



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

ZONING BOARD OF APPEALS

Meeting Minutes

7:00 P.M., JUNE 29, 2017

Kyrouz Auditorium, City Hall

Board Members Present: Francis S. Wright, Chairman
David B. Gardner, Vice Chairman
Michael C. Nimon
Joseph Parisi, III
Sage Wolcott
Alternate: Kris Howard

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

Previous meeting minutes submitted for review; Mr. Nimon motioned to continue the vote to the next meeting so all members can review and comment. Mr. Wright seconded the motion.

Old Business:

Mr. Gardner motioned to review the Zoning Ordinance Amendment at the end of the meeting, Mr. Wright seconded.

There was discussion regarding a timeframe for submission of decisions for signature. Decisions are being received close to or on the meeting date, this does not allow time for review. In the future, there will be a deadline for submission of decisions to be signed. It will be 72 hours prior to the meeting.

Continued Business:

27 Taylor Street:

Mr. Gardner motioned to continue the hearing to July 13, 2017 so all members can read the memo sent by General Council. Mr. Walcott seconded the motion.

New Business:

8 Wonson Street:

The legally required advertisement was not correct; it was missing information pertinent to the application. Continued to July 29, 2017.

273 Washington Street:

Attorney Joel Favazza presents to the board for the applicant, Jeffrey Amero seeking a special permit to convert a two family home to a three family home. There is no proposed exterior change to the structure; lot width, front and left yard setbacks are the requests before the board. Variances were granted in a 1987 decision when applying for a second unit. Requesting again as it is now converting to a three family. At 12,000 s/f, the site has twice the required footage per dwelling unit required.

Mr. Gardner asked if in 1987, it was a single family converted to a two family and now here for three family, is this the end? Will he be back in front of the board to convert to four units? Attorney Favazza responded that it would be very unlikely given the lot size and number of units already in the structure.

Mr. Wright asked where the extra room is coming from to add the third unit, is there space being taken away from the other two units? The rear building is built out entirely residentially, this is going to be a separation on the first floor of the building, a delineation of space in the building, it is all being used and will be reconfigured to accommodate the new unit.

Mr. Parisi asked why there is no record of a variance for the side deck, Attorney Favazza indicated he went by the three foot penetration for decks and stairs, the closest point being the front corner. As the conversation ensued, it was confirmed the deck may not have been properly permitted but may be over 10 years old, if the board would like, the application can be amended to request covering the deck as well.

Mr. Sanborn asked if the footprint of the house was changing, the answer was no. Is Attorney Favazza using the dimensional tables for one, two and three family? Mr. Sanborn indicated because already in that use he already has the relief he is requesting. 3.2.1, Line 6 (conversion to three family) is what the attorney is working with, not Line 3 (conversion to two family). The use is changing but not the dimensional requirements.

No one spoke in favor or against this application.

Mr. Howard motioned to approve a left side yard variance and a special permit to change use, Mr. Gardner seconded the motion.

Attorney Favazza will update the plans to include all three units and submit to the board with the draft decision.

Vote of the Board: Approved.

Assenting votes: Mr. Nimon, Mr. Howard, Mr. Walcott, Mr. Gardner and Mr. Parisi.

110 Wheeler Street:

Robert Gulla, Architect, appears before the board with the applicant. The home is on a lot with "unique" topography, it is a very long lot with limited buildable space. The front of the house touches the lot line. There is an existing retaining wall which the architect is working with instead of rebuilding it. The addition is situated so as not to block the view of neighbor across the street.

Mr. Gardner commended Mr. Gulla on the design of the addition; it is tasteful and fits very nicely with the home, working in the space available it is very well done.

Mr. Nimon asked how deep is “one story sitting on the retaining wall” would be; it steps back from 3 feet to 6 feet.

No one spoke in favor or against the application.

Mr. Gardner motioned to approve the application and Mr. Parisi seconded the motion.

Vote of the board: Approved.

Assenting votes: Mr. Gardner, Mr. Parisi, Mr. Nimon, Mr. Walcott & Mr. Howard.

