

CITY COUNCIL STANDING COMMITTEE  
**Planning & Development Committee**  
Wednesday, August 22, 2012 – 7:00 p.m.  
**1<sup>st</sup> Fl. Council Conference Room – City Hall**  
-MINUTES-

**Present:** Chair, Councilor Bruce Tobey; Vice Chair, Councilor Greg Verga; Councilor Jackie Hardy

**Absent:** None

**Also Present:** Councilor McGeary; Councilor Ciolino; Councilor Steven LeBlanc; Councilor Cox; Linda T. Lowe

**The meeting was called to order at 7:01 p.m. There was a quorum of the City Council.**

**1. Committee Procedural Discussion re: SCP2012-010: GZO Sec. 5.25 Hotel Overlay District; GZO Sec. 5.5.4 Lowlands: 47-61 Commercial Street**

**Councilor Tobey** discussed with the Committee procedures for taking up the SPC2012-010 Special Council Permit applications by Beauport Gloucester LLC to build a hotel under GZO Sec. 5.25 Hotel Overlay District and GZO Sec. 5.5.4 Lowlands for 47-61 Commercial Street. All the members have reviewed the applications; and as Chair he has discussed this application with Gregg Cademartori, Acting Community Development Director; Jim Duggan, CAO; and Linda T. Lowe, City Clerk. They will have a process that is coordinated and without duplication so that it is efficient for the applicant and concerned citizens alike, the Council and other boards as well. At the request of Councilor Tobey a summary of the project approval/review process was given.

**Summary of Process and Associated Dates:** **Linda T. Lowe**, City Clerk explained that the P&D Committee represents the City Council and has to coordinate with other processes on-going. They will do their separate review of the application for both the hotel major project and the lowlands permit but also have to do it in conjunction with all the other City boards and departments involved; or it would be premature to move forward on the Committee's part. In this manner, their decision can be based on a thorough review of all the issues and facts. The project is now with the **Conservation Commission** (ConCom) for a preliminary review, called a "delineation of the project." They will have meetings on that into mid-September. When the project came to the Council the zoning law requires it be sent out at that time to the **Planning Board** for their separate review. That board reviews the project and may employ outside consultants to assist them in their recommendation to P&D who then deliberates and makes their final recommendation(s) to the Council.

**Coordination of Committee and Boards:** P&D and the Planning Board are trying to coordinate what they do to prevent duplicate hearings. Mr. Cademartori has confirmed the Planning Board will meet on September 20<sup>th</sup> and will most likely hold a joint meeting similar to the other joint meetings held previously on other projects. Then P&D will meet separately as a three person committee and receive the Planning Board report; review the decisions made by ConCom.

**Major Project Requirements:** This project is also a Major Project under GZO Sec. 5.7. A part of the P&D review will be to receive reports from several different city departments who will make a report on this project: the Health Department, the Fire Department, the DPW, City Engineer and the Building Inspector. Each reports separately to this committee. At the same time a Site Plan Review under GZO Sec. 5.8 is conducted by the Planning Board which is an overview of the project, and is not performed by the City Council although it is, of course, available to the P&D Committee. That will be on a separate track by that Board. The ConCom when finished with their preliminary review will start their final review for their Order of Conditions which will go on at the same time. It will take a great deal of coordination. Nothing requires that the Council have all those completed reviews in their hands; except the Planning Board recommendations and the department reports. The P&D Committee does their best to collect their information and review it. They can give their approval depending upon the approvals from the other bodies. The ordinance talks of the process of holding a hearing in 65 days. With all that must happen that would be highly unlikely to happen within that timeframe. What usually happens the Council works with the applicant to ask for an extension and can be moved out as long as the applicant is agreeable. The PH would be then held by the City Council when the P&D Committee has completed their process and made their recommendation.

**Committee/Council Process:** **Chairman Tobey** explained the first and next move when they would engage the substance of this matter will be Thursday, September 20<sup>th</sup> when P&D will host and be joined by the Planning Board for a joint meeting. At that meeting P&D would expect the applicant to give a full and comprehensive initial presentation of all elements of this proposal; how they measure up against the standards of the zoning provisions

under which these applications have been filed. Given the scope of the reviews and the volume of material to be reviewed that the only thing that will occur at the Tuesday, October 9th City Council meeting is that the public hearing will be opened to be continued and assumes the applicant would be agreeable. After the September 20<sup>th</sup> joint meeting, he would see the Committee having numerous public meetings which would be work sessions with City staff and the applicant, but not public hearings as it is not the role of P&D to hold a public hearing. It will be in their interest to have a site visit to be scheduled. He summarized this process is different than the zoning ordinance change which led to the Hotel Overlay District whereby the Planning Board in the initial phase of the process was obligated to hold a public hearing on several occasions prior to the City Council's public hearing. He asked the Committee to consider when they are further into this process, and assuming they accept the concept, that one of their meetings be a functional substitute for public hearing with limited time, specified timeframes for folks with concerns to present them; folks in support to present their concerns. This is not legally mandated and the Chair would not accept duplication from either side. He would entertain focused commentary, statements of concerns, statement of questions, done at the discretion of the Committee, in order to obtain solid input. **Councilors Hardy and Verga** indicated their assent. Dates will be determined in that regard.

