

PLANNING BOARD

DATE: February 10, 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. Fick, Mr. Pachano, present; Mr. Higa, present; Ms. Nelson, present

FORMS A:

There were no Forms A presented.

MINUTES: JANUARY 27, 2022

Mr. Hankin made a motion to approve the minutes of January 27, 2022 as amended by Mr. Rembold and Mr. Hankin, Mr. Fick seconded.

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

SITE PLAN REVIEW: 173 DIVISION STREET

Applicants Patricia and Dennis Hogan were present to discuss their application for a second dwelling unit on their property located at 173 Division Street.

Ms. Nelson said there was a site visit at 4:30 PM this afternoon.

Mr. Hogan said the proposal is to add a dwelling unit that would be connected to the garage. He said the dwelling would have three bedrooms. He said the dwelling would be built by Fox Home Builders. He said the house is being built for a family member to live in. He said the Board of Health has reviewed the plan. The Board of Health is requiring a larger septic tank be installed.

Mr. Rembold asked Mr. Hogan to describe how the house will be attached.

Mr. Hogan said the house will face north and south. The north end of the house will be attached to the garage.

Ms. Nelson said the Building Inspector will approve the renovations. She said there is a two car garage and two parking spaces outside of the garage which is adequate. She said the house is on a high spot on the site. The drainage will drain into the woods.

There were no comments from the Board. Ms. Nelson read through Site Plan Review, 10.5. The Board discussed a recommendation for exterior lighting requiring any lighting to be full cut off downward directed fixtures, dark sky compliant and if LED, 3000k or less.

Mr. Hankin made a motion to approve SPR with the condition that any lighting to be full cut off downward directed fixtures, dark sky compliant and if LED, 3000k or less, Mr. Fick seconded. Roll call vote: Mr. Hankin, aye; Mr. Fick, aye; Mr. Pachano, aye; Mr. Higa, aye; Ms. Nelson, aye

ZONING & TOWN CODE AMENDMENTS:

Mr. Rembold said there are bylaw amendments from previous meetings. Those bylaws have been approved by the Board at previous meetings.

B-2-X ZONE:

Mr. Hankin said the current language is not SGOD or Mr. Pachano's original draft.

Ms. Nelson said that is correct.

Mr. Rembold said the Board previously had a general discussion about what parcels would be affected.

Mr. Pachano said he wants the language to include the senior housing and child care incentives.

Ms. Nelson said the entire tax parcel should be included if the parcel fronts on Stockbridge Road.

Mr. Fick said he doesn't agree. He said he doesn't want Commonwealth Avenue or Fairview Terrace to become a commercial area.

Ms. Nelson said the intent is to allow the zone to extend concurrent with the parcel lines. She said language could be added to address concerns.

Mr. Fick said he is worried about commercial traffic as much as types of businesses. He said it would be good for the entrance to the properties to be from Stockbridge Road.

Mr. Pachano said all of the parcels from Fairview Terrace to Commonwealth Avenue are currently in the B-2 Zone.

Mr. Rembold said the parcel with the Mobil station is not split neither is the parcel with the bank. The only parcel that is split by the zoning line is the parcel with the Lantern Motel. It was split because it is a large parcel.

Mr. Hankin said 4.2.6.2 has a height restriction for this situation. He said even if the zone were extended there would be protection.

Mr. Rembold said when the B-2 zone was created it followed the parcel lines.

Ms. Nelson said the Brewery is at the north end of the developable land.

Mr. Hankin said why not run the zone all the way to the Brewery on the east side and the Holiday Inn Express on the west side.

Ms. Nelson said she doesn't have a problem with that. She said the zone would include all of the parcels from Belcher Square, east and west side, to the Brewery.

Mr. Rembold said he doesn't have any concerns but we don't know about the water or sewer capacity. He said if there is pressure to build out to the zoning capacity allowed, we would want to look at the capacity of the systems and the traffic impact.

