

September 26, 2017

City Council of Gloucester
6 Dale Street
Gloucester MA 01930

Dear City Councilors,

Attached are three documents that will continue to guide me in my efforts to help the council respond to the application for a special permit for a proposed building at 1 Colburn Street.

The first is the statute from our Zoning Ordinance that governs this case, 3.1.6.


The second is a copy of the dimensional table, from the Zoning Ordinance, 3.2.1.

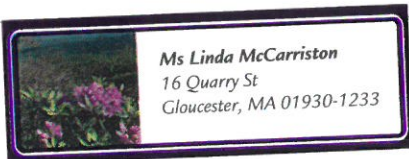
The third is an informal summation of the situation, notes from a friend in the law, who advises me of my rights – and those of my neighbors -- in this situation.

I hope you will have time to look them over before you vote tonight. If there is an opportunity for me to talk, I will read them.

Thank you.

Regards,


Linda McCarriston
16 Quarry Street
978 515 7267
978 381 5747



A Massachusetts Supreme Court decision *Burnham v. Board of Appeals of Gloucester* decided in 1955 is often cited approvingly in subsequent decided cases even though the Gloucester zoning ordinance upheld by the Court on the issuance of a Special Permit, had only a standard that the board "consider the effects upon the neighborhood and the City at large".

The current Gloucester Zone Ordinance now has in its purposes clause some general and particular criteria for the grant of a Special Permit see Sec. 1.2 et. seq.

The present Zone Ordinance provisions seemingly satisfy the statutory requirements.

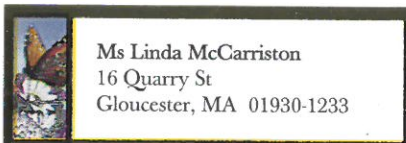
M.G.L. Ch. 40A Sec. 9 states: Special permits may be issued only for uses which are in harmony with the general purpose and intent, of the ordinance or by law.

Additionally, the Gloucester Zone Ordinance has specific language governing the grant of permission to exceed the dimensional height regulation. (3.1.6). The Council is either unaware (unlikely) or acting in disregard thereof (more likely).

Written findings are required to support the Councils determination and these must be specific, fact based, and not repetition of statutory or ordinance boiler plate language.

A conclusion is not a finding. Any decision is required to be supported by a written basis in fact, of facts.

Understand that the statute and the ordinance are a protection, a shield for the neighbors. The Petitioner is he who seeks to vary what the rule is, and his is the burden to support his request for exceptional relief. The citizens, neighbors and others are right to have an expectation that the protection afforded by the statute and ordinance will protect them, the neighborhood and the City.



RELEVANT STATUTES

3.1.6 Special Permit for Building Heights in Excess of Section 3.2 Limits

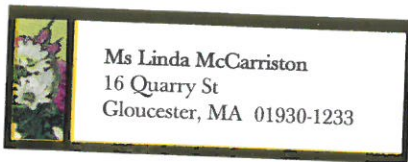
Building heights in excess of the limits set forth in Section 3.2 may be authorized pursuant to the following special permit procedures; provided, however, that in no case shall such increase in allowable height be greater than allowed by the State Building Code and other state and municipal regulations.

(a) Building Heights up to 35 Feet: Building heights up to 35 feet may be authorized by special permit issued by the Board of Appeals. Said permit shall contain such conditions as the board deems necessary, and shall only issue upon a written determination by the board that such increase in allowable height is consistent with neighborhood character and will not be substantially detrimental to the neighborhood because of obstruction of views, overshadowing of other properties, impairment of utilities or other adverse impacts.

(b) Building Heights in Excess of 35 Feet: Building heights in excess of 35 feet may be authorized by special permit issued by City Council. Said permit shall contain such conditions as the council deems necessary, and shall only issue upon a written determination by the council that such increase in allowable height is consistent with neighborhood character and will not be substantially detrimental to the neighborhood because of obstruction of views, overshadowing of other properties, impairment of utilities or other adverse impacts.

Footnotes to Section 3.2.1

a. This requirement pertains to two family dwellings only; see Section 3.2.2 for multi-family dwellings. Two family dwellings must also satisfy the general minimum lot area requirement.



b. Maximum height for buildings may be increased by special permit pursuant to Section 3.1.6.

3.1.8 Definitions of Terms used in Section III

Building Height: In the case of a flat roof, the vertical distance measured from the average grade prior to building construction to the highest point of the roof assembly (including parapets). In the case of a sloping roof, the vertical distance measured from the average grade prior to building construction to the highest point of the peak or ridge.

The average grade prior to building construction is established by determining the elevation of the building at all of its corners and deriving the average thereof. Included in the determination of height are widow's walks, towers or cupolas that are more than four feet long, four feet wide and

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four feet tall. Not included in the determination of height are accessory features such as chimneys, skylights, television antennae and building mechanicals in large commercial, apartment and condominium buildings.



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gloucester-ma.gov

www.gloucester-ma.gov/documentcenter/view/366

the nearest residential district.

former designations:

[R-RB]	[R-RA]	[R-1]	[R-2A]	[R-2]	[R-3]	[R-4]
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fn	R-80	R-40	RC-40	R-30	R-20	R-10	R-5	CCD	CB	VB	NB
		e	f	g	g				f		h

For Principal Uses

Minimum lot area (sf)	80,000	40,000	40,000	40,000	30,000	20,000	10,000	5,000	5,000	5,000	h
Minimum lot area per dwelling unit (sf)	a	80,000	40,000	40,000	30,000	10,000	2,000	1,000	1,000	1,000	h
Minimum lot width (ft)		150	150	150	100	100	80	50	50	50	h
Minimum frontage (ft)		100	100	100	80	80	65	50	50	50	h
Minimum front yard (ft)		40	40	40	30	30	20	15	15	15	h
Minimum side yards (ft each)		30	30	30	20	20	10	7.5	7.5	7.5	h
Minimum rear yard (ft)		30	30	30	30	30	20	20	20	20	h
Maximum building height (ft)	b	30	30	30	30	30	30	30	30	30	h

For Accessory Uses (other than signs)

Minimum distance from street (ft)	c	40	40	40	30	30	20	15	15	15	h
Minimum distance from side lot lines (ft)		15	15	15	15	15	10	5	5	5	h
Minimum distance from rear lot line (ft)		15	15	15	15	15	10	5	5	5	h
Minimum distance from principal building (ft)		20	20	20	20	20	10	5	5	5	h
Maximum building height (ft)	b, d	12	12	12	12	12	12	12	12	12	h

Maximum Lot Coverage - Total of All Structures

	25%	25%	25%	25%	25%	25%	30%	35%	35%	35%	h
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Footnotes to Section 3.2.1 are on the next page

SECTION III

Footnotes to Section 3.2.1