



CITY OF GLOUCESTER
PLANNING BOARD
April 18, 2019
6:00 P.M.

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

Present Members: Rick Noonan, Chair, Doug Cook, Henry McCarl, Jane Remsen, Jonathan Pratt, Beverly Bookin and Shawn Henry.

Staff: Gregg Cademartori, Planning Director

I. BUSINESS

1. Public Comment - There was no public comment.

II. PUBLIC MEETING

1. Form A Application

Application submitted by Patrick Titus to adjust 2 lot lines at **602-606 Washington Street (AKA Seaglass Lane)** (Assessor's Map 112, Lots 25,39).

John Judd with Gateway Engineering presented a modification of interior lot lines to address a neighbor's concerns. There is no modification of the subdivision or road design.

Mr. Cademartori indicated that because the subdivision has been already recorded, the applicant has the ability to modify the lots, and there is no proposed change to the subdivision. The plan will result in three lots as originally proposed, now with conservation restricted areas.

Motion: The subdivision control law does not apply to the plan submitted by Patrick Titus to adjust 2 lot lines at 602-606 Washington Street (AKA Seaglass Lane) Assessor's Map 112 Lots 25 and 39. Motion made by Ms. Bookin, second by Mr. McCarl. Vote (7-0). Motion passes.

2. 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.

Attorney Debra Eliason, Eliason Law Offices 63 Middle Street – Ms. Eliason submitted a memo dated April 18, 2019 and addressed questions raised at a meeting on held on April 17, 2019 with Ron Horvitz, Chip Payson, Jim Destino, Michael Hale and the Planning Director, Gregg Cademartori. At that meeting participants discussed whether there was a requirement to convey Lot 1A (shown on the recorded Plan of Land by Hayes Engineering dated January 13, 1997 with deed of current owners Souza-Geary) to the City as required by the conditions on the Definitive Plan of the original subdivision (Plan of Land by Hayes Engineering dated July 15, 1988, revised July 10, 1990 and approved by the Planning Board on June 25, 1990, endorsed August 13, 1990). Since that meeting, a Certificate of Action dated April 17, 1990, and Planning Board minutes dated February 9, 1998 have been located and submitted to the Board. Condition 4 of Attachment A to the Certificate of

Action requires that the ROW of Bray Street be 50 feet—a width that cannot be satisfied unless Lot 1A was conveyed to the City. However, Planning Board minutes dated February 9, 1998 show a motion to relieve the Applicant (Coles Island Preservation Trust) of Condition 4 was passed. Ms. Eliason argued that since the 50' ROW was no longer required, that current owners Souza-Gearys were no longer subject to Condition 4, and that since they rightfully retain ownership of Lot 1A, they have adequate frontage along Bray Street to meet the requirements of an ANR.

Condition 12 of Attachment A to the April 17, 1990 Certificate of Action required that the Applicant (Coles Island Preservation Trust) provide a deed covenant to prohibit any further subdivision of all lots in the subdivision Essex Bay Estates, including current owners Souza-Gearys' lot, which is shown as Lot 1 on the Definitive Plan; however, although that condition was recorded with the deeds to Lots 2-15, it appears that it was not included with the deed to Lot 1 at the time it was sold by Coles Island Preservation Trust to the Souza-Gearys and recorded on December 22, 1997. Planning Board members and Ms. Eliason were in receipt of a memo dated April 18, 2019 from the City's General Counsel, Chip Payson, that opined that the Planning Board should enforce Condition 12 to all properties in the Essex Bay Estates, including Lot 1. Ms. Eliason argued that case law supports the conclusion that since the restriction was not recorded with the deed, there is nothing to prevent Lot 1 from being subdivided.

Ms. Eliason concluded her remarks by pointing out that when considering the adequacy of access on a public way, the fact that the road may be deficient is not determinative, and she reminded the Board that she had previously presented evidence that the way is passable by a passenger vehicle. Therefore, she believes that 148 Bray Street meets the requirements for an ANR. Ms. Eliason suggested a continuance for 30 days so that the information submitted and received can be reviewed, and asked if the Board had any questions.