8 Woodward Avenue:

Marc St. Pierre owner of the property appears before the board, seeking a special permit to construct a second floor addition. Currently the structure is in need of a new roof and during this time it would be prudent to add a second floor as the space is much needed. Neighbors were notified and have had expressed their pleasure with the project as previously this home was abandoned property. The footprint of the building will not change. Currently the roof is a pitched 30-foot roof; the proposal is for a 22.7-foot sloping roof.

Mr. Gardner asked if the board could limit the special permit to 26 feet, this area is, and always has been, a sensitive area. Conversation clarified if the plan of 22.7-feet is approved that is it, it cannot go higher. Mr. Sanborn asked if the flood elevations were done and the answer was yes, the property is not in the flood plain.

Joseph Jeffries of 8 Woodward Avenue spoke in support of this project.

No one spoke in opposition.

Mr. Walcott motioned to approve the special permit and Mr. Nimon seconded the motion.

Vote of the board: Approved

Assenting votes: Sage Walcott, Michael Nimon, David Gardner, Joseph Parisi & Kris Howard.

Board Discussion:

Planning & Development has requested that the ZBA provide an opinion regarding a proposed amendment to the Zoning Ordinance pertaining to illegal apartments and how to legitimize them. This is a new process. Copies of the proposed amendment were provided to the board for review as well as a copy of Mr. Wright’s memo to the P&D board, which he felt, made very little impact on that board and he expressed his disappointment. This evening the board will work to come up with a consensus opinion as to the desirability of the proposed amendments. Mr. Gregg Cadematori, Director of Community Development is present this evening as well. Mr. Wright offered him the floor.

Mr. Cadematori thanked the Zoning Board of Appeals members for having him at the meeting this evening and stated he appreciated the attendance of ZBA members at the previous Planning Board

meeting on June 1, 2017. It was important to include the ZBA in this process as the amendment assigns responsibilities to the board, which would require actions by the board. At the Planning & Development meeting last week Mr. Cadematori described the planning board hearing process and its recommendation, in the 12 years of working with the planning board, it was the first zoning amendment that had such a split vote. It was a 3/2 vote to recommend the draft in final form. The dissenting votes were Rick Noonan, Planning Board Chairman and member Sean Henry. This may be what gave the P&D chairperson the need to understand more the ZBA perspective as it would be valuable to know the opinion of the board as a whole. Often times Zoning Amendments are initiated by the Planning Board and they are much further along in a consensus as it enters into a more formal process. In this case, with the split decision it was a fairly simple motion to recommend the draft as it was without a lot of commentary. Unfortunately, there were no draft minutes available for the City Council to review, to understand the issues raised at the first and second sessions. Mr. Cadematori did his best at that meeting to characterize the issues raised, which were very wide ranging. Stemming from the potential effectiveness of the ordinance. There was discussion around the requirement of a deed restriction. The participation of the ZBA and opinions on the use of a Zoning Administrator. At this time the hearing is closed from a planning board perspective, some of the key issues are addressed and reflected in the current draft. There is now a "sunset" period on it and there is a limited opportunity for potential petition again as to whether it would be a ZA or the ZBA itself and also clarification of the term "affordable restriction" which was not clear or explicit in the original draft. The draft was provided to the Planning Board, there was support for the draft from three members, not a lengthy discussion and the body of the issues raised by the dissenting members weren't addressed in the current draft and the P&D may be looking to this board for an opinion on the Zoning Administrator which Mr. Wright had addressed in his memo and includes concern of concentration of authority to one person, and if something warranted an appeal it would go to the Zoning Board of Appeals.

