

Minutes of Planning Board Meeting
Virtual Meeting via Zoom
March 15, 2022

Present: Members Don Sluter, Judy Markland, Sara Cooper, Tom Litwin, Brant Cheikes
Hannah Davis (Town of Whately Staff)

The meeting was held remotely, via Zoom, but was not recorded.

Virtual Guests:

Sue Monahan
Mike and Gretchen Bechta
Julie Beauchemin
Chris Larrabee
Fred Orloski
Eric Phaneuf
Kellogg family
Andrew Bernstein
Mark A. Tanner

I. Call to Order, 5:00 p.m.
The meeting was recorded.

II. Discussion of zoning for the Monahan parcel on State Rd.

Sue Monahan told the Board she wants to continue with the change to commercial zoning of her family's parcel on State Rd. for possible expansion of her son Kyle's business. She noted that Kyle's own property has already been rezoned. Judy advised Ms. Monahan to check with Building Inspector James Hawkins before holding the required public hearing, to see whether it is his opinion that the rezoning would allow trucking. She also suggested scheduling the public hearing, in case Mr. Hawkins' answer is favorable. She pointed out that a previous attempt to add the Trucking category to the Table of Use had not succeeded, saying that perhaps it would require changing the zoning along with the Table of Use, and said Ms. Monahan should ask Mr. Hawkins whether he thinks it would fit the situation to change the zoning only.

Judy moved to schedule a public hearing for changing the zoning on the Monahan lot and to add Trucking to the Table of Use if necessary. Don seconded. Don, Judy, Sara, Tom, and Brant each voted Yes, and the motion carried unanimously.

III. 5:15 Continuation of public hearing for site plan review for the Greenjeans Farms, LLC proposed marijuana cultivation facility at 149 Christian Lane. (As an abutter to the subject property, Board member Sara Cooper recused herself from participating in this matter).

2.

Julie Beauchemin addressed the landscaping at the site with plans to use native plants that are attractive, screen the view, and are sun-tolerant, such as *Clethra*, red twig dogwood, and inkberry holly. Forty-two plantings were described as being four to five feet tall, spaced ten feet apart. She noted that the landowner needs more space on the north side, and that the east side has a line of mature trees so they won't plant there.

She screen-shared photos of the fan and of chain link fencing – with plastic green slats and with fabric on both sides – stating that a wooden fence is still an option. Eventually, cedar fencing was preferred and was made a condition of approval. Abutter Fred Orloski asked about monitoring of the fan's noise level and was told that both Julie Beauchemin and the staff would do that, and that the Board will be welcome to visit and inspect the situation. She noted that the metal barns will have no fans, being for storage only.

Abutter Jonathan Chamutka asked for assurance that the maintenance of plantings will be done so that any plant that is damaged or dies shall be replaced on an annual basis each Spring or Fall. Julie Beauchemin noted that sometimes, plants die because plantings are rushed and done at the wrong time of year. She asked that they be allowed to wait until the right time for planting, adding that this could be accomplished within one year of the completion of construction. The Board agreed and made this a condition of approval. Mr. Chamutka then referred to a potential situation mentioned at an earlier hearing session – that the state might require the removal of some screening plants if they were thought to interfere with security. In such a case, he said, Greenjeans Farms should come back to the board about such a development unless their license was going to be withheld by the state because of it.

Tom moved to close the public hearing and Brant seconded. Don, Judy, Tom, and Brant each voted Yes, and the motion carried unanimously. (As an abutter to the subject property, Board member Sara Cooper recused herself from participating in this matter).

Don moved to approve the site plan with the following list of conditions, as shared onscreen:

The plan must receive approvals from all the appropriate boards and committees, including written approval from the Police Department and Fire Department.
In the event of complaints of excessive offensive odor, the Planning Board will have the ability to require additional mitigating conditions as economically practicable to be undertaken at the applicant's expense.
Should any historical artifacts be uncovered in the course of construction, construction must be paused until they can be examined and documented on site.
Horticultural lighting shall not be used.

3.

There shall be no use of town water for cultivation without prior approval from the Water Commission.

Cedar stockade fencing shall be used for all security fencing.

Screening plantings shall be installed within one year of completion of construction, and shall be replaced if necessary on an annual basis each Spring or Fall.

Don, Judy, Tom, and Brant each voted Yes, and the motion carried. (As an abutter to the subject property, Board member Sara Cooper recused herself from participating in this matter).

IV. 6:00 Public hearing for citizen's request for a zoning change reducing the required large-scale solar development bylaw setbacks for the commercial and industrial district

Attorney Mark A. Tanner spoke on behalf of a citizen who wishes to build a solar power plant in Whately, saying his client has requested a change to the bylaw setback requirements for solar power generation projects, to make them consistent with other setbacks required in the Commercial/Industrial District. Judy began the discussion by describing how in 2011, the solar setbacks were fifty feet in front and thirty feet at the sides and rear. After eight or nine years, she said, people had a list of concerns and wanted changes. From a document headed, *Background – Solar Bylaw Setbacks*, Judy read the following:

“By 2019 it became clear that town residents were unhappy with the bylaw because of

- the large amount of farmland being taken for solar projects
- poor screening from abutters and poor maintenance of what screening there was
- concern about large scale battery storage hazards
- installation of large utility poles both adjacent to the projects and on streets outside the project”

Now, she said, the setbacks are 100 feet and apply to all zoning districts. This is applied by *use*, not *district*, she said, and is the same for almost all uses. She noted that the changes she remembered were to expand the setbacks, not shrink them, for the uses Solar Electric Generating Facilities and Adult Use Recreational and Medical Marijuana Establishments.

