



3/13/23 RB
Approved
Kerri Rufo

RECEIVED

2023 MAR 14 A 9:01

TOWN CLERK
BILLERICA

BILLERICA PLANNING BOARD
Town Hall
365 Boston Road Billerica, MA 01821
978-671-0962
978-670-9448 Fax

Marlies Henderson, *Chair*

Michael Parker, *Vice Chair*
Christopher Tribou
Edward Giroux

Patricia Flemming, *Secretary*
Blake Robertson
Kelley Sardina

Planning Board
Minutes
January 30, 2023 @ 7:00 P.M.
Hybrid/Room 210
Videoed by BATV

Can be Viewed: <https://billerica.cablecast.tv/CablecastPublicSite/?channel=3>

Members	Present
Marlies Henderson, Chair	X
Michael Parker, Vice-Chair	X
Patricia Flemming, Secretary	Excused
Chris Tribou	X
Blake Robertson	X
Edward Giroux	X
Kelley Sardina	X

Other Attendees:

Judi Barrett, Barrett Planning Group, LLC
Tayler Maren, Barrett Planning Group, LLC
Mark Reich-Town Counsel

Staff

Erika Oliver Jerram-Director of Planning & Community Development
Katherine Malgieri-Senior Planner
Kerri Rufo

Technical difficulties 7:00pm-7:06pm

Marlies Henderson-The intent of the meeting was to have a joint meeting with ZBLRC but there was no agenda. This is a Planning board work session not a public hearing. The public is welcome to attend.

Pledge of Allegiance

Mike Rosa-1:48- Raised a Point Of Order (POO)-You said no open mic and public input. Continued to read Section 7-10

Marlies Henderson-It was my intention to have public input

Michael Parker-Our intent was to hear the presentation first and then we will open it up to the audience

Barrett Planning Group LLC Team-3:15

Attendees:

Judi Barrett, Barrett Planning Group, LLC
Tayler Maren, Barrett Planning Group, LLC

Marlies Henderson-The first item we have is Judi Barrett and Tyler Maren from Barrett Planning LLC, which is the consultant tasked with a review or an analysis of our bylaw. There is no packet, I assume this is all very preliminary; a meet and greet, listening session. No votes will be taken for this agenda item. I think there is a handout with contact information for anyone who has more comments or seeks answers to questions beyond what is going to be opened later on. I would like to yield the floor to Barrett Consultants.

Judi Barrett-Gave her introduction to the board and her colleague Tyler. We have been asked to take a step back and take an analytical look at your zoning bylaw and make some recommendations to improve it. The slides are in no way a complete representation of the issues that we have identified.

Barrett Group LLC Presented a PowerPoint (See attached)6:49-25:00: Tyler presented an analysis of the ZBL.: First, an introduction with preliminary findings. Not necessarily to change what it says, but how it says it; streamlining and reformatting the codification for improved usability, consistency, section organization, language, use table vs text, as well as clearing up some confusing policy issues. Secondly, he invites feedback to hear what the PB would like to see changed. The presentation is a small step, to create a roadmap to eventually tackle many issues in the current ZBL.

Comments from the board-25:27

Ed Giroux-Looks forward to the report and some feel that it is time that we take a professional look at the ZBL because they have pointed things out that should be cleaned up. To interpret the bylaws and to apply them, this will go a long way. I look forward to the end product of this.

Chris Tribou- It will be nice to clear up the language for a resident who has questions. When some zoning districts were created, they made it almost impossible to do anything. We have a lot of projects through us, a good rule is that it should apply to everyone, equally. We try to get applicants to meet requirements. Having lots with different zoning, you might have to do a zoning change to utilize that lot. So, they don't bother and go somewhere else and that means a missed opportunity. It would be nice to have uniformity.

