



CITY OF GLOUCESTER
ZONING BOARD OF APPEALS
3 POND ROAD, GLOUCESTER MA 01930

ZONING BOARD OF APPEALS
Meeting Minutes
7:00 P.M., January 31, 2019
Kyrouz Auditorium, City Hall

Board Members Present: David B. Gardner, Chairman
Joseph Parisi, III, Vice Chairman
Michael C. Nimon
Sage Walcott
Kris Howard (absent)

Alternate: Adria Pratt
Michele Harrison (absent)

Also in Attendance: Bill Sanborn, Building Commissioner for the City of Gloucester
Alison Battle, Clerk of the Zoning Board of Appeals

The Chairman called the meeting to order at 7:00 p.m.

Continued Business:

New Business:

13 Sleepy Hollow Road

Petition of Joseph and Gloria Distefano, Ozone Realty Trust - seeking to appeal the decision of the Building Commissioner concerning the lot status at 13 Sleepy Hollow Rd.

Atty. Donald Borenstein of Johnson & Borenstein, LLC 12 Chestnut St. Andover, MA. is representing the appellant Ozone Realty Trust and the Bonanno family, owners of 11R Sleep Hollow Rd. They are appealing the November 27, 2018 determination of the Building Commissioner, Bill Sanborn, on his decision on the vacant lot at 13 Sleepy Hollow Rd. Atty. Borenstein submitted a 2 page handout and used an enlarged photo of the assessors map while he discussed what is before the board.

Atty. Borenstein explained that in 2014, the Bonannos looked into purchasing the lot at 13 Sleepy Hollow Rd. so that no one would be able to build on it. They retained Atty. Coakley to represent them, who after reviewing the information on the lot, informed the Bonannos that he had concerns as to the buildability of the lot, if it was a grandfathered lot, or if it was protected by the Zoning Freeze Provision. The Bonannos never moved forward with the purchase of this lot due to Atty. Coakley's findings.

In 2018, the Bonannos learned that the property was for sale and submitted a letter to the Building Inspector, Bill Sanborn, asking him to make the determination that 13 Sleepy Hollow Rd. was not a buildable lot, however, Mr. Sanborn determined that this lot is a grandfathered buildable lot.

Atty. Borenstein discussed the Zoning Freeze regulations and described the issue at hand as a merging issue. He handed out a chronology of the properties which were owned by the Goldberg's from the early 1950's until just recently.

Tim Cavanaugh, 14 May St. Salem MA is the title examiner for the appellant. Mr. Cavanaugh submitted and discussed the title history on the 2 lots and his findings on the ownership chronology of 13-15 Sleepy Hollow Rd. from 1953-2018.

Mark Elfman, 50 Congress St. Boston MA is the probate and trust attorney for the appellant. Mr. Elfman submitted and discussed the laws of trusts and how they do and do not pertain to this case. Mr. Cavanaugh discussed the trust that was used to own both of these properties at different times. Bill Sanborn, Building Commissioner for the City of Gloucester, 3 Pond Rd. discussed the reasons for his decision and stated that when they look at properties and mergers they look at zoning date changes. This zoning date change was in 1999 when the property changed from 10,000 sq. ft. to 20,000 sq. ft. After a zoning change, if 2 properties are held in common ownership, the owner has 5 years to do something with them; if he fails to do so, they will merge. Mr. Sanborn was given these documents and felt that it wasn't held in common ownership at the time. He stands by his decision that the trust had 2 separate ownerships.

Atty. Gardner confirmed that when Mr. Sanborn looked at it 15 Sleepy Hollow Rd. was owned by Kenneth Goldberg and 13 Sleepy Hollow Rd., which is a vacant lot, was owned by the trust. Mr. Sanborn states that he looked at it as separate entities without getting involved with the trust laws. Mr. Sanborn confirmed that the zoning permit has not been issued, only applied for, and was put on hold at the applicant's request. He also stated that the Building Department stands ready to issue a building permit.

Atty. Deborah Eliason of Eliason Law Office, 63 Middle St. represents Joseph and Gloria Distefano who are also present this evening. Ms. Eliason objected to the materials submitted this evening and stated that the Board has rules and procedures of when documents should be presented and she was not given the opportunity to review the materials.

