

SCITUATE PLANNING BOARD MINUTES February 24, 2022

Members Present: Ann Burbine, Chair; Patricia Lambert, Vice Chair; Rebecca Lewis, Clerk; Stephen Pritchard, Benjamin Bornstein and Bob MacLean, Alternate.

Others Present: Karen Joseph, Town Planner; Shari Young, Planning Administrative Assistant.

Members absent:

See Sign-in List for names of others present at this meeting.

Location of meeting: Select Board Hearing Room, Town Hall, 600 C J Cushing Highway, Scituate.

Chair Burbine called the meeting to order at 6:30 P.M. The meeting was being recorded for airing on local cable television and streamed live on Facebook.

Documents

- 2/10/22 Planning Board Agenda

ACCEPTANCE OF AGENDA: Chair Burbine indicated there was a posted agenda. Mr. Pritchard seconded the motion for the posted agenda and the vote was unanimously in favor.

Public Meeting – Site Plan Waiver – 146 Front St./11 Mill Wharf Plaza – Salt Society Assessor's Map/Block/Lot 50-7-8

Applicant: Kara Tondorf

Owner: MAURALAGO, LLC c/o The Hamilton Group

Documents

- PDF Application
- PDF Plans and Parking Plan
- Email dated 2.3.22 comments from Sewer Department
- Email dated 1.25.22 from Select Board
- Doc DRAFT Approval Letter Salt Society
- Doc Transmittal Letter

Attendees: Kara Tondorf, Owner Salt Society

Ms. Tondorf explained to the Board that the tenant next to Salt Society is moving out and she has opportunity to expand into the space. She indicated she is currently using 55 out of 66 seats; she would like to add another 20 seats in the space next door. She said she spoke with Mr. Vogel regarding the bathrooms and he opined she would be in compliance.

Ms. Joseph indicated that bathrooms are not part of the Planning Board prevue, but it will be reviewed when she goes go to get a building permit.

Mr. Bornstein commented it was good to see a successful business be able to expand, he did not see any issues with the site itself and would be amenable to granting the waiver. He discussed the use and expansion of the outdoor seating area on the sidewalk and asked Ms. Tondorf to consider the

clutter on the sidewalk to ensure it is passable. Ms. Tondorf said since it was just recently approved she is considering putting in some bollards that are stationary to denote the space.

Public Comments:

Mr. Bjorklund commented that it is a great business and anything the Board can do to help improve it is great.

Ms. Joseph indicated the outdoor seating does not require any parking.

Ms. Burbine said the merchants on Front Street may want to consider coming together and working to make Front Street one-way during the summer. Ms. Tondorf said she thinks at some point the merchants will get together and make a proposal to the Town for parking issues, etc.

Motion:

Ms. Burbine moved that the Planning Board finds the proposed site work or building work is minor in nature because there appears to be adequate parking on Front Street and in the Mill Wharf Parking lot and the nearby public parking lot in Cole Parkway, and no site work is proposed, to grant the site plan waiver for Kara Tondorf of Salt Society at 146 Front Street/11 Mill Wharf Plaza to expand into the adjacent 1,100 sq. ft. space with Salt Society, with the following conditions:

1. Construction shall comply with the improvements submitted with the application.
2. Approval is contingent upon all local approvals being obtained from the Town of Scituate particularly approval of the Board of Health and Building Inspector or Inspectional Services Department.
3. Trash shall be handled in covered sealed containers in an enclosed fenced area and emptied at least once daily or more frequently if necessary, or as otherwise directed by the Board of Health.
4. Indoor seating is limited to 86.
5. Any further expansion of the use applied for must come back to the Planning Board for approval.
6. It is recommended that the sewer line be cleaned and inspected prior to occupancy of the new space.

Mr. Pritchard seconded the motion; a vote was taken and unanimously in favor.

Minutes
Documents

Ms. Lewis moved to approve the meeting minutes from January 27, 2022.

Ms. Lambert seconded the motion; a vote was taken and was unanimously in favor.

Accounting
Documents

PO #2207146(\$2,250.00), PO #2207145 (\$450.00), PO #2207059 (\$2,250.00), PO #2206986 (\$864.50), PO #2206987 (\$1,170.00), PO

Ms. Lewis moved to approve the requisition of \$1,170.00 to Chessia Consulting for peer review services for 533 Country Way, for \$864.50 to Horsley Witten for peer review services at Seaside at Scituate, for \$2,250.00 to Merrill Corp. for peer review services at 176 Hatherly Road, for \$450.00 to Merrill Corp. for peer review services at The Residence at Driftway Place Drew/MBTA, for \$1,575.00 to Merrill Corp. for peer review services at The Residence at Driftway Place Drew/MBTA, for \$2,250.00 to Merrill Corp. for stormwater peer review services at 23 Neal Gate Street.

Mr. Pritchard seconded the motion; a vote was taken and was unanimously in favor.

Liaison Reports:

CPC – reported by Ms. Burbine:

- Purchase of land on Hollett Street that abuts the Purple Dinosaur
 - Added funds from original price of \$37.5K appraisal came in at \$41K
 - Contingent upon Town Meeting
 - Likely to be a ballfield
- First Cliff – Sunset Property
 - Purchase & Sale done, but one property owner may be opting out
 - Will circumvent that parcel
- Mordecai Lincoln property
 - \$900K appropriated a year ago for the purchase
 - Sellers asking for another \$400K
 - Appraisal was \$1.5M
 - New purchase price still under the appraised value
 - Will be an item at Town Meeting
 - Signed Purchase & Sales agreement before Town Meeting
 - Home inspection being done and Title 5 Septic

Planning and Development – reported by Ms. Joseph:

- Select Board meeting on 3/1
 - Presentation on Foreshore Protection and Coastal issues
- Planning will be attending Advisory Committee on 3/3 for review of Warrant Articles
- 48-52 New Driftway – Gas Backwards project
 - Re-arranging handicapped parking space in the rear
 - Received a Grant for electric vehicle charging station and required to have handicapped parking by the charging station
 - Ms. Joseph indicated spaces will remain 9'x18', no spaces are being lost, small re-arrangement of spaces; she opined it is an insignificant field change
 - Board agreed it was insignificant change
- Toll Brothers - Seaside at Scituate
 - Being fined again for silty water going offsite
 - Ermine and Thelma
 - Silty water going into the drainage system at Wendy and Brand Boulevard
 - Roof drainage pipes going into Norwell Terrace
 - Planning and Conservation told Toll that needs to be fixed.
 - Roof drains are allowed but the water needs to stay on site.

