

TOWN COUNCIL MINUTES
Ordinance Committee
February 7, 2022
Council Chambers

Present: Kenneth DiFazio, Chair
Gary MacDougall, Vice Chair
John Abbott, Councilor
Lisa Belmarsh, Councilor

Absent: Arthur Mathews, Councilor

Also Present: Joe Callanan, Town Solicitor
Robert Luongo, Director of Planning
Owen MacDonald, Traffic Engineer

Recording Secretary: Mary Barker

Chair DiFazio called the meeting to order at 6:48 PM. He introduced the newest committee members. He invited a representative from the citizen's group and Mr. Luongo to the table.

22 001- Citizens Petition- Request to Change Zoning Ordinances-Section 120-64.7.1-Billboard Relocation Overlay District

Bob Delaney, 27 Belmont Street, presented the measure on behalf of the citizens who filed the petition. The chair noted the district is noted in the zoning chart. The land is currently owned by Bristol Brothers Quarries and Development. The objective behind the filing is to eliminate a similar scenario to what's taking place at 611 Pleasant Street; the negative impacts of an electronic billboard installed overlooking a neighborhood of residential homes, and that vastly affects their quality of life. Light from the board reflects on the homes of the neighborhood and solely for the purpose of benefitting Cove, LLC (Ed O'Sullivan, Peter McClary and Landmark Ventures). Actions are currently taking place to circumvent the process, and install a billboard at 0 Finnell, which will impact residents of Progress, Belmont, Mill, Sunnypain and surrounding streets. They have heard many times the billboards will not affect the quality of life for the neighborhoods; however, everyone here knows why the petitioners are here. Last week, the public heard from a resident of Century Road that the mitigation agreement between the residents and administration with Cove, LLC performed exactly as the residents expected. The residents would like to prevent similar action from taking place and impacting any other neighborhood.

Chair DiFazio noted the objective is not only to stop any other boards from being installed in the zoning- at 611 Pleasant, 613 Pleasant and 0 Finnell. Mr. Delaney

responded they want to stop the installation of 0 Finnell, which has not been permitted yet by the state, remove the process to install at 613 Pleasant, and to get the board at 611 Pleasant removed and remediated. The chair responded the objective then is to remove all three electronic billboards and eliminate the overlay district so no future requests may be considered.

Bob Luongo, Planning Director, was asked about the effect of voting this forward, that by removing the overlay district, there would then be no more applications, and would the zoning map be amended? Would it be shown as in place for a time, then removed? Mr. Luongo concurred. He noted if the zoning passes, it would have no effect on the 611 Pleasant Street board that's currently in operation. It is currently in litigation. In his opinion, it would prevent 613 from being built even though they have a permit from the state (Office of Outdoor Advertising) to construct but not a local permit. The permit was sent back because there was a moratorium still in effect, passed by the Council. The moratorium ended on January 19, 2022, but he was unsure if they reapplied for a building permit. He is unsure what the zoning would accomplish, since they applied for perimeter plans for 613 and 0 Finnell and if they meet the ANR requirements, they can obtain ANR approval. If it is approved, it would freeze the current zoning. There could be debate over what the current zoning is- either the zoning passed under the overlay zoning agreement, which allows boards within 300 feet of Route 3, or it could be the amended zoning that limits billboards to 35 feet high, and smaller than what these boards are and restricted to how close to a residential zone they can be located. He isn't willing to discuss this at this time. If the ANR plans are signed, they will have some protections. He is still reviewing case law on those, so they have not been signed yet and he has until February 14th to do so or give reasons why it requires a subdivision, and not an ANR plan. They did file for protection under the current zoning. The public hearing is during tonight's Council meeting, and the Planning Board is expected to make its recommendation at their meeting tomorrow.

The chair asked if the citizens petition objective is to prevent any future boards, and if it is it possible to stop the 613 and 0 Finnell boards? Director Luongo expects it will end up in litigation regardless, if it's passed. He expects interested parties will try to litigate it. There could be other areas to site a billboard. He believes they determined that 613 was not the best location for visibility and decided to switch to 0 Finnell to give better visibility and generate more revenue. It's possible they could try to find other industrial land along Route 3, possibly in the Libbey Industrial Park, if they decide they're blocked at 0 Finnell. The Libbey site offers good visibility. It has merit.