**Areas of Special Committee Concern:**

Water and Sewer Infrastructure: **Councilor Tobey** pointed out to the applicant a matter of high expectations will be the materials they will provide to supplement the application on the water/sewer infrastructure on Commercial Street and Fort Square, and what will be done there, when and how. That would be a critical reason for the site visit. He has talked to Mr. Duggan to ask the Administration to get an engineering consultant to evaluate the state of the infrastructure and the need for upgrading. Prior to walking the area they will have Dig Safe come through to mark the streets, and have an expert who had done a recent evaluation with them to explain the conditions as they walk the area. **Councilor Hardy** thought the linchpin to the project was the infrastructure. But she has the additional questions of who will pay for the infrastructure improvement costs. She has not read anything as to what defines who pays for it and how far it will go. It is only improved to their boundary lines, and the added volume could blow out the old lines that are in the old loop. She'll look for definitive plans as to who, what, where and how they will pay for it. She did not wish to see this burden placed on the taxpayers and ratepayers. **Councilor McGeary** observed if the proponents do the infrastructure work at their expense, could they please share it with the City so the City's engineer can view and assess it, and visa versa; which the attorney for applicant, **John Cunningham** agreed to.

Street and Parking Infrastructure: **Councilor Hardy** would like to see the markings on the street on both sides to the loop. She didn't see distances curb to curb on the plans or measurements of the improved sidewalks nor did she see in the West End where nubbins are proposed as to how many parking spaces may be lost and how they would be made up. She asked for all information to be made available ahead of the September 20th meeting. **Councilor Tobey** stated a critical component is the infrastructure; that this area is essentially an industrial park wrapped around a residential district and needs to be addressed. **Councilor Ciolino** also requested that they address a vehicular turn around on the property owned by the City, 110 Commercial Street; that should be included as part of the solution for traffic. The situation is poor now for trucks and cars. When they do the site visit they should visit that parcel to see where a turnaround can be made.

Height Exception(s): **Councilor Hardy** stated she would be asking if there should be two separate height exception permits for the building and the tower. The tower is higher and would leave room for the building to be raised to the height of the tower. She asked that be addressed by the applicant.

Pavillion Beach: **Nathaniel Mulcahey**, Middle Street asked about Pavilion Beach 10 foot section which is included in the HOD. It is still not clear how that 10 feet would be included in the HOD, and was not clear whether this public asset will be built on. **Councilor Tobey** looked forward to that being further explained by the applicant. **Attorney Cunningham** stated they would discuss the beach and their plans to make clear that construction is behind the lot line. **Councilor Tobey** noted the application and plans are all on line and available in the 8/14/12 City Council agenda packet, as well as on file in the City Clerk's office for public review.

Final Comments on Committee/Council Process: **Councilor Hardy** stated on September 20th they will enter into the record the information that was received, date received, etc.; and also asked permission to begin working on the motions related to this matter, as all must be placed in a positive voice along with any conditions attached, and asked to be given that responsibility to which the Committee assented.

**This matter is continued until September 20, 2012.**

**The Committee recessed at 7:25 p.m. and resumed the meeting at 7:30 p.m.**

**2. CC2012-041 (Tobey) Protection of Babson Watershed Land and Babson Bird Sanctuary pursuant to Article 97 of the Commonwealth of Massachusetts**

**Councilor Tobey** offered that to seek to overlay Article 97 of the State Constitution protections to the Babson watershed lands and Babson bird sanctuary. He asked they refer this to public hearing so they can receive a report from both General Counsel and the City Clerk on the procedural process under which they would invoke this protection and get feedback from the community on the “incessant demand” for a roadway to cross already substantially environmentally protected watershed land. The date will be coordinated with the availability of General Counsel and her being completely versed in this matter to make this presentation.

**MOTION: On motion by Councilor Hardy, seconded by Councilor Verga, the Planning & Development Committee voted 3 in favor, 0 opposed to recommend to the City Council to refer the matter of CC2012-041 (Tobey) Protection of Babson Watershed Land and Babson Bird Sanctuary pursuant to Article 97 of the Constitution of the Commonwealth of Massachusetts to public hearing.**

**3. RZ0212-003: Atlantic Road #107 & #125 to create an Existing Hotel Overlay District**

**Attorney J. Michael Faherty** representing the Bass Rocks Ocean Inn, Inc. (Tracey Muller, President, present), and Bonmal, Inc. (Jan Bordinaro, President, also present) (referred to as the Atlantis and Bass Rocks for the purpose of these minutes) regarding their application for a proposed amendment to the Zoning Ordinances to create an Existing Hotel Overlay District at Atlantic Road #107 and #125 (Map 72, Lots 1 and 3 presently zoned as R-20).

Lot Descriptions: Mr. Faherty displayed three aerial color photographs (on file) of the locus showing the two hotel properties on the ocean just across Atlantic Road. There are no structures on the ocean side of the street in front of them. Bounded on the southerly side of the Atlantis there is a cluster of several homes, one immediately adjacent to the Atlantis and built after the hotel was erected. All the homes are relatively new except one on the set back further away from the site. The northerly side is the Elks Lodge, formerly The Easterly Hotel; and the abutter to the entire rear of the properties is the Bass Rocks Golf Course. The photos show there are no abutters to the east but only the ocean. To the other side is the golf course.