- All building permits have been issued
- Still a fair amount of site work to do
 - Basins all need to be fixed
- Projects are moving along
 - Gas Station
 - Drew Project
 - 18 Ford Place – hopes to have closing on April 1 for first unit
 - Residential Compound - homes are all sold/under agreement
 - Looks barren, landscape will be required per the decision
 - Curtis Estates
 - Condition of the stonewall at front of the property was not acceptable
 - Developer says will be fixed in the spring
 - Septic system needs to be reseeded with the appropriate seed mix
 - Installer of permeable pavement is doing a very good job
 - Mann Hill – clearing has been done
 - Erosion control and entrance was approved after the first of the year
- Next Meeting
 - 7 New Driftway will present a new concept
 - 81 Norwell Ave. Accessory Dwelling
 - Vote recommendations to Town Meeting
 - Discussion about MBTA Communities
 - Qualifications for 2022
 - Complete online form
 - Who is in charge in the community
 - What districts does the community have
 - Meet with the Select Board to present the guidelines
 - Will be able to apply for One Stop for Growth Grants, Housing Choice Initiative Grants, MassWorks Grants, etc.
 - Scituate will not have to comply until 2024
 - Future Zoning changes will likely be needed
 - Only one district – Outer Village in North Scituate that is 15 units by acre by right and 24 units by Special Permit, 20 acres not counting the MBTA parking lot
 - State requiring 15 units by acre by right
 - One area in Greenbush that is 16 units by right and 36 by Special Permit
 - Scituate does have some areas that already meet the requirements, but State is requiring 50 acres and for the Town of Scituate approximately 1,200 units.
 - Areas just need be zoned for, they do not have to be built
 - There are some areas in North Scituate and Greenbush that currently have 12 units/acre by right and 24 by Special Permit, not a big deal to maybe go to 15 units/acre by right.
 - Scituate ahead of some Towns with the VCN Districts

**Public Meeting – Site Plan Administrative Review Common Driveway – 46 Hollett St.
Assessor's Map/Block/Lot 13-1-4
Applicant/Owner: Christopher & Barbara M. Horne**

Documents

- PDF Application Right Side up
- PDF Common Driveway Application_Signed
- PDF Common Driveway Plan 46 Hollett Street
- PDF Steve Bjorklund Letter
- PDF ZBA Decision 2021
- Jpeg 46 Hollett
- Doc Summary of Issues
- Doc Transmittal Letter
- Doc DRAFT Motion Form for 1st continuance
- Email dated 1.24.22 with comments from Fire Department

Attendees: Steve Bjorklund, Representative; Greg Morse, Morse Engineering

Mr. Morse reviewed the plan.

- Common Driveway at 46 Hollett Street
- Property divided into 2 Lots
 - Lot 1 a retreat lot, 50' Frontage Lot
 - Lot 2 existing home, 46 Hollett Street
- Common Driveway
 - Access off Hollett Street
 - Splits with an extension of the driveway to Lot 1 which in future will have new home
 - Location is at the existing driveway, curb cut located on Hollett St.
 - Location is already paved
 - Location is already void of vegetation
 - Plan is in compliance with Section 720, design standard 720.7 A-L
 - Minimum width of driveway is 16'
 - Driveway is located with an easement
 - ASHTO sight distances have been provided with sight distance triangle
 - Identifies trees to be removed
 - Proposing to remove one tree - 12" evergreen
 - Emergency vehicle turnaround
 - Hammerhead turn around provided 20'x30'
 - Letter from Deputy Fire Chief with acceptance of location
 - Driveway cannot exceed a 1,000' in length and cannot service more than 3 lots
 - Driveway is 82' measured from the property line
 - Driveway is 110' measured from the center line of Hollett St.
 - Only accesses 2 lots
 - Note 5 on the plan will also be added to the deeds of each property
- Section 770 standard of review
 - Purpose and intent
 - Reduce access points on to roads
 - Only proposing one access point
 - Protect wetlands and other sensitive areas

- No wetlands or other sensitive areas on the property
- Less land and vegetation disturbance
- Protect the rural atmosphere of Scituate
 - Other Common Driveways on Hollett St.
 - Maintain rural atmosphere by reducing the number of curb cuts, reducing impact to stone walls or scenic vistas along the roadway
 - Sited in the existing driveway to not have any impacts on the rural character of the Town.

Ms. Burbine opined this is incomplete, there is no information about the second lot, she has issue with the parking spaces in front of the existing garage. She said she would be more comfortable if the common driveway was extended on to Lot 2 and if the turnaround was there rather than in front of the existing house; the driveway is only 2' from the property line, it is right on top of the abutting property. She said maybe it complies, but there is too much missing. She is aware of the Section 6 Finding from the ZBA but there needs to be an approval of the Common Driveway from the Planning Board in order for it to go forward otherwise a non-conforming lot has been created. She said she has a problem with this.

Ms. Joseph indicated that because the submission did not have any drainage she did not have the proposal peer reviewed. From her review she believes

- The tree line from the adjacent property should be added
- She questions if there will be a puddle at the end of the driveway because everything is cross pitched towards the end of the driveway
- The Deputy Fire Chiefs memo indicates the proposal complies for now but will need to be revisited when the second home goes in.
 - The purpose of the common driveway is to have the turn around so both houses can be serviced.
- The applicant says there will be less paving
- It is not likely the septic system will be in the driveway
- The utilities are being shown on the other side of the property not in the common driveway
- Does the Board feel the driveway should be screened?
- The sight distance says it complies for the posted speed limit
- The lot width isn't shown
 - The lot width needs to be measured from the common driveway so the Form A can be recorded
- Under Section 770.6 she opines it meets the requirements of protecting against detrimental and offensive methods of using the site, traffic safety and ease of access at street grade, adequate sight distance, safety and adequacy of driveway layout and pedestrian safety,
- Can an emergency vehicle turn from both ways into the driveway?
- No hydrants are shown
 - Cannot say if there is adequacy for firefighting and distribution of water supply
- The site is not in the Water Resource Protection District
- It minimizes cut and fill because it uses the existing driveway

- Minimizing obstruction of scenic views is not applicable
- Not sure if the outdoor areas are buffered
- Assuming outdoor lighting is probably minimized
- Safe and convenient pedestrian access is not applicable.

Ms. Burbine said she feels very strongly it is an incomplete application.

Ms. Lambert had no comments.

Ms. Lewis asked for more information on the driveway. Mr. Morse said it is being widened to 16' from 12' and the area where the turn around is largely developed with a stone/brick patio area, that would be paved, there is pavement along the side of the garage that would be removed. He said ultimately on Lot 1 there will be a single-family home that is what the district allows and what is said on the plan. He said they do not have the size of the house at this time and it is not necessary for the common driveway. He said the use of the land is certainly something to review, but they do not have the dimensions of the house structure and he does not see the nexus between those two.

Ms. Burbine said she has been on and off the Board for many years and she has never seen a common driveway application like this.

Ms. Lewis asked which direction the 4' will be added to the driveway, will it be closer to the neighbors house. Mr. Morse said it will go to the right, currently the existing driveway is right next to the lot line, it encroaches and it will not be any closer to the neighbors.

Mr. Bornstein commented it hits the mark in terms 50' frontage approval, it is a developable lot for a single-family use and meets the purpose and intend of the common driveway bylaw by minimizing disturbance, paved area, reduction in curb cuts, but he is concerned about the location of the turnaround area potentially being used for parking, it seems more like a driveway turnaround for residents verses emergency vehicle turnaround. He opined this plan is conceptual in nature because it is not showing a definitive plan for the remainder of the common driveway. He questioned if the Board could be setting a precedent by not having the complete driveway on the plan. He said he feels it is more conceptual then definitive.

Mr. Morse said the common driveway is where both properties access and what both properties have right to access over; that specifically stops at the end of the easement. He said the length of the driveway to Lot 1 does not matter because there is no limit in the Town on the limit of a driveway on a single-family home. He said the first 80' is identified as being common, the driveway beyond that going to Lot 1 the length does not matter, length only matters where it is common.

Mr. Pritchard asked how the turnaround for emergency vehicles supports Lot 1.

Mr. Bjorklund said under Section 720.7.J, turnarounds should provide a minimum length of 20'x 30' in locations approved by the Fire Chief. The location was approved by the Deputy Fire Chief it is not under the Planning Board prevue. He spoke to Ms. Joseph's comment regarding a fire vehicle being able to turn from either direction on Hollett Street and said he addressed that with the new Deputy Fire Chief they will have to go back to have that question answered, but it was discussed that there is a hydrant located at the intersection of Sedgwick Drive just north that is within 300' of the new dwelling so there was no problem with water to the site and the fire truck would be able to access as

long as the driveway is 16' wide in both directions at Hollett Street. Mr. Bjorklund said the Deputy Chief said as long as the new driveway is 12' wide to the new house there will not be a problem. He said that will come in a written comment.

