

AMHERST PLANNING BOARD
Wednesday, October 6, 2010 – 7:00 PM
Town Room, Town Hall
MINUTES

PRESENT: Jonathan Shefftz, Chair; Jonathan O’Keeffe, Richard Roznoy, Rob Crowner, Stephen Schreiber, David Webber and Sandra Anderson

ABSENT: Bruce Carson

STAFF: Jonathan Tucker, Planning Director; Christine Brestrup, Senior Planner; and Jeffrey Bagg, Senior Planner

Mr. Shefftz opened the meeting at 7:10 PM.

I. ANNOUNCEMENTS

Mr. Shefftz announced that the meeting was being recorded by Planning Department staff and was being recorded and broadcast by ACTV.

II. PUBLIC HEARING – ZONING AMENDMENT

A-04-11 Development Modification (Planning Board)

To amend Article 4, Table 3, Dimensional Regulations, and Articles 6, 12, and 14 of the Zoning Bylaw to amend and unify existing affordable housing incentives, to establish new definitions, and to replace the current phased growth regulations with a new method for regulating the densities and dimensions of proposed residential and mixed uses and developments.

Mr. Shefftz read the preamble and opened the public hearing.

Mr. O’Keeffe presented the report of the Zoning Subcommittee. The Development Modification zoning amendment is the first step towards implementation of the Master Plan. It takes the Master Plan concepts and works them into the Zoning Bylaw. The purpose of the zoning amendment is to provide incentives and disincentives for things that the town wants or does not want to happen. It is a replacement for the existing Article 14 of the Zoning Bylaw, Phased Growth, which placed restrictions on the rate of growth by limiting the number of building permits that could be issued in any given year. The new zoning amendment includes a set of criteria that are aimed at achieving the community’s goals as described in the Master Plan. It establishes a point system for meeting or not meeting those criteria.

The Phased Growth Bylaw allows modification of the development schedule for a project. Phased Growth was to expire last fall, but Town Meeting voted to extend it to November 15, 2010.

The Development Modification zoning amendment is not the same thing as the Phased Growth Bylaw. It has taken the spirit of the Phased Growth Bylaw in that it assigns points, both positive and negative, for certain aspects of a project. Rather than modifying the rate of growth by controlling the pace of building permit issuance, this amendment would modify dimensional requirements for residential developments. It would allow the number of units to be increased or decreased. The idea is to provide incentives to conform to certain criteria deemed to be good by the community. It would also apply to mixed-use developments, which would be able to benefit from modifications in dimensional requirements, such as coverage, setbacks, and height.

Mr. O’Keeffe led the Planning Board through the amendment section by section. He noted that developers [of eligible projects] would not be required to take advantage of the modifications, but they would need to go through the process to figure out their point total. The point total might require that the project be reduced in size or it might allow an increase in size.

The Planning Board will be adding a requirement to its application process for Site Plan Review and Special Permit applications and will be communicating with applicants about how they can meet the requirements. The trade-off is better projects.

Section 14.102 addresses ZBA concerns. The ZBA wanted to be assured that nothing in this zoning amendment could be construed to compel the ZBA to take a particular action with respect to a Special Permit application.

Mr. Shefftz asked if this zoning amendment was based on what is being done in other municipalities. He noted that it makes sense, but is very complex. He also noted that the range of points permitted in some instances allows subjective judgment.

Mr. O’Keeffe stated that the Zoning Subcommittee (ZSC) had looked at what other municipalities have done piece by piece, but not in a comprehensive manner. As for the question of the point ranges being arbitrary, the ZSC spent a long time talking about the points and tried to balance the numbers. The ZSC wanted the point numbers to reflect the importance to the town of various items. In “black or white” cases the points are specific. In other cases a range of points is more useful.

Mr. Shefftz asked if the points would be like demerits and would apply to actions that are illegal.

Mr. Tucker responded that there are some cases, such as Demolition Delay, where there would be negative points given in combination with the standard Demolition Delay penalties.

