



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

ZONING BOARD OF APPEALS
Meeting Minutes
7:00 P.M., January 26, 2017
Kyrouz Auditorium, City Hall

Board Members Present: Francis S. Wright, Chairman
David B. Gardner, Vice Chairman
Leonard A. Gyllenhaal, Secretary
Michael C. Nimon
Joseph Parisi, III
Alternates: Sage Walcott
Kris Howard

Meeting was called to order by the Chairman at 7:00 p.m.

Previous meeting minutes of January 12, 2017 submitted for review, a motion was made to review again after edits and accept at next meeting.

New Business:

Discussion regarding number of copies of application provided for board to review prior to meeting. The question was posed whether 5 copies are adequate or should there be 7 copies provided. As well discussion ensued about the electronic media (Google Drive) used for application review prior to meetings. This particular meeting involved properties that were rather difficult to find and the question was posed as to how to mark or find the location for review by board members. Alternate Board Member Kris Howard volunteered to discuss options for application copies, use of Google Drive, the clear marking of properties for members to visit with Building Inspector Bill Sanborn.

Advertising continued hearings was discussed. It was decided to advertise a continued hearing in the second ad that runs for upcoming ZBA meetings.

Jim Destino has put aside \$400 for the ZBA members to have a seminar regarding Chapter 40-A by someone from the MMA. Mr. Wright will contact MMA and get a few dates and then present those to the board for a decision on which day the training will take place.

Continued Business:

161, 165, 171 Atlantic Road, OVI, LLC by Attorney Deborah Eliason – Mr. Gyllenhaal recounted his discussion with Robert Coakley regarding guidelines for this particular case. Mr. Wright recounted his discussion with City Planner Greg Cademartori regarding OVL, LLC's request for a variance from the

definition of lot area set forth in Section 3.1.8 of the Zoning Ordinance and noted the following points in the conversation:

1. Prior to OVL, LLC's acquisition of the Atlantic Road property Mr. Cademartori advised numerous prospective buyers including representatives of the current owner of the implications of both the proposed FEMA flood plain elevations and ultimately those adopted in July 2014, by FEMA. While the flood plain designation does not render the property unbuildable it prohibits reconfiguration of the property boundaries or property division without variance per Section 3.1.8 of the Zoning Ordinance. Mr. Cademartori's position is that the representative, Mr. Craig Miller was aware of this prior to the purchase of these properties.
2. FEMA's new flood plain elevations were first proposed in July of 2013 well before OVL, LLC's purchase of the Atlantic Road properties.
3. FEMA has a regulatory program by which landowners can request modification of FEMA flood plain elevations on a site specific basis. In early January of this year OVL, LLC prepared an application to FEMA demonstrating the properties are above the flood plain. Under FEMA regulations, before the application can be considered by FEMA it must be reviewed and endorsed by the city's Floodplain Management Officer, which in Gloucester's case is the Conservation Agent. The application is currently under review by Ken Whittaker. (Mr. Wright mentioned that he thought the filing with FEMA had already occurred).
4. In Mr. Cademartori's opinion, the Section 3.1.8 definition is still valid and operative, at least until it is amended, in that it acts as a freeze on the re-division of property to create new building lots in these flood prone areas.

Attorney Eliason indicated that she would have liked to know this information in advance of this meeting as it would have afforded her an opportunity to speak about this with Mr. Miller who is not present this evening. Continuing to Section 3.1.8 Attorney Eliason said the lot cannot be re-divided without a variance as the property is predominately covered by the FEMA flood plain which occurred in July, 2014. An application for a LOMR has been filed with FEMA to get that line amended, they are at the very beginning of this process and do not how long this will take. Asking the property owner to wait for this decision would create an additional hardship upon her client. Mr. Wright asked why, if the property was purchased three years ago, has this not already been done? Attorney Eliason indicated it requires a lot of engineering and expense, a lot of the time has been spent working with the neighbors on a plan that works economically for them as well as for the good of the neighborhood. In regard to the FEMA flood lines Attorney Eliason agreed they certainly could have started that process earlier however, given the expense involved in this process the client certainly wanted to know that they had a development that had support of the neighbors and could be supported by the boards before they went through that expensive process. With regard to proposed FEMA there certainly were proposed map lines previous to adoption in 2014, but not final until after property was purchased. She is not aware of a conversation with Mr. Miller and Mr. Cademartori about the property and has no reason to doubt what was said, just that she has no information about that. The property was purchased at the beginning of 2014. Mr. Wright indicated that gave them 6 months to address something that was as important as this issue; something alluded to by Mr. Cademartori. Attorney Eliason did not know the answer to that as she was not involved in the purchase. She is asking the board to make a reasonable examination of the facts in the case and looking at the entire neighborhood this is somewhat of an anomaly as the FEMA line moves out and covers the entire property, whereas the FEMA line did not really move much at all on the abutting property. This anomaly creates a hardship for her client hence the request for these variances. They are moving on a parallel track to try and have FEMA maps changed, but are at the beginning of the process and it is still in review by the City and anticipate that the review by the federal government will take even longer.

