

Minutes of Zoning Board Meeting  
Town of Whately, MA  
Town Offices Building, 4 Sandy Lane  
June 6, 2019

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

Attending:

Charles Smith, 73 Crest Rd., Wellesley (Mustang Whately Investors LLC)  
Dick Evans, 50 Conz St., Northampton (Attorney for Mustang Whately Investors LLC)  
Chris Chamberland, 4 Allen Pl., Northampton (Berkshire Design Group)  
John H. Fitz-Gibbon, 90 Conz St., Northampton (Attorney for Bernie Smiarowski)  
Bernie Smiarowski, 487 Main St., Hatfield  
Robert Flannery, 5091 Campion Dr., San Ramon, CA 94582  
John Dewey, 62 Christian Ln., South Deerfield (Mustang Whately Investors LLC)

Public Hearing, continued from May 2, 2019 : 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.

Chair Roger Lipton opened the hearing at 6:40 pm.

Attorney Dick Evans, representing Mustang Whately Investors LLC (MWI), submitted a letter dated June 5, 2019, which he had sent to Zoning Board of Appeals Chair Roger Lipton. The letter identifies NAP Advisors, LLC, an affiliate of Dr. Robb Farms, as the third party chosen by MWI to be its Whately tenant charged with the onsite running of the proposed marijuana establishment.

The letter describes Dr. Robb Farms as “a large, well-capitalized California cannabis company”, and says that Mustang and NAP have signed a letter of intent. The letter notes that NAP has announced a Community Outreach Meeting for Wednesday, June 12, at 5:00 p.m. at the greenhouse, and says its representatives expect to meet with the Selectboard later that evening to discuss the Host Community Agreement. After they have held the Community Outreach Agreement and obtained the Host Community Agreement, the letter said, NAP will submit an application to the Cannabis Control Commission. Mustang’s role will be that of a landlord.

Roger asked for more information about Dr. Robb Farms, and Mr. Evans introduced Dr. Robert Flannery (“Dr. Robb”), noting that Dr. Flannery has a PhD in Plant Biology with an emphasis in Environmental Horticulture, specializing in crop optimization for cut flower production. Dr. Flannery’s background has everything needed to oversee the operation except retail, he said.

Dr. Flannery addressed the board, saying that his studies have taught him important details like why a commonly used fungicide cannot be used on marijuana, since it must be heated during processing and the heating results in a poisonous product. He explained that for a marijuana crop, mild instances of pests are not a problem because their only effect is cosmetic and his plants have no ornamental requirements. This allows his company to use no pesticides at all, he said.

When asked about moving to Massachusetts Dr. Flannery said no, he and his wife have roots in California and plan to stay there. He will consult from afar but will visit fairly frequently, he said. Debra asked who the day-to-day onsite manager will be, and he replied that they don't know yet. Debra verified that Dr. Robb Farms will be the company to hire whoever works there.

Regarding the Host Community Agreement: Roger noted that it isn't signed yet, and he and Debra thought that perhaps the hearing couldn't proceed because of that. The board consulted the zoning bylaw for marijuana (~ 171-28.6, D, 20 Host Community Agreement) and found that there was no obstacle after all since a proposed agreement is what is required, and Mustang has one.

Regarding the waiver of the requirement that the project be located at least 500' from the adjacent ball park, Dick Evans said the waiver should be granted because in this case the 326' distance that exists is enough. He cited a heavy vegetation barrier (partly wetland), that obscures sight of the marijuana facility from the park, as well as the planned erection of a gate barrier. The board looked at a foamboard plan showing the 326' distance from the greenhouse boiler room to the closest property line of the ball field, with Mr. Evans noting that the zoning bylaw (~ 171-28.6, C. Requirements Regarding the Allowed Locations for Marijuana Establishments, 3) says measurements are to be made from the "marijuana establishment". The board also looked at the same detail, more clearly shown, on the middle page of the plan submitted on May 2, 2019.

At this point the board heard from Attorney John H. Fitz-Gibbon, representing abutter Bernie Smiarowski, who owns property across the street. Mr. Fitz-Gibbon submitted an 8 ½" x 11" Google satellite photo of the area labeled, "Untitled Map". He explained that his client objects to the project because

- a) his plans to eventually build houses on his land will be badly affected, since property values will drop due to the presence of the marijuana facility, and
- b) the waiver process has no requirements or limits – no standards. He asked why the permit should deviate from the 500' voted at Town Meeting.

