

## PLANNING BOARD

DATE: March 9, 2023

TIME: 6:00 P.M.

PLACE: Hybrid In-Person/Zoom Virtual Meeting

FOR: Regular Meeting/Public Hearing

PRESENT: Brandee Nelson, Chair; Pedro Pachano; Jonathan Hankin; Malcolm Fick;  
Associate Member Jackie Kain  
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 July 16, 2022, from the agenda. She said the meeting was being recorded.

Ms. Nelson also read Section 241-1 of the Town Code.

Ms. Nelson called for roll call attendance:

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

### **FORM A's:**

There were no Form As.

### **MINUTES: FEBRUARY 9, 2023**

Mr. Hankin made a motion to approve the minutes of February 23, 2023 as amended, Mr. Fick seconded, all in favor.

### **PUBLIC HEARING: ZONING BYLAW AMENDMENTS**

Mr. Hankin made a motion to open the public hearing, Mr. Fick seconded, all in favor.

The public hearing was closed at 6:00 PM.

Mr. Rembold read the public hearing notice into the record. He said the notice was advertised for two weeks, posted in the Town Hall and on the website. Abutters notified as required.

Mr. Rembold gave an overview of each of the zoning items via a power point presentation.

Items as listed on the agenda:

3 b (1) Amend Section 11, definitions related to family and dwelling units. Remove the term family from definitions as the term could exclude non-nuclear family members. Unit will replace family.

3 b (2) Amend Section 6.4 Performance Standards including subsections for site design and lighting.

3 b (3) Amend Section 3.1.4, Table of Use Regulations, to permit 3-unit residential development by-right

3 b (4) Amend Sections 8.1, 8.2 and 8.3 governing two, three, accessory, and multi-unit dwellings.

3 b (5) Amend Section 6.2.7 regarding trees on Route 7

3 b (6) Amend Section 3.1.4, Table of Use Regulations, to allow multi-unit residential and mixed use development by-right in the B-2 zone. Development must include affordable housing.

Mr. Hankin said this language is inclusionary. He said it started out as incentivized.

Mr. Rembold said it could be inclusionary.

Mr. Hankin asked if the language could be overridden with a special permit if affordable housing isn't included.

Mr. Rembold said no.

3 b (7) Amend the zoning map to change zoning of certain parcels on Silver Street from R2 to R-1-A.

Mr. Rembold said the frontage and setback requirements will change slightly to allow an extra lot. The zones are similar. The change would make the lots on the south side of Silver Street similar to those on the north side of the street.

3 b (8) Citizen's Petition to amend Section 9.3.16.5 of the Wireless Telecommunications Overlay District.

Ms. Nelson asked if anyone was present to discuss the petition. No one was present.

Ms. Nelson said the Board will take questions from the public on each article. They went through each item.

Item (1): There were no comments.

Item (2) Mr. Hankin said if the item is adopted it does not eliminate Site Plan Review.

Mr. Rembold said no. There will be review through Performance Standards for any development.

Mr. Fick said the first sentence of 6.4.5 is ambiguous. He suggested it be revised to clarify. He said it can be interpreted that all development would be reviewed with performance standards except 3 unit development would be reviewed by staff.

Mr. Rembold said he thinks that is correct. He said all development is reviewed by staff.

Mr. Fick said the sentence should be struck.

Ms. Kain asked about height of light fixtures.

Ms. Nelson said it is a good point. She said the height might vary depending on the location. She asked if height limits should be added.

Ms. Kain asked if we use Dark Sky rules.

Ms. Nelson said that is the industry standard. She said she likes the standard but it is sometimes hard to find. She said the requirement for full-cut offs works. She said the Dark Sky rules are a little more conservative.

Ms. Kain said in California it is enforced and it is perfect.

Mr. Fick said he didn't think it could be introduced without defining.

Ms. Nelson said it is a trademark.

Amanda Hochler, 193 Maple Avenue, said she lives near Big Y and the lights shine in her windows. Lighting is a concern.

Mr. Rembold said he doesn't know about the lighting requirements on that site.