Another view from the street focused in on the closest residential abutter, which he pointed to on the photo, #129 Atlantic Road residence, and also pointed out the Atlantis and Bass Rocks Inns.

History and Tax History: The unique building built at the corner of the Bass Rocks was first operated as a hotel in 1946 before the other two structures on the property were built in about 1963. They have been there continuously in that form since 1963. These hotels do not have function facilities such as the Ocean View Inn further down Atlantic Road that has functions such as weddings and conferences. These two facilities are strictly seasonal hotels, May through October. They are significant contributors to the economic vitality of the City: both facilities each pay approximately \$30,000 in real estate taxes annually. Additionally, Bass Rocks contributes \$160,000 in room tax per year, of which the City shares over \$80,000. The Atlantis pays over \$100,000 a year in room tax; over \$50,000 of that goes to the City. The Atlantis does have a small restaurant open to the public serving breakfast. There is approximately \$10,000 in meals tax annually that comes from this breakfast only restaurant. Bass Rocks has a breakfast facility, but it is used only for their patrons. Looking at the property from the rear, all parking is contained for both facilities there, and all vehicles can be accommodated off street. He showed a plan of the Atlantis (copy on file) and pointed out Atlantic Road noting that the building was constructed in two parts. In the early 1960's the authority to approve hotels was the ZBA. The rules were simple and encouraged these facilities' development. The Atlantis is a three story structure, but is sunk into the ground, and the restaurant is a two story structure in the front part.

Open Space: Referring to the Atlantis, the open space on the lot in the rear is dedicated almost exclusively to parking. The front of the building is dedicated to open space, grass, porches for the rooms and a swimming pool. The Bass Rocks facility (plan on file) is only slightly larger, but has three buildings: the original manse, a three story building, 35 ft. high approximately; and the main two story block hotel; and then a 10-unit, two story free-standing addition approved by the ZBA in 1965. These three buildings are not connected, and parking is in the rear of the buildings. Again, the frontage is dedicated to the pool or open space. With what they propose there is an incentive to keep as much of the front yard as open as possible. The units of this hotel are allocated as follows: The two story block on the southerly side is 10 units. Thirty-eight units are in the main two storied building on the westerly side, and six units are in the manse plus the office facility, totaling 54 units. The Atlantis has 40 units total.

Setbacks: On the Atlantis, the structure on the front of the hotel is 28.8 ft. from the dedicated layout of the road. At this time Mr. Faherty requested the Committee do a site visit to view both properties. To the side of the Atlantis the

dimension is 22.4 ft. and 23.6 ft. (existing dimensions) with more than 50 ft. in the rear, and to the right of the property is 24.2 ft. There are areas that do not and would not meet even their proposed setbacks for the EHOD. On the Bass Rocks Inn, the large building has no issues of set backs with 40ft. in the rear. The left side has 27 ft, and 40 ft. on the right side (viewed as if facing the property from the street). The 10-unit building is south; the manse is to the north (abutted by the Elks Lodge).

Issues of Dimension: The current dimensional requirements for hotels, motels and motor inns, in Sec. 3.26 of the zoning ordinances, in the R20 district, the minimum lot area required is 40,000 sq. ft. Both facilities have lot areas in excess of 65,000 sq. ft. If the minimum lot area per two guest units is 10,000 square feet per unit, then a facility of 65,000 square feet would allow 6.5 guest rooms, which he pointed to as how burdensome this current ordinance is. If it said two guest units, then they're talking 13 units which is 65,000 sq. ft. Minimum open space is 7,500 sq. ft. "per two guest units." If they assume that 40% or 50% of the facility is open space that would give 32,000 sq. ft. which is five units to meet open space and 13 maximum units with the other [facility]. They are looking to have it conform to reality and why this overlay needs to be done. The lot width and lot frontages are not issues; both facilities comply with that. The setback issues when this dimensional table was put in a separate schedule by the Council after the review, they pulled out the multi-family requirements and put them here. The dimensions for set backs expand the higher you get. The base elevation is only 15 feet. Even if they assumed a building of a height that's allowed in the district of 30 ft., they would be adding 15 ft. to each of the required setbacks. The rear yard becomes 55 ft.; the front yard becomes 45 ft. That is 100 ft. of depth front and rear. It leaves no room for construction or renovation of existing hotel.

Upgrading Facilities: These facilities were both built in the early 1960's. Expectations at that time were to find a full bed and a cot in a guest unit. Bathrooms had a toilet and small sink and are the kind of amenities built in the structure. There is a host of things expected by the tourist public in today's market that weren't required or expected then. These successful businesses need to make upgrades to their facilities to be competitive, remain viable and sustain their economic wellbeing and is the motivation behind this rezoning before the Council. They need bigger bathrooms, sleeping quarters, internet connections - amenities people expect in quality facilities. Mr. Faherty pointed to three other hotels in Gloucester to be built (two of which are already permitted) saying the business public requires these amenities which will be found at the Gloucester Crossing (Holiday Inn Express), Essex Avenue (Hampton Inn) and in the Fort (Beauport Gloucester LLC). There is no intent to be a function hall, have full scale restaurants. These facilities are a place to come, stay, and enjoy the City, views and ambiance of the Back Shore. These are grandfathered facilities that are non-conforming. It was noted for the record that the two bodies that could give dimensional relief under the existing ordinance are the ZBA and City Council.

