

Planning Board Minutes, 04/10/2018

Town of Lenox
Planning Board
Auditorium
April 10, 2018

Members present: Chair Pam Kueber (PK); Kate McNulty-Vaughan (KMV); Kameron Spaulding (KS); Deborah Rimmmler (DR) participated via remote participation.

Absent with notification: Tom Delasco (TD)

Staff present: Gwen Miller, Land Use Director, (GM); Peggy Ammendola, Land Use Clerk, (PA)

Others present: There were 21 members of the public present which included Clarence Fanto of the Berkshire Eagle and Joel Williams of the Berkshire Record, both of whom recorded the meeting. Staff also recorded the meeting.

The meeting was called to order at 6:10 PM.

Documents provided for this meeting:

- Agenda
- Planning Board Minutes-

February 13, 2018
February 27, 2018
March 27, 2018
March 29, 2018

- Short Term Rental Minutes-(On the agenda, but not available prior to office closing.)

March 19, 2018
March 27, 2018

- Zoning Bylaw
- Town Counsel Bard's 2014 Opinion
- PK-on Bard's opinion
- What is in our bylaws related to grandfathered and uses related to this discussion
- Hull Decision
- Mass Municipal Law article on Hull Decision
- STR Bylaw Amendment Articles
- SK Design Group, Inc. Letter of April 10, 2018 "Additional Info-241 Walker St."
- Letter from Attorney Gobel
- Specific Recommendations made to date for consideration: Short Term Rental of Private homes
- How the Zoning/General Bylaws Address Registration and Inspection of Lodging Uses
- Chapter AAIII of the General Bylaw
- Short-Term Rental Zoning Bylaw Amendment 3/30/18
- Notes from GM on Bard changes
- Tom Delasco email, Town Counsel changes and other issues
- Fact sheet from Steve Selzer

Approve Planning Board and STR subcommittee minutes for:

- Planning Board Feb 13, 2018-KS made a motion to invoke the Rule of Necessity and approve the minutes as presented as there was not a quorum. KMV was the only one present who attended that meeting. KMV seconded the motion and all agreed. DR made a motion to approve the minutes with one amendment. KMV seconded the motion and the Board voted to approve 3-0-1. PK abstained. (DR participated remotely.)

- Planning Board Feb 27, 2018-Tabled~
- STR subcommittee March 19 and March 27, 2018-(Listed on the agenda, but not addressed.)
- Planning Board March 27, 2018-Tabled
- Planning Board March 29, 2018-Tabled

Walker-Special Permit Application-Continued hearing for the application of Stone Path Development, Inc. for the property at~241 Walker Street~(Map 8, Parcel 1 and Map 8, Parcel 6-1) in the Residential “R-1A” zoning district.~ The Application and supporting materials are available for review at the office of Town Clerk in Lenox Town Hall between the hours of~8:30 a.m. and 4 p.m.~and on the Town website. (The project was first presented informally August 29, 2017 and the first hearing was on November 7, 2018.)

PK noted that this hearing has been continued after the resolution of an administrative issue.

Presenting the application was Jim Scalise of SK Design Group. Also present was Dave Ward of Stone Path Development.

The Conservation Commission closed their hearing on March 15, 2018 and issued an Order of Conditions for this project. There were some conditions which are outside of the Commission’s jurisdiction which Mr. Scalise suggested that should be included in the Board’s decision.

