



**CITY OF GLOUCESTER
PLANNING BOARD
MEETING**

**Thursday, June 7, 2012 at 7:00 PM
Kyrouz Auditorium, City Hall, 9 Dale Avenue, Gloucester
Richard Noonan, Chair**

Members: Richard Noonan- Chair, Mary Black- Vice Chair, Marvin Kushner, Karen Gallagher, Linda Charpentier, Joe Orlando, Henry McCarl-**Absent**
Gregg Cademartori, Planning Director
Planning & Development Members: Councilor Gregg Verga- Vice Chair, Councilor Joe Ciolino, Counselor Paul McGearly

I. BUSINESS

- A. Call to Order with a Quorum of the Planning Board
- B. Introduction of Planning Board Members and Staff
- C. Review of Planning Board Minutes of May 3, 2012

Mr. Noonan stated he noticed an error on page four to be corrected.

Motion: To approve the minutes of May 3, 2012

1st: Marvin Kushner

2nd: Karen Gallagher

Vote: Approved 6-0

II. PUBLIC COMMENT---None

III. CONSENT AGENDA

Continued ANR Applications

1. Mark and Kristina Stevick to redivide three lots into two at **6A, 8, and 8R Lincoln Street** (Assessor's Map 237 Lots 52, 53, & 54).

Presenter: Isaac Rowe, Mill River Consulting

Mr. Rowe explained the site to the commission.

The assessors have it listed as three parcels. It's been in common ownership since 1996. It is considered to be one common lot now. The applicant would like to subdivide it into two separate lots.

Mr. Cademartori stated the revised plan is dated 6/7/12. Some of the adjustments that were made related to the access to the property. The newly created lot is conforming. The structure will need some relief from the Board of Appeals.

Motion: The Subdivision control law does not apply to 6A, 8, and 8R Lincoln Street (Assessor's Map 237 Lots 52, 53, & 54).

1st: Karen Gallagher

2nd: Mary Black

Vote: Approved 6-0

IV. CONTINUED PUBLIC HEARING

In accordance with the provisions of MGL Chapter 40A, Section 5, and the Gloucester Zoning Ordinance, Section 1.11, the **Gloucester Planning Board** will hold a continued public hearing to consider the following petition to amend the Zoning Map and Zoning Ordinance as follows:

Amend the Gloucester Zoning Map by creating an overlay district zone in the R-20 Zoning District located at 107 and 125 Atlantic Road, Assessor's Map 72 Lots 1 and 3, respectively, and to amend the Gloucester Zoning Ordinance by adopting a corresponding new Section 5.26 entitled Existing Hotel Overlay District (EHOD) governing the permitting of alterations of, additions to, and/or replacement of existing hotel(s) and/or new hotels with accessory uses as of right or by special permit of the City Council.

Presenter: Attorney Michael Faherty:

Attorney Faherty stated he would like to review a few items for clarification. He stated people seem confused as to which hotels are asking for relief and what functions that occur at these hotels. Neither hotel has function halls nor do they anticipate a change to that affect. They are seasonal businesses and there is no present intent to become year round. There were questions about parking and how the parking spills onto the street. It does not come from these hotels. All the parking for these hotels is in the rear or to the rear sides of the hotel. There are 60 parking spaces for the Atlantis and 45 at Bass Rocks. He stated there was also an allegation made, that by allowing this relief, it would change the atmosphere of the area. It is clear in the application that there would be no additional encroachment of the front yards in terms of setbacks. In the ordinance proposal it encourages to keep a contiguous 10,000 square foot of open space. Another complaint was the concept of "as of right." This is not peculiar to this request. There are a number of uses in the zoning ordinance that are allowed "as a matter of right". These hotels have earned the right to update their facilities. They are looking to retrofit and rebuild their rooms for the present day traveler. "As of right" doesn't mean you can do anything you want. It means that there are a certain requirements that have to be met. Once the requirements are met, then the 30% room increase could be added. That is all that is on the table. Attorney Faherty stated that comments were made that a public hearing is needed. He stated that this is the public hearing. It is an appeal by two properties owners to have the ordinance changed. Let's have a discussion now as to what those requirements can be so if the hotel owners want to make an expansion they can make their designs conform to the regulations. This is the time to discuss it.

