

Planning & Development Standing Committee
Wednesday, November 18, 2020 – 5:30 p.m.
REMOTE MEETING
-Minutes-

Present: Chair, Councilor Val Gilman; Vice Chair, Councilor Jen Holmgren; Councilor Barry Pett

Also Present: Council President Steve LeBlanc; Councilor John McCarthy`

Also Present: Acting CAO, Vanessa Krawczyk; Assistant City Clerk, Grace E. Poirier; Community Development Director, Jill Cahill; Planning Director, Gregg Cademartori

Applicants: Attorney Joel Favazza of Seaside Legal Solutions, P.C. representing SCP2020-005

This meeting was conducted remotely through ZOOM. All votes were taken by ROLL CALL.

Meeting called to order at 5:30 p.m.

There was a quorum of the City Council.

Chairperson Gilman announced, “This meeting is recorded by video and audio in accordance with state open meeting law. Consistent with the Governor's orders, suspending certain provisions of the open meeting law and banning gatherings of more than 10 people, this meeting will be conducted by remote participation to the greatest extent possible. The public may not physically attend this meeting, but every effort will be made to allow the public to view and listen to the meeting in real time. Persons who wish to do so are invited to view the meeting and you have the information that was on the posting. If you are calling in on a phone, you can press *9 to request to speak. If you are watching on a computer a device, there is a raised hand button that you can tap or press to request to speak. Please use either of these options to be recognized to speak.”

1. Memorandum from Community Development Director requesting extension of temporary zoning relief to businesses during COVID-19 through December 30, 2021 (Cont. from 11/4/2020)

This matter has been continued until **Wednesday, December 2, 2020.**

Summary of Discussion: Chairperson Gilman explained that this matter had been continued until the next Planning & Development meeting so it could appear before the Planning Board tomorrow night, and the board recommendation could be received by the committee.

Community Development Director Jill Cahill shared that while the Planning & Development Committee was allowed to act as an independent body, she respected the fact that the committee liked to receive feedback from the Planning Board's public hearings, and take board recommendations into consideration.

She explained that for zoning, once the public notice was advertised, technically went into effect, so the continuance would not compromise any businesses currently taking advantage of the opportunity that had been available to them since spring due to the pandemic. All involved members of the administration agreed that no foreseeable problems would be caused by waiting until December. She mentioned that **Planning Director Gregg Cademartori** was present at the meeting this evening, and encouraged anyone interested to attend the public hearing tomorrow night.

Ms. Cahill had shared with **Chairperson Gilman** during their discussion this morning that one of the reasons it was requested that the temporary zoning relief be extended through December 30, 2021 was so that businesses could move outside as soon as weather permitted in the spring. She thanked them for their consideration, and stated that she would appear before the committee again on December 2nd. She shared that on Main Street, Jalapeno's Restaurant and Cafe Sicilia were the last two businesses that still offered outside dining, and were permitted to remain outside until November 30th. The Community Development department continued to work closely with the Department of Public Works and both businesses on this matter. She said that both business had been extremely cooperative and fantastic to communicate with, and if there was an extreme weather threat, they would move indoors immediately, but would otherwise try to take advantage of any remaining warm days of the season.

Councilor Pett thanked **Ms. Cahill** and **Mr. Cademartori** for attending tonight's meeting. He stated that on Friday, November 20, 2020, a joint legislative hearing was scheduled for seasonal licenses. Even though the temporary zoning permit extension may not affect any businesses with seasonal licenses, he asked if **Ms. Cahill** had planned on including that possibility in her Planning Board presentation rather than the board reaching a decision, and then having it be discovered that a business might qualify for participation, but were not included in the language.

Ms. Cahill explained that seasonal liquor licenses were a separate matter that would not appear before the Planning Board, but she made **Councilor Pett** aware that she had been working very closely with the Licensing Board on both matters. If the Home Rule Petition was passed by the legislature, the two boards would work together. She encouraged anyone interested to join the joint legislative hearing via Zoom that would be held Friday, November 20th at 1:00 p.m.

