

Planning Board Minutes, 10/25/2016

**Town of Lenox
Planning Board
October 25, 2016
Landuse Meeting Room**

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

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

The meeting was called to order at 6:06 PM.

Documents Available for This Meeting

- There were no new documents. The Board worked from their packet provided at their meeting of October 18, 2016.

Action Items for This Meeting

- Priorities list for 2016 to be revisited as the first item on the agenda for November 15, 2016.
- An updated draft of the changes made tonight to the Zoning Bylaw Amendments-Parking Bylaw Revisions will be prepared.

KS advised the Board that a Form A was being presented. Peter Nikitas of Foresight Land Services and David Carpenter, an associate of the property owner were present.

The Board discussed the appropriate procedure for posting Form As on Planning Board agendas pursuant to the Open Meeting Law. GM had been advised that even though tonight's ANR had not been placed on the agenda within the requisite 48 hours, it could be discussed under open session as an item not reasonably anticipated within 48 hours. She also noted the Board has 21 days to act on a Form A. PK stated she was not comfortable with going forward w/ the item if hadn't been posted, but the group ultimately decided to review the ANR. The Board agreed to proceed in hearing Mr. Nikitas presentation.

Before the Board reviewed the ANR, they discussed the procedure for endorsing an ANR for the benefit of the newest Board members, DR and PK.

Mr. Nikitas provided the plan which is to create four building lots. The frontage is 620 feet; three lots would have 150 feet of frontage and one 170 feet. There is an existing curb cut. There will be a common drive for the four lots, but this is not relevant to the Board's endorsement. KS said that the lots meet the requirements established for an ANR. GM responded that for each of the four lots there was real access, required frontage and lot size for this zoning district, therefore the created lots conform. PK asked the others if the Board should look at case law to make sure that this is a legal way to do it. KMV said that the requirements were met for the Board's endorsement even though the Board may not approve of the lot configuration.

KMV made a motion to accept the ANR as presented and TD seconded the motion. PK asked to put an endorsement on hold, saying that she felt it was an odd proposal. She said that the ANR should be properly noticed and placed on the agenda for a meeting in two weeks. GM pointed out that an ANR does not require a public hearing per MGL Chapter 40A. KS agreed with PK on "how it looks", but stated that this is a robotic procedure and the applicants have demonstrated that they have met the requirements for an ANR endorsement.

GM responded that an ANR and subdivisions are controlled by Section 81 of Chapter 41. She read from (M) of that chapter:

"Subdivision" shall mean the division of a tract of land into two or more lots...provided, however; that the division of a tract of land into two or more lots shall not be deemed to constitute a subdivision within the meaning of the Subdivision Control Law; if, at the time it is made, every lot within the tract so divided has frontage on:

- *A public way or a way which the clerk or town certifies is maintained and used as a public way, or*
- *A way shown on a plan previously approved and endorsed in accordance w/ the Subdivision Control Law, or*
- *A way in existence (See MGL 41, §81 (M) for full explanation).*

PK referred to the Lenox Zoning Bylaw and read the definition of frontage: *A lot line coinciding with the sideline of a street which provides both legal rights of vehicular access and physical vehicular access to the lot, said line to be measured continuously along a single street or along two (2) intersecting streets if their angle of intersection is greater than one hundred and twenty (120) degrees. Vehicular access to a building site on the lot shall be exclusively through the frontage of the lot.* In this Form A, she argued that the access to the building is not exclusive through the frontage of the lot because it is a shared deeded lot. KMV said that it is a shared deeded driveway. PK said that this is not exclusive access to the back lots. There was further discussion regarding what constitutes exclusive access; the group concluded it was the frontage on East Street. Mr. Nikitas and his client stated there are other properties in town with shared driveways. The Board agreed that it would be up to the Building Commissioner to determine the driveways' design compliance with the Zoning Bylaws when issuing any requested building permits.

PK stated for the record: "I agree there is vehicle access to each lot, but that it would require 4 driveways according to my understanding of "frontage lot line" definition, page 19, of the bylaw and that is a quick look. Perhaps there is other contradictory information in the bylaws or in Massachusetts State whatever."

There was no further discussion. The Board voted to endorse the Form A 5-0.