Application Submitted: An application was submitted for an Existing Hotel Overlay District, limited to two locations. They justified sufficiently to the Planning Board that these structures deserve to be treated differently; they are the only two hotels on the Back Shore that are contiguous; no other hotel in the City is bounded by so much open space and nothing across the street. **Councilor Hardy** noted that they are looking at two properties rather than two structures. There are three structures on one property; the other with one principal building.

Planning Board Recommendations re: Ordinance Language: On page 1 Mr. Cademartori's letter dated 8/10/12 of a Planning Board recommendation (on file) it shows a 6-0 vote in favor.

Sec. 5.26 it says Existing Hotel Overlay District; the Planning Board on "location entitled" suggested it should have a street address (125, 107 Atlantic Road). They have no objection to what it is called.

Sec. 5.26.1 has a grammatical error in subsection (1) which needed to say "To facilitate the alteration, expansion, replacement of, or new Hotels in the EHOD..." Since the Planning Board took the time to come up recommendation with the setbacks, it would also apply to the replacement for a new hotel to comply with the same overlay. These two lots would have these dimensional requirements for expansion or alteration and constructed new. The concern there was if one section required to be replaced because of structural, code issues, they didn't want to be hamstrung if was more efficient to replace what is there.. They are not talking "wholesale" new hotel. The rest on that page there was no other changes.

Sec. 5.16.2.1 Map. **Councilor Hardy** asked to view a map as indicated in this section. Mr. Faherty stated they intended to submit a map. They submitted a plan, and it would be a consolidated map and would become part of the record so it would be a date, a plan, a survey and then it becomes part of the ordinance; a compilation of the survey of the two properties. He would intend they would see it after the vote but before it became signed by the City Council. It is just two lots. **Councilor Hardy** would want to see at least a draft to see the totality of the locus before the vote. **Mr. Faherty** would give it to them before their vote.

Sec. 5.26.2.4 makes clear that any special permit required under this ordinance would be granted under the standards of Sec. 1.8 (Special Permits and Sec. 5.7 (Major Projects)). Those are existing sections.

Sec. 5.26.4 Dimensional Requirements. Compared to the existing ordinance, the minimum lot size has not changed (40,000 sq. ft.). The minimum lot area per guest unit (sf) they determined that since they were not looking for more than 60-65 units maximum in the Bass Rocks and in the low 50's for the Atlantis, that 750 per sq. ft. per lot area for every hotel room made sense; 7,500 sq. ft. which was in the previous ordinance does not. The Atlantis has 40 units and the concept is to move it to 50 units. And the increase for the Bass Rocks also would increase by 10 units to 60 units. Open Space per guest unit, they assumed an average hotel room would be up to 300 sq. ft. If they are providing an equal number of open space as they are for using a bedroom it made sense. In trying to keep the character of the Back Shore, there is a footnote here; as it speaks to the calculation (the pool is considered open space under the ordinance). He suggested an incentive in the ordinance that says at the option of the applicant if they provide a 10,000 contiguous open space per property in the front yard, that is an alternative "satisfaction" of the open space to encourage continued openness of the front yard and would prevent building up to the property line and also see a series of pockets. The Planning Board understood it made it more attractive. Lot width and frontage are not issues. The front yard is adopted from the R-2 standards. The rationale is these facilities have been there for more than 50 years. No one can raise any issue about problems with their operation; that they're overcrowding the site, etc., a testament to the fact the existing dimensions work. They have 30 ft. on the front, 20 ft. on the side, 30 ft. in rear. On Bass Rocks, they have one spot that is 26 feet from the street on an existing building. The footnote is worded that it would be 30 feet or whatever exists currently on the site. The sideline of 20 ft. setback meets the requirements as does the rear. The mansie is 19.2 ft. from the layout of Atlantic Road. Councilor Tobey commented that should this be enacted, it would be the attorney's intention for the map called for by Sec. 5.26.2.1 would include the existing structures and show all these things; and speaks to why they need the map before they vote. Mr. Faherty continued by pointing out Atlantic Road on a site map. These meet the requirements. This is 1.2 ft. off and meets all the requirements. The Atlantis meets all the requirements except for one section on the left side of the property with the proposed ordinance; it is less than one foot than what they are proposing.

Building Height: Conclusions by the owners were reached that any expansion would be upward; and the existing heights are about 20 ft. for structural reasons. They believe that they can get them at or under 30 feet especially in the overlay it is handled the same way as elsewhere in the ordinance; that the mechanicals on the roof of commercial buildings are not included; and would not be subject as long as it is not habitable, as is the case with the other HOD. To the extent they could meet that they couldn't meet that requirement, they would agree that would be subject to Special Council Permitting in accordance with the same section, Sec. 3.1.6 (height exception), currently split between the ZBA and the Council. They're looking to do this at Council. The principal buildings, footnote (iv) was placed in by Mr. Cademartori. There is no restriction of one principal building on a lot with exception of a single family district; it is not the same rule. It is defined as accessory, anything that is not principal. Mr. Cademartori wanted a 10 ft. separation for the height. They intend to meet all the current off street parking requirements. To the extent there is more parking as verified by the Building Inspector, more than is required, they would go with the larger number rather than the bare minimum. The application contents would be through the Special Council Permit process.