Ms. Hochler said perhaps it could be addressed.

Mr. Hankin said foot candles are not supposed to exceed 1 foot candle at the property line.

Mr. Rembold said there might be a lower standard for foot candles for new development. He said it is a great question.

The Board continued going through each item.

Item (3) A resident from 15 Sumner Street asked what was the previous requirement.

Ms. Nelson said a 3-unit development currently requires a special permit.

Mr. Hankin asked why 3-unit development will not be allowed in the R-4 zone. He said 3-8 units are not currently allowed.

Mr. Pachano said to protect the open space.

Mr. Hankin said that doesn't make sense in the entire zone.

Mr. Rembold said 4-8 units might be outside the scope. He said it might not be allowed.

Item (4) Mr. Rembold said this item removes SPR.

Mr. Hankin said what if the item for performance standards doesn't pass.

Mr. Rembold said there has been plenty of discussion and debate. He said if the performance standards don't pass this item would be passed over to keep SPR.

Mr. Pachano said keep SPR don't pull everything.

Ms. Nelson asked how much of item 3 goes with item 4.

Mr. Rembold said it aligns with the Table of Use Regulations.

There were no questions from the public.

Item (5) Ms. Nelson said the Board has seen several developments that don't have room in the frontage to accommodate the tree requirement.

Mr. Rembold said on Route 7 the intent was to create a large tree corridor. He said small trees don't bring the scale down. He said that requiring a tree every 50 feet instead of every 25 feet will allow for bigger trees to be planted.

Julie Anidjar from the Tree Committee said the Tree Committee recently met. She said the Committee stated its mission to replant the canopy on Route 7. She said the Committee has been meeting regularly since November. She said the item is directly opposed to the Commission's meeting. She said we are looking for a budget line for planting. She said there is a plan to have an Arbor Day celebration at the Mason Library to provide information and build momentum to recognize trees as an asset. She said trees bring people to the area. She asked that the Board keep the current language and consult with the Tree Committee when there is an application requiring trees to be planted. She said businesses are our only allies for adding trees. She said 25 feet is quite a distance. She suggested adding language to require maintenance of trees and replacement

if they die. She said there is a greater chance that at least one tree would survive when planted 25 feet apart. She said community support is needed to get the budget line. She said the Tree Committee should be involved whenever trees are discussed. We are finding ways to have people donate trees.

Ms. Nelson said the reality is the frontage is limited. She said sometimes there isn't even 50 feet of frontage. She said we would like to collaborate. She said if we leave the bylaw as it is at 50 feet we could get a contribution in lieu of planting. She asked Mr. Rembold if that would be a legal mechanism.

Mr. Rembold said it could be inclusionary trees.

Mr. Hankin said the requirement only applies to the front yard. We are trying to make a street wall of buildings where the trees might be only 12 feet from the building.

Julie Anidjar said on Main Street the trees are that close. She said there are small trees on Main Street. Some did not survive. She said larger trees can definitely be planted close to the buildings. She said larger trees are in the neighborhoods. She said people flock to the shade. She said there are so many benefits to having trees.

Mr. Hankin said in many of the neighborhoods the trees are planted in the right of way. He said that is what makes the street wall.

Ms. Anidjar said she doesn't think it is a big ask for businesses to plant a tree. It can be a coordinated effort. She said if the proposed bylaw passes at the ATM, the people will not understand what is at stake.

Mr. Hankin agreed that trees get planted then die. Trees should be watched for three years by the Tree Warden and replaced if they die.

Ms. Anidjar said the Master Plan has a record of tree removal. She said we need to try to plot where the trees are missing.

Eileen Mooney raised her hand but she was unable to speak through Zoom. Ms. Nelson advised Ms. Mooney to send an email and her comments will be addressed.

Mr. Fick said 6.2.8 allows a special permit for deviations. He said if we leave the bylaw at 25 foot intervals, 6.2.8 can be changed to allow the Planning Board to grant deviations. He said the last tree issue we had, the business had no place to plant a tree so we had to work around it. He said it will be helpful if we allow deviations as part of SPR.

