



CITY OF GLOUCESTER

PLANNING BOARD

MEETING MINUTES
Thursday July 21, 2011 at 6:30 PM
1st Floor CATA Building
Pond Road
Richard Noonan, Chair

Members Present:

Richard Noonan, Chair
Mary Black, Vice Chair
Henry McCarl,
Marvin Kushner
Karen Gallagher

Staff:

Gregg Cademartori, Planning Director
Pauline Doody, Recording Clerk

I. BUSINESS

- Call to Order with a Quorum of the Planning Board
- Introduction of Planning Board Members and Staff

II. EXECUTIVE SESSION

- To discuss the pending litigation at 23-27 Silva Court

The Planning Board meeting of July 21 was called back to order.

Ms. Egan stated the Planning Board has been considering the settlement proposal of Locaino Company vs. City of Gloucester Planning Board and asks the Planning Board to make a motion to accept the agreement.

Motion: To accept the settlement of Locaino Company Vs. The City of Gloucester

1st: Karen Gallaher

2nd: Marvin Kushner

Vote: Approved 4-0

Motion: To accept McPhail Associates as the Geo Technical Engineer agreed upon by both parties.

1st: Henry McCarl

2nd: Mary Black

Vote: Approved 4-0

II. APPROVAL OF MINUTES

A. Meeting of June 2, 2011

Corrections were made to Paragraph 4 "the subdivision control law" and spelling of PIRC

Motion: To accept the minutes of June 2, 2011.

1st: Henry McCarl

2nd: Karen Gallagher

Vote: 4-0

III. PUBLIC COMMENT - None

IV. CONSENT AGENDA

ANR Plans:

1. Carrigan Development LLC to create two building lots from the re-division of 175 and 179 Concord Street, Assessor's Map 247 Lots 12 and 11, respectively.

Presenter: Deborah Ellison, Ellison Law Office

Attorney Ellis stated Mr. Carrigan and Celeste Jalbert have a P & S agreement that is contingent upon Mr. Carrigan getting city approvals. We are seeking approvals for two ANR lots 1 & 2. Lot one has more than adequate frontage as does lot two. There is a submission requirement state that if you create lots out of a larger parcel that you are required to present a plan that shows the entire perimeter of the larger parcel. We have not been able to do that. There is an issue with a title with one boundary line. The issue cannot be resolved easily. We have submitted the entire perimeter of the Jalbert lot and the two ANR lots. The title issue comes from the old deeds in West Gloucester. Two of the property lines were in litigation and have been settled. We are trying to determine if that settlement helps us. We are also inquiring about title insurance to see if we are able to get title insurance. In the meantime, we want to move forward with Mrs. Jalbert and move forward with the development of the two lots. Under Chapter 41- you are required to examine the public interest. Without the approval and the waiver of that requirement, we will be left in limbo. We are asking that you to endorse the plan and to look at the intent and purpose of the subdivision law.

Ms. Black asked if the boundary line in dispute is part of Mr. Carrigans property.

Attorney Ellison stated yes.

Ms. Black stated the boundary line dispute has nothing to do with Mrs. Jalberts property. She asked how much further to the east is the boundary line dispute.- Lot REMA- How large is the lot owned and where is in proximity 1A, 1B, 2A, 2B.

Attorney Ellison stated the lot is 20 acres.

Mr. Carrigan further explained the lot designation to the board.

Ms. Black asked how long has the boundary line been in dispute.

Mr. Carrigan stated he has owned it for two years. The next two abutters have been fighting over it for the entire time. They have now settled.

Attorney Ellison stated that with settlement they are not required to record in court it.

Mr. Cademartori stated that section 9, 10, 13 all pertain to describing how all the lots are affected. It goes in to further detail in 2.2.4- 9, 10, 13.

Ms. Black stated the triangular lot that Mr. Carrigan is trying to purchase is engulfed in his lot, but the boundary lines are not impacted. You just end up owning more than what you owned before, but you are still arguing about the boundary line to the Northeast.

Mr. Noonan stated we need to make a determination to see if this is in the public interest.

Mr. Cademartori stated there is a reference that the two small pieces that are created are labeled remainder A & B.

Attorney Ellison stated that REM A up to the **TIE** line B & C will not be individual lots, but they will be combined with the remainder of the Carrigan property. The surveyor will not show the entire perimeter with that portion in dispute. For your purpose it does impact you at all for what you are looking at as far as safety and access goes, because it is so far removed.

Ms. Black stated she is trying to see how that piece fits into the whole integrity of the lot. What does that mean for us?

