



CITY OF GLOUCESTER  
**PLANNING BOARD**

**April 4, 2019**

**6:00 P.M.**

Kyrouz Auditorium - 9 Dale Ave, Gloucester  
Richard Noonan, Chair

**MINUTES**

**Members Present:** Rick Noonan, Doug Cook, Beverly Bookin, Shawn Henry, Jane Remsen

**Absent:** Jonathan Pratt, Henry McCarl

**Staff:** Gregg Cademartori, Planning Director

**I. BUSINESS**

**1. Call to Order with a Quorum of the Planning Board**

Mr. Noonan called the meeting to order at 6:02pm and introduced the Planning Board members and staff.

**2. Public Comment**

Mr. Noonan opened public comment period.

Jeff Brown of Rockport questioned the Planning Board's role in the Dogtown National Register of Historic Places nomination and the public hearing process.

Mr. Noonan suggested that Mr. Brown present his question to the City Clerk's office.

Mr. Cademartori noted that the process only requires the City Council to hold a public hearing. However, after reconsideration the Council is no longer asking the Planning Board to also hold a public hearing.

Leonard Gyllenhaal, 32 Rockport Rd. Gloucester stated that the City of Rockport has reinforced the seawall at Long Beach, and in the process they tore up the road with the heavy equipment. He stated that the Rockport DPW said they will be fixing the potholes but there is more significant damage to the road. He noted that Rockport Rd is a private road that is heavily used in the summer.

Mr. Noonan closed public comment period.

**II. PUBLIC MEETING**

**1. Form A Application**

Application submitted by Richard Souza and Cynthia Geary to divide **148 Bray Street** (Assessor's Map 247, Lot 44) into two lots.

Deborah Eliason, Eliason Law Office, 53 Middle Street Gloucester. Ms. Eliason distributed handouts and a slideshow presentation.

Ms. Eliason reviewed her arguments as to why the proposed division of Geary-Souza's Lot 1 was eligible for ANR endorsement (presentation and memo dated 4/4/2019 attached).

Mr. Cademartori stated that he agrees with some aspects of the application, but others need more research. At issue are whether Lot 1 is restricted from further subdivision, whether the strip shown as Lot 1A was to be deeded to the City, and whether Lot 1A with frontage on Bray Street may be used and maintained for ANR endorsement.

Ms. Eliason argued that the frontage standards for this end of Bray Street are lower than they are along a typical public way. She argued that in similar projects and according to case law, the City has the right to improve a public way, but if the City does not, then the abutter retains the right to complete improvements. She shared Attachment 7 of her 4/4/2019 memo, which is a Planning Board approval dated 11/23/15 of an ANR at 166 Bray St. She also presented a topographical study, obtained from GIS, showing the road near 148 Bray St. gradually declining by 20 ft and compared it to 166 Bray St. which has a steep grade going from 60-70 feet. Ms. Eliason argued that the public way by 148 Bray St. is easily passable and showed photos and video of a passenger car traveling down the section of Bray Street in question. She stated that it is not an impassable road or a paper road, rather it is a road that exists and is passable by a car that is low to the ground.

Ms. Eliason also argued that because Lot 1A has frontage on a way, and the way is public as she had demonstrated, it meets the standards for ANR approval. She noted that the Souza-Gearys are amenable to discussing improvements to that portion of Bray Street at their own cost but believed that ANR endorsement could not be withheld because the road was not in good shape. Ms. Eliason expressed frustration that she came to the meeting on March 7<sup>th</sup> and expected to have quick review of the ANR plan and was instead told that 148 Bray St. was not eligible for ANR endorsement. She requested the road approval plan proposed by the Souza-Gearys be considered and approved by the City. She reiterated that the endorsement can only be withheld if the road is impassable, which she believed she had proved it was not.

Mr. Cademartori questioned whether an abutter would have a right to make improvements in a public way, where the municipality owned the fee.

Ms. Eliason replied that in the case cited in her 4/4/2019 memo the abutters were the fee owners of the public way. The court's rationale in that case was that the owners could do anything that didn't interfere with the city's use of the public way.

