

PLANNING AND ECONOMIC DEVELOPMENT COMMITTEE

APRIL 27, 2023

A meeting of the Planning and Economic Development Committee was held Thursday, April 27, 2023, at 7:00 p.m. in the Aldermanic Chamber.

The roll call was taken with 3 members of the Planning and Economic Development Committee present:

Alderman-at-Large Michael B. O'Brien, Sr., Vice-Chair  
Alderman June M. Caron  
Alderwoman-at-Large Gloria Timmons

Members not in Attendance: Alderman-at-Large Melbourne Moran, Jr.  
Alderman-at-Large Ben Clemons  
Alderman Derek Thibeault

Also in Attendance: Alderman Ernest A. Jette  
Alderman Richard A. Dowd  
Alderman Alex Comeau  
Alderman Thomas Lopez  
Matt Sullivan, Community Development Director

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PUBLIC HEARING

**O-23-047**

**AMENDING THE LAND USE CODE REGARDING MINOR SITE PLAN  
AMENDMENTS TO PERMIT SEASONAL OUTDOOR DINING APPROVALS**

TESTIMONY IN FAVOR - None

TESTIMONY IN OPPOSITION - None

TESTIMONY IN FAVOR - None

TESTIMONY IN OPPOSITION - None

The public hearing on O-23-047 was declared closed at 7:04 p.m.

Chairman O'Brien

Alderman Jette you had your hand up?

Alderman Jette

Yes, thank you Mr. Chairman. It's just normally our custom to acknowledge Aldermen who aren't on the Committee but who are in attendance.

Chairman O'Brien

I think we could do that. I'm multi-tasking here. You gotta be a little bit gracious.

Alderman Jette

I'm just trying to help you out that's all.

Chairman O'Brien

All right. We'll clean this up. Alderman Jette, Alderman Dowd, and Alderman Comeau. Also in attendance is Matt Sullivan of the City Economic Development.

Alderman Comeau

Community Development.

Chairman O'Brien

Community Development. Did I give you a promotion?

Back to the agenda. We'll open the hearing of Ordinance O-23-051.

The public hearing on O-23-051 was opened at 7:05 p.m.

**O-23-051**

**AMENDING THE LAND USE CODE REGARDING THE APPLICATION OF THE SIGN ARTICLE TO GOVERNMENTAL SIGNAGE AND THE APPROVAL OF SIGN PERMITS THROUGH THE SITE PLAN REVIEW PROCESS**

TESTIMONY IN FAVOR - None

TESTIMONY IN OPPOSITION - None

TESTIMONY IN FAVOR - None

TESTIMONY IN OPPOSITION – None

The public hearing on O-23-051 closed at 7:06 p.m.

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The regular meeting opened at 7:06 p.m.

Regular Meeting

ROLL CALL

The roll call was taken with 3 members of the Planning and Economic Development Committee present:

Alderman-at-Large Michael B. O'Brien, Sr., Vice-Chair  
Alderman June M. Caron  
Alderman-at-Large Gloria Timmons

Members not in Attendance: Alderman-at-Large Melbourne Moran, Jr.  
Alderman-at-Large Ben Clemons  
Alderman Derek Thibeault

Also in Attendance: Alderman Ernest A. Jette  
Alderman Richard A. Dowd  
Alderman Alex Comeau  
Alderman Thomas Lopez  
Matt Sullivan, Community Development Director

PUBLIC COMMENT – None

DISCUSSION - None

COMMUNICATIONS - None

UNFINISHED BUSINESS – None

**O-23-047, Amended**

Endorsers: Mayor Jim Donchess  
Alderman Patricia Klee

Alderman-at-Large Michael B. O'Brien, Sr.  
Alderman Richard A. Dowd  
Alderman Derek Thibeault

**AMENDING THE LAND USE CODE REGARDING MINOR SITE PLAN AMENDMENTS TO PERMIT SEASONAL OUTDOOR DINING APPROVALS**

Chairman O'Brien

Anybody would like to make the motion?

**MOTION BY ALDERWOMAN TIMMONS TO RECOMMEND FINAL PASSAGE AS AMENDED**

ON THE QUESTION

Chairman O'Brien

Alderman Comeau?

Alderman Comeau

Thank you, Mr. Chair. So I'm not on this Committee so I can't make any motions but I did speak with Chairman Moran the other day and this came up in the full Board of Aldermen meeting last the last time we met. We voted to re-refer it to this Committee so that we'd have a deeper discussion about it. Seeing as how three of the five members of the Committee aren't here tonight, I was hoping that a member of this Committee would make a motion on my behalf to table it until those missing members came back. Alderman Moran was in supportive of that idea. But like I said, I can't make the motion so I'm hoping that one of the three of you will make that motion on my behalf. Thank you.

Chairman O'Brien

Okay. Yeah the motion would have to be made by a member of the Committee. However, please indulge. I would like to recognize Mr. Sullivan to introduce this, discuss it briefly, and would tabling greatly affect it? Aren't we kind of under the gun with any time limits with this?

Matt Sullivan, Community Development Division Director

Mr. Chair, I'll start with your second question and respond to that. One of the unique facets of Land Use Law in the State of New Hampshire - and don't worry, I won't be giving a big missive here - but is that once a section of zoning is posted for public hearing, that zoning is actually in effect until the decision making body makes its final decision. This is an extremely interesting oddity within New Hampshire State Law. So to that end, this zoning that has been notified for public hearing is in effect as law right now. So businesses could apply currently for the under the \$25 fee that's been proposed here and secured outdoor dining permit to operate at this point in time. So to that end, timeliness is not critical. However, that timeliness does create an uncertainty in the event that the Board of Aldermen do not vote to approve this legislation and could create condition where the City may have to take an enforcement action and actually pull back approvals that it's granted during the sort of uncertain time where the legislation has been in effect as law.

So timeliness is not critically important for entities that were to apply now but it could impact the outdoor dining season that we expect will begin in earnest at any time over the coming weeks as weather conditions improve. However, I would say it's more important for me as the implementer of this ordinance to have clear guidance from this Committee and the Board of Aldermen on the direction moving forward. So I certainly would not propose or I would not support the tabling but I would accept it in the interest of achieving a better outcome through the Land Use Code or for the Ordinance itself. I think that's a shared objective of this Committee and the Board of Aldermen as well. I do want to be clear that today the Community Development Division and the Planning Department directly could issue approvals under the posted Ordinance that's been posted for public hearing.

Chairman O'Brien

Okay. Chair does have a question on that. If this were to go through without tabling, this Ordinance can be opened for future amendments in the future, correct?

Matt Sullivan, Community Development Division Director

That is absolutely correct.

Chairman O'Brien

So at the next meeting of PEDC if they should choose and bring this up on the agenda the new ideas or any other implications that they want to bring up can be amended into the process, correct?

Matt Sullivan, Community Development Division Director

The answer is actually no in a sense that another oddity of New Hampshire Land Use Law is that when a public hearing is held on a piece of land use legislation specifically if any substantive changes are made to that proposed Ordinance, a new public hearing must be held. So unlike other legislation that the Board of Aldermen deal with, any change to this that takes place whether that be at the Board of Aldermen level or even at this committee level will require notification of a new public hearing and this process that we're going through this evening. So amendments are just not as simple when it comes to land use regulations within the State of New Hampshire.

Chairman O'Brien

Thank you for your clarification.

Matt Sullivan, Community Development Division Director

Of course.

Chairman O'Brien

I'll open up discussion on the Board and to wish want we want to do. Alderman Caron?

Alderman Caron

Yes, thank you. So this was brought up before and there was a lot of discussion because on the books it was a \$300 fee. Basically, it was for something that was more permanent than something that's only there for three or four months at a time. We had that discussion that maybe it shouldn't be zero but it shouldn't be \$300. So we asked you, I think the Committee asked you to look at a good compromise as to between \$25 and \$50 and that's what this amendment is for.

So the thing is if we table this and in the meantime people come in, and ask for an application, and you're charging them \$25, and down the road the Committee takes it back and says no we're going to charge \$300, maybe those people don't want to pay that \$300. So now you're adding more work, talk about staff work, to undo this. I just don't think that's fair. No offense to anyone who's not here but we knew this was coming up. So, you know, I think it's important for these people who are doing this on their private property to have the capability of being able to do the outdoor dining or whatever it is starting the first of May. I mean we already see the downtown has their tables out on Main Street and they're not part of this. I just don't think it's fair. I just feel that we should move this forward. If they decide as the full Board to dump it again, well that's fine too but I think this Committee should put it through, and pass it, and see what happens. I don't think everybody on the Board of Aldermen is looking at a \$300 fee every year for permitting of a short term idea. I am in favor of moving this forward not to table. Thank you.

