



CITY OF GLOUCESTER

PLANNING BOARD

MEETING MINUTES

Thursday August 5, 2010 at 7PM
Kyrouz Auditorium, 9 Dale Avenue
Richard Noonan, Chair

Members Present:

Rick Noonan, Chair

Marvin Kushner

Mary Black

Henry McCarl

Karen Gallagher, [absent](#)

Gregg Cademartori, Planning Director

Pauline Doody, Recording Clerk

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 July 15, 2010

The board review the minutes of July 15, 2010. Ms. Black commented on Page 9 under other business, reference number 6. She suggested using the wording of city solicitor instead of counsel.

Motion: To approve the minutes of July 15, 2010

1st: Henry McCarl

2nd: Marvin Kushner

Vote All approved 4-0

III. PUBLIC COMMENT- None

IV. CONSENT AGENDA

No Form A or Chapter 91 License Applications Filed.

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 stated to refresh the board members that this was forwarded from the City Council back from March 26. The Planning Board did hold a public hearing and continue it for one additional meeting but due to a failure of City Council noticing of City Council public

hearing of 65 days, the amendment process dies so it was reintaited on June22 by Councilor Verga. Rather than providing a new memo, Mr. Cademartori resubmitted the May 5 memorandum showing the differeneeces between the GI and the EB district. The portion that was formerly zoned residential is predominatley wetlands. The balance for the proposal for the Market Basket was zoned General Industrial. In a provided outline it is stated what the uses are that are allowed as of right, that are enabled by General Industrial zoning and the more intense uses are governed by special permit. It provided the background to the board to see if it was appropriate to return to General Industrial. Additionally, in April 2009 the property owner did file a Perimeter Deed to combine the lots. It then would protect the property from zoning changes for three years. We are at the midpoint of that now. They took 3 properties that were seperated out and filed to combine them to one and that provides zoning protection for 3 years. The effect of it is, they could still operate for 18 months for either type of zoning. They can convey the property at any point.

What was provided to the board by the City Council was that all the property involved to be returned to its prior zoning which would create an artificial line, because they created that Perimeter Deed that turned it into one propety, so it would align with the old propety lines returning the portion of it to residential R20 and the balance of it to the General Industrial district.

Public Comment:

Cindy Densmore, 166 Atlantic Street Gloucester

Ms. Densmore stated that at the meeting when Demoulas asked for changed, it was based on the fact they were going to build and was going to revert back to the original zoning if they didn't build. Is that okay for them to say they can just go back?. We were confident that the zoning would go back to what it was.

Mr. Cademartori stated that the agreement that they made with the City Council had a number of conditions. City Council looks at the whole process. The court would have to uphold the denial. When they identify the process for the rezoning, they said either Demoulas would potentially petition for the reversion, City Council could do it or a citizen group. Those are some of the methods that for petitioning for rezoning that are outlined in state statute.

It is completley silent about the other action they took that he couldn't answer for consequence if the petition is approved. Whether they actually have a consequence relative to the agreement. They weren't compelled to come in and rezone the property.

Ms. Densmore asked if they could get another three years.

Mr. Cademartori stated that if it goes back to general industrial the impact of a new ANR would only protect them from a change of General Industrial. If it does move forward to the city council and they approve it it would be the at the end of that period of three years that the EB is protected. The effect of changes the lot lines wouldn't do, but that doesn't mean they cannot petiton the city council as a property owner to rezone.

Kathy Hurlburt, 6 Causeway St, Gloucester

Ms. Hurlburt asked of the status of the sewer is if the old zoning is changed back.

Mr. Cademartori stated if they are intending for the project to have public sewer, then yes.

Ms. Hurlburt stated that we want to have a neighborhood use of that property and asked the board why do you want to keep it at the highest use?

Mr. Noonan stated that it is the intent of the board to offer the most protection. we amended the zoning for the application. The conditions were put on by the City Council.

Ms. Hurlburt stated that the board amended the zoning so a Demoulas could be put there.

Mr. Noonan stated that this evenings hearing is about reverting it back to the original zoning.

The reversion issue is protected under the zoning changes. The board did recommend to the City Council not to revert it because there is better protection under EB than GI. There is a high degree of control. There is protection offered to the land owner. They had to live by a conditon of the City Council that after a year if it was not developed that it would revert back.

The initiation of a citizens group was this brought forward. Regardless of how we vote, the property owner has another 18 months under the current zoning, and if nothing happens at that time it will be reverted by statute back to GI.

