

**SPECIAL MEETING
BOARD OF MAYOR AND ALDERMEN
(PUBLIC HEARING – ZONING ORDINANCES)**

September 22, 2009

5:30 PM

In Mayor Guinta's absence, **Chairman Lopez** called the meeting to order.

Chairman Lopez called for the Pledge of Allegiance, which was led by Alderman J. Roy.

A moment of silent prayer for Mr. Charles Reagan was observed.

The Clerk called the roll.

Present: Aldermen M. Roy, Gatsas, Sullivan, J. Roy, Osborne, Pinard, O'Neil, Shea, Garrity, Smith, Ouellette, Lopez
Alderman DeVries arrived late.

Messrs: L. LaFreniere, T. Clark, D. Beauchesne

Chairman Lopez advised that the purpose of the public hearing is to hear those wishing to speak in favor or in opposition to a proposed Zoning Ordinance. The Clerk will present the proposed Zoning Ordinance change for discussion at which time those wishing to speak in favor will be heard, followed by those wishing to speak in opposition. Anyone wishing to speak must first step to the nearest microphone when recognized and state his/her name and address in a clear, loud voice for the record. Each person will be given only one opportunity to speak and any questions must be directed to the Chair.

City Clerk Matthew Normand presented the proposed Zoning Ordinance change:

“Amending the Zoning Ordinance of the City of Manchester by revising the Floodplain (F) District regulations and by deleting and adding various definitions in order to incorporate changes to the City's Flood Insurance Study and related Flood Insurance Rate Maps.”

Chairman Lopez asked Leon LaFreniere, Director of Planning & Community Development, to make a presentation.

Mr. Leon LaFreniere, Director of Planning & Community Development, stated thank you for the opportunity to come before you this evening. This matter is of some importance even though it is in many ways a housekeeping item. It is a matter of importance because the reason that we have to make these changes is to maintain the City's eligibility for the National Flood Insurance Program. The impetus behind these changes is that FEMA completed recently an update of the City's flood insurance study which resulted in adoption of new language and updates to the flood insurance rate maps. The changes as I indicated are required to maintain our eligibility for the national flood insurance program and must be adopted prior to September 25, 2009 in order to not create any question about our eligibility status. There are no substantial changes as a result of the amendments that are before you. The maps in Manchester did not change. They did change elsewhere in Hillsborough County but the areas that were designated as flood plane or floodway in the City of Manchester did not change. There are no significant issues there regarding how individual properties are designated in accordance with our zoning ordinance regulations. The language changes are primarily in the area of definitions and they are specifically designed to comply with FEMA standards and be consistent with those regulations once again in an effort to maintain our eligibility for the flood insurance program. The Office of Energy and Planning at the State of New Hampshire and FEMA have reviewed the draft changes that you have before you this evening and have approved those changes pending your adoption should you choose to move forward in that direction. I am prepared to respond to any specific questions you might have. These are essentially housekeeping changes to maintain our eligibility with FEMA and the flood insurance program.

Chairman Lopez called for those wishing to speak in favor of the proposed Zoning Ordinance change.

There were none.

Chairman Lopez called for those wishing to speak in opposition to the proposed Zoning Ordinance change.

There were none.

City Clerk Normand presented the proposed Zoning Ordinance change:

“Amending the Zoning Ordinance of the City of Manchester by replacing the Director of the Planning and Community Development Department with the Director of the Economic Development Office as a member of the Millyard Design Review Committee.”

Chairman Lopez asked Leon LaFreniere, Director of Planning & Community Development to make a presentation.

Mr. Leon LaFreniere, Director of Planning & Community Development, stated this change is similar in one way in that it is essentially a housekeeping change. The impetus for this particular change is a result of the consolidation earlier this year of the Planning Department and the Building Department. When that merger took place the Ordinance as constructed intended for the Planning Director to serve on the Millyard Design Review Committee which provides recommendations and findings to the person responsible for issuing permits in the Millyard for construction and renovations of buildings in that district. After the merger I realized the same person who was sitting on the Committee as a member would be making recommendations and findings to the person who is responsible for issuing the permits. I raised the question with the City Solicitor’s Office who did in fact feel that it would be appropriate that a change in Committee membership be effected so that situation wouldn’t happen, so there would be no perception of conflict. There was a discussion that took place within the Millyard Design Review Committee which is otherwise made up of Millyard property owners and design professionals and there was a fairly even split within that Committee about what the qualifications should be of a new member. At the conclusion of that discussion, the Committee recommended that another City staff person be placed on the Committee and that that person be the Economic Development Director because of his interactions and interest in the activities taking place.

