

**Planning & Development Committee**

August 6, 2014 – 5:00 p.m.

**Kyrouz Auditorium – City Hall**

-Minutes-

**Present: Chair, Councilor Greg Verga; Vice Chair, Councilor Paul Lundberg; Councilor Steven LeBlanc****Absent: None.****Also Present: Councilor Cox; Councilor Theken; Gregg Cademartori****The meeting was called to order at 5:00 p.m. There was a quorum of the City Council upon the arrival of Councilor Theken at 5:10 p.m.****1. *Review of Conditions for Event Permit Certificate of Vote No. 2014-180 (Downtown Block Party) and Performance of Organizers during the First Block Party of July 20, 2014***

**Councilor Verga** explained that this was referred back to the Committee after an incident at the July 20, 2014 meeting and wished to review the conditions.

**Councilor Cox** asked about the scope of the permit and where is the line drawn in terms of what the Council signed off on saying that the organizers had control of Main Street or did not. She said she believed the original intent of the Downtown Block Parties was to be welcoming to everyone. If merchants could donate money and assist in paying for advertising, then they did.

**Councilor Verga** said in his review of the Council permit with 16 conditions he didn't see anything that allows the Block Party Committee or its members to limit or require any fees. He said the complaint received by the Council was valid, but that there was nothing that the Council voted on June 10 that allows the Block Party Committee whether they can or can't participate.

**Mark McDonough**, local restaurant owner, said he agreed with the Councilor that it is the Block Party's policy not to block any doors to businesses but is there to make an event to promote businesses on Main Street. He said there were members of their committee without his and the director of the event's knowledge or permission did indicate that they were going to put something in front of people's doors which they do not agree with.

**Councilor Cox** thanked the Committee for bringing the matter up for review and for clarification.

**Mr. McDonough** said that he looks forward to speaking with people on-on-one who may be upset with the Block Party Committee to clarify matters. **Councilor Verga** observed that was a better method to smooth things over and that this was heading in the right direction.

**Valerie Marcey**, director of the Gloucester Block Party said it has been her policy not to block doorways that she has staff that know the rules and will follow them.

**Councilor Verga** announced there would be no Committee action on this matter and considered the matter closed.

**This matter is closed.****The Committee recessed at 5:05 p.m. and reconvened at 5:10 p.m.****2. *SCP2014-009: Commercial Street #44, Map 7, Lot 17, GZO Sections 1.5.3(c), 1.8.3, 2.2.1, 2.3.4, and 5.18 re: Restaurant use (Cont'd from 07/16/14)***

**Attorney Adam Costa**, Blatman, Bobrowski & Mead, representing Cove Harbor, LLC, Mac S. Bell, President of Cod Realty, Inc., Manager of Cove Harbor LLC, expressed the following to the Committee:

**Mr. Costa** reviewed submittals of correspondence of July 2 and an update dated July 16 related to the Special Council Permit and the Chapter 91 license minor modification application to the Department of Environmental Protection (DEP) received by the Council (on file) on behalf of the applicant. He noted the plans on file for the site layout, an internal floor plan of the wharf building on the site which is a warehouse type use which is referred to as a "Mercato" to be proposed to be converted to accommodate a combination of fish processing facility with a market. He said that the Building Inspector, Bill Sanborn, indicated that any food service, be it minimal food service or a true restaurant with table service and wait staff, requires permitting as a restaurant under the city's zoning ordinance.

**Mr. Costa** acknowledged that also likely to be discussed at a future meeting of the Committee is whether a restaurant use is appropriate for a location such as this in the Marine/Industrial (M/I) district; whether it qualifies as

a water-dependent use and how it ties into the Chapter 91 minor modification process. He also acknowledged the presence of John Simpson, a consultant for the applicant who would speak to the DEP minor amendment application for the site's Chapter 91 license.

He reiterated the proposal is that this is not a traditional restaurant and said that: There are no tables, wait station or wait staff proposed. This is a true fish processing market with deep water access for direct delivery of seafood and a retail aspect to purchase fish along with accompaniments. Some pre-packaged/made to order food will also be available and that there may be a countertop with stools to accommodate patrons of the retail fish market who may wish to eat their purchases on site. In their discussions with the Building Inspector they were informed in reference to the stools and counter that is an indication of food service, and if there is food service it qualifies as a restaurant. Whether this is a true restaurant or not, the Building Inspector suggested that the applicant go through the permitting process as a restaurant use which was also communicated to the DEP.

He then reviewed the July 2 correspondence referencing GZO Sec. 1.8.3 he read the six criteria for a Special Council permit from the ordinance.

**Mr. Costa** then made reference to her letter dated July 16, 2014 addressed to Council President McGeary (on file) in which he updated the Council on the applicant's Chapter 91 minor modification process to which Mr. Simpson would speak, and then addressed two additional requirements, one in GZO Sec. 2.3 footnote 1, which says that in the M/I district that supporting designated port area uses as defined in the regulations shall not in the aggregate shall not occupy more than 50 percent of the ground level area on filled tidelands and uplands of a lot in the DPA and moves on to discuss those uses being subject to dimensional requirements. He observed that he believed his written explanation would be satisfactory to the Committee. He pointed out this is a sizable site and only a portion of it is being proposed for reuse for a Mercato use. He also pointed out there was a previous special permit issued to the applicant to construct a second building on the site which has yet to be constructed which is shown on the site plans submitted (on file). GZO Section 2.3 speaks to supporting designated port area (DPA) uses and the primary use is a not a supporting use but an appropriate use in the DPA. He also noted GZO Sec. 5.18 which provides that uses in the M/I zoning district require additional findings that address the water-dependency of the use with five additional factors and asked that the Committee refer to his letter.

