



CITY OF GLOUCESTER

Planning Board

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To: City Council

From: Planning Board *SM*

Planning Board Report and Recommendation

Proposed Zoning Amendment – Section 5.25 Birdseye Mixed Use Overlay District (BMOD) Planned Unit Development (PUD)

As per Chapter 40A Section 5 and Section 1.11 of the Gloucester Zoning Ordinance, at a meeting of the Planning Board on October 7, 2010, the Board voted unanimously (5-0) to submit to the City Council the following Report and Recommendations on the referenced proposed zoning amendment.

The proposed amendment was forwarded to the Planning Board by the City Council on June 9, 2010 in the form of a fourteen page document defining a new overlay zoning district, use regulations, and master plan and special permit approval processes. The Planning Board held a properly noticed public hearing which opened on July 15, 2010. The hearing was continued and heard on the following subsequent dates: July 29, 2010, August 5, 2010, September 9, 2010, and September 16, 2010. The public hearing was closed at the September 16, 2010 meeting of the Planning Board. The Board developed its report and recommendation in two sessions on September 27, 2010 and October 7, 2010. The minutes of these meetings are available on at the City Clerks Office and on the web at www.gloucester-ma.gov/Archive.aspx?AMID=58.

The Planning Board offers the following recommendations which are presented in the order of proposed sections of the drafted amendment; Section 5.25 Birdseye Mixed-Use Overlay District (BMOD). Each section is summarized with a bulleted recommendation of the Board.

Section 5.25.1 Purpose

The Planning Board supports the general purposes of the ordinance, which are broad in nature, with the following exception. Section 5.25.1(b) states one of the purposes is “to provide more mixed-use investment opportunities, so as to maximize the development potential of the BMOD”. The Board acknowledges the testimony of the applicant that the property does not have deepwater access, and is not subject to the State’s Designated Port Area regulations and is flanked by existing residential and mixed uses. Therefore, from a planning perspective evaluation of the zoning in the area is appropriate, as some of the assets that the Marine Industrial (MI) district is based upon are not present. In accordance with the underlying MI district regulation the site may be utilized for marine industrial use and many commercial uses, however the proposal suggests in the alternate a mixed-use proposal including residential uses

may be appropriate. The Board believes any such proposal must be “scaled” or “optimized” related to such demands and impacts as infrastructure and traffic, rather than being “maximized” as the ordinance suggests. Finally, Section 5.25.1(f) suggests that housing is a certain proposed use and that such use will be available to households of “diverse incomes”. If it is certain such use will be included in a future PUD application it may need to be more explicitly stated. Additionally, it is questioned whether the suggestion of housing available to diverse incomes (a laudable purpose) should be highlighted, given later the BMOD ordinance proposes exemption from the existing inclusionary housing requirements contained in the Zoning Ordinance Section 5.11.

- *The Board recommends refining the purposes of the ordinance and addressing the applicability of Section 5.11 Inclusionary Requirements to Potential Housing Components of a BMOD project. The Board suggests the City Council may wish to consider the addition of language to provide an option for a requiring a lower number of affordable housing units if some other public interest is served by a project proposal in a measured way.*

Section 5.25.2 Definitions

The Board does not have particular suggestions regarding the language which is used to define terms, or their actual definitions, with a few exceptions. The Board inquired whether several uses were truly prospective uses, such as Adult Day Care Center, Assisted Living Residences and Integrated Medical Centers. The applicant reiterated that they are. The Board also suggested that the monitoring of such a use as Live/Work Residences may be problematic. However, it is important to note that the Live/Work Residence definition includes gross square footage limitations, while other residential uses (i.e. townhouse/multifamily) do not. In the course of this discussion the Board also noted as of right uses that may be in conflict with other uses in potential mixed use scenarios. In general, the number and type of uses allowed are too broad.

One definition to consider very closely is the *Planned Unit Development* definition. It clearly states that no less than two (2) uses must be included and that at least 25% of the gross floor area shall be non-residential use. There is no requirement to have any uses in a project based in the underlying district, or of an industrial nature. This is mentioned to make it clear that this may result in an entirely new zoning for the area, rather than building upon the MI district regulations which the ordinance is purported to be founded upon.

As the Board discussed a common theme pertaining to the need to infuse predictability in the proposed ordinance, the defining of “Reconstruction” and “Renovation” for permitting purposes should be clarified. It is not clear what is implied or intended by including these definitions in the BMOD, other than in certain circumstances additional permitting may not be needed. These situations should be defined. The final definition “Use Cluster” will be discussed in the review of Section 5.25.4.3.

