

## Planning Board Minutes, 04/24/2018

Town of Lenox  
Planning Board  
Board of Selectmen's Meeting Room  
April 24, 2018

Includes two minor edits that were not included in the set sent to email subscribers.

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

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

**Others present:** Jim Scalise of SK Design; David and Matthew Ward of Stone Path Development for the 241 Walker St. project. Four members of the public present were: Linda Miller, Kelly Brown, Steve Seltzer, and Bruce Gamble. Joel Williams of the Berkshire Record was also present. Both he and staff recorded the meeting.

### Documents provided for this meeting:

Agenda

Special Permit Decision/Proposed Findings For Walker Street

Planning Board Calendar from April through November

Discussion document "Who Owns the Housing Stock in Lenox – and Why Does that Matter?"

March 29, 2018 minutes

April 10, 2018 minutes

The meeting was called to order at 6:07 PM.

**Walker-Street Special Permit Application**-Continued hearing for the application of Stone Path Development, Inc. for the property at~241 Walker Street~(Map 8, Parcel 1 and Map 8, Parcel 6-1) in the Residential "R-1A" zoning district.~ The Application and supporting materials are available for review at the office of Town Clerk in Lenox Town Hall between the hours of~8:30 a.m. and 4 p.m.~and on the Town website. (The project was first presented informally August 29, 2017 and the first hearing was on November 7, 2018.)

Presenting the application was Mr. Scalise of SK Design. Linda Miller, an abutter, was also present. She lives at Birchwood Village Townhouses

Mr. Scalise handed out his letter of April 24<sup>th</sup> to the Board members in which he addressed a few remaining questions from the last meeting.

Within the letter were three proposed designs vs. the two previously proposed; a further explanation of the buffer requirement setback (Section 9.7.14); and how the Board could provide relief from the Buffer Area requirement in accordance with Section 9.7.18. He confirmed that the stormwater measures in the Open Space are more elaborate than required as a result of the neighbors' concerns.

Mr. Scalise also reviewed the site plan.

The Board then reviewed line by line the Special Permit Decision/Proposed Findings that was generated by the Land Use Director, Gwen Miller. Edits were suggested, discussed and made.

On page 2 Section II, discussion ensued with regards to a request for a waiver from Section 9.7.12.1. GM had recommended that the Board require the petitioner to convey the land in title to the Town of Lenox. PK asked to confirm whether there were stormwater management systems within the 100' buffer and whether that buffer was contained in the Open Space. Mr. Scalise answered yes to both questions. PK said that a concern she has is that the Town would own property with significant engineering under it that is related to a drainage system with the abutters next door; this is fundamentally why 100' buffers are supposed to be undisturbed within the bylaw. Mr. Scalise suggested this could be handled with an easement; that is, the Town would own the land and the condo association would have an easement including responsibility for ensuring the stormwater systems were maintained. It was agreed that this is something that needs further discussion with and the go-ahead from Town officials and up to Town Counsel to decide if adequate. DR will relay the issue to Town Planner Gwen Miller to work out with the Town and to make a recommendation to the Planning Board on how to handle and to work out the language.

There was considerable discussion regarding Section 3.4, #1 "The project as proposed meets community needs." Members spoke of the need for affordable housing and that the price for these homes is listed to be just shy of \$700,000 dollars. DR responded that Lenox is fortunate to have second homeowners and primary full time residents and feels the second homeowners are not recognized for their contribution to our community. She stated that the Board and Applicant have been into this process for six months. "You can't tell a new developer you can't build that project here." She feels that the Board needs to do more serious work; probably with the Master Plan and that it needs to be done in a transparent way in the Master Plan but not in this application. TD added that the Board can add this into the Master Plan, but reminded all that the Board cannot steer the market.

PK said that she has re-read Attorney Gobel's letter from the April 17<sup>th</sup> meeting said that he had suggested a performance bond to assure work is completed. Mr. Scalise pointed out that Section 4, item 15 addresses this. TD read this item aloud. Mr. Scalise outlined the construction sequence. With regard to "policing" the project, he suggested that "milestones" be written within the decision, and the Building Inspector will be on the site to inspect compliance. The milestone suggested was that all roads, landscaping etc. be completed before a building permit for the fourth of fifth house was given (need to check notes).

