

CITY OF GLOUCESTER  
PLANNING BOARD  
MEETING MINUTES  
November 19, 2015

7:00 P.M.

Kyrouz Auditorium  
9 Dale Ave, Gloucester  
Richard Noonan, Chair

**Members Present: Rick Noonan, Chair, Mary Black, Vice Chair, Doug Cook, Joe Orlando, Henry McCarl, Ken Hecht, Shawn Henry –Absent**  
**Staff: Gregg Cademartori, Planning Director, Matt Coogan, Senior Planner**

**Mr. Noonan opened the meeting at 7:02 p.m.**

**I. BUSINESS**

Motion to approve the minutes for November 5, 2015 was made by Mr. McCarl, seconded by Mr. Hecht and unanimously approved.

A. Public Comment- None  
Ms. Black recused herself.

**II. CONSENT AGENDA**

Planning Board to consider the *Approval Not Required* Plan submitted by James Greenwood & Stanwood Point Development, LLC to reduce a private right of way width and reconfigure lots at **3 and 1 Stanwood Point** (Assessors Map 230, Lots 51 and 55).

Presenter: Attorney Meredith Fine- 85 Eastern Avenue  
Attorney Fine stated that the plan has been previously approved. The Stanwood property has been transferred and the name and the date is the only change.

**Motion that the** subdivision control law does not apply to the ANR plan submitted by James Greenwood & Stanwood Point Development, LLC to reduce a private right of way width and reconfigure lots at 3 and 1 Stanwood Point (Assessors Map 230, Lots 51 and 55) was made by Mr. Orlando, seconded by Mr. Cook and unanimously approved.

Planning Board to consider the *Approval Not Required* Plan submitted by Chris McCarthy to create an additional lot at **166 Bray Street** (Assessors Map 247, Lot 6). *Continued from November, 5 2015 meeting.*

Presenter: Chris McCarthy- 6 Point Road

A site visit was held with the board and also with the fire chief. A point of discussion was to restrict the two lots through conservation restrictions may be the route to take.

Mr. Coogan reported that the Fire Chief supplied a memo to the planning board regarding access and water supply. Another issue is the potential for future development on the two parcels. Staff suggested to have noted on the plan that the lots could not be divided further in the future. Mr. Coogan acknowledged that Mr. McCarthy would be looking into the conservation restriction path and the only

concern by staff would be to have that language written on the plan based that it was approved on that contingency.

Mr. McCarthy stated that he has got an appraisal of the land first to get value of the lots. It then has to meet the criteria. He prefers not to put to add language on the plan because it will decrease the value for restricting purposes.

Motion was made that the Subdivision Control Law does not apply to the ANR Plan submitted by Chris McCarthy to create an additional lot at 166 Bray Street (Assessors Map 247, Lot 6) by Mr. Hecht, seconded by Mr. McCarl, and unanimously approved.

Ms. Black recused herself

### III. **CONTINUED PUBLIC HEARINGS**

In accordance with the provisions of MGL Chapter 40A, Section 5, and the Gloucester Zoning Ordinance, Section 1.11, the Gloucester Planning Board to consider the following petition to amend to the Zoning Ordinance as follows:

- A. Delete Section **5.5 Lowland Requirements** and Add newly titled Section **5.5 Floodplain Requirments** which will add special permitting requirements in Sections 5.5.1, 5.5.2, and 5.5.3 for principal structures for residential use in special flood hazard areas.

Councilor McGeary stated that the intent is to require that new construction in a FEMA defined flood plan or velocity zone conform to a standard known as “no adverse impact”. It allows things to be built but only through a special city council permit. The council in weighing an application to build can take into account the matter of public safety. In the past there was a Lowland Permit that was required, but it was dispensed with thinking that it was the oversight of DEP and Conservation. This proposal will repair the damage done by that decision. The most relevant case in law is Gold vs. Chatham. Councilor McGeary read from the court decision. He stated that there are two significant differences in regards to Councilor Ciolino’s overlay that was proposed last week. The overlay only applies to the back shore that forbids any and all development. There may be a way to bridge the gap between the two proposals. The proposal would apply to all land within the city limits outside the inner harbor that falls within the FEMA defined flood plain in the V & A zones, and will require a special city council permit to be issued before any residential construction could begin in a flood plain except the harbor. The reason for the special city council permit process is that it takes into account a number of factors which include traffic and safety issues. That is the key holding in the Chatham case that public safety was a legitimate interest. Construction of a residence in a velocity zone is clearly a threat to public safety. There may be an occasions and locations within a FEMA defined flood zone where a residence could be built. The special permit can allow this to happen. Councilor McGeary suggested language changes to the board.