While the Planning Board's recommendation would not affect the joint legislative hearing, she expressed hope that the petition would be passed. She thanked the Licensing Board Chair, Building Inspector Bill Sanborn, **Mr. Cademartori**, **Mayor Romeo Theken**, the City Council, and everyone else who worked quickly and efficiently on the liquor license fees and zoning to make this relief possible for local businesses.

Mr. Cademartori welcomed the public to attend the Planning Board meeting tomorrow night. He explained that the board wanted to perform an audit to determine if there were any issues created by these uses. He mentioned that beyond the ordinance extension, there was a practical issue for the use of public streets, and that use would not change if additional allowances or extensions of other uses related to the licensing were granted. He explained that use on private property was something that would continue as long as it made sense for the operator, and it would be great if some of that was extended further by actions taken on Friday. He stated that the City was trying to create as much reasonable opportunity as possible, so any business conducted on private property would be able to continue outdoors in an effort to act locally and support local businesses. **Chairperson Gilman** expressed thanks and appreciation to **Mr. Cademartori**, **Ms. Cahill**, and **Acting Chief Administrative Officer Vanessa Krawczyk** for all of their proactive work.

Chairperson Gilman stated that **Council President LeBlanc** would open the public hearing for this matter during the City Council meeting scheduled on **Tuesday, November 24, 2020**. It would then appear before the Planning & Development Committee on **Wednesday, December 2, 2020**.

2. SCP2020-005: Rocky Neck Avenue #37, Map 130, Lot 4A, GZO Secs. 2.3.1.7 "Conversion to or new multi-family or apartment dwelling, four to six dwelling units," and 3.2 "Dimensional Tables," reduction in minimum lot area and open space per dwelling unit to create a fourth unit, in the NB zone (Returned to P&D by vote of City Council on November 10, 2020.)

Summary of Discussion: Chairperson Gilman explained that this matter had returned to Planning & Development in order to further discuss the permit conditions.

Attorney Joel Favazza from Seaside Legal Solutions, P.C., located at 123 Main Street Gloucester, stated that he was before the committee this evening on behalf of property owner Mark Goetemann, who would be available to communicate with him via text if there were any questions that needed to be answered.

He prefaced his presentation by explaining that at the last City Council meeting, he had provided some proposed language that was now before the committee for discussion, and he believed that would be the most appropriate place to start this evening's conversation if a condition would be required from the committee in order for the matter to move forward.

Chairperson Gilman stated that she would like to start with the language since that is where the discussion had left off at the City Council meeting. She reminded the meeting attendees that she had made a motion to reconsider that resulted in a vote of four in favor and four opposed. The public hearing began, and **Attorney Favazza** had conducted a presentation based on the updated condition that he had added. From there, it was decided, and unanimously voted by ROLL CALL, that the matter would return to Planning & Development so that a final draft could be created before it was presented to the full Council.

Chairperson Gilman asked if there was anything **Attorney Favazza** would like to add before the **Assistant City Clerk** presented a copy of his amended Special Condition recommendation on the screen. He responded that the only update at the public hearing was when **Chairperson Gilman** had requested that he communicate with those who spoke in favor at the City Council meeting to ensure that they understood the Special Condition. Since that time, he had only heard from Mike Faherty, who also owned a unit in the building. Mr. Faherty had provided a few suggestions related to simplifying the verbiage regarding a gallery or gallery-related uses, as he thought the sentence was too broad. **Attorney Favazza** offered to point out the word selection that Mr. Faherty had helped him edit as the recommendation was being reviewed on the screen.

