

**Planning & Development Committee**  
January 6, 2016 – 5:30 p.m.  
**1<sup>st</sup> Fl. Council Committee Room – City Hall**  
-Minutes-

**Present:** Chair, Councilor Paul Lundberg; Vice Chair, Councilor Melissa Cox; Councilor Valerie Gilman  
**Absent:** None.

**Also Present:** Councilor Ciolino; Councilor LeBlanc (entered the meeting at 5:36 p.m.); Linda T. Lowe, Jim Destino; Chip Payson

The meeting was called to order at 5:30 p.m. There was a quorum of the City Council upon the arrival of Councilor LeBlanc who left the meeting at 6:00 p.m. and that there was no longer a quorum. Matters were taken out of order

**1. SCP2015-008: Western Avenue #53, Map 3, Lot 47, GZO Sec. 2.3.1.7 multi-family, Sec. 3.2.2 reduction in minimum lot area and open space per dwelling unit**

**Attorney Joel Favazza**, Seaside Legal Solutions, representing Donald A. Roby and Paul A. Jensen (owners/applicants) attorney for the permitting process only, explained that the applicants are seeking to convert the property at 53 Western Avenue back to a four-family residential dwelling pursuant to GZO Sections 2.3.1.7 multi-family, and 3.2.2 (a) reduction in minimum lot area and open space per dwelling unit. He pointed out that this matter has already been before the Zoning Board of Appeals (ZBA) for the necessary dimensional relief (ZBA decision and information from the city's Building Dept. on file). There are no proposed additions to or expansion of the existing building outside of its current footprint. The interior of the building will be completely renovated into four separate condominium units, each with two bedrooms and a view of the Boulevard and Gloucester Harbor. The required four parking spaces (although it was noted that it is likely there will be room for more than four vehicles) will be located at the rear of the property where a garage currently stands. Plans are to demolish the garage to expand parking to accommodate the four vehicles.

**Mr. Favazza** said that currently the owners use the property as a combination of two separate apartments and an inn with three rental suites. He pointed out that city records show that the property was used as a four-family as far back as 1982 and until as recently as 2010. In 2015 his clients entered into an agreement to purchase the building and proposed an 8-unit condominium building with parking underneath.

He noted that he worked with Councilor LeBlanc, Ward 3 Councilor who held a neighborhood meeting where neighbors expressed their opinion that they wanted to ensure that this project will fit into with the neighborhood. He noted that the neighbors said they didn't mind the existing building. He said that when word got out about the possible demolition of the building that the Historical Commission expressed their concern that the front portion of the building, or at least the building's façade facing Western Avenue should be preserved. He said that the idea is to preserve a historic building while still maintaining a sufficient economic value to warrant the investment into the property. He that the neighbors said they didn't mind the existing building.

**Mr. Favazza** then reviewed the six criteria for a Special Council Permit pursuant to GZO Sec. 1.8.3 as:

- Social, economic or community need served: The proposed conversion provides downtown residences while maintaining the historical character of the existing building and provides quality housing in the downtown;
- Traffic Flow & Safety: The proposed use is less intense than currently exists on the property and will provide more parking than currently is available;
- Adequacy of utilities & other public services: The proposed use is less intense than currently exists and the utilities on site are adequate to handle the use;
- Neighborhood character & social structure: The building abuts a six-unit condominium and other two- and three-family condominium buildings and will fit into the R-5 zoning district, and the building has been in place for centuries;
- Qualities of the natural environment: There will be no negative impacts to the qualities of the natural environment. The paved surfaces will remain;
- Potential fiscal impact: Four units are required in order to make the purchase and renovation of the property financially viable.

**Mr. Favazza** noted that the lot area decrease is in keeping with the immediate area and that there isn't a lot of open space on Babson Court and Western Avenue. He said it is a good project and good collaboration with the neighbors.