Mr. Noonan stated the Board should have a site visit. He noted that he went to the site 8-10 weeks ago with his vehicle and could not drive past the gate.

Ms. Remsen clarified that there are two issues currently before the Board: the eligibility of the property for an ANR, and the location of the lot frontage, which depends on the outcome of whether Lot 1A was required to be conveyed to the City.

Discussion followed among Board members about the eligibility of 148 Bray St for an ANR. Ms. Remsen stated she would not be comfortable moving forward until they have a opinion regarding the open legal issues from the City Solicitor Chip Payson.

The Board questioned where the road edge would be if Lot 1A was conveyed to the City. Mr. Cademartori replied that the intent of the original Essex Bay Estates subdivision was the edge of Lot 1. The Board

discussed the input from DPW that the street has not been maintained since the 1980s and under GZO Section 2.2.5, the lot frontage has to be on a public way which is used and maintained.

The Board agreed that additional research was needed, and scheduled a site visit for Monday, April 8<sup>th</sup> at 2pm.

Ms. Eliason asked if they could have City input from Staff at the next meeting.

**A motion was made by Ms. Remsen to continue the ANR for 148 Bray Street to April 18, 2019, it was by seconded by Ms. Bookin, and unanimously approved (5-0).**

## **2. Site Plan Review**

Application submitted by Happy Valley Ventures LLC (HVV), for Site Plan Review pursuant to GZO Sections 5.8 and 5.31.4 and 5.31.5 for a marijuana cultivation, production and retail establishment at **38 Great Republic Drive** (Assessor's Map 263, Parcel 64).

Joel Favazza, Seaside Legal, 123 Main Street, attended on behalf of HVV Gloucester, LLC and HHV Massachusetts LLC who are the tenant operator of the property. Mr. Favazza noted that a condition of the September 2017 site plan review was a reevaluation of the site plan if the facility was to dispense recreational marijuana in addition to the previously approved medical marijuana.

The Board's primary concern at the time--should recreational marijuana be sold--was the impact on traffic and parking. Mr. Favazza stated that parking for cultivation staff requires 1 space per each 3 shift employees and 21 spaces for the dispensary. GZO Section 5.31 doubles the parking requirement for a recreational dispensary; therefore 42 dispensary parking spaces would be required. HVV would be providing 74 spaces. Mr. Favazza stated that his client—who also owns 58 Great Republic Drive—would be willing to have HVV employees park there if necessary, leaving all 74 spaces at 38 Great Republic Drive for customer parking.

Ms. Bookin stated she approves of this plan because it tests the actual parking needs and use. She noted that if parking at 58 Great Republic Drive is proven necessary in the long term, it may require permanent paving. Ms. Bookin stated she would rather see a useable site than a parking lot and the current plan more than exceeds the minimal demand.

Mr. Henry noted that the spaces are being provided are voluntary and not required by the ordinance.

Mr. Cademartori acknowledged that if parking at 58 Great Republic Drive is needed long-term, there could be some negative impact and the Board would have to review. He appreciated the traffic submission demonstrating shifts of employees and operating hours.

Mr. Noonan stated that during the original site plan review, the Board was told that this was a medical marijuana facility only, and it barely complied with parking needs then. He asked how additional use by recreational marijuana customers could actually result in a lessor parking demand, and feared that HVV may be downplaying the potential future demand of the recreational facility.

Mr. Favazza explained that at the time of the original site plan review, HVV was expecting twice as many employees onsite on harvest days; however shifts have been organized so that only one room harvests every six weeks. He also noted that the new recreational marijuana ordinance specifically outlined parking requirements, which the applicant will meet.

Ms. Remsen asked if there are any other differences or changes from the original site plan that would result from converting from medical marijuana to recreational.

Mr. Favazza answered that it wasn't until the ballot initiative passed that a licensed medical facility could convert to production of recreational marijuana.

The Board discussed whether there was easy access to the recreational marijuana establishment.

