



CITY OF GLOUCESTER

PLANNING BOARD

MEETING MINUTES

Thursday October 7, 2010 at 7:00 PM

City Hall, 9 Dale Avenue, Gloucester

Richard Noonan, Chair

Members Present:

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

Staff:

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 September 16, 2010

Minor corrections were made per the request of Ms. Black.

Motion: To approve the minutes of September 16, 2010

1st: Mary Black

2nd: Marvin Kushner

Vote: Approved 4-0 with Henry McCarl abstaining.

- B. Meeting of September 27, 2010

Minor correction were made per the request of Ms. Gallagher

Motion: To approve the minutes of September 27, 2010

1st: Henry McCarl

2nd: Karen Gallagher

Vote: All approved 5-0

III. CONSENT AGENDA

- A. **Lisa A. Warren to adjust lot line between 21 and 21R Fernald Street, Assessors Map 236 Lots 79 and 103, respectively.**

Mr. Cademartori stated that this was a transfer of a small parcel from lot 2 to lot 3. They each have the required frontage. It is filed as an ANR. It is a minor lot line adjustment.

Motion: To approve the adjustment of lot line between 21 and 21R Fernald Street, Assessors Map 236 Lots 79 and 103, respectively. It does not require approval under the subdivision approval

1st: Henry McCarl

2nd: Karen Gallagher

Vote: All approved 5-0

Public comment: None

IV. CONTINUED DISCUSSION OF REPORT and RECOMMENDATION

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. Cademartori stated that he had incorporated some additional comments and also introduced bulleted points of potential recommendations to the City Council. Some areas need further revision and clarification. The board can go through each section and then a final motion can be put forth.

In the purposes section there was general agreement:

One of the discussions was focused around providing housing for diverse incomes.

Should the provision of the other ordinance apply to uses that might be allowed in this district and one was the inclusionary requirement. In this ordinance a lesser percentage of affordable housing was allowed, if housing is included in the component in the project it will be provided at a percentage of 5%. The discussion can be approached in two ways; the recommendation is for it to be treated similarly as in other projects in the city or is there further justification why it would be acceptable to require less than the 15% in this instance.

Ms. Black asked if the regular is 15%, do we ever take into consideration other public uses that a project is affording public at large when considering whether or not to accept less than 15 %.

If a project provides access or public use in another fashion, other than just the housing, is that something that would be appropriate to consider. Do we ever consider those together or are they mutually exclusive concepts that we merge when considering to accept a proposal that is less than 15%?

Mr. Cademartori stated that there are instances in the zoning ordinances where if something in excess of what is required to be provided, is provided, there may be a form of a bonus afforded to the applicant. But it is only after the minimum is provided.

There may be a nexus between other public interests served by the proposed ordinance, but this connection to the reduction in the affordability standard has not been made by the petitioner. Perhaps with further specifics being offered it may be made.

Ms. Black asked if that was something the special permitting authority could consider on a case-by-case or would we have to approve or weigh in on a lesser percentage.

Mr. Cademartori stated that there isn't any opportunity to provide anything less than the 15% for housing in the current inclusionary ordinance. It can be left to the council to decide whether they feel what has been described as public use in the proposed ordinance is acceptable to lessen the standards. Most of the prior discussion on applicability of other standards to this proposal it seemed the Board thought uses should be treated similarly as they are elsewhere in the city. I petitioner has addressed some of these points. If the Board thinks it is appropriate for the Council to consider a lesser standard it may be a recommendation to consider such language in this proposal.

Ms. Gallagher stated that she agreed and to put a less amount required by the ordinance is not acceptable. I don't think we should have various standards throughout the city. I do think that this is a type of project that gets some credit. The permitting body would consider the public use aspect of it as some type of a credit toward to diminishing the number of affordable homes. I would like to see that we suggest that the city council consider that when drafting the ordinance.

Mr. Noonan stated that we had a 10% inclusionary and it was raised to 15%. The goal was to get to that 10% number. We need to find the balance and we have an investor who is willing to make contribution to public access. To do less than 15% in consideration of that public/private partnership would be warranted and the Board can leave it up to the permitting authority to define that number.

Mr. Kushner stated that we are not tying the hands of the city council they also have the right to make changes on the basis as discussed such as monetary considerations etc.

Mr. McCarl concurred with the statements made.

Mr. Noonan stated that an exception to the 15% of the inclusionary for consideration of the public access.

