

Town of Lenox
Planning Board
Board of Selectmen's Meeting Room
July 10, 2018

Members present: Chair Pam Kueber (PK); Kate McNulty-Vaughan (KMV); Kameron Spaulding (KS); Tom Delasco (TD); Deborah Rimmmler (DR)

Staff present: Peggy Ammendola, Land Use Clerk (PA)

Others present: Recording the meeting were Joel Williams of the Berkshire Record, Clarence Fanto of the Berkshire Eagle, Kelly Brown, and staff. Jeff and Sally Vincent were present to present two Form As. Seven members of the public were also present.

Documents provided to the Board in advance of this meeting:

1. STR Subcommittee draft minutes for June 29, 2018
2. Adult Use of Marijuana 6 28 18
3. June 30- Subcommittee updates
4. June 28- General Bylaw Draft
5. Multi-family in C and min apartment size (2)
6. Proposed Master Plan Update Scope of Work
7. Timeline for Master Plan Update
8. Comparison of Master Plan Approaches
9. Updated June 6 Calendar to Nov 1 Town Meeting
10. Adult Use of Marijuana Bylaw
11. Prohibition of Adult Use Bylaw
12. Temporary Moratorium on the Sale and Distribution of Recreational Marijuana

PK and KM-V to approve STR subcommittee meeting minutes for June 29-KMV made a motion to approve the minutes and PK seconded the motion. They approved the minutes by a vote of 2-0. (The other members are not on the subcommittee.)

Form A, Plan of Land Prepared for Daniel Liston, Gary T. Liston and Sally Vincent, 46 Elm St., Map 39 Parcel 31-

Sally Vincent presented two Form As identified as Option 1 and Option 2 that were prepared by John Campetti of Foresight Land Services. They had a survey done, but at the end of the process a family member stated that he would like to acquire the property. This resulted in deciding to have a second survey done. One Form A would create two new lots and the other would create one new lot. Ms. Vincent wants the endorsement of both Form As, but with the understanding that when the family makes a decision on which Form A is preferred only one will be recorded at the Registry.

The Board reviewed both plans and determined that each met the requirements of a conforming lot.

KMV made a motion to endorse both of the plans as presented with the understanding that eventually only one will be filed. TD seconded the motion. The Board voted to approve 5-0. There was additional discussion to clarify that when one plan was filed, the other could still be filed at a later date, but that period would not be indefinite; the applicant's attorney Jeff Lynch commented in agreement that the second (non-filed) plan would not be valid for an indefinite period.

Adult Use of Marijuana

Review bylaw proposal v2

Documents for this discussion were:

10. Adult Use of Marijuana Bylaw
11. Prohibition of Adult Use Bylaw
12. Temporary Moratorium on the Sale and Distribution of Recreational Marijuana

Note: (At the meeting, the Board stated that the document identified above under the heading: “Documents provided to the Board in advance of this meeting”, #2. Adult Use of Marijuana 6 28 18 was being replaced with the document identified as #10. Adult Use of Marijuana Bylaw – which contained Town Counsel comments/recommended changes. Even though both documents had the same heading which states *Version 6/6/18*
Updated 6/28/18 re PB, they were not the same.)

The Board reviewed Adult Use of Marijuana Bylaw and discussed in detail possible changes. It was decided to call the different uses for marijuana as “marijuana businesses” and to have a Section J-.TD felt that manufacturing of marijuana would be acceptable in the Industrial zone, as the growing facilities are box buildings that would not be recognizable. KMV stated that if everything was kept together in the table and there was a hard line on the residential districts, there would be a chance the bylaw would be approved at Town Meeting. TD expressed concern with the vague language used in this document.

Next the Board reviewed the Prohibition of Adult Use Bylaw. PK said that the Temporary Moratorium was recommended by Town Counsel. KS explained that:
If the first article passes by a 2/3 vote, the second (prohibition) and third warrant articles (moratorium) will not come up for a vote.
If the first article fails and the second article (prohibition) passes, the third article will come up for a vote.
If the second article fails, the third article also will come up for a vote in case the ballot initiative fails.

Note: KS left the meeting at 7:00.

Short-Term Rentals

Documents for this discussion were:

3. June 30- Subcommittee updates-*This document contained KS’s version of the bylaw vs. the version prepared by KMV and PK.*
4. June 28- General Bylaw Draft

At the meeting KMV provided an additional document she created which stated four purposes for a STR bylaw, edits to the definition of Residential Use and a few other edits.

Review Zoning Bylaw draft dated June 30

Review General Bylaw draft dated June 28 (This item was tabled until the next meeting.)

PK began the discussion by summarizing some of the key discussion points from the June 26 meeting with Town Counsel. She said that Town Counsel Joel Bard told the Board that it is his opinion that an entire dwelling rented out full time as a STR, and never lived in full time would be a commercial use and would not be considered a pre-existing, non-conforming, e.g. a grandfathered use. In the event there were challenges of claims of being a grandfathered, the Building Commissioner would make the determination. If either party disagreed, this would go before the Zoning Board of Appeals. Further appeals could go to Land Court or Massachusetts Supreme Justice Court. PK said that in working on language for the STR bylaw, she had carefully considered some of Attorney Bard’s other comments, in particular the need to clarify and take great care in choosing precise language and in writing definitions, including the topic residential use.

The Board reviewed the document, #3 June 30 Subcommittee Updates. PK advised DR that at the last meeting, the other four Board members agreed to go with KS's version, but both she and KMV changed words and added information. KMV said that they are trying to fit the existing seasonal rentals, which are permitted from Memorial Day through Labor Day and weekends through Columbus with STR. She said that the changes were not substantive. She also said that the seasonal rental bylaw calls for registration and inspection, but many did not comply. Some of the changes were noted.

