

Minutes of Zoning Board Meeting
Town of Whately, MA
March 4, 2021
Remote Meeting via Zoom

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

Attending:

Mark Stadnicki, engineering firm SVE Associates
Walter Pieskarski, 305 Long Plain Rd.
John LaSalle
Attorney Sofia Bitzas, Whately RE Holdings
Chris Cimini, Whately RE Holdings
Bob Cimini, Whately RE Holdings
Neal Dach, Whately RE Holdings
Mark Byers, Byers Scientific
Mark Cybulski
Christine Gordon
Stephen Herbert, Urban Grown
Bruce Tutun

PUBLIC HEARING *continued from February 4, 2021*

Variance application by Walter A. Piekarski, Jr. regarding the side yard dimensional requirements of his property at 305 Long Plain Rd. to allow a carport, currently 3 ft from the property line, to obtain a building permit.

At 6:40 pm Chair Roger Lipton opened the hearing. Roger said that after having attended the site viewing on February 13, he is not convinced that another solution is impossible. He stated his opinion that the water in question should seep into the soil and not cause a problem with the septic system. Fred Orloski added that although it is not an ideal location, there is sufficient room to move the carport and maintain the 20 ft setback. Kristin Vevon commented that she drove by the property and that although she sympathizes with the applicant, she agrees with Roger and Fred.

Roger moved to deny the variance and Fred seconded. Roger, Fred, and Kristin each voted Yes, and Bob recused himself from the vote as an abutter. The variance was denied.

PUBLIC HEARING *continued from February 4, 2021*

Special permit application to allow for an indoor marijuana cultivation establishment in agricultural buildings and greenhouses in existence on April 24, 2018 on premises zoned A/R1 and A/R2 located at 23A LaSalle Drive and owned by LaSalle Florists, Inc.

At 7:15 pm, Roger opened the hearing. Chris Cimini, of Whately RE Holdings, Inc., said that they had sent almost all of the documents required to qualify for site plan approval, and had only one more meeting scheduled with the Planning Board to fine-tune the conditions of approval. He introduced Mark Byers, President of Byers Scientific, and said his company will work with Mr. Byers to control odors.

Mark Byers gave his company's web address (byers-scientific.com) and described his business as the largest cannabis odor control company for the U. S. and Canada. He said his location, Santa Barbara county in California, is the largest cannabis cultivation area in the state, and that Byers Scientific deals in odor control system design, equipment and hardware, and emission analysis. He added that they routinely design successful systems for projects covering square acres, not square feet, even though neighbors are quite close to the fields. This project's odors will be easily controllable, he said. Roger asked whether the firm had been hired by the applicant and Mr. Byers replied, "Yes".

Mark Byers and Chris Cimini said an odor control plan is being constructed and described its development as a fluid process. Asked whether it might be finished within 6-8 weeks, Mr. Byers said it depends on what has to be manufactured. He added that there is a big demand for the parts they need to make the equipment, causing supply chain delays.

Mr. Byers said that they would make sure that cannabis odors would be certainly not detectable at the property line, adding that the goal is to keep 70%-90% of odors inside, then deal with the exiting air. Bob noted that, with no cannabis growing projects operational yet, the town has no experience to rely on when evaluating new proposals. Chris Cimini replied that Mark Byers had made it clear that if Canna Select does not follow the instructions of Byers Scientific, Mr. Byers would have nothing to do with the project. He stated that Mr. Byers does not want his reputation ruined, and that Canna Select wants to follow his direction because they want to succeed.

Mark Byers outlined his company's method for handling such odors this way:

- 1) It is easiest to eliminate odor at its source (the greenhouse)
- 2) They have taken carbon scrubbing to an industrial scale by working with the Swedish manufacturer Camfil, a maker of highly regarded filters. The substrate they use is activated coconut shell shard, which is best for this application.
- 3) They recently discovered that the real source of the skunky smell is a particular thiol, and can now target that chemical precisely. They can more finely measure the filtering efficiency of the carbon substrate, which has been shown to adsorb 99.95% of the particular odor-causing thiol (which is detectable in parts per trillion). They send their carbon canisters to a South Carolina lab which measures how much of the carbon has been used. They measure the emission rate of the offensive gas, then calculate the number of air exchanges needed to remove it.
- 4) They remove odor efficiently by filtering the air in stages, first upstream, then midstream and downstream – instead of filtering all of the air at one time through a single filter.

