

**Town of Lenox
Planning Board
Board of Selectmen's Meeting Room
August 14, 2018**

Members present: Chair Pam Kueber (PK); Kameron Spaulding (KS); Tom Delasco (TD); Deborah Rimmler (DR)

Absent with notification: Kate McNulty-Vaughan (KMV)

Staff present: Gwen Miller (GM), Land Use Director/Town Planner

Others present: Clarence Fanto of the Berkshire Eagle, who along with GM recorded the meeting; Kelly Brown also recorded the meeting.

Documents used at meeting:

STR bylaw Aug 7 2018

Proposed bylaw language

Proposed prohibition bylaw Aug 3

Aug 3 Town Warrant Meeting Article Language including moratorium extension if needed

Aug 3 Housing Revisions

Master Plan July 30

Updated Aug 7 Calendar to Nov 1 Town Meeting

Opening the meeting, PK explained there would be no public comments give the length of the agenda and the need for the Planning Board to take votes on several proposed bylaws. She encouraged citizens to attend the Sept. 12 Public Hearing on the bylaws being proposed and/or to submit written comments.

1. Approvals and Endorsements:

Review and endorse Trinity Church Perimeter Survey Form "A" – Patrick McColgan of Taconic Land Consultants presented a survey of four parcels owned by Trinity Church. Trinity Church is located at 88 Walker St., Map 40 Parcel 39. This is a "perimeter plan", the purpose of which is to combine all into one parcel. The Planning Board reviewed the maps, discussed briefly and agreed unanimously that this plan met the requirements for an Approval Not Required endorsement, and signed the plans accordingly. KS made motion, TD seconded. Approval was unanimous.

Review and endorse the easement plans for Town of Lenox Walker St. project. GM presented the plans. The Town required an endorsement by the Planning Board of the easements involved in the Walker Street reconstruction project. KS acknowledged that he was a homeowner along the route and that his property was part of the easement plan, but that this was not an impediment to his endorsing the plan. The Planning Board reviewed the maps, discussed briefly, and signed the plans accordingly. *Note: the signing took place at the end of the meeting since there were so many pages to sign.* DR made motion to approve, PK seconded, and there was unanimous approval.

2. Short-Term Rentals:

PK recognized recent correspondence on this issue from:

- Armen Sternberg
- Tracy Reis
- Matt and Hannah Keator
- Jo Falacci
- Ted Silverman and Kelly Brown

- Angela Lomanto (Vermont legislation, correspondence received July 17th)

Update on state legislation: GM said that Attorney Bard clarified that language in our bylaw can differ from that in state law.

Review Zoning bylaw draft dated Aug 7 – GM had forwarded an update with Town Counsel comments that afternoon. The Board reviewed this version. Copies were made for citizens in attendance.

Discussion and amendments:

- In General Standards: Adopted proposed amendment to description of nuisances.
- In General Standards, “single-family dwellings, apartments or permitted Accessory Dwelling Units” replaced with “dwelling units” to reflect that there are even more types of dwelling units.
- In Definitions: Added definition of “dwelling unit” from Ipswich: Dwelling Unit: “A single unit providing complete, independent living facilities for one (1) or more persons including permanent provision for living, sleeping, cooking and sanitation.”
 - Document distributed: GM’s printout of five possible definitions taken from other Massachusetts municipalities
- In Definitions: PK had asked GM to ask Town Counsel about clarifying that a Primary Residence must be that of a natural born person, not an LLC or other corporate entity. Town Counsel had agreed with some proposed language to add to that definition, but after some discussion by the Board, it was agreed the Board needs to do some more research into the topic to make sure the Board isn’t excluding residences that may be held in a trust or a similar entity but which are still the residences of actual persons. Agreed that this clarification could be made later.
- In Short-Term Rental of Rooms: TD requested an amendment that would allow “attached ADUs” permitted prior to Nov. 18, 2018, to be included in the bylaw. He reasoned that having a small ADU within a house was not much different than renting two bedrooms and that some residents may have made the conversion to allow their grandmother, for example, to live with them in this regard; moving forward, though, any such new permitted ADUs could not be used for STRs. The Board discussed the issue for some time. The Board again discussed the genesis of ADUs and their purpose. DR was in support of including ADUs as STRs with no limitations and said that in our survey, citizens were 90% in favor of this. DR also expressed objections to making this change so late in the process. PK asked whether the Board should be representing the popular view on this or whether it should be taking into account the larger set of issues involved especially affordable housing. TD stated that the Board should do both. KS said he believed the Board members were elected to study such issues and make recommendations. The group voted 3-1 to make the change. Later, in discussing entire-dwellings, the Board expanded to include detached ADUs in order to avoid having to complicate the bylaw further; the Board did this recognizing that to date there are only about 15 permitted ADUs, a small number, in Town. It was agreed by a 3-1 vote with DR voting against: Rental of the two bedrooms may be in an Accessory Dwelling Unit so long as the Accessory Dwelling Unit received a Special Permit under Section 9.2 of the Lenox Zoning Bylaw prior to November 1, 2018. The Use Table also will be updated accordingly.
- In Short-Term Rental of Rooms -- Registration and Inspection language to be the same as in General Bylaw. This change was adopted.