Chairman O'Brien

Okay. Further discussion? Alderman Jette?

Alderman Jette

Thank you, Mr. Chairman. So I would like, and again I'm not on the Committee, since a motion hasn't been made to table, it's nice to be able to talk about it. So I just want to - I would be in favor of tabling it and let me explain my reasons. At the last - I can't remember if it was the PEDC meeting or the Board of Aldermen meeting but when the discussion was had about referring it back to the Committee and the Committee asked Director Sullivan to look into a compromise, after that meeting, he and I and Chairman Moran spoke about this. Mr. Sullivan and I agreed that we would meet, and talk, and see if we could come up with some language that we could agree upon to propose to the Committee. As you all know, Mr. Sullivan is a very busy guy and he and I could not meet until the Friday before the meeting. That Friday I happened to be ill and Mr. Sullivan recognized that and said let's not do this today, let's do it next week. Both of us forgetting that there

was a meeting on that following Monday and we agreed to meet on Tuesday. On Tuesday, I found out and Mr. Sullivan, I think, he called me either Monday night or Tuesday saying hey we had the meeting Monday night and I don't mean to mischaracterize anything but Mr. Sullivan said you know I was caught by surprise. I said \$25 and that's what passed.

When we talked about this, we talked about the fact that these minor site plan amendments have in the past carried a fee of \$300. Chairman Moran had said that he thought it was fair to charge a fee for the first review that would be more substantial, maybe the \$300. I don't remember exactly if he said that or not but he was looking for a larger fee for the first time and then these annual reviews would be at a lesser amount. When I talked to Mr. Sullivan I said what exactly do you do? It kind of concerns me that people just come in with a site plan review and they say this is what we're doing, and we don't follow up, we don't check on that. He said no we absolutely do. We go out and inspect to make sure they're doing what they say they're doing. I said gee the minute you send someone out there to do an inspection, the normal fee for inspections and our fee schedule is \$100. So why would we be charging \$25 when you put somebody in a car, drive out to a location, and look at it, and come back to the office. I mean it just, you know, personally I just don't want to gouge people but I think we ought to get paid for the service that we're providing.

I think it would be good if you tabled it so that further discussion could be had. If you want to go ahead, then I won't support \$25. It just seems unreasonable. I mean we charge every inspection we charge \$100. So I would be in favor of an initial site plan review fee for the first time and then for the annual review, you know, charge something a lot less. But if you're gonna go out and inspect, at least charge the inspection fee.

Chairman O'Brien

Alderman Caron?

Alderman Caron

Okay. Can I ask a question to Director Sullivan? Thank you.

Chairman O'Brien

Absolutely.

Alderman Caron

So how many of these applications have been putting in for this particular permit over the last five years? I know pre-pandemic might have been different than now but what was the fee that we charged?

Matt Sullivan, Community Development Division Director

Mr. Chair?

Chairman O'Brien

Mr. Sullivan?

Matt Sullivan, Community Development Division Director

It's important to identify the fact that this type of outdoor dining approval was only issued beginning in the first year of COVID. So we have only those years of data to support this discussion. I can say that in the sort of peak COVID time when restaurants were open, we were issuing about 25 in that year. We dropped down to 20. There's sort of been a tailing off down to 20 and subsequently in this most recent year where we are issuing these this most recent summer, we issued approximately 11 permits to restaurants through this no fee permanent process that was in place. So most recent year 11 permits, no fee. Back in peak COVID, it was about 25 permits that were issued for approvals I should say.

Chairman O'Brien

Alderman Dowd?

Alderman Dowd

Yeah when it comes to the full Board I'm going to be supported for the following reasons. One - on a site plan visit we charge \$100 for, it's for one person or one entity and it's to their benefit. If we're doing the downtown dining, the people doing the inspection can do probably all 11 in one visit. It's all in the same area. It's not like they have to go all over town. It's somewhat to the benefit of the people that live in Nashua because they all enjoy outdoor dining. So I would be against tabling it because I think the full Board's gonna vote for it.

The other reason is that we're almost in the outdoor dining season. Delaying it is just going to convolute the entire question. I think that people that are trying to plan for outdoor dining deserve the right to have this this year set up. If we're going to do changing fees, we ought to do it mid-year not just before the outdoor dining. So I would be against tabling.

Chairman O'Brien

Alderman Comeau?

Alderman Comeau

Yes, thank you Mr. Chair. It was my understanding and through you to Director Sullivan and correct me if I'm wrong but this was not for the downtown expanded dining. This is for pretty much everywhere else. Is that correct?

Matt Sullivan, Community Development Division Director

Mr. Chair? That is correct. This specific permitting process applies to outdoor dining on private property only outside of the public right-of-way just for clarification. I would just add though that the commonality is the imminent need to have some sort of process in place regardless of whether it's occurring in the public right-of-way or on private property.

Alderman Comeau

Can I follow up Mr. Chair?

Chairman O'Brien

Follow up.

Alderman Comeau

So based on comments you made earlier about the State law regarding Land Use Code and the need to notice public hearings and things like that, that was part of the reason why I wanted to suggest tabling this tonight was because I'm afraid that this is going to go back to the full Board where there was support for a change in the fee structure and it's going to get re-referred back here for amendments or there's going to be amendments made at the full Board which are going to require another public hearing. I thought that the quicker process would just be to table it until we could get it completely right here and then send it to the full Board rather than send it back and forth a couple of more times.

Chairman O'Brien

Alderman Caron?

Alderman Caron

To that effect, my understanding is that if we make amendments here, it still has to have another public hearing no matter what. So we're still delaying this by almost a month.

Alderman Comeau

But we're delaying it more if we make those amendments at the full Board.

Alderman Caron

I think the issue here is Alderman Dowd made the point that we're into dining season. If you want to make changes, carry this out and then come September, look at it again if you want to make changes and make changes for next year. We shouldn't be doing this again at the last minute. We felt that as a group these private entities should be - they're just asking for a permit. Yes they're going out but they're not inspecting a whole building. They're looking at an outside to see if they're going to put the tent up right, or the tables, or whatever it is that they're doing. It's their property. All you're doing is verifying that they're following the application as provided by the Planning Department. To charge them \$300 or \$200 is kind of - it just does not make any sense. You're coming out of COVID and you're gonna go from nothing to \$300. That doesn't make any sense but I will not agree to a tabling of this piece of legislation. I'm sorry.

Chairman O'Brien

Alderman Comeau.

Alderman Comeau

Thank you Mr. Chairman. Just the last thing I'm gonna say is just to reiterate, I can't make a motion so there's no tabling this tonight unless one of the three of you make the motion. So it's going to go to the full Board. Just full disclosure, I am prepared to make a motion to amend at the full Board and I believe I have support and an amendment. So I was just making the suggestion because I thought it would be quicker but if there's no appetite from the three of you to do that, then I recognize that final passage is going to be recommended and it's going to move on so it's not really up for debate. Thank you.

Chairman O'Brien

Alderman Timmons?

Alderwoman Timmons

Thank you. Director Sullivan having listened to what my colleagues to the left said about tabling it if we table it and then it comes up - if we don't table it and it comes up on the full Board when we have our next meeting which is what two weeks from now, right? At that time, we can make any amendments and still have a public meeting. Is that correct or not?

Chairman O'Brien

Director Sullivan?

Matt Sullivan, Community Development Division Director

Mr. Chair the Board can make amendments. That is absolutely correct. What will also have to happen though is that the Board will have to act that evening to set a new public hearing at a later point in time subject to the notification requirements under State Statute. What that looks like is there needs to be really 10 days or I should say 12 days of time between when the public hearing notice goes out to the newspaper and out to other any other appropriate parties and when that public hearing takes place. So walking through, again, if the Board makes a motion at its next meeting to amend, and re-refers, and sets a new public hearing for PEDC at a later time, at a minimum, there will be a 12 day gap between when that happens. Obviously, there's the intricacy of when the PEDC actually meets and all the scheduling associated with that but it can create substantial scheduling delays - not that that should influence the decision making per se.

Chairman O'Brien

Alderman Lopez?

Alderman Lopez

Question through the Chair to Director Sullivan. Is there a delay period after a public hearing as well before the Board can act on it?

Matt Sullivan, Community Development Division Director

There's no such delay after the public hearing that the Board cannot act on the legislation.

