Whately Planning Board

Minutes of Virtual Meeting

March 22, 2023

Members Present: Judy Markland, Sara Cooper, Tom Litwin, Brant Cheikes

Members Absent: Don Sluter

The meeting was held remotely, via Zoom.

Virtual Guests:

Chris Chamberland

Tim Nourse

Rachel Monette

Call to Order 5:00 pm

 The meeting was recorded.

**ANR**

Brant screen-shared both a new Approval Not Required (ANR) plan for property at 29 River Rd. and a different ANR plan for the same property that had been endorsed at the last meeting. Tim and Rachel Nourse explained that they now propose changing the plot line to add more land to the west in order to allow for the building of extra coolers. The board discussed the existing and proposed plot lines, and there were no objections to the new plan. Judy moved to endorse the ANR and Tom seconded. Sara, Judy, Tom, and Brant each voted Yes, and the motion carried unanimously. Brant will let Tim know when to pick up the documents at town offices.

**ZONING MAP CHANGES**

It was noted that the incorrect Aquifer Protection Overlay District map had been removed from the online map, and that the website had been fixed so that the map with other errors is still available for viewing but that a caution message precedes access to it.

The wells of the former Water District are no longer in use. Nicholas Jones confirmed this when Judy spoke with him yesterday, saying the wells are no longer functional and the areas in the Aquifer Protection Overlay District protecting them are no longer necessary. Brant screen-shared the portion in question. Tom and Judy thought it might be better to keep the protection of these wells in case it is needed in the future, but Judy thinks the removal may be mandatory, per Massachusetts Department of Environmental Protection (Mass DEP) regulations. It was noted that this would be a good time to make any required changes. Tom will check with Nicholas to see whether there is a compelling reason to remove the protection from the wells. It was also suggested to check with Water Superintendent Wayne Hutkoski about the matter. The board will meet again next Wednesday, March 29, and Brant tabled the discussion until then.

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**POTENTIAL ZONING BYLAW CHANGES**

LIMITED MARIJUANA MANUFACTURE

Chris Chamberland, of Berkshire Design, addressed the proposal of his company’s client, Debilitating Medical Condition Treatment Centers (DMCTC) to establish a land use for Marijuana Manufacturing (Limited). Since DMCTC is the party requesting this change, DMCTC will write the proposal and will discuss the proposal’s language with the board.

Mr. Chamberland said that when it comes to appropriate safeguards around marijuana, the company Safety Inspections, LLC is the industry leader. He said that Chris Witherall, of that company, and Jared Glanz-Berger, of DMCTC, intended to attend tonight’s meeting but were unable to. They may be able to come to next week’s extra meeting, he said, and recommended leaving most of the discussion until then.

For tonight, the discussion included the following:

The proposed use should follow NFPA 1, a national fire code also adopted by Massachusetts as the state fire code. Chapter 38 governs specifically marijuana processing activities including flammable hazardous chemicals as well as non-flammable hazardous chemicals. DMCTC’s current proposed text states that any processes regulated under fire code 38 will not be eligible in the limited marijuana manufacturing zone. The Massachusetts language used in Chapter 38’s language is evolving, said Mr. Chamberland; future updates will address who will determine that non-eligible activities are not happening, with annual inspections required. An applicant will have to submit an application showing what they have CCC permission to do, so their activities must match the CCC’s list. Judy suggested that DMCTC include the required annual inspections (especially regarding hazardous materials) as an explicit requirement in the bylaw, to ensure that this does not change over time. Chris Chamberland will discuss this with DMCTC.

Judy had questions for tonight about waste and about water, she said. Mr. Chamberland said they are now using the existing septic system but will eventually have to replace it, and are working with the Board of Health regarding the requirements. Regarding water use, he said it is not a big concern because most commercial/industrial users don’t use as much water as many people think, compared to residential users. The design flow for the proposed manufacturing facility will be 200 – 300 gallons per day, compared to 330 gallons per day for a three-bedroom house. That estimate includes about 60 gallons or so per day for the water bath processing. The rest is “personal use” water for the workers (restroom use and hand washing).

For the record, Brant asked Chris Chamberland whether DMCTC planned activities for the proposed marijuana manufacturing (limited) facility will involve the use of hazardous materials. He was told that

DMCTC’s intention in crafting the limited manufacturing is to *exclude* processes that involve hazardous materials. Brant said he wanted to establish that because in Whately’s existing bylaws, under Light Industrial Uses, there is an entry in the Table of Uses under Other Light Industrial Uses not involving hazardous materials. He read from the entry and said the language is already open ended enough to allow the Zoning Board of Appeals (ZBA) to evaluate “other light industrial uses not

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involving the use of hazardous materials” that might be proposed and to grant such a proposal a special permit if it met the requirements, one of which is location in the commercial district only. However, it was noted that if that were true, no planning board action would be needed. Chris Chamberland said his interpretation was that if Whately had no bylaw addressing this more specifically, then DMCTC could simply apply to the ZBA for a special permit as an “other light industrial use” not involving the use of hazardous materials”. But, he said, they are not proposing simply an “other light industrial use” − because Whately does have a marijuana bylaw and a definition of “marijuana manufacturer”. Since that is the case, it isn’t possible to apply under the more general route of a ZBA special permit and ignore the more specific avenue of a zoning change. Brant explained that DMCTC wants to define a new, narrower subset of marijuana manufacturer, to be called marijuana manufacturer (limited) and to be allowed in the commercial district.