Addressing the first point, Roger asked how we know that the property values will drop. Dr. Flannery interjected that in the San Francisco area there is actually less crime now due to the extra security associated with legal marijuana facilities. Mr. Fitz-Gibbon asked the board, "Would you like this next to your property? Why is it not feasible to move or change the greenhouse, or push the project back?" Dewitt Thompson, of Full Bloom Market Garden LLC, current owner of the greenhouse, stated that there are no other objections from abutters who live here currently, and that Mr. Smiarowski's objection concerns abutters who might exist in the future. John Dewey, of MWI, stated that his company wants to keep the same neighborhood character, with no outside changes except a gate – no signage, no changes

to the number of employees – nothing that will indicate the nature of the business. The pink nighttime greenhouse glow will vanish, he said, and that will *increase* property values.

Roger asked Bernie Smiarowski how long he had owned his property and was told, since the late 1990s. Mr. Smiarowski told Roger that he hadn't built houses yet because he is now farming the land, and wants to build on it for retirement.

Charles Smith, of MWI, stated that regarding the matter of the waiver, the bylaw says it is at the ZBA's sole discretion. Also, he said, the intention was to use existing buildings, as this one is.

Dewitt Thompson asked whether the fear was that children would be able to access marijuana at the facility, adding that such a thing would be virtually impossible. Bernie Smiarowski noted that baseball is played in the spring, before all the screening vegetation leafs out.

John Dewey, of MWI, stated that at a previous hearing session Judy Markland had said this project is in keeping with the town of Whately historically. Also, he added, it is *financially* not feasible to move the greenhouse – and besides, it is inaccessible due to barriers. Dick Evans, for MWI, stated that there is no adverse environmental or safety effect, and that the police department is close by. Attorney Fitz-Gibbon stated that although the applicant had said that it would be financially not feasible to move or change the greenhouse, we don't know how expensive it would be.

Roger moved the discussion to the odor control mechanism. John Dewey said that odor is not just covered up – the molecules that carry the turpene odor are absorbed by fog that is dispersed by fog nozzles located at the greenhouse exhaust points. Fogco is the name of the delivery system that creates the fog, he said, and his company will also use a UV tube system put into the ducting to denature the turpenes. Roger mentioned the possibility of a condition to have a one-year review on odor control. Debra referred to the marijuana bylaw (~ 171-28.6, D, 5 Noise & Odors).

Roger closed the public comment portion of the hearing, and the voting members of the board continued the discussion. Roger said he had viewed the site and was surprised at how the space and vegetative barrier isolate the facility from the ball field. Things seemed farther away than he had expected, he said. Kristin said she felt the same, adding that she would have been more concerned about the situation of abutters Marc Bussiere and Kathryn McGrail, had they not stated their lack of objection to the plan at the last hearing session. John Dewey mentioned that his company had volunteered to work out additional screening with Mr. Bussiere and Ms. McGrail, who agreed. On the matter of the feasibility of moving or changing the greenhouse, Roger posed the question of whether the ZBA should require the applicant to make changes if the board doesn't think those changes will accomplish additional protection. He said he didn't think the board should do so. Debra agreed, and repeated that the intent had always been to use existing buildings such as the greenhouse, so as to avoid development.

Roger stated that a drop in property values is a fear, but questioned whether the board should act on that fear, adding that if they do, future abutters will use it as an objection to any marijuana project. He said that he hears that argument all the time in connection with such things as the creation of commercial developments, the building of solar power fields, etc. He said he didn't think the board should use that fear to overcome the petitioner's argument.

4.

Roger moved to approve the special permit with the following conditions:

1. Approval of the waiver
2. That the odor abatement system described in the minutes is installed
3. That additional screening be planted
4. That a one-year review be held to see whether the odor control system is working, and to evaluate the health and effectiveness of the plantings

Debra seconded the motion and the board voted unanimously to approve the special permit.

The board decided to approve the waiver.

The board wrote the decision.

The minutes of April 4, 2019 were approved as amended.

The minutes of May 2, 2019 were approved as amended.

At 8:20 pm the meeting was adjourned.

*Documents Reviewed (kept in the ZBA files)*

1. A letter dated June 5, 2019, from Richard M. Evans to Zoning Board of Appeals Chair Roger Lipton, re: Mustang Investors, Christian Lane
2. An 8 ½" x 11" Google satellite photo of properties owned by Full Bloom Market Garden LLC and by Bernie Smiarowski, labeled, "Untitled Map"
3. The middle sheet of a set of of large format plans dated April 4, 2019 and titled "Christian Lane Greenhouse Whately, MA", noted at bottom corner of first sheet, "ZBA Rec'd 5/2/19"

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