Ms. Nelson said Rising Paper Mill was on the sewer and water line. She said their demand, while in operation, was significant.

Mr. Rembold said that is correct and why there is no real concern. He said it should still be checked. He said he would talk to DOT about the plans and capacity.

Mr. Hankin said we need to go through the modified Table of Use and the language that calls the zoning inclusionary. He said he doesn't think the zoning would be inclusionary. He said the Board always rejects inclusionary zoning. He said it would be better if the zoning is called incentivized.

Mr. Rembold put the Table of Use with the title up on the screen to show what Mr. Hankin was referring to. He changed inclusionary to incentive zoning.

Mr. Hankin said reference to affordable housing is only defined in the SGOD zoning. He said affordable housing should be defined under Section 11. The B-2-X zone should be able to refer to definitions for affordable housing and work force housing.

Ms. Nelson said the definitions in the SGOD are the ones the State uses. The State definitions are the ones we prefer to use. She said she thought we wanted to leave the definitions alone.

Mr. Hankin said the definitions apply to SGOD so there should be definitions to apply to the B-2-X.

Mr. Pachano said this section is designed for work force housing, 80% or more of AMI. Affordable housing is 80% or less of AMI.

Mr. Rembold said affordable housing is 100% of AMI or less as per the CPA. He said at the State level it is 80% or less. He said work force housing is 80%-120% AMI. He said it could go below 80% and should go to 120%.

Mr. Fick said a developer may want to raise money for affordable housing.

Mr. Hankin said affordable housing is contentious.

Mr. Pachano said affordable housing is already subsidized, this shouldn't affect it. He said the purpose of changing the zoning and allowing density with incentives is to get developers to build more affordable units. He said if the bylaws are too friendly they won't build what we want them to build. The developers would still be able to build market rate units that would be profitable for them. He said he fears that the zoning might create the opposite of what we want. He said there could be a lot more development. The incentives may not work, if a large market rate project can be built without them.

Mr. Hankin asked what is wrong with the bylaw.

Mr. Pachano said nothing is really wrong but if more market rate development is what will come of the change to the B-2-X we might as well leave the B-2 zoning in place as there are incentives in place. He said we don't know if the B-2-X incentives will work.

Mr. Hankin said a profit needs to be made to make any project work.

Mr. Pachano said the BRPC site studies show substantial projects without incentives. He said he agrees we want housing but how much more market rate housing will help?

Mr. Fick said if the builder targets the 120% AMI threshold won't those be market rate rents.

Mr. Higa said they would not be market rate.

Mr. Hankin said market rate rents would be substantially more than that.

Mr. Pachano said he looked at apartments on Railroad Street. They are \$2100 per month. The apartments are filled, with a waiting list. He said there is a segment of the population that is being left behind. He said there could be bigger building without getting to the target population. He said maybe incentives are required.

Ms. Nelson said we are creating an incentive for work force housing.

Mr. Pachano said there is evidence in Canada that adopting social housing, what we are referring to as work force housing; the developer won't lose anything on that housing. He said inclusionary housing above the 80% threshold up to 120%. He said maybe it would work to have inclusionary.

Mr. Hankin said he doesn't know if work force housing will pencil out. He said we had inclusionary in the B-3 zone and we didn't get any development.

Ms. Nelson said Stockbridge Road is different than Railroad Street.

Mr. Pachano said he would like to make sure this is right. We need to decide what amount is right. He said the B-2 is different from the B-2-X. The setbacks are different in the B-2.

Mr. Rembold said the B-2-X has less parking requirements.

Ms. Nelson said we can leave things as they are and take public comment. She said we can solicit some practical feedback including looking at the housing study. She said we have zoning in place to help with affordable housing.

Mr. Pachano said there are many rent burdened people paying too much for rent. He said the incentives he had in mind don't pay enough attention to pitfalls that could happen. People need more money in their pockets. He agreed that public comments should be solicited. He said he has been pushing for more building but maybe it is not the most important thing.

