

West Stockbridge Zoning Board of Appeals

Meeting Minutes
1.6.22

Topic: Scheduled ZBA Meeting Time: Jan 6, 2022 07:00 PM Eastern Time (US and Canada)

The West Stockbridge Zoning Board of Appeals will hold a meeting at 7PM on January 6, 2022. This will be a Zoom hearing and instructions for observation are below.

Agenda items include the following:

- 1) Discussion of the recent ZBA hearing (Orient Express/Foundry) and Roger Kavanagh's written response.
- 2) Discussion of the recent West Stockbridge Master Plan Survey results and implications for zoning.
- 3) Possible review and updating changes to our application for a hearing.
- 4) Possible related "housekeeping" subjects having to do with this committee

You are invited to a scheduled Zoom meeting.

Topic: ZBA Meeting

Time: Jan 6, 2022 07:00 PM Eastern Time (US and Canada)

Join Zoom Meeting

<https://us02web.zoom.us/j/85228004197>

-Joe Roy Jr

<https://www.weststockbridge-ma.gov/zoning-board-appeals>

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Meeting came to order at 7:05PM.

Board members present included the following: Randy Thunfors, Dutch Pinkston, Joe Roy, Jr, Jack Houghton, Jim Clary & Thom Lipiczky.

Vistors included: Roger Kavanagh, Kathleen Keresey, Lori Rose, Frank Landsberger, Seth Jenkins & Trúc Nguyen.

Randy asked Joe to read the post for the meeting, which he did.

As background information, Randy began the agenda by summarizing that Roger had written to the ZBA [11.7.21] expressing his concerns and displeasure with the manner in which the ZBA decided the outcome of the last ZBA hearing and the letter of recommendation that the ZBA sent to the Select Board [11.1.21] after the ZBA hearing which began on 8.26.21. That hearing was an appeal of a decision by the Building Inspector regarding activities at 2 Harris Street [The Foundry]. It was later determined at a Select Board meeting that the remaining two members of The Select Board agreed with Roger's concerns.

Randy pointed out that there was almost no record of Select Board issued special permits and that fact was a reality long before the present board took office. He explained the difference between a regular permit and a *Special Permit*. He pointed out that after some research, it was learned that very few Select Boards in the past had ever issued any required Special Permits - and that included such uses as restaurants among other uses that specifically required one, like the one that was part of the issue at the ZBA hearing mentioned above. He pointed out

that the present Select Board has been diligent in resolving many of the problems in town and inadvertently became the focus of a contentious zoning conflict. As a result, the efforts to correct the conflict was awkward and difficult. He pointed out that efforts to eliminate these conditions - so they don't repeat themselves - becomes similarly awkward and difficult.

Randy said that he could understand how the letter to the Select Board could be seen as insulting. He said that one way to resolve this issue is to turn many of the special permit requests over to the two boards that handle that process on a regular basis: the Planning Board and The Board of Appeals. He posed the following question: how do "new board members" acquaint themselves with the permitting process as they apply to our zoning Bylaws? As a possible remedy, he suggested that newly elected Select Board members could consult The Planning Board regarding Mass General Law Chapter 40A statutes and also that they study the town's zoning bylaws. He then opened the discussion to the board for further comment.

Joe pointed out that presently, there is a concentrated effort by various town officials to iron out conflicting bylaws and clarify some of the inconsistencies in the Town Code. Many inconspicuous flaws in the laws that govern our town are being identified and clarified at this time, and it's producing good results. He said that one of the last things he'd ever want to do is insult another town official, and apologized that anything he was part of appeared to be [or was meant] that way. He explained the difference between what many boards and committees refer to as "minutes", and what a Special Permit Granting Authority [SPGA] produces as a "Record of Proceedings." One simply records the events of a meeting; the other explains exactly how ["in detail"] a particular hearing reached a decision on a specific request. The Special Permit requires that abutters be notified; the discussion of a standard permit requires only that the meeting be posted. He stated that his Record of Proceedings reported what was said and how a decision was reached. He assured everyone that the entire board weighed in on the contents. There were five authors - and the vote was unanimous. He pointed out that most of the objections to date were from the Record of Proceedings of the third meeting of the hearing. He said that there were 4 people [besides the board] at that third meeting. Compare that to the over 40 people in the audience at the first meeting of the hearing. It was as if there was no interest in what remained to be done at that third meeting, but the ZBA still had a serious issue to resolve. There was a great deal of new information brought forth at that third meeting, and very few conflicting arguments about most of it. He concluded that in the future he would make every effort to record information as "digestible" as possible - and would word his report as gently as possible.