Joe and Gloria Distefano own the lot at 13 Sleepy Hollow Rd. When they purchased the vacant lot on August 20, 2018 for \$750,000.00 it was assessed at \$531,500.00 and is now assessed at \$544,800.00. It was assessed as a separate lot before the Zoning change in 1999 and is assessed now as a separate lot at market price. The septic system was approved for this property in July 2018 and the Building Inspector with the General Counsel's Office found that this lot is grandfathered.

Atty. Eliason went on to rebut information given by the appellant's council and discussed her findings when reviewing the trust and ownership of the properties from 1953-2018. Atty. Eliason discussed the questions raised by the title examiner. Atty. Eliason also pointed out that this would effect 15 Sleepy Hollow Rd. which already has a home built on it. This shows that other attorneys looked into this and came to a different conclusion.

Atty. Gardner said that he felt that a lot of what was being discussed is beyond the Zoning Board and will end up in the Land Court. He would like to have an opportunity to speak with the City Solicitor and receive some guidance before the Board makes a decision.

Mr. Parisi agreed with the chair and moved to continue to March 14, 2019.

17 Starknaught Heights

Atty. Sal Frontiero, 43 Middle St. represented Kevin and Kelly Collins who are seeking a Special Permit to demolish an existing structure and construct a new 2 story single family home with attached 2 car garage at 17 Starknaught Heights.

The Collins purchased the property in 1993 and are currently using this property as a summer residence but plan to retire to it. Atty. Frontiero discussed the plans and noted that the property is an odd shape, and it does not comply with the 80' lot width requirement in the R-10 zoning district. It does meet or exceed all other zoning requirements.

Atty. Frontiero showed plans for a 2 story single family home with 4266 sq. ft. of living space, a basement and 2 car drive-under garage. The home will have 3 bedrooms and 3 baths.

The new plan complies with all setbacks, however it is a conforming structure on a non-conforming lot. The Building Inspector does not have the authority to issue a building permit in this instance because the original house is being torn down.

Speaking In Favor: None

Speaking in Opposition: None

Mr. Parisi moved to grant the requested Special Permit as there is not a height issue and only a minimal zoning issue of lot width. This is due to the lot shape and distance to the street. He feels that the desired relief may be granted without substantial detriment to the public good.

Mr. Walcott seconded
All in favor: 5-0

16 Washington Square

Bill Holmes, 58 Green St. Danvers MA of New England Colonial Properties is seeking a Variance to convert a 2 family to a 3 family at 16 Washington Sq.

Mr. Holmes recently purchased 16 Washington Sq. which has been assessed by the City as a 3 family dwelling since 1991, however the Building Department has it as a 2 family dwelling. He would like it to be considered a 3 family again. The Board of Health has it as a 3 family as well.

Mr. Sanborn said that his files have it as a 2 family but somewhere along the line it was changed to a 3 family.

Mr. Parisi filled in information for the Board, as this was his wife's grandmother's house which they sold in 1991. He said that it was always a 2 family and that when it was sold to the Davis family they must have changed it to a 3 family.

The Chair asked Mr. Holmes to make sure everything complies with the laws for a 3 family dwelling and to make sure he gets a Permit of Rental Dwellings from Board of Health.

Speaking in Support: None
Speaking in Opposition: None

Mr. Nimon moved to grant a special permit to convert the property from a 2 family dwelling unit to a 3 family dwelling unit, a Special Permit to allow a lesser number of off-street parking spaces, and Variances for lot area and for lot area per dwelling unit, to correct what has been going on since 1991.

Mr. Walcott seconded
All in favor: 5-0

53 Gloucester Avenue

Atty. Joel Favazza, Seaside Legal Solutions 123 Main St. represented both 53 Gloucester Avenue LLC which is the owner of the property and J & N Ventures, LLC which is the company that runs the business of Cape Ann Lanes as the tenants at this property. They are seeking Special Permits to convert the existing space to add a restaurant and brewery with no exterior changes at 53 Gloucester Ave.