- *The Board recommends clarifying uses to be considered in BMOD master plan or project. Potential conflicting use combinations should be limited by refining potential special permitted or by-right uses in a BMOD project. New uses should be better defined with dimensional or density standards.*

Section 5.25.3 Overlay District

The petitioner has defined the applicability of the overlay to three lots in the MI district including and limited to Assessor's Map 1 Lots 33 and 22, and Map 92 Lot 11 (it is clear that this lot was inadvertently included as it is the location of a single family home at 8 Riverview Road). The Board, to a limited extent, discussed the potential applicability of the overlay district to areas elsewhere in the MI district, or the City. It is understood that the minimum threshold for a PUD is a 60,000 square foot lot, and there are few lots of this size in the MI district. Additionally, the majority of the uses permitted in the proposed BMOD are strictly prohibited in the Gloucester Designated Port Area. However, it is also recognized that lots meeting the 60,000 square foot threshold can change over time, if lots are combined. It is therefore a question as to whether this locus is unique and requires such a specific approach to zoning. At a minimum it appears that the lot on the corner of Commercial Street and Fort Square (Assessor's Map 1 Lot 45) may be important in future project scenarios, but there does not appear to be other areas in which the overlay should be more broadly applied.

Section 5.25.4 Uses

This section defines how the overlay is to operate; all of the uses that are permitted by right in the underlying MI district remain as options for the property in the BMOD, provided all other requirements of the Zoning Ordinance or other land use codes are satisfied. Special Permitted uses in the MI District would be subject to a consolidated PUD special permit rather than follow existing special permitting requirements or processes. This consolidation may result in a change of special permit granting authority for certain uses, as the City Council is identified as the sole special permit granting authority. Additionally, uses (a) through (i) may be permitted by special permit, some of which are exempted from other provisions of the Zoning Ordinance such as Assisted Living Residences. Two other Accessory Uses are also proposed to be permitted by PUD special permit which included "Structure Parking" and "Drive-through Facilities".

- *The Board recommends refining use allowance consistent with the purposes of the ordinance, and specifically recommends the elimination of drive-through facilities from the proposed BMOD.*

"Use Clusters"

This Section requires particular attention, given that it is a fairly new concept to be included in a Zoning Ordinance. One of the purposes of zoning, in general, is to define appropriate land uses for a given area, and typically such uses are subject to dimensional and other requirements resulting in a predictable outcome. The basis of the *Use Clusters* lies in the assumption that uses may be grouped by their similar impacts and benefits, and therefore if one were substituted for another, in the eyes of the permit granting authority no additional consideration or conditioning would be required. Provided it can be demonstrated that two uses are essentially equivalent, this may be a supported concept. However, little to no justification has been provided other than the groupings themselves. Given the desire to create an ordinance with intended purposes, and a means of satisfying the same, this approach may make it difficult to assert that a project satisfies intents and criteria. If the use cluster concept is not supported the definition of "Retenancing" may not be needed. The Board suggests the typical approach of petitioning the Special Permit Granting Authority with a project change may be more appropriate. The Special Permit

Granting Authority may go as far as identify thresholds, which if not surpass could allow the petitioner to gain approval for modification without the necessity of a new public hearing.

- *The Board does not recommend the “use cluster” allowance as drafted. As suggested any substitution should be based on impacts from a proposed use. The Council may wish to consider conditioning substitutions in a special permit based on potential project impact thresholds.*

5.25.5 Dimensional Requirements

This is the section of the proposal that has received the most attention and discussion in the public hearing conducted by the Board. As was pointed out in the discussion of the definitions section, only a subset of the new uses permitted by the BMOD have been further defined by additional dimensional requirements. In particular the ordinance specifies the maximum size a Hotel or Live/Work Residence may occupy in a PUD project. However, all other uses proposed do not have any other limitation other than the dimensional requirements for the buildings in a PUD project. While it is helpful to provide these requirements for the uses that are clarified in this way, it is asked whether the same should be provided for other uses, to help define a predictable outcome. For example residential use in all other districts is defined by an allowed density.

- *The Board recommends residential uses should be defined by density standards rather than percentage of a project.*

Height

To ensure any future project considers site specific characteristics in design, the Board supports the “tiered” requirement as proposed. With a proposed allowance to increase the height over the current allowance in the MI district, the way in which this is applied in design must carefully be considered. As to the overall maximum height and “building height, percentages” the Board required more information to be submitted from the applicant to understand the proposal as written. A rendering was provided at the first session of the Board’s public hearing. As the only concept plan, the Board inquired how this design related to the proposed allowances. At the session held on September 9th, further information was submitted with a comparison of another conceptual design with the heights of other buildings in the community. The Board recognizes that as outlined in the purposes of the ordinance it is suggested that a certain portion of the property may be devoted to public use in form of “access” and “view corridors”. It has also been suggested that “public spaces” may be provided within building(s) on the site. The Board recommends that the added density that would be allowed by the increase in the height needs to be balanced by the public amenity to be provided. Once more what is to be provided needs to be specific and predictable.