5.5.2 would prohibit construction within a velocity zone but then go on within an AAEEHO allow for the special council permit process.

5.5.2 The last sentence should be changed; to health and safety of occupants, residents or public safety first responders.

Mr. McCarl asked; the question of absolute prohibition could get into public taking and this doesn’t take prohibition, but limits them. There is more flexibility.

Mr. McGeary read from the court finding in Chatham stating “decrease the value to the property is different than taking it.”

Mr. Orlando referred to the Chatham case and asked if the regulation of statute was on the books prior to the to the application to build or as in this case an attempt to stop someone from building.

Mr. McGeary stated that it was on the books before the application and permit issued.

Mr. Orlando stated that we have to be careful as a community in transferring rights of its citizens and individual property owners to the city.

Mr. McGeary quoted from the supreme judicial court. The ordinance is not intended to cover a spot zoning but the entire shore line and all of the VE and V1 defined by FEMA.

Mr. Ciolino stated that when a law on the books the court looks at it very differently. It may be better to concentrate on Councilor Ciolino's proposal before considering Councilor McGeary proposal.

Mr. Cadematori stated that the proposed ordinance is a reenactment of an ordinance that had been in place. The issue of prohibition is new. There are three communities in the Commonwealth that prohibits construction in these areas. The V zone lots in this community that are not currently constructed on may be the ones that seem part of the ocean. Of the 13000 lots, 480 are in the V zone and they don't have a structure on them now; 40 of the lots are on the back shore. It is not a widespread area of the community.

Mr. Hecht asked to see detailed maps to understand the lot areas.

The board reviewed flood plain zone maps.

Mr. Cadematori stated that sometimes it takes something to be presented to start thinking that maybe modifications need to be made. One proposal has an outright restriction and one has a special permitted process. As drafted, the lowland requirement has all of the same aspects the overlay has proposed just minus the prohibition and V zones. It is a limited area of the community that have lots of this character.

Mr. Hecht asked why the A zone was included in this proposal and not just the V zones.

Councilor McGeary stated the special council permit applies to both the V zone and the A zones which are flooding zones. The A zone is going to grow and the city needs to take an interest in the flood plain where the city may have to send in firefighters in boats because there is no other way to access the property. It has to be taken into account. To be able to assess an application is to take into consideration public health and safety. The ban could only be in the V zone and special permit for the A zone.

Councilor At Large- Joe Ciolino, 28 High Popples Road

Councilor Ciolino stated that the council gave up any of its rights. At the time it made sense to remove the requirement of a lowlands permit. We would like to have it back and urge the board to recommend Councilor McGeary's proposal. We are talking about public safety and need to stop this so there is no need to put anyone at risk.

Public Comment:

Mark Poulin 84 High Popples Road

Mr. Poulin stated support and showed slides of back shore after storms. He cited safety issues during storms and the damages they have caused over the years.

Louise DeRusso 189 Atlantic road

Ms. DeRusso read a letter to board regarding the tax value and tax abatement questions. She stated that the property values on Atlantic Road will plummet if the project moves forward.

Robert Misselli, 123 Atlantic Road

Mr. Misselli stated that an individual rights are important but the majority rules. He suggested that if more time is needed to review these proposals, that an injunction be put in place by the city solicitor until things are clear.

Paul McGeary stated that council will seek an opinion from the solicitor.

Opposed Public Comment:

Attorney Meredith Fine:

Attorney Fine stated that if Mr. Ciolino's proposal is too narrow than Mr. McGeary's is too broad.

