

**AMHERST PLANNING BOARD**  
**Wednesday, March 30, 2011 – 7:00 PM**  
**Town Room, Town Hall**  
**MINUTES**

**PRESENT:** Jonathan Shefftz, Chair, Jonathan O’Keeffe, Bruce Carson, Richard Roznoy, Rob Crowner, Stephen Schreiber, and David Webber

**ABSENT:** Sandra Anderson

**STAFF:** Jonathan Tucker, Planning Director; Christine Brestrup, Senior Planner

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Mr. Shefftz opened the meeting at 7:07 PM. He later announced that the meeting was being recorded by Planning Department staff and was being recorded and broadcast by ACTV.

**I. MINUTES**

Mr. Shefftz announced that the Minutes of the most recent Planning Board meeting (March 16, 2011) were not ready for review.

**II. PUBLIC HEARING – ZONING AMENDMENTS**

**A-10-11 Accessory Livestock or Poultry (Petition)**

To amend Section 5.014 and Article 12, of the Zoning Bylaw in order to change the permit requirement for accessory livestock or poultry in residential districts, and to provide clarifying definitions.

To amend Article II, General Regulations, Animal Welfare Bylaw, of the General By-Laws of the Town of Amherst to regulate the raising and keeping of livestock and poultry and create a system for registration and inspection.

Mr. Shefftz read the preamble and opened the public hearing. He asked the petitioner, John Gerber, to present the proposed zoning amendment.

Mr. Gerber, of 123 Harlow Drive, stated that he was speaking on behalf of Bernard Brennan and David Tepfer, who had helped him with the petitions. There are two citizen petitions. They both have the appropriate number of signatures. He asked for the Planning Board’s support of both petition articles. These amendments would allow a by-right approach to having a small number of animals for backyard production. The petitions propose boundary setbacks to protect neighbors’ interests. The petitions also propose a site registration process so that the town knows where chickens and rabbits are being kept.

The Health Director will develop educational materials to inform people about best practices and if there are problems there is a proposed complaint-initiated enforcement process, operated by the Animal Welfare Officer. The benefits of backyard hens are many, he said. Concerns about noise, smells and disease have been addressed with the Zoning Subcommittee. There are no significant issues there and they [chickens] are much easier to take care of than dogs, he asserted.

The first of the petition articles is a zoning amendment that would remove the Special Permit requirement for this use in certain zones. Mr. Gerber went through the Special Permitting process himself in order to have hens in his own yard at a cost of \$210. He said it is “a bit

much” to ask people to go through this process to raise hens. The proposed Bylaw amendment would allow people to have a reasonable number of hens and/or rabbits by-right. The second petition article is a proposed change to the Animal Welfare Bylaw [General Bylaws]. The petitioners worked with the Planning Department and the Zoning Subcommittee to develop language that would describe conditions under which the animals would be kept safe and problems with neighbors would be prevented.

Mr. O’Keeffe presented the Zoning Subcommittee (ZSC) report. He noted that there would be a public hearing later in the evening in which an alternative version of one of the articles would be presented. The Zoning Subcommittee voted in the majority to support these articles. Mr. Roznoy was unable to attend the ZSC meeting. His view on the matter is different from that of the majority. The ZSC is generally supportive of the petitioners’ Zoning Bylaw amendment and of the general concept which would make it easier to raise backyard poultry and livestock. The ZSC would like to suggest some minor revisions. Mr. Gerber agreed with the proposed revisions. Mr. O’Keeffe read the proposed revisions to the petitioners’ zoning amendment. The ZSC voted 3-0 (with Mr. Roznoy absent) to support the zoning amendment, with the minor revisions, as proposed.

Mr. O’Keeffe stated that the second half of the petitioners’ proposal is an amendment to the General Bylaw which lays out the best practices for keeping livestock and poultry and proposes a registration process. Currently, people are allowed [by right and by Special Permit] to keep accessory livestock and poultry in certain sections of town, but there is no registration process. There is no way for the town to know who has these types of animals. This amendment sets up a registration and inspection process. The ZSC members did not recommend this amendment to the General Bylaw because they have an alternate version that they think is preferable, to be presented at the public hearing later in the evening. The petitioners’ article has no mechanism for notifying neighbors and no recourse for people who have concerns about the keeping of these animals. The ZSC voted 1-2 (Carson and O’Keeffe opposed) on a motion to recommend this article, so the motion failed. Mr. Crowner supported the article. Mr. Roznoy was absent.