5) Mark Byers first noted that the EPA doesn't publish an acceptable range for cannabis odors because they are not dangerous – only nuisances. He then described his company's odor evaluation process, in which a piece of equipment (an odor panel) grabs the odors. The panels are then sent to a panel of people – human super-sniffers – whose conclusions are admissible in court.

Mr. Byers said that in Santa Barbara County, some residential abutters are very close to the cannabis facilities, much closer than for this project. Roger asked how the Planning Board had ruled on odor, and Sofia Bitzas replied that their concerns were addressed and they were satisfied with the testimony of the hearing.

In response to a question about the bylaw prohibition of any odor at the property line, Mr. Byers replied that nothing can be 100% guaranteed, for 100% of the time. A door could blow open, he explained, or a glass pane could be broken, and a “faint and fleeting” odor could result. Also, he said, people can think, or imagine, that they detect something so we need to rely on the science. He then said he *can* guarantee that the site will not be a nuisance property.

Bob commented that he was much more comfortable and that Mr. Byers' presentation had helped a lot. Bob suggested that the board require a report that includes the results of periodic odor checks made during different times in the cannabis growth cycle.

Roger asked Mark Byers what he would like to see in a report to show he is doing a good job. Mr. Byers suggested questions for anyone complaining of odors, including:

- 1) when the odor was smelled
- 2) where the odor was smelled
- 3) a description of what the odor smelled like
(If a pattern can be shown, that is valuable.)
- 4) What is the response time in the plan?

Mr. Byers cautioned against letting anyone “weaponize” the complaint procedure. He said that every one of his odor control systems has its own website, which shows whether all the Standard Operating Procedures are being followed. He could allow the town to access the site on a “read only” basis, he said. The town could read how many air exchanges are being made and then calculate the removal rate, with no questions.

Neal Dach then spoke about the harvest schedule, confirming that harvests occur every six weeks. He said the early flowering stage has less odor, and in two more weeks there will be peak odor. He said that indoors, with “perpetual harvest”, only one portion of the crop will be in flower at a time.

Roger asked whether any of the attending abutters had questions. Mark Cybulski asked Mark Byers whether he saw any problem with retrofitting the old greenhouses instead of tearing them down and replacing them. Mr. Byers said that the green houses aren't that big, and it shouldn't be a problem because it's all fixable. You can't have a leaky green house, he said, adding that his company is on the same page with the applicant. Mark Cybulski said he'd still like to see an odor mitigation plan first, and

Mr. Byers replied that the layout has to be determined before the exact best approach can be known. He added that once he knows what the volumes are, he can then give a good, understandable explanation. Christine Gordon commented that they want the best for the neighborhood, and that she appreciates the questions, answers, and explanations within the hearing.

Roger stated that the project seems well thought out, and that he was glad to have had the opportunity to view the premises. He pointed out that the bylaw already holds the project owners to a standard of no odors at the property line. Bob said he is happy that the heart of the LaSalle agricultural operation will remain and that he liked the presentation a lot. It was noted that conditions should include having Canna Select draw up their plans for responding to complaints, and describe their standard operating procedures. Also, that Canna Select is to continue working with Byers Scientific to come up with a plan. The applicant will be required to employ Best Available Technology (BAT), and Roger noted that at this point, Byers Scientific is the best that the ZBA knows of. Roger also said he likes the idea of requiring presentation of the odor mitigation plan prior to the beginning of operation. It was agreed that the plan should be endorsed by a Professional Engineer (PE) or a Certified Industrial Hygienist (CIH).

Roger moved to close the public comment portion of the meeting. Kristin seconded. Roger, Bob, and Kristin, each voted Yes, and the motion passed unanimously. Roger stated he was prepared to vote yes if an odor control plan is to be submitted before the beginning of operations, to be endorsed by a Professional Engineer (PE) or a Certified Industrial Hygienist (CIH). He said the plan should address:

- Planned Complaint Response
- Standard Operating Procedures
- Questions for any complainants
- Use of Best Available Technology (BAT)

Roger moved to approve the special permit with the above conditions. Roger, Bob, and Kristin each voted Yes, and the motion passed unanimously. Roger said he will write up the decision, noting that it will take some time.

PUBLIC HEARING *continued from February 4, 2021*

Special Permit application by John Hannum to create two flag lots that will be accessed by a common driveway, on Masterson Rd. at Lot 9 on Map 18 of the Whately Assessors Map.

Roger opened the hearing. Tony Wonseski, of SVE Associates, reviewed past hearing sessions and changes in plans. He shared his screen to show the current plan, dated December 1, 2020, noting that the state Natural Heritage program requires 3:1 mitigation. Now, he said, they can take care of the requirements of the ZBA, Planning Board, and Conservation Commission.