Mr. Hankin said definitions for affordable housing and work force housing need to be written. Housing expenses, go beyond just rent to include things like heating, electricity, and insurance.

Mr. Pachano said 30% does not just include rent.

Ms. Nelson said we want definitions of housing types.

The Board said yes.

Mr. Higa said we can get affordable housing or work force housing if the Town pays for it or builds it.

Mr. Rembold said he would try to write a definition. He said if people are working in the work force regardless of what the income they are part of the workforce. He said he will work with 120% AMI.

Ms. Nelson said it won't be a legal definition but try to fit it within the norms.

Mr. Rembold said even common terms can be problematic.

Mr. Higa said the service industry is what should be targeted.

Mr. Rembold said then it should be called service industry housing. He said he will figure it out.

Mr. Fick said we should let Mr. Rembold work on it.

Ms. Nelson said the goal is to refer the language to the Selectboard. She said we can't wholesale rewrite the bylaw. She said if there are too many changes we should hold off until next year.

Mr. Hankin said we could pull it after the public hearing.

Ms. Nelson agreed but she said she doesn't want to refer something if we are not all in agreement.

Mr. Rembold said if the Board is not ready it could be perceived in the wrong way.

Mr. Fick said if we know there will only be a couple of tweaks we could forward to the Annual Town Meeting but it sounds like there would be more than a couple of tweaks.

Mr. Higa said we could add incentives to the zoning or use the B-2 with the incentives as an overlay district.

Ms. Nelson said she thinks it should be tabled for this year.

Mr. Pachano said the B-2X zone allows a bigger building envelope than the B-2, because of reduced yard requirements.. He said with that there may still be need for an incentive. He said the B-2-X allows substantial development. He said we need to settle how they work. He said the senior housing and child care facilities are important incentives for the Town. He asked if the

bylaw could be referred as is. He said we could get where we need to be with more discussion. If it needs more after the public hearing we could table it.

Mr. Rembold said he applauds the Board's efforts and big thinking but the Board will need to be ready to answer questions.

Ms. Nelson said she would entertain a motion to table the bylaw.

Mr. Higa asked if the Board will actively reach out for comments.

Ms. Nelson said yes there will be due diligence to get feedback from the CDC, private developers and the public. She said we like to create tools that are functional.

Mr. Fick made a motion to table the proposed bylaw, Mr. Hankin seconded.

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

Mr. Higa said he wants to keep working on the language.

Mr. Rembold said this was a good discussion. He said it is important work.

Mr. Hankin said if we come up with the housing definitions discussed, they may conflict with the Smart Growth zoning. He said they don't necessarily have to agree.

Mr. Rembold said he understands; this can be specific.

SPECIAL PERMIT & SITE PLAN REVIEW MORATORIUM:

The Board continued discussion of the proposed moratorium on special permits and SPR.

Mr. Rembold said the proposal can reduce the risk to people building rental housing from frivolous appeals. He said both special permits and SPR are technically appealable. He said requirements in certain areas would still require special permits. He said he has concerns about giving up SPR control. He said the draft delineates certain uses in certain areas. He said the flood plain special permit would still apply.

Ms. Nelson said the intent is that for us to trust the zoning and let the Building Inspector enforce.

Mr. Rembold said yes so we could get more housing.

Ms. Nelson said she struggles with some holes in the zoning like lighting for instance. She said we don't always know what we need to request or condition until we get into some of the applications. She said she supports tools for increasing housing.

Mr. Hankin said many projects need special permits oversight. If we were to pass this he said a one year moratorium would be enough, not the proposed 5 years. One year would allow us to see the impact.

Ms. Nelson asked what would start the clock. She said there would be less risk to follow the zoning bylaw.

Mr. Rembold said a developer would have to work on the project to completion.

