

Meeting Minutes, Zoning Board of Appeals
Town of Whately, MA
November 17, 2022
Remote Meeting via Zoom

Members Present: Roger Lipton, Debra Carney, Kristin Vevon, Fred Orloski
Members Absent: Bob Smith

Attending:
Chris Larrabee
Ethan Haslett
Mike & Lisa Moore
Chris Chamberland
Marcy Nickerson

At 6:41 Roger opened the meeting.

PUBLIC HEARING: Application by John Hanmer for a special permit allowing Debilitating Medical Condition Treatment Centers, Inc. (DMCTC) to become an Indoor Marijuana Cultivator on premises located at 7 River Rd.

ZBA Chair Roger Lipton asked Project Engineer Chris Chamberland, of Berkshire Design Group, to review the existing ZBA permits held by DMCTC for 7 River Rd. Mr. Chamberland began by saying that DMCTC has a ZBA Special Permit, and the Planning Board's Site Plan Approval with an Order of Conditions, allowing them to be an Outdoor Marijuana Cultivator at 7 River Rd, where it currently grows marijuana in open fields. When Roger asked about a previous discussion regarding the interior, Mr. Chamberland explained that

- 1) Page two of the ZBA's Decision granting the Special Permit stated DMCTC's intention that the property manager reside on the property, and that DMCTC wanted to be sure that this didn't conflict with the portion of the zoning bylaw that prohibits marijuana establishments from existing in a residence. He added the reminder that the residence is outside the secure perimeter where the actual marijuana growing and handling occurs.
- 2) Also highlighted was the existence of a barn on the property that is within a property line setback, which occasioned another discussion.

He ended by saying that in the end, the ZBA had decided that there was no action for them to take on either of these points, and read the language used in the ZBA Decision of September 26, 2020.

He shared his screen to show the revised plan being considered tonight, dated September 27, 2022 (Re-Issued without Revision) stating that it is a re-issue of the last plan approved by the Planning Board and shows the site as-is and also with proposed changes to include indoor greenhouse marijuana cultivation, which was not originally defined by the bylaws but now is.

He explained that

- 1) one of the three greenhouses has been built. He said he'd learned that one of the abutters, Tim Smith, had expressed concerns to DMCTC that the tall screening plants approved for use here, on the long northern property line, might shade Mr. Smith's crops. To avoid that, he said, he had asked the Planning Board for the flexibility to include some shorter species, though there is still a commitment to tall screening as well (some deciduous, some evergreen) to break up the appearance of the fence line.
- 2) the guard house has not been built (the police department will advise later whether they consider it to be necessary)
- 3) the driveway must be changed to comply with Whately's regulations (20 ft offset is required, and the first 20 ft must be paved). There has already been a Planning Board hearing session dealing with this.

Chris Chamberland then shared the project narrative for 7 River Rd. onscreen and described its various points as it was before any changes. In 2020 there was a special permit granted for outdoor marijuana cultivation at that site. At that time the Whately bylaw did not define what outdoor cultivation was as distinct from indoor cultivation, so they relied on the Massachusetts Cannabis Control Commission's regulations, which draw that distinction based on whether agricultural lighting is used in the grow operation. In 2022 the town amended that section of the zoning bylaw to define indoor cultivation as "any growing of marijuana inside a greenhouse or a building". As a result, he said, they now have a legally existing non-conforming site, because they are growing inside the greenhouse structures (which is currently defined as indoor) even though they only have an Outdoor Marijuana Cultivator special permit.

Mr. Chamberland explained that tonight's proposed site plan does reflect a couple of small, approved changes that were made to the site plan as originally approved, but that the site plan as submitted for tonight's discussion is identical to the last approved site plan for marijuana cultivation facility from a couple of years ago. The only physical change being proposed this time is for the hanging of agricultural lighting in two large greenhouses to allow for better control of product in the darker seasons of the year and to extend the growing season a bit.

He explained to the board that after the site plan was submitted some neighbors had let DMCTC know that there had been a problem with light from the nursery being visible to them at night. This happened because a worker failed to manually adjust the blackout curtains, he said. Now, the curtains are closed at night by an automatic switch, he said, and abutters at a recent Planning Board meeting said the system is working.

