



Planning Board – Town of Spencer
Minutes
Planning Board Meeting
Tuesday March 26, 2013 at 7:00 PM
McCourt Social Hall
Memorial Town Hall

Planning Board Members Present: Chair James Whalen, Shirley Shiver, Mary Stolarczyk, Robert Ceppi and Jonathan Viner.

Planning Board Members Absent: Ralph DiChiara

Staff Present: Michelle Buck, Town Planner and Brynn Johnson, ODIS Jr. Clerk

Mr. Whalen opens the meeting at 7:00pm.

ANR- Applicant/Owner: Girl Scouts of Central & Western Mass, Inc. & Montachusett Girl Scout Council. Location: Buteau Road. Seth Lajoie and James Looney are present to represent the applicant.

Mr. Lajoie explains the purpose of this plan is to create 6 individual building lots from land owned by the Girl Scouts.

Mr. Looney states the sale of these lots will help generate revenue to maintain the Girl Scout Camp.

Mr. Whalen asks if there are any more questions there are none.

MOTION: Mr. Ceppi makes a motion to approve this ANR plan. Ms. Shiver seconds the motion. **VOTE:** 4-0 in favor.

ANR – Applicant/Owner: Michael Lussier, Pres. Webster First Credit Union. Location: Paul’s Drive. No one is present to represent this ANR.

No one is present to represent this ANR so Ms. Buck explains the plan. Paul’s Drive is part of a subdivision called Fairview Estates that was approved years ago. The subdivision was approved under older zoning regulations with smaller lot sizes. These smaller lots are no longer grandfathered in because too much time has passed. They are taking the 3 lots in the center island of Paul’s Drive and redrawing the line to make the 3 lots into two lots. The new lots will conform to the current zoning bylaw.

MOTION: Ms. Shiver makes a motion to approve this ANR plan. Ms. Stolarczyk seconds the motion. **VOTE:** 4-0 in favor

Public Forum - Medical Marijuana Treatment Centers and the potential need to amend the Towns Zoning Bylaws

Ms. Buck gives the public a general overview of Medical Marijuana in Massachusetts with a power-point presentation. This included a general overview of the medical marijuana legislation, specific information about medical marijuana treatment centers (how defined, how many allowed

statewide, etc.), hardship cultivation requirements, legal issues with local regulation (prohibition not allowed/temporary moratorium an option), and local options to consider regarding potential zoning amendments (overlay, limited district, modification of existing districts, etc.).

Mr. Whalen opens the public forum at 7:25

Selectman Donald Berthiaume states the Selectmen are in favor the temporary moratorium. He feels a temporary moratorium is needed to give the Town time to get more information from the State on the rules and regulations. If they don't do anything a center could open in the Village Residential distract with a special permit. This means a center could open near a school or elderly housing he would like to prevent that from happening. In addition to the temporary moratorium article they would also like a back up zoning amendment in case the moratorium fails at Town Meeting. The zoning amendment would restrict centers to the commercial and industrial zones by special permit, with required distances from various uses. It would be modeled after the adult entertainment by-law.

Spencer resident Rob Goodie would like to caution the Board if the Zoning is any more restrictive than the sale of alcohol, they will open the Town up to law suits from both dispensaries and patients. The Town should avoid this so they won't have to deal with an expensive law suit later.

Peter Fifield of Lake Ave wants to know why the centers are being classified as adult entertainment and segregated from other businesses in Spencer. He feels this zoning restriction is a mistake. The centers would bring people into Town to these people may have dinner or spend money at stores in the center of Town. The added foot traffic from the center would benefit local small businesses. He also feels a moratorium would be a mistake. Spencer is the type of community that needs a boost. A treatment center could give us boost. It's very short-sighted of Spencer to say they don't want it in this Town.

The Board clarifies the centers are not being classified as adult entertainment. They are just using the adult entertainment bylaw as an example to follow in creating the new bylaw.

Ms. Shiver feels it would be a good idea to do the temporary moratorium to give more time to create the appropriate bylaw the first time around.

Mr. Goodie feels a moratorium is the worst thing they could do. It would just encourage home cultivation, which the Town has no control over.

Mr. Viner states we may face issues with the AG's office because the zoning [using Adult Entertainment restrictions] is so restrictive. By looking at the zoning map he notes there is barely any available frontage.

There is much discussion on the States laws regarding Medical Marijuana. The State will be coming out with more regulations on Friday. Ms. Buck says it's hard give this presentation three days before the State regulations come out because there are lots of unanswered questions. Ms. Shiver feels this is a good reason of why the Town needs to have a temporary moratorium.

Ms. Buck reads in part a comment that was emailed to her by Mike Malone of 128 Mechanic Street. He encourages the Board not to put roadblocks on Medical Marijuana in Town. "Last November 63% of voters in the State and 60% of voters in Spencer voted to allow it for people who could receive relief their suffering due to medical conditions. Spencer should be looking for ways to expedite the wishes of the voters."

Heidi Malone of 128 Mechanic Street says she understands there is a lot of missing information right now. Therefore maybe there should be another public hearing after more information comes out. She feels the more information they can gather the better they can make a discussion for this Town. She does understand the need for a temporary moratorium to allow time to gather this information.

Ms. Buck says the Board of Selectman decided to put two Articles on the warrant for the May 2nd Town Meeting. These articles will require the Planning Board to hold a public hearing next month. At the next public hearing she will have an update from the Department of Public Health.

Mr. Whalen asks if there are any other questions or comments. There are none. The Public Forum is closed at 7:56pm.

