

**TOWN OF LENOX
SPECIAL TOWN MEETING
November 7, 2019**

At 7:03 PM a Special Town Meeting held at the Lenox Memorial Middle High School's Duffin Theater was called to order. A quorum for the meeting was met with over 27 present at the opening.

Moderator John McNinch introduced Greg Alexander, Senior Account Executive with Turning Technologies and asked voters to allow him to explain electronic voting to the town residents. It was unanimously allowed. Turning Technologies agreed to let the town use the response devices or "clickers" as a trial at this Special Town Meeting free of charge.

A motion was made and seconded to waive the reading of the warrant and return of service thereof and to authorize the moderator to declare a 2/3rd vote.

ARTICLE 1: It was moved, seconded and approved unanimously by a voice vote that the Town appropriate the sum of \$534,712 for capital expenditures in the Department of Public Works and, further, to provide for said appropriation, to transfer the sum of \$534,712 from Free Cash as certified on July 1, 2019.

ARTICLE 2: It was moved that the Town vote to amend the Zoning Bylaw to regulate the Short-Term Rental of Rooms and the Short-Term Rental of entire Dwellings by repealing Section 8.8.1 and replacing it with Section 8.4 Short-Term Rental of Residential Property, inserting new definitions in alphabetical order into Section 4, "Definitions" of existing Zoning Bylaw, amend and replace location of lodging uses, and amend the "Schedule of Uses", exactly as published in the warrant for this Town Meeting. Moderator McNinch recused himself and Janet H. Pumphrey took over as Moderator. This bylaw was unanimously approved by the Planning Board and also approved by the Board of Selectmen.

Table 5.2 - Schedule of Uses:

		R3A	R1A	R30	R15	C3A	C1A	C	I	References
H.	Accessory Uses and General Off-street Parking									
1	Short-Term Rental of Rooms	Y	Y	Y	Y	Y	Y	Y	Y	Section 8.4
2	Short-Term Rental of Entire Dwelling Units up to 75 days per calendar year	Y	Y	Y	Y	Y	Y	Y	Y	Section 8.4
3	Short-Term Rental of Entire Dwelling Units an additional 35 days (up to 110 days total)	BA	BA	BA	BA	BA	BA	BA	BA	Section 8.4

8.4 Short-Term Rental of Residential Properties

Definition

Short-Term Rental – An accessory lodging use in an owner-occupied, tenant-occupied or non-owner occupied dwelling unit including, but not limited to, an apartment, house, accessory

dwelling unit, cottage, condominium, or a furnished accommodation that is not a hotel, motel, inn, resort, lodging house, or bed and breakfast establishment, where at least 1 room or unit is rented to an occupant or sub-occupant for 1-31 consecutive calendar days; and all accommodations are reserved in advance; except for certain lodging types excluded from such regulation by Massachusetts General Law.

8.4.1 Purposes

Short-Term Rentals (STRs) as defined in this section are allowed for residential properties in conformance with the following regulations. These regulations aim to balance private, neighborhood, and public interests by establishing middle-ground intensity limits that will:

1. Protect and maintain the residential character of existing neighborhoods.
2. Preserve housing options for new residents by deterring commercial interests from buying housing to use primarily as short-term rental businesses.
3. Enable residents to earn extra money from their properties to better afford to live here, maintain their properties, and contribute to the community.

8.4.2 General Requirements for all Short-Term Rentals

1. During the Short-Term Rental use:
 - a. All overnight parking must be within the property's driveway or garage.
 - b. Events that include tents or amplified music or which would customarily require a license or permit are not allowed.
2. Signs advertising the Short-Term Rental are not allowed.
3. A Short-Term Rental is not allowed on any property with outstanding violations of the Building Code, Fire Code, Board of Health, or Town General Bylaws.
4. Except as allowed in 8.4, the regulations of the underlying districts apply.

8.4.3 Short-Term Rental of Rooms

1. Up to two bedrooms in a dwelling unit may be rented year-round by right provided that the owner or tenant is occupying the dwelling unit at the time of the rental.

8.4.4 Short-Term Rental of Entire Dwelling Units

1. An entire dwelling unit may be rented up to 75 days per calendar year by right.
2. An entire dwelling unit may be rented for an additional 35 days (up to 110 days) per calendar year by Special Permit.

