



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

**ZONING BOARD OF APPEALS**

Meeting Minutes

7:00 P.M., February 14, 2019

Kyrouz Auditorium, City Hall

**Board Members Present:** Joseph Parisi, III, Vice Chairman  
Michael C. Nimon  
Sage Walcott  
Kris Howard

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

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

**Continued Business:**

**New Business:**

Atty. Sal Frontiero of Frontiero Law Office, 46 Middle St. is **representing Greely Real Estate Investment LLC 212 Washington St.** who is seeking a variance from section 4.3.4 max allowable sign area to enable petition to replace existing sign.

The sign at issue advertises the location of a long-standing funeral home. A sign in its present form has been in existence at this location on site since 1959. The sign is in disrepair due to rust, etc. and is in need of replacement. The sign is legally nonconforming, the zoning ordinance allows minor repairs and re-lettering. However, in the case of replacement, the ordinance provides that nonconforming signs lose their legally protected status and must be brought into conformance. Due to the condition of the sign, repair/re-lettering is not possible. As the Site is located in the R-5 Zoning District, sign area for commercial uses is limited to not more than ten square feet.

Limiting a sign to ten square feet at this location would cause a substantial hardship to Petitioner, due to the economic impact to its business and the inconvenience it could cause to mourners. The sign is useful in orienting those coming to funeral services from out of town. Accordingly, having a sign of substantial size is extremely valuable in safely orienting mourners to this site. The granting of the within variance request will not cause substantial harm to the public good, and the variance may be granted without substantially derogating from the intent of the Zoning Ordinance. First, it would not have any appreciable effect beyond the status quo because the current sign is in the same location as the proposed sign and is substantially the same size. It is important to note that the present is setback from the street (although still within the required front yard setback) and located on the side of the site closest to the exit driveway. Ensuring public safety and convenience are two of the purposes

of the Zoning Ordinance. For the foregoing reasons, petitioner requests that the within variance be granted.

**Speaking In Favor:** None

**Speaking In Opposition:** None

Mr. Nimon moves to grant the variance as it meets all of the standards that apply.

Mr. Howard seconds.

In Favor: 4-0

Atty. Joel Favazza of Seaside Legal Solutions, P.C., 123 Main St. is representing **Maureen P. Malloy Trustee, et al 31 Western Ave.** who is seeking a special permit to alter/expand a non-conforming structure and variances for front yard and side yard setback to enable petitioner to construct a deck.

Mrs. Malloy is renting this building to Carlo and Danielle Berdahn as it is the future site of the Berdahn's second restaurant called Yella on the Water, managed by Danielle Berdahn. They currently own the popular restaurant Yella in Andover Ma.

Atty. Favazza shows the site plan for the existing deck. They will improve the properties safety as they will have to follow the rules in place by the Licensing Board such as a higher railing, landscaping in front of the deck to close it off from people outside of the restaurant boundaries and an emergency exit.

The expansion of the previously non-conforming structure will not be substantially more detrimental to the neighborhood because the only work proposed is to improve and expand the existing deck, which will in turn bring the deck up to current fire and ADA accessibility codes and will otherwise be a more attractive dining deck than what currently exists on site. Additionally, the expanded dining area will allow for a greater financial investment in the renovation of this property thereby benefitting the neighborhood.

The requested relief will not derogate from the intent of the GZO nor harm the public good; the variances are necessary as the lot shape and location of the existing building cannot be altered. This is a hardships that cannot be reasonably overcome while simultaneously trying to build the new deck to modern health, fire, and accessibility codes.

**Speaking In Favor:** Grace Ciaramitero, 9 Grapevine Rd. is in attendance to represent her mother who was the owner of Morning Glory, the business that previously resided at 31 Western Ave. Ms. Ciaramitero and her mother who recently retired and closed their restaurant states that they met with the Berdahn's and they are very nice and it's a great place for the business.

