DRAFT

Zoning By-Law Committee Meeting Minutes

September 11, 2019

Committee Members: Bernard Greene, Ben Franco, Carla Wyman Benka, Roger Blood, Mark Zarrillo, Neil Wishinsky, Jesse Geller, Kenneth Goldstein, Linda Hamlin, Philip Hresko, Linda Olson Pehlke, Paul Saner

Staff present: Alison Steinfeld, Kara Brewton, Polly Selkoe, Joe Braga, Karen Martin, Victor Panak, Charlotte Leis, Zoe Lynn

Materials: Agenda; Memo from Regulatory Planning Division giving preliminary thoughts on articles (9-11-2019); 2-20-2019 draft minutes; Electric Vehicle Building Code definitions (amended 3-12-2019); Warrant Articles & Explanations 18, 19, 20, 14, 13

Bernard Green opened the meeting at 7:05PM.

2-20-19 Minutes

Linda Pehlke’s name is spelled wrong; Cliff Brown’s last name is missing. With those corrections, minutes are approved.

Short Term Rental Article

Scott Gladstone (petitioner) gave background of why he is proposing amendment. Use 51 made him originally think short-term rental (STRs) were allowed; later found out that Town says STRs are not allowed use because “lodger” is interpreted as being 30+ days / long term. He has been told by the Town that staff is working on it, but this is taking longer than he likes. The Planning Department is hoping to get something in place by Spring 2020, but still having same discussions as a year ago. If there is no zoning restriction and a zoning case is passed and creates a precedent, he believes all currently existing STRs could be grandfathered. He wants to pass just owner-occupied STR legislation to prevent too many STRs from being grandfathered in. The article makes a distinction “lodger” versus “short term lodger.” He disagrees with the Planning Department memo which points out that allowing STRs in zoning without accompanying regulations could grandfather those properties from future regulations.

Ben Franco - WA 20 was self-contradictory and very permissive – it proposes allowance in every zoning district. He did not want to create pre-existing non-conformities by passing this article. He wants to start with a limited proposal and expand from there if appropriate.

Scott Gladstone - it would be better for these to be regulated if they were happening anyways.

Carla Benka – potential to impact everyone in Brookline. Want to have lots of community feedback – no way to get enough feedback with article going in November. Don’t want Town Meeting to pass
something and then have neighborhood people find out about it afterwards. Understand concern about grandfathering, but more worried about lack of awareness about it.

Roger Blood – agree with Carla and Planning Department comments. Monetizing homes / making them into businesses; residents are concerned about what might happen next to them. This article isn’t ready; he doesn’t want it moved too quickly and think if voted on today would be defeated.

Scott Gladstone – any condo building can restrict it in their master deed if desired. Have to pass some allowed use (or fix bylaw in some other way) because a Zoning Board of Appeals (ZBA) decision could set precedent and then you would be able to regulate it at all. Goal is to close current loophole. This article is very modest because of the requirement that the owner must stay in the unit for all but one night. This would narrow the number of people willing to do this.

Linda Pehlke – sleeping provision is unenforceable. She attended a legal seminar on STRs about insurance requirements, she doesn’t want to grandfather STRs in. It is a big deal to amend condo docs. Agree with Carla about lack of input.

Neil Wishinsky – wants Special Permits with a sunset provision – to make people go to the ZBA until we have a good regulation for it. This would allow some units to get grandfathered in, but would’ve had to go through public process. Want to go with what Ben suggested – if this article moves forward, he would like to see a special permit for every district, include sunset provision expiring at end of year or end of next year, and have the Planning Department keep working on this.

Ken Goldstein – would special permit preclude existing non-conforming argument?

Scott Gladstone – putting anything in place that creates the right to have it precludes grandfathering (even if special permit). Sunset provision allows this to be a placeholder article; allows us to do further research without grandfathering things in. Maybe have sunset provision expire fall 2020? He asked the ZBA and Planning Board members to think about risk of overwhelming number of applications if Special Permits are allowed.

Linda Hamlin – don’t think there will be 100 cases, but good idea to think about what conditions would be attached to this – how specific can they be? How enforceable? Main concerns are enforceability and unintended consequences. Special permits give the neighborhood redress if it goes badly; support special permit provision.

Jesse Geller – don’t think people will apply for special permits for this – it’s a six month process, people and people won’t want to do it. Requiring special permits don’t solve the issue of lack of guidance. The ZBA would need guidance on when to allow it and when to deny it. Should STRs be limited to variance until we figure it out?