Randy pointed out that from his point of view, The ZBA is one step away from Superior Court. To him, that requires "...a very accurate and very complete record of the proceedings." He always wondered if the recording of the meeting [in this case, the ZOOM video] could stand as The Record of Proceedings [ROP], and he had just recently learned that it cannot.

Randy stated that the ROP was about 35 pages long and seemed extensive. Joe stated that the ROP reported on three consecutive meetings [of the entire hearing] and the video is 5 to 6 hours long altogether. The ROP was extensive because the hearing time was extensive and contained a great deal of dialogue and information.

Randy went on to state that he had discussed the idea of the video to serve as the ROP with someone of authority and it was suggested that comments made during a hearing that are controversial, ugly, and/or that might be considered offensive might be "left out" of the record, but he stated that he has difficulty with that idea because all evidence and opinions are taken into account when a board has to justify its decision. He learned that the video must be transcribed and submitted in writing - even though there is a video available.

Joe stated that when taking notes at a meeting or a hearing, his first concern is accuracy and thoroughness. Since any appeal to a ZBA decision will come before a judge, it's important that when reading the record, it is very clear what the mood or the flavor of the meeting is. The ZBA members respond to the tone of the meeting, and if it's challenged, the judge is well served to understand that.

Randy mentioned that one of the "quotes" that Roger pointed out in the ROP was from Jack who said that "...we should consider the motivations of actors." He commented that those terms may be some sort of "legal speak" [since Jack is an attorney] - and that term may come from a "legal position" - and he can see how someone might be offended by that comment.

Joe commented that in the case of that particular quote, Jack was referring to the applicant and "The Foundry" - not any board members of the Town. Jack confirmed that to be the case. He was not referring to any board member or anyone on The Select Board.

There was a brief period where we all clarified how each attendee could see [on their video screen] who was attending the meeting. It had to do with choosing "gallery view" on the ZOOM screen. During that clarification period, Randy pointed out that this ZOOM meeting was a "... working session for the ZBA..." without any formality. It is a discussion and attempt to improve our process in the future so that we can better "move forward."

Jack added a few comments to the discussion at this point. He pointed out that during the three separate meetings [of the hearing in question], very few people attended all three meetings [with perhaps the exception of the "participants"]. Most attendees did not hear or witness all of the evidence and comments presented during the entire hearing - with an emphasis on the third meeting. He said that participants in the meetings shared opinions and comments. He said the the ROP contains both findings and opinions. Some of his own comments were opinions and some were findings. He said that in his mind, if a decision is appealed, it's up to The Court to determine which are opinions and which are findings. When he is stating an opinion, it is not his intent to represent the board. He said that Roger's letters were written "...outside of our hearing on the matter involving The Foundry... it's not part of the evidence. It's not part of The Record of Proceedings." He stated that this board can do what it can to help explain the ZBA's process and make an effort to clarify certain misunderstandings as they appear in the ROP, but in his opinion, it's not "productive" to engage in a "back and forth" over "line by line" text as it appears in the ROP. He mentioned that in other towns in Berkshire County, the bitterness and disagreements between boards seem "self destructive" and do little to help town officials work well together. He concluded by declaring his unwillingness to participate in a discussion involving misunderstandings between boards. His feeling is that "... this is not a debate." He said that he's willing to have a constructive discussion on how to better work together for the benefit of the town, but not so much to argue over misunderstandings.

