

Minutes of Planning Board Meeting
Town of Whately, MA
Town Hall, Chestnut Plain Road
August 25, 2020

Members Present: Don Sluter, Nicholas Jones, Judy Markland, Sara Cooper
Members Absent: Tom Litwin

The meeting was held remotely, via Zoom

I. Call to Order: 5:02 p.m.

The meeting was recorded.

II. The minutes of the August 4, 2020 meeting were unanimously approved.

III. ANR: 41 – 45 Egypt Road

Randall E. Izer, Professional Land Surveyor, and the board discussed a Form A submitted by property owners Jason C. Dizек and Caroline R. Daley. Mr. Izer explained that Mr. Dizек and Ms. Daley couldn't access the rear of their property from their house, and had arranged with an abutting neighbor, John Frangie, to trade identically-sized triangular pieces of their respective properties in order to provide access. Mr. Frangie had not yet signed Form A, and it was agreed to decide on the ANR tonight and make any approval conditional on obtaining the signature. According to a plan dated May 18, 2020, the eastern lot line of the Dizек/Daley Lot A-1 property will move eastward into John Frangie's Lot A-2, creating a gain for Dizек/Daley (Parcel B, about 3.871 sq. ft) which will connect Lot A-1 with Lot A-3, where their 41 Egypt Rd. house is. In return, the southern lot line of the Frangie Lot A-2 property will move southward into the Dizек/Daley Lot A-3 property, creating a gain for John Frangie (Parcel A, also about 3.871 sq. ft). Nicholas commented that this will leave the Dizек/Daley property with plenty of frontage.

Nicholas Jones moved to endorse the ANR pending Form A completion with John Frangie's signature, and the board voted unanimously to endorse it.

IV. Discussion: Home Occupation Bylaw Enforcement

Judy Markland submitted a list headed, "Whately Home Businesses in Residential Areas (excl. ag-related)". Judy said she had driven by most of the businesses and saw no zoning violations. Nicholas noted that the aim is to be fair, and that we need to flag clear outliers for the building inspector. Judy added that this is especially necessary in view of comments at the last meeting (May 4, 2020), that there are lots of violations. Someone had mentioned the Meunier truck, and she noted that this is not a home business, but simply a case of a person who brings his employer's truck home.

Sara said she had seen Highway Department Superintendent Keith Bardwell recently, and he said that the building inspector doesn't include him in decisions involving driveway cuts, etc. She said

Keith had suggested contacting other towns to see whether they have enforcement problems with him. Town Administrator Brian Domina thought that was a good approach, noting that the inspector's philosophy may not always line up with the town's.

V. Discussion: Commercial zoning changes

Don suggested that rather than make one zoning change on State Road, it would be appropriate to review the need for more commercial zoning in general. Noting that Rte 5 will eventually resemble Rte 9 in Hadley anyway, he said it would be best to keep new businesses together. Judy commented that it is important to research any commercial zone expansion both in depth and broadly, including areas beyond Rte 5 but that this would be a lengthy process.. Don said he could write a letter to the Monahans suggesting they apply for a zoning change.

Judy said Tom Litwin had had concerns about rewarding a zoning violator.

Judy moved that Don write to Kyle Monahan suggesting an application for a zoning change, and have the board individually review and approve the letter by email, without discussion. Nicholas seconded, and the motion was approved unanimously.

Nicholas moved to send building inspector Jim Hawkins a letter about the situation at 148 State Rd., adding that the letter should highlight what the board believes current zoning doesn't allow, with the last line requesting Mr. Hawkins to "Please enforce".

Brian Domina then wanted to know what the letter would ask the inspector to do *specifically*, such as issue a cease and desist order. Sara noted that it seems Mr. Monahan is being penalized for what the building inspector should have done. J.D. Ross suggested requiring that any home occupation be approved by the planning board. Judy noted that the board can't do that since occupation is "by right" if the home fits the zoning requirements. Mr. Ross replied that the Conservation Commission does it – that it just needs Scott Jackson's signature. Nicholas said he likes J.D. Ross's idea in concept, but that zoning is only one area where this kind of problem can happen and that, next time, it will be something else.

Performance reviews for inspection services were mentioned; Brian Domina said the selectboard has a contract with the FCCIP directly, not as a member of FRCOG.

VI. Review of Letter to Building Inspector re: Whately Renewables

J.D. Ross told the board that he is a big supporter of Jim Hawkins. Don suggested that it would be a good idea to get the chairs of the Zoning Board of Appeals and Planning Board, and maybe Town Administrator Brian Domina, together with Mr. Hawkins to discuss pending projects.

Sara noted that Jeffrey Kocot was upset with Nexamp, which he said needs to help him maintain his property but will not come in to mow. Don suggested writing to Nexamp.

The board reviewed Judy's document headed,
Whately Planning Board
Site Plan Review Approval Conditions Status
Applicant: Whately Renewables Site address: 134 Christian Lane

The site plan approval dated August 15, 2017 was subject to 9 conditions which appear on the document, with a box beside each condition to record its status.

The document lists 9 conditions which the board discussed. Points included:

No. 1 Operations and Management Plan Revisions

Did this happen?

Nos.5 (new utility poles),

6 (Plantings varieties along wetlands boundaries), and

7 (All plantings' good health) Sara: none of these conditions are being followed

Judy suggested writing to Nexamp with the conditions shown as filled or not, and send a copy of that letter to Jim Hawkins.