Mike Parker-32:00-I saw that we are going to talk about minor and major. Things that will be executed by our staff, or it is going to come to our board. I wish we had this information ahead of time so we could have prepared ourselves. This is where zoning will kick you in the butt, zoning is not a friendly thing here in town. When we hold meetings that have nothing behind them, and this stuff gets disseminated here for the first time and expect reasonable comments from the board is tuff. This isn't a process that we can just rip off of band aid. As far as TM goes, if your project is good, it will pass at TM. We have seen it happen time and time again. We have passed many zoning changes for businesses to come here. To say that you are afraid of TM, it means that your project doesn't hold muster. That is what it means. We do need oversight by the elected officials because we are the residents in town, and I do not see myself voting to give up any of my rights given to me as an elected official by the Planning Board that are granted by the ZBL. This board has already been put under fire for approving a project that meet our zoning bylaws because it was a bad zoning bylaw that was passed by TM. I am not going to be part of a board that rushes this book, for TM, for zoning changes and get ridiculed. We are here to do a service for our residents. I am not happy that we were unprepared for this meeting. We do have issues; we need to be more transparent. This needs thorough review.

Blake Robertson-36:04-I appreciate the fact that you want to hear feedback from us, but it is difficult for us to give feedback with zero advanced notice. I have said this multiple times before, we deserve better, the town deserves better. I would like to know what other tasks if any you were asked? If there is a task 1, I am assuming there is a task 2, 3

Judi Barrett-Tyler was trying to break it down to two different comments.

Tyler Maren-The first slide was task1 from the RFP. There are a series of tasks, and you can be provided with the whole scope of work.

Blake Robertson-I look forward to seeing that full document. He then asked the chair when the last audit was done of ZBLRC.

Denise Salemm (ZBLRC member)-It was 5 years ago, for grammar. Last time, was the 70's

Blake Robertson-There is merit in the re-sectioning of our document. Tackle the table versus text disagreements; great sleuth work and thank you for highlighting that. That is something that we need to take under advisement and do the right thing. Your second goal, in terms of Site Plan approval, I don't want to change it, I don't want to split it into major and minor. We are elected to be the permit approving authority for this town, I do not want to give that up. Overlay districts, same thing. Those have been put into place and I don't want to see any more latitude added to those, they were written intentionally, and we need to look at that and obviously if there were some errors, we would like to entertain that. Using the term "split lots" to define a lot with multiple zoning overlays on it, could cause confusion with "lot splits". I would prefer something a little

plainer, like “a lot with multiple zoning”. I look forward to your feedback, and opportunity to provide more feedback when given adequate time to prepare.

Kelly Sardina-41:09-I agree with Mike and Blake. I was hoping to have some material to be able to read over. This way when you did present, we could see where you were going with this. The most documents that I have that I look at is the 2018 Master Plan and I look at that for housing. Keep in mind for our Housing Production Plan through our Master Plan, which was giving to the Planning Board on 9/20/21 and that gentleman was given 5 minutes to give a document that is going to last for 5 years. I get what these gentlemen are saying, when it comes to things with planning. Everything falls on us later if something gets approved the Planning Board rubberstamps. We have a ZBLRC, I have noticed that your meetings have not been on the agenda. I spoke with the chair, and she didn't even know somebody was going to be represented by the Planning Board. We really need to start organizing and following the book. I am one to follow protocol, we ask developers to follow protocol, we need to follow it also. We can't be sloppy because when we are sloppy, mistakes happen and it affects our community. We really need to get it right with the zoning. I get what you are saying Tyler, we need to take it one section at a time. Looking at the Master Plan again, 2015 we had 38% of Billerica was residential. 18% was open undeveloped land so I can't imagine what it is now. We have low density, which is housing, then we have medium, then high. Everybody in town is worried about where the MBTA zoning is going to be. If we are being forced to put the zoning into place, let's make sure we put it in a place that it is going to work best for them and us as a community. When they fail, we fail. If they don't rent them then we have open buildings. We are now what happened in the 70's, everybody was doing mixed use and it didn't work. Businesses that are trying to lease can't get anybody in there, they get an abatement instead and it becomes more profitable for an abatement than it is to get somebody to rent . We need our commercial and industrial built up first. I don't want to see goal 1 & goal 2, I would like to see the whole package so when we come back, I can follow along with you. Instead, I was trying to take notes and cross reference and I am sorry for that. I would say it was a great presentation if I actually had all the material to continue reading it.

