

PLANNING BOARD

DATE: January 13, 2022

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 on behalf of Bearman Nicifero for the arrangement of property lines on the southwest side of Lake Buel Road. Parcel A contains 0.615 acres of land. Parcel A is not to be considered a separate building lot and is to be conveyed to Bearman Nicifero Revocable trust. Parcel B contains 0.492 acres and is not to be considered a separate building lot. Parcel B is to be conveyed to Weinberg.

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

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

Mr. Parsons presented a Form A on behalf of Kathleen McCormick for two parcels of land on the east side of North Plain Road. Lot 1 contains 1.411 acres of land. Lot 2 contains 7.128 acres of land.

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

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

MINUTES: DECEMBER 23, 2021

Mr. Hankin made a motion to approve the minutes of December 23, 2021 as amended, Mr. Fick seconded.

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

MINUTES: NOVEMBER 29, 2021 JOINT MEETING

Mr. Hankin made a motion to approve the minutes of November 29, 2021 as amended, Mr. Fick seconded.

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

SHORT TERM RENTAL REGULATION:

Ms. Nelson said the Board worked on the draft language at their meeting of December 23, 2021.

Mr. Rembold said the objective was to determine if the language fit a general bylaw it would be sent back to the Selectboard. If the language does not fit a general bylaw it will be taken up as a zoning bylaw. He said Town Counsel determined that the language is acceptable as a general bylaw. He suggested finalizing any changes then refer it back to the Selectboard.

Ms. Nelson said there has been a lot of correspondence from the public. She said the comments are not specific to the language of this draft. She said any comments need to be specific to this draft.

Mr. Fick said some of the correspondence sent to us by Mr. Rembold points out issues with grandfathering. He said the way sections A & B are written in the draft, there would be no restrictions on short term rentals currently in business.

Mr. Rembold said major sharing platforms require rental owners to comply with state laws as part of the registration process. The point of the language was a legally operating short term rental would not have sections A & B apply to that rental.

Mr. Hankin said if the draft is going into Town Code, there is no grandfathering. He said there could be a lot of rentals that are not owner occupied or registered with the State that could get a free pass.

Ms. Nelson said she would like Town Counsel to review the language.

Mr. Hankin said non-owner occupied could be grandfathered but they would be illegal so the bylaw would allow for an illegal use.

Ms. Nelson said maybe there needs to be some clarity.

Mr. Hankin said if the rental is being operated illegally but registered with the State then the rental is getting a free pass.

Ms. Nelson said she disagreed with Mr. Hankin's point of view.

Mr. Hankin said the draft allows a maximum of 120 nights.

Mr. Rembold said that was a point of discussion at the last meeting.

Ms. Nelson said the owner might want to occupy for a certain amount of time.

Mr. Rembold said the intention of sections A & B is a short term rental will be required to comply with the building code. A primary resident would have more use than a non-primary resident but the non- primary resident would still have some use. He said this issue is being conflated.

Mr. Hankin said he doesn't know what is gained by providing grandfathering. He suggested the initial registration fee could be waived instead of grandfathering.

Mr. Fick said he thinks grandfathering is a good idea because there are people who made significant investments prior to the bylaw being put in place.

Ms. Nelson said to Mr. Hankin that his suggestions appear to be limiting allowing the use of existing rentals. She said Mr. Fick's suggestions would allow people who are currently renting to continue to do so but they would not be precluded from the other requirements.

Mr. Hankin said if they are currently registered with the State then this won't apply.

Mr. Fick said they can do rentals now.

Mr. Hankin said they are renting potentially in violation of the Building Code.

Ms. Nelson said that is not relevant to this discussion.

Mr. Hankin said it is completely relevant. He said he doesn't know why allowing grandfathering is being offered when it is in violation of the Building Code.

Mr. Fick said the bylaw does not supporting violating the Building Code.

Mr. Rembold said item H is specific.

Ms. Nelson said she would like this debate to end. She said there is no intention of grandfathering anyone from complying with the Building Code.

Mr. Hankin said the draft is badly written.

Ms. Nelson said the draft is not badly written. She reminded Mr. Hankin that 90% of the draft was written by him.

Ms. Nelson said the preliminary guidance from Town Counsel is that the draft can be adopted as a Town Bylaw. She said she is okay with making recommendations and sending it back to the Selectboard to keep the process moving.

Mr. Rembold said Selectmen will meet on Tuesday. The language will not get to Town Counsel before the Selectboard gets the draft to review.

Mr. Hankin had a few minor edits to suggest.

Mr. Higa asked if the draft would have notes for the Selectboard.

Mr. Rembold said he could bring comments to the Selectboard.

Mr. Higa said he does not want to penalize people who already have short term rentals in place.

Mr. Fick made a motion to forward the draft to the Selectboard with Mr. Higa's comment to not penalize people who already have a rental in place, Mr. Higa seconded.

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

Mr. Rembold said he would send the draft to the Selectboard tomorrow.