Mr. Cademartori told Mr. Favazza that he has been to the site and he noticed that the diesel generator is 8' bigger than was approved in the original site plan review. He noted that a temporary certificate of occupancy was issued this morning, and that there are many challenging aspects to permitting retail recreational marijuana.

Mr. Favazza agreed that they were previously in uncharted territory, and neither the Board nor City Staff knew what was going to be required. Now, however, Mr. Favazza believes his client is not only meeting but exceeding the new ordinance.

Mr. Noonan stated he was disappointed to hear that the proposed use changed after being assured it would not. He noted that it's not about the product, but about the process. When the ordinance for recreational facilities was created, this conversion scenario was not anticipated.

The Board discussed the ordinance standards for each type of use, noting that manufacturing uses are segregated from the retail establishments, and that this is a unique case where the manufacturing, medical and retail overlap. The conversion is provided for in the ordinance and parking for retail has been provided.

Mr. Favazza noted that his client is not going to accept a parking threshold increase that is greater than ordinance requirements. He noted that the needs of the business may require his client to use 58 Great Republic Drive parking; however he didn't anticipate that happening.

Mr. Henry stated that he appreciates the applicant's concerns and that if either parking or adequate, safe access is an issue, the Police Chief may take action. Mr. Henry stated that he thinks this is a situation where the applicant meets our ordinance and that the Board should move forward.

Discussion followed regarding a waiver for a cost estimate and a waiver for fire plan to approve the parking lot.

**A motion was made by Mr. Henry to approve the application for 38 Great Republic Drive, it was by seconded by Mr. Cook, and Mr. Noonan opposed. It was approved by the majority of Board members (4-1).**

### **III. CONTINUED PUBLIC HEARINGS**

#### **1. Road Improvement Plan**

Application submitted by Gateway Consultant Inc., on behalf of Richard Souza & Cynthia Geary to consider a Road Improvement Plan for **148 Bray Street** (Assessor's Map 247, Lot 44).

**A motion was made by Ms. Remsen to continue 148 Bray Street to the April 18<sup>th</sup>, 2019 meeting, and seconded by Ms. Bookin, and unanimously approved (5-0).**

## 2. Rezoning Application

In accordance with the provisions of MGL Chapter 40A, Section 5, and Section 1.11 of the Gloucester Zoning Ordinance, the Planning Board will consider the following petition to: Rezone **28 Rockport Road** (Assessor's Map 178, Lot 28) from Extensive Business (EB) to the R-10 (Medium / High Density Residential) Zoning District.

The Board reviewed the process of rezoning and noted that a property owner may petition to rezone. Rezoning is referred to the Planning Board for a public hearing, then the Board will make a recommendation to City Council, who will also have a public hearing.

Joel Favazza, Seaside Legal Solutions, spoke on behalf of Shoreside Investment Group LLC. He stated that his clients, Nick Giacalone and his father, own and operate Fishermen's Wharf on Rogers Street. He explained that 28 Rockport Rd is a peculiar site, with a long tail that wraps to Rockport Rd, located on northwest side, 151.6' from Rockport Road. He shared a map showing the various zones in the neighborhood and requested that the applicant's property be rezoned to match the surrounding area, which is primarily R-10. Mr. Favazza stated that his clients plan to remove the existing motel building and to build two conforming duplexes. The applicants held a neighborhood meeting a month ago and learned that the neighbors did not like the proposed design, and since then a revised design has been presented for their approval. The new design will require a flat roof but can provide peaks up to 35' for architectural variety. Mr. Favazza showed the sides, front, and rear plans.

Mr. Cademartori asked about the current design, and whether the applicants have looked into flood levels. Mr. Favazza confirmed the flood elevation is only 6-8" above grade, the garage will be on ground floor. The plan allows parking for 3-4 cars.

Discussion followed regarding losing commercial opportunities in the area.

Mr. Noonan opened the public hearing and asked whether anyone would like to speak in favor of or against the project.

John Regan, of 1 Long Beach Rd stated he supports the zoning change and the 4 units. He noted he does not like the parking of the two tandems in the garage and would prefer to have the parking elsewhere.

