

PLANNING BOARD

DATE: September 9, 2021

TIME: 6:00 P.M.

PLACE: Zoom Virtual Meeting

FOR: Regular Meeting

PRESENT: Brandee Nelson, Chair; Malcolm Fick; Jonathan Hankin; Jeremy Higa; Pedro Pachano
Chris Rembold, Assistant Town Manager/Director of Planning and Development

Ms. Nelson called the meeting to order at 6:00 P.M. She read the opening statement, revised by Governor Baker on June 16, 2021, from the agenda. She said the meeting was being recorded. She called for roll call attendance:

Mr. Hankin, present; Mr. Pachano, present; Mr. Fick, present; Mr. Higa, present; Ms. Nelson, present

FORMS A:

Michael Parsons, from Kelly, Granger, Parsons and Associates was present with a Form A application on behalf of the Edward J. Madden Memorial Open Heart Camp Club for two parcels of land located on the east side of Monument Valley Road. Lot 1 contains 4.133 acres of land. Lot 2 contains 3.850 acres of land. Mr. Parsons said the lots exceed zoning minimums.

Mr. Hankin made a motion to endorse the plan, Mr. Fick seconded.

Roll call vote: Mr. Hankin, aye; Mr. Pachano, aye; Mr. Fick, aye; Mr. Higa, aye; Ms. Nelson, aye

Patrick McColgan from Taconic Land Surveyors was present with a Form A application on behalf of Patrick O'Connor for 11 and 13 Laurel Street. Lot 1 contains 18,373 square feet of land. Lot 2 contains 3.085 acres of land.

Mr. Pachano said the lots are split between two zoning districts. He asked how zoning requirements are met.

Mr. Rembold said the houses conform to the R-1-B zone.

Mr. Hankin made a motion to endorse the plan, Mr. Fick seconded.

Roll call vote: Mr. Hankin, aye; Mr. Pachano, aye; Mr. Fick, aye; Mr. Higa, aye; Ms. Nelson, aye

MINUTES: AUGUST 26, 2021

Mr. Hankin made a motion to approve the minutes of August 26, 2021 as amended, Mr. Fick seconded.

Roll call vote: Mr. Hankin, aye; Mr. Pachano, aye; Mr. Fick, aye; Mr. Higa, aye; Ms. Nelson, abstained

ZONING:

Ms. Nelson said the zoning discussion is for the 2022 Annual Town Meeting.

The Board discussed the Flood Plain Overlay District amendments. Mr. Rembold said the language for the zoning bylaw for the floodplain overlay is required to be updated by FEMA and MEMA. The language must be included in order for homes to be enrolled in the Flood Plain insurance system.

Mr. Rembold said the flood plain maps have not been updated. He said our maps are old but accurate but there will be changes over the next 5-10 years with climate change. He said FEMA will not be able to update maps for a while. He said some parts of the bylaw are particular to Great Barrington such as dates and the special permit process. Otherwise the language is from FEMA and MEMA.

Mr. Rembold said he wanted to get the language to the Board for discussion as the bylaw has to go to the 2022 ATM.

Ms. Nelson said current bylaw 9.1 will be replaced with new language.

Mr. Rembold said yes.

Ms. Nelson said the Selectboard is the SPGA.

Mr. Rembold said yes as it has been all along.

Mr. Hankin said paragraph 3 says maps can be found in Town files. He said the maps are not on the website. He said he is not able to find the maps.

Mr. Rembold said he has the maps.

Ms. Nelson said the maps are on line with FEMA.

Mr. Rembold said the flood way and the flood plain have to be interpreted. He said we have the flood plain maps.

Mr. Hankin asked if we have flood way maps.

Mr. Rembold said yes we have and FEMA has. He said there is a restriction of building in the flood way but building can take place in the flood plain with a special permit.

Mr. Hankin asked about 9.14.

Mr. Rembold said that is required language.

Mr. Hankin said the bylaw says that plans have to be certified by a professional engineer. Could a surveyor certify plans as well?

Ms. Nelson said there is a difference between a professional engineer and a surveyor.

Mr. Hankin asked if SPGA can be used in place of Selectboard. Change Selectboard to SPGA throughout the document.

Mr. Rembold said that can be done.