Sec. 5.26.8 mirrors the other overlay district.

"As of Right": There has to be some threshold under which any legislative body would say it is not significant enough expansion or construction that they would have to be involved with a wholesale review or permitting. If they made that certain changes would be allowed to be made "as of right," then they complied with the dimensional requirements, there would be some threshold. Initially they said a 30% increase in the number of rooms was the threshold. They came back suggesting no more than 10 units total increase for each of the properties as the threshold. The Planning Board position was that they were not in a position to allow something as of right, which effectively curtails the Council jurisdiction; and therefore, did not make a recommendation on that at all. He believed there should be some threshold maybe less than 10 that people would know in their planning process; there are thresholds. They are still asking the Council to consider it. Nothing is a "deal breaker", but they are still pushing this because it is important to these two businesses. **Councilor Tobey** asked how this threshold of 10 units impacts the intensity activity at the sites; and what would be different. **Mr. Faherty** explained each building would be one story higher. They would have to meet all their requirements of the parking and setbacks. The sense is those are minimal intensifications on the site. **Councilor Tobey** asked if they have done any conceptual plans to see what it would look like with a third floor. **Mr. Faherty** pointed out there are limitations on what can be done on a third floor. It would be the same model and not create whole new facades on the two stories. They not see it as intensification of use. **Councilor Tobey** asked that there be demarcation on the building showing another story at the time of the site visit, as well as to arrange with abutters to allow the Committee to view the hotel properties from their residences. **Mr. Faherty** added that these are remarkably low structures now (the Committee was shown a picture of the roof of the Atlantis submitted for the record); and missing on the roof is mechanicals and is why the

buildings are only 19-20 ft. high. The neighbor's property is much higher. He also showed them a photograph of a view from the restaurant of the Atlantis (photo on file). He devised in this language that there would be certain uses that allowed 10 units or less would have to comply with dimensional requirements of Sec. 5.26.3.1. Issues were raised by one of the neighbors of what they will put in; they are willing to adhere to existing uses; not adding conference, meeting rooms; and so that would not be included. **Councilor Hardy** asked for existing uses now there to be listed for the ordinance. **Councilor Tobey** noted that they listed not permitted uses for the HOD; and it may be useful to put a list of existing uses in and things that aren't on the existing uses on the plan under Sec. 5.26. **Mr. Faherty** agreed to annotate the existing uses. **Councilor Hardy** asked in allowing "by right" provisions in Sec. 5.26 at what point would future development or redevelopment come before City Council for a Special Permit. **Mr. Faherty** informed the Councilor it would be anything other than the initial expansion and nothing else. This wouldn't be 10 units now, 10 more six months later. It is as of the date of enactment, and a one time deal. That is fair to all so there is no incremental development. **Councilor Hardy** stated there is nothing necessitating coming before the Council under 30 ft. high and 10 units or under. She expressed concern for the residential property side of the Atlantis that people who built the home immediately adjacent knowing where the windows of the hotel were (to protect their privacy). Should another floor be added on, the hotel would be good neighbors by not having windows on that side of the hotel facing the abutter's. Should there be future construction of an additional floor, she would want to see some language regarding that matter in the EHOD ordinance. **Mr. Faherty** responded if that is the difference that there be no windows of the residential side of the property, it is not an issue for them; there is no intention to do that anyway. The dimensional footnote would say other than what already exists to not allow windows to be on that side. This would still come under the site plan review.

**Attorney Ralph Pino**, 46 Middle Street representing Mr. & Mrs. Fonzo, abutter on Atlantic Road to the Atlantis Hotel; the Elks and Golf Club, he has not been represented. The Elks stated the Trustees are for the EHOD and the Golf Course has not stated their opinion one way or the other on this matter. He pointed out that while Mr. Faherty's clients are nice people and run good establishments, every representation of what they might do has nothing to do with what they do regarding the rezoning. They could sell the lots and do whatever is allowable under what is proposed. They are doing this for two parcels for land which could become one parcel. The overlay should have had some public purpose other than spot zoning these parcels which he asserted it was. The Fort zoning had a public purpose. These are two successful hotel businesses that are fully booked all summer. He believed it was a bad concept to do an overlay. There is no public benefit or good; the properties are not in distress. It is taking them out of the zoning district and treating them differently. It is intensified use. Take out the matter of right; could they live with the dimension, "No." Under this ordinance, the two properties could be bought, both knocked down; and now there is a gigantic dimensional rectangle that can be built upon. The only parking requirement is to take existing parking and add on parking for the extra rooms added. If there are no extra rooms added, they only need a single parking lot. They can take the accessory use of a restaurant (two there currently between the two properties), make the same number of rooms in one big building, and make a 400 seat restaurant. They can do it as a matter of right. Nothing stops them. They're not opposed to modernizing the facilities and upgrading them. Many neighbors objection was they have no idea what is going to be built; what it may become. They strongly object to blanket dimensional requirements that fit these two parcels and provide for expansion of uses, huge differences in traffic with nothing to keep the hotels from being in use year round with a massive restaurant with the same number of rooms. It needs to come back to the Council (although they are not opposed to the smaller changes). They can waive dimensional requirements under the Special Permit authority. They can also look as to how it would function. He pointed to the Essex Avenue hotel permitting process that had extensive discussions. They are circumventing the whole notion to have some kind of proposal of two lots, endless gigantic possibilities without public review. Hotels do get permitted under the current plan.

