



CITY OF GLOUCESTER
PLANNING BOARD
MEETING MINUTES
Thursday May 20, 2010 at 7PM
CATA 1st Floor Conference Room, 3 POND ROAD
Rick Noonan, Chair

Members Present:

Rick Noonan, Chair
Mary Black, Vice Chair
Marvin Kushner
Shawn Henry
Karen Gallagher

Staff:

Gregg Cademartori, Planning Director
Pauline Doody, Scribe

I. BUSINESS

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

II. APPROVAL OF MINUTES

- A. Meeting of May 6, 2010 –continued to the June 3, 2010 meeting

III. PUBLIC COMMENT-

Attorney Michele Harrison request to speak during the public comment period regarding Silva Court. **Attorney Meredith Fine** objects to Michele Harrison speaking, that the application is not subject to a public hearing.

Mr. Noonan said he would allow limited comment, as it is allowed during public comment.

Richard Cutts, Linden Engineering Partners, LLC on behalf of the Nicastros'

Mr. Cutts stated that a letter was submitted to the board regarding his findings on Silva Court. Mr. Cutts made several points about the project;

- Size of Silva court is very narrow if compared to set standard, show as it exists now, is undersized and over the 500' maximum at 730' long.
- Utility improvements may have been approved by DPW, there has been no statement regarding paving or road.
- Doesn't believe that any plans have been submitted for work done and many things are not standard,
- The applicant has paved 11 Fair St, the easement is substandard at less than the 25' minimum, and it should be improved to meet requirements.

Attorney Michele Harrison: 63 Middle St, Gloucester Represent the Nicastro family

Ms Harrison reminded the board the qualification for an ANR. You must find evidence that it was way in existence. To please look to the present condition of the road and what the standards are now. I don't think the board has had any certification of the materials or stability of the road. It is being presented for the development of a paper road and an easement across a private parking lot. I believe there is insufficient evidence being presented to you.

IV. CONSENT AGENDA

A. Form A Applications

- Loicano Companies Inc. to divide two lots into three at 23 & 27 Silva Court (Assessors Map 51 Lots 28 & 29, respectively).

Mr. Cademartori stated that since the last meeting the application was filed and date stamped May 7, 2010, with the City Clerk's Office. The Board is also in receipt of an additional letter from the Engineering inspector commenting on the utility and roadway improvements.

Mr. Noonan stated that the board had a site visit, saw what has been done, and now we need input from the Board.

Mary Black had several questions for Attorney Fine to clarify different points of the project:

When you withdrew application last year, what did you see as the weakness in the application? I am trying to understand what has changed since that time?

Attorney Fine stated it was in terms of a hurdle we have to overcome, one thing that needed to be provided is sufficient evidence that the road was on the ground before 1960 which has been submitted. There was not a lot of information available. We worked hard to find people regarding the road back then. They did remember a passageway. It was not addressed in 2009.

Mary Black: Do you believe that the access was able to accommodate a vehicle?

Attorney Fine: As I read the law-- it does not have to be for a vehicle. There was something on the ground.

Mary Black what obligations do you need to present to the Board: to satisfy the Board that proper improvements were made?

Attorney Fine: Once you reach a certain threshold, there are requirements. The standards do not apply to this road.

Mary Black: You want the Board to accept going from a gravel passageway to a paved road?

Attorney Fine; This is a private road, that is the law, he has a right to pave it and there is no obligation to test it, etc.

Mary Black: The width of the private road--those are the boundaries at 20', but if it was only 8' do the Board's standards still not apply? When you withdrew in 2009, did you think it might have been prudent to disclose what was planned for the road? I am not implying that you are hiding anything.

Attorney Fine: I have had many conversations with Gregg Cademartori and everyone knew what we were doing.

Mary Black Could you have presented the plan to us before building? Why didn't you?

Attorney Fine: I believe the intention was to embark to answer all of the questions that the Board asked. So before we came back we wanted to answer all of the questions.

Mary Black: You could have come to us before? Correct?

Attorney Fine: There was nothing to ask about until the third lot.

Mary Black: Was it your intention when you built that you may want to add a third building?

Attorney Fine: The idea of a third lot never went away. This was all happening in the beginning of 2009. There was a lot of chaos in the real estate world. Our thought was let's just do the doable for now and then see what happens. Things evolved and the market evolved.