There was discussion about the driveway and when and what the applicant would need to come back to the Board for. The applicant would not need to come back to the Board for further explanation of the driveway to Lot 1, that would be part of the building permit phase. Ms. Joseph indicated the Fire Chief wants to re-evaluate the driveway when Lot 1 comes in. The Planning Board would not be involved at that point. Ms. Joseph will speak with Captain Donovan again for further clarification.

Mr. Bjorklund said they have reviewed the common driveway itself and what is going to be reviewed separately is the driveway that is going into Lot 1 to make sure the truck is able to travel up the roadway; he is not revisiting the common portion of the driveway. He said there will be no building permit issued if a fire truck cannot make it up the driveway. He said the common driveway portion has been reviewed and Fire has no issue with the proposed turnaround.

Ms. Joseph indicated that the common driveway encompasses a large portion of the front lot; she questioned why the rest is not common and why it stops at 85'.

Ms. Burbine said she does not understand that either and asked why the driveway is not extended with a turnaround because a fire truck would have to back up all way to the second house to turn around. Mr. Bjorklund said if the Fire Chief wants a single turn around at the new house they will be told when applying for a building permit.

Mr. MacLean said he would not want to back up the fire truck, but if the Fire Chief is okay.

Ms. Burbine said this is an incomplete submission.

Mr. Pritchard said there needs to be clarification from the Fire Department.

There was discussion about what happens at the end of the common driveway; there is a permanent easement there for Lot 1. Mr. Morse said there is a separate easement at the end for the exclusive rights for Lot 1 because there it is a single driveway. Mr. Bjorklund said the remainder of the access into Lot 1 is shown on the plan and the easement is created.

Mr. Bjorklund said if the Board wants to condition that Lot 2 could use to the end of the common driveway and there is an exclusive use easement for Lot 1 to use the rest of the driveway the applicant would accept that condition.

Mr. Bjorklund said there is a DRAFT Common Driveway Agreement, but there are some changes to be made, i.e. no parking in the common driveway and the common driveway easement cannot be changed without the approval of the Planning Board. Ms. Joseph said those are items in all common driveway agreements.

Mr. Bjorklund addressed the parking spaces in front of the garage saying the paving is going to be in the entire area and was accounted for in the calculations done by Mr. Morse. It is still under the impervious area that is currently there. There will be room to park the cars and they will accept the condition of no parking in the common driveway. Mr. Bjorklund added there is sufficient parking for the existing house on Lot 2, there is a setback from the property line now and it is being moved

back a little bit, they can add a tree line next to the neighbor's property and the turn around area has been approved. He discussed the septic system location and said there is nothing under the common driveway and said Lot 2 will get a new septic system, the water and electric for Lot 1 is coming across a lawn area it does not have to be under the driveway. He said it does not make sense to dig a trench under the existing driveway when they can go across a lawn area.

Mr. Bjorklund indicated the ZBA decision was not a Section 6 Finding, but a Section 610. 2B Fifty Foot Special Permit Lot so nothing is made non-conforming. He said nothing has been made non-conforming, nothing has been recorded, the plan has been held in Town Hall until the common driveway is approved. He addressed the width of the lot for Lot 2, indicating the plan says it is 152' on the north side and 191' on the south side; the lot width requirement is 125' he opined it is simple to see there is over 125' of width measured in the direction parallel to the common driveway. He said if the Board would like to see the exact dimension measured at the house it can be added to the plan, but it is clearly over 125'.

Mr. Bjorklund said they will add the hydrant to the plan. He went on to say Ms. Burbine is correct it is not a complete plan, but that is the reason they are here tonight to discuss with the Board what they want to see on the plans that are in Section 770. He opined the Board can vote on the common driveway as an administrative review that it does meet all the requirements, but if the Board wants more information on plan there is the opportunity to discuss what that information is. What does the Board need to see and what does it not need to see, i.e. does the applicant need to show grading 300' away from where the common driveway is going to be on abutting properties; his opinion is no, that doesn't need to be there for the Board to vote on the common driveway. It is those items that the applicant is looking for direction from the Board if it needs to be on the plan.

Mr. Pritchard asked the applicant to address Ms. Joseph's comment about the puddling at the end of the driveway. Mr. Morse said the existing driveway is pitched in a southeasterly direction away from the house toward the neighbor and toward Hollett Street. He said they are proposing to put a cross pitch on the new driveway, approximately 2% pitch, 4" from one side of the driveway to the other and pitch it toward the property, pitching to the north and then out to Hollett Street. Mr. Morse said he would provide additional spot grades and does not believe there will be any puddling. There was further discussion that when the common driveway is built the existing driveway will be striped and taken down and regraded, etc. and meet the requirements. There is a cross-section of how the driveway is to be constructed on the plan.

Public Comment:

Ms. Julie Straley resident of 231 Levitt Street in Hingham speaking on behalf of her parents' residents of 52 Hollett Street, Dennis and Kathleen Moran, said her parents have lived in the house since 1974 and they have concerns about the plan and that increased traffic next to their property inappropriately diminishes their property; the common driveway turns the house into an undesirable corner lot with less privacy than what they have now. She said what is proposed is referred to as a common driveway, but it is really a street and referenced the house number for the back lot. They are concerned about the emergency vehicle turn around and unsafe parking lot. They asked if there is some assurance that cars won't be parked in the turnaround area. They appreciate that approval is needed by the Board and asked that the request be denied. If the owner of Lot 1 can seek approval for a house to be built they would assume approval could be sought for the driveway to go on the other side of the house, rather than creating a parking lot and street next to their house. The plan does not make sense to them and they don't feel the plan respects the property rights of the abutters.

Mr. Bjorklund addressed the abutters concerns; there are assurances that there can be no parking on the common driveway because that will be conditioned, it is not a parking area it is a turnaround for emergency vehicles which is required in Section 720 of the Common Driveway Bylaw. There is no drainage going towards the neighbor and a common driveway is a reasonable use of property. He said if it was a simple thing to put the driveway across the 50' frontage they would put the driveway there, in order to that the entire existing driveway would have to be removed and there would have to be a driveway that would loop around the property to the back of Lot 2 that would still come down the property line in a reverse direction to have the garage accessible; he said that would be a disaster. To meet the requirements for a common driveway this is the way the site has to be developed. He said they would like to be able to come in and put a single driveway, but this is the way it has to be and the concerns from the abutter are condition able and it is routinely done on common driveways. He said he would love to speak with the abutters if they would have him in.

Mr. Burbine asked for clarification if the common driveway ends at the corner of the house. The applicant said yes.

Ms. Joseph asked if the Board will want screening further back adjacent on the property; the Board said yes and asked for a landscape plan.

Mr. Pritchard said that what was talked about tonight needs to be shown on the plan and the applicant needs to indicated how the drainage will work; the applicant will add the hydrant and show the approximate location for the new septic system.

Mr. Bornstein asked how likely it will be that the development of Lot 1 will trigger the Stormwater Bylaw. Mr. Bjorklund said 50/50. Mr. Bornstein said one of his concerns is how is the Board supposed to factor in the common driveway into the drainage calculations and system, when the pervious area up to the 82'/85' mark for the common driveway ends on Lot 2. That needs to be factored into the development of Lot 1. He said it needs to be clarified how all this is going to happen. Mr. Bjorklund said if there is more work done on Lot 2 which triggers the stormwater with the 12' extension then it maybe required. Mr. Bornstein expressed concern that it could cause issues because this plan has already been filed for the common driveway. Mr. Bjorklund said there is nothing for sale right now and it is a family situation; if some infiltrators need to be put out front that can be done. The driveway will not be constructed until a house is being built.