**Rebuttal:**

**Mr. Faherty** stated Mr. Pino and Councilor Ciolino in a letter to the Planning Board suggest that there has to be some derelict feature to a property to be included in an overlay district. There is nothing in the law that that says they can deal with derelict properties only. **Mr. Pino** commented that is one of the things to be considered, that of a public good. Derelict is helpful. It might be an element that could be looked at. **Mr. Faherty** spoke to public benefit by saying they are talking about 3-legged economy supporting the City, that one being pushed is tourism; and is the only sector experiencing growth. A smart business person either raises their prices or understands it may be time to expand. His clients have the right to compete with the newly permitted hotels and the one pending. He said they designed the Essex Avenue hotel to not go to the Board of Appeals. It was in a commercial zone. This is a residential zone. A huge 400 seat restaurant would be a significant change in the use. The restaurant spaces are small there now. They would have to expand their parking. When they have a parking requirement it applies to added uses. They are protected under the Sec. 5.26.3.1 (c) existing uses. There was a careful approach not to say

alteration, expansion. It would be addressed by additional wording. They also said that they would accept language saying two separate parcels. **Councilor Tobey** asked they clarify Sec. 5.26.3.1 (c) with additional language of two parcels not one. He asked about why it is not spot zoning. They have a preexisting nonconforming use; if this was an overlay would it be reasonable to say spot. **Mr. Faherty** responded it is a specially permitted use. They are changing the dimensional requirement of the use. **Mr. Pino** stated it is allowed under current use by special permit. **Councilor Tobey** expressed he was not moved by spot zoning in this zoning matter. **Mr. Faherty** explained that all of the R-2 parcels have the same rights. In this instance it is limited to these two uses. There is no change in use. There is no argument to spot zoning. His clients are entitled to some relief. **Councilor Ciolino** corrected that in his letter to the Planning Board (on file) overlays are used in blighted areas. That was the intention of the state legislature that it be used to create vitality in blighted areas. They can also research with their state representatives as to what they intended with an overlay. These people are good people; but after this is done, that property could be sold and all these permits they issue go with that property. **Councilor Hardy** added regardless of what they permit, the property can always be sold. **Councilor Ciolino** cautioned they keep in mind the property can flip. The argument he heard is how wonderful these people they are. That is not why they should create an overlay. There remains the possibility of the properties being joined.

**A site visit is to be conducted on September 8, 2012 at 8:00 a.m. The matter is continued to September 19, 2012.**

**4. RZ2012-004: Prospect Street #76, Map 26, Lot 45 from R-5 (High Density) to NB (Neighborhood Business)**

**Attorney Robert Visnick, 11 School Street Rockport** representing the petitioners, Savour Wine and Cheese LLC and Beach Gourmet, Inc. is requesting that the property at Prospect Street #76, Map 26, Lot 45 be changed from R-5 (High Density) to NB (Neighborhood Business). Through the attorney's discourse, and under direct questioning by the Committee, the attorney explained:

**Overview:** Savour LLC previously operated an upscale wine tasting establishment sharing it with Beach Gourmet, a catering entity at 24 Washington Street. That building was destroyed by fire last September. Savour LLC purchased 76 Prospect Street, formerly Connors Pharmacy. Savour LLC and Beach Gourmet entered into a lease arrangement agreed to continue their business relationship at this new location. Because the catering business went with them, they needed to get ZBA approval for change of use.

**Zoning Board of Appeals (ZBA):** The ZBA, as one of its conditions, for granting that use variance was that they apply for and "diligently pursue" a change of zoning because it appeared to the ZBA that the property would more rationally be in the Neighborhood Business (NB).

**Licensing Board:** Subsequently, they went to the Licensing Board for a change of location for their alcohol license. During that process there was public notice to St. Ann's School and the church next door. They came out in support of the change as did the condominium on the other side. The Licensing Board found that locating that business at 76 Prospect Street would not be detrimental to the educational and spiritual activities of the church.

**Planning Board:** A few weeks ago the Planning Board reviewed the zoning change request, and came out unanimously in favor of it. No one spoke in opposition throughout. The feedback has been quite positive.

