

Planning Board Minutes, 09/12/2017

**Town of Lenox
Planning Board
September 12, 2017
Land Use Meeting Room**

Members present: Chair Pam Kueber, (PK); Vice Chair Tom Delasco, (TD); Kate McNulty-Vaughan, (KMOV); Deborah Rimmner, (DR); Kameron Spaulding, (KS)

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

Also present: Jim Biancola and Ellen Roche

The meeting was opened at 6:00 PM.

Documents provided for the meeting:

- Agenda
- Minutes of 8/29/2017
- Timelines to November and May Town Meetings
- Outline of Key Activities This Year
- Initial Notes on Items Discussed During Walk 8-8-2017
- 1909 Design of Main Street Parking-Historic blueline provided for review by Cornelia Gilder
- Lenox Dale Neighborhood Memorandum to Board of Selectmen and Planning Board
- Resident Comments in Tables
- Examples of recreational marijuana prohibition bylaws

Approve Minutes –KMOV made a motion to approve the 8/29/2017 minutes as amended. TD seconded the motion and the Board voted to approve 3-0-2. DR and KS abstained as they were not at that meeting.

Citizen Open Forum- TD said that he had been asked to give an update of the Community Preservation Committee (CPC) meeting that was held last night, but noted that since it was not on the agenda asked if it would be appropriate to give the update at this time. PK consented. TD is the Planning Board member on the CPC.

TD said that Phase I of the new cycle of CPC applications concluded last night. For this year, the deadline for applications was by September 1st. All of the applications had been reviewed and all but one were approved to move to Phase II. The one exception was Stockbridge Bowl Association (SBA). Their application was the same as last year's and the request was for \$250,000 to restore Stockbridge Bowl. TD said among the reasons for not advancing SBA to Phase II was that he and others felt that it was not appropriate to give funding to a private entity, which is a homeowners' association.

TD read off the names of applications that were approved to proceed to Phase II, some of which were Town properties. Requests that are subsequently approved by the CPC go before the voters at the Annual Town Meeting (ATM).

Timelines to November and May Town Meetings -Review timelines to discuss/decide which amendments the Board will focus on for each meeting and discuss work plan.

PK reviewed the document with the deadlines, and pointed out that in order to get an item on the warrant for the November 2, 2017 Special Town Meeting (STM), the Board would have to have agreement on the warrant items at the September 26th Planning Board meeting. The Board of Selectmen would like to begin having two town meetings a year, with the zoning items to be on the November STM and May ATM becomes the budget meeting. She doesn't think that this can be met this year.

PK said that she thought that there were two things the Board could do; Short Term Rentals (STR) and recreational marijuana.

Regarding recreational marijuana, PK explained some of the key points made at the 8/31 BPRC session on this topic, which was attended by KMV, GM and PK. She said that in an election a year ago, Lenox voted 51.2% in favor of decriminalization and sales of marijuana. If the Town voted “Yes” on Question 4 – which it did – sales etc of recreational marijuana can be limited, but it is a two-step process, and this can be done in either order:

- You must get a two-thirds vote on a bylaw at Town Meeting to ban or limit recreational marijuana [there are a variety of limitations that can be done, one or all]. If there isn’t a 2/3 vote, the Board would still have to craft a bylaw.)
- There must also be a ballot vote on the same bylaw, and it needs a simple majority. Ideally, you would do a Town Meeting vote first, since that threshold (2/3 vote) is higher; if at Town Meeting, and there isn’t a 2/3 threshold, you don’t go to ballot vote.

PK said she feels that the Board could be ready to put an outright prohibition on the warrant in November, and said her sense of the Town is that it would want to prohibit recreational marijuana in Town.

KS feels that trying to get something ready for November 2017 would be difficult. The vote at on Question 4 on the State ballot two years ago was in the affirmative. This, he feels, gave a “yes” to the Board to write a bylaw. It is not fair to ban without knowing how it could be regulated, so he feels that a bylaw should be crafted. KS said that a better approach would be to use the time between now and the May ATM to gather information and to inform voters on the pros and cons of recreational marijuana in Towns; PK compared this to the process being used with STRs – don’t jump to conclusions, go through and analysis and info-sharing process. KS suggested that two bylaws be crafted; one would be to regulate recreational marijuana and the other would be to prohibit it.

State law the Cannabis Control Commission (CCC) to promulgate regulations by March 15, 2018. PK stated that she didn’t think that there was enough time to put this matter on the warrant between mid-March and the May 2018 ATM – this had been flagged at the 8/31 presentation; therefore, it would have to wait until November 2018. KS disagreed by saying that with knowledge they have of the three main points to be in the bylaw and having access to frameworks of bylaws already written and likely shared in great part before final regulations are promulgated by the CCC in March, he feels the Board can research and put together something starting early in the year that will require only a minimum amount of editing when the state issues the regulations. The moratorium expires in December of 2018 and if doesn’t have a bylaw place it is going to be allowed in any retail location.

Ms. Roche was invited to share her thoughts. She said that she preferred to have this matter brought up this November and asked how she would go about having it on the warrant. KS said that she would write the bylaw to prohibit the sale of marijuana and get the required number of voter signatures. The number of signatures required for a Special Town Meeting is much higher than for an Annual Town Meeting. It is calculated by a percentage of the last vote, which would be the Presidential Election, and he estimated that to be in the hundreds. (This was later clarified that the number of signatures required would be 20% of the registered voters.) KS also said that he understands that if there are no zoning items on the warrant, it is quite possible that there will not be a Town Meeting this November.

PK said that marijuana regulations could also be addressed under the General Bylaws of the Town, which is the purview of the Select Board.