Speaking in opposition was Charles McManus of 20 Links Road speaking as a property owner on the abutters list and also as a former planning board member involved in drafting parts of the ordinance including the definition of lot area. He recounted the reason for drafting the definition in the ordinance; he then spoke as an abutter about the need for occasional relief of lot lines etc., but the zoning ordinance was in place when this property was purchased and he is a bit offended by this request as the rules are very clearly outlined in the zoning ordinance. He asks that the board follow the spirit and intent of the zoning ordinance when making their decision.

Speaking in opposition was Jim Town of 12 Links Road in regard to the purchase of the land, the zoning rules and FEMA maps should have been clearly understood prior to this purchase and finds it interesting that after the fact a different set of rules are being sought. Zoning laws are in place for good reason, for smart development and does not feel a precedent should be set of having developers come in and change them after the fact; after the purchase. In response to the statement of communication and working with the neighbors, he was informed of this meeting by Mr. McManus. OVL, LLC has not corresponded with him or his other neighbors and finds the comment from their counsel that led the board to believe there was some type of partnership delaying these activities very interesting. He is on the other side of the golf course at the back of their property and has never been contacted. With regard to the FEMA area this is separate from the board itself, these rulings and determinations are put in for good reason. Having lived in this area for over 8 years he can attest to the fact that there is significant flooding from the ocean as well as drainage and he, himself has had to work with the conservation board to do surveys and specific requirements because of the flooding in the area. He also spoke of significant flooding that occurred at the corner of High Popples Road and Links Road from a previous development that required DPW intervention. If you look at the neighborhood and area you will see what type of development is there and it is obvious that the citizens of Gloucester care very much about their oceanfront and about smart development and he feels if the application of the existing zoning board rules are followed, that would be smart development. There is no need to “build-up these monstrosities around our city”.

Speaking in opposition was William Munez of 8 Links Road who indicated he was not notified about what was transpiring with the property until less than a week ago. He built a home there in 2000 and had to follow a standard and would hope that the zoning board will keep to this standard.

Speaking in opposition was Tom Berger of 131 Atlantic Road who has been in Gloucester for 18 years and is very familiar with this property. In heavy rains and high seas, the property does flood as well as the property before it. He was appalled by the density of what this group is trying to put in, 18 units in such a small area that impacts the neighborhood, the people that live here year round, increasing traffic and noise, it is just abusive of the system and hope that the board looks at the specifics of the law and applies them thusly.

Attorney Eliason spoke in rebuttal making a point of order to the Chair that at the last meeting she was under the impression that the hearing was closed. Had she known she would have asked people who do support this project to be present to speak. The Chair responded that the meeting had been suspended so the board could do some research and then resume the hearing. He offered Attorney Eliason the opportunity to bring in supporters and she took a moment to discuss this with her client after making a statement reminding the board is that the this is not an undeveloped site with many buildings on it, that are currently non-conforming. It has lots that have 5, 6, 7 buildings on it, buildings that cross lot lines. What is being proposed is allowed under zoning, it meets the zoning requirements, multi-families are allowed in the area and the lots will be more conforming than they are now, in conformance with zoning. The only thing before the board is to make these lot configurations conform. There will be more hearings with regard to what is being proposed for those lots. The only

issues not in compliance with zoning other than FEMA question is height and, perhaps, distance between buildings. For the most part these building comply with the zoning requirements so it is inaccurate to say they are ignoring the zoning laws. The only issue that creates a problem for the development is the FEMA issue.

Mr. Wright referenced the previous meeting minutes which indicated the vote of the board was to continue the hearing. Attorney Eliason took a moment to consult with her clients and returned to the podium at which time she requested a continuance to the next meeting for an opportunity to review the memorandum and have people present to voice their support. Mr. Wright indicated that a member of the board would be unavailable on that date and a motion was made to continue this hearing to March 9, 2017.

The vote was unanimous.