Attorney Ellison stated it does mean anything to you because the purview now is just these two lots. The property line at some point will have to be resolved if any of that portion is ever sold off. She stated that previously this board does approve ANR plans that do not show the entire perimeter. This was in 2004. There was no reason given.

Mr. Cademartori suggested that if they are being focused in on these two lots to be created and what's known, the language of the note (the third and final note), with the understanding that this is going to have to come back to the board once its resolved as a recordable plan is whether or not that statement can be rearranged to ensure that the board is not acting on anything else other than what there. If it were rearranged to say that lots REM A, B, C and the remaining land of Carrigan Development are not to be considered building lots.

Attorney Ellison that is something we cannot agree to, because it broadens what we are here to look at.

Mr. Cadmartori stated you are also saying we cannot tell you what is going on.

Attorney Ellison stated that if we ever decided to do anything here we would have to meet the zoning requirements. We are still bound by the ordinance. I think what you're saying, by putting in that it is not buildable; you are making that determination with out actually looking at the situation. We are asking you to just look at these lots and that is all that is in front of the board.

I can't think of a public interest as to why you would need that information. I could understand that if it were a boundary that was a lot closer. It doesn't impact the lots.

Mr. Cademartori stated one of things that is being shown is the frontage of Concord Street for remainder. One of the board standards is to show impediments to access. You are asking not to have any kind of language or disposition on how the board would treat that lot. What the board does is to determine whether they have frontage and access.

Attorney Ellison stated that REM A is not to be considered a separate building lot, but to be combined with the remainder.

Mr. Cademartori stated that REM A is only to the TIE line of a larger portion of the lot and not to be considered a separate lot, but to be considered with the remainder. Collectively are they a buildable lot?

Attorney Ellison stated she did not know. The cases look at what is presented on the plan. It talks about; is it clear to someone looking at this plan that the remainder pieces are not buildable. And it is clear. It is clear as to what lots are buildable.

The concern that is that you're bringing in to a piece that is not for consideration. It is not a lot. It's not shown as a lot, we are not saying it's a lot. We are trying to move forward with two small pieces of the lot 80,000 square feet. The rest is 20 acres. The note puts an extra burden on us.

She stated perhaps there is another note that would be satisfactory such as "the board has not considered the buildability of the remainder of the lot, so it can be clear that it could say that is was addressed by the board

Ms. Black asked what the implication regarding the remainder of the lot.

Mr. Cademartori stated that's the question. We are not asked to make any disposition on the frontage and access on the remainder, but it is shown on this plan. You are creating two new lots and creating an unknown remaining lot.

Mr. Carrigan suggested taking the frontage off and moves a boundary line.

Ms. Ellison stated the note says the remainder is not buildable.

Ms. Black stated regardless of what the boundary line ends up being, the remainder lot is not buildable

Mr. Cademartori stated my point is they are going to be combined with the remaining land northeast to the tie line. At some point there will be a plan that shows that configuration. The accessibility will be questioned. You are making a finding on the frontage on the whole area.

Attorney Ellison stated that is the purpose of the note to say that is not the case. We can also just take that out of the equation, if the concern is that you may be implying that the board has made some decision.

Mr. Carrigan stated he could move tie line and the entire frontage on Concord Street would be gone.

Mr. Cademartori stated we are put in a place for a request for a waiver, it can't be shown, if it was shown then there would be disposition on all the property that is included in the division. We would be making a determination on the remainder of the land. It would be presented as a buildable lot or not.

You have the two lots, pieces of land in common ownership, if you file a perimeter deed with the registry and the assessors see these two lots and they have a remainder. It's a lot.

Attorney Ellison stated there is a specific definition of a buildable lot. We are not asking you to make any determination if that lot is buildable and that is the point of the note. If the frontage is making this questionable, we are willing to take the frontage out. It is a parcel of lot, but not necessarily a buildable lot. The zoning requirements determine if it's a buildable lot.

Mr. Noonan stated it meets the zoning as a buildable lot.

Attorney Ellison stated that is not what's before you tonight. Your prevue as far as an ANR's goes is very limited. One issue we would like to reserve our right to is whether or not the requirement is sufficient for you to deny the ANR on that basis. You are allowed to create rules and regulations, but under ANR case law is clear. You can only deny an approval of an ANR if it shows a subdivision. Here is does not. It shows two ANR lots and frontage.

Mr. Noonan stated we are being asked to grant a waiver within our purview. We are leaving it half done.