Attorney Faherty reviewed new survey plans of the hotels showing their existing conditions. The setbacks on the side and on the rear are to be no less than existing and not less than 15 and 20 feet. What we requested was no greater than 30 or whatever is there, whichever is less. We had asked for a specific relief and tonight we are ready to change that because we now have the full benefit of the surveys. Attorney Faherty distributed documents to the boards for review. (Available at 3 Pond Road)

The amendment we are offering along with the survey material is that we would have existing setbacks, so no further encroachments in any direction or the 30 feet in the rear, 30 feet in the front, and the 20 on the sides. He stated that there was some confusion about this being of a commercial nature. The ordinance has hotels in

residential neighborhoods throughout the city. In section 3.23 it states that this is the dimensional requirements to be applied to a commercial structure in the R2 district. We have taken a hypothetical commercial building in this district and applied the same measurements and supported that with survey to show what the exact measurements are now. Attorney Faherty referenced the second page of the distributed document and stated section 3.26 is why we are here. The dimensional requirements for an R20 was established for hotels, motels, and motor inns-it got pulled from the old ordinance which was for multi family dwellings and was cast as a separate schedule. The dimensional requirements in this district are 30 feet, 40 and 40. Footnote D says that you increase the distance for setbacks by 1 foot for every foot that the building exceeds 15 feet in height. At one half of the height dimension you start increasing 1 foot for every foot. Add 15 feet on the 30, 15 feet onto 40 on both sides and that is where the numbers get large. We offer this amendment after the survey. As a practical matter since we are not proposing to encroach on the setbacks on either side, we are working within a limited footprint on an existing building.

Attorney Ralph Pino 46 Middle St

Attorney Pino stated he will address the points in order of Attorney Faherty's rebuttal. It was said that functions, weddings, and conferences are not in the hotels and are not part of this proposal. In looking at 5.2631C of uses allowable right, existing accessory and other uses customarily accessory are incidental to a hotel shall also be allowed by right. A conference center is an accessory incidental to a hotel, as are restaurants. The notion that you couldn't have weddings or functions strikes me as a preposterous. It is easily argued that they are associated with such a use.

There is nothing in this proposal to keep it seasonal.

It was stated there is no overflow of parking. When the hotels and restaurants are full, there are parking issues on that road.

Most importantly, we can't look at this proposal as one for the existing people and the existing hotels. It seems that the hotels could get knocked down and huge buildings will be allowed to be built. There is no parking requirement in the proposal. We have no idea what is being proposed and this is clearly a blank check. Looking at the current zoning ordinance there is a series of abilities to modify and change things. In this case, if the real intention was to take these two hotels and bring them up to current standards, my clients and many others would be in support. There is a method to do that. Just giving a blank slate is an absurdity. It bypasses the whole spirit and intent of the process.

Attorney Mike Faherty stated in regards to customary uses: the language in the proposal says existing customary uses to these two hotels. If you have another facility in addition to the hotel you have to provide the parking for it. We are not asking to abridge that requirement.

Attorney Ralph Pino asked the boards to look at the language in 5.263 sub C. It says "Existing accessory and other uses customarily instituted to a hotel use shall be allowed by right". It doesn't limit it to the uses on the site right now.

Mr. Cademartori stated that a number of things have been pointed out. One of the primary reasons for the approach is how the dimensional requirements to necessitate for an existing use to have to pursue multiple means of relief to allow any type of expansion. In the first session, the concern was expressed to have to pursue a variance

for uses that have been in existence for 50 years. Councilor McGeary had stated whether the approach is to examine those dimensions that apply to the use. There has been information presented this evening that might ground the direction of the consideration of setbacks. In the pursuit of a special permitted hotel use, the City Council now has the ability to waive certain dimensional requirements that have been applied to the use. Part of the discussion is how this approach is consistent with how other uses have been treated in terms of set back. There is a peculiar one that takes away the prescribed “as of right” height for certain uses because of the additional setback requirement. The intention of that was to provide more setbacks to the abutting properties for a special permitted use. The direction of our discussion might be the examination of the dimensional standards as they apply to both hotel use and the overall construct of approaching this as a proposed overlay

Councilor Verga asked Attorney Faherty to acknowledge that Attorney Pino is somewhat correct in saying that if a hotel did come in they could do what they want by right.

