

Minutes of Zoning Board Meeting
Town of Whately, MA
Town Offices Building, 4 Sandy Lane
January 3, 2019

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

Attending:

Ben Kimbro, 401 S. Boston Ave. #325, Tulsa OK
John Bonavita, 2 Broad St., Westfield
Richard Crowley, 15 Great Brook Dr., Southwick
(?) Parzybok, 30 Norwood Ave., Northampton
Peter Davies, 21 Sheldon Ave., Easthampton
William Beetz, 5411 Golddust Ln., Springhill, FL
Mattheu Ploth(e?), 101 Plain Rd., South Deerfield
Blake Gilmore, 96 Maple Springs Rd., Wareham
Chris Chamberland, 4 Allen Pl., Northampton
Richard Evans, 90 Conz St., Northampton
Dan Denehy, Jr., 330 Haydenville Rd.
DeWitt Thompson, 172 Hadley Rd., Sunderland
Charles Smith, 2 (Pepion?) Cir. #2416, Watertown
Wiesia Nye, 36 Lee Rd., South Deerfield
Francis Niemiec, 47 Sugarloaf St., Deerfield
Mark Jarvis 84 Warner St., Northampton
Kylie Kuhn, 67A Old State Rd.
Sally Maher, 67A Old State Rd.
Kendra Kuhn, 67A Old State Rd.
Domenic Poli, The Recorder

Public Hearing, Toro Verde (Massachusetts) III, Inc., a Retail Marijuana Establishment

Application for a special permit to use an existing commercial storefront for retail sale of adult-use marijuana, on premises owned by Old State Road LLC and located at 424 State Road (Sugarloaf Shoppes).

Chair Roger Lipton called the meeting to order at 6:49 pm.

Attorney Richard Evans, representing Toro Verde III, introduced William Beetz, Peter Davies, and Ben Kimbro of that company, and Chris Chamberland of Berkshire Design Group. Mr. Kimbro and Mr. Chamberland gave a PowerPoint presentation which began with the history of Whately's support for retail marijuana sales in town and showed the site plan for the project.

It was noted that Toro Verde has a consultancy relationship with Harvest, Inc., and a photo was shown of one of their stores in Arizona. The board was told that the store has a classroom in it, since consumer education is important to the companies.

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The board reviewed the section 171-8 Table of Use entry, and section 171-28.6 regarding buffer zones. The room was shown a plan page depicting the 1000-ft distance from the property as well as the 500-ft boundary. Chris Chamberland stated that the two points of interest here are the nearby daycare center and the location of a possible religious organization, and that both of these are outside the required 500-ft boundary.

Mr. Chamberland said the retail store will occupy the maximum space inside the existing building that is allowed by the Whately bylaw. He said the balance of the interior space may eventually be used for something else. No additional exterior lighting will be used, he said, adding that he security system will include many infra-red cameras but that they won't require extra light. They don't expect any noise.

He commented that there is a big difference in odor levels from retail operations as opposed to growing operations, since only the flowers stink and there will be no cutting and processing at the retail store. In retail, he explained, anything containing whole parts of the plant is packed in air-tight containers. There is no smell from the oils (turpenes), he said, since they employ a strategy derived from essential oils that changes the chemistry of the turpenes. Any smell associated with the product is only in the store itself, Mr. Chamberland said, noting that the bylaw says there shall be no odors beyond the property lines. A commissioning system will employ a quality control agent to make sure the odor control measures actually work, he said, noting that the Commonwealth of Massachusetts has its own requirements which must be met as well.

Mr. Chamberland explained that the store will not use water quantities beyond the normal retail level, and stated that no hazardous materials will be involved. The name of the store has not yet been chosen, he said, and the design of the sign is ongoing. He noted that the retail company will only control the interior of the building and cannot control the exterior. He mentioned that operation hours of 7:00 a.m. to 8:00 p.m. are allowed by the Whately Zoning Bylaw.

Regarding safety and security, he said they have met with the police chiefs for discussions of some detail, but that they won't publish the details for obvious reasons. The cameras have no blind spots, he noted, adding that remote monitoring is handled by a third party which can control all the cameras and alarms, can communicate with employees, and can ask parking lot loiterers to leave. Employees don't have access to everywhere in the store, either – they have clearance for their assigned areas only. Customers must enter through several doors, accompanied by escorts. The company wants to project the image of being a difficult target for theft.

The applicant submitted copies of the Host Agreement to the board. Regarding Whately Zoning Bylaw section 171-15 Environmental Performance Standards, the applicant's representatives said they had no problems with any of this.

Regarding traffic, they said they expected that eventually, it should be like the traffic for a regular retail store. They noted that, they won't open the store until six or so months from now and by then,

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there may be 30 or more stores open in Massachusetts, which will relieve the pressure on those which open first. If there are traffic problems at the site, they said, they may use a system of satellite parking requiring customers to park in more distant lot and take a shuttle bus to the store from there. Bob Smith noted that their Whatley location is much easier to access than the marijuana retail store location in Northampton, where parking problems and long lines of customers are well known. The Whately store's location is the best possible, he said, and he doesn't want anyone to trivialize the possible congestion. A Toro Verde III representative stated his company's willingness to hire police details as necessary to control congestion; Bob said he would like to see a letter from the police chief addressing what he can do in this regard.

