

Town of Shelburne Planning Board
Minutes of Remote Participation Meeting Mar. 10, 2021

A duly posted meeting of the Shelburne Planning Board was held remotely on Wednesday, March 10, 2021 at 7:00 pm using Zoom online software.

Present: John Wheeler, Chair
Will Flanders
Cam Stevenson
Tom Johnson

Administrative Assistant: Liz Kidder

Audience: John Walsh, Tom Kuklinski, Cynthia Boetner, Kate Whittaker, Nancy Eisenstein, Ken Eisenstein, Seth Wilschutz, Yana Feasey, Joe Palmeri. Andrew Quient

Absent:

The meeting was called to order at 7: 05 p.m. John Wheeler noted he was recording the audio of the meeting.

Motion to approve minutes of the Planning Board meeting of Feb. 24, 2021, was made by Cam and seconded by Will.

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

ANR/Subdivision – none submitted

Special Permit –

Boehmer – Mr. Boehmer has requested a finding by the ZBA on changing the use of his barn and garage to studio office space on a non-conforming lot. The board reviewed the application. It was noted that all neighbors would have been notified as per the standard requirements. The Board did not have any concerns about this change of use based upon the information provided. The ZBA will be dealing with this tomorrow night during a public hearing.

Quient – Tom Johnson noted that he is recusing himself from this discussion since he is an abutter to Mr. Quient. The Board reviewed the points made by Mr. Quient in his application and read the Building Inspector’s letter regarding his need to apply for a special permit. Liz noted that there were letters from the Mullers and Logan/Wallaces that were, as requested, read into the record. Both letters were in support of home-based artist’s studios but felt regular retail hours belonged in the Village Commercial not the Village Residential District.

Kate Whitaker, stated she is an abutter and is married to the recused Tom Johnson. She sees this as a test case for the Section 7 Home-Based Business bylaw. When they purchased their house, they checked the bylaws and bought their house because it was in a residential neighborhood. They felt they would be protected by the bylaw and this is a precedence setting test case. Mr. Quient would be the only home retail business open regular hours instead of by appointment or twice-a- year open studios. She is also an artist and shows her work online, at shows and people can come to her home studio by appointment. Holding regular retail hours is a departure from what has been happening in this Town. She feels this will fundamentally change the character not just of the neighborhood but of the Town.

John Wheeler noted that he appreciates her concerns and that the Planning Board is not the SPGA but the ZBA asks for recommendations regarding special permit applications. John noted that Joe Palmeri, chair of the ZBA was sitting in on the meeting. Joe said that Mr. Quient’s sign is totally in compliance with the bylaws. When he first moved to Town Andrew met all the requirements of the bylaw; when he sought a building permit for an addition, he was then required to obtain a special permit. He was refused his permit because he was going to do retail. This application was just filed a few days ago. Joe noted that the Johnsons had filed a complaint with the ZBA before the plan for the addition, and at that time Andrew Quient was in compliance.

Tom Kuklinski, 14 High St. said he agrees with Kate. If it is zoned residential it should look and feel like a residential property. When retail hours are added, he starts crossing over line to commercial. Home based businesses can be done discretely. John urged Tom to also go to the ZBA hearing. Nancy Eisenstein is here in support of what Kate said. She lives on Bridge St. and her main concern is traffic. She was hit in a cross walk by a car during tourist season. She felt that up to 15 people a day is a lot and that should be addressed. Ken Eisenstein said they own Boswell’s Books on Bridge St. They feel this neighborhood should remain residential and keep the commercial uses in the commercial area. Ken noted that they have a big barn on their property and if retail hours are allowed in the VR, they could always move their store to behind their house. Cynthia Boettner said she was here to listen and to get a sense of the issue. She lives on Bridge St. and she is concerned about the commercial creep up Bridge St. John Walsh said he was listening and gathering information. Yanna Feasay said she is new to the Village and wanted to learn what issues were being covered at the meeting.

Approved: _____ Date: _____ 1

Joe Palmeri said the hearing would be in about 35 days from now, probably the second week of April. All the abutters will receive a copy of the legal notice.

Cam noted that clearly there is an objection in the neighborhood to the retail sales aspect of this proposal. Cam would like more clarity on the retail sales part of Andrew Quient's proposal, clearly you don't want an open retail store in a residential area. Will said it seems pretty clear that retail sales would have a negative effect on the neighborhood especially as it relates to traffic. Will said that he would suggest recommending to the ZBA that the retail sales would be more detrimental to the neighborhood. Liz was asked to draft a letter to the ZBA which it can be reviewed by the Board at their next meeting

Kate asked about Section 7.5.5 regarding traffic. Since the Town has had home-based business retail in the VR traditionally by appointments - the bylaw makes sense. She thinks the 15 people was clearly written with appointments in mind. She said this is clearly unenforceable and 7 or 8 appointments would be more appropriate. Will said the interpretation of the current bylaw is up to the ZBA. This Board is probably going to be making some recommendations to ATM about this section of the bylaw. He thinks there is a question as to the fact that Bridge St. is not really a residential street, it is the main entrance into Town. Therefore, there are other issues to take into consideration in their review since traffic pulling in and out at that site is not the same as cars pulling in and out on at a home based business on High St.

John noted that the planning board has learned a lot tonight from the comments and will consider them as they review the bylaws. Will thanked everyone for attending to the meeting and giving input which had been really helpful for the Board.

Tom Johnson rejoined the meeting.