Mr. Tanner made the point that in the Commercial/Industrial District there are fewer residential concerns, and that Chapter 40A, section 3 says a town cannot single out solar for special rules as a class (except for health and safety concerns) but must take further regulation case by case.

Don explained that the Zoning Board of Appeals (ZBA) can waive setbacks. He said that each solar power generation project needs a ZBA special permit anyway, so applicants should apply for a waiver at the same time.

Mr. Tanner replied that he didn't like waivers since it could be argued in a lawsuit that the ZBA doesn't have waiver power. If the setback numbers appear right in the bylaw, he said, there is almost no chance of a lawsuit. When told that the Attorney General had no problem with the bylaw, Mr. Tanner replied that people didn't put up as many objections then as they do today. Judy stated that fifteen feet of screening is bylaw-required, and a shrunk setback doesn't allow enough space to accommodate maintenance and utility equipment, or a road for getting around the property to perform maintenance. Mr. Tanner didn't agree that a road is necessary, saying that most workers would use all terrain vehicles (ATVs) or walk.

Abutter Fred Orloski stated that since the client will need a special permit, he should apply for one and address the setback issue at that time, instead of trying to change the bylaw – which would affect everyone in town. He said the special permit hearing must be used to look at the particulars of the project. Tom Litwin noted that the bylaw change that Mr. Tanner is proposing – changing the bylaw to suit a project – is a kind of spot zoning.

Don told Mr. Tanner that they would need a special permit anyway, and that for the cost of the application fee and advertising they will find out whether their proposal will be permitted. He noted that his client might not have to pay to have an engineered plan made. Abutter Fred Orloski, a member of the ZBA, invited Mr. Tanner and his client to start the process by first requesting an informal discussion with the ZBA.

Mr. Tanner repeated that his goal was uniformity across the district. Don asked the Board members whether anyone wanted to support this. Judy responded negatively, saying that on the contrary, the Board should recommend to the Selectboard that the town *not* change the bylaw. Mr. Tanner then asked whether the Board had a health and safety reason for treating solar power generation as a class with special rules. He noted that there is a current case involving this aspect of the law, and Tom replied that the Board has to deal with what is in front of it now. Brant noted that this change request will appear on the warrant in any case, but if the Planning Board disapproves, *that* will appear on the warrant as well. Fred Orloski, a Selectboard member, noted that the Selectboard chooses warrant articles base on the recommendations of boards. Brant noted that the discussion had included no mention of any general benefit to the town, saying that it seemed like spot zoning and that recently, the citizens *wanted* setbacks expanded so the town did that.

At 6:48 pm Brant moved to close the public hearing and Tom seconded. Don, Sara, Tom, Brant, and Judy each voted Yes, and the motion carried unanimously. Don moved that the Planning Board recommend to the Selectboard that the bylaw not be changed. Don, Sara, Tom, Brant, and Judy each voted Yes, and the motion carried unanimously.

V. Discussion of Zoning Map changes

Don screen-shared changes made to the zoning map clarifying the zoning district of houses in the Pine Plains Estates area, and Judy read from Zoning Bylaws ~ 171-3. Establishment of districts.:

Agricultural/Residential District 1 [amended ATM 4-27-2010, Art 11] extending 400 feet back from the right of way on any existing road providing Lot Frontage [amended ATM 5-9-2013 Art. 21]

It was noted that the houses have proper access from the road and as well as a 400 foot setback, and therefore are in the Agricultural/Residential District 1. Fred Orloski mentioned that similar clarification needs to be made for Mieczkowski Circle as well. Don will make the appropriate map changes.

VI. Approval of Minutes

Minutes of December 7, 2021

Brant moved to approve the minutes and Sara seconded the motion.

Don, Brant, Tom, Judy, and Sara each voted Yes and the motion carried unanimously.

Minutes of May 11, 2021

Sara moved to approve the minutes as amended and Tom seconded the motion.

Don, Brant, Tom, Judy, and Sara each voted Yes and the motion carried unanimously.

Minutes of April 27, 2021

Brant moved to approve the minutes as amended and Sara seconded the motion.

Don, Brant, Tom, Judy, and Sara each voted Yes and the motion carried unanimously.

It was noted that unless the Board hears otherwise, it will not hold a meeting on Tuesday, March 29.

IV. Adjournment:

Judy moved to adjourn and Sara seconded. Don, Judy, Sara, Tom, and Brant each voted Yes, and the meeting was adjourned.

Documents Reviewed (kept in the Planning Board files)

1. Conditions of Approval for the site plan of the Greenjeans Farms, LLC marijuana cultivation facility at 149 Christian Lane
2. A document headed, *Background – Solar Bylaw Setbacks*

Mary McCarthy
Secretary, Planning Board
Town of Whately, MA