She read from the proposal; No building permit for principal building for residential use shall be issued for construction in flood zones without a special permit from the City Council; if a property has a 1% chance of flooding they would have to go to City Council for a special permit. What kind of permit is it? Attorney Fine also read; only if it is idemostrated by the applicant that the proposed developmeent will pose no hazard to the health and safety of the occupants. There is no definition of proposed development. How can anybody judge if there is 0 hazard to health and safety of the occupants.

She questioned the language of “ the following use will be presumed to be hazardous- any structure requiring pilings or piers in the highest risk flood zone. What is this based on? The Coastal Flooding study has encouraged the city to have resdients put their homes on pilings and piers. Attorney Fine also read from the intial repeal brought forward by Councilor Jackie Hardy on the lowlands requirement ( August 2013 City Council Minutes). In 2013 everyone agreed that requiring a permit in these circumstances was duplicative, expensive, and onerous. There are troubling procedural issues; City Council is required to take an affirmative vote to move a proposed zoning amendment forward and can't put a Councilor order on the Consent Agenda, also, the city is required to give notice to individual property owners if there is a zoning proposal that affects their property. It was not done with the back shore proposal and City Council did not waive the requirement of notice.No research has been done or evidence has been presented that either of these proposals is needed or that the city council review would add any benefit to the existing process.

Attorney Fine read the Wetlands Ordinance “ the purpose of wetland ordince is to provide that land in the City of Gloucester subject to seasonal or periodic flooding shall not be used in such a manner as to endanger the health or safety of the occupants or public generally, to burden the public with costs resulting in from individual choices of land use.

If the reason that the proposal has been brought forward is saftey, the Conservation Commision covers that. If this plan has raised the city consciouness- then they should do their due diligence.

Michael Faherty- 83 Mount Pleasant Ave

Mr. Faherty stated he is someone who would suffer under this proposal. This ordinance is a knee jerk reaction under the heat of an election and was put forth in circumstances that do not meet requirements of the state statute on how a zoning change is initiated. These proposals were initiated by single members of City Council with no vote taken or discussion of Section 5 of the zoning ordinance and that is treading on dangerous ground on the way it was initiated. If it was properly intiated and vetted these problems would not be occuring. Amendments are already being made from the floor. The language is very broad in terms of work being done.

There are a number of properties that are affected from the new FEMA regulations.there is a number of criteria that has to be applied before you can get to needing a permit, however the proposal doesn't say that. The Conservation Commision is not limited and one of the interests Wetlands Protection Act is flood prevention. Mr. Faherty spoke of the numerous applications and fees associated with this type of project and that Mr. McGeary is adding another application when it is not necessary. Regrding public saftey; if there is an event, there will be no response. First resonders will not be needed. If people live near the water, they have an appreciation for its effect and mother nature wins. Send back the proposal.

Joseph Delarusso 189 Atlantic Road

Mr. Delarusso stated that no one has built on that side of their property because it is dangerous.

In our deeds the lots were deemed as unbuildable. Why is it buildable now? This shouldn't even be considered. It is a dangerous undertaking.

Mr. McGeary stated that the proposal was introduced by a single councilor in both cases, however, the council as a body referred it out to Planning & Development and to the board andwas done through a consent agenda. He stated he was open to changes in language for his proposal. This is draft for the board to review.

In response to Attorney Fine in the minutes read from August 2013- saftey was not mentioned and that is what this proposal is trying to correct by bringing in the new bylaw.

Special permits has the ability to attach conditions and as a city we have to think forward. In response to Mr. Faherty's statement that fire fighters will not be needed to help people who find themselves in trouble is not accurate. Our city firefighters have already had experience with those types of situations.

Attorney Fine ask the board to look at RFP that the conservation agent has prepared. The consultant evaluates public safety. The Conservation Commission is dealing with all of these issues. She stated that wording suggestions are being made on the fly which shows these proposals are not ready to move forward.

Joe Ciolino

Mr. Ciolino clarified a statement that was made regarding a vote taken in 2013; which was for ramps, pilings, floats and nothing like what is being currently presented.

Mr. Cademartori explained Velocity and A Zones to the board.

The board discussed how V zones and A zones differentiate and may have to be looked at differently. They also discussed how the proposals were presented to the board and if the overlay with its prohibition would be considered a taking.

