



CITY OF GLOUCESTER  
PLANNING BOARD  
MEETING MINUTES  
July 19, 2012

Kyrouz Auditorium, City Hall, 9 Dale Avenue, Gloucester  
Richard Noonan, Chair

**Members Present:** Rick Noonan, Chair, Mary Black Vice Chair, Marvin Kushner, Linda Charpentier, Henry McCarl, Karen Gallagher, Joe Orlando- **Absent**

**Staff:** Gregg Cademartori, Acting Community Development Director, Pauline Doody  
Recording Clerk

**The meeting was opened at 7:03 p.m.**

**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 June 7, 2012

**Motion: To approve the minutes of June 7, 2012.**

**1<sup>st</sup>: Karen Gallagher**

**2<sup>nd</sup>: Marvin Kushner**

**Vote: Approved 6-0**

**II. PUBLIC COMMENT - None**

**III. CONSENT AGENDA**

**Pre-Application**

Discussion of potential two lot subdivision located at **134 Concord Street** (Assessor's Map 242 Lot 13), owner Conrad Vitale, TR.

**Continued to August 2, 2012**

**ANR Applications**

1. Farm Creek Holdings to re-divide three lots into five at **91-103 Coles Island Road** (Assessor's Map 253 Lots 23 & 24 and Map 258 Lot 13).

**Continued to August 2, 2012**

2. Stephen P. Cohen and Esther Barmak to divide one lot into two porkchop shaped lots at **126 Eastern Avenue** (Assessor's Map 264 Lot 59) and reconfigure 130 Eastern Avenue (Assessor's Map 264 Lot 7).

**Mr. Noonan** stated there is a public hearing this evening regarding this ANR and will be heard at that time.

3. Mark Ventimiglia to re-divide **6, 8, and 10 Madison Court** to create three buildable lots (Assessor's Map 38 Lots 48, 49, 50).

**Mr. Cademartori** there was an existing structure on the front of the lot. The applicants had applied to the Board of Appeals for relief and were denied. The proposal is to relocate the structure and divide the property into three lots to conform to the R5 district. There are no issues.

**Motion: The subdivision control law does not apply to 6, 8, and 10 Madison Court to create three buildable lots (Assessor's Map 38 Lots 48, 49, 50).**

**1<sup>st</sup>: Marvin Kushner**

**2<sup>nd</sup>: Linda Charpentier**

**Vote: Approved 6-0**

4. James R. Santo to combined two lots into one buildable lot at **24 Washington Street and 3 Mansfield Street** (Assessor's Map 6 Lots 36 & 37).

**James Santo, 3 Emerson Circle, Beverly, MA.**

**Mr. Santo** stated he plans to do residential work and it made sense to bring the two areas together.

**Mr. Cademartori** stated the lot has access from both Washington Street and Mansfield Street There are no issues.

**Motion: The subdivision control law does not apply to 24 Washington Street and 3 Mansfield Street (Assessor's Map 6 Lots 36 & 37).**

**1<sup>st</sup>: Henry McCarl**

**2<sup>nd</sup>: Karen Gallagher**

**Vote: Approved 6-0**

The board took a brief recess to wait for Planning and Development to join the Planning Board meeting. **The meeting resumed at 7:26pm**

**Planning & Development (P&D) Members Councilor Jackie Hardy, Councilor Joe Ciolino, Councilor Greg Verga; Linda Lowe, City Clerk; Councilor Paul McGeary joined the Planning Board meeting at 7:45pm.**

Councilor Greg Verga, opened the P&D meeting.

#### **IV. CONTINUED PUBLIC HEARING (To be held jointly with Planning and Development)**

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.

