

Appropriations Committee

Chairman Brodeur, Tramontozzi,
Boisselle, Conn, Forbes, Heavey,
Infurna, Seaboyer, Wright,
Mortimer
Absent: Buonopane

Appropriations Committee called to order by Chairman Brodeur at 8:04 p.m. He opens the Public Hearing on Order No. 07-027, Citizens Petition to amend Melrose Zoning Ordinances as set forth herein. The notice in the newspaper reads: Notice is hereby given that the Board of Aldermen will hold a Public Hearing in the Aldermanic Chambers, City Hall, Melrose, Massachusetts, on Monday, 12 February 2007 at 8:00 p.m. on a citizens petition to amend the Melrose Zoning Map by changing the area described below from a UR-B district to a UR-A district. The area is generally bounded and described as follows: by the westerly line of Boston Rock Road (formerly Quimby Street) as extended to the northerly line of East Wyoming Avenue; by the northerly property line of the properties whose southerly boundary is East Wyoming Avenue; by the easterly boundary line of the eastern most properties on East Wyoming Avenue and Wyoming Heights; and by the southerly boundary line of the properties fronting on Wyoming Heights and Mt. Vernon Street. The public hearing will include consideration of the Planning Board's recommendation to amend the Table of Use and Parking Regulations of the Melrose Zoning Ordinance to require a Special Permit for Townhouse developments in the UR-B zoning district.

Chairman Brodeur says there was a prior public hearing held on January 8. However, the newspaper did not publish the notice for two consecutive weeks, creating a statutory defect in the process. It is the intention that the Board of Aldermen will take into consideration all written and oral comments made that evening as well as including a DVD recording of the televised meeting into the permanent record. To that extent he says it is not necessary for those people that spoke at the January 8 public hearing to repeat themselves, although if they would like to speak they may do so.

Alderman Infurna motions to incorporate the recording of the January 8 2007 public hearing into the permanent record, 2nd by Alderman Boisselle. All in favor.

Alderman Infurna motions to incorporate the clerk's minutes of the January 8 2007 public hearing into the permanent record, 2nd by Alderman Boisselle. All in favor.

Alderman Infurna motions to accept all written comments received at the January 8 2007 public hearing into the permanent record, 2nd by Alderman Seaboyer. All in favor.

Chairman Brodeur says that all references from the January 8 2007 public hearing are incorporated into the permanent record by reference. There are two proposals before them this evening: the original zoning change as presented by the citizens' petition, and the Planning Board's recommendation.

He asks anyone who wishes to speak in favor of the Planning Board's recommendation to come forward.

Mr. Ralph Wilbur states he would like to include his opinion on the Planning Board's recommendation when he speaks to the other matter. Chairman Brodeur says that is understood.

Chairman asks anyone who wishes to speak against the Planning Board's recommendation to come forward. No one comes forward.

Chairman Brodeur asks anyone wishing to speak in favor of the citizens' petition to come forward.

Attorney Robert Bell, 70 W Foster Street speaks on behalf of the Wyoming Hill Association and thanks the committee for the time it has given to this subject matter. The concerns of the neighborhood and the city-at-large have been considered by the Aldermen whereas they were not allowed to be brought forward at the Planning Board meeting. The Planning Board's recommendation provides a limited change in zoning. He feels the Slope Protection Ordinance is not enough because variances may be obtained, as on the land above the Lebanon Street playground. The neighborhood made it clear to the Planning Board that it considered the natural boundary lines of Wyoming Hill larger than what is included in the original petition. He asks that the Aldermen consider amending the petition by changing the boundary lines to include parts of Chestnut, Lynde and Summer Streets. He says that Melrose is a city of neighborhoods and that this one is a key architectural treasure. It was a shock to them to learn that they did not have the same protection as other neighborhoods. The protection against development they are requesting is needed. The developer agreed not to build townhouses but did not agree to not building a multi-family. The neighborhood needs to protect itself from its worst fears. The neighborhood is not against two-family homes or affordable housing. Its request is to respect and preserve the integrity of the neighborhood. In light of what the Chairman said about incorporating the minutes, written comments and a recorded copy of the January 8 meeting into the permanent record, Attorney Bell asks the neighbors present at tonight's meeting that are in favor of the petition to stand and be recognized. He adds that if anyone that has not spoken on the matter may do so. He tells the committee members that he will answer any questions they may have that have come up between the last meeting and now.