**Councilor LeBlanc** expressed his endorsement the project.

**COMMITTEE RECOMMENDATION: On a motion by Councilor Gilman, seconded by Councilor Cox, the Planning & Development Committee voted 3 in favor, 0 opposed, to recommend that the City Council GRANT a Special Council Permit (SCP2015-008) to allow for an existing building to be converted to four residential units at Western Avenue #53, Gloucester Massachusetts, Map 3, Lot 47, zoned R-5, pursuant to Section 2.3.1.7 reduction in minimum lot area per dwelling unit from 2,500 square feet to 1,900 square feet for a total of 600 square feet in relief; and Sec. 3.2.2., decrease in minimum open space per dwelling unit from 1,250 square feet to allow for no open space per dwelling unit. The application under GZO Sec. 1.8.3 is deemed in harmony with the intent and purpose of the zoning ordinance governing Special Council Permits.**

This matter will be advertised for public hearing.

**2. SCP2015-009: Bass Avenue #53, Map 55, Lot 13, GZO Sec. 2.3.1.7 multi-family, Sec. 3.2.2 reduction in minimum lot area and open space per dwelling unit**

**Mr. Favazza**, Seaside Legal Solutions, representing 53 Bass Avenue, LLC (owner/applicant) seek to allow the existing five-unit dwelling which have existed on site since on or about 1981 to remain and be made legal pursuant to Sections 2.3.1.7 and 3.2.2 of the Zoning Ordinance. He noted that the Zoning Board of Appeals decision dated December 10, 2015 was filed with the City Clerk's office on December 15, 2015 (on file). In 1977 relief was received to add a fourth unit to the building and sometime between then and 1981 a fifth unit without permits. When doing the due diligence when going to closing he discovered the discrepancy. He then explained the following:

There are no proposed additions to or expansion of the existing building. The existing parking area is going to be redesigned so as to allow for eight full-size, non-tandem parking spaces (see ZBA decision on file) clearly marked. Historically because these are small affordable units most of the tenants don't have cars and use public transportation. It was noted that the previous owner had observed there were never more than a few tenants at a time that owned cars and parked them on the property. With the new configuration no cars will have to back out onto Bass Avenue.

The reason for the request before the Council is that the property is only legally permitted for four residential units pursuant to ZBA and City Council relief granted in the late 1970's (see application on file). The building by being allowed to remain a five-family, one of the one-bedroom units will be restricted as an "affordable" rental unit (see ZBA decision dated December 10, 2015) which counts towards the affordable housing stock for the city. It was reiterated there is no addition of a unit-- that the only thing being done is reconfiguring the parking lot.

**Mr. Favazza** then reviewed the six criteria for a Special Council Permit pursuant to GZO Sec. 1.8.3 as:

- Social, economic or community need served: By allowing the existing fifth unit to remain provides the city with an affordably-priced single bedroom housing unit that would otherwise be eliminated if the permit should be denied and will add a legally affordable housing unit;
- Traffic Flow & Safety: The ZBA has required a major overhaul of the existing parking lot which will greatly improve traffic flow and on site and to the neighborhood in general;
- Adequacy of utilities & other public services: The fifth unit has existed for at least 34 years without issue; the utilities and available public services are sufficient;
- Neighborhood character & social structure: The building has existed in its current five-unit configuration for at least 34 years and does not conflict with the neighborhood. This property is a double lot and there will remain a good-sized backyard for a densely packed R-10 area;
- Qualities of the natural environment: There will be no negative impacts to the qualities of the natural environment and although a reduction of open space brush and overgrowth will be removed from the property;
- Potential fiscal impact: The rent collected from five units allows the owner to invest in the upkeep and maintenance of the property.

As to the lot area per dwelling unit, there is no change.

**Councilor Cox** asked which unit would be deemed affordable. **Mr. Favazza** indicated it would be either the units on the plan showing a designation of “1R or 1L.” **Councilor Cox** pointed out that one of the two submitted parking plans showed a shed on the property. **Mr. Favazza** confirmed the shed was being removed to make way for the improved parking area to comply with the ZBA decision.

**Councilor Lundberg** said he viewed the parking area today and noted the improvements, with **Councilor Gilman** indicated she also had driven by the property to view it.

City Clerk, **Linda T. Lowe** suggested the addition of language for the recommendation of a Special Council Permit for 53 Bass Avenue to include wording confirming the existence of an affordable unit.