KMY said that in Section 9.7.13, it calls for a trust document to be presented to the Board. Mr. Scalise stated that this has already been submitted to Town Counsel. She advised that when approval is given, the Board should also give approval to this document.

DR, who took copious notes as the finding document was reviewed, will get together with GM to incorporate all changes. PK said that a copy will then be sent to Mr. Scalise. The Board will meet again on this application on May 8<sup>th</sup> at 6:00 PM.

Note: KS left the meeting at 6:45 PM to participate in BRPC's Recreational Marijuana Workshop.

**Info session: Short Term Rentals**-Take public comment on draft bylaw and overall issue:

Bruce Gamble of Tucker Street said that he is concerned about the lack of affordable housing and the impact of STRs on the nature of residential neighborhoods. He feels that in neighborhoods like his where houses are reasonably priced, investors would buy up properties for the sole purposes of having for Short Term Rentals. This, he says, would reduce the affordable housing stock and could potentially change the nature of the town. He believes that local B&Bs would cease operation and that this could harm the businesses in the District as there would be less foot traffic. Mr. Gamble said that they have lived in Wellesley for 20 years, own the house on Tucker St. for 22 years, but have lived here for about the last 3 years. During their absence from Lenox they have rented the house as a seasonal rental and for longer periods.

TD pointed out that under STRs, a person can afford to own a home in Lenox as the income would help to pay the mortgage and provide additional income. His concern is when the home is not the property owner's primary home. He has no problem with seasonal rentals or even with the primary owner leaving for three weeks and renting out the home during that time.

DR said that the investor issue is different than the second homeowner and it is important to distinguish between the two.

PK's response was that a second home owner could have six "second" homes all over the place and operate them as Short Term Rentals. DR said that there could be a limitation that a property owner could host only one property in the Town.

#### **Short Term Rentals discussion among the Board:**

PK explained that in subcommittee, she and KMV proposed breaking down the different policy issues related to for Board discussion to discuss, a few at a time. The five topics are outlined on the calendar. Based on these discussions, we could consider the bylaw. The first topic for this night was: "Who Owns the Housing Stock in Lenox – and Why Does that Matter?" It was chosen for the first topic because DR would be at this meeting and the issue of whether non-resident investors should be able to participate in Short Term Rentals in any capacity or at all within the draft bylaw was of particular concern to her.

KMV led the start of the discussion. She said that the Board's role, according to the Affordable Housing Plan, is to preserve and create a housing opportunity for all. There needs to be a balance in who wants to live here year-round, those who buy for an investment and the second homeowner who loves it here but doesn't want to live here year-round. KMV has read studies about Short Term Rentals with which communities all over are dealing. She understands that condominium homeowner's associations prohibit STRs. The Administrative Assessor's records show that 18% of the single-family homes in Lenox are owned by nonresidents (70% of the condos). KMV said that she has looked at a lot of data from the census to see what has happened since the 1960s and 1970s. She said that according to a recent NY Times article, people seemed to be at a point where they again have discretionary income and an interest in investing. At what point, she asked, should these pressures be shaping how the community looks at the homeowner and the investor. KMV said that at one time the ownership by non-residents had been 13% and in 2000 it dropped and that it went up to 23%. PK said that this percentage could change depending on the denominator. Taking out the group homes, i.e., nursing home units, assisted living units, affordable housing could be as high as 28% of homes that are owned by non-residents. She suggested that should be monitored, which is why she worked with the Assessor recently to get the most granular data possible. PK said that her concern is with non-resident investors purchasing Lenox housing and utilizing STRs to make that purchase possible and that housing will then not be available to others who wish to live here year-round. DR feels that the Board should find data on this and commented that second homeowners have been renting their property both seasonally and year-round. She doesn't believe that this is a new phenomenon. PK described the STR as an internet disruption like that which has disrupted all industries. DR pointed out that there are people in Lenox who offer STRs to make money off of the tourism industry and this regulation could affect their ability to earn a living. While PK argued that this is about investor units, DR feels that investors cannot be separated from second homeowners. She suggested that a limit could be placed on the number of Short Term Rentals a host could have in a town. DR stated that the Board needs facts and PK doesn't think the data exists. DR said that it is a fantasy to expect people to have jobs in Lenox to live in Lenox. She also said that jobs are needed.

PK believes that policies have to be made to put a limit on who can do a STR and limit it to a resident owner.~ The purpose of the limitations is to restrict an investor from coming in and purchasing a property as an investment opportunity only.