Mr. Scalise provided site plans for the project and an update since the last meeting. He reviewed his letter of today which addressed several emails from the Board seeking clarification of a few portions of the Special Permit. The key points were:

- How Open Space was calculated
- Yield plan and density bonus- PK requested additional information regarding this item. Mr. Scalise complied and stated that this meets all of the subdivision regulations and Wetland Protection Act. Thirty five percent, or 3.3 acres of this property, for this project, would be required for Open Space. This proposed development would have 6.59 acres.
- Pedestrian connectivity-Reflecting the work done on Complete Streets, PK asked the Board about requiring a sidewalk. Mr. Scalise explained their request for waiving this, citing a proposed bike lane/shoulder was a good compromise. Because of the issues the neighbors of Birchwood Village Townhouses have, there is concern that additional impervious surfaces would add to stormwater. This will require a waiver. KMV felt that because this is a cul-de-sac design, and not being a thru street, a sidewalk is not necessary, but wondered about the plans provided in the Complete Streets Program. GM said that local policy doesn’t differentiate between small, new neighborhoods and existing thru roads and she felt that the incorporation of the shoulder would fit the Town’s policies and allow connection to the new sidewalk proposed on Walker St. Trails in the open space could connect the new and old neighborhood.
- Building design-As outlined by the bylaw with its call for “varied facades”, PK said that she preferred there be 3 different house styles to the proposal for 2; she also felt that varied facades would make the development more appealing to fulltime residents families and there is a greater need for family housing in Lenox than for more second homeowner housing. Mr. Scalise indicated they would try for a third façade design to add to the mix.
- Conservation Easement language-The Board advised the Applicant that Town Counsel did not find the proposed language acceptable. Mr. Scalise responded that the Open Space would be owned and maintained by the Homeowners Association (HOA) and the intention of the applicant is to place a restriction over the Open Space and allow it to be maintained by the HOA. He said the Board could address this in a condition should they approve of the project.

In closing his presentation, Mr. Scalise said that he has addressed all questions posed by the peer review.

Mr. Scalise provided detail with regards to the downstream culverts and stone diversion swale. Gabions, chain link fencing filled with rip-rap, will be used. A swale is designed to be a conveyance for stormwater. The design is to capture and collect the stormwater and distribute evenly over the ground to avoid creating a gully. He feels that the design may be “overkill”, but they are comfortable with achieving the desired results.

The waiver request for the buffer was discussed.

GM will put together a draft for the decision and provide to DR who will be finalizing it. It is anticipated that the decision will be ready for review at the meeting of April 24th.

Attorney John Gobel, who represents the Board of Managers of Birchwood Village Townhouses, which abuts this property immediately to the north, asked the Board to deny this application. He addressed a number of significant issues that he does not believe Mr. Ward has adequately addressed. Attorney Gobel read from his April 10th letter to the Board and provided to the all members a copy of the letter.

Attorney Gobel argued that the purpose of the Open Space Flexible Development, Section 9.7 encourages the preservation of open land and Section 9.7.14 provides for a buffer area of 100 feet at the perimeter of the property, but Mr. Ward has proposed significant improvements in the buffer zone which would result in no buffer at all.

Birchwood Village is located down the hill from the edge of the proposed improvements and both properties share the same drainage area. Even without the development, there is drainage off of the Stone Path property onto the Birchwood Village property. Attorney Gobel maintains that it is possible that the project will not increase the net flow of runoff, but this project would concentrate that flow and add materials such as salt, gasoline, etc.

Attorney Gobel and his clients are concerned that there will be insufficient resources for the condo association which is the party ultimately responsible for the maintenance of the open space. Additionally they feel that there is insufficient recourse by either the condominium association or the town to pursue Mr. Ward and Stone Path Development, Inc. should the need arise. Attorney Gobel feels that if the town wants to have an entity who will be able to honor the conditions of any permit, it must make an effort to confirm that this homeowner entity will have recourse against the developer. He suggested that the buffer zone and detention basin be monitored by his client, Berkshire Village, and that they be given an interest from the developer in such enforcement. This, he feels, is the best way to ensure that the improvements are properly maintained.

KS responded that he preferred to have the Conservation Commission, Lenox Land Trust or BNRC be given that responsibility rather than to handing it over to an abutter. GM said that the Board has the authority to assign to either of those or any other non-profit. She also said that a bond could be secured for ongoing maintenance.

KS made a motion to continue to April 24, 2018 and PK seconded the motion. The Board voted in favor by a vote of 4-0.