Alderman Lopez

Okay. Just though I should check both sides.

Matt Sullivan, Community Development Division Director

Sure.

Chairman O'Brien

Right. That's why sometimes Alderman Lopez we'll have an oral report because of the meeting the previous evening and the Chair usually gives an oral report at that particular time.

Director Sullivan anticipating - we don't charge fees and make revenue per se. We do it to make us whole in regards of City services being compensated for the time that they do it. But how much of a loss? Right now we're not charging anything and because of the lateness of this with the pending season - I wish this is something we should have discussed and I'm not going to blame anybody. This is something we should have discussed in February but that has so left the barn right now. So how much anticipated and a guess would be, you know, would it be a big financial loss if we prepared better for next year?

Matt Sullivan, Community Development Division Director

It's difficult for me to quantify what the last would be to private businesses if this legislation is not approved. It's impossible in fact for me to quantify that. I simply don't know the financial impacts. I would just say for the record, this legislation was initially heard in February and not to sound defensive but we actually did think we were somewhat ahead of this but I understand that subsequent amendments were necessary. They were very logical amendments and so I don't want to criticize any delay that resulted from that process. We did attempt to get in front of it and I recognize that we should have done that perhaps in December really to allow for this very important conversation to happen.

It is just difficult for me though to really gauge the impact. I will say this in the event that this legislation is not approved, or it's delayed such that outdoor dining cannot proceed in some way, shape, or form, we will simply direct restaurants that are particularly interested in doing this to apply for a \$300 minor site plan amendment that's currently allowed under the existing ordinance. So there's still a mechanism to allow for the outdoor dining to happen but the fee is much more substantial if that makes sense. So there's still a mechanism. It's really a question now of whether or not the fee is commensurate with the request itself.

Chairman O'Brien

So what you're saying is if we pass this, an applicant can get by for \$25 if we pass it. If we do not pass it until the next modification, and public hearing, and everything, it could be a \$300 fee, correct?

Matt Sullivan, Community Development Division Director

That is correct.

Chairman O'Brien

Alderman Comeau?

Alderman Comeau

Thank you. I thought Director Sullivan I thought you said earlier that once we've had the public hearing the new ordinance is in effect.

Matt Sullivan, Community Development Division Director

Mr. Chair. I'm making the assumption that the Board would not table indefinitely. I'm making the assumption that there will be an action to vote against the proposed legislation. If the Board tables indefinitely, and this may be something requires some legal consultation, if the Board tables indefinitely, I believe there is a sunset of the posted legislation. I can't answer the question as to when that would be. I do not believe if a table vote to table indefinitely is made or something



similar, I do not believe the legislation remains in effect. I think that would be something we have to explore with the Legal Department.

Alderman Comeau

Follow up?

Chairman O'Brien

Alderman Comeau?

Alderman Comeau

Yeah I don't think that tabling indefinitely was something that was in play. I feel like me specifically, we're just looking for some more time to haggle for lack of a better term. So if we tabled this tonight and people could apply for \$25 a permit and then the final version that ends up getting approved was \$50 a permit, would you have to go back and collect an additional \$25 from anyone who was issued a permit or would they kind of get it for the \$25 because that's what was on the books and then once the final version was approved going forward, that's what applicants would be charged?

Chairman O'Brien

Director Sullivan?

Matt Sullivan, Community Development Division Director

I'm concerned that if Attorney Bolton were here he may caution me from answering a legal question.

Alderman Comeau

I won't hold you to it.

Matt Sullivan, Community Development Division Director

No but I'm fairly confident in the answer. The answer I'm fairly confident in is that if an applicant is approved under the ordinance that is legal and in force at the time, it would be permissible for them to extend that permit through the remainder of the outdoor dining season and we would not collect an additional \$25 fee. So I think they would be held to whatever standard exists at the point in time that the application was made. If that standard changes at a later time, that would not be applied to the application.

Alderman Comeau

Okay, thank you. Sounds like there's no harm so that's the only reason why I suggested it. Thank you.

Chairman O'Brien

Well Alderman Comeau define how you interpret "no harm"?

Alderman Comeau

Sure. So the current ordinance as amended says that applicants would pay a \$25 fee.

Chairman O'Brien

Correct.

Alderman Comeau

That's what the legislation before us is. So if we voted to table this tonight that is what is in effect and that's what would be in place which is no different than if we approved it tonight. So there's no harm in holding it back until the other three missing members of the Committee are here that wanted to discuss this in more detail.

Chairman O'Brien

Director Sullivan I see the light bulb above your head.

Alderman Comeau

So it's not going to hold you up from issuing permits or anything either.

Matt Sullivan, Community Development Division Director

I believe the answer to that question is yes. What I need to confirm with Corporation Counsel is when if there's a ripeness to that tabling because I don't believe that if you were to simply table - I'm not suggesting a table indefinitely motion but if you were to table to an uncertain time...

Alderman Comeau

It'll be the end of the year would be when it sunsets.

Matt Sullivan, Community Development Division Director

It'll be the end of the legislative session. I do want to confirm with Corporation Counsel but my opinion as of this moment is that because the legislation has been posted for a public hearing, a tabling motion it would keep that piece of legislation in effect until such time that the Committee or the Board directly take it off the table. Therefore, a \$25 fee would be applied.

Chairman O'Brien

Alderman Dowd?

Alderman Dowd

One final thing I hope. If it's tabled at this Committee, at the full Board level it can be taken off the table and addressed at the full Board meeting.

Chairman O'Brien

Correct. Okay. Further comment on Ordinance 23-047? Okay seeing none, I'll call the roll.

Alderman Caron

What's the motion?

Chairman O'Brien

The motion is for final passage.

*A viva voce roll call was taken, which resulted as follows:*

Yea: Alderman Caron, Alderman Timmons, Alderman O'Brien

**MOTION CARRIED**

**O-23-051**

Endorser: Alderman Richard A. Dowd

**AMENDING THE LAND USE CODE REGARDING THE APPLICATION OF THE SIGN ARTICLE TO GOVERNMENTAL SIGNAGE AND THE APPROVAL OF SIGN PERMITS THROUGH THE SITE PLAN REVIEW PROCESS**

**MOTION BY ALDERMAN TIMMONS TO RECOMMEND FINAL PASSAGE**

ON THE QUESTIONChairman O'Brien

Discussion on the motion? Alderman Timmons.

Alderman Timmons

Yes. Thank you, Chair. One of the things about this passage I don't support it because this particular signage meaning that signs of electronic signage is running and it doesn't belong in the residential area, in my opinion. I couldn't support this. I wouldn't want this outside my door so I don't think it's a good idea. I would think a fixed sign is fine unless...

Chairman O'Brien

Okay. Before we have, and I think he'll probably answer to that, I think Director Sullivan's going to give us all the particular information. So I will now turn it before I take any other questions from members of the Board, Director Sullivan.

Matt Sullivan, Community Development Division Director

Thank you, Mr. Chair. I actually I'm thankful to Alderwoman Timmons for raising that concern because in fact, this is where I was going to end my comments this evening and you will hear a bit of a missive from me on this particular piece of legislation that's proposed.

I want to be very clear that this proposed legislation does not allow expressly any specific sign that is being considered in the City of Nashua. This is simply an amendment to the Land Use Code that suggests an alternative approval process or relief process for signs that do not comply with the city's existing ordinance. So I'm going to stop there and I'm going to provide some comments that are more broad in nature to sort of explain the reason that this has been brought forward, the context in which I'm presenting it, and I look forward to questions tonight. Alderman Jette and I have had some good dialogue about this already and I expect this will be a very active discussion tonight about the intent of this change.

So I'd like to start with something that that folks may not be familiar with and that is that under New Hampshire State law under RSA 674-54 for us Land Use Code nerds and attorneys, governmental uses are expressly exempt from their municipal zoning ordinances and regulations. However, many communities like the City of Nashua have actually taken the position, and I think it's a very good position, that despite the exemption that State law provides them under their municipal Ordinances, they have said we want to be representative of the general message and character that our zoning ordinance in our land use regulations lay out. Therefore, we will actually opt in to be fully subject to that code that exists and apply it to the community.

Again, Nashua has done this. It is acknowledged that the zoning ordinance and the rest of the sections of Land Use Code are important to it and it wants to reflect the character included therein. However, this can have its challenges and this is what I'm going to talk to you about this evening. Some of the maybe unintended consequences that I've observed in my time, the Community Development Division, with both specific projects and having a larger vision to what I think municipal science might look like in the future in the community. I've seen some of these things firsthand. Just to be clear, as the ordinance is currently written, the Land Use Code regulations and the sign ordinance particularly apply in full force to any sign that the municipality puts up on its property.

