

Planning & Development Committee
Wednesday, August 8, 2018 – 5:30 p.m.
Venue changed to the Sawyer Free Library Friend Room
-Minutes-

Present: Chair, Councilor Valerie Gilman; Vice Chair, Councilor Jen Holmgren; Councilor Paul Lundberg
Absent: None.

Also Present: Jim Destino; Gregg Cademartori; Jill Cahill; Chip Payson; Rick Noonan

The meeting was called to order at 5:30 p.m.

1. SCP2018-002: Prospect Street #93, Map 13, Lot 43, GZO Sec. 1.8 “Use Table Permits” and Sec. 2.3.1(7) “Conversion to or new multi-family or apartment dwelling, four to six dwelling units”

Attorney Catherine Schlichte, Schlichte & Johnstone P.C., 14 Pleasant Street, representing the Applicant, Action, Inc., confirmed abutters were noticed of this public meeting and reviewed for the Committee as follows:

- Action, Inc., owner of the property at 93 Prospect Street wishes to add a fifth dwelling unit to an existing four dwelling unit building, the largest unit noted as approximately 700 square feet and the smallest at 480 square feet.
- The Applicant has received dimensional relief from the Zoning Board of Appeals (on file) and no objections were raised from abutters about this project.
- By adding a 10 foot to 12 foot dormer on the third floor, easterly street (Chestnut Street) side of the building on the third floor, it will create the necessary head room to convert the third floor storage area into a studio apartment of about 480 square feet.
- The addition of a fifth low-income unit in the building will help the city meet its housing needs for low income, affordable housing, placing the building to its best and highest use in the downtown.
- The footprint of the building will be unchanged.
- There is no place to put parking on the site as the building directly abuts Prospect Street and at the rear of the property is a large retaining wall. None of the tenants have any cars, and it is not anticipated the fifth unit tenant will have a car either. The location is very near all forms of public transportation.

Ms. Schlichte highlighted the photographs of the building submitted with the Special Council Permit application. She then reviewed the six criteria under GZO Sec. 1.8.3 as follows:

1. Social, economic or community need served by the proposal: Gloucester is in need of additional low income housing, and this unit will assist in serving that need. While this isn't a low income deeded property, one of the missions of Action, Inc. is to provide safe and secure affordable housing. There are no rental certificates for this unit but Action tries to place their current clients into these small residential units.
2. Traffic flow and safety: This fifth unit isn't expected to affect traffic flow in the neighborhood adversely. None of the current tenants have cars and the future tenant of this new unit isn't expected to have a car. The property is very close to the downtown and public transportation.
3. Adequacy of utilities and other public services: The current utilities and services available to the building will accommodate the additional studio apartment.
4. Neighborhood character and social structure: The neighborhood character and social structure will be maintained. This is a densely populated downtown neighborhood with many multi-family homes in the immediate vicinity of property. Noted were an 11-unit building, and several four- and five-family buildings in the immediate vicinity. The dormer will be on the street side and will not have an adverse impact on adjacent buildings.
5. Qualities of the natural environment: The building is situated in an urban downtown landscape. It was noted this project will be part of a total building renovation. Highlighted was the installation of new windows and water heaters bringing the building up to energy efficiency standards along with other improvements. The building was purchased by Action about four years ago.
6. Potential fiscal impact: The fiscal impact will be negligible but will add another affordable unit to the city's downtown.

Ms. Schlichte advised that the architect was called for stamped plans and will be submitted to the City Clerk early next week, prior to the public hearing.

COMMITTEE RECOMMENDATION: On a motion by Councilor Holmgren, seconded by Councilor Lundberg, the Planning & Development Committee voted 3 in favor, 0 opposed, to recommend that the City Council grant a Special Council Permit (SCP2018-002) to Action, Inc., for a property at Prospect Street #93, Map 13, Lot 43, zoned R-5 to add a fifth dwelling unit in an existing four dwelling unit building under GZO Sec. 1.8, 1.8.3 and 2.3.1(7) pursuant to an unsigned plan set submitted to the City Clerk July 12, 2018 with the application, rendered by Seitz Architects, Arlington, MA (A1.3, EX1.1, EX1.2, and EX1.3) contingent upon receipt of a signed, stamped plan set by the Architect from Seitz Architects.