 Judy told the board she had talked with town administrator Brian Domina and explained that the board could choose to advise town meeting of its approval or disapproval of the proposed bylaw change, or it could send it forward with no recommendation at all. She noted that each choice will require a report written explaining the board’s rationale.

FLOODPLAIN BYLAW

Judy reported meeting with Brant, Town Administrator Brian Domina, Conservation Commission Chair Scott Jackson, and Franklin Regional Council of Governments (FRCOG) Director of Planning & Development Peggy Sloan, about how best to communicate and develop materials to educate the public about proposals. They discussed the possibility of going through applications and explaining the process, with all the particulars, to people. It became clear that there is no clear guidance on this from the state, and no examples to follow of others who have accomplished the same goal. Judy also spoke with other towns’ staff about this as well. Peggy Sloan suggested that perhaps some communities could use DLTA grants for compiling this kind of material. At the meeting they agreed to change the DLTA request from “Subdivision Regulations” to “Preparing Floodplain Materials as Guidance for Townspeople”, since the latter was considered more urgent. The process is ongoing.

BATTERY STORAGE FACILITIES IN THE AQUIFER OVERLAY DISTRICTS and SOLAR BYLAW

As background information, Judy explained that she had had a change of heart regarding proposed amendments to the hazardous materials section of the Table of Use to allow battery storage where there was adequate containment. She said she sent proposal language to the Conservation Commission and the Board of Health and requested a meeting. She met with the Board of Health, who were very uncomfortable with the proposed relaxation of the rules. Judy explained to the Board of Health that the proposal was being made in order to comply with the solar exemption, and that if we didn’t change the bylaw a solar power company could claim our bylaw is unduly restrictive and threaten to take Whately to court. At that point, Whately would probably not go to court because a recent test case has made it clear that that would be a problem. If we were to reject the project because of the danger of hazardous materials, she said, the power company would simply say the solar exemption does not allow that to happen. The Zoning Board of Appeals (ZBA) would probably have to grant the facility a variance. In that situation, at least the bylaw would offer some protection because it states that the hazardous

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 materials must be contained. So, said Judy, we could leave the bylaw as it is, and if a solar power company objects we would not go to court but would wait to be told that the solar exemption does not allow us to prevent the battery facility from being built. Judy noted that the Board of Health found this outcome to be far preferable to weakening the bylaw, and the more Judy thought about it the more she agreed with them.

The board discussed the two related items:

1. Proposed addition of a prohibition regarding battery storage in the Aquifer Overlay Districts

2. Proposed revisions to the existing solar bylaw, to deal with hazardous materials – and including

 some changes suggested by FRCOG

Brant described the extensive research he had been doing, which had yielded an enormous amount of information about batteries. He has found only one bylaw example – the town of Medway put a lot of time and energy into a very dense bylaw covering all types of battery storage. He said more study is required before writing such a bylaw to cover protection of Whately’s aquifer overlay. His concern is that the wrong language might have unforeseen effects on Whately citizens who, for instance, want to install home solar battery storage. Judy noted that the approach was to limit by size, so perhaps our limit would protect the kind of project Brant is concerned about.

Brant read and screen-shared a paragraph from the Town of Medway Section 8.12 of the Zoning Bylaw, and Tom stated that Whately needs to hire help like the help that Medway got for their bylaw. Brant said he could ask Medway for information and check with the consultant. Brant noted that Medway’s bylaw language made certain batteries, or battery components, allowed “by right” within certain limits. Judy noted that if something is made doable “by right”, there is no way to require inspections in order to ensure important maintenance. Brant also explained his objection to limiting the aquifer overlay district to just residential battery storage; he said he is not convinced it wouldn’t be overly restrictive and might, again, have unintended consequences.

Judy suggested not pursuing the topic of battery storage for the upcoming annual town meeting but leaving it for later since there is so much to analyze and process. The board agreed to table the matter, but also to keep the conversation going toward getting it done eventually.

Topics for the upcoming Town Meeting

− Review of changes to zoning map

− Fix the erroneous language in the solar bylaw

− Remove references to the water district that are in the bylaw itself

Will revisit these next week.

Tabled Topics

− Hazardous Materials – non residential use issue

− Revision to the aquifer protection bylaw regarding battery storage

− Revision to the solar bylaw as it pertains to hazardous materials around batteries

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− Limited Marijuana Manufacturing (an open question)

− New Floodplain Law

ADDITIONAL ITEMS NOT ANTICIPATED

Exit 35 Economic District strength building project

The board received a request from Town Administrator Brian Domina for members to help with this. Judy volunteered, will ask Don Sluter about it, and will follow up with Brian.

ADJOURNMENT

Tom moved to adjourn and Brant seconded. The meeting concluded at 6:42 pm.

Mary McCarthy

Secretary, Planning Board

Town of Whately, MA