

Meeting Minutes for Nov. 9, 2021

Town of Lenox -- Planning Board

Approved Nov 30, 2021

VIA ZOOM

Members Present: Pam Kueber (PK / Chair), Tom Delasco (TD / Vice chair), Kate McNulty Vaughan (KMV), Jim Harwood, (JH), Sue Lyman (SL)

Staff Present: Gwen Miller (JM)

Others Present: Jeff Lynch (JL), Marc LaVasseur (ML), Steven Seltzer (SS)

Documents:

390 Housatonic Preliminary Plan (PP) and narrative

1. Approve minutes for Sept. 28, 2021 and Oct. 20, 2021.

These minutes were not available in advance for review.

2. Application for Approval of Preliminary Plan (PP) for property at 390 Housatonic Street as a subdivision as allowed under the Subdivision Control Law and the Rules and Regulations (SRR) Governing the Subdivision of Land of the Planning Board in the Town of Lenox.

Note:

- "Preliminary Plan" may be referred to using acronym "PP"
- "SRR" is the acronym for "Subdivision Control Law and Rules and Regulations Governing the Subdivision of Land of the Planning Board in the Town of Lenox" acronym is SRR

PK explained the Planning Board's role in reviewing a Preliminary Plan (PP), noting it cannot be recorded and is to provide input and feedback to the applicant prior to their submittal of a Definitive Plan. She also noted the board has 45 days to act, giving them until December 6th to render a decision. Gwen Miller noted that other Boards and Departments (Conservation Commission, Fire, Police and DPW) and the Board of Health also received notice of the filing and can submit comments or input.

Discussion of conflict of interest or perceived conflict of interest: JH discussed experience working with SS (JH bid on a project of SS's and worked with him on advocacy related to the short-term rental bylaw), and he has worked with ML and JH occasionally on joint work projects; JH said he did not think it was a conflict but asked them and the board if they had any issues and if so, he would recuse himself. SS said he had no issues.

PK clarified that approving PP does not mean we must approve definitive plane; we should be substantially detailed guidance to enable applicant know how he should move forward. TD said if Definitive Plan (DP) meets all criteria, we must approve it without unless we have substantial reason/findings.

Property Owner Steven Seltzer (SS), his attorney Jeff Lynch (JL) and Engineer Mark LaVasseur (ML) of Foresight Land Services presented the Preliminary Plan (PP).

390 Housatonic Street currently is a 4.996 acre lot in the R1A district with one home. It has two split pieces of frontage (@150' and 55') on Housatonic and 50' of frontage on Orchard St. The Preliminary Plan (PP) proposes splitting into three lots: A two-lot subdivision, with Lot #1 and Lot #2 having frontage on a planned 185' private way extension of Orchard Street with right-of-way hammerhead; and with Lot #3 created via ANR, along the current 150' Housatonic Street frontage. Buildable lots in R-1A require 1 acre and 150' of frontage.

TD: concern re Lot 3 with curve on Housatonic -- is access verified – can you actually build a driveway there.

JH – question about frontage needing to be a straight line vs. squiggly. ML – need to check. KMV – cited definition in Subdivision Rules & Regulations (SRR) – needs to be a 'straight line.'

PK -- How the proposed lot formation on Orchard Street complies w/the Town of Lenox definition of "Frontage"? "Frontage lot line" definition says access shall be from the frontage – proposed Lot 1 does not have such frontage off proposed new road.

JH – says that if there is a way to make approval of new lots in 1-acre zones, approves that. Supports allowing preexisting driveway access to lot 1.

KMV – wants site visit. What did DPW say about roads, where is ledge, so this is a much more on the ground difficult situation, also would need to get input from water and sewer people whether this is viable.

SL – suggests laser pointer for online presentations like this, challenged by this being done virtually rather than in person.

JH / TD / PK – discussion of whether/how road could be extended to handle all three lots w/o access to Housatonic, or extend further past Lot #1 onto buildable area of Lot #1 with real access. GM – spoke to Fire Chief O'Brien – he had concerns about circular gravel drive relative to grade, width, materials -- seeing very difficult for fire, ambulance; applicants explained the circular gravel drive depicted on the plan is existing and would not be used for site access. Fire Dept. also questioned where fire hydrants would be and how close they are to new homes. PK noted ZBL does not allow for shared driveways. JL – need to improve road access. KMV – need to get a real sense of the site.

JL – asked about frontage lot line definition last sentence “vehicle access shall be exclusively through frontage of lot”: Even if proposal to build this road/spur to create frontage, is interpretation that cars must use this Orchard St. road and close off current driveway; PK – not sure you'd have to eliminate a pre-existing driveway – purpose is to create real access – must be able to access house through frontage. JL – thinking determining whether it's realistic not actual to use frontage for access. Not suggesting creating illusory frontage – but it may just not be the preferable way. PK – would need to make the case and ask for waiver / variance.

JH – sufficient that it's a paper road or does it need to be an actual road. Do you actually have to construct it? KMV – yes. Ask Town Counsel. KMV – whole point of subdivision / purpose of first section / create safe access; a primary thing; access to all the lots safe, convenient, etc. (she read provision). JH – to meet zoning requirement need to meet frontage and access; meet them with paper road because the other way might be more detrimental to environment, neighbors; might be a completely viable, safe other way to access. Don't want to become prisoner to the letter of the law, much more interested in meeting spirit of the law.... If neighbors prefer it, better for the woods, meets safety.

There was further discussion as to how the applicant could shape the lots to have frontage conforming with the Lenox definition of frontage, and to have an adequately sized and paved driveway access with turn-around for public safety vehicles.