**Speaking In Opposition:** None

Mr. Howard moves to grant this special permit due to shape of the lot and placement of the building. He feels that this is going to be an improvement to the city and an asset to Gloucester. He also states that the proposed work will not be more detrimental to the neighborhood or make the structure more non-conforming.

Mr. Nimon seconds

All in Favor: 4-0

Atty. Wilhelmina Sheedy, 76 Main St. Rockport MA is representing **197 East Main St. LLC 53 Beacon St.** seeking a special permit to convert a two family dwelling to a three family

dwelling. Earl Unis of 112 Mount Pleasant Ave. is in attendance and requests a continuance as his attorney was unable to attend this evenings meeting.

The board grants the request for continuance to March 14, 2019

Atty. Joel Favazza of Seaside Legal Solutions, P.C., 123 Main St. is representing **Angela Coulter and Cuan Coulter 14 Long Beach Rd.** seeking a special permit to alter a non-conforming structure and a special permit for height exception to enable petitioner to demolish existing building and rebuild.

The Coulter's are unable to attend as they are on assignment in England and Mrs. Coulter is currently too pregnant to fly.

Mr. Favazza states that the Special Permit to alter and expand is requested only due to the non-conforming nature of the lot, which is not going to be altered by the proposed rebuild. Allowing the lot size to remain as-is while the existing structure is rebuilt will not be a substantial detriment to the neighborhood because, although the lot area will remain unchanged, the proposal will eliminate the current structure's side yard setback non-conformity and will provide an aesthetic upgrade to the property without creating any new non-conformities except as to height as discussed below.

Although the vast majority of the new structure complies with all dimensions required by the GZO, the addition of a clerestory skylight will cause a portion of the new structure to exceed the maximum allowable height. However, said change will not be out of character for the neighborhood or substantially detrimental to the neighborhood as there will be no resulting obstruction of views or overshadowing of other properties, nor will there be any impairment of utilities or other adverse impacts as a result of this skylight.

Mr. Favazza stresses that the Board only needs to vote on the skylight which is 3'.5" over the 30' height requirement and not an obstruction of views. He also states that any shadows will throw only to the Coulter's property. They only part of the skylight that is over the 30' height restriction is the triangles on the top for the skylight which is not visible form the street.

### **Speaking In Favor: None**

**Speaking In Opposition:** Atty. Patricia Johnstone of Schlichte & Johnstone, 14 Pleasant St. is representing Greg and Marie Santos who are direct abutters to 14 Long Beach Rd. Atty. Johnstone confirms that the board received the petition signed by 14 abutters and neighbors in opposition of this project as well as letters written in opposition and submitted to the clerk prior to the meeting. Atty. Johnstone discusses that the proposed project is bringing a single story beach house to a 3 floor house and completely overshadow clients home.

Mr. Nimon states that the only thing that the board can consider as far as overshadowing is concerned is on the skylight not the 30' structure.

He also states that the issue in front of the board is if this new structure within the lot lines is more non-conforming because if it is not then they can't address the question of is more substantially detrimental to the neighborhood.

Mr. Parisi informs Mr. Nimon that people are allowed to speak on the second part even if they board hasn't determines if it is non-conforming.

Greg Stantos 12 Long Beach Rd. is a direct abutter to the Coulter's and has been a builder his whole life. His house has been in his family for 70 years and like many other neighbors in this area is the second generation to live in his home. Mr. Santos feels that they applicant is trying to say that the project is conforming and states that you can never conform on a non-conforming lot. You may be able to maintain the setbacks, but the home is still considered a non-conforming use and the lot is still a non-conforming lot. He feels that it is more

detrimental to the neighborhood as no other home is represented like this. They are all more traditional houses. Mr. Santos states that he asked the applicant to design the house in a more traditional manor, but they do not like the style of traditional homes with a gabled roof.

**Joe Perritano, 10 Long Beach Rd.**

He feels that this project is big and ugly for the neighborhood. He is also a second generation owner and been there for 50 years.