Marlies Henderson-52:15 I look forward to seeing the ZBL cleaned up and inconsistencies taken out. Table of Content, page numbers, a better layout. Now that you presented the slides it would be nice to have the presentation on our website. I agree with Chris about the Mill District Overlay and it will be good to clean that language up. I also agree with Mike Parker about the minor/major. It is an idea, and you want the feedback, but you didn't mention the size and that is where we are all going to be sensitive.

Erika Oliver Jerram-47:10-I want to clarify the process. I just want you to know that having these slides beforehand would not have helped at all, this is just sample slides, it is an introductory presentation, so you understand some of the things that they are talking about. I fully intend to have robust conversation with the community. This is your opportunity for you to give your initial feedback on what may be wrong with the zoning code.

Marlies Henderson-You have mentioned this audit in staff reports at Planning Board Meetings, that this was going to happen, so it did not fall out of a clear blue sky.

Kelly Sardina-I wish I had it because when Tyler was going over it, I would have made my notations on it so I could cross reference.

Katherine Malgieri-The presentation was summarizing the feedback that they have heard from other people. A lot of your comments were in response to those comments but what specifically are you guys struggling with the zoning by laws. The idea wasn't to split what you already have oversight on, its to acknowledge to the giant blind spot that you don't have oversight on. Those are the details we can work on later

Public Comment-

Mike Rosa-50:38- What our Planning Department has said, I am perplexed by. You are the Planning Board. There will be no zoning changes unless it goes through the Planning Board. I personally sent an email to the Assistant Town Manager (ATM) asking him for a copy of the presentation for tonight and then I saw Erika in Town hall today and I asked her if there was a presentation and told there was no presentation and now there is a 12-page presentation. You have been completely ignored. Looking at this it looks like they were talking to stakeholders when they should have been talking to you first. That slide presentation should have started with the Planning Board. Not come to you somewhere along the process, which we aren't even sure what that is right now. It will end with this board, filing changes to TM to go and make zoning changes. I certainly think there needs to a lot more involvement by the planning board and quite frankly I think the Planning staff is amiss to have not started with the Planning Board and what their concerns are. I don't even think this meeting complies with the OML and that is another subject. Mike asked when this would come before Town Meeting.

Marlies Henderson-Certainly not this spring.

Mike Rosa Continued to read his issues with the mixed overlay district. He touched on Height, density bonus, clarifications in the definitions. Affordable housing needs to be at 15%, Dimensional regulations and setbacks.

Marlies Henderson-Felt that this would be better if he (Mike Rosa)could provide the list to the staff.

Chris Tribou-We should focus on big picture and the overall problems

Kelley Sardina-We had the Smart Growth committee that brought the Mixed-Use Development (MUD) into place. The committee was to look at the zoning. A committee does not write the zoning.

Rich Annese-1:05-I'm on the ZBLRC. There are a lot of flaws in the zoning. The zoning was done in the 40's, times have changed, and technology has changed. We want everyone's input; it will take a lot of meetings, a lot of time.;

John Burrows-1:07-A subcommittees job is to make a recommendation to you guys. You should have goals for the direction you want the board to go to, that you come up with. This meeting was posted on the 19th but yet no materials for the public. That is how the rumors run down the road and there are going to be a million apartments. You as the board should demand the materials. If it is not in your packet, you shouldn't discuss it. They work for you. What about the mall lot split.

Judi Barrett-1:09-We are not reviewing specific projects. We are reviewing the ZBL.

John Burrows 1:09 continues to confuse lot splits with split lots.

Rich Annese 1:09- tries to explain the difference between lot splits and split lots

Carol Reardon-1:12-I appreciate the conversation that was started. I have lived here for 21 years and my mother said don't move to Billerica it has terrible zoning. The zoning is extremely confusing. Some can do this; some can't do that. We do need residential input; zoning must be equitable and fair. I am excited that an outsider is looking at this. Identify all lots comprising of portions of multiple zoning for remedy; identify and assess roads with differing zoning on each side of the roads with differing zoning on each side of the road for review and remedy; and assess whether the current number and differences in residential zoning are still appropriate or if changes are needed.