Ms. Nelson asked how long the developer would have to work on a project before getting a certificate of occupancy.

Mr. Hankin said the building permit is good for one year but can be extended if the developer is working on the project.

Mr. Pachano said if the moratorium had been in effect four years ago, we would have 40 units built. The permit that was issued wouldn't have been challenged.

Ms. Nelson said that is hypothetical and we need to leave it aside.

Mr. Fick said he is opposed to the moratorium. If something is not needed in the zoning, we should get rid of it. He said this is a shot gun approach to solving a problem.

Mr. Higa said this is an approach to getting more housing. He said the writing is on the wall, housing above a certain number will get opposition from the neighbors.

Mr. Rembold said the 2020 census numbers have not been released. He said he is not sure if Great Barrington is up the 10% affordable housing threshold in regards to a 40B application. He said even with 10% affordable housing threshold met, a friendly 40B is still a legal mechanism that can be used to simplify the zoning process. He said if we don't have 10% affordable housing a developer can appeal to be able to build under 40B.

Ms. Nelson said she is not sensing strong support for the moratorium.

Mr. Higa said it would be a powerful tool but he wasn't sure about supporting it.

Ms. Nelson asked if the Board wanted to set the proposal aside.

Mr. Fick said he would like to continue discussion of the moratorium but have it be more targeted.

Mr. Higa asked if the permits are the big hold ups for developers.

Mr. Pachano said he met with a developer going through the process. He said it is not a big problem but not going through a special permit or SPR would be better. He said the intent of the moratorium is to provide some by-right projects that we need the most.

Mr. Fick said his concern is that people will take the green light and develop what they want and not what we want. He said it leaves the development door wide open. He said his concern is unintended consequences.

Mr. Pachano said we don't determine what types of projects come before us. He said the moratorium would take away people's ability to challenge.

Mr. Hankin said citizens still have the ability to appeal. He said there are many uses covered by the proposal that should, in his opinion, require a special permit or SPR.

Ms. Nelson said she doesn't think this proposal should be referred for this year.

Mr. Fick made a motion not to send the proposal for a moratorium to the Selectboard for this year's Annual Town Meeting as more discussion in a more targeted form is necessary, Mr. Hankin seconded.

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

Ms. Nelson asked Mr. Pachano not to feel down about the proposals that were voted down tonight. She said the Board needs more information to take up the proposals in a more targeted fashion.

Mr. Pachano said cities in Georgia and Texas have used the approach to build mixed use by-right.

Ms. Nelson asked if it would be scalable to small towns.

Mr. Pachano said he has been working on the proposals for two years. He said now he is rethinking the need of any kind of housing. He said businesses are struggling so there is a need to try anything.

Ms. Nelson said she can sense the frustration. She said there are a lot of tools in the toolbox to promote housing.

Mr. Pachano said the tools are for people with means not the people who need it.

Mr. Fick and Mr. Hankin both disagreed with Mr. Pachano's comment.

Mr. Pachano said it isn't that we don't have the tools and the means. We have done a great job. He said we can do whatever we want but unless the Town gets involved, we can't get to the people who are impacted.

Ms. Nelson said people are not going to go for outrageous ideas.

Mr. Pachano said it is ok if the people vote it down but I don't like the discussion of it won't pass at town meeting so it doesn't go forward. He said he would prefer to have a debate and a vote.

Mr. Higa said there is some logic with taking it to the town meeting to begin discussion.

Ms. Nelson said it could go as a citizen's petition if you feel it should go forward.

Mr. Higa said it is better if proposals come from this body.

Ms. Nelson said there needs to be more deliberation from the Board.

Ms. Nelson moved on with the agenda. She asked about the transmittal letter.

Mr. Rembold said it is straight forward. He listed the amendments already discussed and agreed on for transmittal to the Selectboard.