The ordinance before you this evening does two fundamental things. One - and this is the not so important piece maybe but very important for my team - is that it removes an administrative loophole that exists within the ordinance that suggests that any sign that's shown on a site plan that's presented to the Planning Board if approved by the Planning Board is fully exempt from the sign permitting process within the City of Nashua. This is something that I think has not been taken advantage of by the development community but has been sort of a weakness or a weakness in the armor that I've seen that we need to correct and could create regulatory issues for us in the future if an applicant wants to propose something that's grossly out of character but get it approved through site plan. So we're removing that allowance that exists and would fully subject any sign of site plan to the traditional zoning ordinance.

The second piece, and perhaps more fundamental to the discussion this evening, is to provide an alternative permitting process through the Zoning Board via what we refer to as a "special exception" for signs, any governmental sign for governmental use that does not comply with the underlying zoning ordinance. So I want to dive in a little deeper here and please forgive me as I get into some of the nuts and bolts of the way that our zoning (inaudible). Currently, and there have

been approximately 14 examples of this since 1999, when the municipality proposes a sign that does not comply with the zoning ordinance in one way, shape, or form whether that's the size, it's the type of sign, it's the location on the property, that sign is asked to go through what's the traditional zoning process and that is a variance to the Zoning Board of Adjustment.

The variance process of the Zoning Board of Adjustment relies on five criteria. No I will not go into each one of them but I will spare you that and I think Alderman Jette and I may discuss this in some detail through the conversation tonight. Those five criteria are written in law very broadly in New Hampshire Statute but have been more narrowly defined, although not that well defined through case law subsequent about the criteria and what they mean. Generally, those criteria are intended to help protect public health safety welfare to ensure that the zoning that is intended is being respected despite this sort of exemption that's been required. One of the criteria that I think is very important to point out in context of municipal signage is the fact that variances and the approval of a variance requires an applicant demonstrate a level of what they refer to as "hardship". I definitely will not be attempting to define that this evening because it's a very deep and well litigated definition but essentially, there needs to be a very unique circumstance of the property or the application itself that the sign needs to demonstrate allowing for the Zoning Board to approve it leading me to a maybe a more controversial comment.

Of the 14 to 15 variances that the City has considered for municipal signage over that 24 year period that I mentioned, nearly all have been granted. I would argue that in many of those cases hardship was not strictly met and that the Zoning Board was using a standard of reasonableness trying to implement the general health, safety, welfare impact, the zoning character impact but being more careful and reasonable with the hardship standard. So I'm saying clearly for the record that I believe the municipality and the Zoning Board has used a different standard of review already for municipal signs that are asked to go get a variance. That gives me concern however. So what I'm proposing with this legislation and the legislation I brought forward with Alderman Dowd's sponsorship is to not take away the need for relief from the zoning ordinance but to rather than put it through the variance process that requires that hardship that may or may not exist and there may be a legitimate government purpose to the sign, to actually put it through what we refer to as a "special exception process".

The special exception process is not an exemption per se. It is something that is permitted but subject to certain conditions. The Zoning Board of Adjustment is charged with measuring whether or not those conditions are met. Again both the variance and special exception are decided at the same body. There's still a public notification. There's still a public hearing and there's still an opportunity for the Zoning Board to say no. Why would they say no for a special exception? To Alderwoman Timmons' concern, when would an application for a special exception as proposed by this ordinance be appropriate or not? The special exception criteria in the City of Nashua speaks specifically to whether or not a proposed application is in accordance with the neighborhood character, the neighborhood integrity, and honors very many of the same standards of public health, safety, welfare that are built into the various criteria but not that standard of hardship. So what I'm hoping to drive home here through my explanation of those two different processes is that I believe that putting signage that does not comply with municipal regulations through a special exception process still provides the public with a reasonable level of involvement and opportunity to object and does not take away the Zoning Board's ability to actually deny in the event that the sign is absolutely not appropriate. All that this ordinance does is take away the need for a sign to actually demonstrate a level of hardship that in my experience cannot necessarily be demonstrated, and in my opinion, should not need to be demonstrated for an application or a sign that is intended to serve a legitimate governmental purpose and benefit the public in some way, shape, or form.

Now, I wasn't going to speak to this but I think I should. There's been this question raised of whether or not this legislation is a reaction to any specific proposal that's being considered or proposed in the City. I want to be clear that it is not. I have had conversations with my team and with many folks about this since my arrival here in the City. I came from a community where municipal signage was fully exempted. I'm not saying that's the right approach either because I don't think it is. I believe that there should be a process to keep the municipality in check and that whatever it's implementing is still in accordance with what the neighborhood would like to see. I do not believe that the municipality should be subject to the same hardship standard if it's acting in the best interest of the public at large. So I feel an alternative permitting process is more appropriate for municipal signs specifically.

My last comment will be simply that I believe there'll be some questions tonight about whether or not governmental signage should be treated in a different way generally. I would point out that the existing zoning ordinance for signs, albeit not included in the information presented to you this evening, already provides for the fact that governmental signs shall be exempt from the permitting process itself. It does not exempt them from the zoning but it exempts them from the permitting process. I raise this to say only that governmental signs are already contemplated differently within the context of the sign ordinance. What I'm offering and what I'm suggesting that this Committee recommend, and I'm asking for your support, is that these signs be put through an alternative process in cases where they cannot meet the zoning ordinance

but that will still be protected by the Zoning Board of Adjustment in those cases. I'm happy to take any questions that folks may have.

Chairman O'Brien

All right good. At this time, I want to recognize the prime sponsor of Ordinance 51 and Alderman Dowd.

Alderman Dowd

Yes. The reason for this action is to make it a little more streamlined to provide signage to the general public to give them the information that they need. We get beat up left and right all the time that we're not providing enough information to the public on what's going on. I believe this will also fall into the authorizing the if you've seen the orange signs on the carts from the Board of Public Works that you know advertise police examinations, hazards, hiring, a number of things that we use them all the time, events coming up that are all public information and are beneficial to the public. What Mr. Sullivan is saying is to put those through this process as it currently exists for a variance, it costs the City money, costs the Zoning Board more time than it should, and discussion on hardship and everything which takes forever because, again, nobody can define hardship. To me, the hardship would be that we are not providing the public information that we should be providing.

So this ordinance as Director Sullivan explained and I fully support because the signs that we've been discussing, the signs that are applicable here are providing public information that the public requires and should have. To do anything to detract from that just exacerbates the fact that we're not providing enough information to the public on what's going on in city government, or in dangers, or the other things that I mentioned. So I hope that the Committee will endorse this because it's in the benefit of the City and more importantly, the general public. As he said, 15 signs at 24 years that have gone through the process were a variance even though it took forever were all approved. So let's make this a little easier for the Planning Department to authorize signs that are going to provide information to the public that they need.

Chairman O'Brien

I know Alderman Comeau I see your hand. I will recognize you but I'm going to go with burning desires from members of the Committee. Alderwoman Timmons?

Alderwoman Timmons

Thank you. To my distinguished colleague over there Alderman Dowd. Those signs that you are talking about are temporary signs is it correct? That the City does provide such as the police exams are coming up on whatever day. So they're out there and we see it and the public see it. Those are temporary signs but I'm not talking about a temporary sign. I'm talking about the permanent signs that the public may not need to see all the time. The school signs for instance. I'm going to take the schools. The schools all have their little stationary and we know what's going on in schools because they post everything on their stationary signs. So what is going to enhance the public to know more information by having a different type of sign?

Alderman Dowd

I defer to Director Sullivan to talk about the signs that are permanently placed that are informative to the people. Those are also under consideration.

Chairman O'Brien

Director Sullivan?

Matt Sullivan, Community Development Division Director

If I may Mr. Chair? Just to provide a clarifying comment. So the orange public safety signs if you will, if everyone understands what I'm talking about, they're on trailers. Those are not something that will be affected by this. The reason for that is that those are within the public right-of-way. Signage within the public right-of-way is governed under a different set of regulations. These apply only to I'll say private property but also public parcels of land that are owned these standards apply. So those temporary movable signs as long as they're contained within the right of way, those are not impacted specifically by this ordinance. Those are allowed or permitted through another process.

