Whately Planning Board

Minutes of Virtual Meeting

March 29, 2023

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

Members Absent: none

The meeting was held remotely, via Zoom.

Virtual Guests:

Robert Obear

Chris Chamberland, Berkshire Design

Chris Witherell, Pressure Safety Inspectors

Jared Glanz-Berger, DMCTC

Call to Order: At 5:01pm Don opened the meeting.

The meeting was recorded.

Preliminary site plan review discussion, East School, 219 Christian Lane

Robert Obear described his intention to renovate the former East School to become nine apartments. He said he bought the property from the town three or four years ago, and had it added to the historical property list for the accompanying tax benefits. For the conversion to apartments, he plans to use the existing classrooms and other space, and to bring all systems up to code. He said there would be a “face lift” to the exterior involving lighting and parking, but not many other exterior changes besides a few shrubs, trees, and curb cuts.

Mr. Obear observed that no one has a copy of the school’s plan or the plan for the school’s septic system, which he stated includes a tank with a capacity of 9,000 or so gallons, adding that such capacity is beyond what is needed for his apartment plans. Don asked how Mr. Obear was able to purchase the property without a Title V report, and Judy answered that part of the agreement was that Mr. Obear assume the risk. Mr. Obear did assume the risk, she said, adding that some pumps were installed not long ago.

Mr. Obear said that as of July 1, if there is any change of use, the owner would have to bring all of the building codes up to those of a brand new building. To avoid that, he wants to go forward quickly. Don told Mr. Obear to give the Planning Board a new application form for site plan review, plus the site plan itself. Don and Judy felt the public hearing should be able to happen at the April Planning Board meeting as long as everything is ready by April 19, with the legal notice advertised on April 5 and April 12. It was noted that the Town Meeting date needs changing and that the board may know more later about the Obear hearing date.

2.

Discussion of potential zoning bylaw changes:  
• Limited marijuana manufacture Debilitating Medical Condition Treatment Centers (DMCTC)

proposal)

Chris Chamberland shared a draft of DMCTC’s proposed text to establish a land use for Marijuana Manufacturing (Limited), which had been emailed to the board on March 23, 2023. The draft text appears below:

*Amend ~ 171-8 “Table of Use Regulations” to add the following use:*

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **Light Industrial Uses** | **Agriculture/**  **Residential 1** | **Agriculture/**  **Residential 2** | **Commercial** | **Commercial – Industrial** | **Industrial** |
| Marijuana Manufacturer (Limited) | N | N | SP | SP | SP |

*Amend ~ 171-28.6 “Adult Use Recreational and Medical Marijuana Establishments” as follows:*

*Add the following to subsection* ***B. Definitions****:*

**Marijuana Product Manufacturer (Limited)** – an entity meeting the definition of Marijuana Product Manufacturer but limited to operational processes that do not require the use of hazardous or flammable materials as part of the manufacturing process.

Marijuana Product Manufacturer (Limited) includes the following activities if they comply with the above definition:

1. Production of marijuana infused food products.
2. Extraction of marijuana concentrate using ice water or other non-hazardous and non-flammable materials.
3. Filling and capping products with marijuana concentrate.
4. Physical production (i.e. rolling, infusions) of finished marijuana products without the use of chemical processes.
5. Packaging of finished marijuana products.
6. Warehousing and distribution of finished marijuana products.

In all cases, Marijuana Product Manufacturer (Limited) shall not include any processes that:

* Requires the use or storage of propane, butane, ethanol, or carbon dioxide in the manufacturing process. Use and storage of such materials is allowed for general building operations (i.e. propane heating or cooking appliances) that are customarily used in a commercial building.
* Regulated by current edition of the National Fire Prevention Association Fire Code (NFPA 1), Chapter 38.

3.

*Amend subsection C.7 as follows:*

Marijuana Establishments shall have a minimum 50-foot setback from all property lines except Marijuana Retailers **and (Limited) Marijuana Manufacturers** shall have a minimum 20-foot setback from rear/side yard property lines in the Commercial District.

