

Meeting Minutes, Zoning Board of Appeals  
Town of Whately, MA  
January 6, 2022  
Remote Meeting via Zoom

Members Present: Roger Lipton, Bob Smith, Debra Carney, Kristin Vevon, Fred Orloski  
Members Absent: none

Attending:

Pete Gleason  
Julie Beauchemin  
Brant Cheikes  
Chris Larabee  
Michael Novak  
Tom Reidy  
Troy Tanzer

At 6:40 pm Roger opened the meeting.

**PUBLIC HEARING**, *continued from December 2, 2021*

Greenjeans Farms, LLC has applied for a Special Permit to cultivate adult use marijuana in greenhouses under a state-issued craft marijuana cooperative license, and also applied for a variance from side setbacks, on premises located in the AR/1 and AR/2 zones at Long Plain Farm, 149 Christian Ln. and owned by Scott and Wayne M. Hutkoski.

Julie Beauchemin screen-shared her email to the ZBA dated January 4, 2022, whose attachment (Second Supplemental Submission to 149 Christian Ln Special Permit Application) explains planned changes to odor control, noting the previously planned method, which used iodine, had been a new technology unknown to the town. Instead, she said, they will use tanks refillable with activated carbon pellets. She said the SureSorb<sup>TM</sup> air filter is made by an American company, Air Filters, Inc., for cannabis cultivation. Greenjeans' own construction company will install the filters, which should have its carbon pellets replaced every three months depending on need, she added. Her company hopes the Board and abutters will be more comfortable with this technology, which she said is identical to the kind of filter to be used at the cannabis facility on River Road. Fred asked whether any instruments would be used to indicate whether the system is working. Ms. Beauchemin replied No, but added that five to six people will be onsite everyday and should notice any odors. Otherwise, she said, carbon replacement every three months should keep things running well. Ms. Beauchemin and the head grower will be in charge of that.

At Roger's request, Julie Beauchemin screen-shared Attorney Tom Reidy's Bacon|Wilson memo regarding two years being the time required to reconstruct the damaged greenhouses. It was noted that at this time there are only three months remaining before the deadline. Roger

said he had read the Governor's COVID Order No. 42, which Mr. Reidy had cited at the last hearing session. Roger stated that there is no mention of "rebuilding", and that there is no case law on how broadly this has been applied so far, but said something that was *supposed to* happen by a deadline has been interfered with by the virus. Tom Reidy said he is comfortable making an analogy to what is actually mentioned.

Fred asked whether this project involves a "change of use" from agriculture to cannabis. Planning Board member Judy Markland observed that although cannabis cultivation is considered agriculture in the Table of Use, it doesn't have the usual agricultural exemptions.

Julie Beauchemin screen-shared the Patriot Engineering plan dated September 28, 2021 as revised November 29, 2021., showing where greenhouses were destroyed. Only Greenhouse 1 is in A/R1 and needs to be rebuilt. Regarding any change of use, she said it used to be used for vegetable and tobacco seedlings. Roger referred to Bylaw section 171-12. Nonconforming Uses. (The previous use was conforming.) Tom Reidy noted that bylaw section 171-12. D. wouldn't have been allowed if measured from the April, 2018 deadline.

Section 171-12. D. reads:

"Nonconforming structures damaged or destroyed by fire or other accidental causes may be repaired or reconstructed, provided that the new structure is in equal or better condition than the damaged structure, is located on the same portion of the lot and has the same dimensions as the damaged structure, is not substantially more detrimental to the neighborhood than the damaged structure, is put to the same use as the damaged structure or is rebuilt in conformance with this chapter. If any of these conditions do not apply, then a special permit must be obtained from the Zoning Board of Appeals. Such repair or reconstruction of a damaged structure shall be substantially completed within two years."

Mr. Reidy said the ZBA could use this to give them an extension on the rebuilding, if a special permit is granted. Roger and Tom Reidy both agreed that most people would not seek to do this in the future.