But I, again, want to maybe caution the Committee. Electronic messaging signage where it is not approved will still be subject to Zoning Board relief and approval in areas where it's not approved. The difference and the modification that this ordinance proposes is simply that if an electronic messaging sign is brought forward by a school or the municipality, the Zoning Board will use a different set of criteria to decide whether or not that sign is approved. Now I would offer that I believe one of those criteria, the special exception criteria that I'm proposing, are easier to satisfy but I would argue that the underlying intent of those criteria is exactly the same as the various criteria. I also believe that the Zoning Board could deny an application that it feels is inappropriate based on those criteria as well. So it's really a change just of process. This would not allow for an electronic messaging sign in an area where it's not already allowed. It just sets forward a different process for getting an approval to put that kind of sign in.

Chairman O'Brien

Okay. Committee members all set? Okay. Alderman Comeau.

Alderman Comeau

Thank you, Mr. Chair. Through you to Director Sullivan. I was just curious. You mentioned there were, I might get the numbers wrong, but 14 over the last 24 years have been granted this variance. Could you just give me like an example or two so I know what type of signs we're talking about? You don't have to go through the whole list. Just maybe the one I might be most familiar with if I tried to buy it or something?

Matt Sullivan, Community Development Division Director

That's a good question. Yes, I'll give you an example. I think one that everyone will know - the Hunt building. There's currently a ground sign that encroaches into the front setback for the Hunt building. It also has manually changing text on the reader board, which is not permitted by the Zoning Ordinance or was not permitted at the time that this variance was approved. So again, that sign went too far into the front setback closer to the right-of-way and to actually have manually changing texts that also required a variance as well. That's the Hunt building sign.

Alderman Comeau

I was just trying to picture in my head what exactly we were talking about so thank you.

Matt Sullivan, Community Development Division Director

Absolutely.

Alderwoman Timmons

Can I have a follow up to that? Yeah, that is a low hanging fruit sign. Give me one that's not so low hanging that we know of.

Matt Sullivan, Community Development Division Director

Okay. Let's see. Trying to think of one that everyone will be familiar with - the Elm Street Middle School. The Elm Street Middle School in 2014 had a variance approved for ground sign height as well as a variance approved to allow manually changing text on the reader board. None of these examples are particularly impactful that you'd say oh my gosh, that was an egregious overstep of the regulations. I think that's part of the point of my bringing this forward where there are reasonable allowances that can be made if there's a case to be brought forward. I think the Zoning Board has been has used that standard of reasonableness in taking these actions in the past. My concern is that it's critical for the Zoning Board to act in a way that appropriately applies that fifth criteria related to hardship and I simply do not think that that should be applied in cases where it has a governmental use behind it I guess is my point.

Chairman O'Brien

Alderman Lopez.

Alderman Lopez

Regarding the first cross out on the amendment, signs that are included in the site plan, are there any site plans that we're aware of that we may have put forth that actually have signs included? Like was there any for the Brian McCarthy Middle School, or the police station, or any known government buildings where we could put a sign that we had approved because it was in the site plan?

Chairman O'Brien

Director Sullivan.

Director Sullivan

What I can speak to is that we're not aware of any situations. I'll answer your question maybe a bit indirectly and then come back. I'm not aware of any situations where an approved site plan was used to leverage city staff to approve a sign that was not otherwise allowed by the zoning code. What I can say is that on the middle school for example or any other commercial site plan, we require signage locations to be shown on the plan anyway. What we don't see typically with a site plan is what the dimensions will be, what the typology of the sign will be, and so for that reason, we've generally protected ourselves against any sort of slipping in of something that might not be appropriate. So I'm not aware of any issues where this has come up where we've permitted a sign. I tend to believe with these types of things and these types of openings in an ordinance, it's a matter of time before somebody will find it and attempt to leverage it. So I think we have an obligation to close these as they become aware to it or become...

Chairman O'Brien

Follow up?

Alderman Lopez

Yes please. So we're not in charge of, actually I guess Aldermen Dowd who probably in this we're not in charge of the school properties so like Franklin Street, for example, where we said hey we're gonna put a sign up. They're not going to put a giant billboard up now because there's a space for a sign, right? That wouldn't be something that a different body could do and then we'd be like I guess that happened.

Chairman O'Brien

Director Sullivan.

Matt Sullivan, Community Development Division Director

That is correct. The School Department is fully subject to all of the regulations within the sign ordinance. Hence, the reason that as I look at these approximately four of these requests are related to school signage that were granted in the past. So they've had some instances where they could not comply with the ordinance and they've had to seek relief through the Zoning Board.

Alderman Lopez

But to clarify that.

Chairman O'Brien

Follow up?

Alderman Lopez

Sorry Chair. Thank you please. To clarify, that first strikeout were signs can be updated and amended, we would also be closing the way that we would be able to update our own science. Another example, maybe a little less complicated in the schools would be the one in front of City Hall. It's a sign. Does that mean we're closing our own ability to update it?

Chairman O'Brien

Director Sullivan.

Matt Sullivan, Community Development Division Director

No, it does not. It's absolutely acceptable for any entity not necessarily being the City or the School District to update the copy on an existing sign or update the sign some way, shape, or form. What that sort of more minor striking would do is that if the City were to submit a new site plan for a facility and on that site plan it said that we're putting in a 100 foot by 100 foot electronic messaging sign showing the temperature, they could not have it approved through a site plan process. They would have to come and get a hopefully a special exception if not a variance for that kind of signage. I think I'm getting a bit technical but I hope that's clear.

Alderman Lopez

I understand. Thank you.

Chairman O'Brien

I think we had Alderman Dowd's hand up?

Alderman Dowd

Yeah. First question is the sign you were talking about Elm Street is that the one for the Keefe Auditorium?

Matt Sullivan, Community Development Division Director

Alderman Dowd, I can't actually answer that question. It doesn't say specifically what the use was for.

Alderman Dowd

Because if it doesn't, the Keefe Auditorium has a sign. It's the City sign.

Matt Sullivan, Community Development Division Director

It does not say.

Alderman Comeau

I think there's only one there.

Alderman Dowd

The Pennichuck Middle School - the sign was replaced. They replaced the old one that was there and that was approved by the site plan. The McCarthy School which has a sign on Buckmeadow, it was also approved in the site plan which got full review by your Department and then was approved by the Planning Board. It may have been even the Zoning Board. I'm not sure. I know we went to the Zoning Board for some things, particularly the hibernacula. But there are signs and like if we built the school like the McCarthy School and we didn't put a sign up to say where it is. Seriously, does that make sense? So this is just making the process a little smoother. It's not taking away any of the protections that are offered by Zoning. So I would recommend that we pass this.

Chairman O'Brien

Okay. Alderman Comeau.

Alderman Comeau

Yes thank you, Mr. Chair. I just wanted to thank Director Sullivan for the explanation. That was a lot of information admittedly. More information about signs than I ever thought I would know or needed to know. But particularly where you talked about the hardship in the existing variance process, the way he explained it it makes total sense to me. The City in the past has been arguing pretty much against itself for a hardship that may not necessarily exist and we've been granting it because we agree that the sign might be necessary. I like that you - I forget the exact word you used but there's a public need as opposed to a hardship. So therefore, I like the idea that we have the correct criteria that when we're going to do



something like this, we're arguing for the correct reason as opposed to just the one that happens to be on the books. So for that reason when this does get to the full Board, I'll support it.

Chairman O'Brien

Okay. Alderman Jette.

Alderman Jette

Thank you, Mr. Chairman. So I'm against this. The City a long time ago the current zoning law goes back to 2005. I don't know if before that it also contained the language making the Land Use Code applicable to everyone including the City. I don't know if the language was before 2005 but at least since 2005. That's been the law. That was intentional on the part of the Aldermen at the time. I kind of have a vague memory of there being abuses where the City would do things that would not be in conformance with the zoning law. The Aldermen at the time wanted to put a stop to that and that's why we have the language we have now.

For example, I represent Ward 5. Ward 5 is almost entirely residential. As far as signs are concerned, there are restrictions on what types of signs can be allowed in residential districts. The size of the sign, the height of the sign, the area, the square footage of the sign, whether it's lit exteriorly or interiorly, whether the lights can be flashing. Electronic messaging signs are not permitted in residential areas for example. When you think about it, I think it makes good sense. I don't think anybody would want an electronic messaging sign with graphics, flashing lights across the street from their home. So, you know, they're not permitted in residential areas.