Ms. Roche asked the Board to vote.

KS made a motion that the Board add to the existing town bylaws prohibiting uses to say that all types of recreational marijuana establishments are outlawed in Town of Lenox.

There wasn’t a second to the motion, and there were questions among the Board members to clarify what was being voted on. KS argued that the choices were to move to go forward or to ban. PK said that the Board wanted a motion on whether the Board was going to put item on the agenda for November. KS clarified his motion by saying that the only thing the Board could do in November is a ban as the Board could not write a regulation bylaw before the state has regulated, leaving the only option to be a ban.

PK said there could be a motion that the Board will consider regulations around commercial regulations on marijuana to be move forward after the March regulations are issued by the state. KS said that the Board could not consider a future motion.

PK asked why there should be a vote on this, and KS explained that Ms. Roche requested the Board to vote. It was explained that if the Board votes “Yay” on this motion, it means the Board supports a ban on marijuana and it will be on the November TM warrant. If the Board votes against the motion, i.e., “Nay”, it means the Board is against a ban. The vote was 0 in favor of the motion, and 5 against the motion. KS and DR agreed that they would work together on the marijuana topic starting in January. The plan is to have two public forums sometime in January and February to provide information on how recreational marijuana would work in Lenox and what it means. During this time work will start on the crafting of a bylaw. The scheduled March 13, 2018 PB meeting will be moved to March 20th to coincide with the release of the regulations created by the CCC so that the Board can move promptly into the final phase of drafting the bylaw.

PK explained to Ms. Roche that she had the option of going to the Select Board to ask for them to propose a prohibition at the November Town Meeting. PK also explained the process the PB would use to get to May – two public forums and a public hearing – and the goal would be to provide ample opportunity for voters to weigh in with their views. PK reminded the Board that Town Manager Chris Ketchen had said that if the Board needed funding for updating the Master Plan, they could ask for it in November. It was agreed that PK and GM will work on a request for proposal..

Short Term Rentals (STR) - TD believes that the Board could be ready to present an amendment to the seasonal rental of rooms bylaw in November.

PK stated that the Board could clarify ambiguity about whether non-owner-occupied homes could be STR'd in their entirety. DR said that in clarifying, in a way, it would be prohibiting. She feels that since the Board is just starting the process to talk to the public and since the state will be coming out with legislation within the next year, it would be premature for the Board to make any changes. The group agreed they would wait on any changes so that they could go through the discussion process with voter and present one comprehensive package.

GM pointed out that KS and the consultant have provided specific language for Affordable Housing. GM and PK have combined information from the Housing Production Plan, Equitable Development, KS's document and information from affordable housing in two different formats to be helpful in deciding next steps.

Discussion ensued on the number of items the Board is working on, which item gets priority, in order to bring closure and get to Town Meetings. It was agreed that the Board is limited in terms of what they can do regarding the Lenox Dale and Village Parking projects, so these need to be finished up and passed on to the Board of Selectmen and Town Manager for their follow up. PK said she would write a cover memo with out thoughts on the parking plan.

The Board discussed their strategy for accomplishing their goals. The next meeting, September 26th, will be dedicated solely to affordable housing bylaw changes to get ready for the November 2017 STM including (1) agreeing on the order in which to consider bylaw changes, and (2) working on those. For example, KMV said we should be looking at which bylaws enable creation of new Subsidized Housing Units vs. those that create market-rate units. If a few bylaw amendments can be completed on 9/26, the public hearing could be 2 weeks later. There is a list of non-conforming lots that KS used in creating his document for housing. KMV asked if it was possible to do apartments in the commercial zone. It is believed that the Board can come up with 3 to 4 proposed changes to the bylaw for the STM.

Regarding affordable housing, KS stated that he feels that if the minimum square footage for apartments were eliminated, developers would be more inclined to create. Presently the bylaw square footage is limited to 700 square feet. He also supports a zoning change that would make it easier to have a duplex. The bylaw requires a larger lot for a duplex than what it requires for a single-family home.

PK suggested the Board to look into creative solutions for affordable housing, e.g. negotiating an additional unit in exchange for adding funds to the Affordable Housing Trust, etc. She wondered if the proposed development at 241 Walker could be considered as an opportunity for some type of contribution to affordable housing. TD pointed out that this site has limitations for developing extra units. Both Open Space & Recreation Plan (OSRP) and Inclusionary Development should be examined to see if there could be changes which could result in additional affordable units.

Note: Mr. Biancola had attended the meeting to discuss his ideas for streamlining the sign bylaw and making it easier to understand. Due to the length of the meeting, he left before he had the opportunity. PK will contact him tomorrow and discuss a date to schedule a specific meeting for him to make his presentation.

KMV made a motion to adjourn. TD seconded the motion and the Board voted to agree 5-0. The meeting was adjourned at 8:05 PM. The following agenda items were tabled:

- Longer update on Commercial Marijuana seminar
- Discuss findings and annotate recommendations from Aug. 8 walking tour of Lenox Village potential parking plan improvements — Continuing the discussion and review from July 11, July 25 and Aug. 8, discuss and annotate Planning Board recommendations for improvements to Lenox Village parking; decide how to move forward with improvement plan recommendations. To include: (1) proposed interior walking path, (2) proposed “master lot”, and (3) view and discuss other potential sites for more parking.
- Lenox Dale review — Review and discuss memo on findings and recommendations from Lenox Dale research and discuss/decide next steps.
- Info on Other Meetings: BRPC — Update on July 27 meeting (PK) & Short-Term Rentals subcommittee (PK/DR)

Respectfully submitted,
Peggy Ammendola