Karen Martin – Planning Department is working on Spring 2020 warrant article; lots of components going into regulations, complicated. Wouldn’t be touching definition of lodger, would just be STR definition like what state has (keep it consistent). Scott is using “bedrooms within unit” type of STR, but there are other types – we want feedback on what people want. STR regulations should involve a
registration process and maybe inspections, as well as an enforcement and violation scheme. None of these are included in this article comprehensively. Need community feedback, but that takes time. Talked to Town Counsel about grandfathering issue – believed it was a concern; people legalized in fall wouldn’t have to comply with regulations passed in spring. Need to do one push for legalization and registration together, not in pieces.

Mark Zarrillo – agrees with Karen, concerned about transition areas between STRs and Accessory Dwelling units (ADUs) – Crowninshield area, areas near Boston University/ Boston College could be impacted hard.

Paul Saner – don’t see any risk in waiting on regulations if ZBA is going to set precedent soon anyway. Happy with the Planning Department’s work on this – includes bringing in hotel operators to hear from them on this, as they could be impacted. Want to understand potential tax benefit to town if legalized.

Roger Blood – why wouldn’t it be a simple fix to be just defining rental housing use as 30+ days? This gives the Planning Department until spring to work on STRs, and deals with grandfathering.

There was Board discussion of whether or not that would be in scope.

Bernard Green – could everything but the definition in the warrant article be deleted?

Scott Gladstone – the intent of the warrant article is to legalize STRs, that suggestion would formalize their illegality.

Polly Selkoe – trying to weave STR into existing by-law is complicated. Planning Department is working on it. Outreach to neighbors is essential.

Accessory Dwelling Units

Roger Blood (petitioner) gave background on why he’s proposing the article. Newton adopted one in 2017, have learned from them. Households are becoming smaller and getting older. ADUs are largely by-right, but include restrictions on maximum size of ADU. Have special permit exception if homeowner circumstances warrant it. ADU and property overall have to be under one ownership and must have owner living on property. Have heard the reaction that it’s a backdoor way to create two dwelling units in single-dwelling unit zones; article has restrictions to keep property looking like a single dwelling unit. The Housing Advisory Board (HAB) is putting this article forward. Minimum rental period is 6 months; not transient housing. Many of the extended family uses are already allowed, but that doesn’t apply to everyone. Not technically affordable housing, but is a lower-cost living option. ADU doesn’t require more parking, but ZBA could require if they felt it necessary.

Ken Goldstein – support ADUs but many arguments are similar to arguments for STRs. Benefits from ADUs will be limited to people with large lots that are likely already wealthy. Impact on town is much bigger than STRs. Helps wealthy homeowners, should help less wealthy homeowners too.
Roger Blood – no new buildings can be created.

Mark Zarillo – but it could add additions.

Ben Franco – want to ensure it’s not STRs.

Linda Pehlke – concerned about parking regulations, let homeowners figure it out. How do ADUs mesh with 5.22 FAR requirements?

Mark Zarillo – convert garage into livable space, adds FAR to site, creates non-conforming use that can then expand further. Want language related to conversion of garage saying that livable space in garage doesn’t count towards total FAR of property. Don’t want to end up with non-conforming structures that can do whatever they want. Agree with the concept of ADUs, but wants to define what happens to the FAR with a garage conversion and want to stipulate that you can’t create a non-conforming use this way.

Polly Selkoe – Planning Board public hearing on Oct 10 can include amendments to articles (as long as within scope) so can address some of these issues then.

Neil Wishinsky – Staff could present language regarding Mark Zarillo’s comments to Advisory committee.

Alison Steinfeld – Roger can present it.

Polly Selkoe – if garage converted to ADU, where do cars go?

Linda Hamlin – concerned about garages, but also attics and basements – don’t want to create buildings that fall under the Deadrick decision.

Linda Pehlke – using who lives in house as justification for building something is problematic. What if a new owner comes in and doesn’t want the ADU, what’s the remedy?

Mark Zarillo – would become certified STR.

No public comments.

Polly Selkoe – article needs more work. Don’t think committee is making recommendation at this point, so can move onto next article.