Chairman Lopez asked is the Chairman of that Committee here?

Mr. LaFreniere replied I don’t think he is here.

Alderman Smith stated Leon, you were head of the Building Department so you were on that Committee. Am I correct?

Mr. LaFreniere replied no, I was not on that Committee when I was head of the Building Department. Bob McKenzie was when he was head of the Planning Department. When I became head of the merged department then I took that position.

Alderman Smith stated that is my point. Now you are head of the Planning Department and why would you want to change? I don't think there is any conflict whatsoever.

Mr. LaFreniere stated the conflict may be a perceived conflict only but nonetheless in consultation with the Solicitor's Office I felt that it was something that we should address. If I sit on the Committee as a voting member and submit findings recommending either for or against a permit being issued and then I am the person responsible for issuing the permit, it could be perceived that I would have undo influence in that process. That is why we felt the change should be made.

Alderman Smith asked how many members are on that Commission?

Mr. LaFreniere replied eight.

Alderman Smith stated I don't think one vote should be too tremendous. I would just like to ask the City Solicitor, have you made a ruling on this?

Mr. Thomas Clark, City Solicitor, replied we have had discussions with Leon. Prior to the merger of the Planning and Building Departments, the Planning Director was a member of the Commission and not the Building Director because he issues the permits. We felt that it could be perceived by the public where the same person is issuing the permits and is also ruling on design aspects to be a conflict. I am not saying that it would have to be the Economic Development Director or anybody else. We just felt that it would look better if someone else was on the Commission.

Alderman Smith asked in other words, you are telling me that you are in agreement with this?

Mr. Clark replied we are in agreement that Mr. LaFreniere should probably be off the Commission, yes. Not as to who should be on it. We didn't make any recommendation as to who should be on the Commission.

Alderman Smith stated I am just saying I think the Economic Development Director has enough projects right now that have to be fulfilled without getting involved with this.

Mr. Clark stated my office was not involved in who was going to replace Mr. LaFreniere.

Chairman Lopez stated just so that the Board knows, I sit on the Millyard Design Review Committee as an Alderman because no one else wanted to.

Alderman M. Roy stated Leon, I have to tell you that I disagree with this wholeheartedly. The Millyard Design Review Committee to me is a regulatory. They look at what comes in. The Economic Development Director is our head cheerleader coaxing development, making changes, selling the City and selling some of those concepts that they believe people want to bring to the City. When it comes to Millyard review, in your office I see that as regulatory and you cleared up the question in the middle of your paragraph that says, "I feel it would be appropriate." It seems like it has been determined that it would be appropriate. That language question was one that I had and that I was very uncomfortable with. Was it just your feeling or was it necessary? I do believe it is necessary if you are the ultimate authority on issuing building permits but I also believe it is necessary to have somebody in a regulatory position enforcing the City's viewpoint on the Millyard Design and Review. Is it possible to set up...we do it in real estate all the time...a Chinese wall between yourself and a head planner that they can be working with the Millyard Review and guiding them through the regulatory process but not involved in the building permit process within your department?

Mr. LaFreniere replied I think we can definitely take a look at who that member should be. This recommendation came specifically from the Committee but I am sure that we can take a look at that. There may be other options to present in terms of if it is not a direct department staff person perhaps we could interest a member of the Planning Board to sit on that Committee and to act in that role. That is something that we can definitely take a look at. I understand your concerns.

Alderman M. Roy stated I would definitely, from my Aldermanic standpoint, lean towards a staff member because again they have been privy to the long term planning, the Master Plan and the viewpoints. I wouldn't want to put a Planning or Zoning Board member in that position. They might have to recuse themselves

from projects later. I would like to see a staff member and I think we have enough very qualified staff members that if you are ultimately responsible for the building permit, we can have someone that is ultimately responsible for the planning and knowledge that comes forward out of the Millyard Design Review Committee.