Mr. Schreiber asked a question about the proposed 10 foot setback for the enclosure and how this setback requirement relates to setbacks already in the Zoning Bylaw.

Mr. Tucker stated that the current setback requirement for accessory structures states that a structure must be set back a distance equal to its height. Since these structures for animals would rarely be as tall as 10 feet in height, the proposed 10 foot setback for these structures would be greater than what is currently required. The intent is to keep the structures and enclosures a certain distance from neighbors’ properties. There is an additional requirement that these structures and enclosures be at least 20 feet from any residential structures.

Mr. Schreiber clarified the intent of the zoning amendment by saying that the regulation is whichever would be more restrictive, the 10 feet from the property line or the 20 feet from an adjacent dwelling.

Mr. O’Keeffe noted that the ZSC had proposed one further alteration in the General By-Laws to allow for a waiver of the setback requirements in the case where two or more neighbors would like to raise accessory livestock or poultry together. In this case, if neighbors consented in writing, the Building Commissioner could grant a waiver from the required

setback requirements, if the conditions met the health and safety intent of the Bylaw. Otherwise a Special Permit would be required to waive setback requirements.

Mr. Tucker summarized that it was the intent of the Zoning Subcommittee that if all affected property owners agreed in writing, the Building Commissioner could authorize a variation from the setback requirements.

Mr. Crouner stated his reasoning for preferring the petitioners' version of the General Bylaw. He was persuaded that a public hearing is not necessary and that the location of the coop, etc., can be handled by the Health Director. More restrictions are unnecessary and make chickens different from dogs and cats. While he prefers the petitioners' version he also voted in favor of the Planning Board version so as not to stop the process. Mr. Crouner noted that chickens are as quiet, or quieter, than dogs and cats and will not impinge upon neighbors more than other animals.

Mr. Shefftz disagreed. Accurately or not, cats and dogs are often considered to be members of the family, he said.

Mr. O'Keeffe noted that the main difference between the Planning Board version and the petitioners' version is the provision for notice and an administrative hearing. There is a small fee for registration and a requirement for notification of abutters. If the majority of the abutters raised concerns, there would be an administrative hearing, conducted by the Health Director. The decision would be based on the facts of the case. The ZSC wanted to offer an opportunity for people to share their concerns and thoughts about their neighbors' plans for keeping accessory livestock and poultry.

Mr. Webber asked if a single pet rabbit would be treated as livestock.

There was discussion about what constitutes livestock. Mr. Tucker stated that the Zoning Bylaw defines the difference between pets and non-pets. It would be a judgment call on the part of the Health Director and the Animal Welfare Control Officer as to whether to consider rabbits to be livestock or pets in a particular situation.

Mr. Webber asked if the keeping of a single pet rabbit would change in nature under this provision.

There was further discussion about the nature of pet rabbits versus rabbits kept as livestock and discussion about the number of rabbits that might be kept as pets.

Mr. O'Keeffe suggested deleting the word "customarily" from the definition of livestock. There was general support for this change.

There was further discussion about the options available to the Planning Board regarding the different versions of the Bylaw that had been advanced.

Mr. Roznoy stated that he opposed the amendments and would prefer to keep the Zoning Bylaw as it is.

Wim Levine, a member of the Agricultural Commission who lives in Shutesbury but farms in Amherst, expressed "unqualified support" for the petitioners' version of the General Bylaw and warned of possible conflicts that might arise as a result of the requirement to notify abutters. He also warned that the Health Director and Animal Welfare Control Officer might be overburdened by the Planning Board's version. He suggested waiting to see if problems occur and dealing with them if they arise. Over-regulation will harm the intent of the article and its practice, he said.

Mr. Tucker recommended that the Chair could open the second public hearing without closing the first in order to allow the Board to receive testimony and discuss both articles at the same time.