**COMMITTEE RECOMMENDATION: On a motion by Councilor Cox, seconded by Councilor Gilman, the Planning & Development Committee voted 3 in favor, 0 opposed, to recommend that the City Council GRANT a Special Council Permit (SCP2015-009) to allow for an existing building to be legally converted to five residential units at Bass Avenue #53, Gloucester Massachusetts, Map 55, Lot 13, zoned R-10, pursuant to Section 2.3.1.7 reduction in minimum lot area per dwelling unit from 5,000 square feet to 1,463 square feet for a total of 3,537 square feet in relief; and Sec. 3.2.2., decrease in minimum open space per dwelling unit from 3,500 square feet to 400 square feet space per dwelling unit for a total of 3,100 square feet in relief. One unit shall remain an affordable unit pursuant to the Zoning Board of Appeals decision. The application under GZO Sec. 1.8.3 is deemed in harmony with the intent and purpose of the zoning ordinance governing Special Council Permits.**

This matter will be advertised for public hearing.

**3. CC2015-046 (McGeary) Amend GCO Sections 21-84 (c) (g) and Section 21-85 (b)**

**Mr. Destino** speaking to the proposed amendments to GCO Sections 21-84 (c) (g) and Section 21-85 (b), said it is the policy of the Mayor’s Office to appropriate a certain amount of money each year to allow residents who want to get their private road paved pay a 100 percent betterment. He recalled briefly the recent experience of the Council of the Dec. 15 public hearings on a series of private roadway paving betterment projects and the ordinance issues surrounding that effort. He suggested that former Councilor McGeary was trying to streamline the Council process. He said the Administration has reservations on the proposed streamlining. He highlighted two areas of objection to the Administration of the proposed amendments, one of which was placing the onus of the cost of the engineering piece onto the city which he suggested may not be an appropriate use of taxpayers’ funds to engineer private roads. The second concern is abutters being able to use a proxy voter instead of being at a meeting to make their vote. He said it is the recommendation of the Administration to look at the ordinance in its totality, and that they can’t support the recommended ordinance amendments as presented.

**Councilor Lundberg** said that the process clearly needs to be improved and that the ordinance needs to be looked at in a holistic manner in order to determine what areas of it need amending. **Mr. Destino** suggested that if the Committee would like to submit a Council Order to have the Administration and the Committee undertakes a review the entire section of the Code, they would be amenable to that.

**Councilor Cox** suggested that this matter being a Code of Ordinance concern would be the purview of the Ordinances & Administration Committee, particularly if the Administration wants to put forward their own amendments to O&A. **Councilor Lundberg** said that as an on-going management goal of the city, the streamlining of the ordinance should be done by the city’s professionals and brought to the Standing Committee(s), and clarify who is responsible for what. **Mr. Destino** said that the key is that a private road paving betterment project has to be packaged completely by the ward Councilor and given to the city.

**Councilor Gilman** said she would not vote in favor of the amendments to GCO Sec. 21-84 and 21-85 as she would rather see a pause in moving forward on the amendments so that the appropriate departments can review the process in its entirety.

**COMMITTEE RECOMMENDATION: On a motion by Councilor Cox, seconded by Councilor Gilman, the Planning & Development Committee voted 0 in favor, 3 opposed, to recommend that the City Council Amend the Code of Ordinances Section 21-84 subsection (c) by DELETING the last sentence, “The engineer’s preliminary cost estimate is for guidance of the petitioners only and does not replace the full set of engineering plans required in Sec. 21-85 (g) below.”**

**COMMITTEE RECOMMENDATION: On a motion by Councilor Gilman, seconded by Councilor Cox, the Planning & Development Committee voted 0 in favor, 3 opposed, to recommend that the City Council Amend the Code of Ordinances Section 21-84 subsection (g) as follows:**

**By DELETING the statement within the first sentence, "...including a set of engineering plans, prepared and signed by a registered engineer in the field."**

**And ADDING a sentence at the end of subsection (g) as follows: The DPW director may waive this requirement if in his opinion the preliminary estimate of the cost of the project as provided by the city engineer in Section 21-84 (c) is sufficiently detailed for the project to be undertaken.**

