

PLANNING BOARD

DATE: March 31, 2022

TIME: 6:00 P.M.

PLACE: Zoom Virtual Meeting

FOR: Special Meeting/Public Hearing

PRESENT: Brandee Nelson, Chair; Malcom 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 February 12, 2022, from the agenda. She said the meeting was being recorded. Ms. Nelson also read Section 241-1 of the Town Code.

She called for roll call attendance:

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

FORMS A:

There were no Form A's presented.

MINUTES: MARCH 24, 2022

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

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

PUBLIC HEARING: 183 DIVISION STREET

Mr. Fick said he listened to the recording of the first public hearing. He said he read the material that was submitted for the application and filed a notice with the Town Clerk. He said he is all set.

Mr. Hankin made a motion to re-open the public hearing for 183 Division Street, Mr. Fick seconded.

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

The public hearing was re-opened at 6:03 P.M.

Present to continue discussion of the special permit application for a rear lot in a R-2 zone at 183 Division Street was Heather Brown from Foresight Land Services and applicant Shay Alster.

Ms. Brown said she provided the additional information requested at the public hearing. She said she has updated information about the well, septic system location and wetlands.

Ms. Brown said the common driveway entering from Division Street, is 100 feet from the wetland buffer zone. She said the driveway is outside of the wetland buffer zone.

Ms. Brown said there was a question about landscaping on the east side of the rear lot. She said at this time there is no plan to do any landscaping. The intent is to keep the lot wooded and natural.

Ms. Brown said a perc test was done in the southeast corner of lot 2. She said that per regulations the septic has to be at least 100 feet from a septic system or a well.

The site plan showed the perc location with a 100 foot radius within which the septic system has to be located.

Ms. Brown said she believes the plan is in compliance.

Ms. Brown said 10.4 addresses financial impact. She said the proposal is for a residential home. She said there won't be any financial impact.

Mr. Fick asked if the residence will be operated as a short term rental.

Ms. Brown said as of right now the use will be residential. She said she is not aware of any other intentions.

Mr. Higa asked for clarification that there isn't additional vegetation to be planted on the east side of the lot except for what currently exists.

Ms. Brown said there won't be additional plantings at this time.

Ms. Nelson said the Board heard concerns from the public about traffic and headlights. She asked why not add some landscaping or the applicant will agree to preserve what is there.

Mr. Alster said he plans to retire at this property. He said he wants to keep the property natural and as it is now. He said in the summer the area is greener. He said the neighbors are completely screened. He said doesn't want to see fences between properties. He said we are here to get what we are asking for, the division of two lots to build a second residence.

Ms. Nelson said the portion of the driveway that goes to the rear lot is shown to be 14 feet wide. She said the driveway is only common for the first 30-40 feet. She said the driveway can be narrower if it is only serving one house.

Ms. Brown said she will check with the project engineer to see if the driveway width can be narrower.

Ms. Nelson encouraged Ms. Brown to provide the most narrow driveway allowed.

Mr. Pachano asked about fire trucks.

Ms. Nelson said she thinks the trucks are not wider than 12 feet.

Mr. Pachano said it is a great idea for neighbors to get together to discuss the issues. He encouraged discussion.

Mr. Higa said the buffer would help glare from headlights on the new driveway.

Ms. Nelson asked if there were any comments from the public.

Daniel Bersaw, 181 Division Street, said he has a question about the economic or financial impact on a residential neighborhood. He said if the first house is used as short term rental with capacity for 14 people and the second house is also used for short term rental with a similar capacity there can be large parties with 20-30 people. He said that is his main concern.

Ms. Nelson said the owner has to follow the laws. She said at present we can't control the use of the existing property.

Mr. Pachano suggested looking at 7.16 because it describes what they can do with their house.

Ms. Nelson suggested that the applicant have a neighborly conversation with the neighbor so everyone can enjoy their properties.

Mr. Bersaw asked Mr. Rembold if he looked at the language from when the rear lot bylaw was originally discussed.

Mr. Rembold said he was sorry he hadn't looked it up. He said he could try to access his memory banks.

Mr. Fick said he tried to look up some information. He said the language was adopted when the bylaw was rewritten in 2010. He said there was no discussion.

Mr. Rembold said the rear lot bylaw was intended to be a method to split a lot by meeting in the middle between a Form A land division and a subdivision. He said it is a middle ground where the Planning Board can create a lot when there isn't the typically required amount of frontage. He said the intent was to look for a middle ground.

Mr. Rembold said the benefits of the special permit must outweigh any impacts. He said the Board needs to consider the impacts of the entire proposal, not just the common driveway.

Mr. Alster said he intends to comply with the bylaw.

There were no additional comments from the public.

Ms. Nelson asked if there was any new information from other boards.