Chris Chamberland shared the project narrative onscreen, reading from it and commenting on points of zoning compliance. Noise and odor control, he said, will require minimal change beyond allowing for more grow cycles in a year. The fans and scrubbers are still designed for the greenhouse to be run at full capacity, as they always have, but that full capacity is going to change. What this means is that while it is possible for there to be more impacts during the year, any impacts would not be any more intense than they have been.

He said Energy Efficiency is the only place where there will be more significant change as opposed to what was originally approved. He read from the bylaw the requirement that DMCTC submit an Energy Efficiency Plan and also that cultivation in buildings and greenhouses should generate a minimum of 50% of projected energy use where feasible. Explanatory material was screen-shared with the board, and included a chart showing times of year when varying amounts of light are needed in greenhouses. 46% of the time when light is needed, he said, it is sourced entirely from direct sunlight. The other 54% of the time when light is needed, it is sourced from electrical lighting.

Debra asked whether solar energy production would be included in the project's energy plan. Chris Chamberland answered that the last meeting with the Planning Board had included a long discussion of this, as well as of the entire energy question. He explained that the Planning Board had continued the meeting to give DMCTC a chance to prepare a more detailed report of their plans regarding items like the 50% production of projected energy use where feasible, and the possible use of solar. As a result of the additional research, he has more information to offer at this time.

For example, he stated that plants grown in a conventional building get all of the energy they need from agricultural lights, and that all of the power to run those lights comes from electricity generated from some kind of fuel. Plants grown in a greenhouse get their energy simply from sunlight passing through the greenhouse roof. The sun's energy is obviously the more efficient of the two methods, so no one covers greenhouse roofs with solar panels. The question is, how much of the energy that plants need can they get from the sun? His answer was "a little bit less than half", citing DMCTC's own research as well as a report from New Frontier Data, which he stated did an extensive 2018 report based on data from cultivators in all 31 states where some form of cannabis growing was legal. The report compared data from indoor grows, greenhouses, and outdoor grows. It showed that outdoor grows, of course, get 100% of their energy from the sun. For indoor grows, which are totally dependent on electrical lights, the average use per year was about 260 kW hours per sq. ft. of canopy. For greenhouse grows, the average use per year was about 130 kW hours per sq. ft. of canopy (a little bit less than half). Besides benefiting from the input of the sun, greenhouse grows are more efficient because their ventilation eliminates any need for the cooling that indoor grows require to offset heat from the lamps, and from other heating/cooling interactions.

He stated that in this case light is needed 4700 hours per year, and that during 2100 of those hours, the light is provided purely by the sun. Additionally, the site has an existing 10 kW solar array that provides another 1% (small, but more than nothing) and DMCTC is still assessing whether the farmhouse can support a rooftop solar array without structural modifications – if it can, that would provide another 10 kW. There really is not anywhere else on the site for solar, he said, primarily for regulatory reasons. Although rooftop solar is allowed anywhere, he said, ground mounted solar is limited to a 10 kW array that is allowed by right as an accessory use; anything bigger is not allowed in the Agricultural/Residential 1 district. Here, the limit of A/R 1 and A/R 2 is right along the fence line of these greenhouses. Essentially, all of the land in A/R 2 is in a property line setback, is already being used for marijuana cultivation, or is wetland, or is 25 ft buffer which the Conservation Commission considers a do-no-disturb area for these flat sites.

He summed up by saying that for energy required to grow the plants, DMCTC's combination of outdoor and greenhouse grows, plus a little bit of solar, puts their project within the spirit of the requirement to produce a minimum of 50% of projected energy use where feasible.

Mr. Chamberland continued to review the remaining bylaw requirements. Among his comments were:

Water Efficiency – Due to the greenhouse grows there will be a marginal increase of water used on the site, but the peak use of water will remain the amount used by the outdoor, open-air fields in the heat of summer. He noted that outdoor irrigation has already been running at full capacity, using a finely tuned system with water monitors and drip irrigation to ensure that the minimum needed is used. Peak water use in a single day will remain unchanged, he said, with only a small to negligible increase required overall. Town water will not be used for irrigation – only for drinking water at the farm house. All irrigation water comes from a private well.

Hazardous Materials – there will be no change here. The bylaw is strict about what can be used and the growers are very careful about what materials are on-site. The product is tested at the pharmaceutical level to make sure nothing toxic is contained in it.

Host Community Agreement, Signage, Hours of Operation, Traffic – no change.

