

PLANNING BOARD

Kim to sign

DATE: March 22, 2018
TIME: 7:00 P.M.
PLACE: Large Meeting Room
FOR: Regular Meeting/Public Hearing continued
PRESENT: Brandee Nelson, Chair; Malcolm Fick; Jonathan Hankin; Jack Musgrove;
Jeremy Higa
Pedro Pachano, Associate Member
Chris Rembold, Town Planner

Ms. Nelson called the meeting to order at 7:00 P.M.

REVIEW & COMMENT TO THE SELECTBOARD:

Robert Coons was present with his attorney Dennis Downing for the Board's recommendation to the Selectboard on the Town's Right of First Refusal/Conversion of Chapter 61A land owned by West Plain Road Nominee Trust. 9.2 acres of land will be removed from the Chapter 61A land.

Mr. Hankin made a motion to recommend that the Selectboard waive their Right of First Refusal, Mr. Musgrove seconded, all in favor.

FORM A's:

There were no Form A's presented.

MINUTES: MARCH 8, 2018

Mr. Fick made a motion to approve the minutes of March 8, 2018 as amended, Mr. Musgrove seconded, all in favor.

PUBLIC HEARING: CONTINUED FROM MARCH 8, 2018

Mr. Hankin made a motion to re-open the public hearing for proposed zoning amendments, Mr. Musgrove seconded, all in favor.

Ms. Nelson said the public hearing was being recorded.

The Board briefly discussed the B2X zoning proposed for State Road. There was specific discussion about a parcel of land located at Belcher Square. The long multi-acre parcel fronts on Belcher Square then runs behind existing residential parcels on Giddings Street. There is a small triangle piece of land that abuts land on Giddings Street. The small parcel will remain in the R-1-B zone. The B2X zone will run 300 feet from the center line. The remaining portion of the parcel will be in the R-2 zone.

Mr. Musgrove said although this is not an ideal arrangement, it is ok.

Mr. Rembold then discussed the setbacks in the B2X on State Road. He said the maximum setback language may be confusing when applied to existing buildings. The language could lead people to think that the existing buildings would be non-conforming. He suggested language stating that the setbacks apply to new construction and suggested language stating existing structures or those with valid building permits as of May 7, 2018 with front, side and rear setbacks that do not meet the requirements herein shall be permitted to maintain those setbacks.

Mr. Pachano said he too had been receiving feedback. He suggested a 5 foot minimum and 12 foot maximum setback. He said he walked the area and liked the feel of it. He asked the Board to consider the amendment.

Mr. Hankin said he would like to keep the setback at zero.

Mr. Musgrove asked if the setbacks were zero now.

Mr. Hankin said yes.

Ms. Nelson said the goal is to try to bring buildings closer to the street to create a street wall resulting in a traffic calming measure.

Mr. Pachano said amending the setbacks would still accomplish the goals. He said a 12 foot maximum setback would allow people to maneuver more comfortably.

Ms. Nelson said when the Town redid Main Street there were many easements needed.

Mr. Hankin said a 12 foot setback and a 10 foot sidewalk would allow for plantings in the front.

Ms. Nelson said she is not sure if that is the vision we were initially trying to attain.

Mr. Fick said he does not want to recreate Main Street on State Road.

Mr. Pachano said we are not trying to recreate Main Street.

Ms. Nelson read the purpose. She asked the Board if we would be staying with the original purpose if the setbacks are increased.

Mr. Musgrove said he is happy to change the maximum setback to 12 feet but he does not want to change the minimum from zero. He said there is no reason to not continue.

Ms. Nelson asked the Board wanted to change the Dimensional Schedule from zero to 5 foot minimum-12 foot maximum.

Mr. Musgrove said he only feels strongly about keeping the minimum zero setback.

Mr. Hankin said he does not feel strongly one way or the other.

Ms. Nelson said the highway Right of Way is not uniform. We will change footnote #9 in the Schedule of Dimensional Regulations to say that the maximum setback in the B2X shall be 12 feet and the minimum setback shall be 0 feet.

The Board concluded their discussion of the B2X zone and began discussion of the proposed Marijuana Bylaw.

