

PLANNING BOARD

DATE: March 10, 2022

TIME: 6:00 P.M.

PLACE: Zoom Virtual Meeting

FOR: Regular Meeting

PRESENT: Brandee Nelson, Chair; 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.

Ms. Nelson said the agenda would be modified. She said item 6 will not be discussed as the Board has not received anything from Town Counsel about the airport.

She called for roll call attendance:

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

FORMS A:

There were no Form A's presented.

MINUTES: FEBRUARY 24, 2022

Mr. Hankin made a motion to approve the minutes of February 24, 2022 as amended, Mr. Pachano seconded.

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

PUBLIC HEARING: 183 DIVISION STREET

Mr. Hankin made a motion to open the public hearing, Mr. Pachano seconded.

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

The public hearing was opened at 6:04 P.M.

Heather Brown from Foresight Land Services was present on behalf of the applicant, Shay Alster, IS REAL TEAM, LLC.

Ms. Nelson said the Board conducted a site visit prior to the meeting.

Mr. Rembold said Mr. Fick is not present. He said in order to approve the special permit there will need to be 4 out of 5 members to approve. He said there are only 4 members at this meeting. It is a courtesy to inquire if the applicant wants to proceed with 4 members or wait until there are 5 members present.

Ms. Brown said she would like to proceed with her presentation. She said the plan meets the zoning requirements of 4.3. She said all of the setback requirements exceed the minimums. She said both lots are in the same ownership and both lots exceed the minimum requirements. She said the common driveway was accepted.

Ms. Nelson asked what the difference is between the first plan that was submitted and the current plan being reviewed.

Ms. Brown said the existing driveway was originally proposed to be removed. She said the current plan shows that the existing driveway will remain. The common driveway, that will serve lot two, will be common near Division Street.

Mr. Hankin asked if a 25 foot setback is required for the portion of the driveway that is no longer shared. He said it is probably best to leave it as it is for less impact on the neighbor.

Ms. Brown said the Board of Health reviewed the plans. She said there will be a new septic system for the new house on lot 2.

Ms. Brown said the Selectboard reviewed the plans. The comment from the Selectboard was the rear lot met the zoning requirements.

Ms. Brown said the Conservation Commission reviewed the plans. The Conservation Commission requested an RDA for the new driveway. She said it was decided to keep the existing driveway so there won't be any impact for environmental factors.

Ms. Nelson asked if Ms. Brown would go through the requirements of 10.4.

Ms. Brown said she didn't have her notes for the review of 10.4.

Ms. Nelson said the Board will make their findings on the special permit criteria.

There were no comments from the Board. Ms. Nelson opened the hearing for public comments.

Jessie Reynolds from 181B Division Street asked if the new house will be used as an Airbnb like the house in the front. He said he is concerned about his well that is 125 feet away.

Ms. Brown said the septic will be designed for the use of the building to be built on Lot 2. She said it will be residential. She said she doesn't know about the intended uses.

Mr. Rembold asked about the placement of the new well and septic system.

Ms. Brown said she did not have the design plans with her. She said the septic will be 100 feet from the well. She said the plans meet all of the guidelines for a septic system. She said there shouldn't be any impact on the abutting well.

Mr. Reynolds said if the new property is to be used as an Airbnb for 14 people it will overload the septic and impact my well. He said he doesn't want that to be an issue.

Ms. Brown said the septic is designed per the number of bedrooms. The size of the system will increase for every bedroom.

Mr. Hankin said he wanted to clarify that the septic system and well are Board of Health issues not Planning Board. He said the Board of Health will determine if there is enough distance between the systems.

Mr. Reynolds asked when the Board of Health will meet.

Ms. Nelson said they have already discussed the plan.

Mr. Rembold said if the special permit is approved the Board of Health will review the plans, there might not be another agenda item, but there will be a public document.

Ms. Nelson said the plans will be certified to meet the Board of Health requirements. She said there are many levels to go through to get certified.

Mr. Reynolds said the house is for five people but now there are 14 people staying there. He said he appreciated the Board's time.

Daniel Bersaw, 181A Division Street, said he abuts 183 Division Street. He said he too is concerned about his well. He said he is confident the Board of Health will make sure the fields will be a safe distance from the well.

Mr. Bersaw asked why the driveway to the rear lot couldn't be on the other side; the opposite side of lot 1.