*Add the following to subsection* ***D. Site Development, Permitting Standards & Application****:*

9. Manufacturing Processes: For (Limited) Marijuana Manufacturers, [TEXT RELATED TO VERIFICATION/INSPECTION REQUIREMENTS TBD]

*Amend the numbering of subsection* ***D. Site Development, Permitting Standards & Application*** *to provide for the addition of “9. Manufacturing Processes”.*

Chris Chamberland noted that the text requirements include making applicants spell out exactly what they will be doing, that No. 16 in the marijuana bylaw already reserves the right to inspect, that police are coming to these facilities to assess them, and that the Host Community Agreement and the special permit will need renewal and so provide an opportunity to address questions at that time. Mr. Chamberland asked whether this provides enough verification to go ahead with DMCTC’s request, pointing out that even though there will be no inspection pertaining to regulated, hazardous materials (since they are not going to be doing anything involving such materials that would trigger such an inspection), the items he listed offers inspection opportunities in another way, such as regarding proprietary information.

Brant stated his concern about other, future operations that may not be like DMCTC, and that there may be a certain tension between asking for particular information and inspections when a company is reluctant to disclose the information or show its processes. Jared Glanz-Berger said that in its application to the CCC it must list what they will make, and that will provide broad knowledge of how they will make it. Chris Witherell from Pressure Safety Inspectors (PSI), a company specializing in solvent-based extraction and refinement, said the board should exclude solvents like butane, propane, ethanol, carbon dioxide, hexane, pentane, and heptane from the permitted chemicals but that water would be acceptable since it is not considered a solvent and so is not regulated. He said that besides approval of equipment, approval of the facility is necessary and mentioned the need for classified electrical equipment, Class 1, Division 1 electrical zones, Class 1 Division 2 electrical zones, and hazardous exhaust systems, all of which are obvious to anyone inspecting a facility. The inspector who sees such required safety measures will know immediately what kind of regulated processes are being used.

Judy said she thinks the CCC doesn’t regulate marijuana manufacturers by degree of hazardous materials used, and that once the process is approved, that is not their concern. So, she added, if it is the CCC that is performing the inspection, they would have to have recently read Whately’s bylaw to know that such materials are not permitted. Is this true?

4.

Chris Chamberland said that when an operation is getting set up, there are two onsite inspections by the CCC before they are allowed to start operating. He said his understanding is that once the operation is

ongoing the CCC has the right to inspect, but they are not on any particular schedule to do that, like once a year.

Chris Witherell said that from an occupancy standpoint, any solvent-based processing would have to take place in an F-1, moderate hazard factory/industrial occupancy or, an H-3 high hazard occupancy, but processes like water extraction would not require that.

Jared Glanz-Berger said applicants trying to set up their classified spaces now also have to go to not only the local Fire Chief, but the state fire authority as well.

The board discussed how best to write the No. 9 portion of the proposed DMCTC text highlighted in yellow [TEXT RELATED TO VERIFICATION/INSPECTION REQUIREMENTS TBD]. Chris Chamberland read No. 16 of the Marijuana Bylaw. Jared Glanz-Berger observed that Fire Chief Hannum would instantly recognize a hazardous situation classified as C1D1 if he were to see one. Judy wondered how, if the change is voted in, the board can make sure that Marijuana Manufacturer (Limited) applications they approve continue to operate the way the board approved them. Tom noted that in tonight’s situation an applicant’s consultant is developing bylaw language for the planning board on behalf of that client. The change is being sought in order to advance the applicant’s business plan, not as a planning board initiative. His concern is for precedent that any business can come in and change the bylaw, he said, referring to this as a version of spot zoning. Tom compared it to the Baronas solar facility application that the board dealt with previously. He said he worries that by moving forward with this proposal the board would be overturning the Baronas precedent, where the planning board became neutral on the matter, adding that he didn’t think the applicant ever took the matter to Town Meeting. He said he has procedural concerns that the parties are getting too close.

Chris Chamberland said he appreciates Tom’s concerns and realizes that the board knows the bylaws best and has the town’s needs at heart. He said that DMCTC had come to the board tonight seeking feedback, had received it, and would use it as a guide to write the finished text. Judy said that made sense, and that the board should also hold a public hearing in order to have feedback from the public as well, before DMCTC presented its request at Annual Town Meeting. It would be best, she said, to ask for public opinion before deciding whether or not to support the proposal.