Mr. Pachano said we could notify the Tree Committee when we deal with trees.

Ms. Nelson said we could.

Ms. Kain said it would be nice to have a lovely corridor with canopies of trees. She suggested developing a Master Plan for trees to show where we would like to see trees planted. She said maybe it isn't the Planning Board's purview.

Mr. Rembold said the Tree Committee could spearhead a plan.

Mrs. Mooney emailed to say a few years ago the Planning Board allowed a tree to be planted somewhere else.

Ms. Anidjar said the problem with the Tree Committee and the Master Plan is the lack of a budget. There is money in the DPW budget for tree removal but there isn't any money for tree planting.

Mr. Pachano suggested that a member from each board/committee attend each other's meeting.

Bob Kraus, 39 Welcome St., said he supports Ms. Anidjar but trees can block views when trying to look at the stars. He said his interest is in astronomy.

Item (6) Mr. Pachano thought there was going to be a footnote for this item. He said he sees a change to Y in the Table of Uses.

Mr. Rembold read the draft language that refers to a footnote for affordable housing requirements to allow 9 units by-right.

Mr. Pachano said 9 units or more are allowed by special permit or by-right with affordable housing. The affordable housing is the incentive.

Mr. Fick asked if four stories will be tied to the affordable housing.

Mr. Pachano said height can be discussed a bit later.

Mrs. Mooney emailed to ask if there is no special permit, what guarantee will there be that the building won't be ugly.

Mr. Pachano said a gigantic ugly building can be built now with the bylaws that are in place.

Mr. Hankin said there is no guarantee that a special permit will make it beautiful.

Mr. Pachano said he would sacrifice having an ugly building to house people.

Ms. Hochler asked what the biggest building that could be built without a special permit.

Ms. Nelson said with the amended bylaw, a building with 9 or more units with 10% of the units affordable could be built by-right.

Ms. Hochler asked if people living near the development would have input.

Mr. Hankin said people can have input in all public meetings, but there wouldn't be a public hearing.

Ms. Hochler said it feels underhanded and unfair to take away the voice of the people.

Mr. Pachano said the people always have a voice. He said housing has been turned down because of the process. He said housing is desperately needed so it is important for this Board to incentivize.

Ms. Anidjar asked if the Design Advisory Committee would review.

Mr. Pachano said DAC is required to review when the project is on Main Street.

Ms. Nelson said we are trying to establish a baseline parameter of design standards. We are trying to lay out ground rules when a project is not reviewed by DAC.

Item (7) David Unger, 38 Silver St., asked if the three parcels that are part of this proposal are owned by two people.

Mr. Rembold said he didn't know. He said someone in the room said it is owned by three people.

Mr. Unger asked how many additional units could be built.

Mr. Rembold said it depends on how the lots are configured. He said there is 600 feet of frontage. He said if the 600 feet were split up there could be four lots. He said there are many different ways the lot could be developed.

Mr. Unger asked if a developer could build more.

Mr. Rembold said maybe a developer could build two or three more units.

Mr. Unger said if the zone is changed from R-2 to R-1-A more homes could be built, maybe a lot more.

Mr. Rembold said not a lot more.

Ms. Nelson said the land has to have the frontage. The frontage drives being able to divide a lot.

Mr. Fick said someone could get 6 lots out of the land.

Mr. Pachano said the proposal would reduce the developability. He said an Open Space Residential Plan (OSRD) could be built in the R-2 but not in the R-1-A. He said right now 20 units could be built on the lot under OSRD if approved with a special permit.

Mr. Rembold said the frontage controls the density. The R-1-A zone allows a somewhat higher density.

Mr. Unger asked who is proposing this item.

Ms. Nelson said the Planning Board is proposing. She said we will deliberate after the public hearing has been closed. The item will be voted on at the ATM.

Mr. Unger said the property has been for sale for a while. He asked how it can be sold if the zoning is in flux.

Ms. Hochler said the property is right next to the railroad tracks. She asked how the Board selected it for rezoning.