Blake Robertson & Chris Tribou 1:14-1:20 Offered input to Barrett Planning Group to look at a few things, housing multiple zoning, senior/affordable housing, Sewer and supersized lots in rural residential zoning. They would like recommendations as well. The residents don't want big changes here in Town.

Blake Robertson- Identify all lots comprising of portions of multiple zoning for remedy; identify and assess roads with differing zoning on each side of the roads with differing zoning on each side of the road for review and remedy; and assess whether the current number and differences in residential zoning are still appropriate or if changes are needed.

Judi Barrett-We are not doing a demographic study. We might make a recommendation on the zoning audit, like what other communities are doing. The main focus is not bylaw content changes, but how the bylaw can be clear, and make it the best technical document. We want this to be easy for people to find what they are looking for.

Mark Lalumiere-1:23-This meeting makes it clear that everyone is passionate about zoning. Numerous people have stated they can't understand it. I think what the Barrett Group is saying, clean it up, make it understandable. Get it in black and white. There are some missed opportunities that should be in front of the PB, and people deliberately design project under 5K sq ft to avoid the board. This is an opportunity to bring it to Barrett so they can make it understandable. If we could streamline time to permitting and the right regulations, you are bringing in businesses that you want. If you tell a business you have to go to TM, you are off the checklist, and they will go to another Town.

Dick Colantuoni (ZBLRC member) -I have been working on different zoning bylaws for over 30 years. It is a major project, and it is not easy, people have different agendas. One of the things that bothers me a lot is people coming in trying to get a split and I don't know how to do that. You talked about split zone meaning commercial in the front and residential behind it. We have the same issue in Tewksbury. I put a map on the wall and went lot by lot. It was a process; it took over a year. This is something you don't do overnight. This bylaw really needs a complete overhaul. It doesn't comply what is in the bylaw. We have to get the agendas out of the way so we can make it flow. Judi have you been contracted to do more work on this?

Judi Barrett-We have been contracted to do an audit.

Kelly Sardina-When will the PB get another opportunity to provide feedback on this audit?

Erika Oliver Jerram-The intent was to get something done before TM. I am not rushing anyone.

Mike Parker-Can we get a redacted copy of their contract, so we know what we are looking at. Coming here tonight, not prepared shows lack of transparency. As Kelly said follow along and understand what our goal was here tonight instead of just listening. I didn't come prepared with any questions because I didn't know. The more information that we have, and the residents have, shows that we are working with our residents and not against them.

Erika Oliver Jerram-I created a webpage today, it is very bare bones at the moment. The intent is to upload documents for the residents.

The board thanked Barrett Planning

8:45 PM Motion for 5 minutes recess-1:39

Marlies Henderson-Requested a motion for a 5-minute recess

Ed Giroux-I make a motion for a 5-minute recess

Seconded by Chris Tribou

All in favor

OML-1:45

Call to order, resume meeting at 8:50 PM

Attendees:

Mark Reich-Town Counsel

Ed Giroux-I make a motion that the planning board acknowledges receipt of the OML complaint by Mr. Burrows and to authorize TC to submit a response on behalf of the PB

Seconded by Mike Parker

Mark Reich-Town Counsel-I would recommend that you review the complaint and the response so that it can be indicated in the minutes.

Marlies Henderson- Thank you, that was my intent: I would like to open the floor to the board to discuss the motion

Mark Reich-It is not necessary to read it verbatim, I can summarize.

Mark Reich summarized the complaint to the board by Mr. Burrows dated January 12, 2023. In regard to the January 11, 2023, Planning Board meeting. Mr. Burrows rose to speak during public comment in regard to SPSP- 279 Boston Road. In his complaint in accordance with the OML, he was not given the opportunity to speak and was muted. Mr. Burrows is asking that the Chair is removed from the position of Chair and be ordered to take training.

Discussion-1:51

Each board member acknowledged the response read by Mark Reich. Some board members feel like the residents should get more than 3 minutes during public comment.

Proposed Response-1:55

Mark Reich- Summarized the OML and summarized the proposed response: Mr. Burrows was given ample time to participate, he was not denied access to the meeting. The Chair acted within her authority under the OML. The AG does not have the authority to remove the Chair from the board, so that is a request outside the jurisdiction of the AG. We would indicate to the AG office “no further action” because the Chair did act within her authority of the OML. You now need to authorize the response.