Mr. Rembold said no. He said he does have a question. He asked if a 14 foot wide driveway would be necessary for construction vehicles.

Mr. Pachano said he would expect the driveway to be completed at the end of construction. A temporary driveway would be used during construction.

Mr. Hankin said the equipment will be driven over public ways so a 12 foot driveway should be adequate.

Mr. Higa asked about the existing driveway. He asked if the Conservation Commission would prevent the existing driveway from being used for construction.

Ms. Brown said she doesn't think the driveway on lot 1 can be used for construction. She said the Conservation Commission didn't have a comment on the existing driveway. She said the Conservation Commission said if the existing driveway is to be removed the applicant would have to file an RDA so the driveway will be used as a private driveway.

Mr. Fick said there is no reference to 10.4. He said he has concerns about 10.4. He said a commercial use is not being ruled out on the rear lot. He said he doesn't think there is any benefit for the residential use. He said a commercial use is being introduced into a residential area. He said no social, economic or community needs will be met.

Mr. Hankin said there is no violation of the rear lot. He said there isn't even a house on the lot.

Mr. Fick said the rear lot is not a benefit. He proposed that a condition be put on the special permit, if approved, that the house will not be rented for less than 30 days at a time.

Ms. Nelson said she is not in favor of that.

Mr. Pachano asked what evidence do we have that the house will be used as a short term rental or as a commercial venture.

Mr. Fick said the applicant didn't rule it out.

Mr. Hankin said the lot is conforming as it is.

Ms. Nelson said the application is to create a rear lot.

Mr. Hankin said for a residence.

Mr. Fick said he could go along with a condition for 7.16.

Mr. Pachano said that is an existing law that is in place.

Mr. Higa asked if the house can be built by-right when the rear lot is approved.

Ms. Nelson said none of this was part of the discussion for the recent rear lot we approved and it was the same circumstances.

Mr. Rembold said the public hearing is still open. He said questions can still be asked and answered of the applicant. He said the Castle Hill property is relevant. He said the Board has broad latitude. He said the Board can condition the special permit after going through the 6 findings. The Board can make specific findings. He said the Board can ask questions of the applicant about possible conditions. He said the Board has 90 days to make a decision so there is time to make conditions to address negative impacts you might see.

Mr. Nelson asked Mr. Alster how frequently the existing house has been used as an Airb&b.

Mr. Alster said the house was rented out 3-4 times. He said mostly we stay there. He said the purpose of building the second house is for us to use. If we end up not using it, we will sell it. He said building the house will add to the housing stock. He said short term rental ideas are intriguing with development in different areas. He said he will follow the short term rental bylaw-we will follow the law.

Ms. Nelson said we can condition the use. She said we should recognize where we are in our process. She asked Mr. Fick if he had any other questions.

Mr. Fick said no.

Ms. Nelson went through the finding in 10.4.

Mr. Hankin said the application is for the creation of housing so the perspective has been met as there is a major housing shortage.

Mr. Fick said the shortage is caused by short term rentals.

Mr. Pachano said there are 3200 dwelling units in Great Barrington. He said 50 of them are operated as short term rentals by non-residents. He said the other 150 are operated by residents.

Mr. Fick asked where those numbers come from.

Mr. Pachano said they are from the Housing Study. He said out of 200 units 150 are rented out of some kind of need.

Ms. Nelson said she does not want to debate short term rentals.

Mr. Hankin said we should not be discussing short term rentals.

Ms. Nelson said we are not going to discuss it.

Mr. Higa said short term rentals have impacts on neighborhoods. He said the existing house is used as a short term rental. He said the new house will be used for retirement but are they ready to retire? Could the new house be used as a second home or vacation home? He said the existing house has only been used 3-4 times that doesn't sound like a short term rental when it is used just a little.

Mr. Pachano said we are setting a precedent for a litmus test for people who want to build a house.

Ms. Nelson said the application is for a rear lot for a second single family home.

Mr. Hankin said a two family home could be built or the house could have an ADU.

Mr. Rembold said a limit could be set.

Ms. Nelson said the adjacent lot has a consistent use.

Mr. Rembold said the Board's powers are broad. The board can condition with the appropriate findings.

Ms. Nelson continued review of the findings. She said the revised driveway plan is better than what was originally submitted. She said the new driveway is not too impactful.

Ms. Nelson said it appears the septic system and well will be within the setbacks and the required setbacks from adjacent properties' wells have been met.

Mr. Fick asked if the Board of Health reviews the plans for the proposed use.

Mr. Hankin said the septic system is designed for the number of bedrooms.

Ms. Nelson said in her opinion the application is consistent with the character and there is no impact on the social structure.

Mr. Fick said he will vote against the application if there aren't conditions attached as he feels #1 and #4 of the findings have not been met.