Mr. Hankin asked about 9.5.3 that refers to elevation in accordance with the building code.

Ms. Nelson said typically building takes place 1-2 feet above the flood plain. She said it is specifically called out in the building code.

Mr. Rembold said he can ask the Building Inspector.

Mr. Hankin asked about 9.5.3 6. He asked how to provide safe pedestrian and vehicular movement when building in the flood plain.

Mr. Nelson said the driveway is built above the flood plain.

Mr. Rembold said when a house is permitted in the flood plain people should know the house is in the flood plain.

Mr. Hankin asked about 9.5.7. He asked if septic systems were legal in the flood plain.

Ms. Nelson said she didn't think so.

Mr. Hankin asked about 9.1.7 referring to subdivisions greater than 50 lots or 5 acres, whichever is less. Our smallest lots are 5,000 SF, which, at 50 lots, would exceed the 5 acres.

Ms. Nelson said it is required language.

Mr. Rembold said the language is straight out of the model. He said the language could be modified. He said he can ask the State Flood Plain people.

Ms. Nelson said using the smallest lot allowed in zoning we can't get 50 lots in five acres.

Mr. Hankin said yes that is the point.

Mr. Hankin asked about 9.1.10.

Mr. Rembold said it has to be in the bylaw.

Mr. Hankin said variances traditionally are granted by the ZBA.

Mr. Rembold said the variance is from the building code. He said the ZBA can't grant a variance from the building code. He said currently the ZBA can't grant a variance from the Flood Plain Overlay District.

Ms. Nelson said she doesn't think variances should be given. She said it is foolish to encourage building in the flood plain.

Mr. Hankin said he agrees for new construction but what about existing construction. He asked if a variance should be allowed under very special circumstances.

Mr. Rembold said the variance referred to would be specific to this bylaw.

Ms. Nelson said she would like to think about this more and discuss it again.

Mr. Fick said the bylaw has to do with the Flood Plain Insurance program.

Ms. Nelson said yes and the variances are listed in 9.1.5.

Mr. Hankin said there is nothing to be lost by keeping the section. He said small changes might need a variance. He used for example the construction of a handicap ramp.

Mr. Fick said he is not convinced we need it. He said we don't have it now.

Mr. Hankin said the language is more specific so there should be an option for a variance.

Ms. Nelson asked Mr. Rembold to ask the State Coordinator how other places address the issue. We have a mechanism for variances through the ZBA.

Mr. Fick said he is trying to figure out the waiver.

Ms. Nelson said it is not a variance is not a waiver; it goes to the ZBA.

Mr. Rembold said he will ask the coordinator.

Mr. Hankin asked about 9.1.12, 9.1.13 and the definition.

Mr. Rembold said these are required. He asked the Board members for comments and questions to be submitted individually. He said he will then compile the questions and discuss with the coordinator.

Mr. Pachano asked about the definition of variance.

Mr. Rembold said the definitions are specific to this section.

The Board moved on to discuss affordable housing incentives and Stockbridge Road zoning.

Mr. Rembold asked if the framework for the affordable housing incentives and Stockbridge Road can be pushed off to the next meeting.

The Board agreed. Mr. Pachano said he would send some language for affordable housing incentives to the Board for discussion at the next meeting.

The Board discussed Commercial Event Venues.

Ms. Nelson said she read in the minutes from the last meeting that there was discussion of commercial event venues.

Mr. Rembold said the Town does not currently allow in a specific zone. He said Ms. Nelson sent a sample from another town.

Mr. Pachano said the use could qualify as a home occupation so there is an avenue to establish the business. He said a definition might need to be added.

Ms. Nelson said the definition for home occupations is not great. She said we need to find ways to define and find ways to address issues and characteristics of the use. She said the town where the sample bylaw originated experienced similar issues of fireworks, traffic and loud music. The bylaw puts in boundaries and restrictions to curb the nuisance issues and an annual review is required allowing for an option not to renew the permit.

Mr. Hankin said the sample doesn't say anything about residential areas.

Ms. Nelson said the town doesn't have any commercial zones.

Mr. Hankin asked if there is a down side to leaving our bylaw as it is. The Selectboard could have stipulations to address without formalizing the use. He said we don't want to make it easier to get a commercial event in a residential zone.

