

Minutes of Zoning Board Meeting  
Town of Whately, MA  
Town Offices Building, 4 Sandy Lane  
May 2, 2019

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

Attending:

John Dewey, Mustang Whately Investors  
Dick Evans, 90 Conz St., Northampton  
Doug Serrill, 4 Allen St., Northampton  
Mary Lou Rup, 190 Chestnut Plain Rd.  
John C. Gates, 173 Main St., Greenfield  
Joyce Palmer-Fortune  
Fred Orloski  
Kathryn McGrail  
Marc Bussiere  
Bernie Smiarowski

Public Hearing, continued from April 4, 2019

RE: Town Hall: Appeal by 190 Chestnut Plain Road Trust of the Building Use Policy Adopted by the Selectboard in and for the Town of Whately on November 28, 2018.

Chair Roger Lipton opened the hearing at 6:42 pm.

Roger gave to John C. Gates, attorney for the appellant, a copy of an email received and dated today, May 2, 2019, sent to the Whately Zoning Board of Appeals by town counsel David J. Doneski of KP | Law. Mr. Gates kept the copy to read closely and respond to if necessary. The letter sums up town counsel's position on the matter in question, responding to information previously presented at the April 4 hearing session and to three questions of the ZBA previously submitted to him in an email sent by Roger Lipton. Debra Carney read aloud from town counsel's May 2 letter.

In the discussion which followed among the audience members, Mr. Gates, and the ZBA members, various hypothetical situations were posed, such as:

What if the Selectboard has someone looking for a use that doesn't comply with zoning but which the Selectboard thinks is OK for one night? What about when they come back to do another one-nighter next month? If the Selectboard can approve such events unilaterally, Mr. Gates said, people will always be in the position of reacting to events that have already happened, with no way to control the next one beforehand.

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When told that people could appeal and argue that the Selectboard cannot approve ostensibly one-time events again and again, Mr. Gates responded that it would be better if people can present their objections ahead of time to the zoning enforcement officer, and that he decide independently Yes or No. If the Zoning Enforcement Officer declines because he works for the Selectboard, said Mr. Gates, then there is no answer. So far, in this case, he has only been asked to certify that the building can be occupied, he said.

Debra noted that it's not just about historic use, it's about civic use, with money not going into a general slush fund. Mr. Gates responded that if we start to rent the building to make money for the town, the uses should still have to be approved in each case. There is no provision that the town is exempt from its own zoning, he said. When Roger asked to hear what the appellant feared might be the worst that could happen, it was mentioned that weddings held by a commercial establishment might be a possibility, and if, say, the Whately Inn were to book weddings at the town hall for eight weeks in the fall, there could be parking problems, music and dancing until midnight, etc. When told that those kinds of items are covered by the zoning bylaws, Mr. Gates said that the current Whately use policy for town hall says zoning can be violated case by case. He said that if these items can all be waived solely by the Selectboard on a case-by-case basis, people will not be able to control events into the future. Citizens should not have to monitor events, he said – those applying to hold events should have to get a permit from the ZBA, just like everyone else.

Selectboard members Fred Orloski and Joyce Palmer-Fortune were in the audience and the board asked for their opinions. Fred explained the need for the selectboard to have some control over allowed events. Roger asked specifically about Tab A, page 12, paragraph 11.3 of the document headed,

Whately Town Hall Building Policy  
194 Chestnut Plain Road, Whately, MA 01093

included as part of the appellant's appeal package titled: STATEMENT OF PENDING MATTER. Paragraph 11.3 reads, "Exceptions to this Policy may be made at the discretion of the Selectboard as it deems in the best interest of the Town." Roger asked whether the Selectboard could adjust the language of this paragraph of the policy. Joyce Palmer-Fortune replied that the Selectboard can amend the policy with new language at a public meeting, with 48 hours' notice. Judy Markland suggested adding "with consideration of the abutters" to show they are a part of the process, adding that the town is very thoughtful with regard to having the best interest of the townspeople at heart.

Roger noted that a lot of issues have been explored during the two hearing sessions, that it would be good if the two sides could settle some between themselves, and that this is not the venue for doing that. He added that the ZBA could grant part of the appellant's request and leave the rest. Debra Carney suggested striking paragraph 11.A (on page 12 of Tab A) in the short term, and then re-writing it. When Joyce Palmer-Fortune expressed concern about this, Roger stressed that this would be for the short term only, and Debra explained that the ZBA was exploring ways for the Selectboard to keep the bulk of its policy by re-writing some of it. Attorney Gates returned the copy of Town Counsel's May 2, 2019 email given to him at the beginning of the hearing, saying that he no longer needed more time with it.

At 7:30 pm, Roger closed the public comment portion of the hearing and the board continued to discuss the matter in full public view. Roger moved “to act on the appeal in such a way as to act only on paragraph 11.3, declaring it void”. Debra seconded the motion, Kristin voted yes, and the decision was approved unanimously. The board decide to write the decision paperwork following the second of tonight’s hearings.

