

Minutes of Planning Board Meeting
Virtual Meeting via Zoom
April 26, 2022

Members Present: Don Sluter, Judy Markland, Sara Cooper, Tom Litwin, Brant Cheikes
Hannah Davis (Town of Whately Staff)
Members Absent: none

The meeting was held remotely, via Zoom.

Virtual Guests:

Michelle and Tom Borawski
Sandy Mazzacane
Rich Korpiewski
Fred Orloski
Larry Brotherton
Mike and Gretchen Bechta
Margaret Young
Jeffrey Kocot

- I. Call to Order, 5:03 p.m.
The meeting was recorded.

Don began by asking Tom Borawski about the tree planted by Nexamp at their solar power installation, which is partly on his property and which he would like moved. Mr. Borawski said he doesn't want the tree on his land, and that he doesn't care where Nexamp moves it to. He talked with his neighbor Jeff Kocot, who agreed the tree should be moved off the Borawski land. Brant noted that the tree was planted to screen the view of the solar plant, and shouldn't be moved randomly. There will be further discussion of this later in the meeting, along with other items related to the solar facility landscaping.

- II. Update on floodplain bylaw proposal

Judy reported that after the Floodplain Bylaw Proposal Informational Forum on March 28, she, Peggy Sloan and Hannah Davis all agreed that they are not ready to go to town meeting. More information is needed, and it also seemed precipitate to go to town meeting now if new maps are going to be available next summer. Judy, Hannah and Town Administrator Brian Domina met and talked about the agricultural exemption, and Brian pointed out that it permits reasonable regulation. Presumably, floodplain regulation is reasonable, and there is also a sentence in the exemption that seems to carve out floodplain regulations but isn't very specific. Brian is going to ask town counsel for his opinion on that, and Hannah is going to consult the health department experts for more information about septic systems. The deadline has changed and now the work on this project does not have to be completed until the new Federal Emergency Management Agency (FEMA) maps come out.

III. Vote on proposed general bylaw change to reduce Planning Board terms from five years to three
Judy explained that the Planning Board members have always assumed their terms were three years, but the Town Clerk read the bylaw and discovered they are really five year terms. Judy talked to Town Moderator Nat Fortune about the situation. Adjusting everyone's terms to five years didn't seem fair, and he agreed that it would be very difficult to recruit people for five year terms. He agreed to submit a bylaw change, it will be on the warrant, and its passage would be helped if the members vote to approve it. Judy moved that the Board support the general bylaw amendment that changes Planning Board terms from five years to three. Sara seconded the motion. Don, Judy, Brant, Tom, and Sara each voted Yes, and the motion carried unanimously.

IV. 5:15 Public hearing for proposed zoning bylaw changes to permit marijuana delivery, marijuana courier, and trucking and construction services, and to rezone parcel 12-0-24-2 on State Road from the Agricultural/Residential 1 District to the Commercial District

At 5:15 pm Don opened the public hearing.

Marijuana Delivery and Marijuana Courier

Judy explained that these two types of licenses are new since the original marijuana bylaw was passed. Both involve the delivery of marijuana products to retail customers. Marijuana Courier is a business where somebody goes to the wholesaler, picks up an order and delivers it to the customer. Marijuana Delivery is a business that also purchases at wholesale, but can also relabel the product, store it in a warehouse, and ultimately deliver it to the customer. Marijuana Delivery businesses must deliver directly to the customer and cannot repackage the product or operate a storefront. Each of these businesses would only be allowed in the Commercial, Commercial/Industrial, and Industrial Districts, and each would require a special permit. They have the same setback requirements as the other marijuana businesses, and are probably less intrusive than a marijuana retail or manufacturing business.

Brant summarized: We are looking for public feedback on adding two new businesses to the zoning bylaws that currently are not allowed in Whately. We propose to do this by adding two new commercial Definitions and by revising the Table of Use to explicitly list them, since by their absence they would be prohibited by default. They would be prohibited in the Agricultural/Residential 1 (A/R 1) District and from the Agricultural/Residential 2 (A/R 2) District, but would be allowed in the Commercial, Commercial/Industrial, and Industrial Districts with a special permit. Site plan review would be required.

Brant asked for public comment. Comments and responses included the following:

C: It seems like you are allowing marijuana "Door Dash" style delivery.