Ms. Gallagher stated the only unknown is the boundary. If that wasn't an unknown we are still voting on two parcels and a remainder parcel. Whatever they do decide to do with that remainder parcel does have to come before another board. I would be more comfortable with the plan to take out that portion on Concord

Street and consider a smaller area. I would be inclined to say, it is in the public interest.

Ms. Black stated is there language that is acceptable that would reference that we are taking no position on the remainder of the lot.

Attorney Ellison stated even if we did know the perimeters we would only be asking for the two lots for an ANR approval. It's the applicants decision what he or she puts before the board.

Mr. Cademartori stated there is usually some statement made on each lot. If the remainder was less than the ones being created for access, then it would be labeled as an unbuildable lot.

Attorney Ellison that is the applicant's decision as to what is being put before this board. It is typical, but not required to deal with the entire parcel.

Mr. Noonan stated we make a determination that the remainder is not buildable. But at some point in the future, is there a means to come back and we want to reclassify the unbuildable lot to a buildable lot.

Mr. Cademartori stated there are case examples of that on Causeway St.

Ms. Black asked if the building inspector grant a permit with out a boundary line that is not determined. It doesn't take anything away from the applicant.

Attorney Ellison stated what it does is that require the applicant to come back to this board. You are putting an additional requirement on the applicant that may or may not be there. Mr. Cademartori said there is an access issue. We don't know whether there are any of those issues because it has not been presented to you.

Mr. Cademartori stated it is shown specifically on the plan

Attorney Ellison stated remainders are shown. It says they are not buildable separately. But if they are buildable under zoning, then we wouldn't have to come to you for anything.

Ms. Black stated if you are looking for it from an equitable standpoint, you need something and we are willing to offer you that, so you can move forward with your purchase and sale. It is equally reasonable for you to say, until this part is determined, it may require another step on our part. That is non equitable.

Mr. Carrigan stated it is inequitable because you are taking a 22 acre parcel and saying I can't build on it.

Mr. Cademartori stated you could come back to us and show frontage and access for it. You are not showing us one way or another.

Attorney Ellison stated if he wanted to develop the remainder of the 20 acres parcel and not do a subdivision, then perhaps it may meet the zoning without subdividing or doing another ANR. You are taking that away from him. We are not asking you for that determination.

Mr. Carrigan stated that zoning determines what is buildable or not.

Attorney Ellison stated we are only asking for the two lots under an ANR.

Mr. Noonan stated we are giving you a solution in the public interest and safety concern.

Attorney Ellison stated that it is her position is that you are not. We are happy to put a note saying the board has made no determination on the buildability of remainder of the parcel.

By endorsement of this planning board does not make a determination with regard to the buildability of the remainder of the land owned by Carrigan Development LLC.

Motion: To waive strict adherence to the submission standards 2.2.4 numbers 9,10,13, by granting that waiver it is not inconsistent of the subdivision control law based on the testimony of the applicant.

1st: Karen Gallagher,

2nd: Henry McCarl

Vote; Approved 4-0

Motion: Accept the plan as drafted and amended by endorsement of the plan planning board does not make a determination of the buildability of the remaining land owned by Carrigan Development LLC.

1st: Henry McCarl

2nd: Karen Gallagher

Vote: Approved 4-0

2. Seven Herd's Hill Realty Trust to make lot line adjustment between 5 and 7 Herd's Hill Road, Assessor's Map 201 Lots 6 and 152, respectively.

Mr. Cademartori stated interior lot line adjustment, the former owner of lot 61 sold that house and is now building a house on the lot next store and because of the final location of the septic system and foundation, he requires area from the lot 3A. There are no issues.

Motion: The subdivision control law does not apply to the division of 5 and 7 Herd's Hill Road, Assessor's Map 201 Lots 6 and 152

1st: Mary Black

2nd: Marvin Kushner

Vote: Approved 4-0

V. OTHER BUSINESS

A. Planner's Report

Mr. McCarl stated a suggestion was made that at the next PIRC meeting to be a celebration of the original plan. The Mayor and Sarah Garcia are very interested.

Ms. Gallagher stated there will be two public hearings to hear from applicants. At the regularly scheduled CPC meetings they will begin deliberations of the applications. We have \$400,000 .00 to distribute and close to 1 million in requests.

VI. ADJOURNMENT

1st: Henry McCarl

2nd: Karen Gallagher

Vote: Approved 4-0

VII. NEXT MEETING

Next regular meeting of the Planning Board is Thursday August 4, 2011

Planning Board Members: If you are unable to attend the next meeting please contact the Planning Office at (978)281-9781.