

PLANNING BOARD

DATE: April 12, 2018
TIME: 7:00 P.M.
PLACE: Large Meeting Room
FOR: Regular Meeting
PRESENT: Brandee Nelson, Chair; Malcolm Fick; Jonathan Hankin; Jeremy Higa
Pedro Pachano, Associate Member
Chris Rembold, Town Planner

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

FORM A'S:

There were no Form A's presented.

MINUTES: MARCH 22, 2017

Mr. Hankin made a motion to approve the minutes of March 22, 2018 as amended, Mr. Fick seconded, all in favor.

SPECIAL PERMIT: TOPA ENTERPRISES EXTENSION

Tom Doyle from TOPA Enterprises was present for the Board's recommendation to the Selectboard to extend for another two years Special Permits 741-07 A and B, 742-07 and 743-07.

Mr. Hankin said the plans have changed; what is the point of extending the permits?

Mr. Doyle said he is close to getting a bank commitment. If plan B, the new plan, doesn't go well we will have plan A to fall back on.

Mr. Rembold said there is a special permit for the impervious surface that will be created. They will need to certify that the new plan has the same amount or less impervious surface as the plan approved in the special permit. They will still exercise the special permit for the Water Quality Protection District.

Mr. Doyle thanked Mr. Rembold for his comments. He said the special permit for the Water Quality Protection District is the most important permit.

Ms. Nelson said she doesn't have any problem extending the permits so Mr. Doyle doesn't lose the value of what he has invested.

Mr. Fick made a motion to approve the extension of special permits 741-07 A and B, 742-07 and 743-07, Mr. Higa seconded, all in favor.

SITE PLAN REVIEW: 817 MAIN STREET

The Board conducted a site visit prior to the meeting.

Bob Krol was present on behalf of the Great Barrington Historical Society to discuss the Site Plan Review for a handicap accessible walkway, a handicap accessible bathroom and review of the parking plan.

Mr. Krol said he is waiting for the Board's approval so they can proceed with the project. He said parking is not an issue.

Ms. Nelson asked if signage is required for the handicap space.

Mr. Krol said yes, there will be one sign for one space. He said the space will be at the end of the handicap ramp.

There was discussion of the parking on the site. The Board determined 10-11 parking spaces are required with one handicap space. They felt there was adequate parking for the site.

Mr. Fick read Site Plan Review.

Mr. Fick made a motion to approve Site Plan Review with the condition that an ADA compliant parking space with compliant signage be installed and any lighting will be downward directed, Mr. Higa seconded, all in favor.

MODIFICATION OF WIRELESS TELECOMMUNICATIONS EQUIPMENT:

Ms. Nelson said there was a previous discussion of the information submitted by SBA Communications Corp to add equipment to the existing tower at 425 Stockbridge Road. She noted that she was not at the meeting where the topic was discussed.

Mr. Rembold said there is no one present to discuss the project. A letter was sent after the last meeting requesting required information to be submitted. The requested information, items 20-23 of section 9.3.9 and item 1 of section 9.3.8, has been submitted. He said it is explicit in the Federal law that denial cannot be based on health considerations.

Ms. Nelson asked if the equipment is being swapped out.

Mr. Fick said they are adding new equipment.

Mr. Rembold said the Board can review the information and provide comments to the Building Inspector. It is a by-right use and cannot be denied.

Mr. Pachano said the bylaw asks for power output. He said the information doesn't really tell anything, it doesn't give quantity information and how it affects the human body. He asked the Board if future information should be required to address our interest, specifically what milliwatt percentage affects the human body.

Ms. Nelson said she would make a note for future discussion.

Mr. Fick made a motion to send a letter to the Building Inspector that everything required by the bylaw was submitted, Mr. Hankin seconded, all in favor.

TOWN MEETING REPORTS:

Mr. Rembold said he is still working on the report.

ZONING REVIEW/DISCUSSION OF ZONING AMENDMENT:

Ms. Nelson said she attended the Selectboard meeting on Monday along with Mr. Hankin and Mr. Pachano to discuss a sticking point with the marijuana bylaw. The recommendations made by the Selectboard were discussed but not adopted in the proposed bylaw during the public hearings. The Selectboard wants a special permit process for the cultivation use and to be the SPGA for the special permit process. She said the Planning Board does not agree that a special permit should be required although they agreed to require a special permit for a cultivation use over 10,000 square feet and the Planning Board will be the SPGA.