ZONING AMENDMENTS:

Mr. Rembold said he had received information from BRPC for the Stockbridge Road zoning. He apologized that he hadn't had time to review it. He said he would try to review it before the next meeting.

Ms. Nelson said the other items on the agenda were primarily housekeeping items. She asked if item B, changing gross square feet to net usable floor area, required any further discussion. The Board agreed that no further discussion was necessary.

Ms. Nelson said item C deals with 3.2.3 boarding not more than three rooms instead of three people to make it more consistent.

Ms. Nelson asked Mr. Rembold if these items would be one motion at the Annual Town Meeting.

Mr. Rembold said any approach can be considered. He said one motion is fine.

Mr. Fick said of Item C that the original intention was to address the number of people not the number of rooms. He said the language opens up the possibility of jamming many people into a small area. He said changing from people to rooms could have side effects.

Mr. Rembold said the language is driven by zoning. He said the goal of the change seeks consistency. He said Mr. Fick's point hadn't been considered.

Ms. Nelson asked if item C should be left out. It could be revisited in the future.

Mr. Fick said he doesn't think it is a provision that is used very much.

Mr. Higa said it is used every time someone rents out a room.

Mr. Fick said he is inclined to leave it as it is even if it isn't consistent.

Ms. Nelson said the intent was to align the language under accessory uses with transient homes and lodging. It can be revisited.

Mr. Pachano said if the intent is to align the limit on number of people could be no more than 10 people.

Ms. Nelson said tourist homes are different from boarding rooms. She said there is a gap between transient uses and boarding uses.

Mr. Hankin said it is a good change.

Mr. Fick said he doesn't like to open up to other things. He said there doesn't seem to be a lot of demand.

Mr. Rembold said there is no urgency.

Mr. Fick said he is not thrilled with it but if there is a rationale it could be considered.

Mr. Higa asked whether the building code could be used to get a finite number of people allowed per square foot.

Mr. Pachano said that application is not intended for single family homes.

Ms. Nelson said boarding is a low intensity use. She said transient homes are a higher intensity use.

Mr. Pachano said the resident lives in the house.

Ms. Nelson suggested leaving the bylaw as it is.

Mr. Higa said the resident family might not be the owner. He said the resident can be different from the owner.

Ms. Nelson said let's leave it for now. She said if we receive a lot of correspondence about the issue we can rethink it.

Mr. Hankin said he doesn't want to forget about changes to the common driveway bylaw.

Mr. Rembold said that is not a zoning bylaw, it is a general bylaw. He said changes have been finalized. He said it will get to the Selectboard to be included on the Town Meeting warrant.

The Board discussed and set a public hearing date for the zoning items for March 10, 2022.

Mr. Hankin asked when the zoning has to be finalized to send to the Selectboard.

Mr. Rembold said the zoning will be prepared for the Board to review at their next meeting. The draft can be sent to the Selectboard for their meeting on February 14. He said he will put the draft language together. He said the next meeting is the end of the window.

Ms. Nelson asked that the comments from BRPC for the Stockbridge Road zoning (B2X), be sent out before the next meeting.

Mr. Rembold said he wants to make sure the work has been done correctly and that it is useful.

Mr. Hankin asked if there will be a public hearing to amend the Town Code.

Mr. Rembold said there will not be a public hearing.

Mr. Hankin asked that the zoning articles precede the general bylaw changes on the Town Meeting warrant.

Mr. Rembold said it can be requested.

Mr. Pachano made a motion to request that the small zoning changes go before the short term rental bylaw article on the Annual Town Meeting warrant. Mr. Hankin seconded.

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

AFFORDABLE HOUSING:

Ms. Nelson said the Selectboard is considering short term rental tax that would go to affordable housing.

Mr. Pachano said the Housing Sub-Committee focuses on all housing. Mr. Pachano sent out suggested housing incentives, 2.20 Housing Incentive Program. The document proposes a moratorium on special permits and site plan review for specific housing projects, three tax abatement/deferrals for qualifying rentals and proposes municipal funding.

Mr. Hankin said the sewer connection fees should also be discussed.

Mr. Pachano agreed.

Mr. Rembold said Mass Housing Partnership might have some ideas about tax abatements and municipal bonds. He said these ideas need more discussion from several boards. He said he is not saying the ideas aren't valid, only that it has to be figured out how to do.

Mr. Pachano said it takes housing out of the rat race of the real estate market. He said housing has two roles, shelter and wealth creation. He said we need to be creative with it.

Mr. Pachano said housing has been lost in Town due to the special permit process. He said proposal for the special permit/site plan review moratorium would be for five years. He said if the Mahaiwe Triangle had been allowed to go forward it is possible many people would have been helped. He said it is worth thinking about. He said he is not suggesting a change to zoning, but where housing is allowed to let it be by-right for five years.

Mr. Fick said it wouldn't address the Manville project because that project had a commercial component.

Mr. Rembold said there are a lot of interesting programs out there. He said coupling equity building and affordable housing is the Land Trust model.

