

PLANNING BOARD

DATE: December 23, 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. Fick, present; Mr. Pachano, present; Mr. Higa, present; Mr. Hankin, present; Ms. Nelson, present

FORMS A:

There were no Forms A presented.

MINUTES: DECEMBER 9, 2021

Mr. Hankin made a motion to approve the minutes of December 9, 2021 as amended, Mr. Fick seconded.

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

SIGNING AUTHORIZATION:

Ms. Nelson said the Board needs authorize Mr. Rembold, in accordance with MGL Ch. 41, s. 81L, to certify or endorse, on behalf of the Board, any plans approved by the Board, through December 31, 2022.

Mr. Hankin made a motion to authorize Christopher Rembold, Assistant Town Manager / Director of Planning and Community Development, to certify or endorse, on behalf of the Board, any plans approved by the Board, through December 31, 2022, Mr. Fick seconded.

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

ZONING AMENDMENT DISCUSSION:

Ms. Nelson said the Board agreed to look at the draft bylaw for short term rentals prepared by Ms. Davis. This meeting will focus discussion on the purposes agreed to at the joint meeting with the Selectboard.

Mr. Rembold provided purposes from previous discussions. The Board will decide if the draft has merit for inclusion as a zoning amendment for the Annual Town Meeting. Mr. Rembold said there were comments from Mr. Hankin and Mr. Fick.

Mr. Rembold said there have been there have been many emails, pros and cons, for short term rentals. He suggested initially the discussion could address applicability and the need to regulate short term rentals.

Mr. Rembold said the bylaws currently allow a resident to rent to up to three boarders by-right. A lodging or tourist home is allowed by special permit for up to 11 boarders. He said any more than 11 boarders would be considered a hotel or motel.

Mr. Fick asked if there are any compliant short term rentals in Great Barrington according to the Building Code.

Mr. Rembold said he doesn't know any of that.

Ms. Nelson said a local registry is needed. There is no way to enforce or regulate the short term rentals. She said they are already registered with the State so it isn't a big deal.

Mr. Pachano said the Building Code doesn't have a definition for hotels. The bylaw has a very clear definition. He said a single family home being rented is more like a lodging house than a hotel. He said the current zoning code does not designate lodging houses as transient. He said the 2021 Building Code clearly addresses transient housing.

Ms. Nelson said it is semantics. She said the language can be changed in the bylaw but we don't want to get too far ahead of the Building Code.

Mr. Pachano said according to the Building Code the R-1 (hotels, motels, boarding houses, etc.) uses have extensive fire regulations. He said R-3 (single family residences) does not have fire regulations.

Mr. Rembold said it is clear that a property without a resident on site is clearly a R-1 designation.

Mr. Pachano said the new code will be more specific.

Mr. Rembold said the current interpretation is technical. He said the short term rentals are not being inspected and we don't know where they are.

Ms. Nelson said a registry should be created and the impact fee should be adopted. The fee can be designated for affordable housing assistance. Ms. Nelson said she is not sure why we are going through this process if we don't have enough information.

Mr. Rembold said Mr. Hankin submitted a draft of a bylaw for the Board's consideration. He said draft discussed at the joint meeting with the Selectboard on December 9, 2021 regulates the

types of occupancy, requiring owner occupied for the use. Mr. Hankin's draft is directed more toward code compliance.

Mr. Higa said if someone owned a duplex plus and accessory dwelling unit it would meet the R-1 designation. He asked if one unit would be able to be rented as a short term rental and would be have to be sprinkled.

Mr. Pachano said it is open to interpretation.

Mr. Rembold suggested that maybe 3.2.3 that addresses boarders should say three rooms instead of boarders.

Ms. Nelson said the bylaw regarding use as transient homes, 7.16, touches on issues we have discussed. She said perhaps we have the foundation for the bylaw in 7.16.

Mr. Rembold agreed that 7.16 includes a basis for a bylaw. He said 3.2.3 does not.

Mr. Pachano asked if the first section is addressing single family homes. He said there is a transient structure to the bylaw that implies a conversion for use. He asked if by the mere fact of advertising does that imply a conversion?

Ms. Nelson said the bylaw should be clarified.

Ms. Nelson said there is a potential for conflict. She said we need to look at the conflicting language. She said if we take up 7.20 we will want to spend time going through definitions and the contradiction, especially in the implementation process.

Ms. Nelson made a motion to send bylaw back to the Selectboard for them to require a local registration, Mr. Pachano seconded,

Ms. Nelson said we will have to take public comments.

John Londoner asked that the motion be explained in plain terms.

Ms. Nelson said the Board is proposing to send a recommendation to the Selectboard for them create a mechanism by which the Town can have a list of properties being operated at short term rentals.