After a five-minute break, the meeting was reconvened.

Short-Term Rentals discussion continued among the Board

Continue discussion of Short-Term Rental bylaw including:

- Affirm bylaw intent – The Town has communicated that it will grandfather existing short-term rentals of entire homes, based on a Jan. 22, 2014 Town Counsel opinion.

PK began the discussion by reading the above when GM interjected to clarify that it wasn't meant that the Town is going to definitely grandfather every existing Short-Term Rental, but that this could be argued and that in order to cover the Town either way Counsel had suggested placing registration and inspection of Short-Term Rentals into the General Bylaw. PK responded by reading aloud from previous emails related to this topic and then asked GM to explain them. GM noted that after sending those e-mails excerpted by PK, she clarified w/ Counsel. It was clear that people would have strong reactions to the idea that existing STRs could be grandfathered. Instead of focusing on that, what is the intent of the policy?

PK continued by saying that in the wake of the emails which seemed to indicate that the Town was taking a position she took to mean based on the 2014 letter from Town Counsel that all of these entire dwellings are grandfathered. She said that the agenda topic is not to challenge that, but to understand as a planning board what it thinks it is writing: She asked if the Board was developing a bylaw that puts limits on a use that is already permitted by right or if they are developing a bylaw that makes entire short-term dwelling rentals a new conditional use? She asked what the Board what they think they have and what are they fixing in wake of "new news from the Town".

KS does not think that the emails impact the decision to bring the STR bylaw to the Annual Town Meeting. He believes the Board should take the advice of Town Counsel and vote on adopting the bylaw and have a town regulation on the inspection process. He feels the grandfathered issue should be a separate discussion.

KMV read from a quote "of an early description of the scope of the police power is contained in Commonwealth v. Bearce (1882) which extended the power to all matters which concern (a state's) internal regulation."

DR stated that she is opposed to the proposed bylaw and doesn't think that the Board has the jurisdiction to question Town Counsel. She preferred to talk about the merits of the proposal, and not interested at this time in the grandfathered issue as there are so many important issues before the Board. She cautioned rushing to the Annual Town Meeting.

PK read from email from TD who was unable to attend tonight's meeting. He stated that in his opinion the new information on grandfathering "is a game changer and will create much confusion." He had questions and issues about the proposed bylaw and felt that the Board should seek the opinion of Town Counsel on the applicability of the home occupation regulations. He had specific questions about several other areas within the proposed bylaw. He concluded that more work needs to be done on the proposed bylaw and should not be brought forward to the Annual Town Meeting.

PK said that the Board has six months from the close of a public hearing to make a decision. She doesn't want to close the public hearing. She feels that the Board, at the request of the Town, tried its best to create a proposed bylaw in time for May Town Meeting, but that in the past week too many questions have arisen and it would be better to get back on to the original timeline, do more work, and have the bylaw for November.

KS expressed frustration stating that a week ago the Board voted 4-1 in favor of this bylaw. He said that Town Counsel has said that the proposal is a sound law. He feels that with the many sub-committee and Board meetings, the Board should be ready to present to the voters. He suggested that they at least add Short Term Rentals and Short Term Rental Homes in the definition section of the zoning bylaw and add to the general bylaw registration and inspection regulations. PK disagreed and argued that for the Building Inspector to issue a Certificate of Occupancy for a new use there must be a bylaw in which to refer. GM, responding to PK's statement of feeling rushed, said that the reason the Town wanted to try to conclude the bylaw and bring it to the voters in May was because there is the 2014 opinion from Counsel in which he states that short term rentals of an entire house is not exclusively addressed in bylaw. She said that the Town wants to make local laws clear as it is important that current homeowners and prospective homeowners be clear on what they can and can't do with their property. She added that since the Board of Selectmen are meeting tomorrow night to finalize the Warrant for the Annual Town Meeting, the Board needs to let the BOS know if there is a zoning bylaw that was approved last week, or a general bylaw or if in the future the Board plans to have a special town meeting.

