “MI Plus” Overlay [District]; to relieve them of the restrictions on the MI when they put the MI on the Fort area they included the residences, “not that a boat could get to us or a truck could get to us for unloading” but because of the noise decibels that went up by 10 decibels and that “they had to live with it without complaining”. They asked when the Marriott was looking at the Birdseye building, they asked for an overlay, the aforementioned “MI Plus” which the Council rejected. If they have mixed use, they should be mixed use also. She claimed if it wasn’t, then it would be spot zoning.

**Councilor Ciolino** stated that was part of the process the last time the Fort was going to be rezoned; the whole Fort, including the “Hill” or the “apron” as opposed to this parcel here. The Fort is special, he explained in that it the entire Fort is non-conforming; it is MI and DPA. This proposal is for the property that is empty now “that is in play.” He clarified that if the residents of the Fort want to come back to the Council and ask for a rezoning or the people that own the apron can come back also. There are other issues with two-family; three-family, who is grandfathered, who is not, on the hill that it is “very complex.” He didn’t know if it would all be sorted out. He espoused as one Councilor to “leave the Hill the way it is.”

**Councilor McGeary** asked Attorney Egan that he understood the concern of the specter of spot zoning; but wondered if by applying CB as an overlay to this district, was really appropriate to that specific site or was there something “that qualifies the site as truly unique”.

**Attorney Egan** responded that in terms of whether a completely new dimensional table should be adopted for the parcel, she wasn’t sure what would be “unique” about the project that requires a new dimensional table. There was enough within the ordinance; and what it allowed an applicant of a project to come to the City Council and ask for specific waivers or considerations within that site plan review that are applicable to a “certain” project. “What is necessary for a zoning ordinance is predictability”; for instance, what is the lot area per unit; what are the height requirements; what is the lot coverage. The City’s most dense district is CB. The applicant’s proposal, the PUD did not have those specific requirements which the Planning Board recommended they should have. They didn’t have anything else to go on because there was nothing else proposed, except for the version the applicant had put forward, that had such a height. One of the issues was the height of 125 ft., which gets reduced. She viewed it as what other parcel exists in the City; do they get anything special in their dimensional requirements. “No; each property owner has the ability to ask for, essentially, a map amendment which is to apply different dimensional requirements to their property from this district to this district,” which, she stated, they do often. They “don’t typically create entirely new zoning and new dimensional requirements for just one parcel.”

**Attorney Mead** stated the last draft included a dimensional table and included an area of land frontage building height maximum which was 76 ft. at that time; minimum lot area per mutli-family dwelling unit; minimum lot area per two guest unit for a hotel. Those mirrored what was in the dimensional table, except for the size. The dimensions and how they are applied, which she believed was what the Planning Board was seeking, was what they used as a model. The building coverage, minimum open space, on the lot - in the draft of 11/12 was in there.

**Councilor McGeary** noted Mr. Bell’s developments in the City, 33 Commercial Street, and the “old Mill” and did them under existing rules, under the special permit process. He asked Mr. Bell to respond to what it was about this that makes it extremely difficult to move forward with Pavilion Mercato or “whatever else goes in there”.



**Mr. Bell** stated it had gotten considerably more difficult; it is not benefitting anyone and sense of why should this get something “special” because they came together to follow the laws of the Commonwealth. They are given this opportunity [under the law] as it is over two acres which they feel is necessary in this economy. He explained it was the zoning as to the reason why they put the PUD together with boundaries and specific details so they could possibly succeed. What is being proposed “was a roadmap for failure”. He didn’t see why they would jeopardize the project which “would be beneficial with limitations”.

**Attorney Mead** thought the biggest difference was specificity; the difference between the Special Permit criteria and site plan review versus the PUD concept where there was very specific requirements, very specific review criteria so that before a lot of money is spent, everyone knows the rules and has very specific requirements.

**Mr. Bell** noted that they still have to go to a special council permit which is still there and a difficult stage “which is challenging”, and was the next step.

**Councilor Verga** thought it was a good idea to send the proposal back to the Planning Board and thought they had a lot of diverse documents. “No matter what we vote, what the Council votes in the end is not going to make a lot of people happy.” He believed sending this back to get a final document that everyone agrees on, “at least the Board that is voting on it knows what they’re voting on,” and was a good idea. He would support it going back to the Planning Board.

**Councilor Whynott** agreed, that he would like to see one single document that contains everything that the City Solicitor and what the Planning Board recommended, and what was said in Committee that use to go forward with.

**Councilor Ciolino** explained after their vote that evening, it will go to the City Council for referral to the Planning Board. They will wait for their review before they take it up at Council again. If the Planning Board has an in-depth review, it may have to go back to P&D. “If the changes are minute, they can be handled at the City Council level.” On this motion, they have been trying to do something “down there” in the spirit of compromise and thought this was a compromise. “A good compromise makes nobody happy; everybody feels the pain equally”. There are many different people with many different ideas. This ordinance, zoning change does for that particular parcel “in the tool box”, the developer will have all the tools for MI and if something comes back or someone wants to use it for MI; they have the opportunity to go forward. They are adding to that “tool box” a lot of the features that go with CB which is a large portion of the downtown area. He noted this Council has permitted five windmills; but he stated “just because this Council gives permits or changes in ordinances doesn’t mean it will happen.” They are in process of permitting a hotel on Essex Avenue for 93 rooms and also for another at Gloucester Crossing already permitted. He asked, “How many hotels can the City maintain? Just because the developer has the opportunity to put in a hotel doesn’t mean it will happen.” He noted the Fort is mixed residential. He believed one of the things with this plan was it would give the neighbors the opportunity to voice their concerns about traffic noise, height, view corridors and all the rest once they have a specific plan in place. They will have special permit process and “have all the tools” for them to participate and assured it will be process that they will all work together.

**Councilor Whynott** asked that when they get the final document, before it gets to the City Council that it be put on the website so that it is also available at the City Clerk’s office.

**MOTION: On motion by Councilor Ciolino, seconded by Councilor Whynott, the Planning & Development Committee voted 3 in favor, 0 opposed to recommend to the City Council that the Gloucester Zoning Ordinance be amended by adding Section 5.25 Mixed Use Overlay District and that Section 5.25 Mixed Use Overlay District be referred to the Planning Board for their review.**

**A motion was made, seconded and voted unanimously to adjourn the meeting at 8:25 p.m.**

**Respectfully submitted,**

**Dana C. Jorgenson**  
**Clerk of Committees**

**DOCUMENTS/ITEMS SUBMITTED AT MEETING:**

- **From Attorney Lisa Mead, a summary of a side-by-side comparison of the City Council draft ordinance proposal and proponent's proposal based on the Planning Board recommendations**