2. *Planning Board Formal Review and Recommendations regarding Zoning for Recreational Marijuana Establishments (Cont'd from 07/18/18)*

Councilor Gilman thanked Rick Noonan, Chair, for his leadership with the Planning Board's work on the recreational marijuana Zoning Ordinance proposal, and then moved to a review of the Planning Board's July 5, 2018 recommendations.

"Marijuana Establishments"

Sec. 5.31 Marijuana Establishments:

Councilor Lundberg advised that the language should read in the last sentence; "...; *should it be less than .5, the number shall be rounded down.*"

Section 5.31.1 - Purpose: No comments by the Committee.

Sec. 5.31.2 - Applicability; Effective Date:

Gregg Cademartori, Planning Director, noted this is "boiler plate" and is setting up what the city is seeking to regulate to mirror the language and types of uses the state is licensing.

Sec. 5.31.3 - Definitions: No comments by the Committee.

Sec. 5.31.4 - Use Allowance and Special Permit Procedures:

Mr. Cademartori noted the categories of uses, that through the effort of the Planning Board, they've consolidated the medical uses within the same Ordinance. This isn't just about establishments newly permitted by the state but also treatment centers. They're looking at cultivation centers as "either or" in that it doesn't matter which use in the industry the cultivation center is supplying. It is culled to five categories of uses. Along with Sec. 5.31 are the changes to the use tables in GZO Sec. 2.3. This is an approach as recommended by the Planning Board of as-of-right siting for all the uses except for retailing and is cross referenced in this section for the listing of uses and which districts the uses are permitted.

He highlighted that the second paragraph shows the Planning Board as the Special Permit Granting Authority and as the approvers of site plans for those uses allowed as-of-right. Every one of the uses will require site plan approval by the Board. There are some additional dimensional standards for the uses for the district these establishments would be allowed in -- EB (Extensive Business), GI (General Industrial), and BP (Business Park). Those additional requirements are setbacks from preexisting public or private schools K-12 (Kindergarten through Grade 12), 500 feet, recommended as the one receptor mentioned in state regulations. A lesser standard can be adopted locally by state regulation, but it has remained at 500 feet although initially proposed at 250 feet, he reported. **Councilor Holmgren** expressed agreement with 500 foot setback distance.

Councilor Gilman highlighted that if the city is only going to have three recreational marijuana retail Special Permits, she would recommend because the Board is responsible for the site plan review for those applications, that the Council should be the Special Permit Granting Authority for the recreational marijuana retail establishments, noting preliminary discussions on this matter at previous P&D meetings. She advised she had a comfort level with what the City of Salem has recommended -- with an addition to the dimensional standards of Section 3 of the Zoning Ordinance, asking the Committee to consider adding "A marijuana establishment which is proposing a location within 500 feet of any church, library, institute of higher education, licensed daycare, nursery school, preschool, must provide written notice of its intention to these entities prior to or in conjunction with any request for a Letter of Support or Non-opposition and/or the application for a Special Permit." (Salem Ordinance, Sec. 6 General Provisions, #5). She mentioned this is a good outreach effort before Applicants come forward -- it adds good will on the part of the Applicant, and doesn't create an added undue administrative burden to them. **Councilor**

Lundberg asked how this factually could come about if they say that the retail marijuana establishments can't be within 500 feet of these places; there wouldn't be an occasion for them to be located. **Councilor Gilman** highlighted that the CCC says nothing on these extra locations, quoting again the language from Salem's ordinance. **Councilor Lundberg** pointed out the section of the proposed Gloucester Zoning Ordinance language, "...shall not be located within 500 feet of a pre-existing public or private school providing education in kindergarten or any grades 1 through 12." If they can't site one of these establishments within 500 feet it will never come about that an applicant will be able to obtain a Letter of Support as it won't ever be less than 500 feet.