The Board said the drainage needs be thought of holistically. Mr. Bjorklund said when they get through this process which is not a special permit, it is an administrative review which the applicant is entitled to in the Bylaw; if the Board chooses to vote against it he asked that they be told the exact section of the Bylaw that the applicant does not meet so it can adjust for. They believe they meet everything required in the Bylaw.

The Board requested clarity from the Fire Department.

Ms. Burbine said she would like to see the common driveway continue to the property of Lot 1. Mr. Bjorklund said they will have to review.

Motion:

Ms. Burbine moved to immediately continue the public meeting for the Site Plan Administrative Review Common Driveway at 46 Hollett Street until March 24, 2022 at 7:00 pm and to continue the time for action for filing with the Town Clerk until May 13, 2022.

Mr. Pritchard seconded the motion; a vote was taken and unanimously in favor.

Continued - Public Hearing - Stormwater & Site Plan Review Common Driveway – 533 Country Way
Assessor's Map/Block/Lot 26-2-5
Applicant/Owner: Marvell Homes, LLC

Documents

- Doc REV 3
- Doc 4169 PB Sub Ltr SWP 12-11-21
- PDF 4169 SW Report 1-10-22 Part 2 of 12
- PDF 4169 SW report 1-10-22 Part 1 of 12
- PDF 4169 SW report 1-10-22 Part 3 of 12
- PDF CD-01-10-22-SHT2
- Doc Summary of Issues
- Letter from abutter Tina Davin

Attendees: Steve Bjorklund, Representative

Mr. Bjorklund indicated this is a common driveway with stormwater that has gone out for review, it is much more extensive than the one just being discussed.

- Project has been reviewed by Mr. Chessia and comments have been provided
- Last meeting items were discussed with Mr. Chessia and Mr. Tansey
 - Mr. Tansey has made changes per Mr. Chessia's review letter
 - Drainage items will be put on the plan, there will be 2 separate plans
 - Drainage plan and a Common Driveway Plan
 - Plan has been highlighted with all changes that have been made and provided to Mr. Chessia
 - Will continue to work on drainage
- Mr. Bjorklund is looking for direction from the Board on what items from Section 770 need to be included on the plan
 - Mr. Chessia's comments letter defers to the Board
 - Cross-section is not consistent with the design
 - The Board wants the cross-section shown on the plan
 - Site disturbance
 - All trees are shown as well as areas that are not to be disturbed
 - Trees to saved have been identified
 - Screening
 - Driveway is in the middle of property
 - Landscaping plan is being done
 - Landscaping on individual lots will be up to the homeowner
 - Applicant has already agreed to replacement trees from the Scenic Road

- Landscaping plan will show where trees are proposed to be located
 - Scenic Road conditioned replacement trees be placed under the direction of Ms. Joseph
 - Landscape plan will show grass swales and location of some trees
- Mr. Bornstein requested the applicant review and incorporate Section 751.3
 - Site is subject to Low Impact Development standards because it is in the Water Resource Protection District
 - Applicant should also review Section 751.2
- Speed Analysis
 - Mr. Bjorklund said he does not know of speed analysis being done for any common driveways in Town
 - There is over 300' in both directions which exceeds what is needed
 - Traffic Rules and Regulations has already commented
 - Fire Department has commented
 - Board agreed speed analysis is not necessary
- Building Floor Areas
 - Board requested
 - Mr. Bjorklund argued that requirement is more for a commercial building that would have more impact than a single-family dwelling
 - He said the footprints are on the plan
 - The Board requested the size of footprint be added to the plan
- Required Setbacks on the Zoning Table
 - Table shows what is required and what is proposed
 - Mr. Bjorklund said the information is there
- Existing topography on abutting properties
 - Mr. Bjorklund said they do not have permission to go on the abutting property
 - Mr. Bjorklund pointed out an area on the plan where a drainage outlet has been redirected to not affect the neighbor's property
 - Mr. Bjorklund pointed out a compression area and indicated in the 100 yrs. storm the rate have been reduce to .29 cubic ft./second to .11 cubic ft./second; it has been reduced by 50%.
 - The Board will not require topography of abutting properties
- Specificity of trees to remain on a landscape plan
 - The Board wants to see the trees on the plan
- Data on entrances and exits to the houses
 - Mr. Bjorklund said patio/deck areas and walkways to the driveways are on the plans to and from the dwellings
 - The Board wants to see the entrances
- The Board wants to see the lighting
 - Mr. Bjorklund said lights have been added at the end of the driveway
- Recommended conditions – Board requires both
 - 720.3 DPW approval of the sidewalk construction
 - Mr. Bjorklund said there will be a separate plan for the roadway

- 720.5 require a copy of the O&M Agreement as a condition prior to release of the lots for construction

No public comment.

Motion:

Ms. Burbine moved to accept the applicants request to continue the public hearing for the Stormwater Permit and the public meeting for the Site Plan Administrative Review for a Common Driveway at 533 Country Way until April 14, 2022 at 6:30 pm and to continue the time for action for filing with the Town Clerk until May 6, 2022.

Ms. Lewis seconded the motion; a vote was taken and was unanimously in favor.

Public Hearing – Proposed Zoning Amendment for Annual Town Meeting April 2022

Documents

- Doc DRAFT Motion to Close Public Hearing

Public Hearing - Proposed Zoning Amendment – Section 440.5 – Business District

Ms. Burbine indicated this is a housekeeping issue; adding the VCN (Village Center & Neighborhood District)

No public comment.

Public Hearing – Proposed Zoning Amendment – Section 620.3 - Setback and Yard Requirements

Documents

- Doc Section 620 Redline Version

The Board is not pursuing this amendment.

Public Hearing - Proposed Zoning Amendment – Section 610.1 – Lot Area and Width Requirements

Documents

- Doc Section 600-proposed post phrg 2
- PDF Section 600 – proposed post phrg 2

Public Comment:

Mr. Steve Bjorklund said he has not seen the new language yet from the last meeting; he asked if there is still a certain distance that cannot be counted to the lot area.

Ms. Burbine said it is 30’.

Ms. Joseph read the proposed language, “Any lot, created after April 11, 2022, shall have dimensions sufficient that a circle of 30 feet diameter can be drawn tangent to the exterior of any property line at all points without the boundaries of said circle passing over the opposite property line. Any portion of any lot created after 4/11/2022 that does not meet the above criteria shall not be counted toward the buildable lot area. All buildable lot area must be contiguous.”

Ms. Burbine explained it prevents rattails from be counted as part of buildable area. She gave 33 Beaver Dam Road as an example; a 10’ space was purchased to allow for the sewer to get out to Jericho Road. This would still be allowed but the space could not be counted towards buildable lot area.

Public Hearing – Proposed Zoning Amendment – Section 800 Nonconforming Structures – Bob Vogel

Documents

Attendees: Bob Vogel, Building Commissioner

There was no new comment on the Bylaw.

Public Comment:

Mr. Bjorklund said he has reviewed the proposal again with Mr. Vogel and he is now in favor of the change.

Public Hearing – Proposed Zoning - Marijuana

Documents

- Email dated 2.24.22 from Dianne Wells
- Email dated 2.11.22 from Kristin Condon
- Doc Marijuana 2.14.22 Public Hearing REVISIONS
- Doc Marijuana 2.14.22 Version 3
- PDF Letter dated 2.23.22 from Val Baker 2
- Petition Documents from Dianne Wells

Attendees: Cindy Amara, Town Counsel

Ms. Burbine turned the meeting over to Ms. Lambert.