**Attorney Michael Faherty**

**Attorney Faherty** clarified some items regarding Mr. Cademartori's July 17<sup>th</sup> memo. He stated that at the last meeting in May, it was the petitioners expectation that time would be spent looking at the various other properties that could use the same route with the zoning ordinance. The argument was that the two properties proposed for this zoning are distinct from others in the city. They are contiguous, they are major contributors to the city's economic health, they have been in Gloucester the longest, they only have one neighbor that is a residence, and these reasons alone would warrant looking at them separately. The data base that was accessed by Mr. Cademartori came up with 13 properties in the R20 district. There are 5 in the R20 district and 4 of them are on Atlantic Road. The number of hotels is small that are located in R2. Attorney Faherty stated the other issue was in reference to a letter submitted by Councilor Ciolino which stated overlay districts can only be used in blighted areas. There is no legal requirement in the ordinance or statute for this.

Attorney Faherty addressed sections of the proposed overlay.

**Section 5.26 2.5:** Assertions have been raised claiming this effort is a front to get permits so the properties would be combined, or knocked down, and a new building would be built. This would be resolved by adding a definition section to the overlay "Replacement" will be redefined through discussion with the boards.

**Attorney Faherty** stated that Councilor McGeary raised the issue in the ordinance that there are certain requirements for a special permit in a major project. His concern was that this ordinance would override that. In Section 5.2624 and 5.26 7.1 it says if there is a special permit required in the section of the overlay ordinance, the special permit and submission requirements would take place.

**Councilor Ciolino** questioned the title 5.26 Existing Hotel Overlay District.

**Attorney Faherty** stated it is to distinguish from other hotels and only for existing hotels.

**Ms. Gallagher** asked that if this ordinance was passed without the provision of “by right” then this definition of replacement would not be significant or necessary.

**Attorney Faherty** stated not necessarily because there could be an issue as to what constitutes a replacement.

**Dimensional Tables:** The request has been changed from 45 feet high to 30 feet high. The mechanicals are not included in the requirement. The Building Inspector considers this a commercial building. We will not be seeking any additional relief that isn’t already in the ordinance.

**Setback Requirements:** This has been amended to state that we will take the same setbacks as in the R20 district. Side yard minimum is 20 feet, rear and front yard is 30 feet.

Attorney Faherty described the site plans of the properties involved to the boards.

**The Atlantis-** the only area the property does not meet the setbacks is at the front corner of the café. It is 1.2 feet away from meeting the requirements. In other all aspects, it exceeds all other dimensions. Attorney Faherty suggested applying the R20 to this overlay the Atlantis would not have to remove 1.2 feet of the building. The lot area is 63,004 feet.

**Bass Rocks Ocean Inn:** The dimensional requirements except the front yard setback for two of the buildings on this property. The main building is 19.2 feet off of the property line and the corner of the building is 4 feet into the encroachment. In all other respects it meets the requirements of the R20 district.

**Councilor Hardy** asked the applicant is looking for dimensional relief for the two sites to be included as part of the overlay district

**Attorney Faherty** stated yes.

**Councilor Hardy** stated that if this was passed without what you described, what would make you think Council would not grant dimensional relief under a special permit.

**Attorney Faherty** stated it wouldn’t be the Council; it would have to go to Board of Appeals. In section 2.36 of the Ordinance there is a special section for hotels and motels and the setbacks are established in a different way. To the extent that the building exceeds 15 feet in height, you add 1 foot on to the dimensions. If these structures went to a 30 foot structure it would push the setbacks to the 40-45 foot range which would make the whole building non-conforming. These buildings already conform to the requirements for the district, except for the three exceptions previously noted.

**Mr. Cademartori** stated that the conformance is with a table for other uses, not hotel use.

**Attorney Faherty** stated that the other issues that are different is the minimum lot area per guest unit, minimum open space, minimum lot width and frontage. At the last hearing it was questioned as to what the rationale was for having 750 feet of lot area for every unit. Under the current zoning ordinance, 7500 square feet is needed for each dwelling unit. There are currently 40 units at The Atlantis and 54 at Bass Rocks. There is an Open Space Requirement of 3750 feet. The average unit is 250 square feet. The requirement is to have 15x the size of the room in open space. It has no rational basis. The suggested space would be 200 feet or 1-1 exchange for open space

as opposed to the number of unit. A special footnote was added saying that if there 10,000 square feet of contiguous open space in the front yard that would satisfy that requirement.