Mr. Cademartori stated that there are other ways to credit. There is an allowance of the use that is significant over what's zoned right now. There may be other means by providing credit. The offsite potential is already built into that ordinance. I want to be clear on what the Board is recommending to the Council.

Ms. Gallagher stated that she was not suggesting that we put a firm number or a scale. I don't think that's appropriate. The ordinance should stand just to give an option. A broad statement that certain things can be considered toward crediting the number of affordable homes.

Ms. Black asked if it would it be appropriate to include that statement for food for thought when they are considering their discretionary abilities. Maybe another public amenity can be put toward satisfying that agreement, because to a certain extent they serve for the public good.

Mr. Noonan stated it gets back to the heart of the issue as a community to build this affordable component, but it doesn't help us reach the 10% stock. This is going to be a dense residential development. I understand about not putting a hard number on, but someone has to. Do we put a hard number on it and let it run the City Council process or to encourage them to understand the balance between of community and private investment.

Ms. Gallagher stated that there is a hard number already in the existing code. I am comfortable with letting that stand, with a caveat that they consider some type of exception. I am happy to hear a suggested number.

Mr. Noonan stated that we could recommend that in the inclusionary language that it stays as 15% with leaving the typical mechanism in place and leave it to the SPA. The idea from a community standpoint is to get to that number. Mr. Noonan stated that we are going to leave the 15% inclusionary with the recommendation that the city council consider the public benefit of the project and to leave the traditional mechanisms in place.

Ms. Black asked Ms. Gallagher was aware of other examples when this occurred.

Ms. Gallagher stated she had on the cluster development on Atlantic St. but they used the existing ordinance and donated \$350 thousand to the housing trust. Also, the downtown Montignino had offsite, but they were applying as the ordinance as it exists now. She was not clear exactly what the ordinance states.

Mr. Cademartori read the from the Cluster ordinance reiterating that the approach is a bonus for surpassing the minimum rather than a reduction in affordable units to be provided.

Ms. Gallagher stated that it would be hard to quantify other public use.

Mr. Cademartori stated that is the difficulty. How to create something that is objective for the Council to consider, you would have to have a known quantity. The fallback is that if they can't come back with a reasonable nexus between the two then the recommendation would be for the 5.11 to apply as drafted.

5.25.2 Definitions

Mr. Cademartori recalled most of the discussion in the definitions section surrounded use clusters. In John Hitten's words, under this ordinance you would be permitting a use cluster rather than an individual use by special permit. His recommendation was that it was precarious situation where you wouldn't permit the use presented before you and the more typical procedure would be is when you received a special permit and you wanted to change something you come back and ask for an amendment. We discussed that if any consideration of any use other than what was proposed, but within the same space within the building that there could be an evaluation of potential threshold impacts and if none were triggered the permit may be amended with out hearing.

When comparing the two side by side there may be written into the special permit process a procedure to go through a two-step process of review. To some degree there are terms that relate to that substitution or potential of limiting permitting process that related to reconstruction, retenanting, renovation use cluster concept. This has been utilized in the Gloucester Crossing permitting.

Mr. Noonan stated that it is rooted in fundamental zoning principles. If you change zoning for a predictable outcome and the potentially different uses are grouped as similar, it is very difficult to know what you are permitting. In Mr. Cademartori's draft, it clearly states that no less than two uses must be included and at least 25% of the floor plan shall be non-residential. Stripping it down to the bare minimum, the notion is getting back to the predictability is the crux of the issue.

Mr. Cademartori. There is a specific recommendation on the use cluster allowance. If a substitution were considered, it would be under special permit process after reviewing potential project impacts. Under the definition section additionally is the discussion of live work residences and residential uses. In general, there are no dimensional requirements that are provided for residential uses other than live/work. They were provided as a percentage of a project and that is an unusual way to approach it. In every other district there is a lot area per dwelling unit requirement; clearly in more urban environments those standards get smaller. The least of which are in our Central Business and R-5 residential districts, which are 2500 square feet per dwelling unit which will give you a sense of the potential density of a project. This ordinance has an indeterminate height and a percentage of some gross floor area. If the proposed density is back calculated, again with no limitation on it, the standard would be less than 1000 square feet per unit.

Mr. McCarl asked how does one figure out a percentage of an undetermined number?

Mr. Noonan stated that the question is density and predictability.

Ms. Gallagher concurred with Mr. Cademartori and Mr. McCarl.

Mr. Noonan said it sounds like the consensus of the Board to recommend to city council that density standards be developed.