Councilor Holmgren asked if any receptors, such as houses of worship, are in the proposed districts. **Mr. Cademartori** clarified that the Salem ordinance has setbacks for all the other uses the Councilor identified. The current Gloucester draft only has a setback from schools. There could be instances that there could be a proposal where one of those other uses may be within 500 feet of a church or daycare center. Jurisdictionally there will be no setback requirement from them but the Councilor is suggesting those types of receptors be noticed prior to an applicant "taking a step." **Councilor Lundberg** pointed out that it is more than notice -- it's seeking a Letter of Non-opposition which he said was a "big leap," in his view. He asked what is it about these other entities that rise to the same level as schools; why are they concerned about houses of worship, for instance. **Councilor Gilman** conceded that may not be a big issue regarding houses of worship. She conveyed that there was discussion by the Task Force about trying to keep the retail establishments in places that were less visible to children under the age of 21. In looking at matters like licensed daycare centers, pre-schools, playgrounds, even the library, it seemed to be areas where there'd be a fair amount of children. She conveyed she was considering concerns expressed to her by parents in the community. **Councilor Lundberg** explained he was concerned by the notice and the Letters of Non-opposition -- rather, say they won't be within 500 feet and leave it at that. If there is opposition expressed by the public the Council will hear about it. He expressed he understood the Councilor's concern and suggested listing them all and add them with the last paragraph of 5.31.4. If someone voices that it is unfair at the public hearing, then they'll hear about it. **Councilors Holmgren** and **Gilman** expressed agreement. **Mr. Cademartori** pointed out if they include all those receptors, they will eliminate a lot of the sites that have been noted as good examples of locations -- it will exclude a site that is a shopping center in the city that has a daycare center as a tenant in addition to a liquor store. He advised that they did look at a bubble map of what it looks like when you start to put 500 feet on all of those different types of receptors needing a buffer, and it has a significant impact on the potential locations. The Planning Board recommendation was that the state has identified schools (K-12) to what they will consider as a buffer in licensing. The Planning Board, he conveyed, has agreed with that approach because of the impact to some of the sites from a capacity and access perspective. He proffered that it's a challenging balance of wanting visibility as a positive which was conveyed by the city's Public Safety officials, but with that comes the potential exposure to youth. He highlighted that much of that has been addressed by the districts that have been selected -- 105 lots with some undersized, some on residential streets with other ways to focus on sites with capacity, good access and visibility which are predominantly shopping centers. He reported that none of the 105 sites are within 500 feet of any of the schools in the EB district. **Mr. Cademartori** stated that giving people notice and then asking for some sort of support when they don't really have any standing in the ordinance is one point of concern and that if the Committee is moving in the direction of adding back in what they feel are types of uses that should be protected with a buffer they'd have to relook at what they've done so far. **Councilor Holmgren** noted that they'll take a look at how these establishments will look from the outside, and can regulate how attractive the visuals are to children especially. There is a liquor store in a shopping plaza with a daycare center now which is as much of a concern to parents as a retail recreational marijuana establishment, she noted.

Councilor Gilman cited comments made by a Planning Board member, at one of the Board's meetings on this subject, that there is still a conversation during any permitting process and that there would be an opportunity for the public to share their concerns even if they didn't mention all these sensitive receptors (in the Zoning Ordinance).

Councilor Lundberg pointed out that's the whole point of a Special Council Permit to allow that to happen. He advised he was comfortable with that, highlighting that the Planning Board did vet this issue. If they want to re-vet it they can, he added. **Councilor Gilman** pointed out this was about people who have expressed concern to her and adding something into the ordinance that may seem reasonable in terms of notice. **Councilor Lundberg** cautioned that when there is a move towards an inclusive route something invariably is omitted as Councilors are substituting their judgement for the public. When they have a public hearing, the Council will have taken a stand on schools -- anyone else who has an objection can make that objection at the public hearing. He advised he was against having in the ordinance allowing abutters to have a veto over these things and shouldn't have a role in a veto. It is the Council who is making the decision, he conveyed.