**A-11-11 Accessory Livestock or Poultry (Planning Board)**

To amend Section 5.014 and Article 12, of the Zoning Bylaw in order to change the permit requirement for accessory livestock or poultry in residential districts, and to provide clarifying definitions.

To amend Article II, General Regulations, Animal Welfare Bylaw, of the General By-Laws of the Town of Amherst to regulate the raising and keeping of livestock and poultry, including an abutter notification and hearing process, and to create a system for registration and inspection.

Mr. Shefftz read the preamble and opened the public hearing. He noted that this article was similar to the petitioners' article except for the requirement for abutter notification and administrative hearing.

Mr. O'Keeffe summarized the differences between the petitioners' version and the Planning Board version and summarized the Planning Board version of the General Bylaw.

Mr. Tucker noted that the enforcement staff would be the Health Director and the Animal Welfare Officer.

Mr. Shefftz asked if there would be an increase in the numbers of chickens being kept in town. There was no direct answer to his question. Mr. Levine invited the Planning Board members to consult with the Agricultural Commission on these matters. Mr. Tucker noted that the articles had already been presented to the Agricultural Commission, in addition to the ZBA and the Finance Committee.

Mr. Roznoy noted that the Agricultural Commission already had an impact on the wording of the article. The original version of the article had linked the number of animals allowed to the size of the lot. There are many different sizes of lots in the R-G, R-VC and R-N zoning districts. Proponents had asserted that there would be no smell or noise. Mr. Roznoy stated that chickens do smell. Amherst is a residential community and chickens are appropriate only in the agricultural or outlying districts. Allowing twelve animals on lots in a residential district is not in the best interests of the Town of Amherst, he said. The town hasn't been able to enforce existing laws. The proposal regarding notice to abutters and administrative hearing is "troublesome" because there is no right to due process. There is no provision for appeal. The administrative hearing officer will have great discretion. There could be a constructive grant if no hearing is held. There are a lot of holes in this procedure, he contended. Enforcement is not clear. There is too much discretion allowed to those who would enforce the regulations. He is not in favor of the proposed amendments.

Mr. O'Keeffe stated that lot size is important, but property size doesn't indicate the proximity of animals to adjacent structures or property, since lots can be of unusual shapes. The requirements that the coop and enclosures cannot be closer than 10 feet to the property line or 20 feet to an adjacent structure are more reasonable. He disagreed with the previous speaker's contention that the proposal is ill-conceived or "full of holes". The requirements make this Bylaw stronger and they will protect the public welfare, he said.

Mr. Tucker noted that the number of animals to be allowed is part of the proposed amendment to the Zoning Bylaw. Under the General Bylaw, the Animal Welfare Officer will

inspect the property and advise owners how to care for their animals. The appeal of a decision made following an administrative hearing would be through the courts, he said.

With regard to the constructive granting of an application, Mr. Tucker noted that the Planning Board already operates under this structure. There is considerable motivation on the part of Town staff to hold the public hearings in time.

Mr. Schreiber asked how the zoning amendment would intersect with the Home Occupation section of the Zoning Bylaw, since the purpose of these bylaws is that someone would raise these animals for his own use.

Mr. Tucker stated that there is a use category for two classes of farmstands. However, in this case, the scale of the operation (12 animals or less) would mitigate against any sale of eggs on a scale that might have impacts. The average flock of chickens existing in Amherst today is about 6-7 hens, according to the Animal Welfare Officer. The number of eggs produced will not be enough to generate meaningful commercial activity whose impacts would require regulation, he said.

Mr. Schreiber postulated that people may combine efforts, lease backyard space from one another and establish a larger operation, with 12 chickens on each lot.

Mr. Levine stated that there is already a use category under town regulations and state law that allows hawkers and peddlers and that anyone who raises vegetables, fish or animals may sell these items without encumbrances.

There was discussion about why the Agricultural Commission would have supported this zoning amendment which would allow individuals to compete with farmers. Mr. Webber, a non-voting member of the Agricultural Commission, stated that there is evidence that the more local agricultural activity you have the bigger the market there is for local agriculture.

Carol Hepburn, Animal Welfare Officer and Animal Inspector, and Julie Federman, Health Director, each made statements in support of the proposed amendments.

