



CITY OF GLOUCESTER  
PLANNING BOARD  
MEETING MINUTES  
Monday September 27, 2010 at 7:00 PM  
1<sup>st</sup> Floor Conference Room, City Hall  
9 Dale Avenue, Gloucester MA  
Richard Noonan, Chair

**Members Present:**

Richard Noonan, Chair  
Mary Black, Vice-Chair  
Marvin Kushner  
Karen Gallagher  
Henry McCarl

**Staff:**

Gregg Cademartori, Planning Director  
Jon Witten, Special Counsel

**I. BUSINESS**

- A. Call to Order with a Quorum of the Planning Board
- B. Introduction of Planning Board Members and Staff

**II. DISCUSSION: Report and Recommendation**

The Planning Board discussed the following petition to amend the Zoning Map and Zoning Ordinance as follows:

Amend the Gloucester Zoning Map by creating an overlay district zone consisting of 3 +/- acres in the Marine Industrial district located at 33 & 47 Commercial Street, Assessor's Map 1 Lots 33 & 22, respectively, and to amend the Zoning Ordinance by adopting a corresponding new Section 25 entitled Birdseye Mixed-Use Overlay District (BMOD) governing the permitting new uses by master plan and special permit in the overlay district.

**Mr. Noonan** opened the meeting of the Planning Board by reading the description of the zoning petition and with an outline of how the meeting would be conducted. The Planning Board closed the public hearing on September 16, 2010, and this evening there would be no further opportunity for public comments. Once the Planning Board renders its recommendation to the City Council there will be additional meetings of the Planning and Development Standing Committee and the City Council to address the matter further. Mr. Noonan also recognized Jon Witten, special counsel for the Board, and that a quorum of the City Council was also present including, Jackie Hardy, Joe Ciolino, Ann Mulcahey, Bruce Tobey, and Paul McGeary. Finally he suggested the best approach would be to walk through the proposal section by section as outlined in a draft report supplied by Mr. Cademartori (attached).

**Mr. Cademartori** began with a review stating that given a number of circumstances including but not limited to the area being outside of the Designated Port Area, flanked by residential and mixed uses, and not having all the qualities of the port that is otherwise defined by the Marine Industrial District, it is appropriate to examine the zoning of the area.. **Purposes section.** As outlined he thought he heard concern from the Board during the hearing process that any potential project would have to be carefully scaled given the existing constraints in the area. The ordinance suggests that the purpose is to "maximize" and thought the message of the Board was more a "scaling or optimization". He also noted that one particular purpose which is called out is to provide housing for diverse incomes, and he thought that was inconsistent given the

ordinance also proposes exemption from the inclusionary ordinance. Finally given that residential use is such a dominant use in the proposal it should be more explicitly stated in the purpose section.

**Mr. Kushner** clarified that what they are proposing is provide 5% affordability, and given the constraints of the project it may be too much to apply the inclusionary standard.

**Mr. Gallegher** asked if they could ask the council if they could provide less at the time a full application and understanding of a project is known.

**Mr. Cademartori** said that if the inclusionary ordinance which requires 15% affordability applies one would require a variance from the Zoning Board of Appeals (ZBA) if anything other was suggested. He did point out that the ordinance also provides the option of offsite units or cash contribution.

**Mr. Noonan** wondered if this was wise given 40B mandates.

**Mr. Witten** suggested that the Gloucester ordinance appears to have been design to make progress toward meeting the states mandate for communities to provide 10% affordable housing. The impact of requiring less (5%) is that your market rate or total housing number increases will the affordable stay the same. So the denominator of the equation increases effectively reducing the community's affordable percentage.

**Mr. Noonan** concluded the discussion of the purposes section, suggesting that in many ways we need to utilize the existing tools and standards in evaluating a project should this proposal be adopted and that the inclusionary ordinance provides options.

**Mr. Cademartori** moved on to discuss the *Definitions section*. There were three areas in particular the Board focused some discussion on during the public hearing. During one of the initial sessions the Board questioned where all the uses defined were prospective including: Adult Day Care, Assisted Living and Integrated Medical. Live/Work was also focused on because it may be difficult to police. He thought most important was the distinction that Live/Work and Hotel contained dimensional restrictions while market rate housing in gardenstyle or townhouse style apartment or condominium is unrestricted. Further the PUD definition in its simplest form could produce a project with 75% residential and 25% other uses, and he thought this should be pointed out. The final definitions worthy of discussion are Reconstruction, Retenancing and Use Cluster.