Ms. Nelson asked if Town Counsel had provided comments from the discussion at the last meeting.

Mr. Rembold said no.

Ms. Nelson said we might need to make amendments at the Annual Town Meeting.

Mr. Rembold said that might need to happen. He said the bylaw is in good shape. He said there were questions about measuring from the property line of the school to the nearest part of the marijuana establishment. The State regulations state from property line to property line. He suggested the Board adhere to the State regulations. He said the Board could amend at a later time if they decide to but for now leave the language as it is.

Mr. Hankin said the distance can be reduced but we can't reduce the way it is measured.

Mr. Rembold said that is correct.

Mr. Musgrove said he wants to go to the Town Meeting with what we want.

Mr. Hankin asked what happens if the Attorney General doesn't like the language.

Mr. Rembold said he thinks the Attorney General would strike the language and default to the State regulations.

The Board agreed to move forward with the original language.

The Board went through the bylaw as it has been discussed and agreed upon.

Mr. Fick asked if the bylaw will address taxation.

Ms. Nelson said the Selectboard is working on that.

Mr. Pachano presented information about the size of potential growing facilities in the residential neighborhoods. Potential buildings could range in size from 21,000+ square feet on a five acres site to 47,000+ square feet on an 11 acres site. He said we need to consider potential size in our neighborhoods as well as traffic and overall impact.

Ms. Nelson said this is the reason Site Plan Review is so important.

Mr. Musgrove said there are regulations for the maximum size a building can be.

Mr. Hankin said yes. He said if someone has the money they can build a 100,000 square foot home by-right.

Mr. Pachano agreed however there would not be 30-40 people coming and going from that house on a daily basis. He asked the Board to just consider some of the potential impacts.

Ms. Nelson repeated that SPR gives a measure of control.

Mr. Hankin said that before an applicant applies for a license they need to have a Host Community Agreement which requires a meeting with the Selectboard. During that meeting some issues could be addressed.

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

Selectman, Ed Abrahams, 15 Pleasant Street, said we don't know what the Town can reject a Host Agreement for. He asked if the agreement can be rejected for arbitrary reasons or mitigation of impact.

Mr. Abrahams said there are 28 uses that require a special permit, of those 24 are granted by the Selectboard. He said he thinks the Selectboard should be the SPGA for the marijuana special permits as we have more accountability to the Town than the Planning Board. He said this bylaw needs to pass. He said he is worried about generating negative results.

Holly Hamer, 99 Seekonk Cross Road, said she did measurements for buildings that would be allowed and came up with sizes similar to those of Mr. Pachano. She said the Kilpatrick Athletic

Center at Simon's Rock is 58,000 square feet. She said it is a massive building. A building of that size would not be in keeping with a residential neighborhood in the R-2 and R-4 zones.

Ms. Hamer said she did a Google search and found that many towns in Massachusetts only allow cultivation in Industrial zones. She felt that cultivation should only be allowed in a residential zone with Site Plan Review from the Planning Board and a Special Permit from the Selectboard.

Ms. Hamer said the people in Town know the members of the Selectboard and they speak to them. The Selectboard has more experience with special permits and with the public in general. She said she wants to see the bylaw pass. She recommends that the SPGA be the Selectboard and that a special permit be required.

Ms. Nelson said to Ms. Hamer, you are concerned with the building size in the residential zones but not the I zone.

Ms. Hamer said yes.

Mr. Hankin asked Ms. Hamer if she has concerns about open cultivation.

Ms. Hamer said not as long as there are no security lighting impacts.

Mr. Rembold said the site would have to be adequately lit to provide security.

Ms. Nelson asked Ms. Hamer what size building would be acceptable.

Ms. Hamer said she is not experienced enough to know what size would be acceptable. She said she can't speak for everyone it is just a concern she wanted to bring to the Board's attention.

Ms. Nelson said she did not intend to put Ms. Hamer on the spot she was just trying to determine what size building might be acceptable if the size is an issue. She thanked Ms. Hamer for her input.

There was no other public comment.

Mr. Fick said he does not want to see farmers ruled out of the market as it might be lucrative for farmers. He said he thought the cultivation of marijuana would move toward the agricultural land.