Ms. Lambert made some opening remarks in which she stated that the Planning Board did not draft a Cannabis Bylaw until the Citizen’s put forth their own Bylaw; 2018 a Ban was placed on Adult Use Marijuana which was legalized by the State in 2017. But, in 2018 Town Meeting instructed the Planning Board to craft a Bylaw for the legal use of Adult Use Marijuana; the Board was slow to start the process and not until it was brought forth by the Citizen’s Petition had the Board had any additional direction to craft anything. In 2021 the Citizen’s petition was presented at the Special Town Meeting to lift the ban on Marijuana. It would be irresponsible to lift a Ban on Marijuana without Zoning in place to protect the Town and its citizens from the siting of a business or use particularly one as controversial as Cannabis. She said there have been comments that it is not appropriate for the Board to site such a business, but stakeholders have been involved in the process,

Police, Clergy and the Residents and amendments have been made to the proposal from those sources. She said without this process there is a real possibility the Ban could be lifted without the safeguards that are incorporated in the Bylaw. The Bylaw is a responsible legal use for Adult Use Marijuana. She said the Citizen's Petition requested to lift the Ban, but a Zoning Bylaw is need to accompany such an action and that is what the Board is doing; as elected officials it the Boards' legal responsibility. She addressed the Board's seeking advise from a Marijuana Specialist to help craft the new Bylaw; Mr. Romano offered his services to the Board, the Board accepted some of his suggestions and reject many others. The goal is to reflect the needs of the citizens of Scituate while creating a framework for the siting of these businesses should the Ban be lifted. She said there are some citizens that want the Ban to be lifted, they were doing it outside of the lengthy public comment process in which the Board has engaged. She said she is also offended at the suggestion that the members of the Board are engaging in this process for any reason other than to do their jobs which is to create a Bylaw for the siting of a legal business in Massachusetts. She said Mr. Romano has not received any payment, no public funds have been expended on his expertise. She said Mr. Romano is not the only Attorney that has been consulted, Town Counsel has been fully engaged and Town Counsel has also been working with the Attorney General's Office (AG). She explained how the process unfolds; the zoning is put in place, the Ban is lifted, and the Bylaws are changed. Cannabis is in Scituate with or without the Planning Board engaging in this process; there are residents in Scituate who will seek to over a turn the Ban on Adult Use Cannabis business. She said if you believe there should be no dispensary in Scituate vote "no" if you believe Scituate would benefit from having Marijuana Establishments vote "yes" on the Zoning Bylaw and lifting the Ban. Finally, Ms. Lambert said the Board has not been in conversation with any other Board on this and does not know how they will vote; this Board has not yet decided how they will vote.

Ms. Lambert explained based on the last meeting several things have been added to the Bylaw;

- Table of Uses includes all types of establishments
 - Done on the advice of Town Counsel
 - Establishments were placed in the appropriate zones
- Playgrounds, Libraries and Ballfields were added to the buffer zone of 500' to a Marijuana Establishment
- Cultivation Facilities was changed from 5,000 sq. ft. to 4,000 sq. ft. for both Medical and Adult Use Establishments
- Section 440.4.B.3 language added "no Marijuana Establishment shall be sited or allowed unless and until such time as Section 492 of the Zoning Bylaw and Section 32060 of the General Bylaws are removed".
- If the Zoning Bylaw passes and the Ban is not lifted the Zoning becomes illusory; the Town can be subject to lawsuits.
 - "Illusory" is defined as based on an illusion and not real

Ms. Lambert said the public hearing will be closed this evening, but the Board will not vote on this until their next meeting.

Ms. Lambert indicated two new comments were received today for a total of 13 comments; everyone seems to be bringing up the same issues. She said please read the Bylaw, there are no Marijuana Establishments in residential areas, all the libraries are in residential areas, all the ballfields are in residential areas, all playgrounds are in residential areas with the exception of the playground in North Scituate, but playgrounds have been included in the 500' buffer distance.

The meeting was opened to the public for new comment only.

Public Comment:

Ms. Maureen Connolly resident of 1 Rachel's Way said she was not at the last meeting, but did watch it online. She said looking at the Municipal Zoning Tracker out of 351 Cities and Towns listed in the Commonwealth 113 have a Ban in place, not all Towns answer, but most of the South Shore is included. She referred to the Town of Upton that has Zoning in place along with the Ban. She opined we should be voting on the Ban first at Town Meeting and if Town Meeting were to continue with the Ban there would be no need for Bylaws; she asked that the Board review. She said on a positive note she was glad to hear the priority is to protect children and neighborhoods. She indicated she has looked at Quincy and Marshfield Bylaws they have much more in their Bylaws, as far as protecting children; they include colleges, licensed daycares, recreational or athletic fields, Boys and Girls Clubs and similar places where children congregate, youth activities for those under 21 years old. Quincy also included any public beaches and public transit centers and she feels those are important to include; do we want people coming down the commuter line to buy their marijuana.

Ms. Lambert addressed the comment, it is illegal for anyone under 21 to be in a dispensary, the Bylaw does require a 500' distance from licensed daycares, with regard to beaches and marinas the Town has a General Bylaw that says alcohol consumption and/or drugs in public is not allowed. She said that is a policing activity and that is not in the purview of the Board. She said if you see that happening as a citizen you should call the Police. She also indicated that Scituate beaches are in residential areas and establishments cannot be there.

Ms. Connolly also discussed the boundary lines at 500' from the property lines, she said in Quincy there is also a 1,500' requirement from a residential district. She read how Quincy defines the measurement "the nearest property line of the land used for the above purposes to the nearest portion of the building in which the Marijuana Establishment is located using the route of direct pedestrian access". She said neither is measuring from the center of a building. She opined by doing that the distance is shortened from what is required. She also said neither one has the provision for the 400' for a special permit and she hopes that Board will look at those again on how the measurement is taken. She further went on to say that in Marshfield the facility is on Rt. 139 it is not near anybody, it is not in a pedestrian area. In Quincy there is a Medical facility and one in the works near Blue Hills which is not near anyone and does not impact anyone. She asks why the Board would be considering North Scituate which has a playground, ice cream shop and lots of kids and Greenbush which has plenty of neighbors, Scituate Pediatrics, a playground, dance studio, etc. and from the building going on it looks like it is becoming a vibrant area for families and Scituate Harbor is also a very family friendly area. In conclusion she requested the Ban be on the Town Warrant before the Zoning Bylaws, to look at the Municipal Zoning Tracker and look at the boundaries and how they are done, because the way it is being done definitely shortens the 500' especially if there is 400' special permit. She is pleased about protecting the children and hopes that is a top priority and the Board would find a more appropriate areas where children and families don't congregate.

Ms. Lambert responded that North Scituate and Greenbush are the Commercial areas and although there are residential parts of those areas, establishments are sited in those areas because those are zoned as commercial areas.

Town Counsel, addressed the comment on how items are put on the warrant. In her experience the Bylaw goes first, because if the Ban is lifted first and the Bylaw does not pass then the situation is

there is no Ban and there are no Zoning limitations governing where these facilities could go. It is a logical progression of events; if the Zoning is passed then the Ban should be lifted, either both should be done or neither should be done. The risk of lifting the Ban without having the Zoning already voted means there is risk of expanding where establishments can be lawfully located in Town without any of the protections the Zoning Bylaw puts in place.