Ms. Brown said there are wetlands on the west side of lot 1. She said we can't design through the wetland.

Ms. Nelson asked if the wetlands were shown in the application.

Ms. Brown said she can provide the wetland plans to the Board.

Ms. Nelson said that would be helpful.

Ms. Brown said the plan was designed to avoid the wetlands.

Mr. Rembold asked if there are wetlands on lot 1.

Ms. Brown said yes.

Mr. Rembold said the Board should see the plans showing the wetlands before proceeding. He said it would be beneficial to see the reasoning for the driveway placement. He suggested that a new site plan be submitted with the wetlands flagged so the Board can see everything on one plan.

Ms. Brown said she can do that.

Mr. Bersaw said the two driveways about my property. He said the house on lot 1 is a vacation home. He said sometimes there is no activity but other times there is a lot of activity. He said he has seen 8 vehicles at the house at one time. He said he doesn't feel the use on the back lot should be the same as the use on the front lot. He said when the bylaw was changed it was intended to increase the housing supply for residents, including family members. He said if the single family residence is being built for a second Airbnb that it is not in the spirit of the zoning change in 2010.

Carol Bersaw said she wanted to clarify that the house at 183 Division Street is advertised on VRBO as a ski rental cottage that rents for \$931 per night. She said her main concern is the residential neighborhood. This would be a huge detriment.

Ms. Bersaw said we are losing privacy and there are concerns about noise and traffic. She said there isn't noise after 11:00 P.M. She said she can't see the septic or well on the plans. She said she is worried about the integrity of the neighborhood.

James Garzo, 184 North Plain Road, said this situation to build a residence under an LLC is about property rights. He said this is an example of another short term rental the other board is fighting against. He said all boards are trying to do the right thing.

Ms. Nelson said the special permit is for a division of land and the creation of a common driveway. She said the Board will consider all of the comments. She asked Ms. Brown to show the improvements and the characteristics of the property.

Ms. Brown said at this time there is only a location for a septic system. She said the size of the septic system or the building design won't be determined until the special permit has been approved. The revised plan will show the proposed septic location, wetlands, and wells on the abutting lots.

Ms. Nelson said we are trying to be comprehensive in our review. She asked the Board members if there is anything else that should be requested.

Mr. Pachano said he doesn't have any requests. He asked Mr. Hankin, who was on the Board at the time, if the rear lot bylaw was put in place for locals to create lots for family or income purposes.

Mr. Hankin said no, it wasn't discussed.

Mr. Rembold said he can research the bylaw discussion if it will be helpful for the Board. He said he thought the bylaw was approved during the recodification in 2010. He said the thought process about rear lots was to allow for the creation of the lot when there wasn't enough frontage. He said the rear lot bylaw was middle ground between a Form A and a full subdivision with control through a special permit.

Ms. Nelson asked if there are no additional comments can we continue the public hearing?

Mr. Rembold said the next meeting on March 24 will be a busy night.

Ms. Nelson asked Ms. Brown if she would be prepared on April 14.

Ms. Brown said that will be fine.

Mr. Rembold said there is a fifth Thursday in March. He asked if the Board would be willing to hold an additional meeting in March.

The agreed to meet on March 31. Ms. Brown said she could attend the meeting on March 31.

Mr. Higa asked if the applicant had any thoughts about a buffer to address privacy and noise.

Ms. Brown said she would ask about landscaping.

Mr. Hankin made a motion to continue the public hearing to March 31 at 6:00 PM via Zoom, Mr. Pachano seconded.

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

The public hearing discussion was concluded at 6:49 P.M.

Mr. Rembold said that folks interested in reviewing the revised plans when they are received can see them at the Town Hall or they can be sent electronically.

PUBLIC HEARING: ZONING AMENDMENTS

Mr. Hankin made a motion to open the public hearing for zoning amendments, Mr. Pachano seconded.

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

The public hearing was opened at 6:51 P.M.

Mr. Rembold said all of the amendments can be presented at one time then vote on them one at a time.

Ms. Nelson said we will try to keep the discussion segregated to be organized.

Mr. Rembold said the Planning Board has a total of 4 amendments for the Annual Town Meeting. He said three of the amendments will be discussed tonight, the 4th amendment will be discussed at the meeting on March 24th.