Mr. Higa said he does not have an issue with the Selectboard being the SPGA. People have a regular interest in what they are doing.

Ms. Nelson said the process is going to be difficult. She said she doesn't understand why the Town should have discretionary review after an extensive State licensing process.

Mr. Higa said he hears this as a concern and he wants to have the bylaw pass as well.

Mr. Musgrove said recreational marijuana is legal in Massachusetts. If we don't permit the cultivation here it will take place somewhere else. Why should we allow the tax money to leave Great Barrington? He said he would like to find a way to make all of the uses by-right. There is a \$50,000 application fee before the State Cannabis Commission. We have SPR to allow local input.

Mr. Musgrove said the Planning Board is very skilled and practiced and experienced in the SPR process. SPR is a good tool to get people to conform to what fits in our Town. He asked why we would want to create barriers for uses that should happen here.

Mr. Hankin said the cultivation process is very labor intensive which means there will be jobs created in addition to the tax revenue.

Ms. Hamer said 70-80% of tax money is derived from real estate taxes. She said she would hate to miss out on quick cash but allowing cultivation in residential neighborhoods could create a big impact.

Ms. Nelson said she doesn't get a sense that anyone wants residential neighborhoods to be denigrated by large industrial buildings but farmers have to have the ability to farm without barriers.

Ms. Nelson asked what size buildings should be allowed in residential zones.

Mr. Hankin said setbacks would several hundred feet.

Ms. Nelson asked if SPR is enough to control the size of the buildings.

Mr. Fick said the major point is that we need to get the bylaw passed at the Town Meeting. He said a special permit needs to be part of the process.

Ms. Nelson asked if there is a dimensional threshold.

Mr. Higa said he didn't think the size of the building is the only concern people will have. If we set a threshold it might not take care of it.

Mr. Musgrove asked if we are talking about cultivation in buildings.

Mr. Higa said both in buildings and outside.

Mr. Hankin said there are State Regulations in place.

Mr. Higa said we have to get through the Annual Town Meeting.

Ms. Nelson said the State has built public communications meetings into the regulations and an outreach process. She said we do not need to be redundant. She said the State regulations are adequate.

Mr. Pachano said we would be dealing with it at a local level. He asked if a public hearing could be held for the SPR process.

Mr. Musgrove said there is nothing requiring a public hearing for SPR.

Mr. Pachano said he would think people would want to know.

The Board went through the bylaw.

Mr. Hankin said he thinks there could be a trigger for a special permit for cultivation facilities of 10,000-15,000 square feet in the residential zones. He said he does not think the Selectboard should be the SPGA.

Ms. Nelson said she agrees with the square footage suggestion but we should agree to let the Selectboard be the SPGA.

The Board had further discussion of the square footage trigger.

Mr. Rembold said he would work on the language and keep the bylaw in compliance with State regulations.

Mr. Abrahams said the majority of the Selectboard want the special permit process in all zones. There is concern about appearance.

Mr. Hankin and Mr. Musgrove thought the SPGA issue should be settled at the Town Meeting.

Mr. Abrahams said the Selectboard is SPGA for the majority of special permits.

Mr. Hankin said historically most towns have the Planning Board as the SPGA. The Planning Board deals with land use issues.

Mr. Rembold said best practice is to leave the SPGA the same as the Site Plan Review authority.

It was agreed to require a special permit for growing structures that exceeded a 10,000 SF footprint in the R-2 and R-4 zones but not for open cultivation. The Planning Board will be the SPGA. The Board was satisfied with the language as discussed. There was no further discussion.

Mr. Hankin made a motion to close the public hearing, Mr. Musgrove seconded, all in favor. The public hearing was closed at 8:36 P.M.

Mr. Hankin made a motion to send the B2X as amended to the Annual Town Meeting, Mr. Musgrove seconded, all in favor.

Mr. Hankin made a motion to send the marijuana establishment bylaw as amended to the Annual Town Meeting, Mr. Musgrove seconded, all in favor.

SITE PLAN REVIEW: 367 PARK STREET NORTH

Jeff Webber from Edmond-Bacquerel Inc. was present to discuss the SPR for Berkshire Mountain Bakery at 367 Park Street North for a by-right roof mounted accessory solar energy system in excess of 750 square feet.