KMV added that if the Board is divided on whether to support the proposed bylaw, it would be unlikely that the voters would. She believes the Board needs more time.

DR said that she was never in favor of the proposed bylaw, and felt that there was extreme pressure from the inn keepers. She is in favor of continuing to work on this.

PK said that the Board needed to agree whether to continue the hearing and how to accomplish that. She believes that it should continue so as to preclude more people potentially getting grandfathered.

KS suggested that someone who has voted to approve the bylaw needed to make a motion to reconsider the previous motion that the Board approved to have placed on the Warrant.

KMV made the motion to reconsider the vote to move ahead for the Warrant. PK seconded, and the Board voted to agree 4-0 by way of a roll call vote. KS made the motion to approve submitting the bylaw to the Warrant (as he commented -- it had to be stated in the affirmative). PK seconded the motion and by way of a roll call vote DR, PK and KMV voted against the motion and KS voting in favor. The motion failed.

Note: The following (in italics) was on the agenda, but not addressed given the agreement to not have this bylaw on the Warrant for the ATM.
Given this interpretation and with the goal to ensure we are developing bylaw language reflecting our own clear understanding and intent, assess: How grandfathering is addressed within our existing bylaw. (Kate to lead)
Whether we believe we are developing a bylaw that makes these short-term rentals a new conditional use, or whether we are developing a bylaw that puts limits on a use that is already permitted by-right.
Next steps

- *Review correspondence.*
- *Review list of recommended changes that have come in from various stakeholders. Discuss and make amendments as required.*
- *Affirm previous decision to move bylaw forward to the Public Hearing and Town Meeting.*

Short-Term Rentals – Public Information Session

- Short presentation on the proposed Short-Term Rental bylaw
- Comments, questions from public
- Consider amendments as required.

Steve Seltzer-He complimented Board on their work and provided to the members a fact sheet from his research on the availability of hotel rooms in the area. He supports anything that has to do with economic development and feels that the Town should be encouraging the rentals.

Paul Mitchell-Mr. Mitchell quoted the definition of guest room and the building codes. He feels that the proposed bylaw will be challenged and needs further work.

Jim Harwood-He supports the Board for not putting this on the Warrant, but feels that the Board did not delve into the facts from the beginning. He feels that Lenox should not restrict short term rentals. He feels that requiring a special permit for everyone who wants to rent out a short term rental is a bureaucratic nightmare.

Mark Manoli-He felt that progress was made tonight but suggested that there be impact studies. He said that parking issues had been brought up in several meetings, but his research into police reports showed no impact. He believes not permitting short term rentals is a violation under constitutional rights under the Fourteenth Amendment.

Kelly Brown-He supports the Board taking a slower approach to determine what the needs are and how to meet those needs.

Jeff Lynch-He feels that it is very important not to leave non-conforming to future litigants. He thinks that the ZBA and/or Planning Board has to take the position going into the draft process on whether non-conforming, Airbnbs and transient homes are grandfathered.

Carol Brunnschweiler-She said that she is a “vacation renter” who grew up here. She told of her experience of being on her own and having to work multiple jobs in order to buy her home. She is able to afford to live in her home by providing a rental.

Tom Johnson-He cautioned against creating a bylaw that goes against existing take money for a room that is a lodger you pay tax and register with the state. Building codes can’t go around them mistake to do.

Note: The following (in italics) was on the agenda, but not addressed given the agreement to not have this bylaw on the Warrant for the ATM.

Review warrant item language

- *Due to BOS April 11, current DRAFT:~STR Bylaw Amendment Articles*

Prepare for Public Hearing, April 17

- *Discuss and prepare key talking points/slides for April 17 Public Hearing.*

KS made a motion to adjourn. PK seconded the motion. The Board voted to agree and the meeting was adjourned at 8:40 PM.

Respectfully submitted,
Peggy Ammendola

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