**Mr. Noonan** asked if Mr. Witten could speak from his experience on the Use Cluster concept.

**Mr. Witten** said that this is one of the areas where the Board may wish to be careful. The way the ordinance is draft the petitioner suggests that the Council would permit a cluster and would not know the final use until it is constructed. Chapter 40A is very clear that special permits run with the land for uses and structures and the review is specific to each use permitted.

**Mr. Cademartori** pointed out that other than the groupings there has not been anything provided to support the concept. Additionally, our current zoning segregates business uses, industrial and residential and has different permissions for each in different areas. If there was no additional concern we would have more generalized categories as this ordinance suggests. We can return to the Use Cluster discussion in a latter section.

**Mr. Cademartori** introduced the proposed *Overlay District Boundary Section*. He pointed out that Map 92 Lot 11 was inadvertently included by the petitioner; however this was caught prior to advertisement of the proposed amendment. The Board discussed potential broader applicability of the proposed ordinance in either other areas of the MI or the city, but lot sizes and circumstances are fairly unique to this sight which limits broader application. The site is larger (3acres), outside the DPA where residential uses are prohibited, and is flanked by mixed use. He mentioned that at one session of the public hearing there was discussion of the parcel at the corner of Commercial Street and Fort Square. Two versions of discussion between the petitioner and landowner were provided to the Board; in any event the parcel could be important to prospective projects.

**Mr. Noonan** asked if Mr. Witten could speak to the issues of this being such a small district as proposed.

**Mr. Witten** responded that he thought that is was important for the Board to have this discussion. It is clear the larger the district the easier it is to support and defend. However, as has been pointed out there are a number of specifics to the area that set is apart. At some point you will need an opinion that you are on firm ground. The most important issue is the disparate treatment and with this proposal the predictability as we have discussed. Zoning allows one to anticipate what can occur, and it is not clear at this point.

**Ms. Gallegher** asked isn't there a way to review things without review the whole project if there is a change.

**Mr. Witten** said absolutely currently that is the process that is carried out with special permit. If a change is anticipate and applicant documents what is alternatively proposed and requests approval. Boards may find things deminimus or insubstantial and allow such changes. For more substantive changes they may return to hearing but it would only address the change. The definition of what is minor or allowable can also be articulated with impact thresholds such as increases in stormwater, wastewater or traffic generation.

**Ms. Black** agreed and thought perhaps such language after outlining such thresholds could include a statement that such permission shall not be unduly withheld.

**Mr. Cademartori** then moved to discuss the *Dimensional Requirements Section*. He reiterated that several uses have no limitation other than the limitation of building dimensions. Regarding height the tiered concept was generally supported, but the height and density need some basis. He thought it was reasonable that if public amenity and public spaces were going to be required or provided that some of the space that would occupy would warrant added height elsewhere on the property. While height needs to be addressed in the ordinance, because anything over 40 feet in the MI would constitute a variance, the proposed 125 is out of context with the area.

**Mr. Noonan** asked if Mr. Cademartori could familiarize the Board further with the current Height Exception Ordinance.

**Mr. Cademartori** said that currently in all other districts other than the MI anything over 30 feet requires a special permit from the ZBA, over 35 feet requires a special permit from the City Council. He thinks that it certainly can be used, but beyond making it an option available in the proposed ordinance further guidance could be provided.

**Ms. Gallagher** said if we are going to be honest about this the 125 feet is too much for the area. But, I am not sure we have the experience to say what the right number is.

**Mr. McCarl** agreed that that appropriate way to deal with the issue is through the existing height exception process.

**Mr. Cademartori** briefly went over the *Parking and Design Criteria Sections* say that it is appropriate to require offstreet parking while at the same time allow for a in depth analysis of demand. An example the Gloucester Crossing site would have needed to provide many more spaces if the static use demands were totaled. That same analysis should be performed and evaluated. The only point on the Design Criteria section is applicability of other standards in the ordinance and some of the language I subjective and may need adjustment. He also reminded the Board that Attorney Mead provided a memorandum regarding standards at the last meeting. One permitting process which has not been address is the Lowland Requirement. Finally the Board recognized that the Chapter 91 jurisdiction is a determination of the State.

**Mr. Cademartori** reviewed the final two sections on *PUD Master Plan and PUD Special Permits*. For the most part, during the public hearing, the Boards discussion surrounded what needs to be submitted, standards to be followed, and the length of approval.

**Mr. Noonan** asked if Mr. Witten could speak to the Board regarding the timeline as the submission standards seem to have been addressed at this point.