An audience member asked about when deliveries will be made, and what vehicles will be used, during what hours. He was especially concerned about large trucks at busy times. The company representative replied that for security reasons they can't say how or when, but noted that the vehicles involved will be smaller than a box truck and won't be noticeable. He added that there will be no on-premises use of product.

An abutter whose land is behind the store voiced concern about people entering her property, as has happened sometimes in the past. A company representative stated the company's goal is to be a good neighbor, adding that the added security their presence provides will benefit her. Also, he said, the overnight cameras will be aimed at the building and should not intrude on the privacy of the backyard right behind it, or on that of another abutter's mother, whose garden is "right there". Mr. Kimbrough said the company is "very open" to discussing what things would make close neighbors more comfortable, like landscape screening. The same abutter told the representative that she is worried about traffic congestion, which she said is "already horrendous there". A company representative from Wareham again raised the possibility of hiring police details as necessary, saying his company would pay for off-duty police officers to perform the details. He noted that they would hire Massachusetts-certified officers from Whately or outside it. A question was raised about possibly instituting a one-way turn, which led to the reply that the state would have to approve any type of one-way turn enforcement.

Chris Chamberland explained that any cannabis waste, such as from a dropped container that breaks, must be secured and delivered to a licensed disposer. Otherwise, regular retail trash levels are expected, he said.

He stated that Whately will get 6% of sales, and that \$50,000 will be donated to local charities over five years.

Attorney Evans said that the Cannabis Control Commission (CCC) application is being prepared, and should be files soon since they are hoping to open in six months. Ben Kimbrough agreed, and added that Toro Verde will probably invest \$500,000 - \$600,000 in tenant improvements.

Debra Carney asked about the average time a customer is expected to be in the store, purchasing. The answer was under ten minutes, including parking and purchasing, to driving away. Chris Chamberland commented that Harvest, Inc. is very efficient at processing transactions. Ben Kimbro estimated 110 visits per day by individuals. He noted that some of their customers will be medical marijuana customers, and that they have visiting groups of customers medically oriented by disease of interest.

Mr. Kimbro stated that there will be someone for security onsite during business hours. If there is an alarm at night, he said, it will be dealt with in accordance with the Whately/Deerfield mutual aid agreement. He said the store will be open seven days per week, with Sunday hours often limited. Attorney Evans agreed to email Roger a copy of the Power Point presentation. He gave the board copies of the Host Agreement.

Bob Smith reminded the ToroVerde team that although their other stores may operate without a hitch, his concern is his town, his traffic, and his neighbors, and cautioned the company not to forget that.

Roger scheduled a visit to the store site for the mutually agreed-upon date Saturday, January 12, 2019, at 10:00 a.m. to check on access, etc. Someone will be there to show them around. Roger explained that the site visit is open to the public but is not a continuance of the public hearing. He continued the hearing to January 31, 2019, because of a board member's scheduling conflict on the usual next meeting date of February 7. Roger then closed the hearing session.

Next, the board met with DeWitt Thompson, of Full Bloom Garden, who is working with a party wanting to develop Full Bloom's greenhouse for marijuana cultivation. Roger explained that, at an informal conversation like this one, the board can only offer procedural advice. A representative of the potential grower asked what would be required to get relief from the 500-ft setback, which applies in this case because there is a distance of only 326 feet from the ball field to the boiler bump-out at one end of the greenhouse. The applicant asked about the waiver which the bylaw says may be granted by the Zoning Board of Appeals. The board reviewed section 171-28.6 (C) (5) of the Whately Zoning Bylaws, which reads,

“Marijuana Establishments may request a waiver from the setback standard of 500 feet required by Sections C.2 – 4 from the Zoning Board of Appeal to no less than 300 feet if there is no other feasible alternative. Such waiver may be granted in the ZBA's sole discretion”.

Roger explained that the board has no history yet on exercising this waiver, so can't offer advice at this point. But, he added, the board does have a long, strict history of handling variance requests. The applicant will return at a later date for an advertised hearing.

Documents Reviewed (kept in the ZBA files)

1. A plan of land dated November 27, 2018, with a Revision noted as “11/27/2018 ZBA Application”.
2. A copy of the “Town of Whately Host Agreement”, with an attached copy of the “Host Community Agreement Certification Form”
3. A set of two plan pages for property of Full Bloom Market Garden, LLC:
One prepared by SVE Associates, is dated 02-Jan-19 shows an aerial view of the property at the corner of Christian Lane and State Road.
The second is an undated drawing of the area showing labeled details.

Mary McCarthy
Secretary
Zoning Board of Appeals
Town of Whately, MA