Chairperson Gilman mentioned that Mr. Faherty was in attendance at tonight's meeting, and reminded attendees that although this was not the public hearing, questions would be permitted after the initial discussion. She also welcomed **Attorney Favazza's** client, Mark Goetemann, who had also joined the meeting. At that time, she asked the **Assistant City Clerk** to upload the recommended special condition. **Chairperson Gilman** read the special condition as it had been presented during the City Council meeting that now appeared on the screen:

Special Condition: This relief granted by this City Council Special Permit is conditioned upon Petitioner maintaining the "front" two rooms on the first floor of Petitioner's condominium unit (the "Gallery") for use as a gallery or other use related to the production, preservation, or display of art for public enjoyment and/or retail sales related thereto. Petitioner may allow third parties to operate the Gallery, provided that Petitioner does not charge such third parties rent; however; Petitioner may require such that parties carry their own liability and hazard insurance and cover the actual cost of utilities consumed by the Gallery. Should such use cease, Petitioner shall have 90 days to seek modification of this City Council Special Permit, failing which, this City Council Special Permit shall terminate and be of no further force and effect.

Chairperson Gilman stated that this Special Condition was created as the result of a conversation at the last Planning & Development meeting held on November 4, 2020. During the meeting, Mr. Goetemann had expressed discomfort with the notion of a deed restriction after **Councilor McCarthy** had asked whether the use of the gallery space would remain in perpetuity. Mr. Goetemann had commented that if the right opportunity did not present itself, he might attempt to re-open the gallery himself. **Chairperson Gilman**

clarified that at that point, the importance of possibly adding a condition had been discussed.

Councilor Pett expressed concern that this “Special Condition” served the purpose of why the applicant was before the committee. His understanding was that the reason for the additional unit would be to allow the use of the first-floor gallery space to be available rent-free. He did not understand why it could not be required to be either part of the deed itself or a restriction put on it. He stated that as it was now written, 90 days after the completion of the building modification, if the gallery space was not occupied, in his experience, the additional unit would not be removed. It was his preference that the permit be conditioned by a deed restriction or something similar. He did not think it should be allowed to proceed in another fashion.

Chairperson Gilman acknowledged that **Councilor Pett** wanted to see either conditions or a deed restriction placed on the permit, and asked **Attorney Favazza** to respond since deed restrictions were not within the committee’s purview, but knew that conditions were. She also intended to have that question posed to General Counsel Chip Payson during the public hearing.

Attorney Favazza stated that as **Chairperson Gilman** had alluded to, a deed restriction is a title issue that is beyond the purview of what the City Council has jurisdiction over. A condition would control the permit itself. He explained that the permit gets recorded, and does run with the land. If the Goetemann family was to sell it to an unrelated third party, that third party would be legally bound by the recorded special permit. If a condition like this was included in the special permit, the purchaser would be bound by the terms of it also. He referred to a Google document that he had just shared with the **Assistant City Clerk**, and recommended that if a version of it that allowed editing was shared with the meeting panelists, the changes could be made as the meeting progressed so that all attendees had a clear view of the editing process.

Councilor Pett said that in terms of a condition, and what is within the City Council’s purview, up to that point, he had not seen anything from a 501(c) (3) (tax-exempt non-profit organization) such as the Rocky Neck Art Colony or its Cultural Center, or any other community art provider that indicated (or something that could be included in the document that mentioned) an agreement between Mr. Goetemann and the party interested in using the gallery space. He asked what would happen if that did not occur, and expressed confusion in the sense that it seemed like there were opportunities for this to move in a different direction if some sort of a requirement was not enforced.

Councilor Holmgren commented that if what she had understood from the information **Attorney Favazza** had provided was correct, a special permit was a kind of restriction. If the City Council granted this Special Council Permit, and a third party purchased the property in the future, they would be required to appear before the City Council in order to attempt to change the designation placed on the property. **Attorney Favazza** indicated that her understanding was correct.

Chairperson Gilman mentioned that while she believed everything **Attorney Favazza** had said, it was her suggestion that General Counsel Payson be invited to the next City Council meeting so that he could answer questions during the public hearing as well. She wanted to ensure that Attorney Payson received the invitation to attend at least 5 days in advance. She suggested that this evening, the panelists should proceed with the language modification, and after, the motion could be amended that would then be recommend to the full City Council. **Councilors Holmgren** and **Pett** agreed. **Chairperson Gilman** stated that she wanted to hear from both Councilors before she made her suggestions.