SS – desire to create compatible lots, not ticky tacky 5 houses on five acres all in a row

PK: who owns Orchard Street ROW part of the parcel?

JL: According to deed research, SS owns it. Needs more research on whether that snippet was ever accepted as a public way. Public records request; whether portions discontinued.

Would be private drive; town meeting would have to vote to accept as public way.

PK asked about ROW width – ML confirmed it's 50'; road proposed is 18' will ask for a waiver from 20' requirement. GM – PB can discuss waivers; TD – many town roads are 16'-18', need to measure Orchard, doesn't make sense to demand larger when it's essentially extension of driveway.

KMV: asked, ML: House and garage on Lot # 1, shed on Lot #2.

ML: gravel internal drive not access to Lot #3; if ANR lot wants access they would need to get permission for curb cut; need to talk to fire chief about that.

ML: DPW agreed verbally that as a PP he was satisfied with it.

JH: Seems you need to look at property lines relative to zoning. Could easily see 4-5 lots lining off straight road, not sure if that's a better outcome for Town. KMV: wetland and buffer zone intrusion likely prevents straight line road. GM: When does it go to CC. Will it trigger Scenic Mtn Act relative to slope criteria @ 15% or greater. ML: still needs to be looked into.

TD: Ponds on property, where are they located? SS: Believed to be proximate with wetlands. KMV: Somewhere in PP notes are that gravel extraction had created ponds.

KMV: Would like to get a feel for the grades, slopes. ML: usually we do that concurrent with Definitive Plan. KMV: Makes it hard for us to see the end.

TD: Why not have road penetrate parcel and create three accessible lots. SS: ANR lot shortest distance between two points. Road to letter of the law very expensive; roads accessing a very small number of homes. Allow for waivers to allow for road to go in wo/standard thoroughfare pavement, lighting, drainage? TD: what did we do for Walker St project, not an accepted Town way. PK – it has everything. KMV – that stuff is still true on this one, can't create problems for other neighbors, hilly site.

KMV -- How would this project impact the neighborhood. Noted this was a cut through for kids to get to the high school and presence of old stone walls in the area. "Keep the character of the neighborhood" issues.

The group agreed it would be best to do a site visit, scheduling one for November 19 at 2 p.m. and continuing discussion of PP to Nov. 9.

Roll call vote to continue to Nov. 30, 2021.

Noted: Meeting with Town Counsel Joel Bard on legal issues related to SRR on Nov. 18.

3. Request new members/delegates

- Berkshire Regional Planning Commission

PK explained that the BRPC requires an alternate and delegate from each community; Lauryn Franzoni had been the Lenox representative. There was no interest from a current PB member to serve in this role; GM suggested the Select Board appoint somebody not on the Planning Board to broaden the selection pool. PK will relay info to BOS.

- Land Management Committee

PK explained this committee has been dormant for some time, but needs a Planning Board representative. GM explained the Committee would be helpful in the update of the 2015 OSRP (Open Space and Recreation Plan). Members said they would think about it.

4. Updates: DLTA on Niagara Mill and Wireless Master Plan

GM explained there is still DLTA funding to complete a master plan for the Niagara Mill. Background work through end of year, neighborhood outreach in new year. Idea is to create a to-do list to work with owner to create a mutually desirable use. Look at 3-4 uses e.g. brew pub or museum that would bring visitors to area; light industrial or custom manufacturing; or demolish and start from scratch either new use or make it open space with access to the river. Question: What planning has been done previously? GM: We had conversations with the community, BRPC did regional brownfield plan that included Niagara Mill. Not to level of detail that we want to be in now.

Board had some pushback on doing "another plan or study" – KMV spinning our wheels, time to really dig in on something, not just talk about potential uses. Address site remediation concerns – not just keep talking about reuse scenarios, need is to determine what condition down there is and what is required for remediation. Deeper

questions are of the site contamination, closeness to river. What will it cost to get to be a useable site? TD: Sites in Pittsfield not being taken up by developers because of cost of remediation; will require public monies/grant money, etc. especially for southern part of site where Centennial Mill was buried. Thoughts years ago about subdividing site, take the Centennial Mill by a public entity, Niagara Mill – redevelop. Q: who pays for all the remediation, who carries the liability. TM: Does the Town form a redevelopment authority to prepare site, make it shovel ready, tap public money.

We want to understand remediation issues – how to get something going. GM understanding is that type of reuse will determine different levels of remediation. Mini master plan – here are reuse ideas, here is what you need to do to make that happen e.g., remediation steps, infrastructure investment, any resources e.g., grants we could apply for to make those happen, site readiness from the state, programs. E.g., site 9 in Pittsfield. TD: supports reusing land for clean low impact / light impact industrial land because it's available industrial zoned land.

KMV – fears that when we get to the last part of work like this - the guts, the money - tends to be a little bit vague. Does not want to see bulk of discussion on dreamy ideas – rather, on how do we literally make the next move. GM has had this conversation with planners. Wants succinct, concise to-do list for staff boards and committees. KMV – we want action. GM – punch list. Want this, here's what you do, seek, etc.

GM explained this would be targeted at presenting scenarios to the neighborhood, seeing which are preferred, and creating a punch list of actions the Town can take to make something supported by the community happen there and resources to use. It was noted re-use limitations based on the brownfield characteristics of the site depend on the proposed re-use, so the scenario approach will provide a good way to figure out what level of remediation is needed for a beneficial reuse of the mill building and/or property.

Wireless Master Plan – PK said we have draft back from BPRC, need to make corrections, will bring to Nov. 30 meeting.

Respectfully submitted,
Pam Kueber
Nov. 28, 2021