Mr. Cademartori stated that if the City Council adopts the general industrial zoning it will go back to the original zoning. They did apply for the special permit, the application was initially reviewed by the Planning Board and then the process stopped. They did not ever receive the special permit or the recommendation of the board or city council to construct and operate a grocery on that site.

Ms. Hurlburt stated that they have 99 conditions from the Conservation Commission that goes with the property.

Mr. Cademartori stated that if they don't do the same construction project they do not have to follow those conditions.

Ms. Hurlburt asked if the citizens have the right to appeal the rezoning.

Mr. Cademartori stated that there are a couple of separate issues. The city has the option to rezone the property or not. There is not much that can be contested if it's the decision of the city. The land owner has some rights of appeal. The board will discuss what they hear tonight and will base their decision on the two options presented here.

Ms. Hurlburt stated that she was at the meeting when the City Council held up documents stating if they don't build it will go back to its original zoning.

Mr. Noonan reiterated to Ms. Hurlburt that the Planning Board did recommend not to revert back to General Industrial. It will go to City Council to vote.

Mr. Cademartori stated that the Standing Committee did promote the reversion.

Mr. Noonan asked the board members for their input and questions at this point in the hearing.

Mr. Kushner stated that it appears that the use of that property is not going to automatically happen without further input from Conservation Commission and if it stay as is it will revert back anyway. It will be a very difficult area to develop. We are not doing anything to enhance it.

Ms. Black stated that EB carries the special permit evaluation component.

Mr. Cademartori stated that one of the points that there are a number of uses, most of the more intensive uses that are governed by the special permit process. The other permitted uses limit that potential. It is probably more likely that the special permit uses in the EB district, with that discussion does come infrastructure. That is also true of some GI projects. There is little to no input depending on the project. If it is a matter of right it is a matter of right. It is increasing the allowable uses for a 18 months, the alternative you are not introducing those more intense uses. There have been attempts to outreach to Demoulas, but they didn't represent a strong preference. But we do have a preference to retain it for an EB district.

Mr. McCarl stated it's important to note that nothing can be done without further hearings and an approval. It never happened. Before it was discussed and approved they moved their property to Gloucester Crossing. They are left with a piece of property with a zoning on it that would require approval from City Council to do anything. They don't have a right to do anything unless they get approvals by bodies such as the City Council.

Mr. Cademartori stated that the permits that the Conservation Commission issued, the actual size and configuration of the building is not as much as a consequence as the storm water management design and restoration element were. There is potential that someone could amend those permits and show a different configuration. But the owners have the rights for the property. Other than the potential for the need for a site plan review, but not its use. If general industrial is permitted if you wanted to choose, they could pursue that permitting without the Zoning Board and City Council involvement.

Mr. McCarl stated that if our recommendation was not to rezone it, they cannot do it without further approval.

Mr. Cademartori stated there are other differences as right use extensive business district. as long it was still consistent with the Conservation Commission.

Mr. McCarl reiterated that nothing can happen without further action from and without further approval. Nothing can be done because nothing was ever approved. Because it can be done

under extensive business it still has to go through City Council for approval for anything, because it never came to that point. Whether it was that project or any project, if we revert the zoning, back to general industrial, there are some things that do not have to come through us.

Mr. Cademartori stated that if Conservation approves they can extend the conservation permits. They would have to come to us for a site plan approval. If it is an allowed right as of right, it does not have to come to us. The intention here is to protect the neighborhood.

Ms. Hurlburt stated that we have no protection now. At least whatever goes there won't bring in 27,000 cars. The neighborhood wants to be a neighborhood. We can't live with a major development. We would like a residential buffer for the noise and views.

Ms. Black stated to Ms. Hurlburt that if we revert back to General Industrial you will get back that noise and those types of businesses. If we stay with Extensive Business than the special permit process gives us the opportunity to object. If it stay GI it is a matter of right and those uses can go on. Ms. Black stated that the board cannot give legal advice, we can only advise of what is permitted there and can over it with you. She asked Ms. Hurlbut if she understood the GI & EB mechanisms.

Ms. Hurlburt stated she did.

Motion: Not to recommend the reversion from Extensive Business to General Industrial at this time for 71 Concord Street (Assessors Map 234, Lot 38).

1st: Henry McCarl

2nd: Mary Black

Vote: All approved 4-0

VI. OTHER BUSINESS

A. Planner's Report

B. Chairperson's Report

VII. ADJOURNMENT

Motion to adjourn.

1st: Henry McCarl

2nd: Marvin Kushner

Vote: All approved 4-0

VIII. NEXT MEETING

Next regular meeting of the Planning Board is Thursday August 19, 2010

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