Councilor Pett said that communications in favor of this permit had been received by individuals, but unless he had missed something, he had seen nothing received by an entity such as the Rocky Neck Art Colony or its Cultural Center that suggested that an agreement had been reached with the applicant. He

had a problem with that since he felt that it was “putting the cart before the horse”, or that the intended use could go in a different direction. He expressed feeling leery and concerned, and thought that hearing from Attorney Payson would be helpful.

Chairperson Gilman sought clarification from **Councilor Pett**, and determined that what he wanted to see was a board of directors vote from the Rocky Neck Art Colony, its Cultural Center, or other community art provider that verified interest in utilizing the gallery space. It would be even better if one group had reached an agreement with Mr. Goetemann, and there was at least one other interested party as backup in the event that the first one was not able to move into the space for some reason. **Councilor Pett** stated that a favorable communication received by a previous or current member was not a confirmation that the entire group supported entering into an agreement for the gallery space’s proposed use.

Attorney Favazza responded that a favorable communication had been received by Karen Ristuben, former Chair of the Rocky Neck Art Colony Board of Directors. He stated that he hesitated when the committee started to talk about an agreement with the Rocky Neck Art Colony because as he had previously said to the Planning & Development Committee and Zoning Board of Appeals (ZBA), Mr. Goetemann intended to let the art colony use the space, and he had communicated with them for many months to make arrangements since they intended to use it, but an agreement had not yet been reached as to what the exact use would be, therefore **Attorney Favazza** currently did not have that information to share with the granting authorities. He advised that this permit cannot be conditioned with language that limited the use to only one or two entities, or required that the offer applied to only 501(c) (3) entities using the gallery because there needed to be some flexibility in order for the space to be used charitably. For example, if a new Cape Ann artist trying to become established wanted to do a display in the gallery, and requested that the display be run for a season, and Mr. Goetemann was not currently under agreement with the Rocky Neck Art Colony or its Cultural Center, the permit should ensure that could happen as long as that interested party was willing to carry their own insurance and cover the cost of any utilities or additional related business expenses since the local art scene would be supported by these two rooms. There is a chance that even if an agreement is reached with the Rocky Neck Art Colony, they may be unable to use the space forever, and there may be other entities interested in using it under the kind of guidelines **Attorney Favazza** had suggested in the proposed language. He shared that in his experience, an organization attempting to receive a 501(c) (3) designation could be a lengthy process. He emphasized that flexibility was needed in exchange for the fact that Mr. Goetemann would not be allowed to charge market rent to private artists for the gallery space while also receiving rent from the two apartment units. It could not be limited to certain categories of people or certain entities, because then it would become too hard to manage.

Chairperson Gilman stated that she understood. **Attorney Favazza** mentioned that he had one verbiage edit that he wanted to make, and that he would wait for her to tell him when it was the appropriate time for that to be proposed. She agreed to do that, and commented that having led the Gloucester Fund, which always helped various groups request non-profit status, **Councilor Pett** understood the formal 501(c)(3) process. She explained the reason why it was important for her to have the matter return to Planning & Development was because during his May 28, 2020 ZBA presentation, original slides presented to this committee during the October 7, 2020 meeting, and during the November 10, 2020 City Council meeting, everything had specified the Rocky Neck Art Colony. The language had become broader after the previous meeting for this committee was held on November 4th, when it became referred to as “the Rocky Neck Art Colony or similar”, and she noted that additional words had since been added. This was why she felt that some of the proposed conditions had changed a bit, and that it needed to be further vetted before it was ready to appear before the City Council for a vote, which prompted her recommendation to reconsider her initial vote.