Mr. Rembold said he brought it to the Board as an idea. The parcel has Town water and sewer. Changing the zoning makes it more closely resemble the development on the north side of Silver Street.

Ms. Hochler said she hates to see green space eaten up by many apartment buildings. She said people should have help owning their own homes.

Mr. Unger said the Board just agreed to put 30 units at the former nursing home.

Ms. Nelson said that matter is not before the Board. She asked if there were a question about Silver Street.



Mr. Unger asked how many units can be built now and how many could be built with the change. Mr. Rembold said four conforming lots could be created with the current zone. Six lots could be created with the new zoning. Two units can be built on each lot and there could also be an accessory unit.

Mr. Fick said if a PURD went in, there could be more units.

Carol Baumann, the Executive Director of CDC South Berkshire, read a statement supporting the Board's zoning proposals.

Item (8) Ms. Nelson asked if anyone was present to discuss the citizen's petition regarding amending Section 9.3.16.5 of the Wireless Telecommunications Overlay District.

No one was present to discuss the petition.

Ms. Nelson asked if anyone had any comments or questions.

Mr. Hankin said he hoped someone would be present to explain the proposal.

Ms. Nelson said she would also like to have details.

Mr. Pachano said if no one shows up to speak at the ATM the petition won't go anywhere.

Ed Abrahams, from 15 Pleasant Street, asked if the Town is allowed to make this change or does the FCC say we are not allowed.

Ms. Nelson said we would like to have that question answered. She said we would be happy to have answers.

Mr. Fick said he didn't think we are limited because it is environmental.

Mr. Abrahams said he would expect Town Counsel to comment.

There were no other comments or questions.

Mr. Pachano made a motion to close the public, Mr. Hankin seconded, all in favor. The public hearing was closed at 7:49 PM.

## **DISCUSSION:**

Item (1) Mr. Fick said there is a cap on the number of people in a unit, "not more than 5".

Mr. Rembold said it doesn't restrict the number of people in a unit who are related, only unrelated.

Mr. Fick asked if everyone was in in favor of taking away the limit on unrelated people.

Ms. Nelson said we may need some massaging of family to make it more inclusive.

Sharon Gregory, 32 Hollenbeck Avenue, was present via Zoom. She raised her hand.

Mr. Rembold said the public hearing is closed.

Ms. Nelson gave Ms. Gregory the opportunity to comment.

Ms. Gregory said in regard to the proposed change on Silver Street, at what point does the Board consider traffic changes.

Ms. Nelson said there is no development proposed. Traffic would be discussed during a review of a project.

Mr. Rembold said generally 4-6 units would not impact traffic.

Ms. Nelson said there are a huge number of variables. We can't evaluate all of them.

Mr. Fick said the existing zoning could allow 20-30 units. If a proposal of that many were submitted it would be a special permit application.

Mr. Pachano made a motion to pass Item 1 to the Town Meeting Warrant, Mr. Hankin seconded, all in favor.

Item (2) Mr. Pachano said the point of the performance standards is to eliminate the Site Plan Review process for 2-3 unit development.

Ms. Nelson said the mounting height of lights needs more discussion.

Mr. Rembold said 8.10.4 has the pole height at 14 feet. He said light pole heights under 7.9.5.4 can be no more than 17-25 feet in height for high impact commercial uses.

Mr. Hankin asked where foot candles are addressed.

Mr. Rembold said 7.9.5 6.

Mr. Hankin said foot candles should be part of this item.

Ms. Nelson said she can see a reason for higher poles in a commercial parking lot but 14 foot poles should be reasonable.

Mr. Rembold said the maximum pole at the BCC redevelopment site is 20 feet. He said he thinks that works well.

Mr. Hankin said he thinks this is where something should be said about foot candles.

Mr. Rembold edited the language as shown on the screen adding the bottom of the light source or pole light will be no higher than 20 feet above the finished grade. Light fixtures shall be located and/or shielded so the illumination at any adjacent property is no greater than 0.1 foot candle.