Bill McLaughlin, 30 Rockport Rd. is not opposed to the zone change but would like it "to be done right".

It was noted that this parcel will need oversight from Zoning Board of Appeals.

Christina Tecci, 5 Rockport Rd. is a direct abutter and in favor of the zone change. She requested more information regarding the "tail" of the lot which wraps around to Rockport Rd.

Leonard Gyllenhaal, 32 Rockport Rd. is an abutter of abutter and is opposed to the zone change. He noted that except on one side, much of the property on the street is still EB and there are commercial businesses at both ends of the street. He said the property used to be a very nice small motel. He estimated that the properties that would sell for \$900K each and thought that is not what Gloucester needs. He stated he doesn't think the neighborhood would benefit from rezoning and it would be detrimental to his and others' properties. He asked the Board to consider the effects to the neighborhood.

Ms. Bookin noted that the design is up to the applicant, and the applicant has already voluntarily met with neighbors to receive their input.

Mr. Noonan closed the public hearing.

The Board discussed any financial impact to the City as the result of rezoning. Mr. Cademartori indicated that there would likely be an increase in tax revenue due to increased building value, but could not speak to the potential loss of motel room tax revenue. He noted that if the lot is subdivided it will need to go to Zoning Board of Appeals for relief from lot area requirements as the property is nearly entirely in the floodplain. The Board noted that the Gloucester Housing Production Plan shows that the City has a continuing need for smaller and affordable rental units like those the applicant is proposing.

**A motion was made by Mr. Cook to recommend to rezone 28 Rockport Rd. from EBB to R-10, seconded by Ms. Bookin, and unanimously approved (5-0).**

The Board noted this application will go on to the City Council Planning Committee, May 17<sup>th</sup> and will be the first hearing.

The Board took a 2-minute recess.

### **3. Definitive Subdivision Review**

Form C application submitted by Seaside Legal Solutions for William Friend to consider a five (5) lot definitive subdivision at 12R, 57 and 59 **Wolf Hill Way** (Assessor's Map 88. Lots 22, 23, 24 and 25).

**A motion was made by Ms. Bookin to continue 57 and 59 Wolf Hill Way to April 17, 2019, seconded by Ms. Remsen, and unanimously approved (5-0).**

## **IV. OTHER BUSINESS**

### **1. No minutes to approve.**

### **2. Decisions to Adopt**

A. Pork Chop Lot Special Permit application submitted by Diane Rule for 1 Pork Chop Lot (2A) at 5 Haskell Street (Assessor's Map 58, Lot 24).

**A motion was made by Mr. Cook to adopt the decision for 1 Pork Chop Lot (2A) at 5 Haskell Street (Assessor's Map 58, Lot 24) dated April 4, 2019, seconded by Ms. Remsen, three members voted in favor, Mr. Henry opposed, and Ms. Bookin abstained.**

B. Pork Chop Lot Special Permit application submitted by Diane Rule for 1 Pork Chop Lot (2B) at 5 Haskell Street (Assessor's Map 58, Lot 24).

Mr. Henry questioned whether the decision as written is correct in that the vote to approve the Special Permit was a tie 3-3. Mr Cademartori explained that approval of the Pork Chop Lot Special Permit required a supermajority (4 votes) and since there were only 3 votes in favor of the project, the vote failed; therefore, the decision of the Board is that the applicant does not meet the requirements necessary to obtain a Special Permit for the creation of a Pork Chop Lot.

**A motion was made by Ms. Remsen to adopt the decision for 1 Pork Chop Lot (2B) at 5 Haskell Street (Assessor's Map 58, Lot 24), dated April 4, 2019, seconded by Mr. Cook, three members voted in favor, Mr. Henry opposed, and Ms. Bookin abstained.**

**ADJOURNMENT**

**Motion was made by Mr. Cook to adjourn, seconded by Ms. Remsen, and unanimously approved (5-0).**

*Next regular meeting of the Planning Board April 17, 2019.*