

AMHERST PLANNING BOARD
Wednesday, August 15, 2012 – 7:00 PM
Town Room, Town Hall
MINUTES

PRESENT: David Webber, Chair; Jonathan O’Keeffe, Bruce Carson, Rob Crowner, Connie Kruger, Stephen Schreiber, and Sandra Anderson

ABSENT: Kathleen Ford and Richard Roznoy

STAFF: Jonathan Tucker, Planning Director
Christine Brestrup, Senior Planner
Mr. Webber opened the meeting at 7:08 PM.

I. MINUTES July 18 and August 1, 2012

Ms. Anderson MOVED to approve the Minutes of July 18 and August 1, 2012. Mr. O’Keeffe seconded and the vote was 7-0.

II. OLD BUSINESS

A. Zoning

1. Zoning Subcommittee – Report

Mr. Crowner reported that there was an extensive and involved discussion at the Zoning Subcommittee meeting about the zoning amendments under consideration. Many members of the public attended but did not have an opportunity to comment.

The ZSC considered the proposed Functional Family Definition, which is important in understanding how to regulate rental units. The demographics of families have changed. The ZSC is trying to make sure that new kinds of household groupings are not unfairly excluded, while at the same time not inadvertently broadening the definition to include large groups of students.

The Rental Registration zoning amendment would add language that would require that any residential rental use be registered under the applicable rental regulations of the town. If a unit is not in compliance with this requirement it would be in violation of the Zoning Bylaw and therefore would be subject to a higher penalty than is currently imposed by the Health Department for violations of the rental registration regulations. The language would be added to all of the residential uses in the Zoning Bylaw. There is an ongoing discussion about whether this amendment should include a requirement that all rental uses be required to obtain permits as well. The rental permitting system is anticipated to be in place next spring.

The ZSC is struggling with the issue of dividing one and two-unit dwellings into classes – Class I and Class II – based on whether they are owner-occupied or not. The ZSC is considering how restrictions on the rental of single family houses will impact homeowners. There has been a proposal to drop single-family houses from the zoning amendment list for this fall. Some committee members contend that once two-family houses are dealt with the need to strictly regulate single-family houses may diminish. There are various questions that remain to be answered regarding one and two-family dwellings:

- What is an owner?
- What does it mean for someone to be living in a house?

- Who should be in the house?
- What does it mean to rent a house?

The ZSC is hoping to hear from the public and from the Planning Board members on these issues.

Mr. Crowner reported that the ZSC had held elections for officers with the following results:

- Mr. Crowner – Chair
- Mr. Schreiber – Vice-chair
- Mr. Carson – Clerk

2. Review of Zoning Amendments in Progress

a. Residential Rental Amendments

Mr. Webber listed the amendments that are being considered. He read the draft language for the Rental Registration Requirement. He noted that there was an alternative version of the language which had been circulated.

The language would be added to the top of Section 3.32, Residential Uses, as well as to each residential use below, as a condition.

Mr. O’Keeffe noted that this amendment won’t create or modify the existing rental registration system. However, it will create a higher level of enforcement.

There was discussion about whether to include a requirement for rental permitting along with the requirement for rental registration.

Mr. Tucker noted that there is no current requirement in the rental registration regulations for rental permitting and the inclusion of the word “permitting” might be a source of confusion.

Mr. Crowner agreed that the word “permitting” was not necessary.

Ms. Anderson suggested alternative wording for part of the amendment and noted that she had attended a Safe and Healthy Neighborhoods Initiative meeting. The Initiative includes a group of staff people who are working on issues related to rental housing. The Rental Registration system is merely a system of data collection. The next step is that every rental property in town will need to be permitted. Ms. Anderson cautioned against including language in the zoning amendment that would confuse Town Meeting members about what is being proposed here.

Mr. Tucker noted that this amendment is an interim step and that the language can be amended again once the rental permitting system is in effect.

Mr. Webber proposed language to the effect that “registrations must be kept current at all times.” He further noted that any permits for rentals that come through as Site Plan Reviews or Special Permits will require rental registration.

Board members agreed by consensus to leave out the reference to “rental permitting” at this time.

Joan Burgess of Precinct 9 asked that there be an explanation provided for people so that they know what the “rental registration regulations” are.