Mary Black: For clarification the main access is it thru the Fair St side or Silva Court side?

Attorney Fine: The city made us do the Fair St side. All the addresses are on Silva Ct

Mary Black: Will all of those lots have deeded access thru Fair St? What is the impediment for visitors?

Attorney Fine: There would be two different visitors. One type are visitors to visit family/friends who live there and another would use it as a shortcut, there are speed bumps. I don't know who would actually use it as a shortcut.

Shawn Henry stated that he is completely libertarian about property use and if had gone though the ANR use before this, I would have voted for it. But once you withdrew and started down another path, you could have come forward with proper plans and I would have voted for it. But because you chose to build the two dwellings, you can't come back to us saying the improvement on the road is sufficient, it still has to come in for review. If you did come in it would have been reviewed. It was very clear that you were planning on 6 units. My problem with this has been this process. I don't think, as Board, city, community, should allow the process to be circumvented like this. The overriding concern is that we have adequate oversight for the better well being of the community. This is not a 2-family on a 2-family lot. It is now a subdivision.

Karen Gallagher: I was not part of last Planning Board and am not biased to the process. But we come back to a fundamental piece—it must have had adequate access. I have not been shown that there was meaningful access prior to 1960. It is a crucial piece.

Marvin Kushner: I don't think this is what an ANR covers. These issues presented would be fit for a subdivision. This is not an ANR.

Attorney Fine responded that this may not be the most ideal law and we sincerely believe that it meets an ANR approval. Meaningful access is a gray concept. It is a live controversy. What does it mean? When you look at case law, it doesn't have to be ideal, it has to be more than paper. That is what is required and what the law shows. On the issue of intent: we are trying to do things the right way. Mr. Loiacano did what the city told him to do. He wants to be proud of the work and thought he was doing the right thing.

Shawn Henry: I think you did the right thing for what you did, but if the ultimate plan was to build 6 units then there was a different course you could have taken.

Mr. Loicano stated that he understands what the Board is saying. During the process, there is a sit down with city officials and costs get added to project. I thought it was not feasible to do 2 single families so I decided to build duplexes. Then I was told that I needed a different sewer. At this point, I am not going to make money on these homes for the money I put in. That is why I wanted to develop the third lot. I did not skirt the process. I did everything I was told to do.

Mr. Cademartori stated that no road improvement plan was filed. The subdivision and road improvement process is in place to be predictable. No one has looked at this proposal as a whole. There is a waiver process in place to considered site specific issues. It is unfortunate that utility plans changed at a cost, these are all things that would have been contemplated in a subdivision process.

Shawn Henry stated that he did not mean to imply that you are doing anything wrong or inappropriate. It comes down to the process.

Mr. Noonan stated that his concern lies in the 1960 date and the previous Board's decision that this was a paper road. This board doesn't feel there is meaningful access. The missing component is an engineering plan. At this point, choices were made and executed and has put us in this position. The work that has been done is terrific, but we are missing a major component

Attorney Fine thanked Board for time they have put into this issue. The regulations say: you prove if the road existed by deed, maps, affidavits and we have provided this to you. There has been pavement there before and we have shown every way we can to meet regulations. In terms of the road, it qualifies for an ANR and we didn't do things that don't apply to us.

Karen Gallagher: I have no problem with what you did. You should be able to develop your land, but it is not enough for me. The affidavits do not have a lot of weight.

Motion: To deny the ANR application for Loicano Companies Inc. to divide two lots into three at 23 & 27 Silva Court (Assessors Map 51 Lots 28 & 29

1st: Karen Gallagher

2nd: Shawn Henry

Vote: All approved 5-0

B. Site Plan Reviews

- Cape Ann Brewing Co. to establish brewery and pub at 9-11 Rogers Street (Assessor's Map 7 Lot 15).

Presenter: Jeremy Goldberg

Mr. Goldberg provided the Board plans for Cape Ann Brewing move to 9-11 Roger St. They have received approval from the Conservation Commission. The DPA Chapter 91 common period ends tomorrow. Showing the plans to the Board he explained the construction of a side building to house tanks, chiller and a boiler, outdoor seating deck to go up to the public dock, the lighting and parking plan.