Ms. Nelson asked if this will be a net metered project.

Mr. Webber said yes. There are State incentives. None of energy will be exported to any other facility. The energy generated will not exceed the annual consumption of the Bakery. The roof space will be maximized but there will not be more energy produced than is used.

Ms. Nelson said there are some tree limbs over the west end of the building. Will there be any trees trimmed or removed.

Mr. Webber said not at this time for this project. It is possible there may be some trimming in the future but not without the right permits.

Ms. Nelson asked if each panel will give real time data.

Mr. Webber yes the real time data will be data specific.

Mr. Hankin said the engineer certifies the roof is strong enough but the description used of the roof structure being certified is not reflected in the drawings provided of this building. He said there are big discrepancies in the structure, specifically the rafters and trusses.

Mr. Webber said he will make sure the issues will be addressed with the Building Inspector to make sure the roof is strong enough.

Mr. Musgrove read through the SPR.

Mr. Hankin said he would like his concern expressed to the Building Inspector about the possibility of snow sliding off the roof and damaging people or cars. He would like make sure there is snow shedding protection if required by the Building Inspector. He would also like the structural concerns expressed.

Ms. Nelson said there are no physical changes to the site.

Mr. Musgrove made a motion to waive reading section 10.5, Mr. Hankin seconded, all in favor.

Mr. Hankin made a motion to approve SPR with two notes to the Building Inspector:

--Certify the structural stability as it is not accurately reflected in the application

--Provide snow shedding protection if required

Mr. Musgrove seconded, all in favor.

SITE PLAN REVIEW: 27 HUMPHREY STREET

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

Ian Rasch was present with Al Thorp to discuss the SPR for the application for Greenhouses Partners for grading and clearing of a lot in order to construct 3 residential homes at 27 Humphrey Street.

Mr. Hankin asked about cut and fill on the site.

Mr. Thorp said there is a volumetric analysis of the site. There will be more fill than cut. The lower part of the site has to be raised up. The higher end of the site will be cut. All the cut material should be used on the site.

Mr. Rembold said most of the site is not in the flood plain. There is a tiny area of flood plain in the southwest corner of the site.

Ms. Nelson said the only route into the site is off of Humphrey Street.

Mr. Hankin asked about drainage.

Mr. Thorp said the drainage calculations haven't been done. The storm water drainage flow is east to west. Storm water management on the site previously received approval from the Conservation Commission. We will go back with the revised project.

Mr. Rasch said the revised project is much less dense.

Mr. Thorp said the catch basin at the end of the right of way will catch and manage on site water.

Mr. Musgrove asked if there will be any access from the right of way off of East Street.

Mr. Thorp said possibly pedestrian but there will be no vehicle access.

Mr. Pachano encouraged the applicant to look into snow storage on the site.

There was discussion of installing a guardrail along the driveway.

Mr. Thorp said it is a private driveway.

Ms. Nelson said it is a gravel driveway. She said there is concern about the drop off along the edge. She said perhaps some boulders could be installed to demarcate the edge.

Mr. Thorp said he envisioned plantings along the edge. Boulders could be installed.

Mr. Fick said he thinks it is within our purview to make a guardrail a condition.

Mr. Musgrove said he didn't think we know enough to condition a guardrail.

Mr. Fick asked if we could condition to demarcate the edge.

Mr. Rasch said the Fire Chief reviewed the plan. He didn't bring up any concerns about the driveway.

Mr. Thorp said the driveway is 16 feet wide with 2 foot shoulders on each side. There is two-way travel on the driveway.

Mr. Musgrove suggested not conditioning the driveway.

Mr. Musgrove made a motion to approve SPR, Mr. Higa seconded, all in favor.

Mr. Hankin made a suggestion to combine all the lots that comprise the parcel to avoid setback issues.

FUEL TANK REMOVAL PERMIT: 70 EGREMONT PLAIN ROAD

The Board reviewed the application of Berkshire Application at 70 Egremont Plain Road for a Town permit to remove an existing 4,000 gallon auto gas fuel tank.