The chair asked Solicitor Callanan if because the 611 board may not be potentially in litigation yet, would he offer an opinion whether this particular measure, if passed, would have the effect the citizens seek-- to eliminating one, two or all of these boards?

The solicitor responded that the question is more directed to the proponents. As legal representative for the Council, he sees no impediments to its passage. He issued memos on the previous petitions, pointing out several problems with each of them; he doesn't see any here. He is unable to provide an opinion on future events that could be in litigation;

it's inappropriate in a public meeting where Cove could be listening to the legal strategy of the town. It is not in the best interest of the town for him to share his legal opinions about what the future holds, when they potentially may go into litigation.

Councilor MacDougall asked Director Luongo if there is a reason why the ANR issue hasn't been moved to the Planning Board to decide it? Mr. Luongo responded that under subdivision control, the Planning Board can delegate to the director to sign ANR's, and there is a letter to this effect at the Norfolk County Register of Deeds giving Director Luongo the authority to sign off on ANR's. anytime he signs off on an ANR, it goes to the Registry to be validated. ANR's are not simple. Councilor MacDougall asked if can be moved to the Planning Board to make the decision? Director Luongo responded that he would have to confer with the solicitor to determine if it could. ANR requires a public meeting, but not a public hearing. In his prior tenure with the town, there was an ANR the Planning Board refused to sign, but if it meets the requirements and is not signed within 21 days, it's granted. There is no choice if it doesn't require subdivision control. Because state enabling legislation over zoning and subdivision control has not been updated over the years, it must be decided through case law. There is so much volume that it's difficult to determine what case law applies. The Planning Board is certainly capable.

Councilor MacDougall asked if the ANR was denied, and this measure passes, then it would block 0 Finnell from getting a billboard? Mr. Luongo responded that there would be litigation regardless, but in his opinion, and not being an attorney, he believes it would block it. If the measure passes, the zoning freezes, but the question is which zoning does it freeze.

Councilor Abbott asked why is that a question. Why wouldn't the more recently passed zoning be in effect? Mr. Luongo responded that is what concerned the solicitor. There is a question about which zoning is in effect. Is it the original overlay, because they already applied for a state permit for 0 Finnell but haven't received it; or does their application to the state freeze the zoning that allowed the billboard overlay, even though they don't have a town building permit?

Mr. Delaney added that the application filed 3.5 years ago was a waiver to put a billboard up at 0 Finnell. It is currently a nonconforming site. The citizens feel that with the passage of the zoning changes it would take effect by passage through the Council. The administration's position is that the actions taken by the citizens are illegal. If that were still so, then the solicitor should have gotten a ruling from the court to that effect. Mr. Delaney contends that in his opinion the petitions and the moratorium are legal.

Councilor Abbott asked if it is typical for the state to take 3.5 years to act on a waiver? Ms. Swain questioned whether 3.5 years is accurate.

The chair guided the discussion back to the topic. He reminded the committee to focus on whether to pass the citizen petition or not.

Councilor Belmarsh noted the citizen petition asked for the section 120-64.7.1 to be deleted in its entirety. The prior section, 120-64.7 – billboards of any kind are prohibited outside the limits of the billboard overlay district. If the measure is passed, will the prior be removed also? Mr. Luongo responded yes. The existing billboard becomes nonconforming. The chair responded that those items will be decided at some future time.

Councilor Abbot asked if there is a time period for the ANR. Mr. Luongo responded that it freezes the use only; it does not freeze height and size requirements.

Councilor Belmarsh motioned to forward measure 22 001 to the full Town Council with a recommendation for favorable action and was seconded by Councilor MacDougall. Unanimously voted.

ADJOURNMENT

At 7:18 PM, there being no further business, Councilor Belmarsh motioned to adjourn and was seconded by Councilor MacDougall. Unanimously voted.

Respectfully Submitted by Mary Barker as Recording Secretary.

Approved by Kenneth DiFazio as Ordinance Committee Chairman
Voted unanimously on 22 February 2022