Mr. Wright asked for clarification on a couple of points he heard at the previous two meetings he had attended, he felt that legislation this important would go through iterations with the City Attorney, looking at some of the issues he raised in his memo; can appeal go to the ZBA? If ZA is the granting authority, that appeal would have to go to superior court per 40A. What requires even more clarification and is troubling to the Chair is the vesting of authority in a single individual when heretofore it has been a supermajority of either City Council or the Zoning Board of Appeals. "We are going from a super-democratic decision to a very autocratic one. The problem is and please tell me why I am wrong. The special permit language in our statute says; "a special permit (like the one we are talking about) shall only be granted upon a written determination that the proposed use will not adversely affect the neighborhood". There is also language to that affect in the variance ordinance as well. When looking at what has been proposed, the ZA has a very ministerial task, he has to make sure the BD has inspected the building and it is safe, the board of health has inspected the building and it is healthy and two or three other pieces of paper that are needed. The only deference shown to the impact on the neighborhood is there has to be certification there have been no complaints to the BD in the last five years. As we all know, the files in the BD are not necessarily complete when it comes to people calling about things going on at a certain address. There is a phenomenon that occurs in that very few neighbors want to go to the BD and complain, to start a "shooting war" with their neighbor, so there are probably a lot of people out there putting up with a difficult situation that they probably do not even know is illegal, yet their voices don't get heard. If the neighbors go to the ZA hearing, he is not allowed to consider them or the evidence they have. Mr. Cadematori replied that he had pointed out/prompted the ZBA this question at the first hearing; pointing out that this is not looking at the "standard six", whether or not there are instances when the ZBA sees a conversion from a two to a three, a three to a four, whether the ZBA ever has to condition those permits. Mr. Wright replied that

the board members go to the sites, they speak with the applicant and neighbors, members walk around the site. Mr. Cadematori said that is the point/specific question, do the members, in their experience encounter these things, when permitting multi-family use permits and also review the dimensional relief needed often to go to the City Council, as this specific approach would limit that as a consideration. To put a finer point on it Mr. Wright said, "if someone came to the ZA hearing and stood up and said, "there's been a brothel in that place as long as I can remember" or "the parking over there has been insane ever since 10 years ago when that guy put in another apartment", the ZA isn't allowed to take those factors into consideration. They are just going to cram this down the neighborhood's throat. And, if they take it to appeal, if they can take it to appeal, the ZBA cannot take them into consideration either as it is an appeal to a special, special permit and the board gets to look at whether the building department has inspected the building and that is all the ZBA is limited to decide". Mr. Cadematori said he tends to agree that the ZBA would have to base it on the criteria based in the ordinance and if they are absent the ZBA would be verifying whether or not the criteria outlined in Section 530 were followed and established, those issues. Mr. Wright said these issues are important, that is what Zoning is all about and Mr. Sanborn asked if the ZBA would still be looking at whether it would be a detriment to the neighborhood, Mr. Wright indicated, No there is no language in the ordinance stating that. Mr. Cadematori stated the language in the draft specifies the requirements and he does not know if there is a cross reference to Section 1.8, Mr. Sanborn asked if in general this is still a special permit, which still requires the "two prong" test before any action is taken. Mr. Wright and Mr. Gardner indicated that the way the draft is written there is no language to that affect, Mr. Sanborn said "if that is the way it's written then I definitely have a problem with that", his assumption would be that the special permit would be given the "two prong" test right off the bat. Mr. Gardner stated he is concerned they are trying to "carve out" something so as to remove any issues that may be existing under Chapter 40A and therefore make the ordinance the superseding test and the ZBA can only take into consideration the requirements set forth in the ordinance. He has some issues with it and reminded the attendees that Mr. Wright had written and submitted an opposition to it, spelling out a methodology of trying to accomplish what the P&D are attempting to accomplish, and yet within the framework of 40A in the sense that there could be a ZA. The ZA could go ahead and gather all the necessary information, not quite the same as going before the PB on a subdivision not required as that is defined by statute, a lot on a public way that meets all necessary requirements, the owner appears at the PB meeting, get it stamped based on the recommendations of the planning director. This could be somewhat similar to that, Mr. Sanborn gathers all the information and all the facts, and the ZBA would still be in the position to make the final decision. Mr. Wright reiterated Mr. Gardner's statement; "The ZA would be more of a "master". His job being to remove all doubt as to whether the six paperwork requirements had been satisfied. He would then report to the ZBA, you do not have to worry about that stuff it is all there in black and white, then the board would say, it does not adversely affect the neighborhood we will go out, do a site visit, maybe bump into a neighbor or two, encourage people to come in for the hearing. People do come in on these types of things, over on Bass Avenue there was an attorney trying to get an apartment legitimated, a neighbor showed up and complained that the parking had been awful over there and a condition was written into the decision". Therefore, he cannot see taking the ZBA out of this process all together, the fact gathering part is fine, but the ZBA must be involved to be sure the neighborhood is not being ignored. Mr. Nimon agreed stating, "You take an illegal apartment or apartments in a dwelling and eliminate the ZBA and you eliminate the neighbors, that's crazy". Mr. Cadematori stated that the tradeoff is the affordability, Mr. Wright said, "You're trading a whole neighborhood for that". Stated Mr. Cadematori, "let me make something very, very clear, this is what the Planning and Development committee wants to hear, you presented your case or things you felt strongly about and they're looking to see if that's the sentiment of the board. Mr. Wright asked if the Planning Department pushed back on this at all, the response was; there were some