Tom Vigneron was present for the Airport. He said the tank had been drained and sealed and locked. He said we want to remove the tank in conformance with the Water Quality Protection District. It will not be replaced.

Mr. Hankin made a motion to approve removal of the 4,000 gallon auto gas tank, Mr. Musgrove seconded, all in favor.

APPEAL OF BUILDING INSPECTOR DECISION:

Mr. Rembold said the Board could review and comment to the ZBA on the appeal of the Zoning Enforcement Officer's decision not to require a special permit to install a new replacement underground fuel storage tank at the Great Barrington Airport.

He said the Board reviewed the similar removal of a tank and was in favor of it. The abutters challenged the Building Inspector's decision.

Attorney Richard Dohoney was present on behalf of the abutters. He said there is a minor dispute involving the interpretation of the bylaw. He said the abutters support the upgrade of the tank they would like review of the zoning that applies.

Mr. Dohoney said this is the alteration of a legally pre-existing non-conforming use but the Building Inspector considers it changing out a tank under 9.2.11. He said the abutters think a special permit is required under 9.2.12 for an existing non-conforming use. We are asking for oversight from the Selectboard level. He asked for the Board's support.

Mr. Hankin said he is an abutter to the airport. He said this is a recommendation to the ZBA so he doesn't think there is a reason to recuse himself. He said he disagrees with the interpretation. The bylaw says that a legally pre-existing non-conforming use shall be allowed to continue—that means by-right. He said a special permit is discretionary. The intent is to protect the health and safety. The intent is to get the tank out without hurdles.

Mr. Fick said he disagrees with Mr. Hankin. He said the action we took was to review the removal of the tank not the installation.

Mr. Rembold said there is no town permit required to install the replacement tank.

After a short discussion, Mr. Musgrove made a motion to send a recommendation to the ZBA to uphold the Building Inspector's decision not to require a special permit in this matter, Mr. Hankin seconded, all in favor.

MANVILLE STREET:

Ian Rasch, principle of Framework Properties, was present with Sam Nickerson and attorney Sid Smithers to discuss having a portion of Manville Street discontinued.

Mr. Rembold said there is no urgency for the Board to provide comment now.

Mr. Smithers from Cain/Hibbard said the request is to discontinue the use of a Town way. The road is not totally paved. The Town has an easement over this part of the road. The distance from the east side of Main Street to the area requested to be discontinued has not been measured.

Mr. Rasch said the right of way is 260 feet long by 40 feet wide for a total of 10,400 square feet.

Ms. Nelson asked if the easement is for right of way or an easement for infrastructure.

Mr. Smithers the package comes with providing a right of way from the east side of Main Street to the proposed discontinued area.

Mr. Rasch said from the point of discontinuance the property would become private and the responsibility of the owner.

Mr. Hankin asked if emergency vehicles would have access.

Mr. Rasch said yes.

Ms. Nelson said she would like to see a survey map.

Mr. Smithers said we are only asking that you make a favorable recommendation to the Annual Town Meeting for the discontinuance of the road.

Mr. Rembold said the Board can hold off on the recommendation.

Ms. Nelson said she would want to see if zoning compliance can be maintained. She said she wants to see a map.

Mr. Rembold said there is no rush to make the recommendation.

Mr. Fick said he didn't think we can recommend until we see what is going to the Town Meeting.

Mr. Rembold said you have been informed of the proposal 45 days prior to the Annual Town Meeting. The Board has time to make their recommendation.

TOWN PLANNER'S REPORT:

Mr. Rembold asked everyone to take the survey for the Complete Streets. There will be a meeting later in April. No date has been set.

Mr. Rembold said an application to extend the special permit for TOPA at Mahaiwe Street and Main Street will be coming before the Board. The request is to extend the special permit for two more years. The previous extension expires in April or May.

BOARD & COMMITTEE UPDATES/OTHER ISSUES & CONCERNS:

There were no issues or concerns.

CITIZEN'S SPEAK TIME:

No one spoke.

Having concluded their business, Ms. Nelson adjourned without objection at 9:38 P.M.

Respectfully submitted,



Kimberly L. Shaw

Planning Board Secretary