Mr. Pachano said if we don't pass the other section what happens. He said this is a big one. He asked if anything should be added.

Mr. Fick it is pretty good.

Mr. Pachano made a motion to send a positive recommendation to the ATM, Mr. Fick seconded, all in favor.

Item (3) There was no discussion.

Mr. Fick made a motion to send a positive recommendation to the ATM, Mr. Hankin seconded, all in favor.

Item (4) Mr. Rembold said he will make the text mirror the Table of Use Regulations.

Mr. Pachano made a motion to send a positive recommendation to the ATM, Mr. Hankin seconded, all in favor.

Item (5) Mr. Fick said he didn't think this item will pass. He suggested leaving the language for 25 foot intervals and to find a way to make it easier to deviate from the 25 feet. He said that will allow us to achieve our goals.

Ms. Nelson liked the idea of a fee in lieu of planting a tree if site conditions warrant it.

Mr. Rembold asked how much the "in lieu of" fee would be. He asked when it would be applied, where it would be applied or does it matter?

Ms. Nelson said it matters but the fee could be based on cost. She said we need to consider how much we want to burden an applicant. She said she would like to empower the Tree Committee to care for trees.

Mr. Fick asked about the fee if one is allowed.

Ms. Nelson said a fee could be based on a recommendation from the Tree Committee.

Mr. Rembold asked what if the Tree Committee fails to exist.

Ms. Nelson said we could decide on \$1500 or pick a number.

Mr. Pachano said enforcement is a problem as is maintenance. He said when he hears about fees on development it makes me nervous. He said he has no issue giving the responsibility to another committee. He said he likes Mr. Fick's suggestion to allow for deviation. He said maybe there can be a conversation with the Town and/or Town Counsel about the fee that could be paid into a fund for the Tree Committee to ensure a healthy tree. He said 6.2.8 currently allows for deviation of the bylaw via special permit from the Planning Board.

Ms. Nelson said we are discussing 6.2.7.

Mr. Rembold said the public hearing was specific to 6.2.7. He said 6.2.8 is outside of the scope for discussion.

Mr. Fick said to vote to pass 6.2.7 if it gets rejected it is rejected.

Ms. Nelson said it might not make the warrant.

Mr. Fick said to leave the bylaw for 25 feet.

Mr. Rembold said there can be a way to deviate provided. He said the options for deviating include a fee, plant a tree somewhere else or no tree has to be planted.

Mr. Hankin said can there be a rule that the Planning Board refer to the Tree Committee.

Mr. Pachano said maybe with a special permit. He said not all of it can be added. He suggested taking the special permit out of 6.2.8 and say the Planning Board can deviate.

Mr. Rembold said 6.2.8 applies to the part of 6.2 not just 6.2.7.

Mr. Pachano said if a deviation is allowed why have special permits?

Ms. Nelson said the point is we can't just modify without looking at the rest of 6.2 and any unintended consequences.

Mr. Pachano said he doesn't see the risks.

Mr. Fick said he doesn't see a risk either.

Mr. Hankin said 6.2.8 is not part of what was published. He said we can't modify it here but maybe there could be an amendment on Town Meeting floor.

Mr. Pachano said deviation is discretionary.

Mr. Rembold said there must be rules for deviation. He said either through a special permit or some other process set forth here. He said there has to be authority.

Mr. Pachano said he disagrees as there is already a process in SPR.

Ms. Nelson said it is completely arbitrary for us to deviate whenever we want to. She agreed that there needs to be rules or guidelines.

Mr. Fick said if we can't come up with language we should drop the entire thing.

Mr. Pachano said it is completely arbitrary.

Mr. Pachano made a motion to pass over at the ATM or not even put it on the warrant, Mr. Hankin seconded.

There was additional discussion. Mr. Pachano withdrew his motion. Mr. Hankin withdrew his second.

Mr. Rembold said he would propose language that the Board could review at the next meeting and then decide what to put on the warrant.

Item (6) Ms. Nelson said a development of 9 units or more requires a special permit unless there is 10% affordable housing.