initial meetings on the proposal and a number of things identified, some of which have been resolved and some not resolved at the time of the filing, that is what the public process is for. We have a situation at the planning board level where we didn't have unanimous consensus on the form or the readiness of the current draft, and that is where we are in the process. It is now at the hearing level of City Council, or to clarify, it is within the public hearing process and next another session of the standing committee next week then to public hearing after full council. Mr. Sanborn stated he felt when this was presented the PD is assuming that no buildings that have illegal units are a bother to the public and neighbors. He agreed with Mr. Wright, there are going to be people that will come out and finally have the chance to speak up, he has seen this in his office and also in front of this board in the past. He thought the option with this was that it goes to the ZA, the ZA decides if sitting here tonight and want to do this and there is no one out there about it good, everything is in order and we will grant this. However, if there are 15 people sitting out there, the ZA says, no this goes to the ZBA. That is the way Mr. Sanborn understood it. The appeal is to the ZBA not the court. This does not help anybody. This was only supposed to help a process quickly go by to give the applicant the opportunity to not have to hire an attorney, to save some costs, make them become lawful and now as he is listening to the discussion it is not even close to that. Mr. Wright stated that the way it is set up, not only assuming they can hear the appeal, his belief is the neighbors would have to pay for the appeal; it is not clarified in the ordinance.

Mr. Wright said, "This is the old joke, you don't want to know how sausages or laws are made. This is so ragged, so full of holes, any number of holes, where do the holes get plugged? Is it with PD, Planning Board, City Counsel, Chip Payson? In response Mr. Cadematori stated, this has not been his experience, it depends on the origin of a proposal. A parallel encountered about a year and a half ago was related to the siting of medical marijuana facilities in the GI district. There was a proposal that came forward and then was quickly withdrawn. It does happen, it's not a perfect process, it can be initiated by the Zoning Board, it may be initiated by the Planning Board or it could be initiated by the City Council. There may be something this board thinks, because of your experience, makes sense, it goes through the process, with essentially 16 people weighing in on it, and with good reason as you have to get to a supermajority to enact. But, when you go back to the basic premise of the proposal around affordability, this is a permutation of how to try to promote safe housing as these are units that may not currently be inspected, they would have to be inspected before they advance to the next stage. That is a real concern for the city. There has been a lot of discussion through the housing production process about what "affordability" means in Gloucester. And then also whether or not to some degree the threat of a 40B proposal is really kind of unfounded as we have more affordability in the community to begin with. He feels the purpose is purposeful, what is predominately being discussed is equity of the person that comes forward as was seen this evening, adds another unit, goes through the process, comes to you, discusses the finer points of what the proposal means for the neighborhood, sometimes winding up with conditioning. The question is, if someone has a unit that hasn't been permitted, what needs to be done to bring that unit into compliance, to make it a safe unit. If it is this process, you may or may not get it. The idea behind it is there is an incentive by trying to ease the process and on the other side is the affordability requirement. Mr. Cadematori feels there are things still there process wise, at which point Mr. Wright asked, "will this create a huge boost", he replied he did not know but thinks there was testimony at the public hearing about that. As to a 30-year restriction for a smaller project, it is unknown whether this streamlining will be enough of an incentive for someone to come forward.