**Mr. Witten** said as Mr. Cademartori outlined larger projects with multiple uses take time to put together and construct, not withstanding the current economy. He did not have a particular problem with the timeline as proposed, although it would be up to the Board to decided, and the special permit granting authority can always grant extension. But over 15 years things can change so perhaps it is a little long. The more important point is understanding what exactly you're approving. If for instance you approved a Master Plan and then all by right uses were proposed, you would have no further review.

**Mr. Noonan** thanked the Board members for their hard work on this proposal and Mr. Witten for helping guide the process. At this point he did not think the Board was in the position to make a recommendation and asked if the draft could be further refined and reviewed at the next meeting.

**Mr. McCarl** thought that this was good start and with a little work will be in position to forward to the City Council.

**Mr. Cademartori** said that he would work on incorporating the Board's comments from this evening and try to provide a draft in advance of the Board's next regular meeting on October 7<sup>th</sup>.

**III. ADJOURNMENT**

**Motion: To adjourn at 8:40 pm**

**1<sup>st</sup>: Henry McCarl**

**2<sup>nd</sup>: Karen Gallagher**

**IV. NEXT MEETING**

*Next regular meeting of the Planning Board is Thursday October 7, 2010*

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

**Draft Report and Recommendation Provided to the Board:**

**CITY OF GLOUCESTER**

**Planning Board**

3 Pond Road, Gloucester, MA 01930

Tel 978-281-9781

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**Date: \*\*\*\*\***

**To: City Council**

**From: Planning Board**

**Planning Board Report and Recommendation**

**Proposed Zoning Amendment – Section 5.25 Birdseye Mixed Use Overlay District (BMOD)**

**Planned Unit Development (PUD)**

As per Chapter 40A Section 5 and Section 1.11 of the Gloucester Zoning Ordinance, at a meeting of the Planning Board on \*\*\*\*\*, the Board voted unanimously (\*-0) to submit to the City Council the following Report and Recommendations on the referenced proposed zoning amendment.

The proposed amendment was forwarded to the Planning Board by the City Council on June 9, 2010 in the form of a fourteen page document defining a new overlay zoning district, use regulations, and master plan and special permit approval processes. The Planning Board held a properly noticed public hearing which opened on July 15, 2010. The hearing was continued and heard on the following subsequent dates: July 29, 2010, August 5, 2010, September 9, 2010, and September 16, 2010. The public hearing was closed at the September 16, 2010 meeting of the Planning Board.

The Planning Board offers the following recommendations which are presented in the order of proposed sections of the drafted amendment; Section 5.25 Birdseye Mixed-Use Overlay District (BMOD).

### ***Section 5.25.1 Purpose***

The Planning Board supports the general purposes of the ordinance, which are broad in nature, with the following exception. Section 5.25.1(b) states one of the purposes is “to provide more mixed-use investment opportunities, so as to maximize the development potential of the BMOD”. The Board acknowledges the testimony of the applicant that the property does not have deepwater access, and is not subject to the State’s Designated Port Area regulations and is flanked by existing residential and mixed uses. Therefore, from a planning perspective evaluation of the zoning in the area is appropriate, as some of the assets that the Marine Industrial (MI) district is based upon are not present. In accordance with the underlying MI district regulation the site may be utilized for marine industrial use, however the proposal suggests in the alternate a mixed-use proposal may be appropriate. The Board believes any such proposal must be “scaled” or “optimized” related to such demands and impacts as infrastructure and traffic, rather than being “maximized” as the ordinance suggests. Finally, Section 5.25.1(f) suggests that housing is a certain proposed use and that such use will be available to households of “diverse incomes”. If it is certain such use will be included in a future PUD application it may need to be more explicitly stated. Additionally, it is questioned whether the suggestion of housing available to diverse incomes (a laudable purpose) should be highlighted, given the later the BMOD proposes exemption of such a housing component from the existing inclusionary housing requirements contained in the zoning ordinance Section 5.11.

### ***Section 5.25.2 Definitions***

The Board does not have particular suggestions regarding the language which is used to define terms, or their actual definitions, with a few exceptions. The Board inquired whether several uses were truly prospective uses, such as Adult Day Care Center, Assisted Living Residences and Integrated Medical Centers. The applicant reiterated that they are. The Board also suggested that the monitoring of such a use as Live/Work Residences may be problematic. However, it is important to note that the Live/Work Residence definition includes gross square footage limitations, while other residential uses (i.e. townhouse/multifamily) do not.