This all kind of hits home to me because we just built a new Department of Public Works building. There was a proposal to put a sign at the entrance of that building to identify where the building is so people know where it is. Now under the existing zoning ordinance, identification signs are permitted in residential areas and they can be 12 square feet, and eight feet high, and they can be lit exteriorly. Now that's a pretty substantial sign. I can't imagine that you would need any more than that to identify where this building is. The landfill has a sign. It's a very nice sign. It's made out of granite. It's not lit. It's not an electronic messaging sign. It's just a very nice sign that complies with the sign ordinance. Nobody has any problem finding where the landfill is. They've been going there for years. They're still going there.

The Department of Public Works requested that the sign identifying this new Public Works building be of a size much larger than what is permitted. What's permitted is 12 square feet. The sign they want is 105 square feet. It's huge. Height is 8 feet. The sign they want is close to 10 feet high and they want an electronic messaging component to it. The electronic messaging is 40 square feet. A little TV screen 40 feet - 40 square feet. So the zoning ordinance does not permit that but that didn't stop them. They voted to go ahead with this sign to seek a variance.

Now to my viewpoint, the City should not be asking the Zoning Board to grant variances to violate the zoning law. Of all people, the City ought to be complying with the zoning law. The zoning law is passed by the Board of Aldermen saying specifically for signs what kind of signs are permitted, what size, what the nature is in the various zones of the City. To request a variance is an admission that what you want violates the law and you want to be relieved from the law in order to do what you want to do. Now there's a special situation regarding this Board of Public Works building in that the land on which this sign would be constructed, it was part of four lots that were purchased by the City some time ago. The resolution authorizing the purchase of these lots included language that said in the purpose of buying these lots was to provide a buffer between West Hollis Street in the landfill. The language of the resolution added that nothing would be built on these four lots that did not conform to the zoning law for that residential area. So I pointed that out to the Committee but the Committee went ahead and voted to seek a variance for this sign. It was only because Attorney Bolton sent an email saying that requesting a variance isn't enough because this resolution prohibits a sign that does not comply with the zoning law.

Now the affect whether it's intended or unintended, the unintended consequence of this proposed revision to the ordinance would instead of the sign - this electronic messaging sign being not permitted, it would be permitted by special exception. Any sign that the City wants to put in as long as it's for some governmental purpose which is pretty loose language would be permitted by special exception. So it doesn't matter what the zoning law says about signs. The City can request any sign in any part of the City, any residential neighborhood by special exception. So it's true that in order to get a special exception, you gotta go before the Zoning Board but it's a completely different set of standards.

As Director Sullivan pointed out, to get a variance there are five criteria. One of which is hardship. Hardship means that there's something unique about your particular piece of property that is different than all the other properties in the neighborhood that makes the application of the zoning law unfair, unreasonable to you. It makes it impossible for you to

make reasonable use of your property and still comply with the zoning ordinance. So the variance process is like a relief valve to avoid somebody not being able to use their property in a reasonable manner because of the particular nature of the property. The fact that the Zoning Board struggles with this, I think in a way it's a problem of educating the Zoning Board as to what that standard really means. When the Zoning Board says we're going to grant this variance even though there's no hardship, we're going to grant it because we think it's reasonable. They're substituting their opinion about what the zoning law is for that of the Board of Aldermen. The Board of Aldermen passes the zoning law. If the zoning law says the sign can only be 12 square feet, the Zoning Board of Adjustment should not say, you know, a 14 square foot sign sounds reasonable to us. We're going to permit this. Or a 20 foot square foot sign, you know, it's for a good purpose. It's going to provide information. No. If the Board of Aldermen has said in a residential area no electronic messaging signs and the sign can only be square 12 square feet, that's what it ought to be and the Zoning Board shouldn't be - if they are ignoring the hardship requirement, then that's wrong. I would ask Director Sullivan to you know ask them to - there are courses that are offered to explain this stuff to them and they ought to be reminded that they should be complying with the law.

People who disagree with the Zoning Board can file for an appeal but you have to hire a lawyer. That's expensive. Most people don't have that kind of discretionary income to fight the Zoning Board in court and the court is very limited. It's not like the Court looks at the decision and says oh that was wrong. We're going to substitute our decision. This is the right decision. The court is very limited as to what it can do. It assumes that the facts are however the Zoning Board found those facts. They don't question the facts. So if you look at these decisions that Director Sullivan referred to, you will see that the court says we have very limited ability to change anything that the Zoning Board did.

To change this to a special exception, we'd make these signs permitted as opposed to not permitted by special exception. So it kind of changes that resolution where the Board of Aldermen said you know these four properties you can't build anything on there that doesn't comply with the zoning law. All of a sudden, the arguments is going to be made well it does comply with the zoning law because it's permitted by special exception. I think we're making a big mistake. I think of the guy who lives across the street from where this sign is proposed. His name is John Hilliard. He and his wife live right across the street from this thing. They've got a house. It's got a picture window. Picture window is right into their living room. If an electronic messaging sign is permitted across the street, they're going to have that thing flashing right into their living room. When that property was purchased, the argument was made that by the Aldermen at the time, one of which was Alderman Jim Donchess, said that they don't want to allow, they don't want to encourage, or permit the commercialization of West Hollis Street. It's a residential area. It's bad enough that it serves as an arterial road for people coming from Hollis and elsewhere down that road. There's a lot of traffic. They've had to live with that.

To allow the signage - to remove the signage from the hardship requirement is really opening the door. The Zoning Board has denied electronic messaging signs on West Hollis Street to people because they could not satisfy the hardship requirement. If we allow this to happen, it's gonna be a whole number of people that will come and ask the Zoning Board hey you let the City do it. Let us do it. I think it's a big mistake. If the Zoning Board as Director Sullivan says is trying to find ways around the hardship requirements by imposing a reasonableness standard, substituting a reasonableness standard which is not what the law says in order to allow signs that they think would have some value. Think of how they're going to treat it when it's just a special exception and hardship is removed from the equation. The only standard then would be that it will not impair the integrity, or be out of character with the district, or immediate neighborhood, or be detrimental to the health, morals, or welfare of residents. That's sounds Director Sullivan says hey, that means that they can't put a sign that's going to be out of character with the neighborhood. I tell you if you follow the Zoning Board, you'll see that this is language like under the current variance standard not contrary to the public interest. They just flip over that. They never even discuss it. They just say yes we find it's not contrary to the public interest. It's such a wide open door that I think is going to be misused.

I think that our zoning law should apply to everyone. If you think this zoning law is too restrictive, you can look at changing the zoning law. We're looking at it. We're in the process of changing our zoning law and there are going to be substantial changes to it that are coming up. If you feel that we ought to allow bigger signs, electronic messaging signs, we can have that discussion but don't do it this way. I don't know about how you feel about your neighborhood but I don't want my neighborhood - I don't want West Hollis Street turning into Daniel Webster Highway or Amherst Street in a way you can see these signs with all kinds of graphics, all kinds of flashing, all kinds of colors. It's just not, it's just not right. If you pass this, the Board of Public Works is going to push forward with this sign that they want. I know that's not the purpose that Director Sullivan is proposing this but I think he will admit that that is an unintended consequence that could occur. So I ask the Committee not - the first part. The part about eliminating signs clearly shown on a site plan approved by the Planning Board. I think that that's a good thing and that would be a good thing to do but municipal government signs, I would ask you to please vote against that.

Thank you Alderman. Director Sullivan.

Matt Sullivan, Community Development Division Director

I'd like to just provide a few what I hope are objective comments in response to Alderman Jette's comments. I appreciate his thought on this. He and I have had some dialogue and I certainly understand we're perhaps looking at this in a different way. I understand his concern about I'm not putting these words in his mouth by any means but the idea of bad faith acting on a municipality. That is something that's real. I think that the ordinance that's in place today that subjects the municipality fully to all of the provisions of the zoning ordinance was a direct response to some bad faith acting on behalf of the City perhaps in the past.

I'd like to think we've moved past that and I, again, want to acknowledge the fact that while I appreciate several comments made here that attribute this change or have sort of contextualized it in the context of the DPW sign and I understand that helps identify what this proposed change will do, what's in front of this Committee is a procedural change only. It is not a change to dimensional standards. It's not a change to typology standards. It's not a change to any other specific provision of the sign ordinance that immediately impacts what type or manner of signage is allowed. I do acknowledge Alderman Jette's comments and I can completely understand that the argument is that while it's not doing that, it inherently weakens the Zoning Board of Adjustments ability to regulate the provisions that do exist right now. So I certainly think that's a reasonable concern to have but again, I would harken back to the fact that this is a procedural amendment.