Referring to the three greenhouses, it was noted that five of their sides would have chain link fencing. Regarding measurement of the 50 foot setback, Roger referenced Planning Board Chair Don Sluter's emailed letter of November 4 to the ZBA, which says in part:

"...paragraph C-7 of the marijuana bylaw defines the 50' setback requirement as being applicable to marijuana establishments. "Marijuana Establishment" is a defined term in the bylaw and references "a marijuana cultivator, independent testing laboratory, marijuana product manufacturer, marijuana retailer or any other type of marijuana related business licensed by the Commonwealth of Massachusetts". **Crucially**, the Planning Board interprets the term Marijuana Establishment to encompass the entire cultivation facility, *including the security fence*, not just the buildings within the fence. The security fence is required by the state, defines the locked and controlled area of the marijuana facility, and is a fundamental component of the security plan, often holding the required security cameras. It is integral to the operation of the facility. The applicants use this same interpretation when measuring their setback from the elementary school."

Julie Beauchemin said the metal barn is only used for storage. Roger asked whether, without a variance request, it is OK to exclude the barn exterior and accept the applicant's request that the barn is not in cultivation.

Judy Markland noted that fifty feet is a much bigger setback than usual. She added that she is still uncertain about

- odor,
- security camera intrusion into abutters' property and lives, and
- noise.

Odor filters, fans, security fencing, and security cameras are *all* outside, she explained, and we still have no operating facilities to learn from. So, she said, better to keep *everything* inside the fifty-foot setback.

Tom Reidy stated there is precedent where the outside fences are inside the fifty foot setback for *growing*, excluding Judy Markland's other three points. Julie Beauchemin mentioned that the security fence is not *required*; Judy Markland responded that in an indoor grow, the security fence is the *building* and that otherwise you have to have *some* "perimeter of a secured area". Tom Reidy said that is another argument for concentrating on the *grow* part. Mr. Reidy said it would be easier to cut short the greenhouses, but that Julie Beauchemin doesn't want to take away the farmer's ability to use his entire greenhouse later.

Bob asked how this situation is different from that of the Mustang facility at State Road and Christian Lane. Roger replied that the ball field there seemed very far, separated by lots of trees. Judy Markland recollected that the odor exhaust didn't go toward the north (to abutters).

Roger noted that the previously approved Urban Grown project is not determinative of this situation. Still, he said, why not use what the ZBA already approved in the past? Abutter Mike Bechta requested that Roger read Planning Board Chair Don Sluter's emailed statement of November 4, and Roger did so.

Julie Beauchemin mentioned that Greenjeans and the landowner have agreed that at certain time of year, the landowner can use the greenhouses to grow tobacco seedlings. Roger and Debra asked for more details about this, asking whether some kind of part-time marijuana/tobacco growing arrangement is planned. Ms. Beauchemin said that during May and June there will be no marijuana trays in the front portions of the first three greenhouses, so the landowner can use the space to start growing his tobacco seedlings. Once the tobacco plants are big enough to be transferred, the greenhouse space will become available for marijuana. She stated that in the two rear greenhouses, only marijuana will be grown. She noted that greenhouse four will move to the location shown on the plan, while greenhouse five will be totally new. She said that if the project is stalled during state approvals and inspections, that would be bad for the landowner's tobacco operation. Roger asked why the landowners authorized Urban Grown to cut the greenhouses to a shorter length then, but not this time. Julie Beauchemin didn't know. Judy Markland commented that tobacco fluctuates regarding demand and risk, and since it is not a constant a change of mind isn't surprising.

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At this point, Roger listed items that the ZBA must judge:

1. The suitability of the new odor control method
2. The right to rebuild the destroyed greenhouse
3. Use of a portion of the barn to grow marijuana (fifty foot setback)

The ensuing discussion included these points:

Debra: The iodine odor control method was more concerning; carbon pellets are benign.

Bob:

- Julie Beauchemin has been sensitive to concerns about the iodine control method, and to the owner/farmer situation.
- The chain link fence is a creative solution.
- Regarding marijuana's harmfulness: growing *tobacco* is harmful, and the fish fertilizer really stinks.
- We cannot know the odor situation ahead of time.
- Managing odor is paramount to the neighbors.
- We should be able to keep cameras pointing within the property.