Councilor Gilman asked about the city's pre-school; would it cut out any sites. **Mr. Cademartori** pointed out pre-schools/daycare centers are licensed by the state which can change from year to year. The city's pre-school is

licensed through the Mass. Dept. of Education, **Jill Cahill**, Community Development Director conveyed. **Jim Destino**, CAO, asked for clarification if the Committee is asking for Applicants to give notice before a Host Agreement is signed by the city or giving abutters the ability to veto by their objecting to it which he advised didn't make sense. **Chip Payson**, General Counsel, observed the Salem ordinance is set up much like the draft ordinance before the Committee but Salem has gone "above and beyond" that and as a matter of public policy they're going to require that the Special Permit Applicant directly notice because of the importance of this issue so that they have the opportunity to come in. It is a step up from ordinarily watching the newspapers and the Committee and Council agendas. It is just noticing by a direct letter to churches to let them know there will be an establishment. It is not giving them a veto -- it is noticing this extra group. If this is just about notice, that is not a burden on anyone, **Mr. Destino** advised. **Councilor Gilman** agreed that a Letter of Non-opposition was asking too much, but expressed her agreement to the notice by an Applicant to "special abutters" of their intent. **Mr. Payson** then read Sec. 6.10.7.10 of the Salem ordinance. He explained that Salem placed a notice requirement with the onus on the Applicant to notice and provide proof that they did notice, so the "special abutters" are alerted and can come in and make public comment during the permitting process.

After a lengthy discussion, the Committee agreed that notice was appropriate with language to the effect that, "The petitioner shall submit proof that it provided notification in writing to all churches, libraries, institutes of higher education, licensed daycare, nursery schools or pre-schools within 500 feet of its proposed location to provide them an opportunity to comment at a public hearing." **Mr. Payson** advised it is reasonably related to what the Council is trying to do in the ordinance.

Councilor Holmgren expressed that the Council should be the Special Permitting Granting Authority which **Councilors Gilman** and **Lundberg** expressed agreement.

Rick Noonan, Planning Board Chair, advised the discussion on the Planning Board level on the belts and suspenders of additional noticing was a lengthy discussion. One of their members asked why would they go down this moral or ethical path as to who is or isn't in that group. These are business districts and why do they have to notice Donut Jim's or Pleasant Street Café that I'm putting in a coffee shop in East Gloucester, come and speak for or against my proposal at City Council. He pointed out these are legal businesses with a product which they sell that need parking and access, reporting that the Board didn't want to go to the "slippery slope" of saying who's in this select group. He reminded the Committee they don't have standing. People have the right to appear at a public hearing on the Special Permit to voice their opinion. This was the basis for a more simplified recommendation from the Planning Board.

Sec. 5.31.5 - Additional Filing Requirements and Standards:

Mr. Cademartori reported that there are several examples where Sec. 2.3 will identify different uses, where and how they're allowed either by right or by Special Permit. This section gets into the submission standards that will be required. He touched on not wanting to create a standard of what an applicant was already going to develop with a state license. Much of this language is taken from the CCC regulations noting prohibitions consistent with the state regulations. The addition by the Planning Board was about sites having adequate parking and access. The EB district is typically more of a city-wide draw or beyond; and may have a greater parking demand and so there is an additional standard for parking. He pointed out that there's a great variety of size of properties in the EB district; how they're accessed and where they're located. He reviewed that there was discussion of what are the sites in that 105 parcels that might have the capacity and can provide this type of parking and meet other standards. There are means of adding standards to eliminate sites that are in residential neighborhoods; smaller lots that are zoned EB but properties that house businesses like hair salons and building contractors, citing the Whittemore Street area. Larger sites are on arterial streets and is defined in the Zoning Ordinance, which he cited such streets that are numbered Routes as Essex, Eastern, Bass Avenues, Thatcher and Gloucester Crossing Roads and Route 128. Some language talks about roads created after the time of the Zoning Ordinance. From a lot size perspective, there is a lot of variety in size of operations that are beginning to be permitted in the state -- there are examples of permitted businesses of 2,000 square feet up to 5,000 square feet, and consider building footprint, required parking and access. He suggested it may make sense to look at a threshold of 20,000 square feet in lot size to accommodate that type of parking demand as well as the size of facility that might open. A combination of those two elements of needing to be on an arterial road and minimum lot size may remove many of the smaller parcels. **Councilor Gilman** advised the parking will be a guide for lots that can accommodate these retail establishments. It was recommended that this section is talking about additional filing requirements and standards.