Mr. LaFreniere stated absolutely, and I can consult with the Solicitor's Office on how we might best structure that. Clearly it is very easy for me to sit here and tell you that that would not be an issue. I am not going to influence a staff member who makes a ruling on that Committee so I see it as no problem. I am only concerned about the public perception. If we can structure it so that the public perception is not compromised then I would support it.

Chairman Lopez asked you already have a staff member on the Committee correct?

Mr. LaFreniere stated not as a voting member. We have staff support. My thought is that that could somehow be amended so that that person could be a voting member.

Chairman Lopez stated just another note for some of the Aldermen, sometimes we only get five people there because of the way it is. Just to support what the City Solicitor said, his influence at that time could make a major difference.

Alderman M. Roy stated I want to hear what the other Aldermen have to say but if there is a tabling motion at the end of this until we come back to see who it goes to. Is this time sensitive at all?

Mr. LaFreniere replied it is not at all.

Alderman M. Roy asked as far as any ongoing activities, either you or a staff member will be there to support the Committee?

Mr. LaFreniere replied absolutely.

Alderman O'Neil asked if the Planning Director was okay, why wouldn't the Deputy Director for Planning still be okay? You have two deputies now correct?

Mr. LaFreniere replied yes.

Alderman O'Neil stated a Deputy Director for Building Regulations and a Deputy Director for Planning. Why wouldn't the Deputy Director for Planning be okay?

Mr. LaFreniere replied it could very well be. Again my only concern is to maintain the integrity of the process and if we can find a way to do that then I would support it.

Alderman Ouellette asked Leon, is this Committee more of an advisory committee than anything else?

Mr. LaFreniere replied by structure that was the original intent that it was an advisory committee. However, the Ordinance as adopted does require this Committee to make findings and those findings are binding on the issuance of the permits so it does have a regulatory function from that standpoint.

Alderman Ouellette asked who appoints member to this Committee?

Mr. LaFreniere replied I believe it is the Mayor.

Alderman Ouellette asked does that go for a vote before the Board of Mayor and Aldermen or does the Mayor just appoint them? Is it kind of like a commission?

Chairman Lopez stated the Mayor appoints to the Millyard with the structure that Leon has indicated. There have to be some people from the Millyard.

Alderman O'Neil stated in the package it states "The Committee shall be composed of a representative from the Central Business Service District, currently the Director of Planning & Community Development, an Aldermanic representative and the following members appointed by the Mayor for a term of three years; two property owners in the district, a member of the Heritage Commission and two members from the architectural or design field." It appears that five of the members are appointed by the Mayor.

Alderman Ouellette asked they are not approved by the Board? They are just appointed by the Mayor?

Alderman O'Neil replied it doesn't indicate Board approval.

Alderman Lopez stated I think we all need to understand a little history that developed in the Millyard Design Review Committee. We had I believe it was only four or five people at one meeting. An item was not approved. It was then approved because we didn't have a quorum. That is an issue too. The City Solicitor advised us that we would have to have an organizational type structure and minutes that would take place and a quorum.

Alderman O'Neil asked how many cases do you hear a year or a month? Do you meet every month?

Mr. David Beauchesne, Planning & Community Development, replied we hear about six to twenty cases a year depending on what the flow is of outdoor building permits in the Amoskeag Millyard.

Alderman O'Neil stated just for clarification David, you used the word outdoor. A building exists and they are doing interior, the Millyard Design Review Committee is not involved, correct?

Mr. Beauchesne stated if it is interior, no. No review is involved on the district Millyard. It still has to have building permits and all of that kind of thing but no special review.

Alderman O'Neil asked so it is specifically related to outside improvements?

Mr. Beauchesne replied yes, even then it is limited to the specific items outlined in the Zoning Ordinance that talks about the review field for the Millyard Design Review Committee.

Chairman Lopez stated David, just give a little bit more about what the Committee does because I think it is important that the Aldermen all understand.