One definition to consider very closely is the *Planned Unit Development* definition. It clearly states that no less than two (2) uses must be included and that at least 25% of the gross floor area shall be non-residential use. There is no requirement to have any uses in a project based in the underlying district, or of an industrial nature. This is mentioned to make it clear that this may result in an entirely new zoning for the area, rather than building upon the MI district regulations which the ordinance is purported to be founded upon.

As the Board discussed a common theme pertaining to the need to infuse predictability in the proposed ordinance, the defining of “Reconstruction” and “Renovation” for permitting purposes should be clarified. It is not clear what is implied or intended by including these definitions in the BMOD, other than in certain circumstances additional permitting may not be needed. These situations should be defined. The final definition “Use Cluster” will be discussed in the review of Section 5.25.4.3.

### ***Section 5.25.3 Overlay District***

The petitioner has defined the applicability of the overlay to three lots in the MI district including and limited to Assessor’s Map 1 Lots 33 and 22, and Map 92 Lot 11 (it is clear that this lot was inadvertently included as it is the location of a single family home at 8 Riverview Road). The

Board, to a limited extent, discussed the potential applicability of the overlay district to areas elsewhere in the MI district, or the City. It is understood that the minimum threshold for a PUD is a 60,000 square foot lot, and there are few lots of this size in the MI district. Additionally, the majority of the uses permitted in the proposed BMOD are strictly prohibited in the Gloucester Designated Port Area. However, it is also recognized that lots meeting the 60,000 square foot threshold can change over time, if lots are combined. It is therefore a question as to whether this locus is unique and requires such a specific approach to zoning. At a minimum it appears that the lot on the corner of Commercial Street and Fort Square (Assessor's Map 1 Lot 45) may be important in future project scenarios, but there does not appear to be other areas in which the overlay should be more broadly applied.

#### ***Section 5.25.4 Uses***

This section defines how the overlay is to operate; all of the uses that are permitted by right in the underlying MI district remain as options for the property in the BMOD, provided all other requirements of the zoning ordinance or other land use codes are satisfied. Special Permitted uses in the MI District would be subject to a consolidated PUD special permit rather than follow existing special permitting requirements. This consolidation may result in a change of special permit granting authority for certain uses, as the City Council is identified as the sole special permit granting authority. Additionally, uses (a) through (i) may be permitted by special permit, some of which are exempted from other provisions of the zoning ordinance such as Assisted Living Residences. Two other Accessory Uses are also proposed to be permitted by PUD special permit which included "Structure Parking" and "Drive-through Facilities". The Planning Board does not recommend the inclusion of the allowance of Drive-through Facilities by special permit in the proposed BMOD.

#### ***"Use Clusters"***

This Section requires particular attention, given that it is a fairly new concept to be included in a zoning ordinance. One of the purposes of zoning, in general, is to define appropriate land uses for a given area, and typically such uses are subject to dimensional and other requirements resulting in a predictable outcome. The basis of the *Use Clusters* lies in the assumption that uses may be grouped by their similar impacts and benefits, and therefore if one were substituted for another, in the eyes of the permit granting authority no additional consideration or conditioning would be required. Provided it can be demonstrated that two uses are essentially equivalent, this may be a supported concept. However, little to no justification has been provided other than the groupings themselves. Given the desire to create an ordinance with intended purposes, and a means of satisfying the same, this approach may make it difficult to assert that a project satisfies intents and criteria. If the use cluster concept is not supported the definition of "Retenancing" may not be needed.

#### ***5.25.5 Dimensional Requirements***

This is the section of the proposal that has received the most attention and discussion in the public hearing conducted by the Board. As was pointed out in the discussion of the definitions section, only a subset of the new uses permitted by the BMOD have been further defined by additional dimensional requirements. In particular the ordinance specifies the maximum size a Hotel or Live/Work Residence may occupy in a PUD project. However, all other uses proposed do not have any other limitation other than the dimensional requirements for the buildings in a PUD project. While it is helpful to provide these requirements for the uses that are clarified in this way, it is asked whether the same should be provided for other uses, to help define a predictable outcome.