1-3 Cabot Lane: Mr. Mark Finn presents to the board with a request for the addition of a second floor, the owner is also present. Mr. Gyllenhaal asked that the structure itself, specifically the foundation be addressed during this hearing. The public was invited to stand behind the board members to view the presentation by Mr. Finn. A description of the house as well as the foundation was provided to the board, the corner in question is on solid ledge and 90% of it has a foundation under it. He is confident that the proposed two story dwelling will easily be supported by this block foundation. This addition does not make the lot any more nonconforming than it is now, nor is it a detriment to the neighborhood. The surrounding homes are all significantly larger, two story dwellings. Mr. Wright asked about a sign off on the septic system by the board of health to which Mr. Finn responded there is a brand new design on record with the board of health for a two-bedroom house. Mr. Wright then asked about the narrative that spoke of growing children and if two bedrooms would be more than adequate? Mr. Finn indicated that the end result may be a sale of the property to someone that would not need more bedrooms than what will be built. Mr. Howard asked for confirmation that the footprint would remain the same. Mr. Finn responded it would.

Asking a question was Gary Richardson of 278 Concord Street an abutter, who has a concern that when digging started he had not seen any property markings, no clear mark as to his property line. His property line is inches from the back of the house and he has no argument to this proposal but does have concerns as to what type of traffic and activity will take place on his land. The chair did agree that the existing dwelling is against a dividing rock wall. Mr. Richardson just wants to know his rights as far as builders, ladders, building supplies, etc., on his property. Mr. Finn spoke to this and told Mr. Richardson that he will absolutely flag the rear and side that runs parallel to his property. There would be no construction debris and if there one it would be immediately removed. Workers would not need to be in his yard and any damage would be fixed at their expense. The two parties will set up a meeting to discuss this further. And this will be a condition in the decision if approved.

Charlie Williamson of 274 Concord Street, abutter to the property, spoke of a test hole that was drilled this summer and his concern is the PERC test is underwater and floods, it comes over the driveway and into his yard. He has a capped, drilled well but where is their water going to go as it is all ledge there, no place for the water to go. Mr. Gardner asked if the Title V has been approved by the board of health and Mr. Finn responded "yes". A suggestion was made by the chair for a conversation with Mr. Finn and the other neighbor to rectify the water issue and return to the board of health if this becomes an issue during heavy rain. Mr. Howard asked about accommodations for roof run off and Mr. Finn indicated a drip line trench will be installed, this is the preferred approach versus gutters which can freeze and have ice dams which can damage fascia boards, the trench is more efficient. This run off will go into the soil from the trench.

Mr. Nimon motioned to approve the application, Mr. Parisi seconded it.

Vote of the Board: Unanimously approved with the condition that the decision reflect the agreements made this evening between the builder and abutters.

9 Cardinal Lane: Warren Morrison presents this evening for the owners who are unable to attend. The plans were set up and the public was invited to stand behind the board members to view. 22,000 square feet, 163 feet of frontage on Cardinal Lane but with further research several things were discovered. 1). Despite the fact there is an existing Cardinal Lane, there is no legal access therefore no right to use the frontage. When the lot was deeded decades ago the right of way was deeded through Ames Drive requiring a road be built across to the frontage to Cardinal which would create a substantial hardship. 2). Have been before the Conservation Commission a couple of times, who have visited the site with Mr. Morrison, it was clear access from Cardinal Lane was not wanted, instead access would be better from Cart Track Drive due to topography of the land and run off issues. When the land was deeded the Bennett's were asked to agree to a caveat (a deed restriction) that they would never seek access from Cardinal Lane, which they did. The applicant and Conservation Commission would like to maintain the heavy vegetation along the road. Mr. Wright mentioned the steep slope that falls off dramatically toward the ocean and asked if the house would be built into the slope. Mr. Morrison brought up the plot plan and explained that the slope decreases, therefore it would be a ranch style home with a walkout lower level. That is why they propose to come in from Cart Track across the slope which is not as severe. They have also agreed to place vegetation at the lower end of the driveway to catch runoff. Frontage on Cart Track is 15 feet, and the driveway is 15 feet wide. He pointed out to the board that there are two stone pillars at the beginning of Cart Track that are also 15 feet apart and emergency vehicles do not have a problem passing through them and he feels the same would apply to the frontage off of Cart Track. 3). There is a great deal of support from abutters to access from Cart Track and not from Cardinal Lane. Logistically Cart Track is advantageous as there is a hydrant within 100 feet of the site as well, it already has town sewer, water and electricity, if accessing through Cardinal Lane they would incur a substantial expense connecting to these utilities.