**Mr. Cademartori** addressed comments made by Attorney Faherty. He stated that it was left at the last meeting to look at all the hotel use in the community to see if there was a specific pattern in the R20 district and also to see if other sections of the ordinance need to be addressed. It has been acknowledged that the existing use table for hotel use doesn't promote hotel use on any size site and a new standard should be set. The challenge is making the decision is to see if the two lots involved in this hearing are distinct enough.

**To be discussed further this evening;**

- **The “As of Right” provisions, and if it is in the construct of the existing permitting framework**
- **The consolidation of the review process should someone pass a threshold.**

One suggestion would be to consolidate the review process to approach it from the understanding that it is difficult for the properties to do anything because of the existing tables. The City Council reviews aspects of dimensional requirements and relief from the current hotel special permit process. The review is for fewer than 30 and over 30 unit hotels and the ones that remain deal with setbacks which rests with the Board of Appeals. Moving those to the City Council is one approach. It would ignore the consideration of new hotels that would still be constrained by the same standards that lacks rational because it was carried over from residential density standards. As the Council has seen with hotels as well as multi families' special permits, given the same ability to waive certain dimensional standards or provide relief in the form of a special permit. There are still times where setbacks are still reviewed by the Board of Appeals and they appear before the Council. It just allows the application to move forward. They have to make a finding that should be of the highest burden to show that the variance should be granted. The suggestion of consolidating relief by special permit of dimensional requirements including setbacks to the City Council would be to still look at the tables as a guiding standard and then providing the same kind of relief that has been suggested. The only basis is that there is a structure on the lot. It make sense to look at what is there as to create a path of review. The larger issue surrounding the proposal is the “as of right” provisions.

**Attorney Faherty** stated that the concern is if the applicant is in front of City Council for a special permit, there are 6 criteria that have to be followed. Adding other requirements on this section such as; neighborhood character and structural density is similar to what is already reviewed so there is no need to add them

**Mr. Cademartori** stated that the myriad language for relief for open space per dwelling unit or per two guest units and lot area. It is the existing language for relief for dimensional requirements for hotel use.

**Attorney Faherty** discussed the “As of Right” issue. He read from Councilor Ciolino's previously submitted letter to the board. He stated there are many items in the ordinance that are “as of right”. He referenced page 2 where alternatives were added. He stated that today's tourists today expect more from the hotels they stay at today than 50 years ago. They expect larger baths, beds, appliance hookup etc. and those expectations puts a demand on the current room sizes. There is a need by these hotels to remain competitive and to increase capacity. There should be some common ground to be agreed upon where the hotel owners do not have to go through a lengthy process to make changes. Attorney Faherty stated he would like feedback from the board as to what would be acceptable.

**Ms. Black** asked Attorney Faherty as to the expected time savings if the proposal is approved.

**Attorney Faherty** stated there is a lot of time that goes into a project prior to permitting. The two step process in place now is the Board of Appeals, where someone

can file an appeal that could take up to 2 years before the project can be presented again. Consolidating under one group and make regulations less ambiguous will decrease time and knowing what is allowed “as of right” up front works to everyone’s advantage.

**Councilor Ciolino** stated for clarification of Attorney Fahertys comments, that the proposal of the overlay is to circumvent the appeal process.

**Attorney Faherty** stated that as the way it is structured now, it will invite a law suit and there is no rational basis for it. He stated that the goal is to agree on realistic standards and if someone meets those standards, then there is no appeal.

**Councilor Ciolino** stated to Attorney Faherty for clarification of his comments, that if someone appeals there is no rational. It is not the board’s job to say what the rational is for an appeal. He continued to say that these hotels are in a residential area and it’s proposed that the existing setbacks should also apply to these hotels. Where is the scale of proportion? It doesn’t make sense to apply residential standards to a commercial application.