WA 15: Commercial Parking

Linda Pehlke – went over background of why article is being proposed. Came to attention because of issues with conversion of uses that requires ZBA approval for parking relief. Trying to stop imposing suburban auto-centric zoning on transit-centric, walkable area. Transportation Working group she’s part of is trying to reinforce transit-centeredness. Turns minimums into maximums; current minimums are quite high for what the area needs. Overlay districts have either eliminated parking minimums or substantially reduced them. Did not include banks (to make it harder to put them in), childcare centers, and recreational marijuana (childcare and marijuana both have extensive site plan review already, so
didn’t seem as necessary to reduce parking). Coolidge Corner merchants association endorsed article this morning.

Paul Saner – responding to comments. Commercial development floodgates won’t open up because zoning (esp. FAR) is too low to encourage development. Reducing parking won’t lead to lots more development. Trying to prevent blank expanses of parking in commercial areas. Does nothing to residential rates.

Linda Pehlke – The Staples building in Coolidge Corner creates a hostile pedestrian environment, but they created it that way in order to comply with parking requirements. Parking is expensive, and cost gets passed onto users.

Paul Saner – article would make it easier for businesses to move into existing locations.

Bernard Green – how does it discourage banking?

Linda Pehlke – no longer get “credit” of previous use; don’t have to provide incremental increase, but have to provide total requirement.

Polly Selkoe – Planning Department raised issue that providing parking is a balance; if there isn’t enough, cars will circle or take up residential parking. Also prevents from developers who want to build more parking from doing it; could allow parking beyond maximums through SPs with parking study.

Linda Hamlin – don’t have room for more parking.

Neil Wishinsky – e.g., Trader Joes decides they want more parking; would they be able to move somewhere and get more parking?

Linda Pehlke – fine as long as they aren’t over the parking maximums.

Philip Hresko – want some way of not forbidding more parking than is allowed; allow for shared parking between neighboring properties?

Discussion of allowing dual-use parking and renting out parking.

Scott Englander – will be submitting written comments; concerned about induced demand from too high parking requirements. Town should pursue better management of current public parking in districts rather than requiring more parking.

Ben Franco – why are marijuana uses excluded?

Linda Pehlke – dispensaries determine parking outside of the regular zoning process so less concerned about them.

Zoe Lynn – have received enormous amount of feedback on this from multiple departments and community constituents. Have worked through the nitty gritty. Believes aligns with the Select Board’s sustainability goals.
Polly Selkoe – ready to move on, a lot has been said.

Micro Units

Robert Zucker (petitioner) – gave background on why he’s proposing this article. Have a development under agreement in Coolidge Corner; location would be appropriate for micro-units. Have been implemented throughout country, provide lower-cost housing. Zoning doesn’t allow micro-units anywhere except in I-ESID. People have smaller spaces in apartments but more community space within the building. In addition to not being allowed, challenges to building them include parking requirements (assume 1 person/unit, so less parking demand than other units); I-ESID requires maximum of 0.5 spaces/du, so copied that. 20,000 sf minimum lot size is getting in the way of projects giving things to the town – should be an incentive to get developers to do that.

Ken Goldstein – how many units could you put on that site?

Jennifer Gilbert – site is 25 Webster. Robert Zucker – somewhere in the 30s for the number of units on this 10,000 square foot lot.

Linda Pehlke – supportive of micro units, but don’t like exception to Public Benefit Incentive (PBI) requirements. Don’t have any idea what the implications of exempting G-1.75 is from what PBI minimums would do.

Jennifer Gilbert – would increase allowed FAR in district to 2.5; would apply to most lots, but wouldn’t be that big of a change.

Linda Pehlke – also waiving setbacks?

Robert Zucker – having 4 stories of housing over 1st floor commercial, once you get over 45’ allowed the building has to be setback further than regular setbacks.

Linda Pehlke – package is designed for specific parcel but zoning is applicable to entire district. Doesn’t know what that would do. Wholesale rezoning for district.

Polly Selkoe – another building doing miscounts in another district would have to meet those requirements.

Paul Saner – EDAB is meeting next week, could Zuker show massing scheme that would come out of these regulations?

Robert Zucker – don’t expect microunit residents to be everyday users of town services, so would be economic benefit to town.

Paul Saner – this is upzoning for specific property; EDAB often wants some certainty about economic benefits of rezoning (don’t want it becoming student housing).
Kara Brewton – existing zoning on properties like this tends to produce very large, very expensive units over large garages. We allowed micro-units for decades until we redefined them for the Emerald Isle zoning.

