

CITY COUNCIL STANDING COMMITTEE

**Planning & Development**

Wednesday, September 22, 2010 – 6:30 p.m.

1<sup>st</sup> Fl. Council Conference Room – City Hall

**Present:** Chair, Councilor Joseph Ciolino; Vice Chair, Councilor Robert Whycott; Councilor Greg Verga

**Absent:** None

**Also Present:** Mace & Marianne Wenniger; Attorney Michael Faherty; Joseph & Mary Amicone; Janice Costa; Howard Costa III; Attorney Mark Nestor; Peter Glynn; Vito Calomo; Christine Fisher; Richard Crangle; Janet Essember; Mitch Cohen; Bill McCarthy; Joe Grace; Andy Stevens; Joel & Bonnie Shelkrot; Mildred McCarthy; Gary Raso

**The meeting was called to order at 6:30 p.m.**

**1. Continued Business:**

A) SCP2010-009 re: 70 Holly Street, GCO Sec. 2.3.6(4) (Cont'd from 08/11/10)

**Mace Wenniger**, applicant, restated his request for the Special Council Permit for 70 Holly Street, noting they have a studio on their property they work in and a 100 sq. ft. display area for their art. He noted there was a question of enough parking for themselves and any visitors to their small gallery. He stated they're required to have 3-1/2 spaces but claimed there were eight spaces.

**Marianne Wenniger**, applicant, showed a diagram of the property stating they are providing adequate parking space for the gallery and home. They were informed by the Building Inspector that they needed 3-1/2 spaces. She described the site map (presented at the meeting and on file) done by Oak Engineering dated August 24, 2010 for the parking plan. She expressed she understood the concern about parking on their property. She believed not only have they provided sufficient off-street parking; but where it is now located, they would have to push it back further into the property and get rid of a tree as per the submitted map which she expressed was their intent to adhere to that plan.

**Councilor Verga** noted they were proposing to increase their parking space and were committed to it if the permit moved forward.

**Mrs. Wenniger** confirmed that and felt the concern was unnecessary. She stated this will not be a gallery like they had on Newbury Street in Boston or in Rockport, MA. They only will show their own work in their own small gallery produced in their home studio. The concern in the neighborhood was there would be parking up and down the street as in the case when their home was being built. She realized it is a narrow street and that the hill causes vehicles to speed. But she expressed that if they get one person a week at their gallery, they will be lucky. It will be by appointment. She noted they had many people write letters of support (on file). She assured they will take every step to see that people park in the driveway. She recognized that during the construction of their home, vehicles were backing up into a neighbor's driveway. Now that they are aware of it, they'll do their utmost to stop this from happening going forward.

**Christine Fisher**, 30 Bennett Street North, read her letter she submitted in support of the Wenniger's Special Council Permit application (letter received prior start of the meeting and on file).

**Vito Calomo**, 82 Holly Street, former City Councilor, who has been at that address for over 20 years stated he has not heard a complaint from any of his neighbors regarding the Wenniger property. He believed they have provided sufficient parking. There was a bit of traffic during the home's construction but did not see any problems now. He felt the Wennigers have been an asset to their neighborhood. (Letter of support received at meeting and on file)

**Janet Essember**, 45 Holly Street spoke in support of the Wenniger's application. She didn't feel there were any traffic issues (Letter of support received at meeting and on file).

**Joseph Grace**, 75 Holly Street noted the hill on the street stating it was dangerous. He saw the problem now being tandem parking in the driveway with several cars having to back out of the driveway at once should the first car in need to be moved. He was not against the permit per se, but felt safety came first. He felt there should be a turnaround in the front yard in order to prevent future accidents. He believed it to be a bad situation.

**Ms. Essember** noted herself to be visually disabled and that a “Slow” sign would be helpful on the street. **Councilor Whynott** stated he researched the situation with the assistance of the Engineering Department and showed a map of Holly Street, where the road would be much wider than what is seen in front of #70, noting there has been encroachment to the public way. There are walls on the right hand side of the street and residents have planted in front of it. The Building Inspector expressed he is aware of the encroachment to the public way, but as long as the plows can go through unimpeded he was accepting of the situation. But if there was an issue raised, then he would take a second look at it. The Councilor felt if someone parks on the street it doesn't cause a major problem because it slows people down. He stated backing out of driveways is illegal – one is supposed to back in, in order to move onto the roadway ‘face’ first. But he also contented everyone does it anyway. With regards to someone turning around in someone's driveway, there are many other places where it occurs. He believed the project to be fairly reasonable; and felt they could get 3-1/2 cars off the road and didn't see more than one or two people a week [at the property for the purpose of visiting the gallery].