TD said that Attorney Bard opined that renting out a couple of rooms in one's home occasionally is a residential use. KMV and PK disagreed that Attorney Bard said that.

KMV said that she feels comfortable with going back to the beginning – that is, focus on writing the bylaw around the seasonal window. She stated that there have been so many permutations that it might be better for the Board to incrementally make changes and return next year to look at some other way of breaking out of the seasonal aspect.

PK said that if anyone wants to rent rooms all year long, they can apply for a Special Permit for a Bed and Breakfast.

Discussion ensued on suggested limitations, regulations, definitions, formatting and language.

DR suggested splitting the most substantive policy questions e.g. seasonal vs number of days, residency requirement, and need for Special Permits -- into separate items/options for citizens to vote on at Town Meeting; she said that she would take the subcommittee's update and work with to see if she can make improvements. The Board was open to this idea.

Public comments:

Mary Jo Piretti-She feels that it is the job of the Planning Board to create the bylaw and she believes that giving options would be troublesome.

Angela Lomanto-She said that if the bylaw allows for 112 days a year that is the occupancy rate of the inns. She feels that it would be impossible to track days. She does not think that it is the job of the Planning Board to make economic decisions. TD took exception and responded that the Board is to be aware of economic vitality in crafting bylaws and it is within the purview of the Planning Board. Ms. Lomanto pointed out that the inns make an economic contribution to the Town.

Attorney Jeff Lynch- He is representing a number of inn owners and B&B's had three comments. His first comment concerned a parking requirement/restriction. After some discussion and clarification with the Board Mr. Lynch realized the parking requirement was addressed in a later draft. Attorney Lynch also spoke about the number of rental days allowed for whole house rentals. The number of days does not have to equal the short term seasonal rental period because he does not see any connection between the two uses. The ability to rent an entire house on a short term basis is something in his view that was never previously allowed. Accordingly the Board should not feel compelled to link this new use to the number of days in existing seasonal rental season. Attorney Lynch's final point was a request that the Board include in the new bylaw a statement about the current bylaw and what type of short term rental is permitted. He thought Town Counsel Joel Bard clearly stated that investor owned homes used only for short term rentals are not allowed. During the meeting with Mr. Bard the Board challenged him to then opine on whether short term rentals by non-investors is permitted. Attorney Bard declined to do so, and instead said it is the Planning Board that must define and interpret the Bylaw. Attorney Lynch's point is the Board should address this issue. It will give the Town a clear sense of what is permitted currently and how the new bylaw changes the current status of allowed short term rentals in the town. Further by defining what is currently allowed, the Town will set up a defense against property owners who claim pre-existing non-conforming use.

Beth Tracy Gamble-She responded to both PK and TD. PK stated that according to what we are reading in the current Hull bylaw, which presumably was approved by the Attorney General, a Special Permit does not need to go with the house. TD stated that it does not go with the property. Ms. Gamble said that she had asked that question of Attorney Bard and that he said that the Special Permit goes with the property only for a conforming building and that the owner had registered. PK added that no Seasonal Rental of Rooms will be grandfathered if no one has registered in and is in compliance with current 8.8.1. She also stated that the entire dwelling is the gray area.

Kelly Brown-He talked about the house and senate bill that states that each locality would be required to have registration and inspection. Data will be provided by STR hosts. He does agree with the approach suggested by TD and Ms. Gamble that the number of days be over the year.

Discussion ensued on if the STR bylaw should be split. TD was in favor of one warrant article being on STRs of rooms and the other would be to modify STRs of entire dwellings. He believes that there should be no options.

KMV and PK go back to the subcommittee to incorporate the changes discussed using track changes. Decisions will be made on specific language, number of days, etc. The Board will then make a decision.

Suggestions were made on how the Board would present the articles at Town Meeting. The Board did not ask DR to split the bylaw into voting options.

PK said that at the July 24th meeting, everyone should be prepared to vote on the bylaw given the board is down to the last few issues. The public hearing is in September.

DR said that she will participate remotely on July 24th as she will be out of town. KS will help set up Facetime so that DR can be seen during the meeting.

Housing: Review updates to proposed bylaw on multifamily in C and minimum apartment size
A document provided for this discussion was provided to the Board members in advance of the meeting:

5. Multi-family in C and minimum apartment size (2)

DR said that she will do a mark-up on the Board's document. KMV will send to DR her notes.

Master Plan:

Review and Approve Revised Scope of Work provided by GM, Decide on Consultant or Re-Issuing RFP w/ Revised Scope of Work.

Documents for this discussion were:

6. Proposed Master Plan Update Scope of Work

7. Timeline for Master Plan Update

8. Comparison of Master Plan Approaches

PK reviewed the latest suggestions on how to proceed with a consultant that would be more efficient. We have many component parts of the Master Plan already framed out in detailed, individual plans, and it's unlikely that members of the Steering Committee will be able to read all these plans in order to provide thorough oversight. So instead, we can set up core teams of 2-3 people from e.g., Housing Production, Economic Development, Open Space, etc. who would read their existing plans and then meet with the consultants to help the consultants frame out the key policy issues, focus data, etc. K-MV summarized this as helping "cut to the chase." PK also suggested having 2 page summaries as a preface to each of the plans.

DR was excited about the new approach and volunteered to take comments and update GM's latest draft to even more clearly communicate this.

Plan agenda for next meeting and review schedule; note for calendar that STR Public Hearing will be continued to Sept. 12

Document provided for this discussion:

9. Updated June 6 Calendar to Nov 1 Town Meeting

The meeting was adjourned at 9:03 PM.

Respectfully submitted,
Peggy Ammendola