Ms. Hepburn acknowledged that the Planning Board had a difficult job trying to sort through the various points of view. She recommended reaching a compromise, which will make her work easier. It is better to know where the chickens are than to not know, she said. The new regulations will require people to register the fact that they have chickens. There are now "underground chickens". There has been one complaint about "free-range" chickens in her 10 years with the Town. The solution to that problem is simple—to require people who have chickens to build fences. People are over-reacting to imagined impacts from animals. She has never seen a flock with as many as 12 chickens in Amherst. If she doesn't agree with the number of chickens that someone proposes to keep on the lot, she won't give the license. She always encourages people to talk to their neighbors. She suggested trying the proposed regulations for a year to see what happens. There are more problems with dogs and cats than with chickens, she said. She is here for the welfare of the animals. She works out of the Police Station and for the Chief of Police. She also runs the Town's shelter for the animals.

Mr. Tucker explained that Ms. Hepburn has two jobs – that of Animal Welfare Officer which is a job created by the town and that of Animal Inspector, which is a job created by the state, under the Department of Agriculture. That part of the job is paid for by the state.

Ms. Federman stated that she is the Health Director. In the past there was an Animal Control Officer. Ten years ago the town created the position of Animal Welfare Officer, which is a full-time position. Ms. Hepburn is very busy with all types of animals. By state law, all communities must have a Town Veterinarian and an Animal Inspector. Dr. Katz is the Town Veterinarian. Ms. Hepburn is the Animal Inspector. Public Health and the Animal Welfare

Officers have worked well together. Public Health handles the human side of animal-related issues and the Animal Welfare Officer handles the animal side.

Ms. Federman stated that the Health Department encourages the composting of manure. Odor comes from manure that is not properly managed. Judgment and enforcement are both important in the way that these issues are dealt with. The Health Department is constantly interpreting the Health Code and the Building Code. Ms. Federman stated that she would definitely hold a hearing if the law was in place requiring her to do so [so constructive grants would not be an issue]. Part of her role is to educate the public about health-related issues and the same would be true for the topic of keeping chickens. She has contacted the state veterinarian about what is happening in the rest of the state regarding the keeping of chickens. The raising of a small number of chickens is not a health threat to the town.

The town keeps a "barn book". Every barn and stable is supposed to be checked once a year. The requirements of the proposed regulations are reasonably within the Health Director's job, she said.

She supports that idea of notifying neighbors. There is an assumption that people want to do the right thing and that they will do the right thing. Education is a strong component of the job of the Health Director.

There was discussion about how notification could be accomplished.

Ms. Federman noted that there are many steps in place to enforce the Sanitary Code and the Food Code. Her department works with people to help to bring them into compliance. She supports the idea that property owners can have chickens, but that tenants cannot. She noted that in order to sell food in Amherst a person needs to obtain permits. The slaughtering of animals for consumption by others has to be done at an approved slaughterhouse.

Mr. Schreiber expressed support for the idea that property owners could raise chickens, but only if the property were owner-occupied and only if the owner is the person raising the chickens.

Ms. Hepburn noted that if someone has more than 4 or 5 dogs he would need to obtain a kennel license.

Mr. Roznoy asked about the possibility of salmonella.

Ms. Federman stated that salmonella is more of a concern with pet reptiles than it is for people keeping hens. She encourages anyone who touches an animal to wash his hands. Although chickens do have salmonella, she is not concerned about the spread of salmonella. She has tracked communicable diseases in Amherst since 1995. There are already chickens in Amherst.

Mr. Roznoy asked about Best Management Practices (BMPs). Ms. Federman stated that the town would go along with what the state veterinarian recommends with regard to BMPs.

Mr. Roznoy asked whether chickens are susceptible to frost in winter. Ms. Federman stated that chickens have been raised in New England for a long time. People keep them in coops and in an enclosed area. It is a good idea to insulate the coop, to shelter it from wind and the elements and one can hang a heat lamp in the coop. Chickens are kept in coops at night and during bad weather. Factory chickens are kept in small cages. Free-range chickens are shut up at night but allowed to roam during the day. The size of the coop would depend on the number of chickens being kept.

Mr. Tucker noted that the proposed regulations require 10 square feet per animal in an enclosure and 2 square feet per animal in a coop.

