

TOWN OF SHELBURNE
Planning Board
Minutes of Meeting March 11, 2020

A duly posted meeting of the Shelburne Planning Board was held on Wednesday, March 11, 2020 at 7:00 pm in the Town Hall Meeting Room, 51 Bridge St., Shelburne Falls, MA.

Present: John Wheeler, Chair

Will Flanders

Cam Stevenson

Tom Johnson

Donna MacNicol, Town Counsel

Administrative Assistant: Liz Kidder

Audience: Larry Flaccus, David Schochet, Joe Palmeri

Absent:

The meeting was called to order at 7: 02 p.m.

The Board welcomed Town Counsel, Donna MacNicol, and thanked her for attending the meeting. She mentioned she had been on a lengthy call that afternoon, with the Massachusetts Association of Municipal Lawyers, discussing how towns can deal with public meetings, including annual town meetings, during the pandemic crisis of COVID-19. Her advice was to proceed with the Planning Board's schedule to submit warrant articles to the Selectboard as planned before April 1st. If the Town Meeting schedule is changed, the Board will be notified by the Selectboard.

ANR/Subdivision – Patten Hill Farm Trust, 360 Patten Hill Rd.

Donna reviewed the plans submitted by Paul Kuceja relative to a requested ANR that would create a nonconforming lot on which sits an old barn with barn swallows on Patten Hill Rd. The rest of the parcel of land is being sold to the abutting Mass Audubon Society, however, they do not want to own the barn. Donna noted that if that parcel of land was empty of any structures, the Board could allow the ANR as drafted and mark the parcel "not a building lot". Since there is an existing structure, it can only be separated into its own lot that conforms to the dimensional schedule in Section 5.2. Donna and the Board reviewed the current definition of "frontage", Section 2.20 and noticed that it did not say that the frontage has to be continuous, therefore, the Board may be able to approve an ANR that has the frontage on both sides of an adjoining lot but still on Patten Hill Rd. Liz was asked to notify Mr. Kuceja.

OLD BUSINESS

Zoning Bylaw Revisions for ATM 2020 – Donna and the Board reviewed the public hearing draft.

Article 1:

1. Agricultural Greenhouses – Donna noted that in the proposed footnote, the Board referenced MGL Chapter 128 Section 1A as not including the cultivation of cannabis as agriculture. She informed the Board that MGL Chapter 40A Sec. 3 also states that the cultivation of cannabis is not considered agriculture and she suggested referencing that statute as well. Therefore, she would recommend the following wording for the footnote:

**** Agriculture as defined in M.G.L. Chapter 128 Sec. 1, and Chapter 40A Sec. 3, do not include the cultivation of cannabis which is regulated by the MA Cannabis Control Commission.*

2. Adult Use Marijuana Final Regulations – fine as prepared.

3. Section 22 Temporary Moratorium Removal – fine as prepared.

4. Section 2 Definitions – fine as prepared.

Approved: _____ Date: _____ 1

Article 2: Supportive Transitional Housing – Donna felt that the definition needed additional language relative to the structure being a dwelling. The Board explained that language had been removed at the suggestion of Noah Grunberg since he felt it was better to keep the language as simple as possible and that the building code took care of requirements for such housing. Donna suggested creating a definition that has language similar to the definitions for other dwellings in the bylaw. It was decided that Liz would email the earlier definition created by the Board for her review.

Draft definition: **Supportive Housing or Community Residence** – *A building containing independent cooking, living, sanitary and sleeping facilities intended exclusively for the use of individuals, regardless of relation, participating in a group residential program authorized by an agency of the commonwealth.*

Article 3. Frontage Definition – fine as prepared. Donna agreed that it made sense to incorporate this as one of the zoning updates in Article 1 since Town Meeting approved common driveways last year but that bylaw won't function without this revision to the frontage definition.

Article 4: Village Commercial Streetscape – fine as prepared.

Article 5: Non-conforming uses –

Donna supported the approach being taken by the ZBA and Planning Board for revising Section 10. Suggested edits include:

In Section 10.1.2 A, B, and C, insert the words “by right” at the end of the section just before, “or”;

Section 10.1.2 D, insert the word “However” at the beginning of the section.

Section 10.1.3 – make this 10.1.4 and insert the words “outside of 2 years” after “on the same location” in the second line. The state has changed the requirement from 2 to 3 years.

Section 10.1.4 – make this 10.1.3 and revise to read:

In the event that any non-conforming building is damaged by fire, explosion or other cause, restoration work must be undertaken within two years of the date of damage is inflicted, unless it can be demonstrated that there is good cause for failure to proceed, in which case an extension of time may be granted by the ZBA.

Section 5.0 – fine as prepared.

New Section 15.2.1.3 – fine as prepared except in the last line, insert “however” before “only a simple majority vote will be required.”