## ***Height***

To ensure any future project considers site specific characteristics in design, the Board supports the “tiered” requirement as proposed. With a proposed allowance to increase the height over the current allowance in the MI district, the way in which this is applied in design must carefully be considered. As to the overall maximum height and “building height, percentages” the Board required more information to be submitted from the applicant to understand the proposal as written. A rendering was provided at the first session of the Board’s public hearing. As the only concept plan, the Board inquired how this design related to the proposed allowances. At the session held on September 9<sup>th</sup>, further information was submitted with a comparison of another conceptual design with the heights of other buildings in the community. The Board recognizes that as outlined in the purposes of the ordinance it is suggested that a certain portion of the property may be devoted to public use in form of “access” and “view corridors”. It has also been suggested that “public spaces” may be provided within building(s) on the site. The Board recommends that the added density that would be allowed by the increase in the height needs to be balanced by the public amenity to be provide. Once more what is to be provided needs to be specific and predictable. Finally, given the one rendering provided and better estimates on its compliance with the proposal, the height and massing prescribed is out of context with the locale. It is recognized that a provision addressing height is necessary, as there is no mechanism other than a request for variance to permit height greater than 40’ in the MI district. It is recommended that a more appropriate way to review and condition a proposal for increased height either by alternative maximum dimension or through the application of the current height exception ordinance extended to this proposed district.

### ***5.25.6 Off-Street Parking and Loading Requirements***

Due to the proximity of the proposed BMOD to an existing public parking lot (St. Peters) it is important to carefully review what may be required to be provided by a future project. Given that the ordinance proposes increased density over the current allowance and new uses not allowed in the MI district, the proposal appropriately must provide required parking onsite without the benefit of the exemption of Section 4.1.1(c). However, the opportunity to refine required parking through an evaluation of shared parking opportunities is also provided and worthy of consideration.

### ***5.25.7 Design Criteria***

The Board is in general agreement with the design principles outlined in this section. Two general points were raised by the Board that are worthy of consideration by both the petitioner and the City Council. The language used to apply these design criteria, is to the “extent feasible”. Without any further definition the Board suggests this may be too subjective for a permit granting authority to make a finding, or that such finding may be difficult to objectively defend. Additionally some of the criteria use terms as “appropriate” and “either/or” items in the same design criteria, such as “maintain or establish” multiple view corridors and access ways. It is recommended that the criteria be clarified with language that makes it clear when they are satisfied.

The final subsection in the *Design Criteria* section pertains to *Beach Access*. The Board is in receipt of opinions relating to the ownership of the beach (tidelands) associated with the proposed BMOD, and the applicability of the Chapter 91 jurisdiction. The Board recognizes this is a determination that is made by the state Department of Environmental Protection. This jurisdiction is not the subject of the zoning ordinance.

As outlined prior, several permitting processes in other sections of the zoning ordinance would not apply to the proposed PUD project; one such requirement is that of Section 5.5 Lowland Requirements. The entire site is within the Federal Emergency Management Agency's (FEMA) mapped 100-year floodplain; therefore a development in the BMOD would require a special permit from the City Council. The PUD is silent on this applicability; the Board recommends that this be addressed by the petitioner.

#### ***5.25.7 PUD Master Plan***

This section outlines the type of information that needs to be provided for review and approval of a PUD Master Plan. The Board discussed submission standards with the petitioner at several of the sessions of the Planning Board public hearing. It was suggested that at a minimum a projects of this nature should follow the substantive requirements of some the sections of the zoning ordinance that at PUD project would otherwise be exempted, namely Section 5.7 Major Project. This section contains additional guidelines and criteria for approval which should also be considered. Another way in which this may be addressed is in the wording of the proposed 5.25.8.2 (i) which suggests that the applicant may submit "other supportive material". The Board recommends that the permit granting authority reviewing a project under a new zoning as proposed should be afforded the ability to "request of the applicant other supportive material it deems necessary in evaluating the PUD Master plan, such as traffic, engineering or financial studies".

The remainder of this section is procedural; the Board supports the utilization of the existing procedures contained in Section 1.5 of the zoning ordinance as the basis for the proposed review.

#### ***5.25.7 PUD Special Permit***

The final Section of the ordinance outlines the actual land use permit review, approval and issuance. The petitioner has characterized this zoning as an incentive zoning providing flexibility to move forward on a development proposal. This section also defines how the PUD Special Permit process would be conducted. The Board understands the complexity of large development proposals may take additional time to assemble and finance. However, by reference to the interim of time between the approval of a Master Plan and the filing of a PUD Special Permit (15 years), is too liberal. Further, the Board recommends that the final agreed upon timeframe for validity of a PUD Master Plan, be explicitly stated in Section 5.25.8.

Final note on this Section, the Board again recommends that the use of such words as "consider" and "extent to which" in evaluation of "objectives" may be problematic both for the permit granting authority and an applicant in finding and demonstrating that an objectives has been satisfied.

#### ***Conclusions:***

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