Mr. Tucker explained that the town is in the process of developing rental

regulations for consideration at next spring's Town Meeting. The current rental registration system operates under the Board of Health. The new rental permitting system will be an amendment to the General Bylaws. There is an effort to word the current amendment broadly enough so that it will apply today and also in the spring when the new regulations go into effect. There will be a Planning Board report that will accompany the proposed zoning amendment this fall that will describe the context for this amendment and the report may include a copy of the current Board of Health rental registration regulations. He noted that the property owner or his or her agent is responsible for registering the property with the Board of Health. The regulations themselves specify that.

Mr. O'Keeffe noted that, under the Zoning Bylaw anyone who is initiating the rental of a unit would need to comply with rental registration.

Janet Keller of Precinct 1 suggested that the amendment specifically mention that it is the owner or the owner's agent who must register the rental property.

Ms. Kruger noted that the current regulations require that an owner of a home who goes on sabbatical and rents his home would be required to register his property as a rental.

Mr. Tucker noted that there is a letter going out to all owners of residential property in Amherst asking about the occupancy status of the property – whether it is owner-occupied or rented – and telling property owners that they need to register their rental properties.

There was further discussion about specifying who should register the property.

Mr. Webber summarized the proposed wording:

“All rental dwelling units shall be registered by the owner(s) under the applicable rental regulations of the Town of Amherst and operated in conformance with those and any related regulations.”

Maurianne Adams of Precinct 10 asked about the content of the form that is being sent to property owners and made suggestions about questions that should be included. She suggested that the Planning Board and Zoning Subcommittee review the form.

Ms. Brestrup noted that the Health Director, Julie Federman, who is spearheading the rental registration and permitting effort, had stated recently that she preferred to put her efforts into developing the permitting and inspection system rather than reworking the form, which is 99% ready to be sent out.

Mr. Webber agreed that the form was almost ready and that the Health Director will focus efforts on the new permitting system rather than revisions to the current form. There is no need for the Planning Board to review the form at this time.

John Fox of Precinct 10 asked whether penalties for non-compliance are spelled out in one place. He suggested making it as easy as possible to register and to find out about the consequences of non-compliance.

Mr. Tucker noted that the penalties for non-compliance with the current rental registration regulations can be found on the Board of Health website.

He also noted that state law addresses non-compliance with local and state regulations and that the Zoning Bylaw, Article 11, also addresses enforcement of the Zoning Bylaw. He recommended that members of the public should send recommendations on the current rental registration regulations to the Health Director.

Alex Kent of Precinct 10 suggested that there be communication with the owners of problem properties and between the Police Department and the Health Department regarding rentals. He asked if the Police notified owners when there was a complaint.

Ms. Brestrup reported that Ms. Federman had stated that there is currently very good communication between the Police Department and the Health Department about rental properties, with police reporting to the Health Department about problems or issues that have come to light over the weekend or at night.

Ms. Kruger noted that Ms. Anderson is now the Planning Board's liaison to the Safe and Healthy Neighborhoods group. Public comments from Planning Board meetings will be brought back to the SHN group and also to the Health Department.

Elissa Rubinstein of Precinct 10 asked for clarification that this regulation would apply only to new situations, where someone needs a permit for a new use. She asked if the new rental permitting system could be phased in by having it apply first to those rental property owners who had been in violation of a health, safety or other code. She predicted opposition on the part of owners of rental property.

Mr. Webber again read the proposed language:

“All rental dwelling units shall be registered by the owner(s) under the applicable rental regulations of the Town of Amherst and operated in conformance with those and any related regulations. Registration(s) must be kept current at all times.”

Ms. Kruger MOVED that the Planning Board accept the language as read by the Chair and move it forward to a public hearing. Mr. Carson seconded and the vote was 7-0.

Mr. Webber introduced the Functional Family Definition for discussion.

Mr. Crouner reported that the Zoning Subcommittee was not sure what should be included in the list of functional family characteristics.

Mr. Tucker noted that the ZSC had asked to change the description to include broader language about intention and what is a cohesive living unit to allow for as much discretion as possible. He noted that the language should read “characteristics should include but not be limited to the following” and he listed the characteristics. The intent is to broaden the base so that the town does not exclude functional households. The ZSC discussed substituting the word “household” for “family”.