R: The Courier business operates like that. Northampton is already doing this, and Whately cannot regulate delivery companies from outside Whately. Right now, it has no cannabis delivery bylaw – it would take a general bylaw to accomplish that. 7:00 am to 8:00 pm is the state limit for cannabis deliveries (the same as for our general marijuana bylaw), but Whately could require more restrictive hours as part of the site plan review proceedings. Brant noted that Whately cannot deny site plan approval if the plan appears to follow the bylaws.

C: Why add Marijuana Courier and Delivery services?

R: They are reasonable businesses for Whately, and we don't want to discourage them if they comply.

C: We don't want to open the doors to a "Rte 9 in Hadley" situation, losing scenery to lots of noisy trucks.

R: These deliveries would be made to homes, in unobtrusive ways.

C: How is this different from Fedex and UPS.

R: They don't operate under the marijuana bylaw. Also, if a delivery company established a presence *in* Whately, we could have a say in its operations.

C: Would the number of such companies allowed in town be limited to three?

R: Only marijuana retail shops are limited to three. There are no limits to the number of any other allowed business types, whether related to marijuana or not (such as, no limit to the number of self-storage companies.) There are, however, some categories of businesses that are not allowed in Whately at all (such as car washes, pig farms, dry cleaning establishments, etc.).

C: A Commercial District resident spoke to remind everyone that residents who don't live on Rte 5 only benefit from more business, but don't share the burden borne by those living in the Commercial District. He would like everyone to think that through.

Don moved on to the part of the hearing addressing a bylaw change to allow trucking and construction services, and a citizen request by Sue Monahan to rezone parcel 12-0-24-2 on State Road from the Agricultural/Residential 1 District to the Commercial District. Ms. Monahan stated that the rezoning had been approved on November 18, 2021. Don replied that the Attorney General didn't like the language and didn't approve it. Ms. Monahan said the approval is posted on the town website; and referred to a map as evidence. Fred Orloski explained that the zoning map is not to be taken as evidence, and that it contains errors. He stressed that only the actions taken by boards and committees are proper indicators, and that evidence of those actions must be documented by such items as meeting minutes. Don explained that *Whately* approved it, and that later, the town received word that the Attorney General did not agree with, or approve, *that item* – only the other ones.

Don and Judy then further explained the Attorney General's objection – the legal notice for the hearing did not say where the map showing the parcel could be found, and that is why the Attorney General didn't approve it. Abutters were notified, though, and the legal notice was published in *The Recorder* (Brant remembered abutters being present at the hearing).

Brant said he would establish the status of the rezoning with the Town Clerk later, but that the hearing should be held tonight *as if it hadn't been approved*, and then we will be able to put it on the warrant again. If it turns out not to be needed, we can then take it off the warrant.

Regarding the addition of Trucking and Construction Services as a new commercial Definition, Sue Monahan stated that she didn't need that. Since there was no other call for such an addition the Board opted not to go forward with it.

The discussion moved to the next item – Sue Monahan’s request to change the zoning of parcel 12-0-24-2 on State Road from the Agricultural/Residential 1 District to the Commercial District.

Abutter Sandy Mazzacane said she objects to the proposed change because of the attendant noise. Ms. Monahan responded that the parcel is trapped between Rtes 5 and 91 and that perhaps 200 trucks per day run through there. Her son’s one truck, she said, is not significantly noisy. She bought the land to protect her son’s land, not to establish a trucking business. Abutter Richard Korpiewski advised that everyone must be considered, including those living on Rte 5, even though the Commercial District businesses need some leeway. Don closed the public hearing at 6:08 pm, and the Board considered the items requiring votes.

VOTE

~ 171-28.6 Adult Use Recreational and Medical Marijuana Establishments

B. Definitions

Marijuana Courier – an entity licensed to deliver finished marijuana products, marijuana accessories and branded goods directly to consumers, registered qualifying patients or caregivers but not to sell, wholesale, process, repack or label such items.

Marijuana Delivery -- an entity licensed to purchase at wholesale and warehouse finished marijuana products and label, sell and deliver these products directly to consumers, but is not authorized to repack or label marijuana or marijuana products or operate a storefront.

~ 171-8. Table of Use Regulations.

Principal Use	Agriculture/ Residential 1	Agriculture/ Residential 2	Commercial	Commercial - Industrial	Industrial
Commercial Uses					
<i><u>Marijuana Courier</u></i>	<u>N</u>	<u>N</u>	<u>SP</u>	<u>SP</u>	<u>SP</u>
<i><u>Marijuana Delivery</u></i>	<u>N</u>	<u>N</u>	<u>SP</u>	<u>SP</u>	<u>SP</u>

N = No, the use is not permitted in that zoning district.