I would also just offer that as planners, and the way I've been educated, we are supposed to be constantly monitoring provisions of the zoning code that frequently appear in front of the Zoning Board of Adjustment for variances. The reason that we do that is if something's going to the Zoning Board on a relatively consistent basis, we're taught to look at what that code says and whether or not there should be an adjustment to it. When I see consistently from a pattern perspective is that the City has gone to its Zoning Board, it's requested variances for signs, the Zoning Board has deemed those requests to be reasonable, and I'm not arguing whether the hardship standard was or was not applied correctly but those signs have been approved. So I see a pattern there that to me as a planner indicates that I should look at the sign ordinance.

Now I think where Alderman Jette and I may differ is that, and I completely agree with Alderman Jette, that there is a much more comprehensive look needed at the sign ordinance, and the dimensional standards, and the typology standards that are in there but I also think that one thing that I've recognized and the pattern that I see here is that the municipality has indirectly been subjected to a different standard in a way at least that's what these approvals indicate to me. I'm not suggesting for a second that the Zoning Board, and perhaps I did earlier and I shouldn't have done this, I'm not suggesting that the Zoning Board has simply said we won't apply the hardship criteria here. I think what the Zoning Board has been frustrated by or had to battle against to an extent is that the fact that they're acting within the constraints of the current language of the zoning ordinance that tells them that this has to be a variance process and they must apply the hardship criteria to it. I think that's been a challenge for them when the inherent use of the sign has been one of a public benefit. So it's that tension that I'm recognizing only and as a planner acting to respond to that and provide an alternative procedural remedy, that is a special exception process.

The justification that I find this reasonable is that the only modification this special exception process produces is the fact that the hardship criteria no longer is applied. I think Alderman Jette and I disagree in a healthy way on whether or not that hardship criteria should be applied to municipal sign. My position is that it should not. Alderman Jette's position certainly is that it should be. I think those are both reasonable ways of thinking about it. I'm simply putting forward a solution that I think will provide a more consistent and predictable process for the municipality when making a request for a sign and not necessarily subjecting them to this unpredictable criteria that we've seen relieved many, many times where they have to demonstrate a level of hardship. I'll close my comments there. I think I'm at risk of lobbying too hard for a piece of legislation but I'm going to step back and sort of be less emotional about it. I've seen some frustration on the part of staff here about how to apply these ordinances. I certainly see applying for, you know, some of my own signage for things. I don't want to imply where my view is tainted here in any way. I do believe this is a real problem and I certainly respect if the Committee feels that this is not the right way to solve this. I believe that it is and I'd close by saying I hope that I can get your support.

Chairman O'Brien

Alderman Dowd.

Alderman Dowd

Yeah, I just want to correct one thing. As former Chairman of the Zoning Board of Adjustment here in Nashua, by your definition Alderman Jette a variance should never be granted because you can't prove hardship. Hardship is the hardest thing to prove in many, many cases. I can tell you that the public has had thousands of variances approved since I was on the Zoning Board. To say that the City is not able to subject themselves to the same criteria, I think is definitely wrong. We may be changing the zoning but right now if a member of the public puts in for variance and the Zoning Board agrees that it should go through, it does. This legislation because Mr. Sullivan and I have had discussions is not singled out for that one sign. It's for all City signs. We have granted sign variances for corporations here in Nashua for much larger signs and met the criteria for a variance. So I don't think that argument should be part of this discussion. I think that what we're trying to do is to streamline the process not take away any of the criteria that's required. So I don't buy that argument either. I think we still have to meet the requirements for the signage even with a special exception. The only thing it's eliminating is the hardship. I can tell you from being on the Zoning Board for a long, long time, the hardest thing that Zoning Board had to define was what the hell is hardship? The State has even taken requirements and changed things relative to the term "hardship" which Director Sullivan may or may not know but I know that it changed over the years. So I think this is a good thing. It's making it while still requiring the same requirements for signage, it's allowing it to be a little easier for public information signage to be passed through the ZBA.

Chairman O'Brien

Director Sullivan.

Matt Sullivan, Community Development Division Director

Just one last comment and I apologize for being a bit emotional in my response. I just want to comment and I know this is not Alderman Jette's intent at all. Our Zoning Board is the most professional and educated board that I've had the opportunity to work with and I've been doing this several communities for a bit. They're very respectful. They certainly are challenged by the criteria that are laid in front of them but I don't want to imply that they're not doing their job correctly. I mean only to say that it's challenging and this goes beyond governmental signage. It goes to any request for a variance. It is challenging. I'm not saying it's right or wrong to balance what may on its face be a reasonable request with a strict criteria that State law layout. So I think it's that that they struggle with because they're working in this sort of finite box but they are some of the most educated and professional folks that I've had the opportunity to work with. They're just struggling against that tide.

Chairman O'Brien

Alderman Caron.

Alderman Caron

Thank you. Out of those - may I to Director Sullivan?

Chairman O'Brien

Absolutely.

Alderman Caron

Thank you. Out of those 15 designs, how many of them were electronic signs that the City wanted to put up?

Matt Sullivan, Community Development Division Director

So of the signs that were approved, seven - sorry nine of the signs had some component of an EMC - an electronic messaging center to them.

Alderman Caron

Okay.

Matt Sullivan, Community Development Division Director

Now I want to be really clear about this because that number sounds big. Those nine were all within one project and it was the Performing Arts Center downtown. All of the other signs in other locations or none of the other signs I should say had any component of electronic messaging outside of the downtown Performing Arts Center.

Alderman Caron

Follow up?

Chairman O'Brien

Follow up.

Alderman Caron

So first of all, I appreciate the fact that you're trying to streamline and make it easier. My understanding in my head and I think the problem is that we're focusing on a sign that doesn't exist yet. No Alderman Jette. My concern was that the City was not going to have to go to anybody and they could put the sign up wherever they wanted.

My only concern would be, and I agree with Alderman Jette, if in previous requests by other small businesses on West Hollis they were not allow this type of sign, I would hope that and I believe that Zoning Board does a great job. I've seen them in action - that they take all of that into consideration when and if the City go before them for a sign. Myself, I don't think we need an electronic sign but that being said, I'll support this to go to the full Board. I still have a few concerns but I think you kind of filled in some of the pieces that the questions that I had and one of them was that the City was not just going to be able to put up signs wherever and whenever they wanted to. So I appreciate that but I do understand Alderman Jette's concern. I really do. Thank you.

Chairman O'Brien

Alderman Dowd.

Alderman Dowd

Two things. One - I can tell you based on my 14 years being on the Board of Aldermen and City of Nashua, the City's not going to put up a sign willy nilly. Somebody has to pay for it and it has to be for public information or the City wouldn't put it up in the first place.

The only other thing I wanted to point out, there's an electronic sign at Holman Stadium, which by the way belongs to the City of Nashua. Didn't that have to get a variance?

Alderman Caron

No, I don't think so.

Alderman Dowd

How did it go in then?

Matt Sullivan, Community Development Division Director

Alderman Dowd what's the specific sign? I can check on it. I'm not sure.

Alderman Dowd

There is an electronic sign right at the entrance to Holman Stadium on Amherst Street.

Alderman Caron

True but that replaced the old hand sign.

Alderman Dowd

That doesn't make any difference. It's an electronic sign.

Matt Sullivan, Community Development Division Director

So I'm happy to check on any specific signs after this meeting. I can't speak to what the process was for that specific one. So I can certainly report back. Yup sure.

Chairman O'Brien

And that would be satisfactory. Thank you.

Further comments? Alderman Lopez.

Alderman Lopez

Sorry, I'm not a member the Committee. I just I feel like I'm struggling with this a little bit at the full Board because having listened to some very detailed presentations of both sides, it kind of seems like each side is contradicting itself in terms of well we have this established tradition of the City presenting all of its signs that have managed to be approved through the existing process for the most part but that process isn't trustworthy for the future. We have this Board which constantly is accounting for hardship or at least not accounting for it if my understanding is correct but consistently treats it the same way and so consistently approves the signs that we've needed in the past. I realized that it's different other places but as it's being presented tonight, it just seems like a solution in search of a problem where sure we can we can streamline the process and we can redefine how the City applies for its signs particularly through the other processes but that component of the ordinance doesn't seem like it's actually doing anything other than removing the concept of hardship as it's been described. It has its own process. It's still going to be a public transparency process. It's going to be, you know, subject to another body reviewing it which is the same as we have now.