Mr. O'Keefe noted that the Zoning Bylaw defines families but does not clearly spell out a one-to-one relationship between “family” and “dwelling unit”. He also noted that the Bylaw does not clearly define “dwelling unit”.

The functional family definition is in the process of being re-written and Mr. Webber recommended tabling consideration of the definition until the new

draft is ready.

Ms. Kruger noted that the intention of the zoning amendment was that the definition would operate under the presumption that “you are a family”. A group of people would not need to prove prior to occupying a dwelling unit that it was a functional family. However, the Building Commissioner could use this definition if there were a complaint or a violation and at that point request evidence that a group is operating as a functional family.

Ms. Anderson questioned what this zoning amendment would accomplish. She noted that there are already health, building and state regulations about the number of people allowed per square foot in a building. She prefers the term “household” to “family” because of possible political connotations.

Mr. Schreiber defended the use of the word “family” because it is standard language that is used to describe types of buildings – such as one-family and two-family dwellings.

There was more discussion about the fact that this amendment (functional family definition) was not intended to directly address the same issues as the other amendments are trying to address.

Mr. Tucker gave a further explanation of the definition of functional family.

Mr. Webber referred to the definition used by Ann Arbor, Michigan and stated his support for that definition, which excludes students from a functional family, and uses of the word “temporary”. Mr. Tucker cautioned against using language that might be discriminatory towards students. Ms. Kruger asked that staff forward a definition similar to that from Ann Arbor to Town Counsel for review and pursue the idea of using the word “student” in the definition of functional family.

Mr. Webber suggested tabling further discussion of this item until a new draft had been prepared.

Board members turned to discussion of the amendments related to one and two-family dwellings, August 7th edition. Mr. Crowner reported that this amendment may be split into two separate zoning amendments. He reported that the ZSC was working on the two-family zoning amendment first. After dealing with duplexes, the ZSC might return to single-family dwellings later this fall or wait until next spring to present an amendment. Mr. Crowner noted that there are several types of two-family dwellings – duplexes, converted dwellings and supplemental or accessory apartments.

Mr. Webber summarized the proposal for two-family dwellings and the proposed new definition of a duplex.

Mr. Tucker explained that the amendment was doing several things – dividing two-family dwellings into two categories (owner-occupied and non-owner occupied), identifying whether or not it is a rental and also clarifying the definition and making it clearly different from the definition for a Converted Dwelling. The zoning amendment establishes minimal standards as a default for duplexes but allows the Permit Granting Authority and the Special Permit Granting Authority some discretion.

There was discussion about changing the permitting for duplexes, for non-owner occupied two-family dwellings, to SPP (Special Permit from the Planning Board). There was also discussion about treating all two-unit

dwellings (duplexes, converted dwellings and accessory/supplementary apartments) the same way in terms of permitting.

Mr. Tucker noted that a supplementary (accessory) apartment is small and subordinate to the principal use of a single-family dwelling and one of the units is occupied by the owner of the property. He explained the levels of density that are allowed in different zoning districts.

Ms. Kruger recommended that all two-unit owner occupied dwellings should be permitted the same way. She asserted that the land use impacts of a two-family are the same no matter what its configuration. Owner-occupied duplexes are a positive thing in the community, she said. She proposed that non-owner-occupied two-family dwellings be permitted by the Planning Board as SPP's (Special Permit Planning Board).

Maurianne Adams of Precinct 10 stated that it is important that the Planning Board use the criteria in Section 10.38 of the Zoning Bylaw when considering the granting of a Special Permit (SPP). She also recommended that the Special Permit Granting Authority should require the presence of an on-site manager. She agreed that owner-occupancy was desirable.

There was further discussion about SPP versus SP as the permitting mechanism for two-unit dwellings. Mr. O'Keeffe noted that the Planning Board does not have a lot of experience with discretionary permitting as opposed to the ZBA which does this "all the time".

Board members noted that two years ago a revised definition for duplexes failed at Town Meeting. There was discussion about parents buying houses that would be occupied by their children who were students and there was also discussion about privacy and property rights issues. There has been confusion about how to define owner-occupancy.