Don will look at Whately Renewables re: compliance. The Planning Board may have an extra meeting before the end of September, and it can be discussed further then.

Don then said that, at its August 4 meeting, the planning board had been told by Nexamp representative Archie Adams that the building inspector had approved a building permit for a concrete pad at the Whately Renewables solar power generation site at 134 Christian Lane. Also, he said, they found out that the new zoning bylaw doesn't allow for batteries within 500' of a residence so they'll need a variance. Don added that the Planning Board had not been informed of the planned battery installation at the August 4 meeting. The Board explained Archie Adams that Nexamp would need a new special permit and another site plan review.

The board reviewed Don's draft letter to building inspector Jim Hawkins about the Whately Renewables situation and the need for both boards to approve the plans for the proposed work. Nicholas moved to approve sending the letter with typos amended. Judy seconded, and the motion passed unanimously.

Judy asked Don to fill out the status boxes next to the site plan approval conditions as to whether the conditions have or have not been completed, and said she would then draft the Nexamp letter.

The Board thanked Brian Domina, who then left the meeting.

VII. Other

Engineer Christopher Chamberland, of Berkshire Design Group, submitted an application for site plan review, noting that it must be submitted at a regularly scheduled Planning Board meeting and that Don has it tonight. Debilitating Medical Condition Treatment Centers, Inc. has

applied to be an outdoor marijuana cultivator on premises located at 7 River Road. Sharing his screen of the property, Mr. Chamberland described a 20-acre parcel, saying that a 30-acre swampy parcel is also being purchased. He described plans for both open-field outdoor growing and dirt-floor greenhouses that would not have grow-lights but would rely only on sunlight. Summer growth only is planned, he said, with the only ventilation from fans.

Although marijuana meets the state's agricultural rules, he said, it does not comply with federal law for wetlands protection and the Conservation Commission is reviewing the plans. He noted there will be new driveway access, a parking lot, and a new well.

The existing house, he said, has 2 non-conformances:

- 1) 93-ft frontage (already non-compliant)
- 2) a barn built within the setback (in A/R1). They want to keep using the barn.

Also – the secure perimeter of the fence will enclose in A/R 2 *all* marijuana-related materials, but they want to keep *non*-marijuana-related materials in the house and barns *outside* the fence. He said the existing farm road is in/near wetlands, and they hope to build the security fence there because they can't build *new* access. The board saw pictures of what the greenhouses, including the Quonset-style ones, might look like.

Nicholas asked what is currently missing from the application, and was told the fence line in/near the wetland. They are still working on that with Scott Jackson and the Conservation Commission, he said. Nicholas asked whether Mr. Chamberland had submitted a complete application that will need *some* modifications, and was told, yes. Judy asked whether they have an energy plan. Chris Chamberland answered yes, and said it includes using rainwater which they would store in the porous ground between the greenhouses, and would distribute by drip irrigation. The Board requested corrections to the addresses on the plans, placement of the exterior lighting, information about the screening for the fences, and more detail about the plants to be used in screening.

The board scheduled the site plan review's public hearing for Tuesday, September 29, with the meeting starting at 5:00 p.m. and the hearing at 5:15 p.m. The secretary will write the legal notice and advertise the hearing. If the ZBA holds a site viewing they will invite the Planning Board. Don will check with Roger Lipton on whether the ZBA will schedule a site viewing.

IX. Milk Bottle Remaining at Center School

Judy said that the Milk Bottle is such an iconic presence in the Center, it would be great for the Planning Board to endorse the Historical Society's request of the Selectboard to keep it there, for the Historical Society to use and maintain, regardless of any future use. Nicholas said he couldn't imagine much objection, and Don said he has no problem supporting the Historical Society. Sara moved to write a letter of support. Judy seconded, and the board voted unanimously to send the letter by email since the meeting is tomorrow night.

X. Planning Board mail. None picked up today.

XI. Adjournment

At 6:27 p.m. the board voted to adjourn.

Documents Reviewed (kept in the Planning Board files)

1. ANR Form A dated 8-21-2020, submitted by property owners Jason C. Dizек and Caroline R. Daley, for property located at 41 Egypt Rd.
2. A plan of land dated May 18, 2020 and prepared for property owner John Frangie by Harold L. Eaton and Associates Inc., professional land surveyors. Plan labels include:

PARCEL A
3871 ± SQ FT
PORTION OF BOOK 7527, PAGE 87 – PARCEL ONE
TO BE CONVEYED TO FRANGIE
TO FORM ONE UNDIVIDED PARCEL.
NOT A SEPARATE BUILDING LOT.

PARCEL B
3871 ± SQ FT
PORTION OF BOOK 7348, PAGE 238
TO BE CONVEYED TO
DIZEK AND DALY TO FORM
ONE UNDIVIDED PARCEL.
NOT A SEPARATE BUILDING LOT.

3. A list headed, “Whately Home Businesses in Residential Areas (excl. ag-related)”.
4. Judy’s document headed,
Whately Planning Board
Site Plan Review Approval Conditions Status
Applicant: Whately Renewables Site address: 134 Christian Lane
5. Don’s draft letter to building inspector Jim Hawkins about the Whately Renewables situation.
6. A multi-document application packet for site plan review dated August 25, 2020 and submitted by engineer Christopher Chamberland, of Berkshire Design Group, on behalf of Debilitating Medical Condition Treatment Centers, Inc., a company hoping to be an outdoor marijuana cultivator located on premises located at 7 River Road.

Mary McCarthy
Secretary, Planning Board
Town of Whately, MA