Mr. Pachano said the Land Trust model has been around for a long time but it isn't used all that much.

Ms. Nelson asked how much of a challenge is available land? Mr. Hankin replied it is a significant challenge.

Mr. Rembold said, due to our geography, there is limited land that is left and it is expensive.

Ms. Nelson said the item should be left on the agenda for further discussion.

Mr. Rembold said affordable housing is a high priority for the Selectboard. He said he can provide updates.

Mr. Higa said the affordable housing conversation has me confused. If the Town wants to create more housing than it should be created.

Mr. Pachano said there are programs for methods for towns to find funding. He said the Town can foot the bill.

Mr. Higa said the Town can create a unit a year.

Ms. Nelson said there are a lot of other priorities for the Town to consider.

Mr. Higa said then overall the housing isn't that important.

Ms. Nelson said that is not so. She said a lot of units have been created. The Town can't solve the whole problem.

205 NORTH PLAIN ROAD:

Mr. Rembold said he didn't have any new information. He said Peter Stanton was present.

Mr. Stanton said he did email the new drawings. He said he sent them nine days ago. He said he can answer the Board's questions based on the drawings.

Ms. Nelson said typically the Board has 3-4 days to review the plans.

Mr. Rembold said he didn't receive the plans.

Ms. Nelson said the Board can review for discussion at the next meeting on January 27.

Mr. Stanton said he will not be available for that meeting.

Ms. Nelson asked if the installer could be the representative at that meeting.

Mr. Stanton said yes. He said he needs some guidance from the Board about the height of the ground mounted solar panels and the height of the greenhouse. He said he has questions about screening.

Ms. Nelson said she is aware that Mr. Stanton would like to show the solar array to promote the sustainability objectives of the farm. She said previous discussions show that the community supports solar.

Mr. Rembold said reasonable efforts need to be made to reduce the impacts. The Board can't waive the requirements but they can decide what is appropriate.

Ms. Nelson apologized for the mix up. She asked that the installer be sent to the next meeting.

Mr. Stanton said the installer can't address these topics. He said the only way to not see the array would be to install a solid fence 15 feet high. He said it needs to be decided what a reasonable effort is.

Ms. Nelson asked if Mr. Stanton could attend the February 10 meeting.

Mr. Stanton said he can but there are other permit challenges.

Mr. Rembold suggested the Board provide some general guidance to put on the plans.

Mr. Stanton said he would put shrubs on the road side ends of the panels if that is what works that is what will be done.

Mr. Hankin said the intention is to reduce the visual impact and divert attention. He said he doesn't find solar objectionable. He suggested something like a magnolia tree or two could be planted.

Mr. Stanton said he would be happy to put some trees in. He said he would have to decide where they would go.

Ms. Nelson said the Route 7 Landscape Plan has a numeric quantity. We recently allowed for plantings where they would fit on the property with the requirement that the trees have to grow and be maintained. She said maybe something like that could be applied to this situation. The applicant can decide where to put half a dozen trees.

Mr. Hankin said he doesn't think they need to put in half a dozen trees.

Ms. Nelson said if the farm wants to go off the grid let them do it. She said she doesn't find it objectionable. She asked if the inverter and transformer structures need to be screened or maybe just painted a muted color. She said we can provide guidance and not delay the applicant.

Mr. Fick said he does find some arrays objectionable but he said he doesn't think there is an issue here. He said it is a flat piece of land. He suggested the application can be voted on without Mr. Stanton present if he can get ideas to us before the next meeting.

The Board agreed. Ms. Nelson said Mr. Stanton should provide neutral color for the transformers and a plan for trees and/or shrubs.

Mr. Stanton said he will get details about the transformers and work on colors that will blend in. He said his preference is to not have shrubs in the field. He said he doesn't mind putting trees near the road. He said he will get the documents together. He said it would be great if the Board could move forward with it on the 27th.

Mr. Rembold said he would look for the plans and confirm when he receives them.

BOARD & COMMITTEE UPDATES/ISSUES & CONCERNS:

Mr. Pachano said there were technical difficulties for the Housing Sub-Committee meeting yesterday. He said the sub-committee will meet next month.

Mr. Higa said the Step 2 applications will be reviewed at the CPC's January 25th meeting.

TOWN PLANNER'S REPORT:

Mr. Rembold said the Selectboard meets Tuesday. Short Term Rentals will be on the agenda as well as an RFP for the Housatonic School building. He said at the next Planning Board meeting there will possibly be a site plan review application for the conversion of a single family home to a two-family home on North Plain Road. He suggested a site visit could be considered.

Mr. Rembold said he will include the B2X and affordable housing draft for the Selectboard on the next agenda.

CITIZEN'S SPEAK TIME:

No one spoke.

Having concluded their business, Ms. Nelson adjourned without objection at 7:53 P.M.

Respectfully submitted,

Kimberly L. Shaw

Kimberly L. Shaw
Planning Board Secretary