Attorney Faherty stated there is no intention of the current owners to sell to each other or to anyone else. We have discussed the fact that if there was a concern about this being applied to a wholesale knockdown brand new facility-we are not asking for that either. Putting the word “replacement” was that as buildings, rooms, become outdated they would have to be replaced. For the purposes of this amendment, we are certainly prepared to make language changes to eliminate that issue.

Councilor McGeary stated that in zoning ordinance 5.7.1, it says any hotel, in which the existing or any enlargement would result in more than 30 plus rooms is a major project and major projects have to go to City Council for a special permit. It is like we are making an exception.

Attorney Faherty stated that the wording is intentional. In the section of the proposed ordinance 526.2.2, the third sentence says “to the extent that any provision in this section 5.26 is in contradiction or conflict with any other provision of this ordinance, the provisions of this section shall control.” It is deliberate. There would not be a permit required up to a 30% increase of the number of rooms. The requirement of a major project under the ordinance since it would be in conflict with this section would not control it. It is not a mistake. The other point is that it is limited to these two buildings and lots. Each of the hotels/motels in Gloucester, have peculiarities. That is why it particular to these two facilities.

Councilor Ciolino stated that if this overlay goes through and if the hotels are sold the overly goes with the property.

Attorney Faherty stated that is true but can be changed.

Councilor Ciolino stated that Attorney Faherty made it a point in saying the current owners are upstanding individuals and business people, however they could choose to sell the property and the new owners may not have the same values as the current owners. He stated that Attorney Faherty mentioned to put faith in them to do the right thing.

Attorney Faherty stated he did not say that. He stated that these businesses have existed in this location for over 50 years without complaint or any problems. They are fine people, but that is not a basis upon which to make a zoning decision. Just as it isn't a basis to make a zoning decision on assuming that there are fine people there now, but what happens if the devil buys it. That is not a land use decision.

Councilor Ciolino stated that is why the city has zoning, so when the property does turn over, whatever goes in that property is proper to the area.

Attorney Faherty stated to Councilor Ciolino to be careful to what he says. He stated that what you are suggesting is that the personality of the person making the application is subject to review. You cannot condition zoning relief on a continuation of ownership by one person.

Ms. Gallagher asked Attorney Faherty if the Board was to recommend some relief of the dimensional requirements, but still require a permit, would your clients still want move forward?

Attorney Faherty stated if there are reasons that it could be advanced, we would have to react to that. The City Council will accept this logic or not.

Mr. Noonan asked for clarification on where the numbers for open space and minimum lot area came from.

Attorney Faherty stated a typical hotel room is approximately 15x18. It is less than 200 square foot per unit. To say that a lot area of 10,000 square feet is needed for every 250 square feet of space used for the dwelling unit is just not practical. In addition to the current open space requirement is 1250 square feet, meaning that to have one guest unit you have to have 5 times of that amount of open space. We looked at those numbers and asked what makes sense. Having 3 times of lot area (750 square feet) for each guest unit made sense. That is how we came up with the 750. We are proposing 750 lot size per unit. Attorney Faherty stated he cannot say why it's been labeled per two guest units.

Mr. Cademartori stated that through the course of the development of the ordinance it went from no requirement to five lodgers to two guest units. It applies to two rooms in a hotel.

Mr. Noonan stated he was trying to get to the defect in the ordinance. If this board would consider reviewing the existing ordinance based on the recommendations put forward, would that relieve the process we have in place?

Attorney Faherty stated yes and no. In the schedule under 3.26, there are parts in this section that are grossly disproportioned. One of them is the minimum lot area per two guest units, the minimum open space per two guest units and the front, rear, and side yards. The lot width and lot frontage are agreeable as is the building height.

Mr. Cademartori stated one of the themes of table 3.2.26 is that there is distinction between the commercial and residential districts. There is a difference and lesser setback requirement for other districts. Across the residential districts there is some consideration for the smaller lot districts. This was likely developed from the residential dimensional standards. Another oddity is hotels and motels are commercial uses of property but they are grouped with residential uses in the zoning ordinance. Is it a residential use or a commercial use? It is clearly a commercial use, but people want it to be treated the same as a residential neighborhood. The standard that has been presented tonight is modeled after a commercial use. When talking about those standards being applied to all others if you reference the use tables, those uses are not allowed in the R20 district, it's only if they are already there. One of the things to struggle with is; are they the appropriate setbacks if we were to start from scratch?