Finally, given the one rendering provided and better estimates on its compliance with the proposal, the height and massing prescribed are out of context with the locale. It is recognized that a provision addressing height is necessary, as there is no mechanism other than a request for variance to permit height greater than 40’ in the MI district. It is recommended that the more appropriate way to review and condition a proposal for increased height is through the application of the current height exception ordinance extended to this proposed district.

- ***The Board recommends that height be specifically addressed in the BMOD ordinance through the extension of the allowance of a Height Exception (Section 3.1.6) to the BMOD. Additional language may be appropriate to outline expectations on height.***

5.25.6 Off-Street Parking and Loading Requirements

Due to the proximity of the proposed BMOD to an existing public parking lot (St. Peters) it is important to carefully review what may be required to be provided by a future project. Given that the ordinance proposes increased density over the current allowance and new uses not allowed in the MI district, the proposal appropriately must provide required parking onsite without the benefit of the exemption of Section 4.1.1(c). However, the opportunity to refine required parking through an evaluation of shared parking opportunities is also provided and worthy of consideration.

5.25.7 Design Criteria

The Board is in general agreement with the design principles outlined in this section. Two general points were raised by the Board that are worthy of consideration by both the petitioner and the City Council. The language used to apply these design criteria, is to the “extent feasible”. Without any further definition the Board suggests this may be too subjective for a permit granting authority to make a finding, or that such finding may be difficult to objectively defend. Additionally some of the criteria use terms as “appropriate” and “either/or” items in the same design criteria, such as “maintain or establish” multiple view corridors and access ways. It is recommended that the criteria be clarified with language that makes it clear when they are satisfied.

The final subsection in the *Design Criteria* section pertains to *Beach Access*. The Board is in receipt of opinions relating to the ownership of the beach (tidelands) associated with the proposed BMOD, and the applicability of the Chapter 91 jurisdiction. The Board recognizes this is a determination that is made by the state Department of Environmental Protection. This jurisdiction is not the subject of the zoning ordinance.

As outlined prior, several permitting processes in other sections of the zoning ordinance would not apply to the proposed PUD project; one such requirement is that of Section 5.5 Lowland Requirements. The entire site is within the Federal Emergency Management Agency’s (FEMA) mapped 100-year floodplain; therefore a development in the BMOD would require a special permit from the City Council. The PUD is silent on this applicability; the Board recommends that this be addressed by the petitioner.

- ***The Board recommends the applicability of the Lowlands Requirement (Section 5.5) be addressed in the draft ordinance, or understands that it otherwise applies.***

5.25.7 PUD Master Plan

This section outlines the type of information that needs to be provided for review and approval of a PUD Master Plan. The Board discussed submission standards with the petitioner at several of the sessions of the Planning Board public hearing. It was suggested that at a minimum a projects of this nature should follow the substantive requirements of some the sections of the zoning ordinance that at PUD project would otherwise be exempted, namely Section 5.7 Major Project. This section contains additional guidelines and criteria for approval which should also be considered. Another way in which this may be addressed is in the wording of the proposed 5.25.8.2 (i) which suggests that the applicant may submit “other supportive material”. The Board recommends that the permit granting authority reviewing a project under a new zoning as proposed should be afforded the ability to “request of the applicant other supportive material it deems necessary in evaluating the PUD Master plan, such as traffic, engineering or financial studies”.

The remainder of this section is procedural; the Board supports the utilization of the existing procedures contained in Section 1.5 of the zoning ordinance as the basis for the proposed review.

- *The Board recommends submission standards be clarified, as well as applicability of standards to uses otherwise addressed in the current Zoning Ordinance. At a minimum the draft Ordinance should incorporate the language outlined in the memorandum submitted to the Board from Attorney Mead, dated September 16, 2010.*

5.25.7 PUD Special Permit

The final Section of the ordinance outlines the actual land use permit review, approval and issuance. The petitioner has characterized this zoning as an incentive zoning providing flexibility to move forward on a development proposal. This section also defines how the PUD Special Permit process would be conducted. The Board understands the complexity of large development proposals may take additional time to assemble and finance. However, by reference to the interim of time between the approval of a Master Plan and the filing of a PUD Special Permit (15 years) is too liberal, the Board suggests a more reasonable time frame may be five years with allowance for extension. Further, the Board recommends that the final agreed upon timeframe for validity of a PUD Master Plan, be explicitly stated in Section 5.25.8.

Final note on this Section, the Board again recommends that the use of such words as “consider” and “extent to which” in evaluation of “objectives” may be problematic both for the permit granting authority and an applicant in finding and demonstrating that an objectives has been satisfied.

Conclusion

The Board supports the intentions of the Ordinance and believes mixed use zoning may be consistent for the area, but that the standards and processes in the ordinance need to be further clarified as outlined above. The introduction of residential use to the proposed district needs to be better defined as permitted elsewhere in the community, along with more specific density and dimensional standards.