He said that if the ZBA is comfortable moving ahead before the state permits are in hand, the applicant is prepared to do that. Other than that, he said, the two lot labels on the plan aren't necessarily where the house will go, adding that the choice is open to the buyers. They will

need a building permit, he said, and depending on what they want to do, they may have to go back to the Conservation Commission. Asked about the vegetation buffer, Mr. Wonseski answered that there is a 40 foot wooded buffer of trees, and added that the wetland is an open meadow.

Bruce Tutun asked for confirmation that the 5 acre lot no longer exists, and got it. Mr. Tutun stated that the new arrangement is not better for the neighbors, citing health problems that may be caused by smoke drifting into abutting houses. He said he already has problems when smoke from his neighbors' wood stoves enters his house, and that one neighbor has made adjustments to the burning according to the wind situation. The other neighbor's house is sufficiently distant that the smoke causes no problem. Mr. Tutun said he would not ask for a ban on wood stoves for the new houses, but asked that the board make a condition forbidding wood burning furnaces at either of these houses, especially because such furnaces are used year-round to heat water. Bob explained that Mr. Tutun and his neighbors can call the Building Inspector, adding that the ZBA does not enforce. Bruce Tutun said he knows this, and that the Building Inspector has been called many times. Roger noted that on a flag lot application the ZBA has no power to restrict a future structure. Roger added that the owner/seller could make such a restriction part of the sale, if the buyer is willing to accept that, but that the ZBA can't do anything about it. Tony Wonseski stated that single family homes are allowed by right, and that people can do whatever is allowed by the bylaws. Roger noted that the ZBA had done its job by consulting town counsel and reducing the number of lots.

Roger indicated that he would vote yes, to approve the special permit. Bob said that although he feels bad for Bruce Tutun and the other abutters, he would vote yes because the project now meets the flag lot requirements. Fred said that since requirements have been met he, too, would vote yes.

Roger closed the public comment portion of the hearing. He moved to approve the flag lot plan dated December 1, 2020, in addition to the ANR lot, subject to the following condition:

If any state approvals change the dimension aspects of the plan dated 12/1/2020, the applicant must return to the ZBA for additional consideration.

Roger, Bob, and Fred each voted yes, and the special permit was approved unanimously.

INFORMAL DISCUSSION

- 1) Urban Grown, Inc.'s request for a waiver for its marijuana facility, proposed for map 32, lot 6 (commercially zoned land directly abutting the Whately truck stop), in order to allow reduction of the setback from a recreational area (the Whately Town Beach) from the required 500 feet to 300 feet.
- 2) Agnes Ting's special permit application for self storage units to be co-located on the northern portion of lot 6.

Stephen Herbert, of Urban Grown, Inc. explained that he wants to grow marijuana on a lot with no churches or schools, and only one home, within 300 feet. But, he said, he will need a waiver allowing the project because the town beach is only 300 feet away instead of the required 500 feet. He added that the project won't be seen from Route 91.

The board confirmed that tonight's conversation is simply a preliminary discussion. Fred stated that without a plan to look at, the ZBA can't really do anything. Stephen Herbert replied that he will submit a proposal which covers all the points of the bylaw. Fred said he thinks the project may be closer to Route 91 than 300 feet. The board told Dr. Herbert that they would need the plan, details about whether the project would involve indoor or outdoor cultivation, and also a Host Community Agreement in place.

Bob said that the Tri-Town Beach commission would need legal notice; Stephen Herbert noted that since the beach is not listed on the 300 foot abutters list they must be farther away than 300 feet.

Stephen Herbert asked whether Agnes Ting needs her own special permit for her storage units. Bob referred to the Whately Zoning Bylaws, section 171-8 Table of Use Regulations, Other Principal Uses. He advised contacting the Building Inspector about this, saying that if he gives Ms. Ting a building permit she won't need the ZBA. If he says a special permit is required, Ms. Ting will need to apply for one.

For more information, Dr. Herbert gave his company's web address (urbangrowninc.com) where a link connects to a Power Point presentation that was shown to the Selectboard on February 24, 2021.

The secretary explained to Dr. Herbert the timeline involved in advertising a special permit public hearing for his project in time for the April 1 meeting.

The meeting was adjourned.

Documents Reviewed (kept in the ZBA files)

1. A plan of land for the Hannum flag lot project, dated December 1, 2020 and prepared by SVE Associates.

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