Ms. Nelson said the Planning Board made several attempts to engage the Selectboard in the drafting process of the bylaw. The Selectboard did not participate during the process or make any recommendations for the Board's consideration until the continued public hearing held last month.

Ms. Nelson asked if an amendment could be crafted to be presented at the ATM by the Planning Board.

Mr. Rembold said the Planning Board cannot offer the amendment without voting on it at the public hearing which has been closed.

Mr. Hankin said he is adamantly opposed to an amendment.

Mr. Fick said he is half way opposed to the amendment. He said the Planning Board considers the rights of the property owner. We compromised with the special permit for a cultivation use over 10,000 square feet. He said that is as far as he would agree to go. He said he won't step on the property rights of the people. He said the Site Plan Review process is adequate for review.

Mr. Rembold said with all due respect there are many uses that are restricted in residential zones. Perhaps this should be restricted until we know what it looks like.

Ms. Nelson said she is not willing to jeopardize the entire bylaw. We can proceed cautiously and tweak the bylaw at a later time when we know what needs additional oversight.

Mr. Fick said we won't be able to avoid the amendment at the ATM.

Mr. Higa said he thinks Ms. Nelson is worried about the amendment not being supported. If we support the amendment it will be as if it were on the warrant.

Mr. Hankin said he has been to two Selectboard meetings and argued before the Selectboard about the issues. He addressed Sean Stanton, Chair of the Selectboard present in the audience, why would the Selectboard be the better SPGA?

Mr. Stanton responded that the Planning Board should convince him that they would be the better SPGA.

Mr. Higa said we should talk about the use and whether it should be by-right or by special permit.

Mr. Hankin said if an amendment is proposed making the process more restrictive it will likely pass. He suggested if the SPGA is to be changed to the Selectboard, we should pass over the article.

Ms. Nelson disagreed.

Mr. Hankin said the State regulations will impose a 500 foot setback from places where children congregate. That will adversely impact several locations in the downtown area. If the Building Inspector is not given clear guidance he will seek guidance from the ZBA.

Mr. Rembold said he thinks the confusion will be over cultivation.

Mr. Hankin said he had a conversation with the Building Inspector. He will be cautious on all matters and seek guidance.

Ms. Nelson said we need to provide local guidance. Why should we pass over the article?

Mr. Fick said the Planning Board went through a long process and we came up with a good bylaw.

Mr. Hankin said we went through a public hearing with extensive discussion of the bylaw. The amendment hasn't gone through a public hearing and will only require a majority vote to be added to the warrant article.

Mr. Fick said he understands where the Selectboard is coming from but he said he doesn't agree with them. He said we came up with a good bylaw.

Ms. Nelson said to Mr. Stanton that we do have concerns. She said she reached out to the Selectboard as far back as last summer. The Selectboard did not respond to the Planning Board's effort to include them in the process.

Mr. Stanton said you did a good job. You did not include the Selectboard's comments in the final draft of the bylaw.

Mr. Fick said the Selectboard does not have a role at this point.

Mr. Stanton said it doesn't make sense for you to say the Selectboard doesn't have a role. We will discuss the bylaw and make an amendment.

Mr. Rembold said the Selectboard has delivered comments and may amend as they see fit.

Ms. Nelson said this agenda item is a discussion of information gathered from the Selectboard meeting. The Board knows what the Selectboard's opinion is. It is clear that there are two camps. Ms. Nelson said she had a conversation with Mr. Musgrove who was unable to attend this meeting. She said he will support the amendment because he wants to see local control pass.

Mr. Nelson said she would support the amendment to get the bylaw passed.

Mr. Fick said the only compromise at this point is for the Planning Board to move toward the Selectboard's position.

Ms. Nelson said it is fair to say that we did compromise with the Selectboard by adding #4 and #5 of the proposed bylaw.

Mr. Hankin said the State regulation is 102 pages of extremely onerous regulations. It is an open complicated process to get a license from the State. An applicant can't do anything without a Host Community Agreement. How many bites of the apple do you need?

Mr. Higa said the State regulations will be hard for the small guy to get through the process. To put a special permit process in place is not a big deal.

Ms. Nelson said if we go to a special permit process it will be difficult to take it back.

Mr. Stanton said he doesn't have an issue with the way the bylaw is written. If the process is by-right we won't be able to undo an application.

Mr. Hankin said we have the Site Plan Review process.

Mr. Stanton said yes we have SPR. The Selectboard has concerns about what this use will do to our community.

Mr. Higa asked if our bylaw is more or less restrictive than the State regulation.