**COMMITTEE RECOMMENDATION: On a motion by Councilor Cox, seconded by Councilor Gilman, the Planning & Development Committee voted 0 in favor, 3 opposed, to recommend that the City Council Amend the Code of Ordinances Section 21-85 subsection (b) by ADDING after the last sentence the following statement:**

**"Abutters may designate a representative to cast the requisite votes on matters required by this Article. Such designation shall be a signed and notarized letter designating such representative by name and address complete with a copy of said abutters identification attached to said letter by all owners of the property if owned jointly, by the trustee of any trust having ownership of the property, by all the partners of a partnership, or by the chief executive of a corporation having ownership of the property on behalf of which votes are being cast. The designation documents must be delivered to the City Clerk no later than 48 hours before the date and time set for the meeting at which votes will be cast.**

These matters are to be advertised for public hearing.

#### **4. Memorandum from Public Works re: Acceptance of Unaccepted or Private Ways (Cont'd from 12/09/15)**

**Mike Hale**, Public Works Director, said that this matter is a longstanding process which he described as follows: The DPW created a paving management plan several years ago to identify conditions of public roads and which private ways are in a condition to have the city help. The city can only spend public dollars on temporary repairs on private ways which leaves many neighborhoods in limbo as to what they can and can't do as they aren't eligible for local money or state funding. The idea of acceptance of private roads to become public ways hasn't been acted on commonly by the city. There have been only two private ways accepted in the Director's 16 years with the city. It was noted that it was in the 1970's when the last large bundle of private ways were accepted as public roads, and the 1940's prior to that.

Last year the DPW looked at which roads would make the most sense to be accepted as public ways. Some are ways that have no ownership rights to them -- they were subdivisions where no specific rights were granted to the abutting properties or were statutory private ways which the city laid out and never went forward with the formal process of accepting them as public. It was noted most of the proposed roads (previously voted by P&D to recommend to the City Council to add to the roster of city accepted public ways: *Apple Street; Baker Street; Beach Road; Birch Grove Heights; Biskie Head Point; Blueberry Lane; Brierwood Street; Brightside Avenue; Colburn Street; Colonial Street; Crowell Avenue; Decatur Street; Dogtown Road; Dr. Osman Babson Road; Duley Street; Gilbert Road; Goodwin Road; Grapevine Road; Harold Court; Harriet Road; High Popples Road; Hillside Road; Honeysuckle Road; Hough Avenue; Jacque Lane; Juniper Road; Lane's Cove Road; Laurel Street; Lawndale Circle; Lincoln Avenue; Lincoln Street; Linden Road; Lisa Drive; Macomber Road; Marsh Street; Mason Court; Montvale Avenue; Morgan Avenue; Munsey Lane; North Kilby Street; Oceanview Drive; Pigeon Lane; Rockport Road; Scott Street*).

The process of developing a plan that can be recorded at the Registry of Deeds as well as accepted by the Council is what is slowing the DPW up. There is a full-time employee who is not a full-time surveyor, who is licensed, for the city. He submitted a two-page plan of a project that the city entered into two years ago, a paving of High Popples Road, Jacques Lane (placed on file) and Mayflower Lane which is a private way off of the former roads. The concept was at that time that the residents had agreed to pay for part of that paving project so that the city would consider accepting those private ways as public ways through a separate Council process. He noted that in order for the plan before the Committee to be developed there is a significant amount of surveying involved which he described briefly to the Committee and described the kind of research that has to be done in conjunction with the surveying. This level of effort has to be done for all private ways that are being put forward to be accepted as public ways. It was noted that the DPW has almost completed the work for approximately 12 private roads to be

accepted as public ways. They are not ready to have the Council vote on the recommended roadways, and **Mr. Hale** indicated he wanted to have the Legal Department review their paperwork to ensure everything was in order before presenting it to the Council.