SP = The use is allowed in that zoning district only after a special permit has been granted.

Judy moved to approve the Definitions and Table of Use entries as shown above (the text appeared in “Proposed Bylaw Changes for Annual Town Meeting”, posted on the Whately town website). Don seconded the motion. Don, Judy, Brant, Tom, and Sara each voted Yes, and the motion carried unanimously.

VOTE

Judy moved not to approve the bylaw Commercial Use Definition of Trucking and Construction Equipment Services, and not to approve revision of the Table of Use to list it. Brant seconded. Sara, Judy, Tom, Brant, and Don each voted Yes, and the motion carried unanimously.

This means that it is entirely up to the Building Inspector to determine whether trucking is an eligible use in the Commercial District per our current zoning.

VOTE

Judy moved to change the zoning of parcel 12-0-24-2 on State Road from the Agricultural/ Residential 1 District to the Commercial District. Brant seconded the motion. Sara and Tom each voted Opposed, Don, Judy, and Brant each voted Yes, and the motion carried three to two.

V. Update on landscaping at 134 Christian Lane

Tom and Sara reported on their site visit, which Gretchen Bechta also attended. As an abutter to the subject property, Sara has recused herself from voting on matters to do with this solar project. They observed unhealthy plants, no plantings under the solar panels, many dead plants on all sides, and the replacement of a concolor fir.

On the west side, the plantings were done differently from what is on the “as built” plan. Jeffrey Kocot explained that the original arborvitae failed in two successive plantings and were replaced by hollies that also look bad. There are many dead or stressed plants, and no screen effect has been achieved after five years.

The Board consulted the Conditions attached to the Site Plan Approval, which says that the plantings are to be maintained and cared for.

There is wind erosion. Nothing is planted under the panels. Jeffrey Kocot said that late last year the company cultivated and planted with seed and straw. Sara agreed with him that the company plants seed incorrectly – they don’t scratch it in. Mr. Kocot said he can call and talk to Skip Provost; Brant has been emailing the same party.

Mr. Kocot mentioned that an evergreen tree had gone missing and was later replaced, but right on the property line – so that neither he nor his neighbor, Mr. Borawski, can put up a fence. The majority of the tree is on Mr. Borawski’s property, but he doesn’t want the tree. Mr. Kocot would like the whole tree canopy relocated south, to the last pole. Sara mentioned that the Bechta family views the spot directly, so they should be involved as well. Gretchen Bechta said that the tree grew well and softened the view of the big boxes, and that moving it will remove the softening effect. She told the Board that poles and hard surfaces are all she sees. The Board will write a letter to Skip Provost to suggest moving the tree away from the property line. Don, Gretchen, Jeff, and Sara will work together to determine the best placement. Brant suggested writing a letter to Nexamp with the report attached, to let them know the Board is worried; perhaps they can visit. Don will draft the letter and send it to the Board for comment. Tom suggested that in future cases the town could bring in an architect to steer conditions. Judy noted that they can hire an expert for that, to consult on future pole conditioning.

Jeffrey Kocot said there is a lot of water on his property that he can’t do anything about. Don advised him to discuss the problem first with Highway Superintendent Keith Bardwell. Mr. Kocot mentioned that he would like to be notified in advance of any people who want to tour his land, and gave his phone number to Sara.

VI. Informal Discussion regarding undeveloped land at 83 State Road

Landscaping company owner Larry Brotherton showed the Board a plan and application for site plan review, for land where he would like to move his business, currently in Hatfield. The Board advised him of the need for a detailed engineering plan and described the features of one. Brant showed an example of such a plan onscreen and will send Mr. Brotherton a copy. The Board advised the applicant to speak about his plans with Building Inspector James Hawkins, for his insights and interpretations, and described how to look for the most appropriate Table of Use category for his business. They reviewed the application process and the need for hearings and advance advertising, and said they could schedule a hearing as soon as possible after receiving the items described.

Judy mentioned that John Baronas has withdrawn his request for rezoning.

VII. Adjournment

At 7:27 pm Tom moved to adjourn and Brant seconded. Don, Judy, Sara, Tom, and Brant each voted Yes, and the meeting was adjourned unanimously.

Documents Reviewed (kept in the Planning Board files)

1. A document headed, *Proposed Bylaw Changes for Annual Town Meeting*
2. Conditions of Approval attached to the site plan approval for the Nexamp solar power generation facility at 134 Christian Lane.

Mary McCarthy
Secretary, Planning Board
Town of Whately, MA