Alderman Wright says that Attorney Bell indicated that the Slope Protection Ordinance has been watered down and asks him to elaborate. Attorney Bell says that the City Solicitor has ruled that it may not be applied to the construction of ways or paper roads. There is property above the Lebanon Street playground that is very steep and the contractor is putting up a huge retaining wall. That is the very thing the Slope Protection Ordinance was meant to protect – the terrain of the City – and now it has been watered down. Alderman Wright asks how that relates to Wyoming Hill. Attorney Bell says the Slope Protection Ordinance is relatively new and has not yet been tested by reported litigation. The ability to control construction on sloped land is going to be reviewed in the future by the courts. The neighbors do not want to rely on a theory that has yet to be tested. Alderman Wright asks if the state may preempt city ordinances; Attorney Bell says yes.

Alderman Conn asks if the neighbors in the expanded zone have been notified of this amendment. Attorney Bell says notices were sent notice by mail and hand delivered to every owner in the expanded zone, and that there is unanimous support. Alderman

Conn says the members of the Planning Board did not allow additional comment on the expanded zone because they were under the opinion that they could not. Attorney Bell says they felt they were constrained from allowing it. Alderman Conn asks for the dimensions of the district in the proposal. Attorney Bell says that in the Wyoming Hill neighborhood, the lots are larger than those in the UR-A zone. More units could be built on the lots. There is low water pressure, no sidewalks, and narrow streets. If denser building is allowed, there would be adverse effects to public safety. Alderman Conn asks if the Wyoming Hill Association has an opinion regarding the Planning Board's recommendation. Attorney Bell says that they are not against the recommendation but they think multi-family homes are as much a concern as townhouses.

Alderman Seaboyer says he has received correspondence regarding the petition and one-third if it addresses preserving the historic value of the area. He says the proposal does not do anything for the historic value. Attorney Bell says under zoning laws, controlling aesthetics is sketchy. The state does it through the creation of historic districts, which is costly and time consuming and involves entirely different criteria. Zoning does not authorize historic districts. He says the neighborhood would love to have aesthetic control but in the meantime they are vulnerable to the building of townhouses. They are being proactive by bringing the petition before the aldermen. Alderman Seaboyer says the most drastic change being presented is the requirement of a special permit for townhouses and multi-family homes, but there are more subtle changes such as setbacks. He asks if some of those options will be lost as well. Attorney Bell says yes. Alderman Seaboyer says that he lives in a UR-A zone and he would love to have the option of turning his house into a two-family. Attorney Bell says that there will be some properties in the neighborhood that are grandfathered and that most structures in the City are non-conforming. There are some provisions in the existing ordinance that take some of the sting out. Alderman Seaboyer asks if he would expand on the grandfather clause. Attorney Bell says that when the zoning ordinance is changed there are already dimensional nonconformities but that use continues as being totally legal. A three-family may convert to three condominiums, but conversion to a four-family requires a hearing. He says that it is puzzling that in 1984 the Cedar Park area changed from UR-B to UR-A and that it is a big rock just like Wyoming Hill.

Chairman Brodeur asks what stipulations there are if a three-family dwelling in a UR-A zone burns down or is torn down. Attorney Bell says there is a two-year period to rebuild to the same specifications. Chairman Brodeur asks if this is something that can be done by choice – if a home-owner can demolish and rebuild to make it more attractive. Attorney Bell says no, but that people do so by not doing a total tear-down. Chairman Brodeur asks if a single large Victorian home could be converted into three condominiums in a UR-A zone. Attorney Bell says no; it could be converted to two condominiums, but not three. Three units or more constitutes a multi-family.