Mr. Gardner asked if there is any idea of how many units there are being talked about in this conversation, Mr. Cadematori replied, no. "So, when you say that we're going to bring a lot of units

that are going to become suddenly affordable you may be talking about one, two or even five. What do you do, throw the baby out with the bathwater to get five units? What's the length of time that a restriction is applied, that someone is willing to put on their property, it's thirty years and that's a long, long time. "I have some serious reservations as most of the units we're talking about here are in center city, certain districts where they've been put in there without the permitting process. I cannot conceive of people tying up their property to make that one unit in their building affordable. I like the overall concept of a ZA, I have mentioned this to Bill, many things that come up before the board are deminimus, a lot of them are minor things, Gloucester is an old city and we have a zoning ordinance that is inconsistent with an old city in my opinion. "So, anyone that wants to do something with his or her property, it all of a sudden becomes nonconforming and they have to come before the board for even minor matters and sometimes people are shy about coming out, coming before the board. They don't want to hire an attorney and there should be a way to facilitate certain situations where it is a minor matter, they don't have to come before the board, maybe the ZA can take care of it in a way that he can package it and it becomes a sort of rubber stamp from the ZBA standpoint.

Mr. Wright asked about the origin of the amendments and was informed by Mr. Cademartori that Joel Favazza was the primary drafter and that the amendments were sponsored by Councilor Orlando. Mr. Cademartori noted that Councilor Orlando had been involved in extended discussions about affordability as it related to projects that have come before the council, the Fuller process and the housing production plan. Mr. Cademartori further stated that the draft amendments are a genuine attempt to deal with these issues. Mr. Wright noted that someone suggested that the banks are also in favor as they are fed up with situations where they are trying to lend money on a five unit building that turns out to only have three units permitted. It provides a fast track for someone with very few bullets flying to become legal and go back to the bank and say, "see, I'm now legal". Mr. Cademartori added that there is the requirement of the restriction. Mr. Wright asked "will that keep people from applying for this program or are these places in such run down condition that they can only realistically get below market rates that fall within the purview of what is affordability in this state". "Therefore, it's no big deal to them, it's never going to be market rate so why care about the thirty years, I don't know which way that cuts". Sean Murphy made a good point at a previous meeting; "if these people are capable of tricking the city the way they have been for the last 10 years, they are certainly capable of gaming the affordability requirements. In order for this to work someone is going to have to staff up, go out, and actually make sure these apartments are affordable". Mr. Sanborn agreed with that statement.

Mr. Howard stated he feels somewhat passionate about this issue both as a ZBA member and as a citizen of this city. From the ZBA standpoint he agrees with Mr. Wright, he has great points, this is a lot of weight to put on one administrator, he does not support that. It is a great idea, it is a creative idea but he definitely does not support it. As far as being a landlord, looking at the affordable housing restriction, it just seems ridiculous, it's like putting a knife to a owners back and saying "this is your opportunity, this is all you can do, have a deed restriction on your property". It feels like we are poking them in the back to get the city's affordable housing numbers up. "By doing that there is certification that owners have to do, mom and pop landlords are not going to do these certifications. So, what will happen is they are probably going to sell their two or three family home which has been in the family for a number of years, it will be bought up by a larger owner or corporation that will probably raise the rent in all the units keeping a couple as affordable as the restriction requires. They will raise rent in the rest of the units, which in turn makes all the units less affordable. As far as safety, certificates of inspections, I do not think we are inspecting all our legal units right now, so if we want to start somewhere with safety, let us start by inspecting the legal units. As a housing authority inspector for a

number of years, I know it is difficult with the resources we have. All it takes is one smoke detector missing. As a citizen, I feel it will have a reverse affect.