Mr. Londoner asked what the purpose is of the registration.

Ms. Nelson said the Town would know what properties are being operated as short term rentals.

Mr. Hankin said he disagrees. He said the purpose is to protect public health and safety. He said the request should not be just for registration of short term rentals but also inspections.

Ms. Nelson said there can also be a request for inspections.

Mr. Fick said he has an issue with inspections.

Mr. Hankin said the Building Inspector has to be asked to do inspections and get paid for it.

Mr. Fick said the Selectboard can ask the Building Inspector to do inspections.

Ms. Nelson said other communities inspect a certain percentage of units. They do a random sampling.

Mr. Fick said inspections are not a zoning issue but proposing to be part of a zoning bylaw. He recommended periodic inspections.

Mr. Pachano said he is more inclined to let the Building Code handle the inspections. He said the Building Code describes the activities of the Building Inspector.

Mr. Hankin said a change of use would trigger an inspection.

Mr. Pachano said if the owner stays two weeks out of the year then rents the property is that a change of use.

Ms. Nelson said we are going down a rabbit hole. She said the motion is to create a local registry, Mr. Hankin recommended inspections.

Mr. Fick said it is important to recommend that the Selectboard consider inspections.

Mr. Hankin said fire code inspections are also important.

Mr. Pachano suggested conformance with all building code and fire code requirements rather than periodic inspections. He said registration would imply compliance with the Building Code and Fire Code.

John Segalla who owns properties in Great Barrington asked if only short term rentals would be required to be inspected. He said there are more health and safety issues with long term rentals. He said the Board is picking on a group of people. He said short term rentals are probably safer.

Ms. Nelson said we are focused on short term rentals. She said she doesn't agree with the perspective of no enforcement.

Mr. Segalla said people get too comfortable in long term rentals and do stupid stuff. He said he thinks there is less of an issue with short term rentals.

Mr. Hankin said he goes into a lot of houses, as a real estate broker, that are not completely safe. He said properties should meet egress requirements and have working smoke detectors. He said he is focused on life safety risks.

Ms. Nelson said some communities have forms asking these questions. She said the questions can be asked as part of the registration process.

Mr. Hankin said to sell your house you have to have an inspection showing working smoke detectors.

Ms. Nelson withdrew the motion. Mr. Pachano withdrew his second.

Mr. Hankin made a motion requiring registration for short term rentals to have periodic inspections of smoke detectors, Mr. Fick seconded.

There was no additional discussion from the Board or public comment.

Roll call vote: Mr. Hankin, aye; Mr. Higa, aye; Mr. Fick, aye; Mr. Pachano, no; Ms. Nelson, aye

Ms. Nelson asked if the Board wanted to continue discussion of the proposed bylaw or rather modify the existing code.

Mr. Higa asked if the Board was going to discuss what Mr. Hankin proposed.

Ms. Nelson said Mr. Hankin's proposal is already addressed in 7.16.

Mr. Higa said the public won't know where to look.

Ms. Nelson said the bylaw would be clarified.

Mr. Rembold said the Board needs to decide if they are going the zoning route or Ms. Davis's version requiring resident occupied. He said Mr. Hankin's version follows the zoning code and the Building Code. He said this is an important decision at this point.

Ms. Nelson said she thinks the two drafts create contradictions. She suggested taking elements from both and work on 7.16.

Mr. Fick said Mr. Hankin's draft distinguished between resident owner and non-resident owner. He asked if Ms. Davis's bylaw could be passed as a general bylaw.

Mr. Rembold said he can't answer that question definitively.

Ms. Nelson said there is no review mechanism for Ms. Davis's bylaw.

Mr. Pachano asked if as written if Ms. Davis's bylaw is zoning or general.

Mr. Rembold said it might be a general bylaw.

Ms. Nelson said Ms. Davis's objective is to get something in front of us.

Mr. Rembold said similar language has been approved as a general bylaw in some communities.

Mr. Fick said Mr. Pachano said there are 56 short term rentals that are not owner occupied. He said that is a low number but in terms of affordable housing it is not a low number. He said we need to regulate.

Mr. Pachano said to Mr. Fick, short term rentals are a housing issue.

Mr. Fick said yes. Short term rentals increase housing prices and generally depress traditional bed and breakfast operations. He said they create a loss of neighbors.

Mr. Pachano asked based on what information.

Mr. Fick said his anecdotal evidence based on a house sold in his neighborhood. He said the house price was increased due to the demand for short term rentals.

Mr. Pachano said so there is a demand.

Mr. Fick said the increased housing prices in Town are because of the increase in demand.

Ms. Nelson suggested being careful with this line of discussion as 56 short term rentals is only 1.5% of the total housing stock. She said that is not a significant number.