Public Hearing: Mustang Whately Investors, LLC

Application for a special permit for cultivation of marijuana at the current Full Bloom Market Garden LLC greenhouse, located on land bounded by Christian Lane to the north, State Road to the west, Route 91 to the east, and residential property to the south.

Roger opened the hearing and the applicant submitted a 36-page application/information packet, along with a 3-sheet set of large format plans dated April 4, 2019, titled “Christian Lane Greenhouse Whately, MA”. Attorney Richard Evans corrected the name of the property owner. Although Dewitt Thompson’s name appears on the application as the owner, that was an error made by the applicant, he said. The correct property owner name is Full Bloom Market Garden, LLC.

The board then heard from John Dewey, who, according to the application packet, owns 100% of the California company Mustang Renewable Power Ventures, LLC, which in turn owns 70% of Mustang Whately Investors, LLC (MWI), the applicant for this project. He said that Whately had an ideal location and that MWI will be landlords. They have been discussing the project with possible tenants, he said, and hope to select one within 30 days. Attorney Evans said hardly any visible changes to the exterior are planned, and suggested a site visit by the ZBA on May 11 or 18, adding that the Planning Board is available on both dates and has agreed to let the ZBA choose.

Doug Serrill, Landscape Designer for The Berkshire Design Group, projected and commented on plans of the property. He said 326 ft is the distance from the greenhouse to the baseball park, and that they will need a waiver to allow that distance instead of the required 500 ft. It is not financially feasible to move the greenhouse farther from the ballpark, he said. Mr. Serrill showed photos of the property as seen from several vantage points, to demonstrate cover given by trees and other vegetation. All activities will take place inside the greenhouse, he said. Abutter Marc Bussiere commented that he has no problem with a waiver of the 500 ft requirement, but that he is more concerned with additional traffic when children are coming home. No traffic increase over that of the existing operation is expected, he explained, adding that the farm currently has 50 employees and 15-25 vehicles (carpooling is used), and deliveries are made by 18-wheeled trucks. The proposed operation plans to use the same number of employees and of vehicles, with fewer large trucks involved because more deliveries will be made by small vehicles. Since Yankee Candle’s shift change takes place at 6:00 am or 6:30 am, and the Mustang operation’s shift change will take place at 8:00 am, he stated there will be no conflict.

Odor control will be supplied by Odor-Armor 420, which dispenses an odor neutralizing fog through fog rings attached to the greenhouse at the exhaust points. Noting that the Planning Board had asked about the system’s performance during cold weather, Mr. Serrill showed a chart comparing average temperatures in states and provinces that use the fog rings, saying cold weather is not a problem. When

asked for more detail by abutter Kathryn McGrail, he said the fog is an essential oil that infuses the air and is designed to absorb the molecules that carry the odor. It is non-toxic and non-hazardous, he said, adding that although 78° - 82° weather is best for the application it still works in cold weather. All marijuana refuse will be stored inside and removed by a licensed operator, he said.

In response to more questions from abutters Kathryn McGrail and Mark Bussiere, Mr. Serrill verified that employee and traffic levels will remain the same, adding that they will be more seasonally consistent. He said his company expects to replace the greenhouse walls with solid, metal-clad walls for security and insulation. He noted that a lot of the pink glow currently seen at night from inside the greenhouse may disappear. The roof will still be UV-absorbent, but will have curtains, he said. There will be one security gate on the greenhouse side of Christian Lane and a second security gate on State Road, he explained. He also said he wants to improve one dirt road with rock.

He stated that current water usage is 28,000 gallons per day and that the future usage would start at 14,000 gallons per day, becoming higher after some time. He said that the water department thinks there will be no problem. The runoff profile will stay the same, he said, adding that they may increase some collection.

Abutter Bernie Smiarowski expressed concern about whether houses or another marijuana cultivation operation might eventually be put on the rest of the property if it were to be sold in the future and were to be rezoned.

It was determined Debra and Kristin would be able to attend a site visit on May 18, but that Roger would not but would drive by later. Roger scheduled the site viewing (open to the public) for May 18, 2019 at 10:00 am. He then continued the hearing to June 6, 2019, at 6:40 pm.

Review of the minutes was postponed to the next meeting.

At 7:30 pm the meeting was adjourned.

*Documents Reviewed (kept in the ZBA files)*

1. A letter (RE: Old Town Hall, appeal of 190 Chestnut Plain Road Trust), dated May 2, 2019, from David J. Doneski to Whately Board of Appeals (*By Electronic Mail Only*)
2. A 36-page application/information packet from Mustang Whately Investors, LLC, handwritten as having been received on 4/9/19 at 12:53
3. 3 sheets of large format plans dated April 4, 2019, titled "Christian Lane Greenhouse Whately, MA"

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