Mr. Cademartori stated that the new use should be better defined with dimensional or density standards. It is not necessary at this point to define what they will be.

5.25.3 Overlay District

Mr. Cademartori stated that there was not a lot of discussion about the bounds. There is no specific recommendation that the Board made. It will stand on the bounds that were suggested.

5.25.4 Uses

Mr. Cademartori stated that there was some discussion surrounding potential uses that would be allowed with special permit. There hasn't been any particular response from the petitioner to omit any potential uses and the Board did ask about the viability of certain uses. There is no specific recommendation, other than if certain uses are to be included otherwise described with performance standards and other places in the zoning ordinances they shouldn't be exempted and as previously discussed each use should have a density standard.

Use clusters:

Mr. Cademartori stated if the SPGA has the ability to describe a process for modification in the issuing of a special permit, barring that, there is a process for modification under 40A. With our discussion with John Witten, the concept is allowable, but with the number of combinations that can be proposed and the number of substitute projects that can emerge, make it difficult for SPGA to say this is what we did and anticipate the potential impacts if there is no need to return for modification.

Mr. Cademartori stated right now they are just listed uses. There are differences between those uses in terms of potential impacts and benefits. One example is the difference between the traffic impacts of assisted living unit versus market rate units. It is significant. Without saying how many numbers of units, but if they were equal numbers, the impact is clearly different and you would want to examine the potential impact or mitigation that might be required if those two uses were substituted. They have been refined further in this draft, but without any kind of basis or putting them all side by side for comparison to demonstrate equivalence. If two uses are evaluated at the point of special permitting or post special permitting, you could then set that up in a special permitting decision. That was the recommendation from John Witten.

Mr. Noonan stated that this is something we haven't contemplated before. We want to offer flexibility to a proponent, but at the same time make it predictable if these uses are truly identical. We have to be able to give to the SPGA an opportunity to say yes or no they are not identical. If there is an approved use list, it would be appropriate. There has been no justification by the proponent that these uses are compatible.

Mr. Kushner stated it is difficult to conclude this in the sense that ultimate uses that may never come to be.

Mr. Cademartori stated that are ways to further define intensity of a use in a special permit. There are projects that have been permitted that say "up to". There are different ways to accommodate things in a special permit process. You have the ability to build flexibility into a decision.

Conventional Requirements

Mr. Cademartori stated some of the uses have a dimensional requirement in their definition and others are called out in this section. The proposed uses have to be held to some standard so that you can anticipate what might be included. We saw a rendering and it was divided up into several uses in the project and that is only one possibility with a certain density associated with each use. If it based on the percentage of the project, we won't know until something is proposed, so there should be some basis so that there isn't too much difficulty in predicting what would or should come in as a proposal. Again, the typical basis is dimensional standards.

Mr. Noonan stated that ideally there is consistency between the two recommendations, relative to density.

Mr. Cademartori stated that the dimensional standard in the ordinance is dealing with the building. The dimensional standards for uses are included in definitions. They may have to be cross-referenced or perhaps a small table in the dimensional standard section.

Height:

Mr. Noonan stated that there have been many discussions regarding the height exception idea. There is a presumption that this is going to be bigger than 40 feet in the MI. If it is warranted for the public/private benefit, then a higher number than 40' will be put forward but within the context of height exception to offer the proponent an opportunity the ability to say yes. We have to justify through a project and master plan that there are reasons why we need to consider it.

Mr. Cademartori stated that Gloucester does not have any zoning districts that allow anything over 40' with out a height exception. Mr. Cademartori read from the height ordinance to the Board.

It's the way anyone pursues it in the community. It will have to be clearly stated and addressed in this ordinance that process would extend to the BMOD district in order for the council to consider it. In the discussion it did not seem that anyone was contemplating the 125' height that was proposed. Usually comes in with a petition, a rationale and a justification and how they have considered their design in the context of those standards that have to be met.

Mr. Noonan questioned whether to rely on the 40 foot MI height and as the default; the proponent comes forward with a project and says they need height exception that could be substantially higher.

Mr. Cademartori stated that the council has granted height exceptions as in Gloucester Crossing. The language suggested is if the recommendation is to allow height greater, that the ordinance reference the allowance to petition for a height exception; it could also include language rolled into the master plan step. It would be showing the anticipated maximum height of a project.

Mr. Noonan stated the recommendation is to leave it at 40' and rely on height exception as the project comes forward. There is an existing building there that has some mass and structure that may afford the proponent the opportunity to have a reference when in front of the City Council.