Mr. Wright spoke of an often not used ordinance regarding the turn into the driveway given his concerns that it will satisfy fire and police as well as DPW. Mr. Morrison said in discussion with the Building Inspector he was told the minimum required width for a driveway is 10 feet and they have 15 feet, this is not a 90 degree turn, nor is it a tunnel. Mr. Wright read from the ordinance which gives the board the authority to seek input from city departments, boards and commissions when in the process of deliberating on an application and he feels inclined to do this in regard to this "intersection" which is very narrow and the turning radius is questionable. Mr. Morrison indicated this will still have to go through the city engineer and Mr. Wright would like to speak with him prior to issuing the variance. Mr. Wright read the ordinance, 1.5.8. Mr. Morrison indicated in order to get to city engineer they had to go through conservation first and are doing all of this on a preliminary basis before going to engineering. Mr. Parisi voiced his concern that the board may be overstepping their authority, he feels the only issue in front of the board is the variance and the rest can be decided as the project goes through each phase.

There was no one present to speak in favor of this application. There was one letter of support submitted prior to the hearing.

Mr. George Stevens, abutter on the south side of property, 22 Ames Drive. Mr. Stevens thought that before coming to ZBA this would go to conservation, there were several meetings scheduled and then continued, there are issues of a coastal bank mentioned by Mr. Whittaker as well part of the road is

wetlands. Mr. Stevens realizes this will be addressed by conservation and wanted to be heard as to his desire to have this addressed by conservation first. Mr. Morrison asked to clarify and indicated conservation was approached; Mr. Whittaker said this should qualify under an RDA and the commission came out and looked at the site, an engineer was hired for more detailed plans showing an NOI was required and another engineer was hired to work on an NDA which is on hold until such time as access to Cart Track was requested and granted. He believes the commission will hear this at the beginning of March, 2017.

Lynn Lenhardt, 7 Cardinal Lane in support of access from Cart Track Lane.

James Lenhardt, 10 Round Hill Rd, Lexington MA owner of 39 Cart Track Drive, in favor of this application as it benefits all neighbors.

Mr. Wright read a letter of opposition from Mr. Todd Myers.

Mr. Wright read a letter of opposition from Mrs. Harriet Myers.

Mr. Parisi discussed the dual path being taken at this time between conservation and the ZBA and why he feels this is being pushed to the ZBA first so there is an idea as to where the access frontage will be and then conservation can make their rulings. Mr. Gyllenhaal spoke to the feeling that the neighbors are in objection due solely to the lack of conservations input. Mr. Nimon spoke to Mr. James Lenhardt's letter and support of the project due to the lack of impact to the neighbors by using this access.

Mr. Parisi made a motion to approve the application, Mr. Gyllenhaal seconded it.

Vote of the Board: Unanimously approved.

493 Essex Avenue: Drew Hale of Hale Design Build Corporation, owner and developer of this site. This application is for an increase to the height restriction going from 30 feet to 35 feet. The two unit building design meets all other 2 family dwelling requirements in the district. Site engineering is complete. The current design shows a 5.5 to 12 pitch or approximately 24 degrees, a reasonable slope for New England weather as well as a design and engineering standpoint. The design is consistent with the surrounding neighborhood, tastefully designed on a corner lot backing up to a wooded ledge not obstructing any views. Mr. Nimon asked if the height exception request was due to the garages under the house and the answer was "yes". There are issues of water runoff and taking into consideration Route 133, a state highway, safety issues such as not backing out onto the state road were of concern. Mr. Wright questioned whether access to the garage would be impeded by 489 Essex Avenue to which Mr. Hale responded the garages would not face 489 and would not be impacted.

Mr. Wright asked why Mr. Hale is requesting the height exception and Mr. Hale indicated he is already permitted to build but esthetically it is unattractive and would like to make this structure more visually appealing architecturally. Mr. Gyllenhaal spoke with one of the neighbors on his visit and the neighbor indicated he had not seen any plans, and had no concerns about them either. Mr. Hale mentioned that the resident of 489 is very agreeable and working with him during the build providing electrical services as needed.

Mr. Parisi made a motion to approve the application, Mr. Nimon seconded the motion.

Vote of the Board: Unanimously approved.

Mr. Gyllenhaal notified the board that his appointment was not renewed by the Mayor and this will be his last meeting with the Zoning Board of Appeals.

Motion to adjourn was made by Mr. Parisi, Seconded by Mr. Wright. The meeting ended at 9:00 p.m.