**Mr. Cademartori** asked for the current lot coverage for each of the structures on the lots and what standard they held to.

**Attorney Faherty** stated less than 25% of lot coverage. They meet the standard.

**Ms. Gallagher** stated her concern about using a certain percentage to determine whether or not you can build something by right. What if that percentage is used over & over again? What would prevent using that 30% more than once? Also, if the property is sold what would prevent the new owner from exercising the as of right 30%?

**Attorney Faherty** stated that concern could be dealt with in the language.

**Mr. Cademartori** recapped some of the issues that that need continued discussion; Dimensional requirements, lot coverage, 30 % as of right increase.

**Attorney Faherty** stated he would like to get a threshold that everyone can agree on that wouldn’t need a permit. The ultimate decision is made by City Council. This board is charged with modifications to zoning ordinances. The two issues are setback requirements and consolidation of the function.

**Mr. Cademartori** stated in your initial application there was a proposed height and then after additional information was gathered the height standard was change. It went from 45 feet to 30 feet. There was also discussion about an added floor. There is a nexus between the percentage calculation and another floor.

**Attorney Faherty** stated that knowing what you can do with or without a permit governs what you are prepared to do in terms of design.

**Ms. Gallagher** stated that if this body doesn’t agree on a use “by right” portions of this ordinance then this conversation is mute. We as a body should know which way we are leaning towards and not pass it on to City Council without any type of recommendation. Mr. McCarl and Mr. Kushner concurred.

**Councilor Hardy** stated that the current definition of hotel/motel/ motor inn is lacking and would like to see each defined separately.

**Mr. Cademartori** questioned the change in 526 3 C.

**Attorney Faherty** stated 526 3 C is for existing accessory & incidental uses and any changes in that use would require a special permit.

**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 to August 2.**

**1<sup>st</sup>: Henry McCarl**

**2<sup>nd</sup>: Karen Gallagher**

**Vote: Approved 6-0**

**Councilor Hardy stated that Planning & Development will join the planning board at the August 2<sup>nd</sup> meeting. We stand adjourned.**

**V. NEW PUBLIC HEARINGS**

In accordance with MGL Chapter 40A, Section 9, and City of Gloucester Zoning Ordinance, Sections 1.8.3, 5.20 and 5.21, Gloucester Planning Board will hold a public hearing to consider the applications of Stephen Cohen and Esther Barmark for a Common Driveway Special Permit and two Pork Chop Shaped Lots, Zoning Ordinance to serve four (4) lots at **126 Eastern Avenue** (Assessors Map 264, Lot 59).

**Presenter: John Judd, Gateway Consultants**

**Mr. Judd** stated this is a 6.3 acre parcel that was previously permitted with a common drive way that serves 3 properties. In 2007 the special permit was issued for the common drive that serves the three parcels. The request is for the two special permits to access one additional lot for the common driveway and to subdivide the property to pork chop lots. There is over 80 feet of frontage The majority of the land will be not be developed. A memo from Paul Keene stated three concerns, mostly being about the slope of the driveway. Mr. Judd explained the slope of the driveway and the drainage system to the board. He stated a turnaround is provided for emergency vehicles, a fire hydrant and 6 inch water supply and 8 inch sewage line has been installed in anticipation of development.

**Mr. Cademartori** stated there has been no input from the fire department. The City Engineer may want a site visit.

**Public Comment:**

**Robert W. Cusick Jr. 130 Eastern Avenue**

**Mr. Cusick** stated he is an abutter and is all for the project.

**Sybille Denninger-Abed, Unit B 124 Eastern Avenue**

**Ms. Denninger** stated concern with the portion of Eastern Ave that goes to the proposed driveway. She stated that she is currently paying for the snow plowing and wanted to ensure that if this goes through, that it is put in writing that the costs will be shared. Her other concern is drainage which will be running her building.