If there is a wholesale reconstruction of these properties in the future: what would apply? If there is language that only addresses the expansion rather than the wholesale replacement, then they would have to comply with the existing stringent standards. What has been identified is that there are a lot of inconsistencies in the way the use is treated in this district, and across districts and whether we say lets not look at these other pages and write four new ones for these particular properties. Or whether we try to make some kind of accommodation and review of what is working. Some discussion has been around having uses that have to go to the Board of Appeals first for some

limited relief. It might be an approach to consolidate the review to one permit granting authority which would also consider setbacks. What it comes down to is if any one of these properties looks to expand they are heading to the Zoning Board of Appeals and City Council. One of the steps in facilitating change is if we eliminated one of those steps. If there isn't an acceptance of some new dimensional standard for "as of right" use, one approach is to examine the R20, knowing that this is something that should be more comprehensively and looked at. The Planning Board and City Council also have to clarify what we are about: reconstruction with out any more formal review process, combining the properties, expansion 30% allowed "as of right", do you get one shot at that or does it come in again? We have to look at every word and what it means or work towards something different to provide some relief for these properties.

Attorney Faherty stated that as I understand the process of Section 40A, my clients can assent to extensions of time and continuance of the hearing of the City Council. The discussion the Planning Board in zoning for this project would not be adding hotels to this amendment but examination the issue of the other districts, hotels and schedules that affect facilities.

Mr. Noonan stated a closer analysis of the existing ordinance is in order.

Attorney Faherty stated the applicants agree to an extension of time.

Councilor Ciolino read a statement into the record that is available for review at 3 Pond Road. He stated that what he is hearing tonight is to keep the overlay on the table. It should be withdrawn and believe the city boards should work with the applicants to tweak the existing ordinance.

Motion: To continue the public hearing to Amend the Gloucester Zoning Map by creating an overlay district zone in the R-20 Zoning District located at 107 and 125 Atlantic Road, Assessor's Map 72 Lots 1 and 3, respectively, and to amend the Gloucester Zoning Ordinance by adopting a corresponding new Section 5.26 entitled Existing Hotel Overlay District (EHOD) governing the permitting of alterations of, additions to, and/or replacement of existing hotel(s) and/or new hotels with accessory uses as of right or by special permit of the City Council. Date to be determined.

1st: Karen Gallagher

2nd: Joe Orlando

Vote: Approved 6-0

Adjournment of the Planning & Development Committee.

1st: Joe Ciolino

2nd: Gregg Verga

Vote: Approved 3-0All.

V. OTHER BUSINESS

1. Release of Covenant, Larry Smith, The Village at West Gloucester, 36 Atlantic Street

Attorney Jack Macalonin West Gloucester Capital & Larry Smith, Principal, West Gloucester Capitol

Attorney Macalonin stated they are requesting release of units 17-30 within the project. The road has been completed except for the topcoat of pavement, final fitting of catch basins and ADA compliant walkways.

Mr. Cademartori stated the last piece of information needed was the interim as built for the construction of Heron Circle. It has been reviewed by the Fire Chief. The city engineer has reviewed the as built and is satisfied

Motion: To approve the Release of Covenants for units 17-30 at the Village of West Gloucester for construction.

1st: Karen Gallagher

2nd: Mary Black

Vote: Approved 6-0

2. Release of Covenant, Bob Coakley, Common Driveway 9-11 Hesperus Avenue

Susan Foster stated she is requesting Covenant for the common driveway 9-11 Hesperus Avenue.

Mr. Cademartori stated that this was reviewed for release for the first full construction several years back. The conditional release was based on final pavement. It has been completed.

Motion: To approve the Release of Covenant Common Driveway 9-11 Hesperus Avenue

1st: Joe Orlando

2nd: Marvin Kushner

Vote: Approved 6-0

3. Release of Covenant, Riverdale Place LLC, Lot 7 Lupine Lane

Mr. Cademartori stated this is consistent with the previous releases. It is for the vertical construction for one of the additional lots in the definitive subdivision. There are no issues.

Motion: To approve the Release of Covenant Riverdale Place LLC, Lot 7 Lupine Lane

1st: Mary Black

2nd: Linda Charpentier

Vote: Approved 6-0

VI. ADJOURNMENT

VII. NEXT MEETING

Next regular meeting of the Planning Board TBD