Mr. Stanton said less restrictive. He said he wants it clear to applicants what they have to do to get a permit. He said he does not want applicants to have to go to the ZBA.

Ms. Nelson said the Board's compromise was the special permit required for a cultivation use over 10,000 square feet or more. She said she doesn't know that there is more to discuss.

Mr. Fick said the amendment will go to the ATM. He said he would rather see the bylaw passed as drafted. Any opportunity to cultivate will be reduced if amended.

Mr. Stanton said should people to do whatever they want? This isn't the wild west.

Mr. Fick said there are guidelines included to provide opportunities. We considered the use carefully. We made the change recommended by you. He said he thought the Selectboard's primary objective was a size limit so we created a limit and added the special permit requirement but that is not adequate.

Mr. Stanton said he would have to go back to see what the discussion was.

Mr. Pachano said he is not clear on what the Town's citizenry wants. What does the Planning Board have to lose by allowing the Selectboard to be the SPGA?

Mr. Hankin said the Selectboard is over reaching. He quoted Mr. Stanton from the last Selectboard meeting where he said "the Selectboard ideally oversees everything that happens in Great Barrington.". The Town Charter allows all boards to have permitting authority. This is not the first time we have had this argument. Allowing the Selectboard to be the SPGA for this bylaw significantly diminishes this Board's power and the attractiveness to sit on this Board. If we give away the granting authority because we are threatened then we will never get it back.

Mr. Pachano asked if recommendations made by the Planning Board on a special permit application can be denied by the Selectboard.

Mr. Hankin said while SPR conditions are mandatory, a separate SPGA would not have to abide by recommendations of other boards and would not have to grant the permit.

Mr. Pachano said the special permit process is appealable. It has to go through us for a recommendation and we give conditions. What does it matter who gives the paper?

Mr. Hankin said the Selectboard argues that they have higher visibility because their meetings are televised. They would be a recommending board, which would be televised, and the public hearing before the Planning Board as the SPGA would be televised. The recommendations we would make to the Selectboard as SPGA would not be televised, therefore a big piece of the process would be visible to the general public.

Mr. Stanton said you are twisting what is being said to your advantage.

The discussion concluded. Ms. Nelson thanked Mr. Stanton for attending the meeting.

Mr. Pachano asked if the bylaw fails will everything go to the Building Inspector for approval.

Mr. Rembold said yes.

TOWN PLANNER'S REPORT:

Mr. Rembold said there will be a meeting for the Complete Streets planning process on April 25 at 6 P.M. at the Senior Center. He said results received from the survey will be discussed and a second survey will be made available after the meeting.

Mr. Rembold said there will be a preliminary scoping session for transportation. State DOT funds for pavement and sidewalks may be available. Discussion needs to begin. Engineering work will begin soon. There will be Complete Streets workshops going forward.

Mr. Rembold said there will be a community meeting on May 8 at 6:30 at the Congregational Church to launch the Heat Smart GB program. He said the meeting will connect people with heating and cooling information.

Mr. Rembold said there will be a marijuana workshop on April 24 at 6:00 P.M. at the Lenox Town Hall to review the State regulations. He said the same evening the continued ZBA public hearing for the O'Brien appeal will be at 7:30 P.M.

Mr. Rembold said there is a plan for a boat launch at Lake Mansfield. The Board can review the plan if they want. It is not required that the Board provide input.

Mr. Rembold said there is a letter from the DEP dated March 28, 2018 outlining local Planning Board responsibilities under Chapter 91 dealing with public waterfronts. He said there are two Great Ponds in Great Barrington that this law would apply to—Lake Mansfield and Long Pond. However, structures are not allowed at either one so the law likely won't ever come up for this Board.

BOARD & COMMITTEE UPDATES/ISSUES & CONCERNS:

There were no updates or concerns discussed.

CITIZEN'S SPEAK TIME:

Eileen Mooney asked about discontinuing a portion of Manville Street.

Mr. Hankin said the Selectboard sent a positive recommendation to the ATM.

Mr. Rembold said the Selectboard was voting to put articles on the warrant. He said he is not sure they intended to recommend on the article or just recommend that it be included on the warrant. The applicant will be at the next Planning Board meeting scheduled for April 26, 2018.

Having concluded their business, Ms. Nelson adjourned without objection at 8:30 P.M.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Kimberly Shaw", followed by a circular stamp containing the letters "CS".

Kimberly L. Shaw
Planning Board Secretary