Ms. Nelson asked Mr. Fick to explain why he thinks the application doesn't meet #4.

Mr. Fick said because the property revolves around short term rentals.

Mr. Pachano said the applicant just said he wouldn't short term rent the property. He said he would abide by the law.

Mr. Fick said he would vote for a condition for 7.16.

Ms. Nelson said the applicant has to abide by 7.16 anyway because it is a bylaw that is in place.

Ms. Nelson said the proposal avoids wetlands so the use will be no more impactful than any other single family home. She said the house will add to the tax base, there is no new curb cut and no fiscal impact other than possibly a positive impact.

Ms. Nelson asked if there is any additional discussion.

Mr. Higa commented to the applicant to communicate with the abutters to address each other's concerns.

Mr. Hankin made a motion to close the public hearing, Mr. Fick seconded.

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

The public hearing was closed at 7:03 P.M.

Ms. Nelson said she would entertain a motion to grant the special permit subject to a condition that the applicant comply with the bylaws that are in place.

Mr. Rembold said the applicant would have to comply with bylaws anyway. He suggested going through the 6 findings again.

Ms. Nelson said she is satisfied we have reviewed the 6 criteria. She said Mr. Fick is concerned about #4 and suggested a condition for compliance with 7.16. Mr. Pachano said the applicant has to comply with the bylaws regardless.

Mr. Fick asked who enforces 7.16.

Ms. Nelson said 7.16 hasn't been enforced to this point. She said it will have to be enforced.

Mr. Hankin said someone would have to be found to be in violation then be required to get a special permit.

Ms. Nelson asked if the Board is procedurally wrong to mention 7.16.

Mr. Rembold said no but it is not technically needed. He said a new home can't be used as a tourist home for 10 years as per 7.16. He said there is no zoning bylaw set up to deal with short term rentals. He said he doesn't think 7.16 should be relied on to deal with short term rentals.

Mr. Hankin asked for focus on the application.

Ms. Nelson agreed. She said she is trying to find a way to bring Mr. Fick along. She agreed that the applicant has to agree with zoning regardless. She said this is a compliant application.

Mr. Fick said he doesn't think the benefit will outweigh adverse impacts.

Ms. Nelson said she is not sure we have 4 out of 5 in favor of the application.

Mr. Higa said he disagreed. He said Mr. Fick has a right to his opinion. He asked Mr. Fick if the proposal is more of a detriment.

Mr. Fick said there is the potential to introduce a commercial use in a residential neighborhood and that is not good for the Town.

Mr. Higa said he is not persuaded there will be a commercial use. He said it is definitely a benefit to have second home owners. He said the addition of other people using the property is also a benefit to the Town. He said there are a certain number of visitors who come to Town that will only stay in houses. He asked if the use of the property is more detrimental. He said what is proposed does not sound commercial. He said it sounds like a second home that will eventually be full time.

Ms. Nelson said she agrees with Mr. Higa.

Mr. Fick said he now has three short term rentals in his neighborhood so he won't ever know the neighbors.

Mr. Higa said that is comparing to short term rentals as a primary use, not a sometimes use.

Mr. Fick said he agrees. He said the use sounded different during the last public hearing.

Mr. Hankin made a motion to approve the special permit for a rear lot, Mr. Pachano seconded. Roll call vote: Mr. Hankin, aye; Mr. Pachano, aye; Mr. Fick, no; Mr. Higa, aye; Ms. Nelson, aye. The motion passed 4-1.

AFFORDABLE HOUSING:

Ms. Nelson sent around the One Berkshire document. She said the Board should look at it.

Mr. Rembold said he would like to discuss the document at a future meeting.

Mr. Higa asked if the Board can start discussing new zoning amendments before the Annual Town Meeting.

Ms. Nelson said we have an ongoing list to work from.

Mr. Higa asked if he could submit additions to the list.

Ms. Nelson suggested he send the items to Mr. Rembold and her.

BOARD & COMMITTEE UPDATES/ISSUES & CONCERNS:

Mr. Hankin said the at last night's Selectboard meeting a continuation of the public hearing for the Chamber of Commerce application has been requested.

Mr. Pachano invited the Board to attend the Housing Subcommittee meeting scheduled for April 6 at 6:00 P.M. He said there will be a speaker who is a housing advocate.

Mr. Hankin said he heard the former nursing home on Maple Avenue is under contract and may proceed with the approved special permit.

TOWN PLANNER'S REPORT:

Mr. Rembold said he didn't have anything to report.

CITIZEN'S SPEAK TIME:

No one spoke.

Having concluded its business, Ms. Nelson adjourned without objection at 7:25 P.M.

Respectfully submitted,

Kimberly L. Shaw
Planning Board Secretary