**Councilor Ciolino** acknowledged all the communications received regarding the application of the Wennigers, some in favor, others opposed which were all on file. He also noted a petition that was circulated and was also on file which was in support of the applicants.

**Councilor Verga** thanked Mr. Grace for pointing out the discrepancies on the previous site map. If the new plan is executed then he would be all right with it. It would have to be deeper and much wider and they have the space to do that. He was in agreement with Councilor Whynott.

**Councilor Ciolino** read the conditions listed in the motion below and would vote for it but would restrict the permit to the owners so that if they sell the house and no longer own it, the permit would be extinguished. He believed this to be fair; and would not be a commercial concern. He asked the applicants if they understood the conditions.

**Mr. and Mrs. Wenniger** responded they did understand the conditions being placed on the Special Council Permit.

**Mr. Grace** was pleased with Councilor Ciolino's statements and asked about the sign anticipated to be placed for the gallery on the property.

**Councilor Ciolino** stated ultimately it would be up to the Building Inspector who has to give them a permit for it. He also communicated to the Wennigers that Councilor Hardy wanted them to know that if the parking situation changes in the future to make one side of Holly Street no parking, and that the Wenniger's needed to be aware of it.

**MOTION: On motion by Councilor Ciolino, seconded by Councilor Verga the Planning & Development Committee voted 3 in favor, 0 opposed to recommend to the City Council to grant a Special Council Permit (SPC2010-009) under the Gloucester Zoning Ordinance, §2.3.6(4), Other Principal Uses, for 70 Holly Street to the owners and applicants, Mace and Marianne Wenniger, to operate a gallery for the sale of art made on the premises, subject to conditions as follows:**

- 1) **The art gallery is to be located on the residential premises of 70 Holly Street where the applicants reside and within the structures currently in existence;**
- 2) **The art to be offered for sale at the gallery shall be limited to the artwork created by the two applicants;**
- 3) **The parking for gallery visitors shall be entirely off-street as shown on plans submitted to and approved by the City Council;**
- 4) **The signage for the gallery shall be limited to no more than 2 ft. x 2 ft. sign as approved by the Planning & Development Committee;**

- 5) **The grant of this permit is restricted to the applicants and current owners Mace & Marianne Wenniger and shall expire when these applicants cease to operate this gallery as approved.**

**The Planning & Development Committee finds that the art gallery as approved with conditions complies with the six (6) factors of §1.8.3(e) of the zoning ordinances and is in harmony with the purposes of the zoning ordinances.**

**A recess was called at 7:09 p.m.**

**The Committee reconvened at 7:13 p.m.**

B) SCP2010-011: 82 Hesperus Avenue, GZO Sec. 2.3.6(4) (Cont'd from 09/08/10)

**Attorney Michael Faherty** representing the applicants, Mr. & Mrs. Joseph Amicone, property at 82 Hesperus Avenue, took up a procedural matter first regarding a Google map aerial view Mr. Howard Costa had submitted at the last meeting of Planning & Development. The submission of the aerial view that was downloaded and submitted with the application was at the suggestion of the Building Inspector. The map that Attorney Faherty wished to submit now was a correct view; the original he had submitted showed the house that was to be torn down and apologized for the discrepancy. He made note that there had the site visit; they went over the location of the property; the house on the property and all of the marks of the boundaries of the house were accurately shown and the elevations posted which showed what could be constructed as a matter of right on the top of the property; and a relative elevation of the proposed house. There was a question raised during the site visit of whether or not the Conservation Commission (ConCom) would allow further intrusion into the buffer zone. He noted he spoke with John Judd who handled the application with ConCom; and as a result of the pre-meeting with the Conservation Agent regarding the house being removed is in the buffer zone and so ConCom allowed an encroachment for the porches and the yard to take its place; but the new construction they are requiring to be outside the 100 ft. buffer zone of the top of the coastal bank. And as seen during the site visit, it is further inland from the water. The top of the coastal bank is the first change in elevation on the north slope coming up from the water.