Mr. Beauchesne stated the Millyard Design Review Committee was created in 1995 to review building permit applications for outdoor building permits in the Amoskeag Millyard. That was the year that the Amoskeag Millyard became a designated zoned historic district. The feeling was rather than have the Heritage Commission, or at that point it was the Historic District Review Commission, review activities in the Millyard, the Board of Mayor and Aldermen felt it was

important to create a new body that in this case would specifically have owner representation on it so that there would be a sense of fairness with review of important industrial buildings in that part of town. The Millyard Design Review Committee has been in place ever since and it looks at major exterior rehabilitations and restorations of buildings within that district. It excludes normal maintenance and in kind replacement type stuff. That is not reviewed. It also looks at exterior signage and any new free standing structures like parking garages.

Alderman Ouellette stated if it is really just going to be an advisory committee, Leon, I can't see the conflict. If it was something that had a little more teeth like maybe a commission like the Arts Commission or whatnot then I could probably see some sort of conflict. I think that the direction of what this Committee does and its importance to the City, we may want to look at making that more of a commission than an advisory committee.

Mr. LaFreniere stated the original structure and even the way it was administered initially was as an advisory committee but there is a brief section from the ordinance that I think will be helpful. "The Committee shall report its findings and recommendations within 30 days to the Planning and Community Development Director, or in the case of conditional use permits, building use and design plan or site plan review applications, to the Planning Board. Neither the Planning Board nor the Director of Planning and Community Development shall approve the proposed action unless the Millyard Design Review Committee shall find that the proposed action..." and then there are four criteria that have to be met. What that means is that a permit shall not be issued until the Millyard Design Review Committee makes findings that all four of the criteria that are under their purview are met. They do have a regulatory function from that standpoint. Unless they make that finding, I can't issue a permit. That is where the comfort level was stretched a bit for me in terms of there being a perception that there would be a conflict. I think the comments that I have heard tonight are valid with regard to what that membership makeup ought to be but I still have a concern about the potential for the conflict because the findings that are reported from this Committee to the Planning Board and to the Planning and Community Development Director are binding on what their following actions will be for permits that they issue.

Chairman Lopez stated we have two Aldermen that sit on the Planning Board. If they want to comment it might help the rest of us.

Alderman J. Roy stated I have a concern as Alderman Mark Roy did about who that person is. For the same reason I didn't think that Economic Development shouldn't have been involved with Building and Planning when we did the consolidation, I don't think that Economic Development staff should be on that review committee either. You have the person that wants people and they are trying to attract people to Manchester to develop and then they are going to sit on a Board that is going to regulate. I think that that doesn't work. He is right. That group has to send something to the Planning Board that says this is what we will accept; otherwise we can't approve it. They do have some regulatory power there.

Alderman DeVries stated I am wondering, since we did have a court appeal on the quorum where four were present, maintaining a quorum of five with eight members can be difficult. To address concerns of Economic Development not necessarily being the best person from a regulatory standpoint to balance that, maybe an additional member from the Heritage Commission would assure that there is a fair and balanced review from a regulatory standpoint and enhance the issues with a quorum and balance any fears that we may have for the Economic Development Director. I certainly agree. I see the conflict of interest and I don't think any member of your staff should be there because they will be weighing in when it comes back to the full Planning Board. I would put that out as a motion that we add a second member from the Heritage Commission and leave the Economic Development as the person with voting membership.

Mr. Clark stated Alderman, it is not appropriate to amend the zoning proposal. This is just a public hearing.

Alderman DeVries stated you are absolutely correct, thank you.

Mr. LaFreniere stated if I might, just for a point of clarification, there was not a court appeal in that case. The decision was just appealed back to the Committee.

Alderman Sullivan asked is the makeup of the Committee established by Ordinance or by Charter?

Mr. Clark replied it is by Ordinance.

Chairman Lopez called for those wishing to speak in favor of the proposed Zoning Ordinance change.

There were none.

Chairman Lopez called for those wishing to speak in opposition to the proposed Zoning Ordinance Change.

There were none.

Chairman Lopez asked what was the date on the first Ordinance?

Mr. LaFreniere stated that date was September 25, 2009.

Chairman Lopez advised that all those wishing to speak have been heard. The testimony presented will be referred to the Board of Mayor and Aldermen.

*This being a special meeting of the Board, no further business was presented, and on motion of **Alderman Shea**, duly seconded by **Alderman DeVries**, it was voted to adjourn.*

A True Record. Attest.

City Clerk