

TOWN OF SHELBURNE
Planning Board
Minutes of Meeting October 14, 2015

A duly posted meeting of the Shelburne Planning Board was held on Wednesday, October 14, 2015 at 6 pm in the Shelburne Town Hall, 51 Bridge St., Shelburne Falls, MA.

Present: John Wheeler, Chair Planning Board
Will Flanders, Planning Board
Josiah Simpson, Planning Board
Cam Stevenson, Planning Board (arrived at 6:50pm)
Pat Smith, FRCOG
Peggy Sloan, FRCOG
Joe Palmeri, Chair Zoning Board of Appeals
John Taylor, Zoning Board of Appeals
Mike Parry, Zoning Board of Appeals

Administrative Assistant: Liz Kidder

Absent: George Dole

Audience:

Press:

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

A motion to approve the minutes of September 9, 2015 was made by Will and seconded by Josiah.

Vote: 2 in favor, 0 opposed, 1 abstention by John as Chair of the meeting.

ANR Plans -none presented.

Special Permit Applications – 106-108 Bridge St. application submitted by Joseph Poirier, Jr.

John Wheeler suggested moving this discussion until after meeting with Pat Smith and Peggy Sloan who were present from the FRCOG.

OLD BUSINESS

Cluster/Natural Resource Zoning Bylaw

Peggy passed out two papers and reviewed the difference between Cluster/Open Space and Natural Resource Protection Zoning (NRPZ) development approaches: relationship to standard subdivision regulations, land area subject to applicable zoning, lot size threshold, relationship to ANR, % required open space set-a-side, nature/quality of open space preserved, dimensional standards, types of dwellings allowed, bonuses incentives, dwelling units v. lots, maximum allowed density bonus, and design process/conservation analysis.

Pat and Peggy presented their working draft which was an update to a previous Shelburne draft bylaw and noted that the yellow passages are questions for the board on which Pat and Peggy need feedback. Will said that he would continue as the contact point between the Board and the FRCOG. It was noted that in the past, Shelburne has wanted to allow for a farmer to maintain ownership of the open space portion of a development on his property within requiring that a land trust or homeowners association is involved – Section 19.1.2.a.

The Board will meet on Oct. 28th to review the draft after which Will will get comments and changes to Pat. The Board will meet on November 18th with Pat and Peggy to finalize the next draft. Then meet again in early Dec. for a regular meeting and then hold a

Approved: _____ Date: _____ 1

public information meeting with the FRCOG present on Dec. 16th to get public input. The Board will then the public hearing in January.

Special Permit Applications – 106-108 Bridge St. application submitted by Joseph Poirier, Jr.

Liz Kidder stated that since she owns a 2-family house within a block of the house discussed in this application that she was going to recuse herself to ensure that there was no appearance of a conflict of interest. The following minutes were prepared and submitted by Josiah Simpson.

Special permit application for 106-108 Bridge St.

A Special Permit was denied by building inspector because application was filed to change a two-dwelling unit into a four-dwelling unit.

Will looked up information about the title of the lot, which shows a right of way along the west and northern sides of the lot.

Cam reminded the board that the lot is non-conforming for a two-family, so to make the house a 4-family is even more non-conforming.

Will cited section 10.1.2 Alteration, which says that a non-conforming lot can be enlarged if the alteration doesn't increase the non-conforming nature of the structure. However, enlarging the lot is not proposed.

The planning board has been asked to give its opinion to the ZBA about the matter. Will reminded the Planning Board that the owner of the property went about building without the proper application/permits, which is offensive to the PB, showing a complete disregard for following the rules. The PB asked, is the Planning Board setting a precedent for others that once someone, like the case at 106-108 Bridge St., has gone on so long with building that they can force the town's hand in allowing the building to continue.

The board agreed that there is an emotional precedent in the neighborhood that if this lot gets approval then why couldn't others get away with the same thing.

Cam is concerned that the permit was originally taken out for a two-dwelling house and somewhere along the way it was changed, without permission, to a four-dwelling house.

The Planning Board decided to develop a list of concerns and email to ZBA (below):

- Allowing this project to proceed creates a bad political and emotional precedent for how construction process happens in Shelburne. The Planning Board recommends not allowing construction to continue until the appropriate application is filed.
- The Planning Board demands an answer for why the original permit was made out for a two-unit dwelling and then changed to a four-unit dwelling.
- The Planning Board has deep concerns about allowing a two-unit dwelling to become a four-unit dwelling.
- Parking layout was rejected for not following the rules and regulations regarding parking in Shelburne.
- Provide a site map that is to an appropriate scale (1:20) with dimensions when showing proposed site alterations. The map provided that showed alternative parking was not to scale and did not follow Shelburne's parking size 10'x20'.
- Parking should be designed to meet the parking requirements of the zoning bylaw
- Adequate space needs to be provided for snow removal.
- Vegetation Screening from bridge street should be provided if parking is located on the Bridge St. side of the dwelling.
- Storm water run off should not be allowed to run into Bridge street.
- The developer should consider the possibility of the new parking driveway to enter from the right of way rather than from Bridge St.

8:30 PM the Zoning Board of Appeals convened as a Board and joined the Planning Board meeting and Liz Kidder returned to the meeting table.

Zoning Revisions for ATM 2016 –

John Wheeler welcomed the ZBA and stated that the purpose of the joint meeting was to review possible revisions to the zoning bylaw that could be presented to Annual Town Meeting 2016.

John Taylor said he wanted to look at the Telecommunications bylaws again since there are new federal guidelines that need to be reviewed. He noted there is an online presentation and sample bylaws to help municipalities understand the federal regulations. John would like to insure that our bylaws are not out of sync with the federal guidelines. For example there are some changes that include a fast track process. The ZBA will come up with appropriate proposed revisions and submit it to the planning board in time for a public hearing before Town Meeting. Chris Macek will send Liz the link to the online presentation and she will forward it on to Planning Board members.