**Councilor Ciolino** posed that moving the house forward towards the water was not an option.

**Attorney Faherty** responded it was not a practical option. He made clear he was not representing that it wasn't asked for; but the meeting that was held, the pre-meeting with the agent (before any project is done and recommendations are made), the agent showed what they needed to do and what could be done. That was the full extent that they can extend in that direction. He pointed out that the ordinance is quite clear of what the finding is on. Any house on this lot, especially one built by the street, will have an impact on some people's view. He contended most people will not be affected. The height of the house, while 37 ft. requiring a 7.5 ft. variance in the Special Council Permit, was not dissimilar to a number of homes that are taking advantage of the ocean side, some three stories, and in some cases more. He believed it would be the same thing with the applicants', the Amicone's. This would be two stories on the upland side and three stories on the lower side.

**Councilor Ciolino** reminded Attorney Faherty the Committee had requested a landscaping plan.

**Attorney Faherty** responded the Committee had asked if they applicants had any landscaping in mind; that the applicants did not have a landscape plan at this time, nor did they have a particular plan in mind.

**Councilor Ciolino** noted on of the concerns of the neighbors was that plantings could obstruct the view further. They would like assurances that the new plantings can't be any higher than what exists and should be deciduous and not evergreens to further obstruct the view; that the plantings would be lower than the proposed height of the building. Existing trees can stay; but anything that would be planted couldn't be any higher than what is proposed.

**Attorney Faherty** noted if the trees are not higher than the building, they'd be relatively short trees and would not block views any further. If it was a requirement of this Committee that they wanted to see a

plan become a part of the application, they will do that. If they provide that plan, they could condition that on the project; and they will provide one.

**Councilor Ciolino** noted his concern that they had gone through a similar thing with a home on Atlantic Road upon completion put a “huge wall” of evergreens which blocked the view and didn’t want to see anything like that happen here out of consideration for the neighborhood.

**Attorney Faherty** reiterated there is no pre-set plan, but if they wish for the applicants to submit one, they would if required.

**Attorney Mark Nestor** representing Joel and Bonnie Shelkrot, 92 Hesperus Avenue and Kerin Fenster, 86 Hesperus Avenue, agreed with Attorney Faherty that most of the homes there are relatively the same size. He stated he had pulled the building plans on Ms. Fenster’s home. She had an addition done in 2006 but the height of the Fenster home is less than 30 feet and didn’t have to come before this Committee. He further stated the biggest concern the abutters have is that it is 37.5 ft. but the mean elevation of the proposed home is 117 ft. If one looked at the other houses, they are along the coastline. The applicants are asking for this home to be outside the buffer zone which would be approximately 110 feet away. Ms. Fenster’s home is a mean elevation of approximately 105 ft., so they’re starting out with this proposed house being 12 ft. higher in elevation because it’s set back, which is a concern of many of the abutters because of it being on top of a hill and all the current houses being down by the ocean. He spoke with Mrs. Fenster and others, as well as having briefly spoken with Attorney Faherty, regarding the issue of ConCom. He knew the applicants had something before ConCom regarding the yard and the pool. His suggestion to this Committee and to Attorney Faherty was that the applicants submit a formal request to go into the buffer zone with ConCom so they can move the house further down the hill which would drop the elevation of the house (keeping the same sizes of house, have the same 37.5 ft. height) thereby giving less of a silhouette for the people behind [the house]. His clients and Ms. Fenster would support any application the applicants would make to ConCom to allow them to move into the buffer zone because it would be better for them. Ms. Fenster, who is right next door, would be directly impacted and felt it is better to be closer to the water; whereas as now proposed this home at the top of the hill would overshadow her home. He contended 37.5 ft. on top of the existing grade makes it a very large house and would have a significant impact silhouette-wise. Any attempts to bring it further down the hill so there is less of a silhouette would be endorsed by the abutters.