Roger Blood – HAB is in support, less expensive housing option.

**WA 15: EV parking**

Scott Ananian – want to solve chicken and egg problem of chargers and EVs; goal of state is to transition to mostly EVs eventually. Plug-in hybrids have to be charged very frequently, otherwise just gas car. Want to make transition to EVs easier by making charging them easier. Brought up article years ago that was shot down because of technical issues; state building code now has definitions that make proposing this article easier. TAP guidelines are roughly consistent with this (both require ~15% of spaces to have chargers).

Linda Pehlke – what uses does the building code require EV spaces for?

Scott Ananian and Joe Braga – answered Pehlke’s question about building code use groups. Basically requires commercial and large residential uses to have EV charging.

Neil Wishinsky – theoretical question about Coolidge Corner theater parking requirement.

Linda Pehlke – what kind of change is required to trigger the need to put in EV parking?

Joe Braga – would only apply to new construction, change in parking lot.

Linda Pehlke – trying to get at potential problem of 7 space lot at 3 family home trying to do something and then being required to put in EV parking space.

Scott Ananian – would require change in extent of parking spaces or change in use of parcel.

Linda Pehlke – this belongs in the building code. Worried about homeowners being caught up in this unintentionally and getting hit really hard.

Neil Wishinsky – worried about amp of electricity service.

Scott Ananian – can avoid all of that by staying under 6 spaces.

Mark Zarrillo – question about exclusive use of EV spaces?

Scott Ananian – anyone can park in EV spaces, only requires that some spaces be EV ready.

Carla Benka – if multiple people have EVs, how do they deal with competition?

Scott Ananian – condos have deeded parking. Let the private owners figure it out.
Zoe Lynn – paid by Town to help Select Board reach 0 emissions by 2050 goal. Looking for specific edits on article. Two biggest emissions hurdles are buildings and transportation.

Linda Pehlke – supports Maria Morelli’s suggestions in the Planning Department memo.

Scott Ananian – requirements don’t require you to install a charger, only require an outlet; costs are almost entirely installation labor, not pieces. Retrofitting is more expensive than new construction. Cost for new construction is ~$1,000/space; many spaces will pay for themselves very quickly.

Phil Hresko – who pays for electricity?

Scott Ananian – let property owners figure that out.

Kara Brewton – went over Maria’s recommendations for amending proposal. She suggests minimum lot size or minimum number of spaces as threshold; could increase trigger of # of spaces from 15 spaces to 20. If within scope, would be helpful to reference Transportation Access Plan (TAP) guidelines in article.

Neil Wishinsky – opportunity for unintended consequences is mainly for existing buildings; thresholds for new buildings can be relatively low, but for existing construction wish regulations could be more granular (and a little higher).

Board discussion of inability to zone for only new houses.

Scott Ananian – maybe could have escape clause that allows other sustainability requirements to be provided rather than EV charging.

Linda Hamlin – good idea but wouldn’t work.

Neil Wishinsky – giving zoning power to an administrative document that can be changed at will (TAP).

Ground mounted solar

Kara Brewton – went over background of article; currently allow solar on roofs but not on ground. Want to allow it the same way that we allow sheds. Anything over 10 kWdc would require special permit, like sheds over 150sf.

Neil Wishinsky – why kW rather than SF?

Scott Englander – kind of stuck either way – commercial sized modules are different size than residential modules; wouldn’t want to allow part of a module but not the whole thing because it’s too big.

Kara Brewton – different than enclosed spaces, so hard to regulate with sf. Zoning already distinguishes between small and large solar installations. Any solar would have to comply with overlay regulations.

Ben Franco – have to comply with setback requirements; would you be able to put it in the front yard.
Kara – sheds not allowed in front yards, and are being treated as sheds in the same way.

Ken Goldstein – does it deduct from open space?

General discussion of question.

Polly Selkoe – reduces the amount of open space.

Kara asked if willing to vote. Board said that they are positive about it, but not wanting to vote.

UPDATES

Alison Steinfeld – working on general code, expect updated by end of year

Neil Wishinsky – Newbury College offered to sell town half of the college property. The other half is a proposal for redevelopment for senior continuing care (combination of independent, assisted, and memory care). Select Board created a committee to bring this to Town Meeting in March 2020.

Meeting adjourned at 9:35.