Mr. Pritchard asked Town Counsel, why a Ban vote could not be done along with the Zoning simultaneously; package it all together. Town Counsel indicated because they are different votes. Mr. Pritchard asked why it could not be one vote. Town Counsel explained that they are two different votes, one to remove the Ban and the other is to add a new section; even if they were one article they would be taken as two separate motions because they are different subjects. She said realistically the people who are going to vote for the Zoning are going to vote “yes” to the Ban and those that are not going to vote for the Zoning will vote “no” to the Ban; the articles are back to back for that reason. Ms. Lambert said many people have spoken on this, including the Attorney General.

Mr. Pritchard said what he heard last time was if the Zoning is passed and the Ban is not lifted the Town is being exposed to litigation. He continued to question why they could not be done as one and packaged together to make one decision. Town Counsel said they are routinely done as separate articles or motions because they are technically separate questions before the voters, just like the third one for the General prohibition that needs to be lifted. They are separate questions for the Town and the Town should vote consistently among the three; there is no reason for someone to vote for lifting Ban and not putting in Zoning or vote to keep the Ban and for the Zoning, they go hand in hand.

Mr. Pritchard said if it is just tradition than he would not worry about that, the real issues is whether to lift the Ban or not. He said the Bylaw for lifting the Ban should be voted at the same time. Town Counsel said they are being voted at the same time, but they are consecutive, they are back to back.

There was discussion on the process and if it was up to the Board to decide the order or the Town Moderator. Town Counsel said the Moderator will instruct people of the consequences of a “yes” vote on the Zoning and a “yes” of lifting the Zoning Ban and a “yes” vote for lifting the General Bylaw ban. He will also inform everyone about the consequences of voting the opposite way; he will explain why if you vote one way you should vote consistently. Mr. Pritchard said he, the Moderator, is not setting the warrant the Board is. Ms. Burbine disagreed and said the Moderator sets it. Ms. Joseph explained that the Board recommends an order for the Warrant as it is put together. Mr. Pritchard said he is recommended that they be put together as one. The Board will continue to discuss that option.

Mr. Bjorklund said no matter what happens the Zoning needs to go in first; if the Zoning goes in and passes and then moratorium doesn’t get lifted there can be a motion to reconsider the article on the Zoning. There only needs to one article in between. He said pass the Zoning because if it is not passed these establishments could go anywhere were general business is allowed it could go right next to the playground. If the lifting of the moratorium doesn’t go through a motion can be made to rescind the Zoning article and then the Town does not have to worry about being sued.

Mr. Conor Doherty resident of 603 Country Way said he has heard a lot from Ms. Lambert about consulting with lawyers and Mr. Romano and pro-bono services and all the concern for the children, but what he said he hasn’t heard is if there have been any consultations with public health experts, child counselors, school nurses. He said his concern is there a lot of research about the addictive

effects of marijuana use which is about 1 in 10 for adults, but skyrockets to about 20% when people start using as teenagers. He said opening a dispensary isn't going to make it less likely that our kids are going to be exposed to it and he hopes that the pros and cons are being considered. He discussed the playground in Greenbush saying it is not a "public" playground, but a private playground for a daycare but the public uses it. He said he hopes we are being honest about the pros and cons of the situation and looking at holistically.

Ms. Lambert responded that the Planning Board's job given to them by the Town Moderator was to take the Citizen's petition and make a legal use; the petition was to lift the ban. She said she and the Board understand his concerns, but in terms of addiction, etc. that is not part of the Board's prevue. Their prevue is only over a legal land use and that is what they are addressing. She thanked him for his concern and said they hear him.

Ms. Annmarie Galvin resident of 80 First Parish Road thanked the Board for continuing the conversation and for their consideration of many of the comments that have been made during the process. She indicated at the last meeting she asked the Board why the particular list of businesses was being proposed and she had not heard any comments on that. She referred to an early comment made about the Zoning in Marshfield, Rockland and Quincy where there are typically 2-3 Cannabis business types in those communities, communities near highways, office parks and better access for consumers. She said she can understand Zoning a retail Cannabis businesses or possibly smaller micro businesses for our small coastal community, but she has not heard of any rational for the other 6 business types outside of retail for Scituate; she asked if there is a reason for delivery, transport, cultivation, manufacturing being included.

Ms. Joseph responded the Board has reviewed Ms. Galvin's comment again with Town Counsel. Counsel has advised the Board all the different types of establishments need to be included otherwise a ballot vote is required to exclude them. The citizen's petition did not direct the Board to do a ballot vote, the petition directed the Board to do a Bylaw for Marijuana. The Board has reviewed where it would be reasonable for all these establishments and it has been limited to one zone.

Ms. Galvin said that is inaccurate, that a ballot vote is not needed in Scituate. Scituate is a "no" community on the statewide ballot vote so a ballot vote is never needed it is always Town Meeting for a Zoning Bylaw and General Bylaw. She questioned again why the Board is proposing the 7 businesses for the Town.

Ms. Joseph said the Board is doing what Town Counsel advises, by including all the establishments. Town Counsel said the original petition included all establishments. Ms. Galvin was confused on the number of business that were being proposed she was referencing 7 business types when there are more which are documented in the version posted on 2.14.22 located on the website. Ms. Joseph said the only business that has not been sited is a Social Consumption Business because it is not legal in the State yet. Ms. Galvin said her question remains the same and listed several communities, Quincy, Boston, Cambridge, Marshfield, Rockland that do not zone for all the business types. She asked why is Scituate zoning for all the business types. Ms. Galvin opined it is a bad idea to put forth 10 business types and if it was limited maybe more people would vote for it. She said the Board has not made a case for it.

Town Counsel said the law says establishments can be limited to 20% of liquor stores, if it goes beyond that there needs to be a ballot question. She indicated she has talked to the Attorney General's Office there has to be a ballot question.

Ms. Tracy Cutting resident of 389 Country Way thanked the Board for incorporating some of the changes, these have been hard meeting for the Board and for the residents because it is such a volatile topic. She said when she looks to vote for people who hold positions, like the Board, it is usually never personal it is about the person who shares the viewpoints and policies that she does and she wants to know what they are. She asked the Board if they are willing to say what their vote will be and are they willing to say it tonight. She said she does not know where the Board stands and they are writing the policies. She said she grew up in this town and shared some personal information about family members suffering from addiction. She said as citizens it is important for people to know how the Board is going to vote. She said she is voting "no", but is confused and is thinking if the Bylaws comes first she has to vote "yes" on the Bylaws and vote "no" on the Ban; it is confusing and they are being told they need to be consistent on their votes, but without them being together it is confusing.

Ms. Lambert said the Board is going to vote, it is a public vote so the residents will know how the Board members vote; they will vote on all 6 articles. Ms. Lambert said you can vote "yes" for the Zoning and "no" to the lifting of the Ban, but what typically happens is people that vote "no" on the Ban lifting tend to vote "no" on the Zoning and those that vote "yes" for the Ban lifting tend to vote "yes" on the Zoning. Ms. Cutting said she disagrees and said that the way it has been presented people should be voting "yes" on the Zoning Bylaw and "no" and lifting Ban. She said that is confusing and where the concern comes from.

Ms. Burbine opined this is being made more difficult than it needs to be. She appreciates Ms. Cutting coming forward and is sorry for her loss. She indicated on March 10th the Board will discuss the Planning Board recommendations to Town Meeting. She said as Mr. Bjorklund pointed out if the Zoning Bylaw, which is a land use and not an endorsement of Cannabis, were to pass and the Ban and the General Bylaw are not passed at the next article someone gets up and moves to reconsider the article on the Bylaw. She said that is everyone's right to do and it has happened before.

