

Minutes of Planning Board Meeting  
Town of Whately, MA  
The meeting was held virtually via Zoom.  
July 27, 2021

Members Present: Don Sluter, Judy Markland, Sara Cooper, Tom Litwin, Brant Cheikes  
Members Absent: none

The meeting was held remotely, via Zoom.

VIRTUAL GUESTS

Stan Rosenberg	Bernie Smiarowski	Attorney Dick Evans
David Ullian	Eric Phaneuf	Alex Ephraim
Isaac Fleisher	Jared Glanz-Berger	John Baronas
Peggy Sloan	Chris Larrabee	William Beetz
Aaron Simms		

- I. Call to Order, 5:00 p.m.  
The meeting was recorded.
- II. The board voted on whether to send a proposed draft letter to both Town Administrator Brian Domina and the Selectboard, recommending that one of the first projects to be funded with marijuana community impact fees be the hiring of a professional to organize a program to monitor and measure marijuana outdoor odors. Don moved to send the letter as written, and the motion was seconded. Sara, Tom, Don, Brant, and Judy each voted Yes, and the board approved the sending of the letter unanimously.
- III. Informal discussion with Aaron Simms and Eric Phaneuf of Aegis Renewable Energy, regarding a possible solar power project at John Smiarowski's property on Long Plain Rd. near the South Deerfield town line. Eric Phaneuf asked about a wedge-shaped parcel which would be unable to be used because of the setback increase from 50 ft to 100 ft, in the latest zoning revisions. He said they were advised by counsel that a variance from this requirement would be hard to get, and asked the board for advice on how to proceed.

A suggestion was made to change the setback for the Commercial/Industrial zone. Judy noted the town reduced the rear setback for commercial properties in the original bylaw, and that the Selectboard prefers major zoning changes to be made only at the spring Annual Town Meeting. She mentioned that the primary reason for the increase in setback is that battery storage is now involved, which comes with a risk of fire, explosion, leakage, and general environmental damage. Don suggested that perhaps the Zoning Board of Appeals might consider waiving the requirement if they think the project otherwise fits the bylaws. Landowner John Baronas asked whether a special town meeting could be arranged and was told that was unlikely for a significant zoning change but that he had the right to request the change.

**IV. PUBLIC HEARING:** Public hearing to review a site plan application by Debilitating Medical Condition Treatment Centers, Inc. (DMCTC) for a marijuana retail facility at 424 State Road (Sugarloaf Shoppes).

At 5:16 pm Chris Chamberland, of Berkshire Design, Attorney Isaac Fleisher, of Bacon and Wilson, and Jared Glanz-Berger, of DMCTC, appeared on behalf of the project, which is planned for Unit B at the same address where a second company, ToroVerde, was already granted a special permit to operate a similar shop in Unit A. The Board was told that both parcels are part of a condominium association, and Chris Chamberland shared his screen to show the locations of both units on plans dated May 10, 2021. He said that Unit B has a total of 8,000 sq ft, with 3,000 sq ft of that (at the end closest to Rte 5) set aside for DMCTC's retail shop. The remaining 4,900 sq ft will be rented to an office, he said. He said that DMCTC will buy the unit from Yankee Candle.

No exterior changes are planned, he said, and there are no abutters of note within the prohibited zone. Initial security plans for both this project and the processing plant project at 3 River Rd. have been reviewed with the police chief and the fire chief. He noted that the oils are not very smelly and that the flowers will be in sealed containers. Additional discussion points included these:

- The handicapped parking space in the connector strip serves both units.
- Traffic: for cannabis retailing, study is in its infancy so there is not much data. One report said 80 to 800 trips per 1000 sq ft, but that is unreliable. They project an increase of 20 additional trips per hour during peak hours.  
Chris Chamberland said they have done an extensive review of the traffic and parking situation, which is documented in detail in the application. Putting in a crosswalk is not easy when the road is a state road.
- Hours: Will abide by the bylaw limits of 7 am to 8 pm.
- Total staff will number 12.
- The bylaw calls for more parking spaces than the whole site has – it requires 106, but there are only 87. Will this require a ZBA variance? ToroVerde will have people in for education, and they will park longer. Chris Chamberland said the remaining interior space will be leased for general office.
- Brant: If a customer lights up in the parking lot, does DMCTC have any responsibilities?  
Attorney Fleisher: there is no social consumption allowed on any such sites, per state law.  
Brant: for DMCTC to police at their own expense. Attorney Fleisher: rather than have the neighbors *call* police. Outside its own property, DMCTC is not responsible.
- William Beetz, of Toro Verde: Met with the chief of police 7 – 10 days ago about traffic, and the chief said he had heard nothing from DMCTC about it. Jared Glanz-Berger: they met in the River Rd. grow space, and the conversation covered both that project and the State Rd. retail project. Chris Chamberland: there was an informal meeting, but there is nothing in writing yet. Judy: we always need it in writing.
- Don referenced a special permit condition used for ToroVerde that could also be used for DMCTC as well. Immediately following this, Don lost his internet connection for a significant amount of time.

Judy: are both companies cooperating on this? Chris Chamberland: let the police department decide what is needed. Brant: We can't change ToroVerde's conditions, so we should use identical language for DMCTC if we grant them a permit. We can't, and shouldn't, force collaboration between the companies. The police are neutral.

Attorney Dick Evans, representing ToroVerde: consider the difficult intersection with Rte 116, Old State Rd., and Rte 5. Consider deliveries, too. Attorney Isaac Fleisher: Do not consider the deliveries (he assumed Dick Evans meant *home* delivery), and that is not part of the application. Judy: also, the town can't do anything about the two state highways.