The Committee agreed this language should be added. **Mr. Payson** suggested regarding the issues raised by the Committee for language additions and changes that he and Mr. Cademartori will take the time to draft the

recommendations carefully. The Committee expressed agreement to await the full documentation of the redrafted Zoning Ordinance amendment before considering a possible vote to recommend.

Mr. Noonan noted the district approach versus the list of abutters. It is about applicability and casting a broad enough net that gives some sort of separation and opportunity without picking numbers. It is a limiting exercise, he pointed out. He advised he had no problem with it, that the Board's concern was not to regulate these businesses at a higher level than other businesses in the city. These are adult use only stores and kids aren't going to be allowed in to make a purchase, he highlighted.

Sec. 5.31.8 - Special Permit Findings:

Mr. Cademartori noted this would change slightly. This is just for the retail establishments only, **Councilor Gilman** pointed out and the Committee expressed its agreement.

Sec. 5.31.9 - Host Community Agreements:

Councilor Gilman mentioned the phrase, "effective for longer than 5 years." suggesting it has to be three years as to the term of a Host Agreement. **Mr. Payson** advised he would confirm that if it is the case. **Councilor Holmgren** confirmed that the host agreement is renegotiated every three years. **Mr. Destino** advised there have been a lot of cautionary tales about the Host Agreements and the Administration has to be careful to put things that relate to direct impact on adult use.

Sec. 5.31.10 - Unlawful Acts:

Subsection three would change to City Council from Planning Board as the Special Permit Granting Authority.

Sec. 5.31.11 - Violations and Penalties: No comments

Sec. 5.31.12 - Severability: No comments

Further Discussion by the Committee not on specific sections:

Councilor Gilman suggested the draft language could have kept the CCC language on energy efficiencies in cultivation centers mentioning concerns raised by National Grid that these new businesses, particularly cultivation centers could take a "lion share" of cities' and towns' energy capacity. Noting her understanding of the Planning Board's position, she suggested that the city could make sure that cultivation centers should be reminded about this issue and be urged to be responsible about their energy use. She advised she preferred the redline version (on file) which is repeating what the CCC says is important. She pointed out that in California they're taking 3% of the state's electricity. She pointed out she's not saying they want to make it harder but want to ensure the city has enough water and electricity for other businesses in a particular location. It is part of the (state) application that you have to do these things. **Mr. Cademartori** confirmed it is in the licensing application to the state. **Councilor Gilman** expressed she wanted Councilors to consider repeating this energy request in the zoning language. **Councilor Lundberg** agreed that it is good to make it a statement but that they didn't have any way of knowing if these new cultivation centers would take up any more utility capacity than that of Gorton's processing plant or any of the large freezer establishments in the city that run 24/7. He advised he wasn't prepared to substitute his judgement as a requirement on a business. They aren't in a position to start making those kinds of technical assessments because they don't have the tools to do that. **Mr. Payson** noted the CCC regulations are different from what was stricken. The CCC and the state put the onus on the applicant to come up with energy conservation and energy policies and procedures not with particular specificity. What was stricken was that particular specificity which goes a step beyond what the CCC requires, for example, of requiring the offset of 100% of electricity consumption with at least 50% of onsite generation facilities, renewable energy credits or some other method approved by the city. He explained that there is recognition throughout the regulations of the probability of increased energy consumption, to what degree, the regulations are somewhat vague. There are requirements under the regulations, Sec. 500.105 1P for Marijuana Establishments and also for outdoor marijuana cultivators. It is not as specific as what was included in the draft and then stricken. It wasn't a repetition of the CCC regulations, he added. **Mr. Cademartori** pointed out that in the submission standards and filing requirements they have exactly what they are mentioning. It is putting it up front from the Planning Board recommended draft Page 4, Sec. 5.31.5 l. c) by asking the applicants to provide a written description of how they are addressing specific standards and regulations. **Councilor Gilman** asked for a descriptive sentence which takes note of what that entails. **Mr. Payson** offered simple language to the Committee which he suggested could be inserted to which the Committee voiced its