8.4.5 Multiple Dwelling Units on a Parcel

1. If more than one dwelling unit exists on a single parcel:
 - a. The above totals apply to the parcel. The day limits defined above shall be apportioned among those dwelling units.
 - b. Only one dwelling may be used for either Short-Term Rental of Rooms or Short-Term rental of an Entire Dwelling Unit on the parcel at a time.

Amendment: Rinaldo DelGallo, 24 Orchard St. moved to amend the motion as follows: Adding the following language at the bottom of Special town Meeting Warrant Article 2 The aforementioned text shall be referred to as THE AMENDMENT TO THE LENOX ZONING BYLAWS TO REGULATE SHORT TERM RENTALS."

In ADDITION, should a MAJORITY VOTE BE SECURED of this TOWN MEETING formally petitions the General Court pursuant to Section 8 of Article II of the Articles of Amendment to the Constitution of the Commonwealth of Massachusetts, as amended from time to time, (i.e., what is

commonly called a “home rule petition” or “special legislation”) that legislation be adopted precisely as provided in ‘THE AMENDMENT TO THE LENOX ZONING BYLAWS TO REGULATE SHORT TERM RENTALS.’ The General Court may make clerical or editorial changes of form only to the bill, unless the Lenox Planning Board approves amendments to the bill before enactment by the General Court. The Lenox Planning Board are hereby authorized to approve amendments which shall be within the scope of the general public objectives of this petition. If a vote on the preceding proposed “AMENDMENT TO THE LENOX ZONING BYLAWS TO REGULATE SHORT TERM RENTALS.” Submitted to the Lenox Town Meeting pursuant to c. 337 of the Acts of 2018 entitled “An Act Regulating and Insuring Short-term Rentals,” ALSO obtains the 2/3 vote that is required under Mass. Gen. L. c 40A §5 (entitled “Adoption or change of zoning ordinances or by-laws: procedure”) it shall so be adopted, and nothing in this ADDITIONAL effort to seek a Home Rule Petition pursuant to Section 8 of Article II of the Articles of the Amendment of the Massachusetts Constitution shall be interpreted as meaning that short-term rental amendments to the Lenox Zoning bylaw is ineffective or contingent upon approval by the legislature of the additional home rule petition. It is the intent of this warrant article to SIMULTANEOUSLY pursue an “ordinary” amendment to the Lenox zoning bylaws (pursuant to c. 337 of the Acts of 2018, entitled “An Act Regulating and Insuring Short-term Rentals,” under the procedure to establish zoning bylaw amendments under Mass. Gen. L. c. 40A §5) AND ALSO to pursue a home rule petition under Section 8 of Article II of the Articles of Amendment to the Constitution of the Commonwealth.

Moderator Pumphrey deemed this amendment beyond the scope so no vote was taken.

Amendment: Danielle Viletto, 27 Schermerhorn Park moved to amend the motion as follows:

- 8.4.4 Short-Term Rental of Entire Dwelling Units**
1. An entire dwelling unit may be rented.
 2. Delete,

Vote on the amendment using “clickers”

Yes 65

No 149

Amendment fails.

Amendment: Jackie L. Wong, 35 Hubbard St. moved to amend the motion as follows:

- 8.4.4 Short-Term Rental of Entire Dwelling Units**
1. An entire dwelling unit may be rented up to 110 days per calendar year by right.
 2. Delete.

Vote on the amendment using “clickers”

Yes 84

No 126

Amendment fails.

Amendment: Ariel Dawn Smith, 59 Jaynes Rd. B moved to amend the motion as follows:

- 8.4.4.**
2. An entire dwelling unit may be rented for additional days by Special Permit.

Vote on amendment using “clickers”

Yes 65
No 128
Amendment fails.

**Judy Moss, 177 West St. Called the Question and it was unanimously agreed.
Moderator Pumphrey asks for a vote on the original Motion,
That the Town vote to amend the Zoning Bylaw to regulate the Short-Term Rental of Rooms and the Short-Term Rental of entire Dwellings by repealing Section 8.8.1 and replacing it with Section 8.4 Short-Term Rental of Residential Property, inserting new definitions in alphabetical order into Section 4, “Definitions” of existing Zoning Bylaw, amend and replace location of lodging uses, and amend the “Schedule of Uses”, exactly as published in the warrant for this Town Meeting.**

Vote on original Motion using “clickers”

Yes 151

No 61

Motion passes with more than 2/3 votes.

