

Report on the Special Town Meeting ,Town of Monterey, April 2, 2009

This is to certify that at the Special Town Meeting of the Town of Monterey held at the Monterey Firehouse, Inc. on April 2, 2009 the following articles were acted upon in the following manner by 32 of 638 voters qualified to vote in Town affairs.

ARTICLE 1. The Town voted to authorize any Town board to appoint any member thereof to another office or position for the term provided by law (if any), otherwise for the term not to exceed one year from May, 2008, and to fix the salary and compensation in accordance with Massachusetts General Laws Chapter 41, Section 4A. This vote corrected an omission in the Annual Town Meeting Warrant of May 2008 and a request from the Planning Board to allow one its members to serve as Secretary was approved as was a request from the Parks Commission. The vote was a voice vote and there were no negative votes.

ARTICLE 2. The Town accepted Massachusetts General Laws Chapter 143, § 3Z, to allow any part time inspector of buildings, building commissioner, local inspector or alternate inspector to practice for hire or engage in the business for which he is certified, licensed or registered under the building code, while serving as such inspector; provided, however, that within the area over which he has jurisdiction as inspector or alternate inspector, he shall not exercise any of his powers and duties as such inspector, including those of enforcement officer of the state building code for the construction, reconstruction, alteration, repair, demolition or removal work done by himself, his employer, employee or one employed with him.

The inspection of such work shall be performed by the inspector of buildings or building commissioner of another city, town or district or by a special assistant inspector of buildings or assistant building commissioner who is appointed solely for the purpose of performing such inspections by the mayor of a city, the board of selectmen of a town or the governing board of a district.

Discussion centered around why this was necessary. Wayne Burkhart noted that this allows the Assistant Building Inspectors to bid on and work on projects here in town (to be inspected by Inspectors other than the Inspector doing work) and is considered by the Select Board to be a mere formality. The point was made that any Inspector cannot inspect their own work. Asked about the Building Commissioner doing such work, Wayne Burkhart noted that he is contracted for one-third time here.

The motion to approve this article was made by voice vote, with one negative voice vote.

ARTICLE 3. The Town voted to amend the following sections of the zoning by-laws by
a. deleting the words "Bylaw" or "bylaw" located anywhere in the Monterey Zoning by-laws and replacing them with "by-law"
b. deleting all the words "single-family" located anywhere in the Monterey Zoning by-laws and replacing the word with "single family"
c. deleting all the words "multi family" located anywhere in the Monterey Zoning by-laws and replacing the word with "multi-family"
d. deleting all the words "non-conforming" located anywhere in the Monterey Zoning by-laws and replacing the word with

"nonconforming" e. deleting all the words "set-back" located anywhere in the Monterey Zoning by-laws and replacing the word with "setback".

The report by the Planning Board was as follows:

Planning Board Report regarding By-Law Clerical Changes

The Monterey Planning Board held a Public Hearing on March 12, 2009 at 7:00 PM at the Monterey Town Hall to receive public comment about the proposed zoning by-law. The public notice of the public hearing was advertised twice in the Berkshire Record on February 20, 2009 and February 27, 2009, and a copy of the by-law was posted at the Town Clerk's Office. Five members of the Planning Board and several town residents attended the public hearing. The proposed bylaw was discussed and the comments and recommendations from the public were considered.

The purpose of this by-law to make clerical changes so that the wording in the different sections of the Zoning By-laws will be consistent. This By-law makes no substantive changes.

The Planning Board voted unanimously in favor of recommending approval of this bylaw at town meeting.

Thank you. Cynthia T. Hoogs, Planning Board Chair

Discussion included the suggestion of an amendment asking that all terms be hyphenated and that the title "Monterey Zoning bylaws" be capitalized. That amendment failed on a voice vote.

Orthography suggested by the Planning Board was reportedly drawn from usage in Chapter 40A of Massachusetts General Laws, the enabling legislation for Zoning Bylaws.

Acceptance of the set of changes called for in this article was by voice vote.

Unanimously

ARTICLE 4 The Town voted to amend the Zoning bylaws of the Town by deleting the header in Section VII "3. Signs Not Requiring Permits:" and replacing it with a header entitled "4. Signs Not Requiring Permits:"

The Report by the Planning Board was as follows:

Planning Board Report regarding change of header for sign permits

The Monterey Planning Board held a Public Hearing on March 12, 2009 at 7:00 pm at the Monterey Town Hall to receive public comment about the proposed zoning bylaw. The public notice of the public hearing was advertised twice in the Berkshire Record on February 20, 2009 and February 27, 2009, and a copy of the by-law was posted at the Town Clerk's Office. Five members of the Planning Board and several town residents attended the public hearing. The proposed bylaw was discussed and the comments and recommendations from the public were considered.