Atty. Favazza explained that while a restaurant and brewery are allowed in the EB district, a bowling alley and arcade are not. This means that every time they want to make a change inside the building they need a Special Permit to do so, unless the bowling alley and arcade are removed. They also need a Special Permit to reduce the amount of parking spaces required, and plan to keep using the area across the street, as well as, the 11 spaces allotted them in the back of the building.

Jim Frontiero and Nic and Caitlin Pszenny of J & N Ventures took over the property in 2016, cleaning up the facility both inside and out. They have also added a crosswalk in front of the building for public safety. They are now looking to update the facility to improve upon the current services they are providing, as well as, to be able to compete with other bowling alleys in the Boston and North Shore areas.

Mr. Favazza discussed the project and showed slides of different catered events and bowling leagues that are currently held in this facility. The Veteran's league is in attendance tonight to show their support for the application.

Mr. Favazza pointed out the current cooking area and stated that they cannot cook enough food in their small kitchen to serve the patrons that they have. They are looking to upgrade the kitchen and dining area. This will enable them to be a more full service experience. Currently, patrons take their

families bowling and then going somewhere else to eat. The floor plans are shown to the board and it is said that there will be lane side seating and bar and food service to the lanes.

Atty. Favazza discussed the survival of bowling alleys in the area and how the ones that have stayed the same have not survived, but the ones that have added the requested changes have flourished.

Atty. Favazza stated that 31 letters and emails plus 99 petition signatures have been presented to the Board before and during this meeting.

Parking was discussed and the lease allows for 11 spaces on the lot in the rear of the building and the right to cross through the lot to get to them. Mr. Scott, the owner of the property, who is present this evening and has been granted permission from the D.O.T. to pave, improve and maintain the strip of paved area across the street from the front door of Cape Ann Lanes for parking. This space is owned by the Massachusetts State Highway and will give their business 30 additional parking spaces. Mr. Scott has also given permission to J & N Ventures, LLC to use the neighboring business lots for overflow, though it is not in their lease.

Mr. Parisi asked if children that are dropped off to bowl will have to get drinks and pizza from the bar. Atty. Favazza said that they do not and showed a counter area where the old snack bar was located as a place where underage patrons can order. The Board is reminded that the lanes will also have assigned servers that the bowlers can order from.

Mr. Gardner voiced his concern of children being dropped off to a brew pub atmosphere and is insured that they are making this a full service family focused business, not a bar or pub.

Mr. Gardner said his recent experience going into the facility was a positive one, and that he feels that the bowling alley is an asset to the city.

The Board voiced their concerns of the business turning into a brew pub.

The Chair would like to see the brewery stay in the bowling alley even though they are allowed to distribute 25% of what they produce. He does not want to have loading docks and trucks pulling up. The Board doesn't want this to turn into a distribution center.

Nic Pszenny of J & N Ventures addressed the Board's concern and stated that he already has trucks delivering beer and other supplies 3-4 times a week with no issue. He also said that selling 25% of the beer that is made would require a whole sale company and they won't be producing enough product for this to be feasible.

Alan MacMillian 18 Story St. Rockport, MA

Mr. MacMillian said with the loss of Friendly's and the lack of family focused businesses in Gloucester he supports the project. He said the Peabody bowling alley, which was brought up by Atty. Favazza, revitalized the downtown area of Peabody after it was updated.

He felt that the Board's concern of trucks would not have a negative impact.

Ken Reardon, Cape Ann Chamber of Commerce read a letter that he had submitted to the ZBA Clerk earlier in the week stating that the Cape Ann Chamber is in favor of this application and supports the economic development of the city and its businesses along with the character of the Pszenny's.

Mark Bouchie, 56 Friend St. spoke in favor of the owners and their support for so many local groups and charities.

Stephen LeBlanc, Ward 3 City Councilor is the City Councilor for the Gloucester Ave. neighborhood and stated that he is in favor of these changes. He and Nic Pszenny walked through the neighborhood going door to door handing out flyers and answering any questions that the neighbors had. He stated that not one person said they didn't want it in their neighborhood. He is in full support and feels that it is a family place and there are not many places like this in Gloucester.

The Board did a count; there were 35 people present that are in favor of the application.