Alderman Boisselle asks Attorney Bell to explain the restrictions that will apply in the expanded area. Attorney Bell says the main changes are in the use category. A letter was sent to the neighborhood to inform them of the changes. Alderman asks how many people were contacted and Attorney Bell says there were over 50. Alderman Boisselle asks how many multi-family homes there are in that area and Attorney Bell says about 25 percent. Alderman Boisselle says there was a woman at the 8 January public hearing that expressed that she was not notified. Attorney Bell says she resides outside of the expanded area.

Alderman Wright says the amendment to expand the proposed zoning change adds the east sides of Chestnut Street and Boston Rock Road, and the south side of Mount Vernon Street. He asks why the expansion only includes the east and south sides and not both sides of the streets. Attorney Bell says it is the feeling of the Planning Board and the City Planner that this area is more appropriate for larger density than the interior neighborhoods. Looking at the Assessor's maps, house size and lots are significantly larger on the east side. Crossing Chestnut Street brings you closer to Main Street. Normally the City wants to preserve a streetscape but it has the right to encourage density in some areas rather than others. It is visually obvious doing a lot comparison between Mount Vernon and E Wyoming. The consistency of Chestnut Street is that the house lots are bigger on one side than the other. It is the same with Mount Vernon Street. Alderman Wright says he is sympathetic with the neighborhood concerns about teardown and asks if he would have to be concerned if he lived on the west side of Chestnut or the north side of Mount Vernon. Attorney Bell says it would not hurt if the Board of Aldermen decides to extend the zoning change to both sides of the street. All involved tried to make a rational decision, and thought this to be a reasonable place to put the line.

Alderman Boisselle says the original document, the citizen's petition, is restricted to one area, and now it is being requested that it be expanded. He questions whether or not another public hearing is necessary to address the expanded area.

Chairman Brodeur asks if anyone else would like to come forward to speak in favor of the citizens' petition.

Ann Linehan, 3 Wyoming Heights says the Wyoming Hill Neighborhood Association was formed to discuss dense and inappropriate development. No resident was excluded. The neighbors felt that it was necessary to be proactive due to the Sylvan Street development. Wyoming Heights is recognized as a substandard street in which parking is a problem. The neighbors are frightened that an ambulance or other emergency vehicles will not be able to make it up the street. Water pressure is a huge problem and concern to the Fire Department as well. The housing stock in the neighborhood is important to the entire community. There are eight significant historic neighborhoods in Melrose of which six are protected by UR-A zoning. The Wyoming Hill Neighborhood Association is asking for the same protection. The impact of inappropriate development to the neighborhood could be devastating. The Slope Protection Ordinance is not enough protection.

Ed Fasano, 155 Bellview Ave owns a 2-family in the Wyoming Hill neighborhood. He enjoyed living there; it is a great neighborhood. It is hard to believe the integrity of the neighborhood could be jeopardized by building townhouses and apartment houses. The atmosphere and integrity of the neighborhood would be changed forever. He hopes the Board of Aldermen approves the zoning change that is before them.

Edith Mooers, 89 E Wyoming Avenue addresses Attorney Bell's reference to what is happening above the Lebanon Street playground due to the location of a paper road. She says there is a paper road from E Wyoming to the road below, and another one beyond that. There is a chain link fence and the pavement ends at a huge drop-off. It is very steep, but the Slope Protection Ordinance would not be applicable.

Ed Calamari, 92 E Wyoming Avenue says he moved into his home in 1991 and has slowly worked to get his home to where he knew it could be. He asks the Board of Aldermen to take the step necessary to protect the neighborhood.

Lea Fasano, 32 Wyoming Heights reads into the record a letter from Kathy Harlow. She would also like to make a short statement on the issue. She says it is very comforting that the Ward Alderman has been supportive of the most reasonable plan for the neighborhood, but that every Alderman she has spoken with has asked thoughtful questions. In being part of the neighborhood she bought her house with an extra lot without option. Under the UR-B zoning she could do much more with the land but she is comfortable asking for restrictions under UR-A zoning.