The purpose of this by-law is to make a clerical change to the header "Sign not Requiring Permits". It is only a change to the numbering of the header. This By-law makes no substantive changes.

The Planning Board voted unanimously in favor of recommending approval of this bylaw at town meeting. Thank you. Cynthia T. Hoogs, Planning Board Chair

With no discussion, this article was approved:

Unanimously

ARTICLE 5. The Town of Monterey voted to amend the Zoning bylaws of the Town by adding a new Use Category for "Camp and/or Recreational Facility, Seasonal or Year Round", as noted in the Warrant.

The Report of the Planning Board was as follows:

Planning Board Report regarding Addition of a New Use Category -
Camp and/or Recreational Facility, Seasonal or Year Round

The Monterey Planning Board held a Public Hearing on March 12, 2009 at 7:15 pm at the Monterey Town Hall to receive public comment about the proposed Zoning By-law. The public notice of the public hearing was advertised twice in the Berkshire Record on February 20, 2009 and February 27, 2009, and a copy of the By-law was posted at the Town Clerks's Office. Five members of the Planning Board and several town residents attended the public hearing. The proposed bylaw was discussed and the comments and recommendations from the public were considered.

The purpose of this by-law is to create a new use category for a camp and/or facility, whereby a property would be able to conduct a camp, sports camp, recreational camp, recreational facility on a seasonal basis or on a year round basis. Currently our zoning by-laws restrict such use to a period from Memorial Day to Labor Day. This use would also include a place to conduct meetings, functions and events. This By-law would be allowed in both the agricultural-residential district and in the lake shore district. Approval of any proposed functions under this By-law would be by special permit from the zoning board of appeals, with all the usual findings required. The Planning Board voted unanimously in favor of recommending approval of this bylaw at town meeting. Thank you. Cynthia T. Hoogs, Planning Board Chair

Discussion centered around an amendment offered by Rob Hoogs which would have included the term "Multiple Use Facility" in the header of this section of the bylaws. Concern was expressed that if there were not an explicit noting of allowed activity, a special permit might be denied. Alan Salamon noted that if "multiple use" were to be included, it would mean any activity anywhere, and would be too broad in meaning.

Asked whether change to include "multiple-use" could only be in the title, and not in the body of the bylaw, Rob Hoogs answered that he could accept that change. Objection was raised then to adding it in the title, since uses are carefully defined in the body of the text, and perhaps including the concept of multiple use anywhere else might lead to unintended consequences. Asked whether the Town could restrict any use, one Planning Board member noted that this proposed bylaw use would have to go through the Special Permit process of the Zoning Board of Appeals and there it would have to conform to State law, thus that is where you have the control.

The lawyer was asked whether "recreational facility" was too limiting and "multiuse facility" too broad, the reply was that "multiuse" may or may not be better for the town, because what is proposed here is just one use: from seasonal camp to year-round uses to allow not just recreational uses. Further, it would not apply in the business district.

Gige O'Connell noted that we have closed our eyes to the fact that what was once areas for children's camps is now needed for more uses. Jonathan Sylbert added that one camp with a new owner in town and two other existing camps would all be able to benefit by this bylaw change. We should wish to make the change beneficial because now we are not allowing enough uses through the year, but, with the change, these facilities can look to generate income and activity over more seasons. With the recent talk about a need for a Community Center, he noted perhaps one or more might fill that need.

Alan Salamon made it clear that some members of the Planning Board would prefer to keep activities in a more restrictive mode than opening areas other than camps up to changes. Gige O'Connell noted that uses for weddings and parties were once conducted for a time next to Lake Garfield but that a change in the bylaws would have been required to allow them to continue in that location, according to the Town Counsel of that time.

Rob Hoogs then withdrew his amendment changing the bylaw title and his suggestion that events "may" include "a common kitchen" but left in place an amendment to add the words "for any one or more" organized ... events and including a common kitchen and dining facilities." to keep the uses restricted. The amendment was approved by voice vote:

Unanimously

Bringing the entire bylaw to a vote, as amended, the bylaw change was approved by voice vote:

Unanimously

ARTICLE 6. The Town voted to amend the zoning by-laws by adding a new Use Category for "Common Driveway" as noted in the Warrant and amended on the floor of Town Meeting. A motion to waive reading of this article was approved. After a motion to approve this article was seconded, the article was opened up for discussion.