HDC Guideline & Bylaw Revision Update-KS reported that he was at the HDC's last meeting and they were working on a small section of the Guidelines and there are a number of changes to the language. He said that they are getting close to completion and highlighted a few items that the HDC discussed. They were:

- Eliminating all references to color. A building can be repainted without approval by the HDC as it can't be enforced. For new construction, there are stipulations as to color, e.g. a fence post color is limited, but once it is approved, an owner could repaint using another color.
- The membership of the HDC is limited to business owner, architect, a Realtor®, Planning Board member etc., and this has proven to be restrictive in filling positions. This is a proposed change is to eliminate the planning board member requirement.

KS said that other issues before the HDC is enforcement and considering having affirmative maintenance and demolition delay bylaw. The latter would need for the property owners to "buy in" to the idea.

Discussion ensued regarding the HD bylaw with regard to signage. The HD can be more restrictive than the zoning bylaw, but not less. Should the HDC decide to change their regulations for signs to be more restrictive, the Planning Board doesn't have to amend the zoning sign bylaw.

Zoning Bylaw Amendments

Parking Bylaw Revisions; working documents:
proposed-bylaw-amendments parking-10-7-2016

- **proposed-bylaw-amendments definitions-10-7-2016**

The Board worked with their packets that were provided at the last meeting. KMV suggested that amendments be written in an affirmative way. Changes are shown as tracked.

The Board discussed other parts of Section 7 and eventually came back to 7.1.1 to make further changes. At that point GM suggested that the Board approach from a different way by coming up with policy, the objectives, then determine the language. The Board discussed which changes would be exempt from parking requirements:

- Use change with no substantial structure change exempt from parking requirements
- Use change with substantial structure change not exempt from parking requirements
- New construction with no sub structure change from previous buildings (Within limits) under substantial exempt from parking requirements
- New construction above substantial structure change not exempt from parking requirements

The Board confirmed there is a provision in the existing Bylaw that allows property owners to seek a Special Permit to reduce parking requirements. This is Section 7.1.5.

The group was ok with removing Norway Maples from the ZBL as they are an invasive species. The group will not require conformity with the loading requirements.

GM will provide updated policy to the Planning Board for the next meeting on November 15th.

Revisions to Definition Section: The group will revisit on November 15th.

Committee Assignments & Board Reorganization:

For the benefit of the newer Board members, PK and DR, a description of the responsibilities of the various committees was provided. After discussion,

KMV made a motion to approve the appointment of these members to the five committees:

Affordable Housing-KMV
Historic District Commission-KS
Community Preservation Committee-TD
Land Management-DR
Berkshire Regional Planning Committee-PK

KMV moved to nominate Pam Kueber as Chairperson. She noted that the Board is meant to rotate Chairmanship regularly, and that she received comments from concerned community members who perceived KS's Chairmanship and position as Chamber Director to be a conflict of interest. She said that PK is very organized and would keep the group moving forward.

Others on the Board indicated they had not heard of these concerns. KS explained that he had sought out opinion from Counsel who did not see a conflict and had recused himself from meetings where the perceived conflict might make people uncomfortable. KS said he would be happy to remain as the Chair until at least June. The group will revisit the issue in June.

PK stated that she did not feel qualified to accept the nomination to be Chair, but she was open to serving as Vice Chair. KMV withdrew her motion. TD made a motion to nominate KS as Chair and KMV seconded the motion. The Board voted to approve 5-0. TD made a motion to appoint PK as Vice Chair and DR seconded the motion. The Board voted to approve 5-0.

Approve Minutes:

September 27, 2016-KMV made a motion to approve the minutes as amended. TD seconded the motion and the Board voted to approve 5-0.
October 18, 2016-PK made a motion to approve the minutes as amended. DR seconded the motion and the Board voted to approve 5-0.

Correspondence-The correspondence was not reviewed, but it is available for the members to review at their convenience.

The Board agreed that for the rest of the calendar year, and taking the holidays into consideration the meeting dates will be November 15th, November 29th, and December 13th and will determine remaining meetings in December at these next meetings.

Other Business:

- KS suggested that they resume their talks about a marijuana bylaw after the elections.
- It is expected that a Special Town Meeting related to a land deal related to the Town's objective to the installation of a solar array will be called and held before the Annual Town Meeting. Regarding the Planning Board's proposed amendments it is thought that it is more likely to be presented at the Annual Town Meeting. The Board discussed the importance of making the proposed parking amendments very clear to the public and to talk about the broader implications.

TD made a motion to close the meeting and KMV seconded the motion. The Board voted to agree 5-0 and the meeting was adjourned at 9:25 PM.

Respectfully submitted,
Peggy Ammendola