ARTICLE 3: Selectmen Chairman Ed Lane moved that the Town vote to amend the By-laws of the Town of Lenox, Massachusetts, by adding a new Chapter XXVIII, Inspection and Registration of Short-Term Rentals, exactly as published in the warrant for this Town Meeting. Approved by Board of Selectmen

Chapter XXVIII

Inspection and Registration of Short-Term Rentals

Applicants for short-term rental uses must complete a registration application with the Town Clerk. Requirements include:

1. A Certificate of Compliance from the Building Commissioner

The Building Inspections Department shall inspect the premises to determine adherence to applicable zoning, building, safety and housing codes and to determine maximum occupancy, and will issue a Certificate of Compliance if the premises meet all applicable requirements. If the Department and applicant are unable to schedule an inspection within sixty (60) days, a temporary registration number may be issued.

Applicants may need to apply for a Special Permit from the Zoning Board of Appeals (ZBA).

2. Registration with the Town Clerk

Upon receipt of applicable zoning and building permits as may be needed, the Town Clerk shall issue a registration number and certificate. To complete the registration, the following information is required:

- a) Name, address, telephone number(s), email address.
- b) The registration number shall be displayed at all times in online listings, or any other form of listing, and at the short-term rental property.
- c) Local contact (name, address, telephone number(s) and email address) on file if owner of record does not reside in Berkshire County.

3. Annual Renewal

Annual renewal through the Building Inspections Department is required and will be granted subject to continuing evidence of adherence to zoning, building, safety and housing codes as well as annual inspection.

4. Fees

The Select Board or its designee may set and periodically revise a schedule of fees for registration, permit application, and inspections of short-term rental properties.

Amendment: Ed Lane, Chairman of the Selectmen, 101 Crystal St. moved to amend the motion and explained that the Board isn't ready and realized this after their last Selectmen's Meeting. He'd like to STRIKE the words "Inspection and" from the title STRIKE Section 1, Section 3, and Section 4 in their entirety STRIKE the title from Section 2 STRIKE the first two sentences from Section 2 ADD the following sentence to the end of the bylaw: "The application shall be in a format approved by the Board of Selectmen. The Town Clerk will issue a registration number upon approval of an application."

Vote on amendment using "clickers"

Yes 132

No 46

Amendment passes

Amendment: Rinaldo DelGallo, 24 Orchard St. moved to amend the motion:

2. Registration with the Town Clerk

- d.) Provide State Department of Revenue (DOR) number as proof of registration with the DOR.**

Vote on amendment using "clickers"

Yes 127

No 55

Amendment passes.

Moderator Pumphrey asked for a vote on Article 3 Motion as Amended:

Vote on the Motion as amended using "clickers"

Yes 173

No 23

Motion passes.

ARTICLE 4: It was moved, seconded and approved by voice vote that the Town amend the By-laws of the Town of Lenox, Massachusetts, by adding a new Chapter XXIX, Preservation of Historically Significant Buildings, exactly as published in the warrant for this Town Meeting. Approved by Board of Selectmen and Historical Commission

CHAPTER XXIX

Demolition Delay Bylaw for Preservation of Historically Significant Buildings

This bylaw will take effect March 1, 2020.

Intent and Purpose

This bylaw is enacted for the purpose of preserving and protecting significant buildings, streetscapes and neighborhoods within Lenox which constitute or reflect distinctive features of the architectural, cultural, economic, political or social history of the town and to limit the detrimental effect of demolition on the character of the town. Through this bylaw, owners of preferably preserved buildings are encouraged to seek out alternative options that will preserve, rehabilitate or restore such buildings and residents of the town are alerted to demolitions of significant buildings. By preserving and protecting significant buildings, streetscapes and neighborhoods, this bylaw promotes the public welfare by making the town a more attractive and desirable place in which to live and work. To achieve these purposes the Historical Commission is authorized to advise the Building Inspector with respect to demolition permit applications. The issuance of demolition is regulated as provided by this bylaw.