The Planning Board Report on the proposed bylaw was as follows:

Planning Board Report regarding Proposed Common Driveway Bylaw

The Monterey Planning Board held a Public Hearing on March 12, 2009 at 7:05 pm at the Monterey Town Hall to receive public comment about the proposed zoning bylaw to regulate common driveways. The public notice of the public hearing was advertised twice in the Berkshire Record on February 20, 2009 and February 27, 2009, and a copy of the by-law was posted at the Town Clerk's office.

Five members of the Planning Board and several town residents attended the public hearing. The proposed bylaw was discussed and the comments and recommendations from the public were considered.

At the end of the Public Hearing, the Planning Board agreed to make minor clarifications to the draft bylaw in response to the comments received. The Planning Board voted unanimously to issue a strongly positive recommendation to Town Meeting in favor of adopting the Common Driveway bylaw as amended.

The common driveway bylaw is proposed by the Planning Board to provide an alternative to having individual driveways for each house. The bylaw will allow property owners the option of sharing a driveway. This will minimize the need for multiple curb cuts along our rural roads, to reduce cutting of street trees and alteration of stone walls, to avoid wetlands and other sensitive areas, to improve safety by allowing driveways to be located where sight distance is optimal, and to reduce the amount of land disturbance.

The bylaw sets up a simple review process. A common driveway serving two lots is allowed "by right" without a permit. A common driveway serving three or four lots would require a permit from the Planning Board. The bylaw sets out standards for the application, design plans, and construction. A regular curb cut permit will still be required from the Public Works Department. The bylaw also requires that a maintenance association be established by the owners of the lots being served by the driveway for the perpetual maintenance of the driveway. The driveway will always be private, and will not be maintained by the town.

Any private roadway that serves five or more lots will be considered a subdivision road that must be approved under the Subdivision Control Regulations. A Common driveway cannot be used to create frontage for lots. Each lot served by a common driveway must have its own legal frontage on an approved way.

In conclusion, the Planning Board believes that common driveways offer a good option for preserving the rural character of Monterey's town roads. The Planning Board strongly recommends approval of this bylaw at town meeting.

Thank you. Cynthia T. Hoogs, Planning Board Chair

Discussion began with a question regarding whether or not there are some common driveways now in existence with access to more than five lots. The answer was that there were some, but

that any now in existence would be grandfathered. If this passes, any private way created after this would be affected. If there are five or more lots involved, then it would be a subdivision. It was noted that "private way" is defined in State law, and that a "way in existence" would not be considered a common driveway.

There was a motion made to add the words "or driveway" to the fifth paragraph of the bylaw, changing the wording there to read: "A private way or driveway accessing five (5) or more lots shall be considered a subdivision road and must be approved under the Subdivision Control Regulations.

This amendment was brought to a voice vote and was approved
By voice vote Unanimously


Turning to the requirement for a maintenance agreement, the Planning Board noted that the details of each maintenance agreement would run with a deed, and that the legal means to force equal contribution toward upkeep would be in that deed. While there was the comment that many shared driveways and private ways now have difficulty forcing equal shared upkeep costs, and that the requirement for betterments might be a better solution since the Town would collect the funds for driveway improvements, no amendment on this subject was offered. Stephen Rose of the Planning Board commented that some of the language in this bylaw comes close to the use of betterments.

When asked why there was no requirement for a maintenance agreement regarding a two-lot common driveway, the reply by the Planning Board Chair noted that it was felt there would be undue hardship to meet the specifications of a common driveway when there were only two lots involved. Muriel Lazzarini queried whether or not this would not set one landowner up with the entire cost of maintenance or risk blockages to emergency vehicles. In response it was felt that anyone involved in a two-lot driveway would likely either be related or have an agreement in place for this matter.

It is a requirement of this bylaw that you have to have access from your own frontage, and there was discussion of illusory frontage and the need to determine the possibility that some part of your frontage must allow access, whether or not it is used. With no further discussion, the entire bylaw, as amended, was voted and approval by voice vote was
Unanimous

There being no further business brought before the Town Meeting, there was a motion to adjourn at 8:40P.M. which was approved unanimously.

Respectfully submitted,


Barbara B. Swann
Town Clerk