Mr. Fick made a motion to send the transmittal letter to the Selectboard, Mr. Hankin seconded. Roll call vote: Mr. Hankin, aye; Mr. Fick, aye; Mr. Pachano, aye; Mr. Higa, aye; Ms. Nelson, aye

Mr. Rembold said there will be a separate transmission for the change to common driveways, which falls under Town Bylaws, not Zoning. He said that will go to the Selectboard for inclusion on the warrant. There won't be a public hearing so there is time to forward it.

Mr. Rembold brought up that the common driveway bylaw still ties the driveway to a maximum of three lots. He said there is an increase of dwellings to 9 dwellings on a common driveway and there are design guidelines for the number of units. He asked why the lots would be limited to three. He said he doesn't think a cap on lots is necessary.

Mr. Hankin said the three lot language is current and was used as a starting point for the revision. Mr. Rembold said the item is not on the agenda to discuss. He said there can be additional discussion before sending to the Selectboard.

Mr. Hankin said he doesn't want to miss this year's Annual Town Meeting.

Mr. Rembold said it will be on the warrant. There can be some discussion at the next meeting.

AFFORDABLE HOUSING:

Ms. Nelson said it seems that the discussion of affordable housing was combined with other discussion at this meeting.

Ms. Nelson asked about the budgeting process.

Mr. Rembold said the budget has been approved. There will be a public hearing in March.

Ms. Nelson asked if there is money budgeted for a housing needs study.

Mr. Rembold said that can come out of CPA funds.

Ms. Nelson asked if there is any other data effort that should be recommended.

Mr. Rembold said no. He said there might be a need for BRPC assistance but there are resources for that outside of the budget.

Mr. Pachano said the Board can send a recommendation to the Selectboard to explore funding for housing like bond sales and low interest loans. He said he would like to have something to send to the Selectboard. He said he would like to know what can be done.

Ms. Nelson said she thought that was something that the Housing Sub-Committee would discuss.

Mr. Pachano said he can't get people to agree to meet. He said the sub-committee might have to be disbanded.

Ms. Nelson said the sub-committee was created as a mechanism for shared thinking. If it is not functioning it should be disbanded.

Mr. Rembold said Mass Resource Housing might be a resource. He said he would look into it.

Mr. Fick asked if the CPC can bond for housing that the Town doesn't own.

Mr. Rembold said no, only for what the Town owns.

Mr. Pachano suggested a land trust model where the land trust would buy a parcel and invite people to build. The land trust would own the land but the people would own the building.

Mr. Hankin said that is what is happening on North Plain Road.

Mr. Rembold said there is a deed restriction.

Ms. Nelson said we will leave affordable housing on the agenda as a standing item. She said if there are any specific items the Board members would like discussed they can send the item to Mr. Rembold.

BOARD & COMMITTEE UPDATES/ISSUES & CONCERNS:

Mr. Hankin said there is conflict in the Table of Uses regarding live/work and home occupations. He asked that it be on an agenda for discussion.

Mr. Fick said at the last BRPC Executive Meeting it was discussed that there is only one designation for Berkshire County as an economic development district. He said this puts Berkshire County in a position to be fast tracked for economic development funds.

Mr. Higa said there should be housing incentives for work force housing, child care and broadband access.

Mr. Pachano said he received DLTA application notification. He said it would be good to start planning ahead for housing growth.

Mr. Rembold suggested he and Mr. Pachano could discuss this when they meet next week.

TOWN PLANNER'S REPORT:

Mr. Rembold said there will be 2 SPR applications at the next meeting. One is for Berkshire Aviation to rebuild a commercial office. He suggested the Board members drive by to look at it.

CITIZEN'S SPEAK TIME:

James from 84 North Plain Road thanked the Board members for their hard work.

There were no other citizen's who wished to speak.

Having concluded their business, Ms. Nelson adjourned without objection at 8:03 P.M.

Respectfully submitted,

Kimberly L. Shaw

Kimberly L. Shaw
Planning Board Secretary