CHANGES TO THE ZONING ACT- MGL Chapter 40A. John said that he attended a webinar about recent changes to the Zoning Act. Cam and Will said they also attended. Will's impression was that the changes are designed to make it easier for a town to pass affordable housing provisions. A lot of the changes related to the greater Boston area where they want to have affordable housing near subway stations. John noted that some of the zoning bylaw changes related to affordable housing can now be passed by simple majority vote instead of super majority. Cam said that the State has a help-line where towns could call for free instead of calling Town Counsel. They also noted, that warrant articles should include the size of the vote right in the warrant article, so that it is clear to everyone whether it is a simple or super majority vote needed to pass that article. It was noted that in the past, they had passed over a couple of warrant articles because there wasn't going to achieve a 2/3rds vote even though they would have achieved a simple majority.

Joe said that he would like to see the Selectboard added to the list of the Boards required to get a copy of SPGA applications. Many projects affect town properties. The Board felt that they could get that added as a warrant article this year. John said we will send the MMA link for the webinar to the Selectboard and the moderator so that they know about the change in the voting requirements.

OLD BUSINESS

CPA March 24 meeting – 6:00 o'clock will be a Selectboard meeting with Alyssa LaRose with local Town Boards to learn about the CPA program. Liz will post an agenda that includes the 6:00 portion of the meeting so that all the Planning Board members can join. At 7:30 they will adjourn and the Board will have to recheck into a new meeting at 7:30.

Shelburne Housing needs, town owned land, Section 10, Findings/Variances: John will ask the Selectboard/finance about authorizing time for Will to talk to Town Council on findings/variances and how to handle requests for variances which she has told the ZBA should not be issued but residents expect some flexibility.

Planning Board goals/proposed bylaws for 2020-2021/ATM and Public Hearing Schedule:

Home Based Businesses – Tom Johnson recused himself due to conflict of interest. John noted that the Board was reviewing Section 7 based upon comments that had been received. Issues included retail hours in home-based businesses, parking. Joe questioned the motivation behind these changes and the parking approach since it could mean more parking on the street in front of other people's houses. John noted that as situations come up in Town, the Planning Board sees what is happening and then reviews the bylaws to see if they are able to handle the situation. These changes were discussed by the Board before there was an application to the Town by Mr. Quient. Once there was an application, Tom Johnson, Mr. Quient's neighbor recused himself from the discussion.

5G – Jonathan Mirin reported that he talked to Joe Palmeri. Joe feels that there are a lot of questions that have to be answered on the proposed draft. Joe asked if anyone has looked into the FCC bylaws to see what the federal regulations require and how this relates to the override of local zoning. Jonathan mentioned that many local communities are putting in 5G bylaws since the Federal regulations are in flux. Joe felt that there were many things that don't fit in with the current CRS facilities bylaw. Will said that the Board had been considering just adding the small cell towers into the definition. The Board does not see adding the regulatory requirements as are being done in other Town bylaws. Adding 5g towers to the CRS definition, would be the simplest thing that the Board could do. The Town would be expressing an opinion that the Town doesn't want it even if the Feds overrule the Town. Joe suggested that 5g shouldn't just be put in the definition, it should be clearly put in its own section. Will said he could put that in one paragraph. Joe would have to see a draft and then have it reviewed by the whole ZBA.

Jonathan informed the Board that the FCC had passed a new "otard" rule – giving permission for anybody to turn their roof into a wireless provided. You can get a satellite connection and then share it with a neighbor and reduce costs. This could bypass any zoning regulations. A lawsuit has been filed to stop it based upon the electro-sensitivity issue. If the "otard" rule goes through, any local providers are going out the window and everyone is going to be broadcasting themselves. He said the both Charlemont and Health have been working on this. Jonathan is hoping the Planning Board or the ZBA could file an amicus brief stating they do not want neighbors in Shelburne broadcasting to their neighbors. If would take all the power out of the local bylaw. John asked Jonathan to send a link to a website so that the Board could better understand these concerns.

Affordable Housing/Reuse of Abandoned/Town owned properties – the Board reviewed Will's Section 10.1.4 that was sent out just before the meeting. This would allow the ZBA an option of extending the time limit for reuse of an abandoned nonconforming lot. Joe noted that the Selectboard had Donna calling the AG's office to see if the Town could do this. Will asked John to add a discussion on town owned land use to Will's agenda for a discussion with Donna.

Meeting with ZBA March 24th – the ZBA will join at 7:30 but would need to get see drafts to look at first.

Resiliency, Sustainability, Climate Change impact on Franklin County nothing new discussed

Master Plan/Economic Development update – waiting on the census

Zoning Bylaw Revisions adopted SPTM 2020 – no new information from the AG's office.

Planning Board Budget for FY22 – John is meeting with the Selectboard and Finance Committee on Monday

COMMITTEE and REGIONAL PROJECT UPDATES

FRCOG –They are having a meeting on March 25th Siting solar panels on agricultural land.

Open Space – Tom was not able to participate in the last meeting. They have been developing signage for wooded loop trail on the Payne Property. A brochure is being developed on invasive species. In regard the hiking trail along the Deerfield. There are letters. It was noted that letters objecting to the Trail have been received.

Other Town Board updates – nothing presented.

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

Read Mail – only legal notices from neighboring towns have been received in the mailbox at Town Hall.

Public Comments—none presented.

Schedule next meeting - The Board will meet remotely again at 6 and 7:30pm on Wednesday, March 24th. Cam noted that he may have to miss an upcoming meeting. Tom noted his position on the Board is up for reelection this year and he is not running again. The Board discussed reaching out to members of the community to encourage more participation.

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

Vote: 3 in favor, 0 opposed, 0 abstentions

Meeting was adjourned at 9:54 pm.

Respectfully submitted by,

Liz Kidder
Administrative Assistant

LIST OF DOCUMENTS:

Proposed bylaw revisions, home based businesses, Affordable housing, 5G.
Emails received on the trails and the home based business bylaw.