There was an extensive discussion regarding 2 major points in the above draft revisions: Joe Palmeri stated that he felt the maximum structural lot coverage should be 25% and that any determinations by the ZBA should be done following the Special Permit process which requires a 4 out of 5 vote of the board. The Planning Board explained to Joe, that the bylaw revisions were based upon discussions with the other ZBA members when Joe was unable to attend the meetings and that 40% structural lot coverage had been agreed upon as reasonable and that the other ZBA members seemed to think that the use of findings with a simple majority vote of the Board was a better way to proceed. The Planning Board said they would bring those suggestions up during the public hearing on March 25th. If after that public hearing, the Planning Board decides to change the structural lot coverage percentage or use the special permit process, then the warrant article will be revised as appropriate prior to submittal to the Selectboard. That type of modification to the public hearing document would not require another public hearing prior to Annual Town Meeting.

Article 6: Small-Scale Ground-Mounted Solar: at Donna’s suggestions the definition is revised to read as follows:

2.41 Small-Scale Ground Mounted Solar Energy Generating Facility: A ground-mounted solar electric system *that covers no more than 40,000 square feet of land* and is designed for residential/industrial/commercial use. *A special permit is required in all zones except Industrial, and is granted by the ZBA. ~~only if the array is not substantially detrimental to the neighborhood.~~*

Exception 4.1.3 language is fine as presented.

Article 7: Municipal or Non-Profit Trail: - extensive discussion was held on the history of this bylaw and its purpose. Joe Palmeri noted that it had been presented by citizen petition at a time in the past when a trail was being proposed. Following lengthy discussion about inconsistencies within the definition, including that it applies to hikers and not snowmobiles, that it applies to municipal and non-profit trails and that there was a question as to whether this would apply to new trails on Mass Audubon property as an example, the Planning Board decided that they needed to do more research about how this bylaw is being applied and how zoning is used to site trails in other towns. Donna noted that she has seen some towns try to regulate snowmobile trails through zoning but that it has not been easy or successful. The consensus of the Board was to not include this article as part of the package for ATM but to continue researching it for consideration next year.

Article 8: Dwelling, Multiple-Family – Joe Palmeri had suggested that the term “Historic” should be “historical”. John Taylor had submitted comments regarding a lack of continuity between multi-family dwellings up to 4 units and the conversion of historical structures in the Commercial and Industrial districts which are designed for 10 or greater units. John noted the lack of references for 5-9 units. The consensus of the Planning Board was to set this revision aside for this year until it can be further analyzed.

Article 9: NonBinding Resolution

The article was not discussed since it is a non-binding resolution and appears fine as presented.

The Board thanked Donna for her attendance at the meeting before she left.

Minutes of the meeting:

Motion to approve minutes of February 26, 2020, was made by Cam and seconded by Will.

Vote: 2 in favor, 0 opposed, 1 abstention by John as Chair of the meeting and 1 abstention by Tom since he wasn't in attendance

Special Permit – Residences at Mill Falls, LLC, 10 Deerfield Ave. conversion of the former Mole Hollow building into a 10 unit multi-family project. The Board reviewed plans submitted to convert the former Mole Hollow Building into 10 dwelling units. It was noted that the Town Master Plan and Townscape plan recommend that buildings along Bridge and Deerfield St. have commercial storefronts with dwelling units in other parts of the building. Will noted that he felt the residents in Units 3 and 6 which face on the area around the glacial potholes may feel like they are living in a fishbowl. The consensus of the Board was to submit a letter to the ZBA suggesting that this proposal would be more in keeping with current plans for the Village if Units 3 and 6 were rented for commercial units if the developer was able to make that change. Liz will prepare a letter for review by the Board.

Budget FY 2021-- John reported that he met with the Selectmen and presented the Board's budget for next year. In general, he felt the board was satisfied with his answers to questions.

COMMITTEE and REGIONAL PROJECT UPDATES

FRCOG Planning Board- no report

Open Space – no report

Other Town Board updates – nothing presented

Other business not reasonably foreseen 48 hours prior to the meeting- nothing presented.

Read Mail –the Board read the mail as listed below.

Public Comments—none presented.

Schedule next meeting – Wednesday, Mar. 25, at 7:00 with the public hearing starting at 7:30.

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

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

Meeting was adjourned at 9:42 pm.

Respectfully submitted by,

Liz Kidder
Administrative Assistant

LIST OF DOCUMENTS:

Legal notices from neighboring communities: Greenfield – 1, Charlemont – 2, Deerfield – 1
Public Hearing Handouts – Hearing Draft, Planning Board report, Interpretation of Section 10, 5, 15
Email from John Taylor and Noah Grunberg relative to the proposed zoning bylaw revisions
Email from Paul Kuzeja on Patten Farm Trust ANR