Mr. Fick asked about allowing four story structures with "X" amount of affordable units.

Mr. Pachano said he didn't know if we need a density bonus. He said a developer can do a lot without it.

Ms. Nelson said we are not changing the height limit just the number of stories allowed. She asked if 40 feet is realistic for four stories.

Mr. Hankin said the height is measured to the mid-point of the gable.

Mr. Pachano said he thinks there is enough development potential available without the density bonus.

Mr. Rembold said he struck stories and added a footnote to the Table of Uses.

Mr. Pachano made a motion to send a positive recommendation to the ATM, Mr. Hankin seconded, all in favor.

Item (7) Mr. Pachano said the R-2 zone allows for an OSRD.

Mr. Rembold asked how many units could be allowed in an OSRD.

Mr. Fick said the R-2 allows for more commercial development than the R-1-A, including marijuana cultivation, retail up to 20,000 (this is incorrect) and other uses.

Mr. Rembold said he thought there was an error in that language.

Mr. Hankin said the land is more developable as R-1-A.

Mr. Rembold said there is by-right development of the lot with R-1-A. He said there is Town water and sewer.

Mr. Pachano said there can be 5 lots if it is zoned R-1-A and 4 lots as zoned, R-2. He said rezoning takes a certain type of development option away.

Ms. Nelson said there might be single family lots and not multi-unit development.

Mr. Rembold said there would not be huge gain.

Mr. Pachano said he can go either way.

Mr. Rembold said maybe the Board doesn't want to move forward this item.

Mr. Pachano asked if there is that much more incentive.

Mr. Rembold said he doesn't know. There is not a huge gain.

Mr. Fick said he like R-1-A.

Ms. Nelson said we don't have to decide on this tonight. It can be discussed at the next meeting.

Mr. Fick made a motion to send a positive recommendation to the ATM, Mr. Pachano seconded, all in favor.

Item (8) Ms. Nelson said she didn't have enough information to make a recommendation. The rest of the Board agreed.

Mr. Hankin made a motion to send no recommendation to the ATM in the absence of more information, Mr. Fick seconded, all in favor.

#### **BOARD & SUBCOMMITTEE UPDATES/ISSUES & CONCERNS:**

Ms. Nelson said there is an issue with information with the Habitat property on North Plain Road. She asked if the Board would want to make a comment to the Selectboard. She said the chair of the Selectboard would have welcomed more comments regarding the Planning Board's request for and an increase to 30 units.

Mr. Fick said it wasn't brought up to us at our meetings. He said maybe we need to revisit our recommendation.

Mr. Hankin said there was communication we weren't aware of.

Ms. Nelson asked if the Board wanted to submit additional comments with rationale.

Mr. Pachano said he thinks the onus is on Habitat to communicate with us.

Mr. Hankin said the Housing Trust is also responsible.

Ms. Nelson said she does not want to put blame anywhere.

Mr. Pachano said we need more housing and people for the economics of the Town.

Ms. Nelson said she let the Selectboard chair know that the 30 units was our request. She asked if it would be constructive to send comments around land use.

Ms. Kain said she looked at the minutes of the Board's review. She said there was a lot of discussion about infrastructure.

Mr. Fick said we were not party to the agreement between the neighbors and Habitat. He said we looked at what could be supported.

Ms. Nelson said she is willing to put something together. She said she wanted to ask the Board if they wanted to work on something with her.

Both Mr. Hankin and Mr. Pachano would be willing to work with Ms. Nelson.

**TOWN PLANNER'S REPORT:**

Mr. Rembold said the Board will have a special permit for the marquee sign and more discussion of the zoning articles.

Mr. Rembold said he provided a sheet with some statistics about affordable housing in Town. He said the top table is accurate.

**CITIZEN'S SPEAK TIME:**

No one spoke.

Having concluded its business, Ms. Nelson adjourned without objection at 9:05 PM

Respectfully submitted,

*Kimberly L. Shaw*

Kimberly L. Shaw  
Planning Board Secretray