**Councilor Verga** stated if the applicants do that and go through the process and are shut down by ConCom then what.

**Attorney Nestor** stated that he couldn’t speak for Attorney Faherty, but thought they would likely come back before the Committee stating now there would a hardship because they tried and lost and say they need it where they had it originally. They would prefer it be addressed in this manner to alleviate the issues. They’re complying with the setbacks but he believed the statute was vague as to the standards as to what the Board needs to do to disallow it going over 35 ft. It speaks about obstruction of views, overshadowing of properties and impairment of utilities. He felt there was a bigger obstruction of view, especially from those homes across the street on Hesperus Avenue if it is put in at its current proposed location. “Now you have a very large building.”

**Attorney Faherty** rebutted stating this notion had taken him by surprise and had not had an opportunity to speak with his clients on this [suggestion]. The house that is coming down is right next to the Fenster house. His clients, by moving the house back, actually creates a bit distance and puts the new house in a more private setting from the Fenster house. Putting it further down the hill, even if it were allowed by ConCom, he suggested would put the house in a less private setting from both sides. He didn’t know how putting this house further on that bank affects them (the Shelkrot’s and Ms. Fenster) at all. He expressed that there would be some impact of homes across the street on Hesperus Avenue. What Attorney Nestor’s clients are asking his clients to do is to incur a very significant additional cost because it will all be blasted. The site is prepared right now, slab on grade. In order to do something on that slope (down) they would have to do a lot more blasting or pour significant concrete to get it level. If they get into bedrock, it would be an enormous expense and he questioned to what benefit. He didn’t feel the standard of the

ordinance is anything but clear. The standard is set, and it is up to the Committee to make that determination.

**Councilor Whynott** asked if he intended to take this suggestion to his clients.

**Attorney Faherty** asked for a recess to speak with his clients.

**The Committee recessed at 7:30 p.m.**

**The Committee reconvened at 7:36 p.m.**

**Attorney Faherty** stated his clients would not agree to move the house any further down on the property, that the construction cost, the blasting cost, would be prohibitive. Making it level would create an additional concrete base around it. It would be extremely unattractive to everybody. He stated with due respect, Ms. Fenster would like the house further away from her property. With regard to the landscaping plan, he suggested that this matter be continued to the next regularly scheduled P&D meeting so that they can have the landscaping plan available to the Committee and asked for a clarification from the Chair on what was required in that plan, that the plan will not further impair the view from the house. When the Committee says they don't want the trees taller than the house, they mean within the view corridor.

**Councilor Ciolino** stated that they would be deciduous trees, not evergreens that do not grow to be taller at maturity than 25 feet in the view corridor. This would be placed as a condition of the permit, that the plantings be deciduous trees no taller than 25 feet in the view corridor.

**Attorney Faherty** asked who had the view corridor and from where.

**Councilor Ciolino** responded that would be determined from the plans to determine that.

**Attorney Faherty** stated he would feel more comfortable with the plan to be a part of the permit which would not be subject to interpretation, as opposed to making a statement in a condition this evening. He took the view corridor he took to be from Mr. Costa's house.

**Councilor Ciolino** stated they were talking about where the house is going to be built. The house is 150 ft. long. So this would assure there would be any other obstructions this was to help protect the view in the future. If the neighbors for one reason or another say that this or that tree has gone too high, they can come before the Committee and ask for the trees to be cut. He noted the Seine Fields agreement, when he was a ward Councilor, as an example, where it was put in place that trees wouldn't be any taller than "X" height, and how that was handled obstruction with the trees being cut back at the owner's expense to ensure no further obstruction with the trees.

**This matter is continued to October 6, 2010.**

- B) Creation of a Gloucester Dog Park Petition, pursuant to Sec. 9-1 "Free Petition" of City Charter (Cont'd from 07/28/10)

**Councilor Ciolino** related that the Open Space Committee will make a recommendation for a location and will forward the recommendation to P&D which will be taken up at the next regularly scheduled P&D meeting; then there will be a site visit to the proposed off-leash dog park on Saturday, October 9, 2010; then it is hoped P&D will be vote upon the proposed site at their meeting of October 20<sup>th</sup>.