FLOOD PLAIN OVERLAY: Mr. Rembold said the Flood Plain Overlay is a set of regulations required for people in communities to be able to participate in the flood insurance program. He said if the regulation is not kept up to date those people in the flood plain will not be able to participate in the program. He said the purpose of the regulation is to be up to date with the Federal Emergency Management directives. He said the intent is to be in compliance. He asked if the Board wanted him to go through the language. He said the Board is very familiar with the language. He said we need a vote to recommend the amendment to the ATM.

Ms. Nelson asked if the Board members have any questions or comments. She said the intent is to align our regulation with the Federal regulations.

Mr. Rembold shared the document with Town Counsel's comments. He said Town Counsel is aware the amendment has to be approved by MEMA and FEMA.

Ms. Nelson asked if it is an intermediate step to go to MEMA and FEMA.

Mr. Rembold said he thought the review would be concurrent with the Attorney General's review after the Annual Town Meeting.

Ms. Nelson opened the hearing up for public comment. There were no comments.

ACCESSORY DWELLING UNITS: Mr. Rembold said the change to the ADU language, 8.2.3, is to determine the square footage by net floor area instead of gross floor area. The change will make measuring ADU's consistent with how other measurements are taken in the bylaws. The change is from gross square foot to net usable floor area consistent with the rest of the bylaw.

Mr. Hankin said the intent is to encourage ADU's. ADU's are being built to a higher energy standard which requires thicker walls. He said we want to encourage eco-friendly standards we don't want to penalize attempts to be more energy efficient.

Ms. Nelson asked if there are any comments from the Board. There were none. Ms. Nelson opened the hearing for public comments.

There were no comments from the public.

LODGING HOUSES & TOURISTS HOMES: Mr. Rembold said the proposed changes are intended to make the bylaws consistent and to define the terms. He said currently there is no definition of Tourist Homes and areas of the bylaw that deal with Tourist Homes do not refer to Lodging Houses. He said the intent is to keep them the same and consistent.

Ms. Nelson said the intent is to bring these sections into alignment.

Ms. Nelson asked if there are any comments from the Board. There were none. Ms. Nelson opened the hearing for public comments.

There were no comments from the public.

Mr. Rembold said he received comments from Town Counsel just before the meeting. He said there were two comments. Town Counsel said there are State regulations that address Lodging Houses but the concept is different than Tourist Homes as defined in the bylaw. Mr. Rembold said he is not sure of the differences or if the two uses should be kept separate. He suggested keeping the Public Hearing open until he can clarify with Town Counsel. He said we can deal with these items at the next meeting.

Ms. Nelson agreed to keep the hearing open to get clarification.

Mr. Pachano asked if Town Counsel included definitions.

Mr. Rembold said yes he did.

Mr. Hankin said lodging houses and boarding houses are very similar if not identical.

Mr. Rembold said yes that is the gist of lodging houses. He said Town Counsel notes a different concept for tourist homes. He said we need to fix the difference. He apologized to the Board for not have had time to review before the meeting.

Mr. Pachano asked if a definition is added does there need to be a change to the Table of Uses.

Mr. Rembold said possibly.

Mr. Hankin asked if the change can be done this year or will it have to wait.

Mr. Rembold said he thinks it is fine but he will check with Town Counsel.

Mr. Hankin made a motion to continue the public hearing to March 24 at 6:00 via Zoom, Mr. Pachano seconded.

Roll call vote: Mr. Hankin, aye; Mr. Pachano, aye; Mr. Higa, aye; Ms. Nelson, aye
The public hearing concluded at 7:15 P.M.

BARRINGTON BROOK/BURNING TREE SUBDIVISIONS:

Mr. Rembold said lot 5 on Londonderry Drive needs to be released from the Form D Covenant.

Ms. Nelson said we received the release form.

Mr. Rembold said the update for Barrington Brook is that all underground utilities are in to all houses under construction and the lots on Thrushwood Lane. He said the asphalt will be completed in the spring. He said the development changed at the end of Thrushwood. There were two lots sold with a house put in the middle of the lot. This will mean one less house on Thrushwood. Mr. Rembold said he looked at the plans to see if another lot could go on another lot on Thrushwood. Lot 1 on Thrushwood could be split for another lot but it would impact open space. He said the developer will come to the Board if they decide to split the lot. He said there would be the same number of lots just a different configuration.

Ms. Nelson said there are still not lights at the west end of Burning Tree.