**Councilor Cox** asked if there is a list of streets that the DPW is planning to take. **Mr. Hale** said there was a short list provided originally that are considered “low-hanging fruit,” and weren’t ward specific that included private roads acting as public roads but were never accepted as a public way or were like the High Popples area project that were paved in a private/public partnership, of which the second part of that project was to accept those roads as public ways. He reiterated that the acceptance of those roads as public ways is a separate process, and the Council would choose or not choose to accept these roadways. Once the acceptance is made by the Council, the city turns the acceptance documentation from the Council in to MassDOT for recognition for the city’s Chapter 90 funding.

**Councilor Gilman** confirmed that the benefit of converting private ways to public ways is financial. **Mr. Hale** responded there were a number of benefits, one being that it takes away any ambiguity for abutters of who is responsible for the maintenance and care of a particular roadway. The DPW’s actions in such matters are governed by local ordinance and state statute as to what they can and can’t do on private ways, he said, and noted that the state is unique in how they handle private ways reiterating that temporary repairs are the only task he can spend funds on for private ways without a vote of the City Council. He pointed out that perpetual pothole repairs are not considered temporary, adding that many communities in the state won’t plow private ways that are in disrepair. He said there is a financial incentive to receive Chapter 90 money reimbursements from the state. He described briefly the process by which the DPW looks annually at all public roads and their condition and the receipt of Chapter 90 funds for paving reimbursements as to which roads are at the top of the list to be repaved. He said that the city’s paving program is on a 35 to 40 year paving schedule and pointed out that roads have a life expectancy of 15 to 20 years. This is why the city’s roads deteriorate at the rate that they do as there isn’t enough funding to keep them in good repair. **Councilor Gilman** asked how the DPW determines which private roads are appropriate for becoming public ways; and how the roads are prioritized. **Mr. Hale** said any citizen can come forward to request their road be made public and that they would work through their ward Councilor to put forward such a proposal. He described the prerequisite for the city to accept the way is that Public Works, the Mayor’s Office and the City Auditor have to identify that they have funding to maintain these roads and are in good repair per the Code of Ordinances. He reiterated that they look at roads that have no ownership issues first and then they look at other criteria such as current road condition, had these private roads been used traditionally as public ways.

**Mr. Destino** pointed out that the roadways already recommended by P&D earlier in 2015 will be able to move forward when Mr. Hale has all the necessary documentation in place. **Mr. Hale** confirmed that it is anticipated out of that large group recommended by the Committee; about 12 will be ready to be voted on by the Council with full documentation in hand. **Mr. Destino** added that if the city had full-time surveyor working for the city, this project they would have been ready sooner as this is all being handled, “in house.” He reconfirmed Mr. Hale’s statement that there is a financial benefit because of additional Chapter 90 monies and added that supplemental Chapter 90 money has come from the state through Chapter 90 funding in addition to the annual reimbursement which have benefitted the city.

**This matter is considered closed at the Committee level.**

**5. Amend GZO by adding a new definition to Section VI “Definitions” for “Farmers Markets” as referred back to the P&D Committee by the City Council on June 23, 2015 (Cont’d from 11/09/15)**

**Councilor Lundberg** reminded members of the public who were present that this was a public meeting, and not a public hearing. That when the matter moves forward at that time the public will have the opportunity to express their views on a possible ordinance amendment.

**Chip Payson**, General Counsel, reviewed that a Council Order by former Councilor Greg Verga brought this matter forward as a potential Zoning Ordinance amendment, and there was discussion about taking another look at the issue. He said that as a result he looked at whether there is a definition of Farmers’ Markets codified in state statute or in the CMR (Code of Massachusetts Regulations), and found there isn’t. He said the Massachusetts Department of Agricultural Resources (MDAR) does have a policy for Farmers’ Markets (2013). He noted had advised the Committee previously that a policy is not the same as a regulation or statute. After the last P&D meeting members of the Administration, the City Clerk and he sat down and looked at what had been proposed originally as a definition and the MDAR policy. He explained they then reframed and reworked the definition which is now for all intents and purposes a codification of the policy into the Code of Ordinances for Massachusetts Farmers’ Markets as put forward by the MDAR.