Mr. Shefftz asked about the topic of green roofs and permeable paving. He expressed concern that this important issue might be buried in a “catchall” category.

Mr. Tucker noted that the inclusion of these topics in the Development Modification amendment does not preclude the Board from considering these topics in another separate zoning amendment in the future.

Mr. Schreiber expressed concern from the perspective of the designer that there would be uncertainty. One might be caught in an endless loop of designing a project, getting points that allow modifications, making the modifications and then getting more points that would prompt another redesign.

Mr. O’Keeffe noted that this amendment applies to larger projects. A larger project would be designed with these guidelines in mind. These issues should be taken into consideration early in the process.

Mr. Tucker referred to the Phased Growth Bylaw and noted that developments are submitted which have already been tailored to the incentives and disincentives contained in the Bylaw. In the case of Development Modification, the Board would look at an application that has already been reviewed by staff.

There was further discussion about the iterative nature of the design process and how that might be affected by the new Bylaw.

Mr. O’Keeffe agreed that a designer would not have certainty about the number of points that the Board would assign to a project. The designer would be required to submit a proposal for the number of points that the project might receive. There is a need to amend the Planning Boards Rules and Regulations to accommodate this new process. Mr. O’Keeffe noted that staff has run a number of test projects through the process already and plans to test more projects.

Mr. O’Keeffe gave a “high level” overview of the amendment. The topic headings include Affordable and Diverse Housing, Centers and Mixed Use Developments, Critical Natural Resource Protection, Critical Historic Resources, Sustainable Site and Building Design and Transportation. Almost all topics covered in the Phased Growth Bylaw are included in the new zoning amendment.

Mr. O’Keeffe explained how the final section of the Bylaw would work, including the totaling of points and how this point total might affect a project.

Ms. Anderson asked if there had been any feedback from the perspective of the applicant, i.e. from builders or architects. Mr. O’Keeffe stated that there had been a limited amount of feedback. There has been an intent to sit down with the TCRC and the Chamber of Commerce before Town Meeting to discuss the proposed amendment.

Mr. O’Keeffe reported that the Zoning Subcommittee had voted 2-1 to recommend this zoning amendment to the Planning Board. Mr. Roznoy had opposed the motion to recommend.

Mr. Roznoy explained his objections to the amendment. He expressed concern about the complexity and length of the amendment and the process that would be required to go through it. It will make development more difficult in town. The Board will have more late meetings. He acknowledged a good faith effort on the part of those who had worked on the amendment. The amendment had been shortened by eliminating commercial projects. The ZSC had made attempts to streamline and simplify the amendment. Staff had researched different approaches. He believes that the amendment can be streamlined and consolidated. He would like to see a more discretionary application of points. He noted that staff had offered to develop a spreadsheet to help with the process. The Board already needs to review two lists [conditions and criteria] for each application. This would add another list for the Board to review.

Mr. O’Keeffe acknowledged Mr. Roznoy’s concerns, but stated that the process would achieve a better project. This process will not be part of all Site Plan Review applications. It will be the exception, rather than the rule.

Sy Friedman of 10 Allen Street stated that this is too complex for him to have an opinion, but he asked who would enforce it.

Mr. Tucker stated that the Zoning Enforcement Officer, the Building Commissioner, would enforce it.

Mr. Friedman noted that over the years people have done renovations without getting permits, or permits were granted retroactively. He stated that there are not enough inspectors to enforce the Bylaw.

There was further discussion about enforcement. Mr. O’Keeffe noted that the Board confronts the issue of enforcement with all Site Plan Reviews. There are conditions attached to each permit that must be enforced.

Mr. Tucker further noted that the Building Commissioner requires submissions by professionals, certifying that things have been done in a certain way.

Mr. Schreiber questioned the LEED section of the amendment. LEED certification happens after a building is finished. One is uncertain as to whether it will get certification. He noted that LEED is moving towards performance testing of buildings. He stated that some things are already required by code, such as universal accessibility.