Mr. Kushner we can only go so far with our proposal, because there are so many things that are undecided. We need to give City Council a workable framework.

Mr. Noonan asked the board if they recommend to 40 feet and leave it up to the City Council for any height exception?

Ms. Gallagher stated that any project that comes will be greater than 40' and we should address it now.

Mr. Noonan stated that we want to see that it is scaled and appropriate. We hope the proponent will bring a project forward that will be appropriate.

Ms. Black stated to follow-up with Ms. Gallagher thought about not being comfortable with a figure, but looking more for a framework to acknowledge where the discussions have gone and to incorporate that language and to give that information to the City Council.

Mr. Cademartori stated that the requirements that were proposed were very complex. The percentages defined a project to a certain degree. They did not define where on the site and where the percentage would be applied in terms of the peak that was proposed in the initial presentation. It was discussed in one area and then was shifted. It's a moving target. It does make sense to address with some language of anticipation. There may some ways to address the standards that are in 3.1.6 to make it clear that it is anticipated. The petitioner will make a presentation to the council next week and it the recommendation of the board is the height exception be allowed rather than the straight maximum standard ordinance. There is still a discussion to be had. If there is general acceptance of the board of that concept that the petitioner should be allowed to propose something greater than 40 feet, then you are doing it by providing a height exception to a district that; it is simply not allowed right now. That is a significant step barring allowing the language in that ordinance stand. Forty feet is the ceiling.

Mr. Kushner stated that even if the forty feet was put in the language it does not preclude them from seeking a greater height nor does it limit what the City Council can do.

Mr. Noonan stated there is no way for the board to come up with a height with the absence of a project.

Mr. Cademartori read bullet points from draft document. They will have this discussion all over again. The recommendation is clear; it is supporting the allowance and it will be project specific.

Mr. Noonan stated Rick: there is no justification for anything more at this point but what we have in the books.

Mr. McCarl stated that he didn't see how we could be specific about anything it depends on the design of the project and how it impresses the city council. Certainly there are structures that are higher than 40 feet in the city and those projects were presented and evaluated.

Mr. Noonan stated to leave the height exception.

Design Criteria.

Mr. Cademartori stated there was some discussion, and a memo was provided writing some of the standards back into the design criteria that were suggested throughout the hearing. Attorney Mead did not address the lowland requirement, so it was highlighted, that if it applies it will be concurrent with the special permit grant for a PUD. It will be reviewed by general council and should be clarified that what is appropriate or either or items. It needs to be cleaned up a bit.

Master plan 5.25.7

Mr. Cademartori stated that it was addressed to a certain extent and a memorandum from Attorney Mead dated September 16 that is in the record and has been forward to the council. There has been no revised draft at this point. Master Plan and PUD permit is to follow the process that we have in place. There was one recommendation on the life span of a master plan. This was set up to set the time period where you gain approval of a master plan and then come in for a special permit and that is a long period of time. Certainly circumstances can change for a community or petitioner the owner over that period of time. A number of 5 years was used for a shelf life for a plan.

Ms. Gallagher stated that they could get a continuance if they need to go beyond the five years and if the extension is appropriate.

Mr. Cademartori stated that the concluding statement should be the voice of the board.

There was no particular objection to the intention or purposes of the ordinance. It seems to be more process oriented and standard needs to be revised other than the concept in general. There needs to be more specificity on percentages of uses and height that will clearly be discussed further at the council level.

Mr. McCarl stated that he agrees with Mr. Cademartori wording that we do not recommend the overlay district as drafted, but we do support the intentions and do believe that mixed use may be good for the area.

Motion: To forward the draft dated October 7, 2010 as amended to reflect the edits and discussions of this evening.

1st: Karen Gallagher

2nd:Marvin Kushner

Vote: All approved 5-0

V. OTHER BUSINESS

Ms. Gallagher stated that the CPC determined our recommendation for the City Council awarding money to projects that were submitted to us. The CPC has approximately 850-900 hundred thousand dollars within the budget and found out they would be receiving a 27% match. We deliberated on what we should award and decided not to give out the total amount of \$900 hundred thousand since it is the first round. It will go to City Council next Tuesday and then refer to B&F. Some projects were not funded and some were not fully funded.

VI. ADJOURNMENT

Motion: To adjourn

1st: Henry McCarl

2nd: Marvin Kushner

Vote: All approved 5-0

VII. NEXT MEETING

Next regular meeting of the Planning Board is Thursday, October 21, 2010

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