**Committee Input:** **Councilor Hardy** stated the City Clerk received the application on February 3, 2012. As clarified by **Mr. Visnick**, at that time the petitioner was Connors Pharmacy. It is Savour LLC now. The petitioner indicated at the time of the ZBA application that they were represented by Attorney Meredith Fine. **Mr. Visnick** clarified that The Beach Gourmet is still represented by Ms. Fine. They will be the party that will be leasing from Savour LLC. The primary use that the public will see will be Savour and the wine sales operation. **Councilor Tobey** noted under his mayoral administration there was a project to restore and illuminate the Spanish American War Memorial (at the Prospect and Pleasant Street intersection). There then was an area revitalization of buildings surrounding that immediate area. The City put in a water service in order to maintain the area of the memorial. The plantings are currently being maintained by volunteers. He asked the new owners to help with the upkeep of the memorial in honor of Austin Connors. **Robert Morgan**, owner of Savour LLC and **Kathleen Ericson**, his partner, both present, assented to the request. **Councilor Cox** expressed she has not heard any opposition to this rezoning, but rather all input has been positive that this establishment is coming to the neighborhood. **Councilor Hardy** asked the City Clerk for the current state law (MGL c. 138, § 16) that allows the sale of alcohol within so many feet of a church and also applies to a school prior to the public hearing of August 28th. The Councilor noted the Licensing Board approved the change of location of the alcohol license; and that body would not go against state law. **Mr. Visnick** stated Michelle Harrison, Chair Licensing Board was aware of that and so she named the requisite finding on the record knew that and understood it. **Councilor Verga** stated the assumption was it was NB all along; and

would support this zoning change. **Councilor Hardy** expressed her support of the zoning change also, noting the previous commercial uses of the property and said it would improve the neighborhood. **Councilor Tobey** also supported the change in the zoning. **Mr. Morgan** and **Ms. Ericson**, his partner, assured the Committee they would improve the property and make it something the community would be proud of.

**MOTION: On motion by Councilor Verga, seconded by Councilor Hardy, the Planning & Development Committee voted 3 in favor, 0 opposed to recommend to the City Council to grant a zoning change for the property at Prospect Street #76, Assessors Map #26, Lot #45 from its present zoning classification of R-5 (High Density) to NB (Neighborhood Business), and to amend the Zoning Map accordingly.**

**The Committee recessed at 9:05 p.m. and reconvened at 9:07 p.m. Councilor Tobey left the meeting at this time [due to family issues]; Councilor Verga took over the Chair with Councilor Ciolino stepping in as an alternate.**

**5. *Addendum to Mayor's Report re: request that certain school property be repurposed for use as part of Newell Stadium***

**Michael Carrigan**, chair of the Newell Stadium Building Committee spoke to why they need to expand the area of property for Newell Stadium to include Lot A . They have gone out to bid on the project of rebuilding Newell Stadium, are awarding the contract, and wish to start the reconstruction as soon as possible. To accomplish it there is a need for a property line shift taking Lot A from the School Department oversight to the City's oversight.

**Property Description:** The property in question was shown shaded yellow on the plan shown to the Committee. Lot A is located at Newell Stadium (on Leslie O. Johnson Road) on the northerly side of the current stadium. The property line now runs westerly down to a point and then back northerly which is the existing property line. It goes directly through what will be the new bleachers. The property line will go northerly first then westerly to the same point. There is a little bit of parking that gets changed. The lot is still there; but the line shifts. The spots will become parallel versus perpendicular as they are now. There will be a new design for parking lot layout under with the revitalized stadium. There will be new handicap spots in the new layout. There are currently six handicap spaces, and they will remain. They are not increasing seating in the stadium, but actually decreasing it.

**Committee Input:** **Mr. Carrigan**, on inquiry by **Councilor Hardy** stated the City owns and controls the stadium, track and field. The School controls the parking lot. That is essentially where the shift is. As they go towards the canal between the track and canal, that is controlled by the City. At some point between the softball field and the canal it would be owned by the school. This will not be detrimental to the school. The School Committee endorsed this land line change (on file). **Ms. Lowe** added that she had a discussion with Stephen Winslow (Senior Project Manager, Community Development Dept.), that the Council should also reference MGL c. 40, §15A; they are changing the purpose of the land which is dedicated to school purpose currently, and this is a shift of purpose. This state law authorizes the Council to take this action. **Councilor Ciolino** asked about the storm drain on the plot plan which **Mr. Carrigan** stated the plan shows it as proposed, and that work will be done. **Councilors Verga** and **LeBlanc** added that some of the storm drain work would piggyback on the water infrastructure work to be done simultaneously by the City. There is storm drainage under the bleachers now that will be worked on through the upgrade to the stadium. **Councilor Hardy** expressed her endorsement of the proposal.

**MOTION: On motion by Councilor Ciolino, seconded by Councilor Hardy, the Planning & Development Committee voted 3 in favor, 0 opposed to recommend to the City Council as follows:**

**Whereas the School Committee on July 9, 2012 has given notice of their determination that "Lot A" is no longer needed for school purposes, said notice and description of "Lot A" is incorporated into this motion. Wherefore the City Council, under MGL c. 40, §15A, hereby transfers "Lot A" to the care, custody and management of the City's Department of Public Works' Public Property Division.**

**Shown on a plan entitled, "Approval-Not-Required, Plan of Land, Gloucester High School, Newell Stadium, Gloucester, MA" dated July 2, 2012, prepared by Surveying and Mapping Consultants, 324 Wood Road, Suite 109, Braintree MA 02184; and whereas "Lot A" is more particularly described as:**

**"A certain parcel of land situated on Leslie O. Johnson Road beginning at the northeasterly corner of said parcel at a point in the southwesterly sideline of Leslie O. Johnson Road turning and running S32°00'48"E, a distance of 84.30 feet by the westerly boundary of Leslie O. Johnson Road and land now or formerly the City**



of Gloucester to a point turning and running S76°38'52"W, a distance of 345.27 feet along the northerly line of said land now or formerly the City of Gloucester to a point, turning and running N13°21'08"W, a distance of 79.87 feet to a point, turning and running N76°38'52"E, a distance of 318.29 feet to the point of beginning, containing approximately 26,499 square feet more or less or 0.61 acres, more or less, according to said Plan; AND FURTHER TO ADVERTISE FOR PUBLIC HEARING.