I am interested in the closing of the loophole of the site plans that include signs so that they don't have to necessarily meet the need for the sign process that we have. It sounds like that gets worked around pretty regularly as well. I do definitely understand Alderman Jette's perspective. If I were a couple with a picture window facing you know a future landfill site having an electronic sign facing my window would be like icing on the cake. So I will definitely be keeping my eyes out for any proposal like that, that I haven't put over. I would encourage those residents and their Aldermen to do the same.

I also don't think it's fair to categorize the Zoning Board as not doing its job because it allows variances. I think it's a very, very austere perspective on these different boards than what we do. Like if the laws were written to such a perfect amount and if we had such a tremendous respect for our own personal judgment to account for every possible situation, sure I guess we wouldn't need other bodies but we don't. We aren't able to write laws so that we can autopilot and not make any decisions or amendments to those laws. So I think having bodies that are able to interpret based on criteria for variances just makes common sense is a check against the, I guess as Alderman Dowd would call them, unknown unknowns. So I'm not 100% sure how I'm going to vote for the Board of Aldermen. I would just say when it's presented if there's any discussion to those effects, I would be mindful of those contradictions that we need to change this because it's not good enough that causes all the stress but it won't change anything because everything we've done in the past has been the same. That doesn't make sense to me.

Chairman O'Brien

Okay the Chair would like to weigh in if I may. Although I appreciate Alderman Jette's advocacy, I gotta think to the greater public good. Now when it comes down to the authority of boards, and commissions, and everything, the law that is made within these chambers is supposed to be fluid. Okay. We don't hire and pay through Public Works anybody going down Main Street picking up horse manure anymore but that was once in the books. Modern times do happen. Speaking to modern times, it sort of reminds me of the old 70s song *Signs, Signs, Everywhere's a Sign*.

Alderman Comeau

Even I know that one.

Chairman O'Brien

Exactly. So now that I dated myself. I look that we're living in a world of, you know, technology and information and people want it. They crave it. Okay. I think we've seen it in many different formats of podcasts and everything else on our

phones and everything else. Yet I look at this City and sadly I see the periodical of the Nashua Telegraph. Now with the retirement of Dean Shalhoup and I don't see too much local stuff in there and if it is past tense. I mean most of the people looking at the obituaries, they're already dead and buried if I look at the Telegraph on Sunday. It's tragically too late to go.

Yet let's look at the other thing that you hear through the airwaves. Even though I'm a satellite radio listener but go Sirius FM. The thing is WSMN, the Weather Hawk doesn't exist anymore. So there isn't so much local news or any other things. So how can we get the information out? What we have done as a municipality is we have combined all, and I don't want to get into this because (inaudible) to take a step back, what I feel that Director Sullivan is looking at us the conversation did circle around we're currently changing the zoning laws. I get the feeling from what Director Sullivan is working on with this proposal and your proposal Alderman Dowd of 23-051 is a change to the zoning law that will go hand in hand that would exist with other changes that will be done in the future. Evidently, we see the need. Again, it is within our purview as the power of the Board to come out for the public good and to meet that particular need.

So I think this is what we're doing but I do realize and the advocacy of Aldermen Jette that this could somehow filter back to one address. I understand that but what we're doing here this evening is looking globally across city wide equally. Now I worked in the fire station that we told people to put sprinkler systems into different structures yet do you think the fire stations were sprinkled? No they weren't until we complained about it. Now they are. Now they have alarm systems and everything. So there's always been a stretch between a municipality and the thing. I don't really want to avoid it too much because this is not what Director Sullivan is asking us to do here. Again, this is something that is global within the City.

But let's talk about one particular address. Is the landfill not a commercial property? I don't see anybody living at the landfill. It's not residential and where we spent the money to put all those Divisions together. Now I know one Alderman used to work for the City equally as well and was independently winged out to a back section of a park that used to be a horse barn and had a floor in it that, you know, send somebody upstairs so they could fall through it. Gladly, we replaced that. I mean that thing was a fire trap. Now we have a complete modern facility. It seems like the sign itself will go hand in hand with the modernization of this new facility. The sign will be perpendicular. It's not intended to go into anybody's picture window. It will be perpendicular to the street and it will provide information of all those Divisions whether trash pickup is going to be done, snow removal, emergency ban effects, and other important things. Even with the other departments that have been previously negated such as you know Park & Rec. Time to get your seasonal permits, renting a ball field, or something like that. So I see a lot of good for this so I'll leave it at that. I'm not going to get hung up on one particular address. I'm going to more look at this as a way of fixing the zoning. I, too, believe that try to prove a hardship is a legal nightmare and so therefore, I think we're going to clearly and by working to define it better. So I'll end my comments with that.

Any other comment? Seeing none, I'll call for the vote.

*A viva voce roll call was taken, which resulted as follows:*

Yea: Alderman Caron, Alderman Timmons, Alderman O'Brien

## **MOTION CARRIED**

UNFINISHED BUSINESS – None

NEW BUSINESS – RESOLUTIONS - None

TABLED IN COMMITTEE - None

GENERAL DISCUSSION - None

PUBLIC COMMENT - None

## REMARKS BY THE ALDERMEN

### Alderman Comeau

Yes thank you, Mr. Chair. I just wanted to thank Director Sullivan. It's been about a year and a half now since I've been on this Board. I don't think I've met anyone in the City government as knowledgeable as you are. We are but mere Aldermen most of us that don't know the ins and outs of this stuff. I can't remember a single time I've asked you a question and you didn't at least know the basics and you would follow up with more information if necessary. The

knowledge you have about the workings of city government is second to none and I also appreciate your patience sitting here and answering some questions that may seem benign but to us they're pertinent. So I appreciate your patience with us and your breath of knowledge. So thank you.

Chairman O'Brien

You're well educated, very good! Alderman Timmons and Alderman Caron.

Alderwoman Timmons

Thank you. I, too, would like to thank Director Sullivan for the argument that clearly convinced me otherwise, although I do respect Alderman Jette. His argument was just as compelling to me so I don't want him to think that I wasn't listening and that I may change my mind at the full Board of Alderman who knows. I think we should move forward on this. I see a larger picture and I thank you Director Sullivan for that.

As far as my colleague over here, Mr. Dowd let me just tell you one thing. If you find it hard to get to that new school, all you have to do a GPS that. Thank you for everything and you, too, Director Sullivan.

Alderman Caron

Thank you. I, too, want to thank you Director Sullivan for coming in and also to talk about the previous permitting for the outdoor dining for the private restaurants. I think it's important that everyone is treated fairly and we move forward with this. What happens at the full Board level, we won't know for two weeks but it could affect and I will certainly let those people that have asked me about the permit to call you personally? No.

I won't do that but I really appreciated the piece about the signage. Alderman Jette and I have had a conversation about it. I'm still not up there on electronic signs for some areas but I think that showing that City staff has to go before Zoning to get a permit for signs is very important because it's above board. So how that goes at the meeting as well, we won't know but I think a little bit of the address conversation kind of skewered some of this information that we were getting. So I appreciate that and thank you Alderman Jette for your concern for your constituents. I appreciate that.

Alderman Dowd

Yeah, a couple of things. I have an electronic sign in my Ward that I'd like to put an Abrams tank to and that's the one that started all the laws on zoning and signs. It's the big huge one on Amherst Street. It's grandfathered because it was put in before all of these changes to zoning on signs. When that action was taken place and I was sitting here, it didn't mean that everything that was done in regards to those zoning restrictions was perfect. I agree that we're looking at the entire situation with zoning. The Zoning Board has a very difficult thing hearing a whole bunch of cases and I respect them fully because I've been there.

I want to thank Director Sullivan for asking me to sponsor this legislation because it's generated a lot of conversation but I wanted to support the people that we have in our Planning Department and to try to help them do their job and do their more effectively. So I enjoyed sponsoring this.

Chairman O'Brien

Good. Anybody else?

Well I, too, recognize Alderman Jette and appreciate your advocacy for the residents of Ward 5. This was a tough night. Two items on the agenda. I could have very easily myself gone with the tabling but I understand the need. I'm talking about outdoor dining. I understand the need to go forward with that but I think we could work that out in the future to be better prepared as well as we should. With that, I thank you all for your due diligence to the good work you've done this evening. It was a tough one and I appreciate it. Thank you.

ADJOURNMENT

**MOTION BY ALDERWOMAN TIMMONS TO ADJOURN  
MOTION CARRIED**

The meeting was declared closed at 8:51 p.m.



Alderman-at-Large Michael B. O'Brien, Sr.  
Committee Clerk Pro Tem