Brant asked for any questions from the public. John Bonavita, owner of ToroVerde's Unit A, said Yankee Candle and his own group own all of the parking spaces and greenery in common. He questioned the sufficiency of parking spaces, pointing out that all visitors must drive to these stores – they are not within walking distance of anyone. Christopher Chamberland: for him, 72 spaces is the worst case estimate for the two cannabis stores *and* the rented office spaces (he noted that there is a “by right” use for offices). A spokesman for ToroVerde said that for their rental space they are considering as tenants a restaurant and the Chamber of Commerce.

Judy stated that the Planning Board can't deny the project – it can only condition it. She suggested that the board write to the ZBA members asking that they consider parking a serious safety issue as they deliberate whether to grant a special permit. She noted that there may not be room for another *retailer* in addition to two marijuana stores and an office, adding that another such tenant would need to file a special permit application with the ZBA and that a traffic study could be done then.

It was determined that due to technical difficulties, Don had missed too much of tonight's hearing to vote on the approval. Judy then moved to close the public hearing and Brant seconded the motion. Sara, Judy, Brant, and Don each voted to close the hearing. Tom argued for undoing the closure in order to discuss getting more information from the ZBA and/or Town Counsel. Don noted that the ZBA will not give any opinion before an application has been heard. Judy, Don, Brant, and Sara opted to leave the vote “as is” and move forward.

The board then wrote the following conditions for site plan approval:

1. Receipt by the Planning Board of letters of approval of this site plan from Whately Safety Officials.
2. DMCTC shall make every effort to facilitate traffic flow in and out of the facility with Detail Officers to be assigned to the site as deemed necessary by the Whately Police Department.

Judy moved to adopt these two conditions as part of the site plan review acceptance and Sara seconded the motion. Don, Sara, Brant, Tom and Judy each voted yes, and the conditions were adopted unanimously.

Judy then moved to approve the site plan application with the two conditions and Brant seconded the motion. Don abstained, Tom voted No, Sara, Brant, and Judy each voted yes, and the motion passed by majority vote.

V. Floodplain Bylaw discussion with FRCOG planners

Invited planners Peggy Sloan and Kimberly MacPhee, of the Franklin Regional Council of Governments (FRCOG), discussed with the Board the second draft of a document the Board had asked them to help write, titled:

**Town of Whately**

Proposed Floodplain Overlay District Bylaw to replace the current  
Section ~171-26. Flood Hazard Overlay District Regulations

The second draft's proposed changes that Peggy had made had been highlighted, and written comments about the changes had been added by the Planning Board. Discussion results:

- The Planning Board will contact Scott Jackson of the Conservation Commission, who also received the second draft.
- Kim is reaching out to the state about whether they have made a checklist regarding Other Necessary Permits.
- Amendments need to be made not only to the Floodplain Bylaw but also to Site Plan Review procedures. The name of the Floodplain Administrator must be added to the distribution lists for both Site Plan Reviews and ZBA Special Permits.
- Peggy will send Town Counsel a list of important items to address.

VI. PUBLIC HEARING: Continuation of the public hearing for the Debilitating Medical Condition Treatment Centers (DMCTC) site plan application for a marijuana processing facility at 3 River Rd.

Christopher Chamberland, of engineering firm Berkshire Design, submitted revised plans dated July 27, 2021. He noted that the Zoning Board of Appeals (ZBA) wants proof of the building's status as originally approved under the zoning of its time. He submitted information on the odor control air scrubbers. Other discussion points included these:

- Two lean-to buildings (corner to corner) are to be demolished.
- They will cut a new driveway where the little, sharp-angled one is, using porous aggregate. It will be cut at a 90° angle, but with bollards installed to show that the driveway is not for main use.
- The only sight line obstacle is a mature tree. The applicants hope they will not be required to take it down.
- The Hatfield marker is a "roadstone".
- Hatfield will hold a hearing about the part of the property that is on their side.

Judy asked about continuing tonight's hearing until after they hear from Hatfield, and Chris Chamberland replied that it was best to proceed but that if Hatfield said no, the applicant would have to amend the plan. However, he said, they think Hatfield will accept tonight's plan. Judy noted that if the plan were to be amended for Hatfield after tonight's plan had already been approved by Whately, then Whately would have to re-advertise and re-open the hearing.

The board then proposed the following three conditions for Site Plan Approval:

- 1) The plan must receive approvals from all the appropriate Boards and Committees.
- 2) Zoning approval must be received from the Hatfield Planning Board.
- 3) 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.

Brant moved that these be the conditions for site plan approval and Don seconded.

Don closed the public hearing. Judy moved to approve the site plan with the above three conditions and Brant seconded the motion. Don, Judy, Sara, Tom, and Brant each voted yes, and the site plan was approved unanimously.

#### VI. Adjourn

At 7:33 pm Don moved to adjourn and the motion was seconded. Don, Judy, Tom, Sara and Brent each voted Yes, and the meeting was adjourned.

#### Documents Reviewed (kept in the Planning Board files)

1. A draft letter headed, Re: Monitoring Off-site Marijuana Odor, from the Planning Board to Town Administrator Brian Domina and the Selectboard.
2. A set of plans dated May 10, 2021, prepared by Berkshire Design Group for MIDCO CHY MA LLC and headed,

Site Plan for  
424 STATE ROAD  
Whately, Massachusetts  
SPECIAL PERMIT APPLICATION

3. The second draft of the document titled:

**Town of Whately**  
Proposed Floodplain Overlay District Bylaw to replace the current  
Section ~171-26. Flood Hazard Overlay District Regulations

4. Revised plans dated July 27, 2021, for the proposed DMCTC marijuana processing facility at 3 River Rd.

Mary McCarthy  
Secretary, Planning Board  
Town of Whately, MA