Mr. Tucker noted that the reason the attempt to revise the definition of duplexes had failed two years ago was that there was confusion about the intent of the amendment. Some people believed that it was an attempt to increase the number of duplexes in the community.

Mr. Webber noted that there is tension between the attempt to make duplexes more difficult to permit and the goal of the Master Plan which is to increase density in certain areas of town, in order to preserve open space in other areas of town.

Elissa Rubinstein of Fearing Street asked whether there could be a requirement that a duplex remain owner-occupied. She noted that there have been examples of people stating that they intended to occupy the dwelling but then they never did occupy the dwelling.

Mr. Webber noted that such a scenario would represent a change of use and that if the owner moves out, or never occupies the dwelling in accordance with a Special Permit, a new Special Permit would be required.

There was discussion about enforcement. Staff noted that once rental registration and permitting is fully in place, the enforcement officials will be better prepared to know whether a property is owner-occupied or not.

Mr. Webber suggested permitting all two-unit dwellings by Special Permit. Ms. Kruger objected to permitting owner-occupied two-unit dwellings by Special Permit, stating that she would support promoting duplexes in order to

diversify the housing stock in town.

John Fox of Precinct 10 asserted that there is no definition of owner-occupancy in the Zoning Bylaw. There should be a definition of continuing owner-occupancy. He questioned whether groups of people (students) would be able to circumvent the definition of functional family, by stating that they intended to live together for four years.

Mr. Tucker noted that there is an existing definition of “Owner Occupant(s)”.

There was further discussion about what constitutes an owner-occupant and what level and duration of occupancy should be expected.

Ms. Kruger cautioned Board members against “Bylaw clutter” – trying to include too many qualifications in the Bylaw. She also cautioned against focusing on those who are “cheaters” and trying to close every possible loophole. The Board will not end up with a good Bylaw if it is only worrying about the “cheater”, she said.

Mr. O’Keeffe stated that he is comfortable with the direction that this zoning amendment is taking, although he expressed minor reservations about the issue of SPP vs. SP. He encouraged the Board to consider how this will be packaged for Town Meeting. He suggested separating out the definitions from the rest of the amendment so that necessary definitions will not be defeated at Town Meeting if the more substantive portions of the amendments are defeated.

Mr. Webber asked the ZSC to work on the language and to take things in “small bites which are easier to swallow”.

Irene Starr of Precinct 9 asked two questions:

- How about the situation of a faculty member who owns a two-family house and goes on sabbatical?
- Does any of this relate to someone who rents a room out in his house?

Mr. Tucker explained that this discussion does not relate to the rental of rooms in one’s house. That use is covered by a different section of the Bylaw, Accessory Uses. Mr. Tucker explained the Accessory Use section of the Bylaw and how it relates to this topic. Mr. Tucker also noted that in the case of a professor who owns a duplex, rents out one unit and wishes to rent his own residence for a few months, language could be drafted that refers to the “principal residence” allowing it to be rented. The Bylaw could make the distinction between a 12-month lease and someone who wishes to rent his principal residence for a few months, while he is on sabbatical.

Mr. Webber suggested defining the term “principal residence” in the Bylaw. He suggested tabling the discussion until the Zoning Subcommittee had a chance to work on the definitions.

b. DEP Surface Water Supply Protection

Mr. Webber noted that the Board had discussed this amendment at its last meeting.

Mr. Schreiber MOVED that the Board recommend that this amendment move forward to a public hearing. Ms. Anderson seconded and the vote was 7-0.

c. Other

Mr. Tucker noted that the Board had heard a presentation by staff members of the Pioneer Valley Planning Commission about Transfer of Development Rights (TDR) at a recent meeting.

Mr. Tucker reminded the Board that the Select Board had signed an MOU with PVPC for Technical Services and that the contract with PVPC will expire at the end of December 2012.

The Board members decided by consensus that they would continue to briefly engage TDR over the course of the next few months. However, the Board determined that, because of TDR's complexity and because there are several other pressing items on the Board's agenda for the Fall Town Meeting, it is not likely that TDR will be ready for Fall Town Meeting.

Mr. Tucker noted that the Board had expressed interest in TDR for years and he encouraged the Board members to keep up the momentum by working on a form of TDR for Spring Town Meeting. Staff will put TDR on an upcoming Planning Board agenda and the Board will allot time for discussion.