The letter approving the zoning bylaw revisions passed at ATM 2015 was reviewed along with a letter from Town Counsel. Apparently there is new case law regarding a Supreme Court Case that affects part of Section 9.3 of the new sign bylaw. It was noted that there are severability clauses within the bylaw and therefore the unaffected sections of the bylaw should still be enforced. Will suggested the Board informs the Building Inspector to not enforce Section 9.3 and have the Planning Board make revisions at the next Town Meeting. The Board discussed the history of the sign regulations, a memo from MASSDOT regarding signs in the highway right-of-way, and responsibilities for enforcement of the sign bylaw. John Taylor suggested having a meeting that includes the Building Inspector, Selectboard, Planning Board, ZBA and MassDOT to discuss who has enforcement ability and whether the Town can develop bylaws that direct the type and size of signs along a state highway that is also a Scenic Byway

Mike noted that there may need to be a tweak in the sign bylaw for next ATM based upon the case law and advice from Donna MacNichol relative to political signs. However, he noted that since temporary political signs are being allowed for a much longer time than other signs, he questioned the interpretation of the Supreme Court case as it applies to the Town Bylaw. Will said he will review the case law information, work on a tweak to the Shelburne bylaw, discuss it with Town Counsel and come back to the Board with a suggestion on how to proceed.

Note: John Wheeler recused himself from any discussions regarding online, short term rentals.

Liz presented information from the Board Of Health (BOH) regarding the different definitions in the Town Zoning Bylaw and MDPH definitions related to Lodging Houses and B&B Homes and Establishments. Liz reviewed how the BOH is monitoring the listings for B&B's on the online sites, such as Air B&B and Homeaway/VRBO. The BOH is monitoring for compliance with basic public health and housing code regulations. In doing so, the BOH had noticed that the definitions in the Shelburne Zoning Bylaw were not consistent with the MDPH regulations and were suggesting that the Planning Board review their definitions and considered adopting the same definitions as used by the MDPH. John Taylor said that he has been told by the Building Inspector that the Building Code has still different definitions. Mike suggested that because of the success of Air B&B that the definitions may be evolving and there may be new regulations developing all over the country. Will noted that this issue is being looked at by many other cities.

John Wheeler rejoined the meeting. John Wheeler. updated the ZBA on the Planning Board's work with the FRCOG on an Open Space Development Bylaw. The Board reviewed their approach with incentives to create and encourage more Dragonhill type developments. The consensus of both Boards was that the Planning Board should continue to be the SPGA for Open Space Developments since they are responsible for reviews of subdivisions.

John Wheeler thanked the ZBA for attending and the ZBA adjourned their meeting.

Tennessee Gas Pipeline Company, L.L.C. Northeast Energy Direct Project, FERC Docket No. PF14-22 updates

The Board noted the correspondence/emails that had been received since the last meeting.

Subdivision Regulations – further discussion postponed.

COMMITTEE UPDATES

FRCOG Planning Board – The FRCOG is requesting a letter identifying a Planning Board representative. Cam will stay as the representative.

Open Space – John said they reviewed the OSP and were interested in the NRPZ meeting with Jeff Lacy. John said he will keep the Open Space Committee up to date on the Planning Board’s progress in developing an Open Space Development bylaw.

Community Energy Strategies Pilot Program (CESPP) update – no new information to present.

Other Town Board Updates – nothing presented.

OTHER BUSINESS NOT REASONABLY FORESEEN 48 HOURS PRIOR TO THE MEETING -. None.

READ MAIL – the Board read mail as listed below.

PUBLIC COMMENTS – none presented.

SCHEDULE NEXT MEETING – Wednesday, October 28th at 7 pm. The focus will be the Open Space Development Bylaw. Liz noted that they had originally planned to meet on November 11th but that is Veterans Day - the Board rescheduled to November 18th at 7pm.

A motion to adjourn the meeting was made by Josiah and seconded by Will.

Vote: 3 in favor, 0 opposed, 1 abstention by John as Chair of the meeting

Meeting was adjourned at 10:05 pm.

Respectfully submitted by,

Liz Kidder
Administrative Assistant

List of Documents:

- Board of Health Memo March 2015 regarding Air B&Bs
- Citizen Planner Training Collaborative Fall 2015 Course Shedule
- Oct. 02, 2015 email from Peggy Sloan regarding Pipeline Advisory Committee
- Sept. 10, 2015 email from David Schochet regarding a NYS Statute on mitigation of large-scale development projects.
- Sept. 8, 2015 letter from the Attorney General regarding warrant articles passed at Shelburne Annual Town Meeting May 5, 2015
- Sept. 29, 2015 email from Jeff Lacy regarding Shutesbury NRPZ Plan approval
- Oct. 1, 2015 email from Joe Palmeri to Building Inspector regarding Shelburne sign bylaw
- Sept. 24, 2015 letter from MassDOT to Municipal Officials regarding outdoor advertising on street furniture
- Oct. 13, 2015 email from Joe Palmeri and Donna MacNicol regarding New sign Supreme Court Case
- Oct. 14, 2015 email form Donna MacNicol regarding Reed v. Gilbert case law.
- Special Permit Application for 106-108 Bridge St.
- Letter from Jim Wallace and Robin Logan relative to the special permit application for 106-108 Bridge St.
- Comparison between Cluster/Open Space and NRPZ Development Approaches form the FRCOG
- Preliminary Draft (10-14-2015) Proposed Shelburne Open Space Development Bylaw