Randy pointed out that he's been on the ZBA for 3 to 4 decades and this board has always been objective, honest and as thorough as possible. He restated that when recording the details of a hearing, there's no place for editing certain facts as they are presented during the hearing. He said that there is always a possibility that certain participants will be unhappy with the way things turn out, but this board has always make an effort to be fair and objective. He stated that nearly all our decisions over the years were unanimous, and that all minutes and ROP's are approved by each member. He also mentioned that the ZBA is not an elected board. We are appointed by the Select Board. If The Select Board feels that we are not being respectful, honest and fair, they can chose to replace us.

Thom stated that he felt that the ROP was accurate. He said that some of the contents of the hearing may have included some inaccuracies, but this board has to deal with what is stated nevertheless - and we're not a court of law.

Randy replied that in any given meeting or hearing, there is always the possibility of inaccuracies or misrepresentations, but it's not always possible to recognize and challenge them. This board is obliged to be as objective and fair as possible and to record all aspects of the hearing process accurately.

Seth offered that his research on the subject "...according to the Mullen Rule," a video recording of a hearing that includes the audio as well is acceptable and might satisfy our meeting requirements. He will check further and report back to this board with more information. Dana agreed with Seth on this. We should check the rules as to the proper way to record those videos for public access.

Joe explained the three written documents that he is required to complete and file with the Town Clerk: a Notice of Decision, The Record of Proceedings, and "The Decision" itself. It's not a matter of simply submitting "minutes."

Randy asked how new elected officials should be made aware of their obligations when they come into office. What could the town do to make things more clear to new town officials? Whose responsibility is that?

Roger explained that in his case, there was no "orientation information" presented to him when he took office. Kathleen agreed.

Randy asked if there was any discussion about relieving the Select Board of any specific SPGA responsibilities. Dana confirmed that it is under consideration for the next Town Meeting. There was some discussion about obtaining a handbook on the subject. They do exist. A guidebook from "former" boards would serve any new boards well.

Randy again asked if there was anyone on the board who felt that [in hindsight] the ROP was not objective? Dutch replied that he could speak to "accuracy." He said that he feels that the it was accurate. But he said that "objectivity" is a value. It's individual and personal. One member has no real way to know if anyone else is truly being objective. We are all human. We all try our best, and we use the information that we hear as a form of guide to be objective.

Joe again added that every board member had the opportunity to revise certain language in the ROP and The Decision - and there were some.

Roger stated that in the findings, there are some notes and some paraphrasing that he feels were inaccurate and said that they would have been better left out. Joe said that he would double check and would make every effort to avoid that in the future.

Roger further stated that during the ZBA hearing in question, the topics of conversation often strayed away from the actual focus of the appeal, and he suggested that in the future, closer attention should be spent to avoid that. Joe responded that during the hearing, there were several points where that issue was addressed and there was a call to stay on subject and avoid getting off the point.

Randy then asked if there were any further comments on the first agenda item. Hearing none, he moved to the next agenda item and asked how many people had a chance to review the survey/questionnaire that was circulated by the Master Plan Committee not long ago. Some hands went up. Randy remembered a discussion [from when he was on The Vision Committee]

from a meeting when we asked each other what the needs were on subjects like “downtown improvement” and “housing” in West Stockbridge. He noted that in the Master Plan survey, “elderly housing” was high on the list of replies. He was interested in the types of housing this board would like to be focused on.

Dutch pointed out that this board may not set policy guidelines, but could help in the way of adjusting bylaws and enforcing them. He thought that there needs to be more “follow up” before a course of direction could be identified.

Randy suggested that if we made some senior housing available for some elder residents, it may also make some affordable housing available for young families to settle in.

Thom said that this board is less likely to add to the effort of proposing what the town should plan for, and agreed with Dutch about the need for more public input.

Randy pointed out that this board deals specifically with zoning - and that we have a feel for the kind of zoning that would encourage more people to live here.

Jim mentioned that affordable housing is very important. AirB&B possibilities and VRBO housing is also of great interest in this area as well. Most people are interested in how they can make a property work for them - and earn enough to help in supporting the mortgage - like VRBOs and AirB&Bs.

Joe asked Jim to describe his average client that hires him to build a house in West Stockbridge. Jim replied that they are usually over 50 and relatively well off. Young couples are not high on the list of investing in housing in this area right now. Building costs have more than doubled recently. There are few people investing in a second property for investment. Those who do are looking for the highest return - they are searching for “premium dollars.”