Kelly Sardina-When did you send this email out?

Mark Reich-We sent a draft to Erika this afternoon.

Discussion-2:01

Ed Giroux-The Chair has the discretion to allow people to speak or not and I support the motion

Chris Tribou-We need to regulate the timing of the meeting. I have no problem with the motion

Mike Parker-The response is consistent with the OML. The tape shows the time he started and the time he was told to stop, which was 3 minutes. Does somebody feel that the answers in their questions belong in that 3 minute, well don't ask questions, make points. When you address anyone on this board or the people who work for our Town you do that in a respectful manner. Telling the people in the room that they work for somebody, yes that is a fact, but they also are maybe our neighbors and maybe residents of this Town who are trying to be good people in this place. We need to be respectful of everybody when you comment in this forum. Just like if I came to your forum, I would be respectful to your board. I would not swear because that chair would shut me down just like we did when you swore. Finally, to tell the chair they are a joke is completely out of bounds. You are a resident and also a Selectboard member. You have a code of conduct that you voted for so by addressing unrespectfully to town employees and to the chair of another board. I wonder if you have put yourself in a conflict here. I am in support of this because you got 3 minutes, you got answers, you became disruptive in our meeting and then you were disrespectful to our whole board.

Blake Robertson-I am not attorney, and I don't play one on TV. Thank you, Mr. Reich. I am not going to contest the OML allows access. I guess the deeper question is the access to what end. I would argue that the end is to verbally participate in it. We can disagree but I think that is what that access affords. Mr. Burrows was given the opportunity to speak but again we are splitting hairs here. I have heard the term “ample” so we get to a question was he cut off prematurely, ok we can argue and that happens regularly in other meetings. Does response time count towards the 3 minutes. As long as things are progressing well, I think that time shouldn't count, and folks should be given the full opportunity to speak. We can disagree but I am going to make a motion at a later meeting that we address how much time we give folks to speak. My greater issue is the general law section that you quoted and again the chair exceeded the time when she acknowledged Mr. Burrows and allow him to speak. The section that you cited really is someone that hasn't been given the opportunity to speak, disrupting the meeting and carrying on. I think you might be able to find a much better section the in the Mass general law that would over this. At present I am not able to fully support this document being presented in response.

Mark Reich-A couple of points that need to be clarified. We need to separate the OML and access to both meetings from public hearings. The OML doesn't address public hearings and participation in public hearings. The AG is involved in the OML. There is nothing in the OML that requires a public body to allow members of the public to speak at a public hearing. The appropriate section is Chapter 20A, section G. No person shall address a meeting of a public body without permission of the chair. And all persons shall at request of the chair shall be silent. What the planning board would like to determine in terms of the amount of time that an individual can participate during a public hearing, which is a different matter, and it is not a matter governed by the OML or the AG. The boards chair can determine how to best manage the meeting. Mr. Burrows was never denied access as allowed under the OML and access is not participation. Access is the ability to observe the process and only to speak when allowed by the chair.

Kelly Sardina-Being somebody who's been on the other end of 3 minutes and trying to get your point across and being interrupted by the attorney, applicant or anyone. That has happened to me numerous times, so my 3 minutes has been cut down to 30 seconds. We have other members on this board who have been muted or silenced and felt very offended. That aside attorney Reich the interruption is only through the chair. I am going to go back and watch the tape. There are a lot of things that we didn't follow according to 30A, subsection 20g, a lot of mistakes have been made. Stepping down, no. Moving forward we need to do a better job. I would hope next time moving forward let the resident finish.

Marlies Henderson-2:12-All in favor to authorize town Counsel to do a response

Ed Giroux-Aye

Blake Robertson-Opposed

Kelly Sardina-Opposed

Chris Tribou-Aye

Mike Parker-Aye

Marlies Henderson-Aye

2-4

ADJOURNMENT-2:13

Marlies Henderson-Can I get a motion to adjourn (9:15 PM)

Ed Giroux-Moved

Seconded by Chris Tribou

All in favor