Chairperson Gilman told the panelists that she wanted to talk more about some of the wording, and then would allow **Attorney Favazza** to make his proposed verbiage edit. **Councilor Holmgren** stated that she appreciated the Special Condition wording that currently existed, and was comfortable voting to have the matter appear again before the full Council once **Attorney Favazza** was allowed to reveal his proposed edit.

Chairperson Gilman made the following edits to the Special Condition that **Attorney Favazza** had created:

She replaced *“petitioner may allow third parties to operate the gallery”* with *“petitioner shall allow third parties to operate the gallery, including, but not limited to, the Rocky Neck Art Colony and other 501 (c)(3) or comparable”*.

Chairperson Gilman shared that her thought behind the edits was that she wanted to show that organized groups would be the ones allowed to lease this property for insurance and licensing purposes.

She proposed that in the statement *“Petitioner shall have 90 days to seek modification of the City Council permit”*, the word *“shall”* should be replaced by the word *“will”* because she thought it was a stronger word, however, she expressed willingness to be open-minded.

Chairperson Gilman questioned whether 90 days provided enough time, and thought that 120 would be a more fair amount of time to allow applicants to go through the whole process since it can take longer than 90 days start-to-finish. **Councilor Holmgren** agreed.

Where the Special Condition stated *“including, but not limited to, the Rocky Neck Art Colony and other comparable 501(c)(3)”*, **Councilor Holmgren** questioned whether that included sole proprietors, since she took it to mean Rocky Neck Art Colony or individual artists, and not limited to Rocky Neck residents, but anyone in Gloucester. She said that she did not want to limit it to too much.

Councilor Pett stated that he did not have a problem with any of the suggestions that had just been made by **Chairperson Gilman** and **Councilor Holmgren**. He clarified that when he said 501(c)(3), it was just because he was concerned by the fact that he had not seen any documents from an actual entity, like the Rocky Neck Art Colony, its Cultural Center, or something like a 501(c)(3). Individual artists and sole proprietors may be qualified interested parties as well, so he did not have a problem with them being included. He thought that something needed to be included that required the reason for the permit application. He said that he did not have any problem with the verbiage *“Petitioner may allow third parties to operate the Gallery, provided that Petitioner does not charge such third parties rent; however; Petitioner may require such that parties carry their own liability and hazard insurance and cover the actual cost of utilities consumed by the Gallery.”*

Councilor Pett thought that in order for the matter to proceed, the committee needed to ensure that the purpose is adhered to, and that the use is constrained. He stated that he appreciated **Attorney Favazza’s** experience and input, however, he would feel more comfortable once Attorney Payson had reviewed and approved the verbiage.

Chairperson Gilman said she believed that **Councilor Pett’s** proposed additions seemed fair.

Attorney Favazza shared that his client Mr. Goetemann had just reminded him that Kathy Archer, the President of the Rocky Neck Art Gallery, had spoken in favor during the public hearing on behalf of the art colony, so the organization had provided official input. Regarding the language **Chairperson Gilman** had just added, *“including, but not limited to, the Rocky Neck Art Colony and other comparable*

501(c)(3)”, he mentioned that he would not worry if she ended with the word “colony”, and placed a comma there.

However, when “*and other comparable*” was added, he said it begins to suggest that the third parties it referred to were limited to 501(c)(3) organizations. The committee agreed to eliminate that wording.

Attorney Favazza mentioned that the section that stated “*Petitioner shall allow third parties to operate the gallery, including, but not limited to, the Rocky Neck Art Colony, provided that Petitioner does not charge such third parties rent;*” would be fine because no one wanted that to be restricted.

Chairperson Gilman referred to the end of the Special Condition section that stated “*Petitioner shall have 90 days to seek modification of this City Council Special Permit, failing which, this City Council Special Permit shall terminate and be of no further force and effect.*”

She asked **Attorney Favazza** what “*and be of no further force and effect.*” meant from a legal standpoint, since it seemed technical. He felt that it was redundant, and did not think it affected the way the word “*terminate*” was interpreted, but wanted to receive input from Attorney Payson as to whether the General Counsel wanted it eliminated. **Attorney Favazza** explained that he had included it to be very clear about the fact that this action will occur if the use was not followed.