3. Public Comment Period – Mr. Webber asked if there were any members of the public present who did not have a chance to speak about the zoning amendments. Hearing no one, he thanked the members of the public who had spoken and acknowledged that their comments had made a big difference to the Board's discussion.

B. Topics not reasonably anticipated 48 hours prior to the meeting

Ms. Brestrup described minor changes that were being made to the Site Plan for 321 Main Street as part of the repaving of the site, including relocation of the handicapped parking space and the addition of a piece of granite curb along the east side of the property to help to take up a grade change. Board members determined by consensus that these changes were indeed minor and did not need to be reviewed by the Board.

Mr. Tucker reported that Alice Carlozzi [a well-known resident of Amherst who had served the town for a long time in various capacities, most notably and recently on the Finance Committee] had suffered a heart attack and was currently at Bay State Hospital. On behalf of the Board Mr. Webber wished the best for her recovery.

Maurianne Adams asked about the Housing Market Study and whether there would be a chance for public comment during that process. Ms. Brestrup explained that the town had hired a housing consultant to work on the first task of the housing study, which has to do with assembling data and then creating a Housing Production Plan, related to affordable housing. The consultant is working with staff and with the Housing and Sheltering Committee. Ms. Kruger is the Planning Board liaison to that committee. They will make an effort to have a public comment period during at least one of their meetings.

Ms. Kruger noted that the Housing and Sheltering Committee would be meeting on August 29th. The Housing Study that is currently being done is more about data collection and is related to the Housing Production Plan.

Ms. Brestrup reported that the Housing Market Study will be done later. The consultant hired for the Housing Production Plan was hired just for Task #1. The

RFP will be reissued for Tasks #2 – 4.

III. NEW BUSINESS

A. Planning Board schedule

The Board decided by consensus that it would hold four public hearings on September 5th, as follows:

Rental Registration public hearing	7:30 p.m.
Scenic Roads public hearing	7:45 p.m.
DEP Public Water Supply public hearing	8:00 p.m.
Planning Board Rules and Regulations public hearing	8:15 p.m.

Board members expressed a desire to maintain the recent practice of hearing the Zoning Subcommittee report and receiving public comments on zoning as the first item on the agenda.

Board members requested that Planning Board reorganization and elections be held on September 5th. There will be no committee reports that night.

B. Agenda for upcoming Planning Board meetings – see above

C. Update on Housing Market Study – see above

D. Amherst College – Improvements to Pratt Field

Ms. Brestrup described the proposed improvements to Pratt Field and presented a plan that had been submitted by Amherst College. She explained that the property is located in the ED zoning district. No formal review is required by the Planning Board and the Planning Board has no jurisdiction in this case. The college is required to submit a plot plan to the Planning Board for its information showing the proposed work 60 days prior to the beginning of construction. The Board decided by consensus that it would not ask for a formal presentation by Amherst College on this project. The Board members asked several questions but did not offer any recommendations on the plan.

E. Topics not reasonably anticipated 48 hours prior to the meeting

Ms. Brestrup reported that Mr. Tucker had recently spoken with David Elvin of PVPC and that Mr. Elvin had offered to attend a Planning Board meeting and give a presentation on Transit Oriented Development (TOD). She noted that this may be relevant to the Board's current discussions on housing because TOD promotes the development of housing near transportation hubs. The Board agreed to schedule a presentation on TOD after the public hearings on zoning amendments are finished. Mr. Webber stated that he is very interested in hearing from Mr. Elvin. Board members suggested scheduling a presentation by Mr. Elvin on November 7th.

Ms. Brestrup noted that Ms. Kruger had submitted a document earlier in the summer, outlining how she envisioned that the Board might tackle the topic of housing. The Board had tentatively scheduled a discussion of housing for September 19th. After discussion the Board decided by consensus that it would postpone a formal, in-depth discussion of the topic of housing until after it had dealt with the pressing issues of zoning amendments and after the Board had some results from the housing study. Ms. Kruger also noted that the Board had been discussing housing as part of the discussion on zoning amendments. She indicated that she may not be in attendance on September 19th.

Mr. Schreiber left the meeting (9:13 PM).