**Leonard Gyllenhaal 32 Rockport Rd.**

Is a previous board member and speaks to the character of the neighborhood. His grandchildren are 6th generation to his property. Mr. Gyllenhaal wishes that Chair Atty. Gardner was here to hear what he would have to say. Mr. Gyllenhaal shows a picture of the height of the house stating that the proposed house is a mega mansion. He would like to see an overshadow study as he knows that this house will greatly overshadow the Santos property.

**Catherine Ryan 17 High Rock Terrace** is in opposition of this build and asks the board to consider the question, if they issue in question is the height of the skylight then to consider that if this house wasn't being built up so massively then they wouldn't be getting up to this point. She also states that the views, values and the natural landscape is important in this area and that other homes in the area that were built to this size are not complete and not sold. She feels that Maxing out and Maxing up is not always better.

**Rebuttal:**

Atty. Favazza address some issues brought up by the opposition and that there is no such thing as a conforming house on a non-conforming property. He states that the Coulter's did consider the neighbors issues and have already moved back the house 10' for the Santos. He states for the record that views are not protected unless they have deeded rights on record with the registry of deeds. The planned build has less lot coverage than the average homes in this area and the footprint is below average and the living area is above average due to the height of the home. It is still not the biggest home in the area.

Atty. Favazza also discusses the aesthetics of the proposed home and shows a slideshow of multiple homes in the neighborhood explaining the area as eclectic with no pattern of style.

Mr. Nimon asks Mr. Sanborn his opinion on the Zoning Ordinance and if the reason that he as the Building Commissioner would not give a building permit is due to a non-conformity. Mr. Sanborn explains that the first thing that he looks at is if there is a non-conformity and in this case agrees that he could issue the permit, however there is a case law out that says that you have to provide notice to the public. He questions what is notice to the public and feels that this question has not been answered in case law. He does know that 40 A states that if you send a notice to the abutters and advertise it in the newspaper, that is notice. He feels that it has not been determined that a building permit being issued and posted in City Hall is considered proper notice. To protect people, because this question is not answered, he always recommends that they come to the board of appeals to get a special permit and put the public on notice.

Mr. Sanborn explains that they have a non-conforming lot with a non-conforming structure. If they tear it down, they now have a non-conforming lot and he couldn't issue the permit because the building doesn't comply. This now makes the argument for someone to say they can't put a house back on it.

Mr. Parisi discusses the intensification of a non-conformity.

Mr. Nimon feels that there is a decrease in non-conformity not an increase so that the answer to the first question is no. Mr. Walcott agrees as does Mr. Howard.

Mr. Nimon makes a finding that the new building does not increase the non-conformity. Though he feels for the neighbors, he does not believe that they have the legal authority to help them.

Mr. Walcott seconds.

Mr. Parisi reluctantly votes yes. Though he hates what he sees in the plans, legally it's not an increase in non-conformity.

All in favor 4-0

The board discusses the criteria for the Special Permit for height exception.

Mr. Nimon moves that the height exception is not substantially more detrimental to the neighborhood for the reasons stated in the ordinance.

Mr. Walcott seconds.

Mr. Nimon confirms that the board is only voting on the 3 ½ structure on top of the building which is the skylight. First to consider is the size of the skylight and placement. Then they need to consider if the skylight will affect the neighborhood character.

Mr. Nimon feels that this is an eclectic neighborhood and that the small appendage on top of the skylight will not obstruct any views or overshadow the neighbors though the structure itself will. He also doesn't feel it will impair utilities or have other adverse impacts.

All in favor: 4-0

Mr. Parisi clarifies that the board has voted that the Special Permit was not needed for the conforming structure and they approved the height exception for the skylight.

Motion to adjourn was made at: 8:30 pm

Motion by: Mr. Walcott

Second by: Mr. Howard

All in favor: 4-0

Meeting is closed.