Chairperson Gilman asked if the spirit of the Special Condition changed in terms of the community that would be supporting it, namely the Rock Neck Art Colony, and maybe a group of artists. Would the spirit change if an individual artist decided that they want to use the space, and are willing to pay for the insurance and liability?

Attorney Favazza replied that while he only spoke on behalf of himself and his client, he did not think the spirit changed. He thought that one of the issues that was articulated by at least one, if not several of the people who had spoken in favor at the public hearing before the Council, and potentially the ZBA public hearing as well, was that gallery space was evaporating on Rocky Neck and elsewhere in Cape Ann. This proposed gallery space, regardless of who ended up utilizing it, supported the artistic cause and preserved gallery use on Rocky Neck, so in his opinion, the spirit was maintained as long as it was designated for gallery use.

Chairperson Gilman asked the **Assistant City Clerk** to edit the Special Condition section that stated “*Petitioner shall have 90 days to seek modification of this City Council Special Permit*” from 90 to 120 days. She then asked what would happen to the tenant of this newly-permitted second apartment if they were required to appear before the City Council to request to remain permitted if the terms were not met by the Rocky Neck Art Colony or comparable person involved with production, preservation, or display of art for public equipment that the permit is conditioned based on.

Attorney Favazza stated that he did not have a problem with the time limit being increased from 90 to 120 days. The reason he had put 90 days in the verbiage was because if a modification was sought, as long as the person requesting it filed the application within either 90 days, or 120 days if the committee thought it should be changed, they would be safe because once the application was filed, the applicant would be entered into the special modification pending review process, so the Building Inspector would not need to take action unless the City Council denied the modification. If a denial was received, the Building Inspector would then be instructed to revoke the occupancy permit for one of the apartments, and the tenant whose occupancy permit was revoked would have a substantial housing court claim against

whoever owned the property at the time, because the landlord would now be in material breach of the lease should the tenant be forced to relocate.

He elaborated that it was his guess that a housing court judge would make sure that a landlord at fault for creating the situation would be required to ensure that that tenant was appropriately compensated for the upheaval. He stressed that at no point in a situation like that would a utility company such as National Grid be outside ready to cut the power off, and Building Inspector Bill Sanborn would not have the doors boarded up. Landlords in violation who do not attempt to rectify the situation immediately are subject to hefty fines that accrue daily according to the zoning ordinance. In the event that tenant relocation was absolutely necessary, there would be mutual incentive for all parties to make sure that it was done as quickly and efficiently as possible. Being cruel to a tenant was the worst way to try to get them to leave, because the tenant would know that the longer they stayed, the more the landlord would continue to be fined by the City.

Chairperson Gilman mentioned to **Attorney Favazza** that she had checked the Rocky Neck Art Colony website to see when their board meetings were held, and asked if it would be prudent at some point in this process to receive confirmation from the board that they are interested in entering into an agreement with Mr. Goetemann to utilize the gallery space rather than just having communications received by individual members. She explained that the reason she had asked was because when people spoke at the public hearing, and the conditions were discussed, the details provided were such that the newspaper ad had basically said the space was designated for the Rocky Neck Art Colony, so she had become a little concerned as to whether those who spoke in favor were aware that the gallery space had not been earmarked specifically for the art colony. She asked how they could proceed in a way that everyone involved would feel comfortable with.

He reminded Councilors that when Kathy Archer had spoken in favor, she spoke as the President of the Rocky Neck Art Colony, authorized to speak on behalf of the organization. He elaborated that she had spoken after the permit's Special Condition had been presented, and since that meeting, had not rescinded or otherwise communicated to **Attorney Favazza** or his client that the art colony's support of this proposed project had wavered. He considered that to be the art colony's official position that had already been confirmed for the record. He pointed out that there had been ample time for the art colony to contact him, his client, or the City Council directly if their position had changed. He thought that the committee had everything they needed to rest assured that the Rocky Neck Art Colony was aware that nothing had been "set in stone" yet since they were directly negotiating with Mr. Goetemann, and while both parties were in cooperation, a formal agreement had not yet been reached and finalized. There should be no confusion on the part of the art colony, because while it was the apparent intent of both parties to reach an agreement, it was not a foregone conclusion, so if negotiations broke down, and a specific use could not be determined and agreed on, Mr. Goetemann would be allowed to get the relief necessary to make the gallery space available to another interested party.