Mr. Cademartori stated that: this is a first submission; we also have the ability to waive standards for minor projects, and outlined the elements of exterior construction and improvements. He asked if parking would be concentrated on the westerly side of the existing building?

Mr. Goldberg stated yes, most of the employee parking will be on the westerly side.

Mr. Cademartori read a memo given to Board, went through the site plan review guidelines point by point, and may one recommended condition that plan be amended to show the required parking for the brewery use as determined by the building inspector, and that it be concentrated on the westerly side and parking in the front of the building on the lot be discouraged..

Mr. Noonan asked about pallet storage and Mr. Goldberg referenced plan showing storage behind the loading dock.

Motion to approve the site plan as submitted at Cape Ann Brewing Co. to establish brewery and pub at 9-11 Rogers Street (Assessor's Map 7 Lot 15) with the condition:

- **Plan to be amended to designating required parking, to be located on westerly side of the existing building.**

1st:Karen Gallagher

2nd: Shawn Henry

Vote: All approved 5-0

C. Chapter 91 Recommendations

Waterways License Application submitted by Cape Ann Brewing Co. to establish brewery and pub at 9-11 Rogers Street (Assessor's Map 7 Lot 15).

Mr Cademartori read a memo to the Board for the Waterways License Application, which is available and on file available at 3 Pond Rd. He stated it is the first license application filed since the approval of the 2009 Harbor Plan and Board's site plan review ordinance enabling 50% supporting commercial use in the Designated Port Area.

Mr. Noonan stated that this is a good case for the additional 25% supporting use.

Motion: Mr. Noonan accepted a motion , to recommend the approval as read for the Waterways License Application submitted by Cape Ann Brewing Co. to establish brewery and pub at 9-11 Rogers Street (Assessor's Map 7 Lot 15).

1st:Shawn Henry

2nd: Marvin Kushner

Vote: All approved 5-0

V. 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 public hearing to consider the following petition to rezone one parcel of land:

Amend the Gloucester Zoning Map and corresponding zoning districts in the Zoning Ordinance by rezoning 12.95 acres in the Extensive Business (EB) district to 7.9 acres in the General Industrial (GI) district and approximately 5 acres in the R-20 (low/medium density residential) district, respectively, at 71 Concord Street (Assessors Map 234, Lot 38).

Mr. Cademartori updated the Board at 71 Concord St. He has had email correspondence with Demoulas' representative - Jim Ward. A meeting has not happened yet, and there will be ample notice with the City Council. As outlined and discussed at the last meeting, we want to make sure the petitioners are aware of the impacts of the zoning change.

There are certain conditions that have not been met. One of the remaining questions would be if they would agree and forgo any filing and just agree to change. The rezoning would provide more

options for the property for a period of time and this is a question for the City Council. Thus far the Board has heard from the petitioners, and Demoulas has not expressed any preference one way or another. There will be additional meeting with the Planning and Development Committee and the City Council including another public hearing. The act of the Planning Board is to make a recommendation to the City Council.

Mr. Henry stated that there is no overriding interest in rezoning the area at this point. The existing zoning provides options and controls.

Mr. Cademartori stated that the memorandum of agreement initiated the process, but the Board is charged under the zoning amendment process to make its recommendation independent of the agreement and based on its public hearing. There were certain conditions that they outlined that they wouldn't oppose. Mr. Cademartori reviewed once more the distinctions between the EB and GI Districts and the affect of the proposed change.

Ms. Black clarified that it seems the consensus of the Board to recommendation to the City Council to leave it as is.

Motion: Move to close the public hearing on the rezoning application filed for 71 Concord Street.

1st: Shawn Henry-- not to revert zoning-- maintain as is.

2nd: Marvin Kushner

Vote: All approved 5-0

Motion: To recommend to the Gloucester City Council to retain the Extensive Business Zoning District designation of 71 Concord Street (Assessors Map 234, Lot 38).

1st: Shawn Henry

2nd: Marvin Kushner

Vote: All approved 5-0

Motion to adjourn the meeting 9:00pm

1st: Karen Gallagher

2nd: Shawn Henry

NEXT MEETING

Next regular meeting of the Planning Board is Thursday June 3, 2010

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