There will be a formal Planning Board Public Hearing on April 23, 2013 for the Temporary Moratorium (Article 29) and the Zoning Bylaw Amendment (Article 30). Town Meeting vote will be May 2, 2013.

Public Hearing – Proposed Amendment to Zoning Bylaw (Inclusionary Housing)

Ms. Buck gives an overview of the Inclusionary Housing Bylaw. The purpose of this section is to increase the supply of affordable housing in Town. This Bylaw aims to ensure that such housing is affordable over the long term and provided in accordance with the requirements of Mass General Law Chapter 40B.

This section is designed to:

1. Increase the supply of affordable rental and ownership housing in Spencer.
2. Attain the 10% affordable housing established by the State.
3. Encourage a greater diversity and distribution of housing to meet the needs of families and individuals at all income levels.
4. Prevent the displacement of Spencer residents.

This will apply to residential projects with nine or more dwelling units. 12 % of units would be required to be affordable.

Options to Provide Affordable Units:

1. Constructed or rehabilitated on-site.
2. Constructed or rehabilitated off-site.
3. Equivalent fees-in-lieu payment.

Preservation of Affordable Units:

1. Restrictions on resale price
2. Municipal right of first refusal to purchase
3. Deed Restriction

Ms. Buck explains in doing research for this Bylaw she has found some legal concerns. There are a limited number of towns that have taken the approach of having a mandatory housing Bylaw like this one. There is a lot of disagreement among Planners on the legal challenges of a mandatory Bylaw. The Town's Attorney Stan Weinberg reviewed this draft Bylaw and gave his response today. The short version of his response is the Bylaw as drafted faces a great degree of

uncertainty and is likely to face legal challenges. There is risk involved in moving forward with it. Ms. Buck recommends postponing action certainly for this upcoming Town meeting. Maybe they can work on it for the Fall Town Meeting. This is a complicated Bylaw and given the concerns of the Town's Attorney there isn't enough time to make all the changes before the next Town Meeting.

Mr. Whalen asks the public if they have any comments.

Neil Rivers of 6 Overlook Drive asks what the States definition of affordable housing is. Ms. Buck says for the purpose of the 40B program it has to be subsidized and protected in perpetuity. It also has to be affordable to people who make 80% of median area income, and has to be deed restricted to protect its affordability long term.

Mr. Whalen notes some banks were not respecting the deed restrictions on some affordable houses in other communities.

Mr. Rivers asks if the cost of providing this affordable housing will go to the developer. Ms. Buck says yes. He asks why the developer should have to do this. Ms. Buck says to meet the public's need for affordable housing. He feels this is the responsibility of the community to provide not the individual developers. Mr. Ceppi says the Town doesn't have the money to just go build affordable houses so they need the developers to help. If a developer is looking to build a 10 house subdivision they would ask that one be affordable to help with the affordable housing requirements.

Mr. Rivers says this is a demand there is no incentive for the builder. Ms. Buck says yes and this is the basis for the legal concerns. Mr. Rivers asks if the developer will be able to get a tax break for the lowering of the price. The Board discusses this it's unclear if there would be any kind of tax break to the builder.

Mr. Rivers says he's not totally against the Bylaw. However instead of telling developers what they have to do, why not work with them to help absorb the cost of making the affordable units. As it is now you are asking the builder to lose part of his profit and get nothing in return. Maybe the Town could help with the fees such as sewer and water tie-ins on these affordable units.

Mr. Whalen agrees its bad public policy to tell someone what they have to do. He discusses the idea of a tax abatement. Mr. Rivers feels a tax abatement is a nice idea but could get complicated he would rather something easier like reducing the fees from the Town. Mr. Rivers says instead of just saying it's all on the developer, the Town should share the responsibility not just put it all on one person.

Mr. Whalen asks if there are any further comments. There are none. He thanks Mr. Rivers for his input. It will help with the development of the Bylaw.

MOTION: Mr. Ceppi makes a motion to close this public hearing. They will continue to work on this Inclusionary Housing Bylaw to try to prepare it for the Fall Town Meeting with the guidance of the Town's Attorney. Ms. Shiver seconds the motion.

VOTE: 5-0 in favor

Approval of Minutes- Minutes for November 13, 2012. **MOTION:** Ms Shiver makes a motion to approve the minutes for November 13, 2012. Mr. Ceppi seconds the motion. **VOTE:** is 5-0 in favor.

Town Planner Report- Ms. Buck gives the Board an update. The Regional Chamber of Commerce received a grant to do some marketing. The marketing campaign focuses on showing this region as a good place to live, work and visit. The tag line will be “Get In the Middle of It”, they have asked each member community to submit photos to represent their Towns. Ms. Buck asks the Board if they have any recommendations on photos to represent Spencer, these photos will be on the website. Ms. Shiver states maybe the Historical Commission may have some good photos.

Adjournment: With no further discussion the meeting is adjourned at 8:30 pm.

Submitted by: Brynn Johnson, Jr. Clerk

Approved by the Planning Board on: May 21, 2013

List of Documents used on March 23 2013

Items sent to Planning Board prior to Meeting:

- Agenda
- ANR Application Girl Scouts-Buteau Road
- Memo from Michelle Buck dated 3/14/13
- Memo from James Whalen to Board of Selectmen
- ANR Application and plan for Seven Mile River Nominee Trust (Rt. 49)
- Small Farm APR application
- Draft Inclusionary Housing Bylaw dated 2/14/2013
- Town Counsel Request
- Minutes November 13, 2012

Items submitted to Planning Board at meeting:

- Overview of Inclusionary Housing Bylaw handout
- Email from Mike Malone to Michelle Buck dated 3/26/2013
- Response from Town Counsel Stan Weinberg dated 3/26/2013