Mr. Noonan reminded the audience that this was not a public hearing so the Board would not be taking testimony from those in favor or against the ANR application.

Mr. Henry noted that he believed the main issue was the Condition #12 of the prior subdivision approval, and wondered if the applicant could ask for a modification of the subdivision approval.

Ms. Eliason does not believe it is up to the buyer to make sure that a previous condition was recorded.

Mr. Pratt agreed that the Board has received a lot of data in a short period of time and that an extension is appropriate.

Mr. Cademartori expressed appreciation for everyone's patience and noted that there are only five members eligible to vote so a meeting opportunity must be provided for all five members to vote.

Ms. Remsen agreed the Board needs adequate time to review documents and memos recently submitted and noted that there were several legal issues outside of the Planning Board's purview that need resolution in advance of any meeting requiring a vote.

Mr. Cademartori outlined several issues needing resolution, including whether there is a recorded decision which would relieve the ANR applicants from requirements of Condition 12, and whether proper procedure was followed with regard to the 1997 subdivision modification as required by Chapter 41, as there was no public hearing.

Ms. Eliason questioned the statute of limitations.

Mr. Cademartori also pointed out that the request for the release of covenant (per Planning Board minutes dated February 9, 1998) was made after the Souza's took title (deed recorded December 22, 1997), so the relief was granted to the applicant Coles Island Preservation Trust not the owner at the time, Souza-Geary, and noted that there are numerous irregularities with this property that need to be resolved before it would meet the standards of an ANR.

Ms. Eliason stated that she believed that the Planning Board had sufficient information to proceed with an ANR.

Mr. McCarl clarified that he and Mr. Pratt would not be able to vote as they missed a previous meeting, but were able to participate in the discussion.

Motion to extend the deadline for the Planning Board to act on the Form A application submitted by Richard A. Souza and Cynthia Geary to divide 148 Bray Street (Assessor's Map 247, Lot 44) into two lots to June 1, 2019, made by Ms. Bookin, second by Mr. Henry, Vote (5-0, McCarl and Pratt abstain). Motion carries.

Motion to continue the Form A application submitted by Richard A. Souza and Cynthia Geary to divide 148 Bray Street (Assessor's Map 247, Lot 44) into two lots to appear on the May 16, 2019 made by Ms. Remsen, second by Mr. Henry (Vote 5-0, Mr. McCarl and Pratt abstain). Motion carries.

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).

Attorney Debra Eliason, Eliason Law Offices, 63 Middle Street on behalf of the applicants a request was made to withdraw the application without prejudice.

Motion to accept the request to withdraw 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) without prejudice was made by Ms. Remsen, second by Mr. Henry (Vote 4-0, Mr. Noonan, Mr. Pratt, Mr. McCarl abstain). Motion carries.

2. 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).

Mr. Cademartori indicated that the Board was in receipt of a request from the applicant to continue to the May 2, 2019 meeting of the Board.

Motion to continue the 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) to May 2, 2019 made by Mr. McCarl, second Ms. Remsen, (Vote 7-0). Motion carries.

IV. OTHER BUSINESS

Ms. Remsen wished to discuss the Board's interaction with the media. Her concern was that it appears that any newspaper may construe communication from a member speaking as private citizen as the Board's official position.

Mr. Noonan referred to the recent article in the Gloucester Daily Times in which he was identified as the Chair, even though he was offering his personal opinion on the matter.

Mr. Cademartori said that perhaps some of this is unnecessarily caused by the listing of phone contacts on the Planning Board website. If contacted, members do not have to comment. In particular there should not be comment on anything currently before the Board, and you can feel free to direct media contacts to the Planning Office.

V. ADJOURNMENT

A motion to adjourn was made by Mr. McCarl and seconded by Mr. Pratt, unanimously approved (7-0).