Brant agreed that a public hearing is the correct next step, adding that he didn’t necessarily see this proposal as being the same as the Baronas proposal and would have to think about that some more. He also said he didn’t think that the board should only consider its own ideas, but should listen to others’ ideas and recommendations as well. Judy stated that the board has no choice on that point, because it is required by law that the board review suggestions from property owners. He also warned against fine-tuning bylaw changes for the one person who would benefit from it, versus the rest of the town. Jared Glanz-Berger said the proposed Marijuana Manufacturer (Limited) classification will benefit others, too – enabling such local businesses as Muffin’s or Tea Guys to make edibles containing cannabis if they choose to.

5.

The DMCTC representatives said they could have the proposal finished in time for April 5. Don noted that other cannabis growers may want to manufacture as well. Jared Glanz-Berger agreed, saying that outdoor growing by solo cultivators is very difficult and this proposal would very much benefit other such growers as well.

Brant moved to hold a public hearing on the proposed bylaw revision, and Tom seconded the motion. Don, Brant, Tom, Sara, and Judy each voted Yes, and the motion carried unanimously. Chris Chamberland said DMCTC will send the final version of the proposal to the board by April 5.

• Revision to Aquifer Overlay District Borders

Don will check with the Town Offices, and will talk to Nicholas Jones, about the location of an original Aquifer Overlay map that was voted on at Town Meeting. Don mentioned that it is all fractured stone where the water wells were.

Brant screen-shared a document from map maker Ryan Cleary, FRCOG GIS specialist. On the map, all five zones show A2/2 as everything not color-coded. Ryan asked what it was (an orange square, owned by Nourse, and legitimate – don’t delete). Don will check with Lynn. Judy remembers a decision to leave it, but not the reason why. She said she asked about leaving the two wells in case they are needed in the future, but Nicholas had said that wasn’t practically feasible. The original reason for creating the zone for the District wells has technically disappeared and the town might not be able to justify leaving them. Tom noted that once decommissioned, the wells can’t be used for public water.

Judy noted Ryan is not pressing them to have the public hearing on April 19; rather, take the time to get the zoning map revisions right. To her it seems like a lot to expect to finish all this for Town Meeting. It was noted that the Selectboard want Annual Town Meeting on May 9 and if the planning board can’t do it by then, it will be moved to June. Brant moved to say the planning board cannot be ready for May – it will be ready later. Judy will write to the Selectboard that the Planning Board cannot be ready for a May 9 town meeting and would request a later date.

Judy recommends continuing with the regular schedule for an April 26 public hearing for the East School site plan review, the proposed DMCTC zoning change proposal, and the Planning Board’s zoning revision proposals to correct the solar bylaw language and revise the Aquifer Overlay District Bylaw. It was agreed to post the original solar bylaw language that had been erroneously cut out for the public hearing and consider any modifications then.

Approval of Minutes

Don moved to accept the minutes of January 25, 2023 as amended. Don, Tom, Judy, and Sara each voted Yes, and the motion carried unanimously.

Approval of Draft Document

Don moved to accept the wording on Judy’s revised draft of the Aquifer Protection Zoning Revisions headed, “**171-28.4 AQUIFER PROTECTION DISTRICT**”, which was emailed to the board on March 28.

6.

Adjournment

At 6:52 pm Don moved to adjourn and Brant seconded the motion. Don, Brant, Sara, Judy, and Tom each voted Yes and the motion carried unanimously.

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

1. A draft of DMCTC’s proposed text to establish a land use for Marijuana Manufacturing (Limited),

which had been emailed to the board on March 23, 2023.

2. Judy’s revised draft of the Aquifer Protection Zoning Revisions headed, “**171-28.4 AQUIFER**

**PROTECTION DISTRICT**”, which was emailed to the board on March 28.

3. A map from Ryan Cleary on which all five Aquifer Overlay Zones show AR/2 as everything not

color-coded.

Mary McCarthy

Secretary, Planning Board

Town of Whately, MA