approval. **Mr. Destino** noted he attended the Cannabis Business Association meeting where there was talk about the mistakes made by other states where they licensed too many cultivation centers and demand doesn't keep up with supply. Massachusetts isn't going to make those mistakes, he assured, that the state has learned from those examples and won't allow outpacing supply with demand -- in turn they may not have the same energy issues as Colorado and California by not permitting as many cultivation establishments.

Mr. Destino then addressed Board of Health Regulations that has to be adopted. The smoke shops in the city are now selling CBD (Cannabidiol) foodstuff which falls under the Board of Health regulations. They don't know the levels of THC (Tetrahydrocannabinol) a foodstuff may contain until they test them. They still need to deal with these businesses and deal with the edibles which he termed a "gray area." They're thinking about leaving this in the Board of Health regulations as this is constantly evolving situation, he advised.

Councilor Gilman there is a need to deal with the paraphernalia that is being displayed in smoke shop windows. **Mr. Destino** advised the state is going to take a look at this. Regulations will have to be put in place, he agreed, and they'll need something on foodstuffs, signs and displays. As long as it is enforceable, it can be in the Board of Health regulations or the Code of Ordinances, **Mr. Payson** advised. He suggested perhaps considering language in this ordinance about marijuana paraphernalia in windows of accessories stores. It was noted that a definition would have to be added. **Mr. Payson** advised they would look into this and he and Mr. Cademartori would prepare the list for the Committee.

Councilor Lundberg touched on the use table and asked why is there a "yes" for Marijuana Testing Facility in the EB district when the other product manufacturers are "No." **Mr. Cademartori** advised a testing facility could be 500 square feet, like a biomarine type of facility. It is not producing or retailing whereas a cultivator requires the additional space requirements.

The definition of bulk storage was touched upon between **Mr. Cademartori** and **Councilor Gilman** and how the parking is calculated for retail uses. He suggested they add for the use table at the end: "(see section 5.31)."

Attorney Joel Favazza, 123 Main Street, noted the difficulty of permitting with Gloucester; that there is no "one stop shopping." Every applicant is already at the Planning Board doing site plan review, they could hear the Special Council Permit simultaneously, he suggested.

Attorney Deborah Eliason, 63 Middle Street, asked with regard to the use table it appeared to hear that Medical is only allowed in the BP district and retail in the EB district. She asked what the rationale is. **Mr. Cademartori** noted there was a lot of discussion at the Planning Board about the potential for expanding the opportunities but knowing the potentially limited number of retail establishment locations which was the primary focus, there was also the consolidation of the uses into one ordinance so there may be the ability to expand the allowance into other districts but that it is narrow at this time. This is all fairly new, he pointed out, and for the time being they are segregated in two districts. **Ms. Eliason** expressed concern that the way the ordinance is written it limits the opportunity for people to obtain Medical Marijuana businesses. **Mr. Cademartori** and **Mr. Noonan** noted this was a topic of discussion with the Planning Board and is something the Board would like to revisit particularly on the dispensing side.

A motion was made, seconded and voted unanimously to adjourn the meeting at 7:02 p.m.

Respectfully submitted,

Dana C. Jorgensson

Clerk of Committees

DOCUMENTS/ITEMS SUBMITTED AT MEETING: None.