Phil Kukura, 79 Mount Vernon Street reads a letter into the record from Nancy Kukura.

Cindy Jacobs, 80 Mount Vernon Street says she moved here 12 years ago. She fell in love with the house despite the fact that it was not cared for by the previous owners. She speaks in favor of the change.

Chairman Brodeur asks if anyone would like to come forward to speak against the citizens' petition.

Ralph Wilbur, 27 Marbleridge Road, North Andover, MA says that Mr. Hedetniemi will assist him with charts he has brought with him. At the last meeting concerning UR-B zoning issues, many people testified in favor of the change but many of them came from outside of the area. The Victorian Melrose Society and the Melrose Historical Society talked of preserving the integrity of the neighborhood. That is an admirable and worthwhile objective but he is under the impression that they feel as though the neighborhood is under siege and that he is the spoiler. He can not blame them for lending their support but he is bothered that they are doing so under false pretenses and are doing so for only three of four property owners. They have grown accustomed to looking out at a wooded area and they wish to codify that condition into perpetuity by adding restrictions to an already difficult terrain on which to build. He says that the homeowners in the pink area of the chart want to increase the value of their land at the expense of others by establishing a wooded buffer zone. This will have the effect of living next to a state forest, something none of the other neighbors will enjoy. They seem to have no moral or ethical problems with saddling himself and others with building restrictions that they do not have to deal with. This matter is not just about preserving historic Victorian homes or preventing inappropriate development. It only concerns these very few property owners who are making a grab for control over any homebuilding on adjacent properties, and this is wrong. Any zoning changes will diminish the rights of all property owners in the area but he doubts they know the consequences. Page 22 of the Melrose Master Plan states that good zoning must balance, providing proper protection for citizens, while guarding against undue impact upon those being regulated. This protocol is at risk of being ignored. At least 50% of homes in the newly created UR-A zone will be non-conforming right out of the gate. This means a lot of stress for home owners and city boards. He wonders how many people supporting this change have thought of the downside of the proposal. The few who will not be affected by the change are the same people that have lead the charge, that border his property, and who already own an extra lot beside their homes which will

absorb the impact of tighter regulations. He also owns a home abutting the same wooded land and it is in his best interest as well to retain the present character. If retaining the neighborhood's architectural integrity is the real objective, he says he is their best insurance of preserving it; but their real objective is to prevent any type of construction on any property that abuts them. He finds it interesting that the Association brought in local historians to the meetings to support their position. He has history credentials, too. Chart 8 shows one wall of his study filled with history books and biographies. He wrote a piece for the Melrose Free Press last November titled "Remembering Armistice Day" recounting a memorable day in 1919 that took place at Memorial Hall. He brought copies of the cover of the 40 page program for the Aldermen, originally printed by his grandfather's printing business. History is something he is in tune with, and the historians that spoke at the last meeting were preaching to the choir, but in his view they were misdirected and manipulated by a very few residents of Wyoming Hill. There is a two page, unsigned memorandum that was sent to the Board of Aldermen, the Planning Board and the ZBA subcommittee in which his name was mentioned 12 times. He had no knowledge that the Wyoming Hill Neighborhood Association even existed and hadn't spoken to any of its members. The memorandum raked him over the coals with false allegations and speculations about his plans for his property, all of which was invented by the few neighbors abutting his property. If the accusations were sincere the neighbors would have contacted him. Mr. Nolte was not contacted, either. A man in attendance at the last meeting circulated rumors about a family feud involving his two sisters, which he does not have. He wrote to Mr. Jacobs and is still waiting for an explanation. Addressing the memorandum, he says he never mentioned multi-family housing in his presentation and the assertion of the property owners that their lot sizes are on average larger than those in the adjoining UR-A zone on Boston Rock Road is not true. At the last meeting the assertion was made that all other Victorian neighborhoods in the city are zoned UR-A, and this too is not true. He wrote twice to Mrs. Linehan and once to Alderman Infurna after the joint public hearing to see if a meeting could be scheduled with him and the neighborhood, but no one replied. He was approached by Attorney Bell after the last meeting who suggested they get together to discuss the matter. Although Mr. Wilbur agreed to it, the meeting never took place. He did however speak with Attorney Bell on the telephone. He told Attorney Bell that he had no interest in building townhouses and he agrees with the Planning Board's recommendation requiring a Special Permit for townhouses in all UR-B zones; that being the reason for the proposal, there was no need to rezone. But the target has changed. Attorney Bell said that his clients had found new reasons to rezone the area, including the possibility of teardowns. Mr. Wilbur says this excuse for rezoning is about as disingenuous as it can get. He agrees with the Planning Board that the concerns expressed by the Wyoming Hill neighbors should be handled on a city-wide basis and he believes all city boards involved do not want to have to go through this exercise again and again. He also feels that with all the local interest in Victorian homes and architecture that there should be some consideration to retaining some Victorian values.