Vincent O’Connor of Summer Street, a Precinct 1 Town Meeting member, made the following comments:

- He asked about the point total calculations, suggesting that the Board provide two examples from recent history of projects that have been completed.
- He recommended that copies of the existing Article 14 be provided so that Town Meeting members can compare it with the new Article 14.
- He noted that a 40% increase in size of a project (as might be allowed based on the point chart) would be too much.
- He expressed concern about the destruction of existing buildings.

- He suggested reducing the maximum percentage of increase to 10 to 25%.
- He recommended taking some of the items and making them mandatory, such as pathways to bus stops or installation of sidewalks.
- He urged the Board to become involved with following what happens after a project is built.
- He encouraged Amherst to adopt a stronger stance against builders who are permitted to build one thing and end up building something else. Other towns require that the unpermitted structures be demolished.

Mr. O’Keeffe noted that the higher percentages of increase are only achievable in certain districts. He also noted that it is very difficult to achieve the highest point totals.

Mr. O’Connor recommended that the Board figure out the highest number of points that might be achievable and only show those numbers. Otherwise leave the spaces in the chart blank. This will avoid confusion.

Mr. Roznoy MOVED to close the public hearing. Ms. Anderson seconded and the vote was 6-1 (Crownor opposed).

The Board decided by consensus to proceed to the Site Plan Review public hearing and to return to discussion of the Development Modification amendment later in the evening.

III. PUBLIC HEARING – SITE PLAN REVIEW

SPR2011-00005/M6948 – 43-51 North Pleasant St. - Boltwood Place – Archipelago Investments, LLC

Request to amend previously granted permit (SPR2010-00004/M3410) to alter 5th floor plan to allow for 3 smaller units rather than 2 larger penthouse units. (Map 14A/Parcel 48; B-G zoning district)

Mr. Shefftz read the preamble and opened the public hearing.

Dave Williams and Kyle Wilson presented the application. Mr. Williams noted that he is a resident of 360 Shays Street and is a partner in Judie’s Restaurant as well as a partner in IAT Corp., the owner of the property on which Boltwood Place is proposed to be built.

Mr. Williams stated that the partners have secured financing for this project. He thanked the Building Commissioner, Bonnie Weeks, and his code consultant, Eric Wright, for their help with building safety issues. The project has been reviewed by the Design Review Board. Changes were made to the façade to satisfy the concerns of the DRB. In addition, the architects completely redesigned the interior of the building.

Mr. Wilson stated that the experience of working with the town has been good. The applicants had obtained approval from the Planning Board last year so that they could take the next steps in the process. There has been a lot of interest in the units on the part of prospective tenants, most of whom are interested in two-bedroom, two-bath units. The interior of the building has been redesigned to accommodate this interest as well as to provide more favorable exposure for most of the units. The area between the new building and Judie’s Restaurant has also been redesigned. The “chimney” space between the two buildings has been eliminated. The cooler, freezer and doors at Judie’s are being relocated. There will be a fire wall at the back of Judie’s.

Mr. Wilson described the details of the redesign. He noted that the interior construction has been simplified. The ground floor has also been redone. The retail space has shrunk. Utilities and egress stairs have been relocated. The units will be about 1,000 square feet. Storage space will be provided on the first floor. There will be a shared, air-conditioned trash room for Judie’s and the new building.

The Design Review Board had recommended that warmer materials be used. As a result there is a proposal to use fire-treated Western Red Cedar on the east façade of the building, if this is acceptable to the Building Commissioner. Mr. Wilson noted that the applicants have been meeting with the Building Commissioner while redesigning the building.

Mr. Wilson described the access to the new building and to the back of Judie's.

Mr. Webber noted that aspects of the project, such as landscaping and signage, will be going back to the Design Review Board.

Mr. Shefftz reviewed the Site Visit Report. Mr. Roznoy noted that it was obvious from the site visit that the decision to eliminate the "chimney" space between the two buildings was a good decision.

There was discussion about the planes of the façade and how far the windows would be recessed.