Fred had two questions and Chris Chamberland replied that 1) All marijuana activity will continue to take place within A/R 2 and that 2) the only indoor grow lights that are already in place are in the nursery, where an exception for low-intensity artificial lighting was made in order to provide light to the mother plants during the time when all the growing was outdoors. All other current lighting in the greenhouse is for worker safety.

Roger asked for any questions or comments from the public, and there were none. Roger moved to close the public comment portion of the hearing, and Debra seconded the motion. The Board held a brief open discussion: Roger voted in favor of granting the special permit, adding that he thought it was a good project, well thought-out, and an extension of what is already in place. He noted that it causes no harm and no neighbors are complaining. Debra also voted to approve. Fred voted to approve as well, adding that he thinks the activity currently going on is very positive, with only one or two neighbors voicing any negative comments. The special permit was approved unanimously.

Roger asked whether anyone else attending the meeting had other business. Mike and Lisa Moore brought up the topic of the truck activity and expansion happening on the property behind theirs. They said the owners want to increase the amount and type of stored explosives, to potentially lease part of it out to another company, to a place to store all their commercial construction equipment (loaders, trucks, etc.) and that they are expanding the parking lot to accommodate all of that. The Moores want to use the 1980s permit that was issued to Pioneer Explosives to determine what original use was granted in the permit decision.

Debra asked whether the building inspector had been responding to their emails and was told “not well”. Mike Moore said Town Administrator Brian Domina had told him that he was working with Building Inspector Jim Hawkins, Fire Chief John Hannum, and the town attorney to find the best way to approach the situation. Lisa is worried about how work that abutters want to do on their own property might be affected by the setbacks required for magazines of explosives located on the Pioneer Explosives property. Lisa has been trying to contact the right person at the Bureau of Alcohol, Tobacco and Firearms.

Roger first explained to the Moors that personally, he might not be able to vote on any future Zoning Board of Appeals (ZBA) decisions because he had legally represented their family in the past. He then explained, as the ZBA Chair, that the ZBA members must remain entirely neutral. The zoning board may hear an appeal of some sort, if someone is unhappy with what the building inspector does or doesn’t do. It may also hear a special permit application by the landowner for an amendment to the current special permit or for a new special permit. When people come before the board for a reason that is not a scheduled matter that’s on an agenda, the board can only answer procedural questions about how things can be done, and records questions, such as their question about the 1980 or 1983 special permit decision. It was explained that records from that time do not exist electronically but may exist as paper files at the town offices. Roger also explained that special permits do not go into effect until filed with the Registry of Deeds, and that their copy may be available as well.

Mike Moore asked about any steps that might be taken regarding noise at the site. Roger explained that any violations of the bylaws, including violations involving noise and dust, are addressed first by the building inspector, who has to act or not act. The aggrieved abutter has rights based on what the building inspector does or doesn’t do, he said, but the ZBA never cites people for violations. When questioned about calling the police regarding the noise, Roger noted that this situation may soon develop into a case for the ZBA to hear, and that this is another reason to refrain from giving what might be considered quasi-legal advice in the future. He told the Moores that it might hurt their own case if the landowner were to say that the ZBA was prejudiced in their favor, based on advice given on such matters tonight. Roger recommended that the Moores peruse the bylaws for the parts that pertain to this case.

Marcy Nickerson spoke up to say she, also, is investigating the Pioneer Explosives situation since it seems there is a lot going on there. Roger suggested that she consult with the Moores. He added that he hopes this gets resolved soon without having to come to a formal hearing but that if it does, the ZBA will be ready.

Minutes Approval

The board reviewed and approved the minutes of September 1 and October 6, 2022. (Debra approved the minutes of September 1 only, since she had not read the minutes of October 6. Roger stated that a two out of three majority was fine in that case.

At 7:50 pm Roger adjourned the meeting.

Documents Reviewed (kept in the ZBA files)

1. A special permit application package filed on October 11, 2022 by John Hanmer, for DMCTC to become an Indoor Marijuana Cultivator at 7 River Rd. The package includes, among many other documents, plans dated September 27, 2022 (Re-Issued without Revision) prepared by Berkshire Design Group for Debilitating Medical Condition Treatment Centers.
1. The ZBA Decision of September 26, 2020, permitting DMCTC to become an Outdoor Marijuana Cultivator.

Mary C. McCarthy
Secretary,
Zoning Board of Appeals and Planning Board
Town of Whately, MA