Alderman Conn says that Mr. Wilbur has identified himself as a target but a zoning change is a global change. He asks Mr. Wilbur how long he has owned the parcels of land. Mr. Wilbur says the house was purchased in 1915 and the lots between 1915 and 1940. Alderman Conn asks if the house and the lots have common ownership. Mr. Wilbur says he and his family own them. Alderman Conn asks Mr. Wilbur what uses he will lose if the zoning is changed from UR-B to UR-A. Mr. Wilbur says there is a situation with the terrain. Alderman Conn asks which lots will be affected by the zoning change.

Mr. Wilbur says he is looking at it in perspective of the terrain. He will lose a percentage of coverage and setbacks of one or two feet could alter what could be built. Alderman Conn says the zoning change is about dimensional density and asks Mr. Wilbur what he could do now that he could not do in a UR-A zone. Mr. Wilbur says he has not done enough planning to know that. Most people are against townhouses and are concerned with appearances. Alderman Conn says the Board of Aldermen's vote won't regulate architecture.

Alderman Wright says that if someone wanted to tear down a Victorian home they could do that. The zoning change has nothing to do with aesthetics. Mr. Wilbur says that is true whether in a UR-A or UR-B zone. Alderman Wright says he also heard Attorney Bell talk about the Slope Protection Ordinance. He says that getting a variance is not a foregone conclusion and asks Mr. Wilbur if his rendering of the new construction could be built; Mr. Wilbur says yes, whether it is a one, two or three family dwelling.

Alderman Seaboyer refers to the rendering and asks if he has any intention to build it.

Chairman Brodeur says that this is not about a single lot of land. The zoning proposal is for a district. It may be inappropriate to focus on a particular lot.

Alderman Seaboyer withdraws his question.

Chairman Brodeur asks if there is anyone else wishing to speak in opposition of the citizen's petition. No one comes forward. Chairman Brodeur declares the public hearing closed at 9:56 p.m. and says that Order No. 07-027 is before the Appropriations Committee.

Alderman Conn asks if the order includes the Planning Board's recommendation. Chairman Brodeur says no, the order is the original citizen's petition but is subject to amendment at any time.

Alderman Infurna motions to amend to include the expanded area, 2nd by Alderman Conn.

On discussion, Alderman Boisselle asks if another public hearing is needed to include the residents in the expansion. Chairman Brodeur says that the City Solicitor has opined on that and a brief summary of that is that it would be the safest practice.

Alderman Infurna says on the amendment and Alderman Boisselle's question, she has the City Solicitor's informal reply and reads it into the record:

"There is no hard/fast answer on this. 40A simply says that any zoning change MUST be preceded by a public hearing, which MUST be preceded by sufficient notice and publication. There are cases which say that where a defective notice, or change in proposal is relatively small, so as not to negatively affect someone's rights, a new hearing and publication was not required. Conversely, there are cases which say that, where a notice or public hearing was defective and resulted in someone losing a real opportunity to object/be heard, a new public hearing was required. I agree with you, Denise. Where the Board of Aldermen may be considering several additional parcels of land, with several new

landowners who are entitled to notice, I would recommend a new notice of a public hearing be put into either Melrose paper, each week for 2 consecutive weeks, and hold a new hearing, just to cover the bases. It may be that the Board of Aldermen may amend the proposal to include additionally affected areas of the City, and no new hearing would be required, but I am not certain of this."