Ms. Brestrup noted that Planning Department staff and the applicant had met with the Building Commissioner and the Assistant Fire Chief to review the proposed changes to the design. Assistant Fire Chief Don McKay had stated that the changes were satisfactory and he did not have any concerns.

Mr. Williams and Mr. Wilson described the storage units. There was discussion about the protective railings that would be installed at the sliding doors.

There was discussion about whether the amount of retail space on the ground floor was adequate to meet the requirements of Section 3.325 of the Zoning Bylaw. Ms. Brestrup stated that the limitations placed on mixed use buildings in the B-L and COM zoning districts did not apply in this case, since the building will be in the B-G zoning district.

Mr. O'Keeffe MOVED to close the public hearing. Mr. Roznoy seconded and the vote was 7-0.

The Board agreed by consensus to assign a development authorization date for the one additional dwelling unit of November 2010, the month following the date that the public hearing was closed.

The Board found under Section 11.24 of the Zoning Bylaw, Site Plan Review, as follows:

- 11.2400 – The project is in conformance with all appropriate provisions of the Zoning Bylaw and with the goals of the Master Plan; a Special Permit was granted in 2009 to allow a modification in building coverage, lot coverage and height of the building;
- 11.2401 – Town amenities and abutting properties will be protected because detrimental or offensive actions will be minimized; lighting will be downcast;
- 11.2402 – Abutting properties will be protected from detrimental site characteristics resulting from the proposed use because there have been improvements made to the façade of the proposed building and landscaping, signs and other site improvements will be brought back to the Board for review and approval;
- 11.2403 – N/A
- 11.2410 – N/A
- 11.2411 – Proposed methods of refuse disposal are adequate; they are addressed in the Management Plan;
- 11.2412 – The ability of the proposed sewage disposal and water supply systems within and adjacent to the site is adequate to serve the proposed use; the Town Engineer has reviewed this project and has not raised any concerns about this issue;
- 11.2413 – The proposed drainage system is adequate; the Town Engineer has reviewed this project and has not raised any concerns about this issue;
- 11.2414 – Adequate landscaping will be provided because there is very little area on the site available for landscaping and a Landscape Plan will be presented to the Board for review and approval, as a condition of this permit;

- 11.2415 – N/A – There are no steep slopes on this property;
- 11.2416 – The adjacent properties will be protected by minimizing the creation of nuisances during construction because a condition of the permit will require that a construction sequencing and staging plan including soil erosion control measures and parking impacts will be submitted for review and approval by the Planning Board;
- 11.2417 – The adjacent properties will be protected by minimizing the intrusion of lighting because conditions of the permit will require that a Lighting Plan be submitted for review and approval by the Planning Board and that all lighting shall be downcast and shall not shine onto adjacent properties or streets;
- 11.2418 – N/A
- 11.2419 – N/A
- 11.2420 – N/A
- 11.2421 – The development shall be consistent with surrounding buildings and development because the streetscape on the parking lot side of the building will be an extension of the streetscape along the east side of the other buildings in the area and it will be restored to its previous condition, after construction is completed;
- 11.2422 – N/A;
- 11.2423 – The buildings on the site will relate harmoniously to each other; they will not be discordant;
- 11.2424 – Storage areas and loading areas will be incorporated into the building design; dumpsters will be eliminated from the site; the developers will work with the Design Review Board and the Planning Board to devise appropriate methods of screening for rooftop equipment;
- 11.2430 – The site has been designed to provide for the convenience and safety of vehicular and pedestrian movement both within the site and in relation to adjoining ways and properties; at the public hearing for SPR 2010-00004, the Board discussed these issues and determined that there is not a substantial amount of pedestrian traffic passing by the north side of the building; most pedestrians will arrive and enter the building through the front door; there is no room on the north side of the building to construct a walkway along with the existing driveway; the alleyway between the buildings has been eliminated;
- 11.2431 – N/A
- 11.2432 – N/A
- 11.2433 – N/A
- 11.2434 – N/A
- 11.2435 – N/A
- 11.2436 – N/A; The requirement for a Traffic Impact Report will be waived for one additional unit;
- 11.2437 – N/A

Mr. Webber MOVED to approve the application as amended, and previously discussed, with the conditions and waivers from the previous permit [SPR2010-00004] carried over to this permit. Mr. Roznoy seconded and the vote was 7-0.