Ms. Cutting asked if any of the Board members had the courage to say how they would vote on April 11th, because the Board is going to make recommendations based on what they believe and where they stand on this matter.

Ms. Joseph explained the Board has to read a report about their recommendations at Town Meeting, they have to vote the report at the March 10th meeting, they have to physically read the report and hand it to the Moderator at Town Meeting.

There was continued discussion about where the Board stands on the issue and how they intend to vote. Ms. Lambert said you will know on the 10th; Ms. Lambert said she is voting "yes" on both.

Ms. Lewis said she agrees with Ms. Cutting that it is very confusing and thought the way to go was put the Zoning in and vote the rest down, but that does not seem to be the correct action.

Mr. Valerio Romano, consulting Attorney, spoke to address some of the issues raised. He indicated that after the last meeting a clause was added to the Bylaw that if the Zoning passes and the Ban

does not the Zoning has no effect. He said that removes the ambiguity and inconsistency. Ms. Lambert said it is in Section 440.3.B.3 and read the clause "No marijuana establishment shall be sited or allowed unless and until such time as section 492 of the Zoning Bylaw and Section 32060 of the General Bylaw shall be removed". He said the reason for the order is people do not want to have the Ban lifted without the Zoning, as Town Counsel said this is a regular retail use and it could be placed anywhere where a retail use is allowed, potentially. He said the Board wants to put Zoning in first, but if there is some ambiguity and Zoning passes and the Ban doesn't, Zoning has no effect unless the Ban is also lifted. He said that is written and should put the matter to bed.

Mr. Romano also commented on the uses as explained by Town Counsel; it is an all or nothing Ban; if the Ban gets lifted all the uses go in. He provided an example and said that if a microbusiness comes forward and it is not included in the Bylaw it might be akin to manufacturing or agriculture and it could anywhere in Scituate those uses could go. He said you cannot just ban some uses, if there is no ban the uses are still allowed in the Town and Zoning has not been created for them; there is no regulatory framework for where they would be allowed. He said by adding the extra uses the Board is responding to the citizens concerns; if they were not included in the Zoning they would still be allowed and have to go where ever the like use would be allowed. The Board went over and above what was originally done and it provides more protection for the Town. He also said that on-site consumption is not allowed anywhere in Massachusetts right now. He said the other uses were added with great time and thought figuring out how they would go in; there cannot be a "some" Ban, it is either an all Ban or no Ban and a no Ban means zoning should be thought of for every use. He said there maybe some Towns, etc. that have ordinances that have not been as well thought out as Scituate.

Ms. Cutting said Mr. Romano did answer some questions and she likes the language that was put in, but she still thinks there is confusion with Town Counsel's comment that people are going to vote a certain way. She said that she is voting against, but with the explanation from Mr. Romano and the clause added she thinks she should be voting "yes" on Zoning and "no" on lifting the Ban and that is not the way Town Counsel expressed it. She does not think what Town Counsel said about voting "no" on both is true, she does not think it is clear and that people have to vote "yes" on the Bylaws. She said the other reason she asked how the Board is voting is because there is that "SP" vote which all these Bylaws/changes can be overridden by the five Board members in a vote. She said the Board would have the power to reduce the size, the distance and that is why she feels the citizens should know where they stand.

Ms. Joseph indicated the wording was changed to say "no less than 400 feet". The Board would have to make a satisfactory finding that is its unreasonably impractical to not go to 500'; that is a standard that the Planning Board as the Special Permit Granting Authority would have to make. She said the Board takes Special Permits very seriously and a lot of things are considered.

Ms. Cutting said that based on how the Board votes on this there would be some reasonable decree that they would vote for the 400'; the Board has the leeway. The Board disagreed with her statement, it is not reasonable to assume the Board would vote for a reduction to 400' if presented.

Ms. Lambert said the Board takes Special Permits very seriously and everyone needs to read the Bylaw and look at the table of uses.

Ms. Linda Ferguson resident of 57 Kings Way said she appreciates what Mr. Romano said that they do not have to vote for the General Bylaw and the Town does not have to worry about being sued,

but she is going back to what she originally said that the vote is being forced to be a “yes” whether they agree with them or not, she said 500’ from the center of a building in a 10,000 sq. ft. is nothing. She said these should both not be brought up at the same Town Meeting; people are not going to vote for the Zoning Bylaw because they want it stricter, etc. and the next vote is to lift the Ban and if there are enough people there who want pot they are going to vote “yes” and the Town will be in trouble because there won’t be any Zoning Bylaws. She said it is more than feasible that people are going to vote “no” on the Zoning Bylaw because they don’t like the measurement or they don’t like the location of a manufacturing plant or delivery service because once it is voted in we are done. She said in terms of a Special Permit it seems to be up to five people sitting on the Board and how those people feel. She said the stricter the Zoning Bylaws and the more that is in place and not left up to somebody’s opinion the better it is for our Town. She said she thinks she understands based on Mr. Romano’s comment that manufacturing and delivery need to be accounted for. She opined what we need to do as a Town is decide what we want our Town to look like and by saying “yes” to manufacturing of Marijuana, Amazon could be right down the road. She said we say “no” to MacDonald’s in Town because that is not what we want our Town to be. She said it is up to us either for or against to get out there and ask people what they want Scituate to look like, do you want a manufacturing business in Town. She said we have said “no” to very nice businesses in Town, i.e. the Shaw’s Plaza right up the road and now we are saying “yes” to a manufacturing and distribution plant in North Scituate, she said it is one thing to put it out on 3A, but to say is okay in North Scituate she does not know how anyone thinks that is a good idea.

Ms. Joseph and Ms. Lambert referred Ms. Ferguson to the table of uses, those uses are only allowed in a very small area down near the dump, not North Scituate. Ms. Ferguson said she thought it was allowed by Special Permit. The Board corrected her and said it is not and again referred her to the table of uses. Ms. Joseph also added that the Planning Board is not the only Board that acts on a Marijuana Establishment; the Select Board has to vote on a Host Agreement, it is not just five people deciding if a Marijuana Establishment will be allowed in Town. It takes 2 Boards for an establishment to attempt to open in Town; the Select Board for the Host Agreement and the Planning Board for the Special Permit. Ms. Ferguson said by having the Special Permit it allows for five people to make the decision.

Ms. Lambert said the Planning Board cannot override the Select Board. Ms. Ferguson said she is not saying the Planning Board can override the Select Board, but the Board has the authority to go from 500’ to 400’ that is a personal thing. The Board said no it is not, there are standards. Ms. Ferguson continued to say that by having a Special Permit and the way the Zoning Bylaw is written there might be people that say “no” because of certain aspects in it and if it gets voted down and the next thing on the agenda is a General Bylaw lifting the Ban and the vote passes the Town is screwed; she said the General Bylaw should not be put at the same Town Meeting and that is why it wasn’t voted last year because Keith Saunders didn’t have Zoning put in place. She said this is now putting us in the same situation with possibly having no Zoning in place and a General Bylaw pass. She said she cannot be convinced otherwise.

Ms. April O’Connor resident of 21 Gilson Road and an original petitioner said the petition was pulled because the Town didn’t feel the Zoning was specific enough and the Town wanted to put their input in to make it more specific which is why it went to the Planning Board. She said the Board has been taking all of the input and putting it towards what we are doing and asked if anyone has read the updated Bylaw. She mentioned the change from 10,000 sq. ft. to 5,000 sq. ft. that she recommended it, the Catholic Church also provided comment, the Police have given their input the Board is listening. She said the clause about 500’ to 400’ was to put in to protect against being sued

and putting it at 400' to be extra protective. She opined the Board is doing their best to follow through on what the citizens brought forward to vote on and to protect the Town and make it more specific. She applauds the Board for paying attention and updating the proposal constantly; she encouraged people to keep reading and pay attention to the final version right up until Town Meeting.