**6. *Compliance by businesses holding DEP Chapter 91 licenses pursuant to City Council discussion of 07/24/12 and a Councilor Request to the Mayor dated week of 07/23/12: Review by Building Inspector regarding posting of signage for public restrooms***

**Councilor Verga** informed the Committee they are in receipt of an email from the Building Inspector stating he has requested a list of businesses that are required to provide bathroom facilities under their Department of Environmental Protection (DEP) Chapter 91 licenses and is awaiting their response. He asked this matter be continued to the next regularly scheduled P&D meeting.

**This matter is continued to September 5, 2012.**

**7. *CC2012-045 (Tobey/Hardy) Review of outdoor portable toilets & consideration of new regulations or new Ordinance***

**Councilor Hardy** asked this be referred to General Counsel and the Building Inspector with an eye to constructing an ordinance; and that they will look at other communities to seek a model. **Ms. Lowe** noted her research for Councilor Tobey's order showed there are no other communities who have an ordinance on this matter.

**This matter is continued to October 3, 2012.**

**8. *CC2012-046 (Hardy) Review of outdoor dumpsters & consideration of new regulations or new ordinance***

**Councilor Hardy** asked this, too, be continued and that they work cohesively with the Board of Health.

**This matter is continued to October 3, 2012.**

**9. *Discussion on possible creation of Planning & Development Advisory Committee re: Special Events permitting, etc. pursuant to City Charter Sec. 2-9(c)***

**Councilor Hardy** commented that many special event application submissions are incomplete and shouldn't be received in the City Clerk's office until an advisory committee has given their stamp of approval and can attest that all departmental sign-offs and insurance matters, etc. are done, and the package is ready to go to the Council for approval, much like the Traffic Commission, an advisory commission to the O&A Committee. This would be an ad hoc committee through P&D which appoints who sits on it. With a busy Council schedule, this will be helpful. Ideally this advisory committee would be up and running by early spring when many of these special events applications come forward for approval by the Council. P&D will work with Ms. Lowe on the matter and also seek input from the Licensing Commission and department heads. **Ms. Lowe** suggested they think of a parallel process also, that of updating the ordinance governing vendors because so many special events have vendor issues, and would work in concert with this process.

**This matter is continued September 5, 2012.**

**10. *Request & Application from Gloucester Fund to hold Labor Day Concert on Stacy Boulevard on September 1, 2012 as a "Special Event"***

**Brent Tarr**, 18 Timothy Drive speaking for the Gloucester Fund explained the annual Boat Light parade has not gelled, so they are looking to hold a concert on the Boulevard instead. This is a late submission; it will be right to the end to know whether they can do it. They have a Police Department endorsement and are awaiting the Fire Department endorsement; and are working to get a Certificate of Insurance. This has been done successfully on July 3<sup>rd</sup>. There is to be a stage 75 feet off the old pump house. It is no where near the Fisherman's Statue. The stage

faces the Man at the Wheel. It is contained in that area. They're not planning to block off any roads. AT&T will help fund the concert with \$3,500 which won't come until after the concert. **Councilor Hardy** expressed whatever Mr. Tarr does for the community he does well. On behalf of the Council she thanked him for his work. **Councilors Ciolino** and **Verga** endorsed permitting the concert.

**MOTION: On motion by Councilor Hardy, seconded by Councilor Ciolino, the Planning & Development Committee voted 3 in favor, 0 opposed to recommend to the City Council to permit the Gloucester Fund to hold a Free Concert on Stacy Boulevard in the vicinity of the Blynman Bridge on September 1, 2012. Approvals by the Fire Chief, Police Chief and DPW Director or their designees must be on file by August 28, 2012 in the City Clerk's office including day of event contact information. The Gloucester Fund is also required to obtain any necessary approvals from the Licensing Board, the Board of Health and the Licensing Commission. It is the sole responsibility of the Gloucester Fund to ensure that all required documentation and insurance is timely filed with the appropriate City departments as indicated. Failure to comply with any conditions precedent may result in revocation of Council approval.**

A motion was made, seconded and voted unanimously to adjourn the meeting at 9:34 p.m.

Respectfully submitted,

Dana C. Jorgensson  
Clerk of Committees

**DOCUMENTS/ITEMS SUBMITTED AT MEETING:**

- Two photographs, one taken from the roof of the Atlantis Oceanfront Inn and one from their restaurant; large locus plans and aerial photographs displayed by Attorney J. Michael Faherty regarding the EHOD matter.