DR would like to see some data on what would we have in Lenox if we didn't have a tourist economy.

DR believes there is a difference in a second homeowner and an investor. She doesn't support a primary resident restriction. She is in favor of limiting the number of days for STRs because then it is impossible for them to be a full time investor, but it allows anyone who is here to do it. She said that the millionaires who came here decades ago were second homeowners; now second homeowners are being treated as a full time investor which is creating divisiveness in our community. She concluded that a second homeowner is not a bad thing.~TD said that there are some Lenox residents who have more than one home in Lenox.

PK said she is worried about policies that would further enable people who want to invest in Lenox but don't want to live here year round to take housing out of the market for those who do want to live here fulltime. That is a paramount concern to her along with the neighborhood character.~

DR stated that she will not support anything that creates an "us and them" (people who live here and second homeowners) because she thinks that it is the wrong direction for Lenox. She feels that there are ways to place limitations without discriminating against second homeowners.~ She would like to see a comparison of the number of second homeowners of seven years ago and today. There are also no statistics on Lenox property owners who in the past have hosted short term rentals.

DR said that discrimination against second homeowners has not been discussed in any of the subcommittee sessions until the last session, but she was never a part of the discussion. She noted that she could not attend the meeting before the bylaw was written. She feels that was a very important issue that should have been discussed, and vetted with the public, but was suddenly added. She said that the Board doesn't have facts supportive of not having full time investor units. She would be happy to participate in that conversation, but if the Board supports banning second homeowners, she doesn't have the time to dedicate to the subcommittee. She will remain on the Planning Board.

PK noted that addressing these kinds of policy questions is why the subcommittee recommended the PB have these topical discussions. Saying that there is a housing crisis in America and in the Berkshires, PK said that Lenox has a vacancy rate of 0.2%, and a low stock of housing. She stated that Lenox needs a diversity of housing on all levels.

TD commented that GM recently made the point that using the STR bylaw to correct the housing issues and the lack of housing stock isn't the right way to go about it. It was noted that we are now about to start on the Master Plan and that discussion housing issues, in order to build support for needed changes, was among the reasons we launched it.

KMV said that they should create limitations to keep out what they do not want. DR responded that second homeowners can't be treated differently and whole house rental is a problem that is not addressed.

TD referred to KS's statement of a year ago saying there is an existing bylaw for the seasonal rental of rooms. He suggested that it could be modified to handle Accessory Dwelling Units, whole house rentals limitations, etc.

Steve Seltzer suggested that the Board look at the big picture and do an impact study. He mentioned that Professor Shepard of Williams College in Williamstown could do such a study on the impacts of STRs. With regards to the issue of affordable housing, Mr. Seltzer pointed out the number of tax paying enterprises that have built or added to their facilities in Lenox. He estimated the amount spent for construction was up to thirty million dollars and those properties have added to the Town's revenue. He believes that those tax dollars could go toward affordable housing. He asked that the Board not demonize STRs. Lenox relies on the tourist industry and those tourists support the local businesses, not the people who live year round. Mr. Seltzer said that if Lenox "chokes" the STRs they will go to other communities. He said that in order to make a decision it will not regret in five years is to an impact study and have real data on what is happening.

**Update on Master Plan**-PK reviewed the following:

- RFP deadlines

Issue Solicitation: Friday, April 6<sup>th</sup>

Deadline for Submitting Questions: Thursday, April 19<sup>th</sup>

Addenda, if Necessary: Thursday, April 26<sup>th</sup>

Proposals Due: Thursday, May 24<sup>th</sup>

Interviews: May 2018

Award Contract: May/June 2018

Project Completion: November 2019

*The following items were on the agenda, but not addressed:*

**Discuss agenda items for next meetings:**

- May 8 – Board organization
- May 25

**Approve minutes:**

*March 29, 2018*-TD made a motion to accept the minutes of March 29<sup>th</sup> and PK seconded the motion. The Board voted to approve by a vote of 4-0.

*April 10, 2018*-KMV made a motion to accept the minutes of April 10<sup>th</sup> and PK seconded the motion. The Board voted to approve by a vote of 3-0-1. TD abstained as he was not at that meeting.

The meeting was adjourned at 8:40 PM.

Respectfully submitted,  
Peggy Ammendola