Councilor Gilman thanked **Attorney Favazza**, and asked if **Councilors Holmgren** and **Pett** had any further questions on the permit's Special Condition that had been reviewed this evening. **Councilor Pett** wondered if there was something specific in the negotiation process that was keeping an agreement from being reached. He asked **Attorney Favazza** to clarify whether an agreement should be reached before the language was reviewed again and possibly edited further, and if he believed the matter should wait to appear before the City Council again until both of those requirements were met.

Attorney Favazza responded that on a broad level, the permit was not limited to the Rocky Neck Art Colony, so it should be immaterial whether the negotiations were completed. There were a number of variables that could affect the outcome of the negotiations, such as if the number of confirmed COVID-19 cases continued to rise. He stated that the permit worked whether or not an agreement was reached

between Mr. Goetemann and the art colony, or if an agreement with another interested party was reached instead. The most important thing would be to allow Mr. Goetemann to be able to either reach an agreement with the art colony, or find someone else to put in the gallery space. He reminded the committee that this had been a lengthy process, and the longer that it took for a Council decision to be reached, the longer Mr. Goetemann had to wait before being able to pull the permits necessary for the second unit to be renovated. He emphasized the fact that his client continued to bear the financial burden of covering expenses for his entire section of the building while only receiving rental income from the tenant in the small back unit. To wait for an agreement to be reached would be detrimental for both of those reasons. He asked the committee to move forward with the understanding that it would be the art colony if possible, otherwise, it would be something else, but either way, the purpose of providing gallery space on Rocky Neck would be achieved.

Councilor Pett expressed appreciation for **Attorney Favazza's** expertise. He stated that although he was comfortable with this evening's discussion, and was not trying to hold up the process, he wanted input from the General Counsel to be received before he supported this matter at the Council level.

Chairperson Gilman addressed the Councilors, and although she wanted everyone to realize this was not the public hearing, she asked that they notify her if they had any questions for **Attorney Favazza**. Once any Councilors with questions were given the chance to ask them, she would allow any interested members of the public to do the same. She asked that there be no discussion or deliberation this evening because all City Councilors should be present when that occurred, and reminded attendees that there was a quorum of the full Council present.

Attorney Favazza asked to suggest a change to the permit's Special Condition before the meeting moved on to questions. He suggested that the statement *"This relief granted by this City Council Special Permit is conditioned upon Petitioner maintaining the "front" two rooms on the first floor of Petitioner's condominium unit (the "Gallery") for use as a gallery or other use related to the production, preservation, or display of art for public enjoyment and/or retail sales related thereto."* be shortened to *"for use as a gallery or other gallery-related use."* The committee agreed with the suggestion.

Chairperson Gilman decided to edit the statement *"Should such use cease, Petitioner shall have 120 days to seek modification of this City Council Special Permit, failing which, this City Council Special Permit shall terminate and be of no further force and effect."* by placing a period at the end of the word *"terminate"*, so *"and be of no further force and effect"* was removed. She thought it sounded redundant, but would check with the General Counsel to see if there was some reason that it needed to be included in the language.

Chairperson Gilman discussed with **Councilors Holmgren** and **Pett** her plan to amend the motion that was moved at the last meeting to add this Special Condition if there was no objection. **Councilor Pett** asked her to read the entire motion with the amendment for clarity.