**Councilor Lundberg** noted that the P&D Committee had voted to recommend the previous definition (May 6, 2015). It was noted the Planning Board had recommended that rather than the Zoning Ordinance the definition belonged in the Code of Ordinances and so prompted the return of the matter to P&D to be reexamined, and that this is now a separate motion for the Committee to vote on. **Ms. Lowe** suggested the amendment to the Code of Ordinances should be added in Chapter 11 “Hawkers, Peddlers and Transient Vendors, Section 1-1 “Definitions,” which is the chapter’s definitional section.

**Councilor Cox** noted that in the new definition it quotes Chapter 11, Sec. 14(a) which says, “All vendors participating in a farmer’s market covered by this definition are exempt as vendors under Code of Ordinances Section 11-14(a). Any other vendors participating in the farmer’s market must obtain a local vendors license.” She suggested that the exemptions would be for anyone selling meats, butters, cheese, fresh fruits or vegetables and fish. **Mr. Payson** confirmed the Councilor’s statement saying that Section 11-14 requires those folks selling meats, butters, cheese, fresh fruits or vegetables and fish to be duly licensed by the Director of Standards of the Commonwealth or permitted by the Licensing Commission. The Farmer’s Market draft definition says that if they’re participating in a Farmer’s Market under this definition they’re not required to get those licenses because they would already be licensed. **Councilor Cox** said that anyone else not selling meats, butter, cheese, fresh fruits and fish would have to be licensed by the city to sell their products and that they would be required to have that proof with them when vending at a Farmer’s Market. **Ms. Lowe** confirmed the Councilor’s statement as correct and said if the vendors get a license from the Licensing Commission for a vending permit it would have to be on them. She clarified that a vendor’s permit is event specific so that if a vendor has a permit for the Farmer’s Market, and wished to vend at another different event, they would have to return to the Licensing Commission for a separate vendor’s permit.

**COMMITTEE RECOMMENDATION: On a motion by Councilor Gilman, seconded by Councilor Cox, the Planning & Development Committee voted 3 in favor, 0 opposed, to recommend that the City Council Amend the Code of Ordinances Chapter 11, Section 11-1 by ADDING the following definition:**

**“A farmer’s market is a public market for the primary purpose of connecting and mutually benefitting Massachusetts farmers, communities and shoppers while promoting and selling products grown and raised by participating farmers.**

**A proposed farmers market must meet the minimum qualification for Massachusetts Farmers’ Markets as defined by the Massachusetts Department of Agricultural Resources (MDAR) that include, without limitation, two or more farmers primarily selling products that they grew, produced or raised; set hours of regularly scheduled operation; products that are clearly labeled as to origin; and written rules that govern the operation of the farmers market that 1) assure its primary purpose is to provide a direct marketing opportunity for Massachusetts farmers, foresters and fisheries, 2) addresses the terms and conditions of sales, including pricing and labeling, vendor eligibility and product source, and compliance by all vendors with local, state and federal laws and regulations, 3) include a written grievance procedure, and 4) address market and vendor liability, including any insurance requirements.**

**Included in this definition are state licensed farm-wineries and fresh fish caught by local fishermen.**

**All vendors participating in a farmer’s market covered by this definition are exempt as vendors under Code of Ordinances Section 11-14(a).**

**Any other vendors participating in the farmer’s market must obtain a local vendors license.**

**Farmers markets are not included under Zoning Ordinance Use Schedule, “Open Uses,” Section 2.3.3 (1) and (2).**

**Farmers’ markets must comply with all applicable local, state and federal laws and regulations.”**

This matter will be advertised for public hearing.

**Councilor Cox** requested through the Chair that the Council President convene an Executive Session of the Council and request the Administration be present at it to hear the results of a professional real estate appraisal for the Fuller School property. Councilor Lundberg and Council President, Councilor Ciolino briefly discussed the matter. Councilor Ciolino said he would make that inquiry of the Administration on the Council’s behalf.

**A motion was made, seconded and voted unanimously to adjourn the meeting at 6:25 p.m.**

**Respectfully submitted,**

**Dana C. Jorgenson**  
**Clerk of Committees**

**DOCUMENTS/ITEMS SUBMITTED AT MEETING:**

- **Plan of Layouts in Gloucester, Mass. for High Popples Road and Jacques Lane submitted by Mike Hale, Public Works Director**