**John Devreeze 124 Eastern Avenue**

**Mr. Devreeze** stated concerns regarding the approach on Eastern Ave with the possible common driveway. It will be on his doorstep. He also stated concern regarding the slope and drainage issues.

A site visit was scheduled for Thursday July 26 at 6:45 pm.

**Motion: To continue the Public Hearing for Stephen Cohen and Esther Barmark for a Common Driveway Special Permit and two Pork Chop Shaped Lots, Zoning Ordinance to serve four (4) lots at 126 Eastern Avenue (Assessors Map 264, Lot 59) to August 2.**

**1<sup>st</sup>: Mary Black**

**2<sup>nd</sup>: Marvin Kushner**

**Vote: Approved 6-0**

**VI. OTHER BUSINESS**

Release of Covenant, Windover ShoreCliff, LLC, 9-11 Boulder Avenue Common Driveway

**Mr. Cademartori** stated there is substantial completion of one of the buildings and one driveway is adequate to serve as access.

**Motion: To release the building and units shown in the 3A approved plans for Windover ShoreCliff, LLC, 9-11 Boulder Avenue Common Driveway**

**1<sup>st</sup>: Karen Gallagher**

**2<sup>nd</sup>: Henry McCarl**

**Vote: Approved 6-0**

**Mr. Cademartori** stated there was a transmission from City Clerk's Office in the context of the Capital Planning for the city regarding the acquisition of Briernneck Crossing. Bruce Tobey asked for input from the Planning Board regarding the possible acquisition of the land. A 40 B application was filed on the property and there is approval to construct the project. Friends of Good Harbor approached the investors/ owner of the site for acquisition and a Purchase & Sale has been agreed upon. An application for funds from the CPA has been filed and an application from the Conservation Commission to the state for a land grant has been filed to fundraise for the acquisition. The structure of the percentages of where the funds will come from is numerous. It has been pointed out to the City Council that this specific locus has not been identified in the open space plan. It is 6.2 acres and two lots. It was positively reviewed & endorsed by the Open Space Committee in pursuing the acquisition and the Conservation Commission supported it. Capital Improvement Advisory Board was forwarded the loan order request that is before the Council. The loan order request is needed because the fundraising of the non profit entity, the CPA, and the state grant is reimbursable. Councilors want some assurance from the identified funding sources be in place before the authorization is granted. The Capital Improvement Advisory Board does not review individual loan authorization as part of their charter and would not take a particular position. The city's role is to fund the bridge loan of \$375,000 and would be reimbursed by the state for a portion of it. The CPA recommended \$150,000 will be in front of the City Council at the next meeting. The balance will come from contributions and fundraising. It is designed with a pass through with the loan authorization. It does come with a cost of management from the city and time and energy from a legal standpoint.

**Councilor McGeary, Ward 1 Councilor**

**Councilor McGeary** stated fundraising has been done and there is private money in the mix. The state land grant can only be given to a Conservation Commission and owned by municipality and that is why the city has to front the money.

**Denton Cruz Friends of Good Harbor**

**Mr. Cruz** stated that the loan before the City Council is only a bridge loan. The goal is to have a closing on the property in January 2013. The state awarded the grant, but will not release the funds until it is reimbursed. The loan is needed.

**Mr. Cademartori** stated the land was zoned extensive business. One of the concerns is whether that is an area to promote development. It is just out of reach of the flood plain. It would be maintained as open land.

**Motion: To offer a letter in support for the acquisition of Briernneck Crossing.**

**1<sup>st</sup>: Karen Gallagher**

**2: Mary Black**

**Vote: Approved 5-0 with Mr. McCarl abstaining**

**Motion: Adjournment**

**1<sup>st</sup>: Henry McCarl**

**2<sup>nd</sup>: Mary Black**

**Vote: Approved 6-0**

**VII. NEXT MEETING**

*Next regular meeting of the Planning Board August 2, 2012*

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