Alderman Infurna says the neighbors in the expanded area have been notified and there was a well attended neighborhood meeting. They were given more notice than if it were published in a newspaper.

Alderman Infurna motions to further amend to include within the order the Planning Board's recommendation to amend the zoning ordinances to require a special permit for townhouses in all UR-B zones, 2nd by Alderman Conn.

Alderman Wright motions to further amend the proposal to extend the zone to the west side of Chestnut Street and to the south side of Mount Vernon Street, 2nd by Alderman Boisselle.

Chairman Brodeur says there are three amendments before them. The first amendment was made by Alderman Infurna and seconded by Alderman Conn to expand the area. On the motion to recommend, All in favor.

The second amendment was made by Alderman Infurna and seconded by Alderman Conn to include the Planning Board's recommendation to amend the zoning ordinances to require a special permit for townhouses in all UR-B zones. On the motion to recommend, All in favor. Alderman Conn motions to divide this amendment. This becomes Order No. 07-027A.

The third amendment was made by Alderman Wright and seconded by Alderman Boisselle to include both sides of the streets in the expanded area.

On discussion, Alderman Infurna says she has concerns because those residents were not notified of the expansion. She does not want to jeopardize all the work that has been done. Those homes were not included because they are not part of what is historically known as Wyoming Hill.

Alderman Wright says this is for zoning purposes and not historic purposes. In regards to notice, it has not been given for legal purposes but for convenience.

On the motion to amend, motion fails.

Alderman Conn speaks to the original order. He says that originally he had concerns with it. It is the first time a zoning amendment came from a citizen's petition. He understands the Planning Board may not have had a lot of time to spend on it. The Board of Aldermen has to make a decision about two particular zoning districts before them with two different requirements including lot size and set backs but no requirements relative to architecture or ownership. The bulk of tonight's discussion does not impact the Board's decision. The Board is being called upon to make a simple decision: rezoning an area from UR-B to UR-A, which limits multi-family development.

He says he will support this. This has nothing to do with one particular person's property. The decision should be made on the merits of the zoning change only.

Alderman Boisselle asks if the original order is before them or the expanded area. Alderman Conn says that currently before them is the original order with the expanded area.

Chairman Brodeur hands the gavel to Vice-Chairman Tramontozzi. He says that he reluctantly stepped down because of concerns about the notice requirements. He supports the zoning change and supports this amendment but he does not want defective notice to impact this in the future. He feels the citizens will be better served to have a legal notice published in the newspaper.

Alderman Brodeur motions to divide the order so that the amendment to expand the area becomes Order No. 07-027B.

Alderman Brodeur motions to recommend the original order, 2nd by Alderman Infurna. All in favor.

Alderman Brodeur motions to recommend Order 07-027A, 2nd by Alderman Infurna. On discussion Alderman Conn says he thinks the committee needs to have more discussion on it. He is not comfortable passing it this evening. He would like to keep it in Appropriations for further discussion.

Alderman Brodeur says there has been a lot of work and discussion on it and this is a necessary protection city-wide. This will allow all neighborhoods to have a foot in the door regulating townhouses.

On the motion to recommend, one opposed; motion carries.

Alderman Tramontozzi asks if there is a motion regarding Order No. 07-027B.

Alderman Conn motions for further public hearing on the amendment that is proposed, 2nd by Alderman Boisselle. All in favor. The committee sets the public hearing for Monday, 5 March 2007 at 8:00 p.m.

Alderman Infurna says it isn't necessary for all of the residents to come out again; everyone in the neighborhood has been great and the Aldermen know they are in favor of this.

Alderman Conn motions to adjourn, 2nd by Alderman Seaboyer. All in favor.

Appropriations adjourns at 10:30 p.m.

Maribeth Harrington
Clerk of Committees