Mr. Fick disagreed. He said it is a significant issue. He said the Board has spent years passing zoning for multi-family housing. He asked if people are converting housing to multi-family from single family.

Ms. Nelson said she doesn't know but she doesn't want to tell people what to do. She said there is no guarantee that a short-term rental bylaw will affect affordable housing.

Mr. Pachano said there are at least 50 properties on the market that are not selling. He said more multi-family units have been lost to the permitting process. He said regulating a market is not necessarily a good thing.

Mr. Fick said he thinks it is a good thing if properly regulated.

Mr. Higa said short term rentals can be attractive to people who don't have the money to do long term rentals or who have had bad renters.

Ms. Nelson said if a registry is created the issue can be resolved.

Mr. Pachano said if the Building Code is considered the R-1 use will eliminate short term rentals all together for non primary residences. If property is being rented for less than 30 days it will be required to have sprinklers. He said it doesn't make sense.

Mr. Rembold said if you decide to move forward are you going to use the model proposed by Ms. Davis? He asked the Board members if they are in line with that proposal.

Ms. Nelson said the way Ms. Davis's proposal is written it would require the property to be the primary residence of the owner. She said there is contradictory language.

Mr. Rembold said the Board talked about purposes that short term rentals should achieve. He asked what the opinion is for second homeowners renting their properties.

Ms. Nelson said she doesn't have an issue with second homeowners. She said the properties should be registered.

Mr. Rembold said the registration process could ensure life safety concerns and nuisance issues. He said registration and an inspection process could help meet the purpose.

Ms. Nelson said we need to figure out threshold questions.

Mr. Pachano said he doesn't have an issue with second homeowners. He said there is a bad perception that they are evil and take advantage of our community.

Mr. Fick said the second homeowners should be limited in their ability to rent short term their properties. He said who it is, the primary homeowner can rent the property short term. Non-resident homeowners should be limited in the number of days they can rent. He said those currently doing short term rentals should be grandfathered.

Mr. Rembold said the primary resident can rent out as much as they want, if not a primary homeowner there is a limit on the number of days to rent.

Mr. Fick said he is ok with grandfathering as of 12-31-21. He said if people want to be grandfathered they have to register.

Mr. Pachano said if people are grandfathered they don't have to comply with zoning.

Ms. Nelson said she didn't get to review Mr. Hankin's bylaw in detail. She asked if Mr. Hankin's bylaw would be zoning or general.

Mr. Hankin said he didn't know that would be up to Town Counsel.

Mr. Pachano asked impact wise what is the difference between long term or short term rentals. He asked what makes them different.

Mr. Higa said short term renters get to leave. Long term renters or homeowners have to live with the consequences.

Mr. Pachano said the proposal doesn't allow for non-resident renting.

Mr. Hankin said yes, under definitions.

Ms. Nelson said anytime there is a change in the building code there will have to be a change in definitions.

Mr. Hankin said all it is doing is alerting people. If the State adopts the IBC it will be implemented.

Ms. Nelson agreed that it could be left as Building Code as it isn't specific.

Mr. Rembold said it seems the Board is coalescing around Mr. Hankin's version. He asked if want to look at it again to make edits.

Ms. Nelson suggested putting language in about grandfathering. If currently registered with the State as of a certain date grandfathering will apply.

Mr. Rembold said he would figure out the revisions.

Ms. Nelson said it can be discussed at the Board's next meeting in January.

Mr. Rembold said he would want any comments by the start of the day on January 10, 2022. He said he would let the Selectboard know about the registration recommendation.

Mr. Pachano made a motion to have the Selectboard consider a 3% short term rental impact fee to create funds for affordable housing, Mr. Higa seconded.

Anthony Segalla asked if under the definitions a non-primary resident can rent or not.

Ms. Nelson said we have a rough draft we will work to make the language consistent.

There was no other public comment.

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

Mr. Hankin said he would like to introduce for the next meeting a change to the ADU bylaw. He said the bylaw limits the gross square feet to 900 square feet. He said with more energy efficient standard the wall can be thicker. He said he is suggesting changing from Gross Square Feet to (NUFA) Net Usable Floor Area. He said it is a minor housing item.

Mr. Pachano said 7.16 use regulations for lodging and transient housing has one defined and one not defined. He said language should be changed to make consistent.

Mr. Higa asked if Mr. Hankin's version should be sent to the Selectboard.

Ms. Nelson said not until it has been refined then it will be referred back. She said she will have a discussion with Mr. Bannon. The process won't be done in a vacuum.

CITIZEN'S SPEAK TIME:

No one spoke.

Having concluded their business, Ms. Nelson adjourned without objection at 7:51 P.M.

Respectfully submitted,

Kimberly L. Shaw

Kimberly L. Shaw
Planning Board Secretary