Mr. Shefftz noted that some homeowners' associations ban chickens.

Betsy Krogh of 84 Eames Avenue stated that she is not in favor of the proposed abutter notification process. She would like to see fair and equal treatment for chickens. They are not more disturbing than cats and dogs.

Mr. Shefftz stated that cats and dogs are currently a customary part of human domesticated culture and that not many people normally have chickens as pets.

Mr. Gerber stated that he would support a less restrictive abutter notification process. There was discussion about the possibility of requiring an abutter sign-off rather than a mailed notification.

Mr. Carson suggested distributing information to abutters about how chickens will be raised.

Mr. Schreiber supported the typical abutter notification including abutters and abutters to abutters within 300 feet. There was further discussion about those who should be included in the notification and discussion about whether certified mail is necessary.

Mr. O'Keeffe suggested that the town should send out the notifications and that the requirement for certified mail should be dropped.

Mr. Gerber agreed to this compromise method of notification.

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

Mr. O'Keeffe summarized the agreement. The Planning Board is in favor of the petitioners' original Zoning Bylaw article and in favor of the Planning Board's alternative to the General Bylaw article. The Planning Board is in favor of dismissal of the petitioners' General Bylaw article.

Mr. O'Keeffe MOVED that the Planning Board recommends approval of the petitioners' Accessory Livestock and Poultry Zoning Bylaw article. Mr. Carson seconded.

Mr. O'Keeffe stated that he would like to amend the motion to remove the word "customarily" from the definition of Livestock and Poultry.

Mr. Tucker noted that the Planning Board would make motions from the floor of Town Meeting to amend the article as follows:

- The first paragraph would be proposed to be amended by adding language "be raised and kept in a safe and humane manner consistent with best agricultural practices and shall be" after the word "shall" in the fourth line;
- Paragraph 5.0141.3 would be proposed to be amended by adding the language "secure sheltering" before the word "structure" and adding the language "or shed" after the word "hutch";
- The language regarding setbacks would be altered to allow for an exception if all affected property owners submit a written statement to the effect that they agree to a modification of the setback requirements; then the Building Commissioner may authorize a modification to the setback requirements;
- The word "customarily" would be deleted from the definition of Accessory Livestock and Poultry;
- There are also number sequencing changes.

The vote was 6-1 (Roznoy opposed).

Mr. O’Keeffe MOVED that the Planning Board recommends approval of the article entitled “General Bylaws Amendment – Registration of Certain Livestock or Poultry”, the version provided by the Planning Board, with language yet to be crafted regarding the first sentence of Part D, incorporating the following revisions:

- To shift the burden of sending notifications from the applicant to the town;
- To allow delivery to be made by standard delivery and not certified mail;
- To allow private mail services to make the deliveries;
- To include abutters and abutters to abutters within 300 feet in the list of those who must be notified;
- And that accessory livestock and poultry may be kept by owners of property and not by tenants.

Mr. Carson seconded and the vote was 6-1 (Roznoy opposed).

Mr. Roznoy noted that the Zoning Bylaw needs a 2/3 majority and the General By-Laws needs only a majority to pass. Mr. Roznoy asked what happens if the General By-Laws article is approved and not the Zoning Bylaw article.

Mr. O’Keeffe MOVED that the Planning Board recommends dismissal of the petitioners’ General By-Laws article, if the Planning Board’s General By-Laws article passes. Mr. Webber seconded.

There was discussion about the need to have a provision if one of the articles passes and the other doesn’t. Mr. O’Keeffe stated that the Zoning Bylaw article should be considered first. The town could have the Zoning Bylaw article without the General By-Laws article, but not vice versa. There was further discussion about the sequence of articles.

The vote was 6-0-1 (Roznoy abstained).

Mr. O’Keeffe MOVED that if the Zoning Bylaw passes and the Planning Board General By-Laws article fails, the Planning Board recommends approval of the petitioners’ General By-Laws article.

The reason for this is that if the Zoning Bylaw article passes it will be better to have the petitioners’ General By-Laws article rather than nothing.

Mr. Tucker noted that the Zoning Bylaw requires registration of the animals in question and regular inspections by the Animal Welfare Officer. The Zoning Bylaw establishes the requirement, but doesn’t include the level of regulatory detail contained in the General By-Laws.