- In Short-Term Rental of Rooms – The enforcement date was set at May 1, 2019, with Building Commissioner B.J. Church, who was at the meeting, agreeing that it would be better to have all inspection and registration completed in advance of the launch of the busy summer season.
- In Entire Dwelling: It was agreed to add sentence from Town Counsel on Special Permit holder; and also agreed to enforcement date of bylaw being May 1, 2019.
- PK raised the issue of single dwelling units, operating in the same way as STRs, being approved as Motels in the C District by Special Permit, as currently possible under Motels in Use Table. The other Board members expressed support for this, given that such units must go through the special permit process and obtain building permits as a Motel to attain such designation.
- Board voted 3-1 (DR voting against) to move this bylaw forward to Nov. 1 Town Meeting; DR said she is opposed to the bylaw and hopes the Town votes it down. The Board confirmed the Public Hearing date of Sept. 12th (continued from Sept. 11th); next steps include presentation/update to the Board of Selectmen (BOS) on Aug. 22.

Re General Bylaw:

- In Registration section, change “maybe” to “may be”
- Added paragraph on grandfathering prepared by Town Counsel after correspondence was received about the issue
- Added “as well as annual inspection” to 3.a.
- Deleted 3b on taxation etc. as this is outside the town’s purview per se
- DR noted that affidavit for residency was in the general bylaw; she does not support residency requirement so with her vote on General Bylaw wanted to be clear she does not endorse that particular requirement. It also was noted that if residency requirement is stripped from zoning bylaw by amendment at Town meeting, the affidavit requirement will need to come out of general bylaw as well.
- This continues to Town meeting, voted previously.

3. Recreational Marijuana:

Review and amend final document bylaw proposals – The Board reviewed the final draft documents and made no new changes. Discussed whether to advance the bylaw amendment removing RMDs from Industrial zone. PK expressed concern that residents of Lenox Dale did not want retail sales in the area and therefore moving all Registered *Marijuana Dispensary* (RMD) activity to C1A and C3A was a responsive step. TD, KS and DR all believed that it was an appropriate use and good land use planning in the I-zone (Industrial). It was also pointed out that last year, the location was approved unanimously at Town Meeting. The Board voted 3-1 (PK against) to not move the amendment to Town meeting, that is, to leave the Use Table as is with RMDs in the I-zone. There was a unanimous vote to move all other bylaw proposals to Town meeting, 4-0. This will be presented to BOS on Aug. 22nd.

There was discussion about how to stage the warrant articles:

- (1) Adult Use of Marijuana (AUM) – The Planning Board endorsed bylaw proposal setting time, manner and use in various recommended zones.
- (2) Prohibition – In case the Planning Board’s endorsed bylaw fails to gain a 2/3 vote. It was noted that this will not be endorsed by the Planning Board. The Board prepared and is forwarding it to enable the Town to plan for a timely ballot vote if that is required.

- (3) Extension of Moratorium – If Prohibition passes, the moratorium will be needed in case the ballot vote fails; or if both proposed bylaws fail, the moratorium will be needed to allow time to work on new AUM bylaw.

4. Housing Dimensional Requirement Changes:

The Board reviewed the proposed changes. DR and then KS identified a few other instances within the Bylaw that set a minimum square footage (s.f.) size. It was agreed that GM would review the Bylaw one more time for any such examples and that these amendments will be made to the proposed bylaw. That is: The Planning Board is recommending that all requirements for minimum s.f. size for dwellings or dwelling units be removed from the zoning bylaw and instead be determined by the Building Code. These changes will enable the creation of additional housing units that are also more affordable. The Board voted 4-0 to move all drafts to Town meeting and will update the BOS on Aug. 22.

5. Master Plan: Board voted 4-0 to award amended the Request for Proposal (RFP) to the Berkshire Regional Planning Commission (BRPC) assuming they will agree to the changes.

6. Review schedule – The Board reviewed the schedule and agreed to hold the Public Hearing for all three sets of proposed bylaws on one date, Sept. 12th and will be presented in this order: Housing Dimensional Requirements; Adult Use of Marijuana; Short-Term Rentals.

PK asked GM to make sure to check the deadline for publication of notice dates in the calendar (doublecheck PK's count of calendar days).

The Board agreed to cancel the August 28th meeting given that several members would be on vacation. The next meeting is the Public Hearing. PK and GM will work on the presentation and circulate the drafts asking members to relay any comments to GM. Assignment of roles in Public Hearing also will be determined in process.

Submitted by Pam Kueber, Chair