Definitions

APPLICANT - Any person or entity who files an application for a demolition permit. If the applicant is not the owner of the premises upon which the building is situated, the owner must indicate on or with the application his/her assent to the filing of the application.

APPLICATION - An application for the demolition of a building.

BUILDING - Any combination of materials forming a shelter for persons, animals or property.

BUILDING COMMISSIONER - The person occupying the office of Building Commissioner or otherwise authorized to issue demolition permits.

COMMISSION - The Lenox Historical Commission or its designee.

DEMOLITION - Any act of pulling down, destroying, removing, dismantling or razing a building or commencing the work of total or substantial destruction. Substantial destruction is further defined as destruction of the street facing facade. Interior demolition and routine maintenance are excluded as is demolition within the Historic District, which is covered by separate bylaw.

DEMOLITION PERMIT - The building permit issued by the Building Inspector for a demolition of a building, excluding a building permit issued solely for the demolition of the interior of a building.

PREFERABLY PRESERVED - Any significant building which the Commission determines, following a public hearing, that it is in the public interest to be preserved rather than demolished. A preferably preserved building is subject to the twelve-month demolition delay period of this bylaw.

SIGNIFICANT BUILDING - Any building within Lenox which is in whole or in part seventy-five years old or older which has been determined by the Commission or its designee to be significant based on any of the following criteria:

- The Building is importantly associated with one or more historic persons or events, or with the broad architectural, cultural, political, economic or social history of Lenox or the Commonwealth; or
- The Building is historically or architecturally important (in terms of period, style, method of building construction or association with a recognized architect or builder)

either by itself or in the context of a group of buildings.

- The Building is a component of a neighborhood of buildings of similar age and or style.

Procedure

No demolition permit for a building which is in whole or in part seventy-five or more years old shall be issued without following the provisions of this bylaw. If a building is of unknown age, it shall be assumed that the building is seventy-five years or more old for the purposes of this bylaw.

An applicant proposing to demolish a building subject to this bylaw shall file with the Building Commissioner an application including:

1. The owner's name, address, email, and telephone number
2. Description of the demolition

Upon receipt of this information, the building inspector shall alert the Historical Commission. If the Commission determines the demolition is significant, additional information as follows will be requested:

1. The address and Town Assessor's Map, block and lot designation of the structure to be demolished;
2. The date of structure establishment as determined by the Assessor's information, deed or other documentation verifying year of construction;
3. The reason for requesting a demolition permit;
4. A brief description of the proposed reuse, reconstruction or replacement and
5. A photograph or photograph(s) of the structure.

The Building Commissioner shall, within seven days, forward a copy of the application to the Commission. The Commission shall, within fifteen days after receipt of a satisfactorily completed application, make a written determination of whether the building is significant.

Upon determination by the Commission that the building is not significant, the Commission shall so advise the Building Commissioner and applicant in writing. The Building Commissioner may then issue the demolition permit.

Upon determination by the Commission that the building is significant, the Commission shall so notify the Building Commissioner and the applicant in writing.

No demolition permit may be issued at this time. If the Commission does not notify, the Building Commissioner may proceed to issue the demolition permit.

If the Commission finds that the building is significant, it shall hold a public hearing within thirty days of the written notification to the Building Commissioner. Public notice of the time, place and purpose of the hearing shall be properly posted according to local and state law by the municipality and shall be for a period of not less than seven days prior to the date of said hearing.

The applicant, the owners of all adjoining property, the Building Commissioner and the Board of Selectmen shall be sent a copy of the notice.

The Commission shall decide at the public hearing or within fourteen days after the public hearing whether the building should be preferably preserved. If agreed to in writing by the applicant, the determination of the Commission may be postponed.

If the Commission determines that the building is not preferably preserved, the Commission shall so notify the Building Commissioner and applicant in writing. The Building Commissioner may then issue the demolition permit.

If the Commission determines that the building is preferably preserved, the Commission shall notify the Building Commissioner and applicant in writing. No demolition permit may then be issued for a period of twelve months from the date of the determination unless otherwise agreed to by the Commission. If the Commission does not so notify the Building Commissioner in writing within twenty-one days of the public hearing, the Building Commissioner may issue the demolition permit.

Upon determination by the Commission that a building is preferably preserved, no building permit for new construction or alterations to the subject building shall be issued for a period of twelve months from the date of the determination unless otherwise agreed to by the Commission.