Mr. Crouner seconded and the vote was 5-1-1 (Roznoy opposed; Carson abstained).

Mr. Carson noted the reason for his abstention was that this recommendation would give a mixed message to Town Meeting.

Mr. Shefftz noted that he is not really in favor of relaxing the restrictions on the keeping of accessory livestock and poultry but he is worried that something he likes even less than the proposed articles will be brought forth.

Mr. Tucker suggested that the Planning Board could agree by consensus that if the Zoning Bylaw article fails the Board could recommend dismissal of the other two articles. The Board agreed by consensus.



### III. OLD BUSINESS

- A. SPR2011-00005/M6948 – 43-51 North Pleasant St. - Boltwood Place – Archipelago Investments, LLC – review of plan submitted in accordance with Condition #2 - Construction Sequencing, Staging, and Soil Erosion Plan

Kyle Wilson of Archipelago Investments presented the plans for construction sequencing, staging and soil erosion control, in accordance with Condition #2 of the decision for SPR2011-00005. He noted that he had spoken with Guilford Mooring, John Musante and Claire McGinnis about the plan for parking during construction. A total of fourteen spaces will be taken up. He explained the plan for the use of the spaces. Ms. Brestrup noted that the Town Manager had already approved the parking plan. Mr. Wilson described the plan for erosion control during construction, as well as the plan for controlling the site with fencing. Erosion will be minimal because the material that is excavated will be trucked off site. Mr. Wilson has discussed the plan for erosion control with Mr. Mooring and the DPW.

Mr. Schreiber MOVED that the applicant had complied with Condition #2 of the decision for SPR2011-00005. Mr. Webber seconded and the vote was 7-0.

- B. Other Old Business – none

### II. PUBLIC HEARING – ZONING AMENDMENTS

**A-12-11 Residential Rental Parking (Planning Board)**  
*(to be cancelled)*

To add a new section under Article IV, Regulations Relating to Real Estate and Real Estate Users, of the General By-Laws of the Town of Amherst to regulate parking at selected residential rental properties in Amherst.

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

Ms. Brestrup stated that the Zoning Subcommittee had recommended that this article not go forward at this time.

Mr. O’Keeffe noted that the Zoning Subcommittee was going to work on an article to amend the General Bylaw with regard to parking but did not have enough time to address the issues adequately in time for the Annual Town Meeting. There is no corresponding article, he said.

Mr. Carson MOVED to close the public hearing. Mr. Webber seconded and the vote was 7-0.

### IV. NEW BUSINESS

- A. Franklin Regional Council of Governments – Comprehensive Economic Development Strategy (CEDS) Program – no discussion
- B. Draft Town Meeting Reports – no discussion
- C. Other New Information – none

### V. FORM A (ANR) SUBDIVISION APPLICATIONS – none

**VI. UPCOMING ZBA APPLICATIONS – none**

**VII. UPCOMING SPP/SPR/SUB APPLICATIONS – none**

**VIII. PLANNING BOARD SUBCOMMITTEE REPORTS**

Zoning – Mr. O’Keeffe reported. The process for rezoning of the village centers is getting underway. The ZSC has selected The Cecil Group as consultants. The tentative dates for public design workshops were discussed.

Mr. Schreiber pointed out that May 14<sup>th</sup> is UMass graduation weekend.

**IX. PLANNING BOARD COMMITTEE & LIAISON REPORTS**

Pioneer Valley Planning Commission – none

Community Preservation Act Committee – none

Agricultural Commission – none

Public Transportation and Bicycle Committee – none

Amherst Redevelopment Authority – Mr. Webber reported that the ARA had also selected a consultant for Gateway. The design charettes will be held Thursday through Saturday, April 28<sup>th</sup>, 29<sup>th</sup> and 30<sup>th</sup>.

**X. REPORT OF THE CHAIR – none**

**XI. REPORT OF STAFF – none**

**XII. ADJOURNMENT**

The meeting was adjourned at 9:58 p.m.

Respectfully submitted:

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Christine M. Brestrup, Senior Planner

Approved:

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Jonathan Shefftz, Chair

DATE: \_\_\_\_\_