Joe pointed out that our Planning Board is always searching for ways to help our elderly and youth find ways to stay in town. Accessory dwellings and things like VRBOs are getting close scrutiny. Where could we place housing to keep more people in town?

Dana added that Accessory Dwelling Units are being considered for some zoning changes. This would help make it easier to allow home owners to keep families together. Some might make it easier to rent to outside folks at a higher rate, and might not be of any value to our youth or the elderly at all, but the trick is to address both possibilities in a fair way. Each town has to consider what type of housing to develop, where to locate them and how it can be implemented - especially when searching for grants for funding. She also thinks our multiple family housing zoning is very restrictive and could use some changes as well. She said that her board is interested in opinions from everyone in town and is pleased that our board put this discussion on our agenda. People familiar with zoning are certainly welcome, but other people in general should have a voice as well. Contractors, merchants, landlords, retirees and all sorts of business people have opinions that help form the course of our zoning as the town grows and adapts as it moves forward.

Randy went back to the questionnaire and asked for more thoughts on the downtown.

Joe mentioned that there isn't a whole lot of actual space for much more business development. Dutch stated that we have two indoor entertainment venues [The Old Town Hall and The Foundry.] Truc mentioned TurnPark, even though it's mostly an outdoor space.

Joe suggested the possibility of creating more commercial space in town - even if it is in a separate location.

Jack mentioned the idea of an industrial park for new types of business.

Randy mentioned that there might be some discussions in town that have the notion that we have “grown” enough and should stay about the same. Then he pointed out that there are some under-utilized areas that new businesses could develop [like places for sale, the west side of the Williams River south of the footbridge on Main Street, the areas around the new town hall, and new possibilities on Moscow Road that could be developed.]

Dana commented that the “village” should be dominated by new housing. More people will support downtown business. Much of the newly revised zoning for downtown was for the development of housing and commercial use. She also stated that there are several new proposals of new businesses that are interested in locating in town.

Randy then brought up the third item on the agenda - Special Permit applications for the three Special Permit Granting Authorities [SPGA]. Randy pointed out that the three SPGAs could share the same application form. Joe added that the ZBA is the only board that grants valances and hears Appeals, but we could still all share one application form. Joe mentioned three aspects in particular: we need a higher fee because often one hearing can cost more than the fee amount; we need to stress the need for a site plan as per state statute; and it should be mandatory that the applicant consult with the Building Commissioner [and possibly the boards that will need to weigh in on the proposal.] He added that we need to make it clear that The Town Clerk must make sure all required information is completed before forwarding the application to The ZBA.

Randy suggested the idea that applications should be reviewed by the ZBA first, and then submitted to The Town Clerk for filing. This would streamline the process. Joe agreed to discuss this with The Town Clerk and see if that can work.

The application fee was discussed and the consensus was that it should be increased - from \$250.00 to \$350.00 was suggested, but no action was taken at that time.

Dana suggested that the three SPGA's might discuss the same fee for consistency. She also added that the ZBA might keep their application separate because of the extra types of actions that board performs. She also offered that there were times that The Planning Board would check applications over before asking The Town Clerk to accept it [and time stamp it] - much like what Randy was proposing. Joe will keep that in mind when he speaks with Ronni about the process.

Randy then suggested that we raise the application fee to 300.00. There was further discussion on that subject. The board agreed to the \$300.00 fee amount, and that Joe will talk with The Town Clerk to allow this board to review future applications before time stamping them.

On another note, Randy offered copies of the application submitted by Heirloom Lodge LLC for the upcoming Feb 10th meeting for the continuance of that hearing. The Town Clerk has an original hard copy for people who need to see it or copy it, and there are digital copies available for anyone who needs the basic information.

Joe will consult Marie Ryan for some instruction on how to conduct a “Webinar” ZOOM meeting - in an effort to provide some protection for possible “ZOOM Bombing.”

Randy suggested that each board member download a copy of the Zoning Bylaw from the town website so that we're all referring to the same printed copies.

The meeting adjourned at 9:01 PM.

Respectfully submitted,

Joe Roy, Jr  
Clerk