Roger read No. 2 of the Urban Grown conditions of approval, then No. 3. He recommended using the Urban Grown conditions, except to change the odor condition to say, "must change filters every three months, or more often during flowering".

Abutter Mike Bechta thanked Bob, and Julie Beauchemin, for their explanations, and for finding a substitute for the iodine odor control method. Fred Orloski, as an abutter, thanked Julie Beauchemin for all of her answers. He said he thinks the landowners are responsible and community-aware.

Roger moved to close the public comment portion of the hearing and Debra seconded the motion. The Board discussed the matter among themselves, in full view and hearing of the Zoom attendees. Roger said he would be in favor of the project, and of approving the chain link fence. In measuring the fifty-foot setback. Debra said she is also in favor of approval, noting the need to control odor. Bob noted that Julie Beauchemin and her company had given the school committee a walk-through of the site to address their concerns.

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

1. Greenhouses must conform to the Patriot Engineering plan dated September 28, 2021 as revised November 29, 2021. The ZBA approved the rebuilding of the destroyed greenhouses.
2. Members of the Zoning Board of Appeals will visit the greenhouses during each of the first two blooming cycles, to assess odor. Twenty days before each of the first two bloom times, Greenjeans Farms, LLC will send to the Town Clerk and to the Chair of the ZBA a notice to visit on the first and second weekends after the 20-day notice. The board shall endeavor to send at least one representative,

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and the visit will be restricted to ZBA board members.

3. The year that will determine the date of the one-year review will start once Cannabis Control Commission approval is received. Greenjeans Farms, LLC must notify the Chair of the ZBA in writing that CCC approval has been received. The one-year review will be an advertised public hearing at the board's first regular hearing that falls at least 12 months after CCC approval. At the review hearing, the board will hear residents' comments, concerns, complaints, evidence, and testimony, and may impose new conditions.
4. All lighting on the property must be directed downward onto the ground.
5. Odor control carbon filters will be operated in each greenhouse and will be changed at least every 3 months.

Debra seconded the motion.

Roger voted Yes, Debra voted Yes, Bob voted Yes, and the motion carried unanimously.

The Board took a break until 8:05pm, then resumed with Pete Gleason's session.

**Informal preliminary discussion regarding a possible accessory apartment at 159 Westbrook Road.**

Pete Gleason came to the Board because he is thinking of upgrading an existing barn to an accessory apartment and would like information on things to consider and how to proceed. The barn is 430 to 450 sq ft. now; he might add a three-room, one bedroom apartment, for a total of 700 sq ft. The apartment won't be inside the existing barn, but will be built as an ell to the east, with a small porch. The Board read and discussed bylaw section 171-37, Terms defined, comparing the new definition to the old one. Ultimately, the Board said it was unable to feel comfortable with a particular interpretation at this time. It was agreed that Mr. Gleason would email the Planning Board and ask for clarification.

**Discussion with Hannah Davis, Whately Community Development Administrator and Assistant Town Administrator about the formation of the Housing Committee and the search for members.**

Hannah Davis explained that the town has recently received a grant for \$30,000 from the DHCD Rural and Small Towns Grant Program to create a Housing Production Plan for the Town of Whately. The Housing Committee is being reassembled in order to provide input on the new plan.

As the Housing Production Plan will likely involve zoning bylaw recommendations and other suggestions for land use regulations, the Housing Committee is looking for one member of the ZBA to join the Committee. Hannah would like to have the Housing Committee assembled by the end of January, and any ZBA member interested in joining should let her know.

*Documents Reviewed (kept in the ZBA files)*

1. An email from Julie Beauchemin to the ZBA dated January 4, 2022, whose attachment (Second Supplemental Submission to 149 Christian Ln Special Permit Application) explains planned changes to odor control for the Greenjeans Farms marijuana cultivation facility.
2. Attorney Tom Reidy's Bacon|Wilson memo regarding two years being the time required to reconstruct the damaged greenhouses at the Greenjeans Farms marijuana cultivation facility.
3. The list of Conditions of Approval for the Urban Grown marijuana cultivation project that was approved in 2018 but never built.
4. The Patriot Engineering plan dated September 28, 2021 as revised November 29, 2021.

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