Mr. Rembold said no certificates of occupancy can be granted until the work is completed to the Board's satisfaction. Mr. Rembold corrected himself about the two lots with the house in the middle. He said the house was not put in the middle. The house was built on lot 10 and lot 11 was bought so no one would build on it.

Attorney Charles Ferris was present on behalf of a potential buyer of Lot 5 on Londonderry Drive. He said Burning Tree is an abandoned subdivision. He said the attempt is to clean up the

old Form D Covenant that is part of the old Burning Tree subdivision. Release of the Form D Covenant from Burning Tree has no impact on Barrington Brook.

Mr. Ferris went through some history of the development. He said he is asking for the record to be clarified. He said Lot No. 5 was sold without permission from the Board but the lot is not part of Barrington Brook. He said Town Council agreed to the release form.

Mr. Rembold said when the Board votes the document can be signed by the chair. It will provide a clear title for Lot No. 5. The release will clear the original subdivision. There is currently a Form D Covenant in place for Barrington Brook which remains.

The Board agreed to release the Form D Covenant on Lot No. 5 from the Burning Tree subdivision.

Mr. Hankin disclosed that the owners of the lot in question purchased a property in Egremont that he represented. They had their own buyer agent. He said he has no interest in the property to be released.

Mr. Pachano made a motion to approve that the Town of Great Barrington, acting by and through its Planning Board, hereby releases the Ivey Form D Covenant (Book 1521, Page 35, recorded in said Registry on April 26, 2004) and the First Stone Path Form D Covenant (Book 1592, Page 246, recorded in said Registry on January 27, 2005). And for the sake of clarity, to confirm that the Second Stone Path Form D Covenant, which was recorded in said Registry in Book 2270, Page 155 on September 24, 2014, remains in full force and effect. Mr. Higa seconded

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

AFFORDABLE HOUSING:

Mr. Pachano said at the next meeting we will discuss lodging homes. He said he didn't see an avenue in the bylaw to allow SRO's. He said he didn't see anything in the bylaw that would allow a B & B to convert to long term rental housing. He said if there is a clear definition of a lodging house it could cover the use.

Ms. Nelson said it is worth thinking about.

Mr. Higa said he is going to say what he says at every meeting that housing security is important. He said homes are a person's biggest asset. He said the Town makes efforts around food security which would be easier with housing security. He said we need to look toward affordable housing provided by the Town not just private developers.

Mr. Pachano said we could make recommendations.

Mr. Nelson asked if there will be a 3% surtax on short term rentals designated for affordable housing.

Mr. Rembold said no decision has been made.

Mr. Higa said the CPC is constantly going after the Affordable Housing Trust for not have any other funding. He said we should encourage the Town to fund.

Ms. Nelson asked if the ARPA funds can be invested in the Affordable Housing Trust fund.

Mr. Rembold said recommendations will be made to the Select Board. He said the funds are not restricted by the ATM as they are outside of the budget discussions. He said there are certain eligible uses and we can't stray from what is indicated. He said housing should be promoted.

Mr. Higa asked when the meetings are scheduled for the Affordable Housing Trust.

Mr. Rembold said they have set the second Tuesday of every month at 6:30 P.M.

BOARD & COMMITTEE UPDATES/ISSUES & CONCERNS:

Mr. Pachano said we make similar recommendations on SPR and special permits. He suggested we should consider septic systems, wells and buffers for rear lots as well.

Ms. Nelson said septic systems and wells are already in the State sanitary code. Maybe we can refer to the sanitary code.

Mr. Rembold said the Lake Mansfield Improvement Task Force will meet on March 17.

TOWN PLANNER'S REPORT:

Mr. Rembold said the next meeting will have another public hearing for zoning and the continued public hearing from tonight. He said there are two special permit proposals for one is for the Chamber of Commerce that proposes to demolish the existing building and rebuild it. The other application is for a special permit and site plan review for a cannabis cultivation use at 964 Main Street.

The Board set a site visit for 964 Main Street for 5:00 on March 24.

Mr. Rembold said he expected to have the airport on the next agenda. He said it will be a busy night.

CITIZEN'S SPEAK TIME:

No one spoke.

Having concluded their business, Ms. Nelson adjourned without objection at 7:46 P.M.

Respectfully submitted,

Kimberly L. Shaw

Kimberly L. Shaw
Planning Board Secretary