**This matter is continued to October 6, 2010.**

- C) COM2010-026: Request from 1907 LLC and Pavilion Mercato LLC re: BirdsEye Mixed Use Overlay District ("BMOD") Zoning Proposal (Rezoning #2010-003) (Cont'd from 06/16/10)

**This matter is continued to October 6, 2010.**

## **2. PP2010-004 Installation of 300' UG Conduit re: #80 Middle Street**

**This is public hearing is open.**

**Those speaking in favor:**

**Peter Glynn**, representative for National Grid stated they are seeking permission to install 300' of underground conduit on a public way coming from existing pole #755 going down School Street, coming out of a switch and going down Center Street to a manhole there.

**Councilor Ciolino** asked if it was in the street or the sidewalk. They'll be on School Street and they're going on the sidewalk.

**Mr. Glynn** clarified when he says public way he means sidewalk. There are jersey barriers there right now. This is all proposed electrical work.

**Councilor Ciolino** gave Mr. Glynn a copy of a memorandum received from Michael Hale, Director of Public Works regarding the repaving of the streets.

**Mr. Glynn** stated his service company will work with the request of the DPW.

**Councilor Ciolino** stated they will have to repair the road to the satisfaction of the DPW Director.

**Mitch Cohen**, 88 Witham Street representing the Temple asked that this be passed in order for their property to be connected appropriately.

**Councilor Ciolino** asked that the sidewalk be ADA compliant when it is repaired.

**Those speaking in opposition:**

**Communications:**

Memorandum from Michael B. Hale, Director of Public Works (on file).

**Questions:**

**Councilor Whynott** expressed that his concern that the repaving be done correctly and properly.

**Councilor Ciolino** asked how National GRID would deal with the Fire Department access and asked Mr. Glynn to speak with the Fire Chief directly.

**Mr. Glynn** stated he will speak with the service company. He was sure that they will work with the Fire Department for adequate and appropriate access for emergency vehicles at all times.

**Councilor Whynott** expressed if there was any point in the process that the road will be completely blocked to regular vehicular traffic that there be clear signage for detours to the area.

**Councilor Verga** stated he was pleased with the language of the motion and was in support.

**This public hearing is closed.**

**MOTION: On motion by Councilor Verga, seconded by Councilor Whynott, the Planning & Development Committee voted 3 in favor, 0 opposed to permit National Grid to construct a line of underground electric conduits, including the necessary sustaining and protecting fixtures under and across the public way or ways hereinafter named and to excavate the public highways and to run and maintain underground electric conduits, together with such sustaining and protecting fixtures as it may find necessary for the transmission of electricity. Said underground conduits to be located substantially in accordance with the plan filed herewith marked National Grid, UG-WR#7662344 08/05/10 for the installation of approximately 300 feet of UG conduit to serve #80 Middle Street with the following conditions:**

- 1. The Department of Public Works and the Gloucester Fire Department is to be notified 72 hours in advance of the proposed work;**
- 2. All proposed lines and/or conduits are placed so as to cause minimum conflict with other underground services and mains;**
- 3. The excavated trench shall be patched flush with the surrounding asphalt using hot mix asphalt binder, applied in two lifts of two (2) inches, totaling four (4) inches;**
- 4. Grind two (2) inches; curb line to curb line within area of excavation on School Street extending onto Middle Street;**
- 5. Grind keyways on north and south side excavation to accept two (2) inch top course;**

- 6. Install two (2) inch hot mix asphalt top course pavement with emulsion sprayed on prepared surfaces, including all joints;**
- 7. All affected sidewalk is made ADA compliant.**

**A motion was made, seconded and voted unanimously to adjourn the meeting at 7:57 p.m.**

**Respectfully submitted,**

**Dana C. Jorgenson  
Clerk of Committees**

**DOCUMENTATION/ITEMS SUBMITTED AT MEETING:**

- 70 Holly Street Site Plan including parking by Oak Engineering dated August 24, 2010
- Vito Calomo, 82 Holly Street, former City Councilor letter of support for 70 Holly Street application
- Janet Essember, 45 Holly Street letter of support for 70 Holly Street application
- 82 Hesperus Avenue Google Earth photograph submitted by Attorney Michael Faherty