IV. OLD BUSINESS – none

V. NEW BUSINESS

- A.** Board reorganization and election of officers – postponed until later in the meeting
- B.** New Information – none

VI. FORM A (ANR) SUBDIVISION APPLICATIONS – none

VII. UPCOMING ZBA APPLICATIONS

The Board decided by consensus to review ZBA FY2011-00010- Deborah Eaton, 13-15 High Street, at the October 20th Planning Board meeting. The Board had declined to review a previous application for this property, on August 4, 2010. That application was withdrawn and the current application has just recently been filed. Mr. Crowner noted that this would be the first use of the new B-N zoning district.

VIII. UPCOMING SPP/SPR/SUB APPLICATIONS - none

IX. PLANNING BOARD SUBCOMMITTEE REPORTS

Zoning – Mr. O’Keeffe had given the report during the public hearing for the Development Modification zoning amendment.

X. PLANNING BOARD COMMITTEE & LIAISON REPORTS – none

- A. Pioneer Valley Planning Commission
- B. Community Preservation Act Committee
- C. Agricultural Commission
- D. Save Our Stop Committee
- E. Public Transportation and Bicycle Committee
- F. Amherst Redevelopment Authority

XI. REPORT OF THE CHAIR – none

XII. REPORT OF STAFF – none

II. PUBLIC HEARING – ZONING AMENDMENT

A-04-11 Development Modification (Planning Board)

(deliberations continued from earlier in the meeting)

The Board returned to deliberations on the proposed zoning amendment.

Mr. Webber asked what happens if the existing Phased Growth Bylaw expires and is not replaced. Ms. Brestrup stated that there would be no dire consequences. Mr. O’Keeffe added that the town would lose a method for using incentives to get developers to do what we want them to do.

Mr. Webber asked if this would affect the Gateway development. He asked if specific developments were discussed.

Mr. O’Keeffe stated that no potential developments were discussed; however, real-world examples from past developments were run through the calculations. Mr. O’Keeffe noted that if the Boltwood Place project had received a certain number of points it might be able to add another floor.

Mr. Webber asked what would happen if Chapter 40B were repealed. Mr. O’Keeffe noted that the Planning Board would need to rethink this portion of the Bylaw if Chapter 40B were repealed. Mr. Webber recommended that the section of Development Modification that relates to 40B might contain a phrase like “Chapter 40B as it was in existence on _____ date”. Mr. O’Keeffe noted that the outcome of the state referendum would be known at the time of Town Meeting.

Mr. Webber asked how the Development Modification amendment would interact with the Subdivision Rules and Regulations and state subdivision law. He asked about zoning freeze provisions.

Ms. Brestrup stated that Town Counsel had reviewed a preliminary version of the Development Modification and found it to be acceptable.

Mr. O’Keeffe stated that there had not been a specific discussion about how the Development Modification amendment would interact with subdivision law and regulations. However, the process of Development Modification might cause the number of dwelling units allowed in a project to change.

Mr. Webber asked staff to make sure that this proposed amendment is cohesive regarding the subdivision and other laws. Mr. Webber further commented that the amendment looks complete, but it is complicated. He expressed reluctance to vote for it at this time. He would like to see something less specific, more general, with a simpler table. He termed the amendment an attempt at “micromanaging”.

The Board discussed the number of points to be assigned for various items. Although only a few points are assigned for each item, the cumulative impact of the points may be significant.

Mr. Schreiber suggested that Planning Board members think of the amendment in “chunks” rather than all at once. He questioned the sense of “false accuracy” that might come out of the point system. He questioned the comparison among items and stated that it was hard to assess the numbers assigned to various items.