Mr. Carson asked about the progress of the Transportation Plan. Ms. Brestrup reported that the response to the RFP for the Transportation Plan had been very meager. The RFP will be put out again, with hopes for a better response. The Transportation Plan is currently on a “slow track” and the final product is not going to be due until September 2013.

Ms. Kruger reported that she had an opportunity to drive through the double roundabout at Atkins Corners on the day that it opened. It was very smooth and overall a great experience. She encouraged other Planning Board members to drive through the roundabouts.

Ms. Brestrup reported that the town had prepared plans for improvements along Pine Street. These improvements are proposed to include paving, sewer and water lines, sidewalks and bike lanes. Although the Planning Board has no formal jurisdiction over the project, Board members may wish to become familiar with the plans and offer comments to the DPW individually. The comment period is open at least through August 17th and possibly will be extended. The construction work will not be done for a while because the town needs to apply for funds from the state.

IV. FORM A (ANR) SUBDIVISION APPLICATIONS

The Board endorsed the following ANR plan:

ANR2013-00002 – The Estate of Agnes Drozdal – 237 Meadow Street

V. UPCOMING ZBA APPLICATIONS

The Planning Board declined to review the following applications:

ZBA FY2013-00002 – ServiceNet – To Appeal the Building Commissioners denial of a building permit for substantial alterations and a change in use to a group home, due to inadequate lot frontage, under Section 10.1 of the Zoning Bylaw, at 326 Pine Street (Map 5B, Parcel 91, R-N Zoning District)

ZBA FY2013-00003 – ServiceNet – For a Variance to allow interior alterations and a change in use to a group home on a property containing inadequate lot frontage, under Section 10.2 of the Zoning Bylaw, at 326 Pine Street (Map 5B, Parcel 91, R-N Zoning District)

ZBA FY2013-00004 – Deborah & Ronnie Gilmore – For a Special Permit to create a Supplemental Apartment within a new addition to an existing Single Family Dwelling, under Section 5.011 of the Zoning Bylaw, at 36 Mount Holyoke Drive (Map 20A, Parcel 105, R-N Zoning District)

ZBA FY2013-00005 – Christopher & Lisa Packard – For a Special Permit to establish a Home Occupation, as a Greyhound rescue and adoption operation, under Section 5.013 of the Zoning Bylaw, at 145 North Whitney Street (Map 11D-Parcel 175, R-G Zoning District)

VI. UPCOMING SPP/SPR/SUB APPLICATIONS – none

VII. PLANNING BOARD COMMITTEE & LIAISON REPORTS

Pioneer Valley Planning Commission – Stephen Schreiber – no report

Community Preservation Act Committee – Sandra Anderson – no report

Agricultural Commission – David Webber reported that the Agricultural Commission had met on August 14th. A quorum was not present. During the growing season the farmers who are on the Commission have important farming duties to attend to and sometimes have trouble attending meetings. The Commission hopes to reinvigorate itself once the fall comes. The Commission members who were present talked about the Farmers Market and farmers’ access to public lands.

Transportation Plan Task Force – Richard Roznoy and Sandra Anderson – no report

Amherst Redevelopment Authority – Constance Kruger – no report

Design Review Board – Kathleen Ford – no report

Housing and Sheltering Committee – Constance Kruger – no report

Safe and Healthy Neighborhoods – Sandra Anderson – no report

Other Boards and Committees

VIII. REPORT OF THE CHAIR – Mr. Webber reported that he had attended the CDBG Advisory Committee meeting on August 9th. It was very instructive. The Committee is trying to assign priorities for spending CDBG funds. The priorities include the homeless shelter, transportation, affordable housing for single residents, mortgage counseling, services for low income children and youth and general services for extremely low income people. It is not clear if Amherst will remain a mini-entitlement community. Residents of the “Gateway” area recommended using CDBG funds to encourage more middle-income owner-occupied housing, setting up a community land trust with restrictive covenants with respect to owner occupancy.

IX. REPORT OF STAFF – none

XI. ADJOURNMENT

The meeting was adjourned at 9:40 p.m.

Respectfully submitted:

Approved:

Christine M. Brestrup,
Senior Planner

David Webber, Chair

DATE: _____