Mr. Cademartori stated that if the focus is on refining the types of projects or permitting paths in A zones. That can be accomplished in Councilor McGeary's proposal. If it is to align V zone prohibition within Councilor McGeary's proposal that can also be done. If the board feels that the area beyond Councilor Ciolino's proposal needs further investigation, then Councilor McGeary's proposal should be continued and the board can make a recommendation on Councilor Ciolino's proposal.

Councilor McGeary stated that in the interest of moving forward he is willing to back off the A zone special council permit requirement. The V zone is susceptible to more zoning control regulation.

Mr. Orlando stated the City Council should look at Councilor Ciolino's proposal again come back with a plan that is not a pure prohibition but something that will need a special permit.

Mr. Cademartori stated that if the board is in agreement on the back shore proposal regarding the velocity zone, you will find the same issues and concerns wherever there is a V zone in the community. There could be simple revisions in Councilor McGeary's proposal that strike the A zone consideration. It could encompass more area in the community for the velocity zone and has the structure of the permitting process. If the board wants to introduce a special permit process for the V zone construction, a revised draft can be done.

Motion to continue the public hearing; Delete Section 5.5 Lowland Requirements and Add newly titled Section 5.5 Floodplain Requirements which will add special permitting requirements in Sections 5.5.1, 5.5.2, and 5.5.3 for principal structures for residential use in special flood hazard areas for further clarification from Councilor Ciolino to further define V zone versus A zone to December 3, 2015 was made by Mr. Hecht, seconded by Mr. McCarl and unanimously approved.

- B. Add a New Section titled **Atlantic Road Overlay District** on the water side of Atlantic Road from the intersection of Grapevine Road and Atlantic Road to the intersection of Atlantic Road and Bass Rocks Road. The purpose of the overlay would be to protect the coastal shoreline known as Gloucester's Back Shore from any development. The overlay would prohibit any residential or commercial construction insuring protection of this valuable environmental resource.

Mr. Cademartori reported that since the last meeting Mr. Cook and Mr. Orlando are eligible to vote as they listened to the recording from the November 5, 2015 meeting.

On November 3, 2015 a memo was provided to the Planning Board with revised language regarding the Atlantic Road Overlay District. Mr. Cademartori read the memo to the board.

Mr. Hecht stated that he would like to discuss the proposal that will make it a special permit granted by City Council for new construction in that zone.

Councilor Ciolino stated the intent of the overlay with special city council permit would be amenable.

**Public Comment:**

Attorney Meredith Fine asked if there was going to be revised language or is there going to be a recommendation tonight?

Mr. Noonan stated that there is going to be an amendment to the November 3 recommendation from staff. A recommendation to City Council will be drafted. If the board members find a consensus in a modification then a recommendation will sent up to the City Council

Attorney Fine stated that the board cannot have a public hearing about language that has been advertised, and then change the language without a new public hearing. It seems that the entire language is being changed and the nature of the proposal is being changed.

Mr. Noonan stated that the intention is the same and the language will be clearer.

Motion to close the public hearing; add a New Section titled Atlantic Road Overlay District on the water side of Atlantic Road from the intersection of Grapevine Road and Atlantic Road to the intersection of Atlantic Road and Bass Rocks Road. The purpose of the overlay would be to protect the coastal shoreline known as Gloucester's Back Shore from any development. The overlay would prohibit any residential or commercial construction insuring protection of this valuable environmental resource was made by Mr. McCarl, seconded by Mr. Orlando and unanimously approved.

Motion to approve the recommendation to City Council; (November 3, 2015 memo) The proposed section 5 283 uses would read" new residential and commercial construction may only be permitted upon the issuance of a special permit issued by the City Council. Also to include a cross reference to their special permitting process and filing requirements in Section 1 was made by Mr. Hecht, seconded by Mr. Cook and unanimously approved.

**IV. ADJOURNMENT**

Motion to adjourn was made by Mr. McCarl, seconded by Mr. Hecht and unanimously approved.

**V. NEXT MEETING**

***Next regular meeting of the Planning Board December 3, 2015***

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