No permit for demolition of a building determined to be a preferably preserved building shall be granted until all plans for future use and development of the site have been filed with the Building Commissioner and have been found to comply with all laws pertaining to the issuance of a building permit or, if for a parking lot, a certificate of occupancy including without limitation any necessary zoning variances or special permits, must be granted and all appeals from the granting of such approvals must be concluded, prior to the issuance of a demolition permit under this section.

The Building Commissioner may issue a demolition permit or a building permit for a preferably preserved building if the Commission notifies the Building Inspector:

- a. The owner has made continuing bona fide and reasonable efforts to locate a purchaser willing and reasonably able to preserve, rehabilitate or restore the subject structure and that such efforts have been unsuccessful. For the purposes of this subsection, the term "continuing, bona fide and reasonable efforts to locate a purchaser" shall mean retaining a licensed broker to market the property in the usual manner over a substantial period, obtaining an appraisal from a reputable appraiser and providing evidence of good faith negotiations with potential buyers of the property. These efforts to sell the property shall be deemed unsuccessful only upon a finding that either there were no offers to purchase the property, that no offer from a willing and reasonably able buyer was for at least the reasonable appraised value of the property, or that no agreement to sell the property pursuant to an offer of at least the reasonable appraised value of the property could be reached despite good faith efforts to do so; and
- b. There is no reasonable likelihood that any person or group is willing to purchase, preserve, rehabilitate or restore such structure.

Demolition approval by the Commission is valid for two years.

Administration

The Commission may adopt such rules and regulations as are necessary to administer the terms of the bylaw.

The Commission may delegate authority to make initial determinations of significance to one or more members of the Commission.

Emergency Demolition

If after an inspection, the Building Commissioner finds that a building subject to this bylaw is found to pose an immediate threat to public health or safety due to its deteriorated condition and that there is no reasonable alternative to the immediate demolition of the building, then the Building Commissioner may issue an emergency demolition permit to the owner of the building. The Building Commissioner shall then prepare a report explaining the condition of the building and the basis for his/her decision which shall be forwarded to the Commission.

Enforcement and Remedies

The Commission and/or the Building Commissioner are each specifically authorized to institute any and all actions and proceedings, in law or equity they may deem necessary and appropriate to obtain compliance with the requirements of this bylaw or to prevent a threatened violation thereof.

Any owner of a building subject to this bylaw that demolished the building without first obtaining a demolition permit in accordance with the provisions of this bylaw shall be subject to a fine of not more than Three Hundred Dollars. Each day the violation exists shall constitute a separate offense until a faithful recreation of the demolished building is completed or unless otherwise agreed to by the Commission.

If a building subject to this bylaw is demolished without a demolition permit being first obtained, no building permit shall be issued for a period of two years from the date of the demolition on the subject parcel of land or any adjoining parcels of land under common ownership and control unless the building permit is for the faithful recreation referred to above or unless otherwise agreed to by the Commission.

Historic District Act

Following a determination that the building is significant and preferably preserved, the Commission may recommend to town meeting that the building be protected through the provisions of Massachusetts General Law, Chapter 40C, the Historic Districts Act. The steps required under M.G.L. Chapter 40C shall be followed prior to the establishment of a local historic district. Nothing in this by-law shall be deemed to conflict with the provisions of the Historic District Act, Massachusetts General Laws Chapter 40C. If any of the provisions of this bylaw do so conflict, that act shall prevail. Buildings included within the boundaries of a local historic district established under M.G.L. Chapter 40C shall not be subject to this bylaw so long as the proposed demolition is regulated by the local historic district bylaw.

Severability

In case any section, paragraph or part of this by-law be for any reason declared invalid or unconstitutional by any court, every other section, paragraph, and part shall continue in full force and effect.

ARTICLE 5: It was moved, seconded and approved unanimously by voice-vote to transfer the sum of \$21,000 from Free Cash as certified on July 1, 2019 for vocational education expenses

Moderator McNinch asked the voters if they liked electronic voting. It was shown by “clicker vote” that 140 are in favor and 7 against.

It was voted unanimously to dissolve the meeting at 9:19 PM.

Attest:

**Kerry L. Sullivan
Town Clerk**