Ms. Anderson stated that she had experience using a point system in the public bid process. Points assignments can be both subjective and objective. She suggested having a maximum number of points for each area. She is not in favor of the amendment as it now stands, although she recognizes the value of this type of system. The process seems cumbersome. She would like applicants to make a good presentation of their projects and not be caught up in chasing points.

Mr. Crouner expressed strong support for this amendment. It is not complex, although it is long, he said. The bylaw amendment is an expression of the Master Plan. The Master Plan was a long process that involved lots of people. Mr. Crouner served on the Committee. The Master Plan involved compromise. This is similar. The Development Modification Bylaw does express the goals of the Master Plan for the community. The Zoning Subcommittee worked on this for over a year. Members of the Select Board, the Zoning Board of Appeals and the Planning Board were involved in the meetings, as were members of the public.

Mr. O’Keeffe noted that the number of hours spent is not a reason for passage. There have been good concerns expressed. The points to be assigned represent consensus by a number of people.

Mr. Roznoy agreed that a large number of people had worked on this amendment for a long time. He described research that he had done in Colorado, where a “slow growth” ordinance had passed in the 1970’s (the Danish Plan). This has evolved into an affordable housing regulation. In the beginning the provision limited the number of applications for residential development. Applications almost died since so few people could gather points. The Zoning Subcommittee looked at other town’s approaches. A good-faith effort was made to adopt other approaches. Mr. Roznoy stated that he is not overly enthusiastic about this proposed bylaw amendment.

Mr. Webber stated that he could support the amendment on two conditions: 1) There should be a clear explanation of how it works; the introduction should include an explanation “in plain English”; 2) There should be an accompanying document that spells out the Planning Board procedure for using this Bylaw, including how to assess points, how to tally them and whether to average them. He suggested that there be a minimum and maximum number of points given for each category. This would help people to know the relative importance of each section.

Mr. O’Keeffe stated that the Planning Board report would lay out what the amendment means and how it will be used. He asked that the Planning Board be able to review the report before it is distributed.

Mr. Webber agreed that this approach would make it more user-friendly.

Mr. O’Keeffe noted that the Warrant for Town Meeting was going to be signed on Friday, October 8th.

Mr. Shefftz asked if there should be a motion to refer it back to the Planning Board, noting that having it on the Warrant would give it some exposure and get people thinking about it.

Mr. Webber MOVED to recommend to Town Meeting that this zoning amendment be adopted, subject to an ancillary document being available to explain to applicants how to follow these rules and including the Planning Board procedures for tallying point totals. Mr. O’Keeffe seconded.

There was further discussion about whether the amendment could be changed after tonight. Although the amendment cannot be changed substantially after the Warrant is signed, the Board can still discuss supporting materials which will make the Bylaw more practical to use.

Mr. Webber amended his motion as follows: MOVED to approve the zoning amendment as presented. Mr. O’Keeffe seconded.

Mr. Webber and Mr. O’Keeffe agreed to continue to work on supporting documentation. Mr. O’Keeffe noted that if this amendment passes, there will be a need to amend the Planning Board Rules and Regulations.

The vote was 5-2 (Anderson and Roznoy opposed).

V. NEW BUSINESS – continued from earlier in the meeting

A. Board reorganization and election of officers

Mr. Roznoy MOVED to continue with the current officers [Shefftz as Chair, O’Keeffe as Vice-Chair]. Mr. Schreiber seconded and the vote was 5-2 (Shefftz and O’Keeffe abstained).

Board members noted that the position of Planning Board Clerk was vacant. Mr. Carson’s name was mentioned as a senior member of the Board who might be interested in serving as Clerk. A vote on Mr. Carson’s nomination was postponed until Mr. Carson could be present.

XIII. ADJOURNMENT

The meeting was adjourned at 10:04 p.m.

Respectfully submitted:

Christine M. Brestrup, Senior Planner

Approved:

Jonathan Shefftz, Chair

DATE: _____