COMMITTEE RECOMMENDATION: On a motion by Councilor Gilman, seconded by Councilor Holmgren, the Planning & Development Committee voted by ROLL CALL 3 in favor, 0 opposed, to recommend that the City Council grant to Seaside Legal Solutions, P.C., on behalf of the owner, Mark Goetemann, P.R., a Special Council Permit (SCP 2020-005) for the property located at Rocky Neck Avenue #37, Assessors Map 130, Lot 4A, pursuant to Gloucester Zoning Ordinance Sec. 2.3.1.7 "Conversion to or new multifamily or apartment dwelling, four to six dwelling units" and Sec. 3.2.2 "Dimensional requirements for Multifamily Dwellings and Their Accessory Uses (other than signs) fn(a) for reduction in minimum lot area and open space per dwelling unit, to construct a fourth housing unit. This permit is made on the basis of plans and elevations dated August 10th,

1990 and submitted to the City Clerk on September 16, 2020 entitled “37 Rocky Neck Avenue Condominium” and plans and elevations dated August 14, 1990 and submitted to the City Clerk on September 16, 2020, entitled “Phase Plan-Site Plan of Thirty Seven Rocky Neck Avenue Condominium, Gloucester, Massachusetts.”

This Special Council Special Permit is conditioned upon Petitioner maintaining the “front” two rooms on the first floor of Petitioner’s condominium unit (the “Gallery”) for use as a gallery or other gallery-related use. Petitioner shall allow third parties to operate the Gallery, including, but not limited to, the Rocky Neck Art Colony, provided that Petitioner does not charge such third parties rent; however; Petitioner may require such third parties carry their own liability and hazard insurance and cover the actual cost of utilities consumed by the Gallery. Should such use cease, Petitioner shall have 120 days to seek modification of this City Council Special Permit, failing which, this City Council Special Permit shall terminate. Subject to new information and/or debate that results from the public hearing, this Special Council Permit is deemed to be in harmony with the intent and the purpose of the Zoning ordinance.

Councilor Pett stated that he liked the way the motion had been amended. He shared that when the matter appeared again before the City Council on November 24th, he would support it once the Council heard from Attorney Payson to ensure that the intent was in accordance with the recommendation from the City Legal Department, while at the same time not hindering the applicant’s ability to proceed.

Chairperson Gilman felt better about the matter appearing before the City Council now that the Planning & Development Committee had been given the opportunity to further discuss and edit the Special Condition with **Attorney Favazza**. She shared that she supported this. She emphasized that Rocky Neck was very densely populated, and the generous offer from the Goetemann family to make the gallery available for local artists was phenomenal, but she believed approval of the second apartment was contingent on the generous offer. She explained that was the reason why she thought it was important to be clear on the conditions, because in GZO Section 2.3.1.7, in order for the conversion and reduction in minimum lot area, and open space per dwelling in an already crowded area to be approved, there needed to be something given back to be able to accommodate that request.

She reiterated the fact that **Attorney Payson** would be invited to attend the public hearing on **November 24, 2020**, and that he would be asked to review the Zoom meeting minutes at his earliest convenience so he could understand the Council’s expectations regarding his expertise regarding this matter.

MOTION: on a motion by Councilor Holmgen, seconded by Councilor Pett, the Planning & Development Committee voted by ROLL CALL 3 in favor, 0 opposed, to adjourn the meeting at 6:30p.m.

There is a link to this Zoom recorded meeting available on the city website at https://gloucester-ma-gov.zoom.us/rec/play/NlmtGIQkpVQuiQhquIisYkWvyoUWArC3Uce6muKS9S-j7BreUI5wNOC1N3G4IP9rFPLmxZJi6wn05yJu.wUkXgC41S2B_C3H_?startTime=1605738611000&_x_zm_rtaid=a91vtYR8S3mFI367ppPCQ.1605799297659.b67089ad6bd669701934901db196adb5&_x_zm_rhtaid=797

A transcript of this meeting will be filed with the minutes as soon as possible.

Respectfully submitted,
Brianna Komi
Administrative Support
City Clerk’s Office