Speaking in Opposition: None

Discussion: Mr. Parisi stated that he bowls in the Saturday league and feels that they do a great job. He explained to the audience that it is the ZBA's job to ask the important questions and have all the conditions covered to keep the community safe.

Mr. Nimon doesn't share the Chair and Vice Chairs concern of the 25% distribution. They want to serve more food to grow their business. He feels the Pszennys are extremely concerned with their reputation and their business.

Mr. Gardner suggested approving the application with a stipulation that they have to come back to the Board within 2 years limit in respects to the distribution of product. This will allow the Board to discuss any issues that come up.

Mr. Parisi didn't like the 2 year stipulation and would prefer to approve the whole thing.

Decision:

Mr. Parisi moved to grant a Special Permit to alter the use of the property to include a bowling alley and arcade with a restaurant and accessory to the restaurant of a brewery.

He also moved to grant a Special Permit to allow a lesser number of off street parking, as he feels that they are adding to a well-run successful business. He believed that there is adequate alternate parking in the area and it will not be more detrimental to the neighborhood.

Per Mr. Sanborn's suggestion the Vice Chair added that this implies the accessory use to restaurants in this district which limits the brew portion to 10 employees or less and Mr. Parisi does so.

Mr. Nimon seconded

All in favor: 5-0

35 Perkins Street

Atty. Joel Favazza is representing Melissa Lovasco who is seeking a special permit from section 5.30 of the GZO to convert existing 3 family to 4 family at 35 Perkins St.

Ms. Lovasco's property is in the R-5 district and Atty. Favazza has been working with the City Council on a temporary zoning addition that will aid the safe but unpermitted apartments in the City that are currently not permitted to do so. There are a lot of apartments that are safe, but due to the way the Zoning Ordinance is currently written, are not permitted because it is so difficult to meet all of the required dimensional regulations for a multi-family use without being granted a great deal of variances.

The new ordinance states that if you can prove that from 2001 to present your extra unit existed, that you've had no issues and a signature of rental dwellings for every unit in the building, than the property owner can get a Special Permit from the ZBA that waives the dimensional requirements and allows the use to increase. Currently you have to go to the City Council for this.

Ms. Lovasco and her family purchased this property from a bank because it was in foreclosure. At this time the basement apartment was already there. The only change that she made was to have National Grid put in a separate meter in 2005. Atty. Favazza felt that his client is a good first candidate for this ordinance.

Mr. Sanborn had Greg Cefalo the Zoning Enforcement Officer and the Planning Director Greg Cademartori look over this as it is the first application that Inspectional Service has received.

Mr. Cefalo submitted a letter to the board and is present this evening to discuss his findings.

Discussion of the Board: The Board discussed the ordinance and how it will work within the ZBA with Atty. Favazza. Atty. Favazza discussed the issues that he has run into with collecting the appropriate documentation. The Chair suggested amending the ordinance to correct the issues that he is having.

The Board discussed the issue of Ms. Lovasco's unit being accepted as a new 4th unit, the fire code would require sprinklers throughout the building which would be very expensive. Atty. Gardner asked to attach in the decision as an exhibit A, the language that will be recorded at the Registry of Deeds as deed restrictions will be different depending on the case. The Chair noted that this unit must be an affordable housing unit in this particular case and that it must include the language for affordable housing that has been approved by the Community Development Department.

Speaking in Favor: No

Speaking in Opposition: No

Motion:

Mrs. Pratt moved to approve a Special Permit to section 5.30 Zoning Ordinance based to the totality of evidence provided in the petition. Although it doesn't comply completely with the Ordinance, based on the amount of documentation provided in the application, she feels it is sufficient to meet the requirements.

Ms. Pratt moved to approve the Special Permit with the condition that the basement be turned into an affordable housing unit and the language of affordable restrictions be attached to the decision as exhibit A.

Seconded: Mr. Parisi seconded

All in favor:

Granted 5-0

Board Discussion: Mr. Howard will be leaving the Board at the end of February and Atty. Gardner informed the Board that Adria Pratt will become the temporary board member until one is appointed by the Mayor.

Motion to adjourn was made at: 9:59pm

Motion by: Atty. Gardner

Second by: Mr. Nimon