**John Simpson**, 6 Piccadilly Road, South Dennis, MA, Waterways Information Services, said he is a former Chief of Waterways for the DEP, former Coastal Zone Inspector for Virginia Beach, former Port Director for New Bedford and a Waterways Commissioner in Dennis, MA. He pointed out the following: That under waterways regulations, 310 CMR 9.2.2.3 the statute and regulations it allow for minor modifications of existing licenses. The applicant submitted a letter to the DEP requesting a minor modification to the existing Chapter 91 license. The DEP had 30 days to respond to that request or the request would be automatically approved. The 30 days have passed. Discussions dating back to April with the DEP and in a meeting the previous day it was noted that the DEP appreciates the concept by the applicant but the approval letter did not come within the 30 days but pursuant to the regulations the minor modification application is approved.

**Gregg Cademartori**, Planning Director, said he spoke to Ben Lynch of the DEP this morning and that it is his belief the DEP will still issue a response to the application clarifying the DEP's position. He referred to the memo he submitted to the City Clerk which accompanied the Special Council Permit application (on file) providing additional information on the other sections of the zoning ordinance outlined by Attorney Costa as well as fleshing out further where the applicant is in the process for minor modification.

He noted there is some concern about where things are located on the property related to DEP's jurisdiction which should be a part of the DEP's response. He said the challenge for the Council at this time is that the city's regulations reference their jurisdictional standards as well as categories of uses that the DEP also identifies whether they are water-dependent or dimensional. It matters greatly, he said, how the DEP categorizes the minor modification to the Chapter 91 license as to the dimensional standards and allowances. He observed that typically one the things that becomes important is whether there are different types of jurisdiction the DEP has – existing flowed tidelands, filled tidelands (historic high water mark) which is the limit of the DEP jurisdiction. If something is proposed on piles it matters very much if it falls under a supporting use category or accessory use category or water dependent use that can otherwise be licensed on piles, he said. **Mr. Cademartori** said that the zoning ordinance mirrors those standards; and it would be helpful to see what the DEP's position is. He added that it would be something for the Council to consider in terms of local compliance to the city's zoning ordinance.

**Councilor Verga** commented it would be appropriate to wait for the official word from the DEP before the Council makes a decision on the Special Council Permit application. **Mr. Cademartori** suggested the DEP response would be forthcoming before any hearing deadlines.

**Mr. Costa** clarified there is no objection to the Committee awaiting a response from the DEP. He reiterated that under the DEP regulations that once the 30 days has passed, the DEP would be in a very difficult position to

attempt to deny the minor modification as the 30 days has passed. He said it is the applicant's hope to have the DEP response very soon. He said they are unable to ascertain whether the DEP response includes conditions or additional information and have been pursuing a response. He voiced that the applicant has no objection to this Council process being held open until the DEP response is received and made part of the Special Council Permit file to assure all concerned that the project can move forward for approval of a Special Council Permit.

At the request of **Councilor Verga, Mr. Costa** addressed the requirement in the zoning ordinance for a site plan review for new uses or changes in uses in the M/I zoning district. The applicant is aware of that requirement, he noted, but they have not submitted that application to the Planning Board yet. He pointed out that the applicant wanted to be sure that the restaurant use could be pursued successfully through a Special Council Permit before pursuing the application for a site plan review. He said they acknowledge that requirement and would work with the applicant to update the site plans in order to meet city requirements.

**Councilor Verga** said that this matter will be continued to the next regularly scheduled meeting to take up Councilor questions and other matters related to this Special Council Permit application and await the DEP clarification. He also announced the intent of the Committee to hold a Site Visit and determined that it would be held at 8:00 a.m. on Tuesday, August 12 at 44 Commercial Street.

**A Site Visit will take place on Tuesday, August 12 at 8:00 a.m. at 44 Commercial Street by the Planning & Development Committee. This matter is continued to August 20, 2014.**

**3. Cape Ann Community Cinema request for Open Air Parking Lot pursuant to GCO Sec. 22-153 (Cont'd from 07/16/14)**

**Dana Jorgensson**, Clerk of Committees informed the Committee at **Councilor Verga's** request as follows: that the applicant for the Open Air Parking Lot permit was informed that the city's Building Inspector had said a Special Council Permit was needed as well and that the application had yet to be filed. The Cape Ann Community Cinema had indicated they would want to pursue this matter. The City Clerk had pointed out in an email (on file) that this matter and that of a Special Council Permit may be made moot by the Special Council Permit put forward for that same property by Cove Harbor, LLC, Mac S. Bell, President of Cod Realty, Inc., Manager of Cove Harbor LLC for a restaurant use.

**Councilor Verga** determined that this matter will be removed from the Committee's agenda until a Special Council Permit is filed in conjunction with the request for an Open Air Parking Lot permit or until a communication to the contrary is received by the Council.

**A motion was made, seconded and voted unanimously to adjourn the meeting at 5:30 p.m.**

**Respectfully submitted,**

**Dana C. Jorgensson**  
Clerk of Committees

**DOCUMENTS/ITEMS SUBMITTED AT MEETING: None.**