Mr. Wright stated procedurally there is not much time as they meet again next Wednesday. If the board would like he will write something up which will be less wordy but go to the issues being discussed. It will be circulated individually to all involved, comments will be taken back as individuals, make the changes, send it out again and then individually tell me if you would sign on to it. If there was time he would bring it back formally to the board but there is not enough. This is the best option unless the meeting can be put off a week or two, Mr. Cadematori replied it is on the agenda for next week and wondered what the time frame would be for draft minutes given it is also a holiday weekend. The ZBA clerk indicated they could be available by Wednesday in draft form. Mr. Sanborn indicated he is getting the sense the board is not in favor of this as it sits but isn't sure if the board is in favor of a revised version and willing to work on it or they just don't want to deal with it at all. Mr. Wright had volunteered to re-write it the way he felt it should be and no one took him up on that. Mr. Cadematori said the process would most likely have to be restarted if the re-write was in a substantially different form. There is something in there that Mr. Wright alluded to in his initial memo, the concern is not necessarily around the ZA but being vested the board's authority to review these as a single person. The issue of a two-thirds majority requirement currently as these are permitted vs. having it be one person and even if it were reduced to one person would they follow the standard six. To Mr. Sanborn's point it would be helpful to understand and be informed of some of the merits aspect of it and knowing where units are, having them inspected, having them have the life, health and safety, everything they need to be a safe unit is the root, the base of what we should be driving toward. The tension back and forth on the affordability piece whether an incentive or not is another issue, but it does come down to if this is enacted in three or four weeks from now it requires the ZBA to be integral to it and if the board doesn't think its supportable in its current form, that is very helpful feedback.

Mr. Walcott asked how long City Council has been working on this plan; it was presented to standing committee of the city council last Wednesday. Mr. Walcott asked about the whole project, not when presented to council. Initial proposal was quite a while back and then the first public hearing had to be scheduled, June 1 was the first public hearing which the ZBA attended. Mr. Walcott stated it seemed to him that in a revision of the way this is going to work he would have thought that they would have liked the ZBA to have some awareness of what was going on to see if the board may be able to help reconcile any differences and yet they only heard about this recently. Mr. Wright said he was invited to a meeting of the Planning Dept about six weeks ago, everyone sat around and asked what are we going to do about this, it was a very uneventful meeting. He did not consider he was part of a group in which Councilor Orlando would participate in as well. Mr. Walcott in his last statement said, "I am totally opposed to the idea of just a single person acting as the Zoning Board, it is just much too much power to put in someone's hands".

Mr. Nimon asked, "even if this is enacted, is it the Zoning Board's responsibility to appoint the administrator", the answer was yes, only you have that authority. Mr. Nimon said, "So, ultimately they could enact it and the board could say, no we don't think so". Mr. Wright called that a constitutional crisis and went on "the statute says, "the zoning board *may* appoint a special administrator but the ordinance says, "The zoning board *shall* appoint a special administrator". Mr. Nimon, "So, essentially from the way it is written, the board is being ordered, told what to do and we then have to decide whether we are going to do that. Mr. Sanborn said the difference with the ZA is they are acting as an agent for the ZBA; the ZBA is giving them authority to do certain things and only certain things. And, that is the way the law is set up; to allow this. In this case, they are saying you *shall* do it. He has

mentioned to Gregg before in discussion it should grant the ZBA the authority to do it and allow them to doing the ZA not *shall* do it. Shall means you have to and he agrees there is a problem with the point of law in that issue, doing it that way.

Mr. Howard stated as written the affordable housing restriction is a byproduct, when presented to the board his take away was that was the driving force.

Mr. Cadematori asked if the recording of this meeting would be available if needed and the answer was yes.

Mr. Gardner motioned to adjourn and Mr. Wright seconded the motion.

Meeting adjourned at 9:00 p.m.