Mr. Rembold said certain conditions such as the annual review and limiting the number of events per year exist for the Selectboard to work with. There haven't been any events allowed so there is no way to judge.

Ms. Nelson said maybe we don't need a separate stand- alone bylaw. We can look at home occupation again.

Mr. Hankin said he would be happy to have the home occupation bylaw reviewed.

Ms. Nelson said there are a number of properties that are not owner occupied hosting events. She said she hates to be reactionary. She said she would like to get ahead of future applications given all the properties that have been purchased over the last year. She said it might be logical for a homeowner to want to have events but they might not meet the residency requirement.

Mr. Fick said to Ms. Nelson that she seems to want to allow the use.

Mr. Rembold said it is not a question of allowing but rather regulating.

Mr. Fick said by regulating the use will be allowed. He said the Home Occupation should be looked at to bring into conformance what we want. He said permit or not permit, I don't see where in Town we would want to permit.

Ms. Nelson said some parcels in the R-4 zone might be an area where it could be permitted.

Mr. Fick said noise still might be heard in areas.

Mr. Hankin said some farmers might want to create an entertainment venue. He said we shouldn't rule it out as keeping a farm financially solvent is increasingly challenging.

Mr. Fick said he would object to someone buying property then renting it out for commercial events.

Mr. Pachano said home occupation does not allow for an absentee owner.

Ms. Nelson said we need to look at the home occupation bylaw.

Mr. Pachano said he agreed with future discussion. The rest of the Board agreed.

Mr. Hankin said he would be willing to review the Home Occupation bylaw.

BOARD & COMMITTEE UPDATES/ISSUES & CONCERNS:

Mr. Pachano said the Design Advisory Committee is having trouble getting a quorum. He said he is concerned about DAC not being functional.

Mr. Rembold said the CPC approved its annual CPC plan. He said Mr. Fick presented the Board's recommendations. The Step 1 applications are due on November 5.

Mr. Fick said it was a good discussion. He said the CPC was open to smaller projects. It is not wedded to a specific character design.

Mr. Higa he would send the revised text.

Ms. Nelson said Selectboard members Abrahams and Bannon are interested in getting a short-term rental bylaw in place. She said there is pressure on work force houses. Housing needs to be constructed for teachers, fire fighters, and police. We need to think about short-term rentals in an already tight housing market. She asked the Board if they want to work on a bylaw jointly with the Selectboard.

Ms. Nelson said the Housing Sub-Committee may be the logical place for the bylaw.

Mr. Pachano said the Housing Sub-Committee has a model draft bylaw for short-term rental units. There will be discussion on September 20 at 1:00. He said he can report back at the next meeting.

Ms. Nelson asked if there is anything available please send it out for us to read.

Mr. Pachano said he will send out the model bylaw.

TOWN PLANNER'S REPORT:

Mr. Rembold said the Board will hold a public hearing in October 4 for a sign for the Flying Church at 198 Main Street.

Mr. Rembold said the next meeting on September 23 will focus on zoning. He said so far that is all there is on the agenda.

Mr. Rembold said the Attorney General approved the zoning amendments from the ATM in June.

Ms. Nelson asked about the Citizen's petition about speaking at meetings.

Mr. Rembold said the Citizen's petition has not been approved yet.

He said there is a pending appeal before the ZBA regarding an alleged commercial event on Hurlburt Road. The appeal is on September 21.

CITIZEN'S SPEAK TIME:

Mr. Abrahams asked Mr. Rembold about a gaping question in the Citizen's petition, does each citizen get to speak as long as the presenter, or does this describe the total amount of time all the citizens can use?

Mr. Rembold said he doesn't know.

John Migliaccio, 150 Hurlburt Road, said he had the commercial event being appealed was near his property. He said if there is no regulation how does a Cease and Desist order come about? He said the ZBA needs to address the issue and two other issues that include the airport and storage of commercial vehicles.

Mr. Pachano said the Clinton Zion Church project will have a Nickelback event where 5% of all sales will go to the church project. He asked people to help.

Ms. Nelson said she will not be present at the next meeting but Mr. Fick will chair the meeting.

Having concluded their business, Ms. Nelson adjourned without objection at 7:26 PM.

Respectfully submitted,

Kimberly L. Shaw

Kimberly L. Shaw
Planning Board Secretary