Ms. Lambert said all updates are posted on the Town website and marked. Ms. Joseph said the Warrant will have the complete wording in it.

Ms. O'Connor also said if a small manufacturing facility went in by the dump it would not bring more traffic, there is higher security which brings more safety to the area, you can't get into a shop without an ID and when you purchase, IDs are checked again; children are not going to get their hands on this unless they get it from the person that purchased it and it can be tracked back to the person through the Metric Track and Trace system. She said this is safer; kids can be brought into a liquor store and grab something.

Ms. Lambert said the Board's job is a legal land use. The reason this is being done is because the Citizen's Petition asked to lift the Ban and there needs to be a legal land use to go with that.

Mr. Keith Saunders resident of 90 Summer Street asked what other things beside the Cannabis Industry would the Planning Board have Special Permit Authority over. The Board said many things. Mr. Saunders pointed out the Special Permit process is not new just for Cannabis and that the Planning Board has been engaged with judging Special Permits the entire time on the Planning Board and their personal votes have been recorded. The Board said yes, that is correct.

Ms. Galvin said that municipalities can most certainly limit the number and type of Cannabis businesses that they want zoned and allowed for in the General Bylaw and said those are words that Mr. Romano wrote in the ballot question. She is confused.

Mr. Romano said the ballot initiative that he drafted is not what wound up as law. He said the Legislature did significant reworking to what the voters approved in Mass. He said it is tough to line up word for word what was drafted and what was approved. He said ultimately what the Legislature approved was that municipalities will have control over siting of these businesses. He said after discussion with Town Counsel, a business cannot be banned simply by not including it the Zoning Bylaw. He provided an example of someone trying to open a microbusiness going to the Zoning Enforcement Officer/Building Commissioner and saying the business is similar to light industrial manufacturing where would the Town allow that, there is a Letter of Intent and the applicant would ask if it is an appropriate use for the property, the Enforcement Officer would say "yes". He said something is not banned because it is left out of the Zoning, it is irresponsible zoning. There is no process to ban 3 out of the 10, but what is being done is finding the appropriate parts of Town for the use; it is just being responsible. Mr. Romano also spoke about the Host Agreement and referenced Section 440.3.F that a Special Permit cannot be applied for unless a Host Agreement is obtained first; the Select Board is the gatekeeper for any Marijuana Establishment, Medical or Adult Use. He said the Bylaw directly contradicts the notion of five people making the decision and how they feel because a Host Community Agreement is needed in order to apply for Special Permit. Mr. Romano also made comment about the outcry of 500' to 400' and opined it is much ado about nothing; what is the argument. The Planning Board is doing the best they can to put forth a Zoning structure so these businesses can be sited responsibly; it is up to the Town to decide.

Ms. Lewis asked Mr. Romano's opinion if the Zoning Bylaw gets passed and the lifting of the Ban does not, does the Zoning just go away and someone does not need to stand up and get rid of it. Mr. Romano opined yes, but it would be up to the Moderator. He said by its own terms the Zoning Bylaw shall have no force or effect as Ms. Lambert read until such time as the Ban is removed.

Ms. Lewis also said that retail is limited to 2, but did we limit any other types of establishments and why not. Ms. Lambert it is correct that retail is limited to 2, but with regards to the others the Select Board will have to approve them and the free market is going to dictate how many can be in Scituate. She provided an example in the Town of Abington where more than 3 have been approved and only 2 have been built because the free market will not support it.

Mr. MacLean asked Mr. Romano the reason for reducing the cultivation from 10,000 to 5,000 sq. ft. Ms. Lambert said that was not Mr. Romano; however, he did answer and said that it was done to assuage the fears of there being a large grow in Scituate. It is his opinion that no one is going to grow a 5,000 sq. ft. canopy or 10,000 sq. ft. canopy in Scituate. He said the price/sq. ft. would be way more than in areas 30-45 minutes away from here and even less another 45 minutes from there. He said whether the Ban passes or not, he has no stake in the game, he has no client he is trying to bring to Scituate, the Planning Board has been great to work with and he is engaged because he enjoys it. He said no one is going to grow a bunch of Cannabis in Scituate, it does not make any financial sense; in order to grow a 5,000 sq. ft. canopy, it really requires a 10,000 - 12,000 sq. ft. building, for 10,000 sq. ft. needs a 20,000 sq. ft. building and where do those industrial buildings exist in Scituate. Mr. MacLean said it doesn't have to exist yet.

Mr. MacLean said that Mr. Romano previously said no retailer is going to come to Scituate so he asked Mr. Romano what in his view is the business opportunity for Cannabis in Scituate. Mr. Romano said the winters here are tough and most Towns around here have Bans, Marshfield has one open and another opening soon, Rockland has a couple with another one opening soon, some are doing better than others, those that are doing very well have no margins, they are selling it at cost to get people in the door. He opined the Scituate Cannabis business is 4 – 5 months a year with a trickle the rest of the time and if he were to build one he thinks the location of the old Jamie's Pub would be a good spot, but he would site one somewhere near the waterfront. He again said he has no client. He thinks the opportunity in Scituate is around a \$2-\$3M/year business, it will cost at least \$800K to build out the facility with the security requirements the CCC has, all land use and special permits and it is a major site plan approval process which requires architecture, engineering, etc., but \$2M is probably what a business would do in Scituate.

Mr. MacLean asked what type of businesses does Mr. Romano see here in Scituate. Mr. Romano said maybe some sort of delivery, but delivery is very complicated. He does not think anyone will grow and maybe there could be a little product manufacturing, it only requires maybe 3,000 sq. ft. but one would be paying way more per square foot than if they drove 45 minutes west and there would be less opposition from the community against your business. He said to say Scituate is a dead area from a retail perspective, people are already growing it here, they are driving to other towns to get it and Scituate is not getting any of the money from it. He said adding a dispensary in Scituate would not increase the amount of Cannabis in Scituate it is here. He said he has had kids in the Scituate public schools and spoken with the Police Chief about what is easier to get Cannabis or Alcohol and the Chief said weed. It is not taxed and regulated and is not thoughtful. He believes part of Mr. Saunders goal is for Scituate to get a part of it. He again said he is not trying to site a business here, but thinking about it financially it makes sense for Scituate to get a few hundred grand a year out of a use that is effectively already here.

Ms. Ferguson said it keeps being said the Select Board has to approve the Host Community Agreement(HCA) so they will approve the type of business that could come to Town, but if the Town passes Zoning Bylaws that allow for manufacturing, etc. and the Ban is lifted wouldn't the Select Board have a hard time saying "no" to some sort of business that we don't want, i.e. currently there may not be a 5,000 sq. ft. manufacturing plant in Scituate, but there could be. What would the litigation be for that? She also asked about the money and said that several Cannabis businesses now say they are not going to pay the Host Agreement, Community Impact Fees, because there wasn't any impact on the community, i.e. extra police were not needed, so the amount of money Towns are getting is dropping substantially, down to just the excise tax.

Mr. Romano referred to the HCA Section 440.3.E.4 and spoke of a case Mederi vs. City of Salem. Mederi was one of his clients, a Special Permit was obtained from the Planning Board; it was a properly zoned property under agreement; Salem refused to issue the HCA so Mederi sued. The Supreme Judicial Court (SJC) opined the Town did not have to issue the HCA even though a Special Permit had been issued. The SJC ruled it was up to the Town to decide; a municipality has extreme deference on whether to issue a Host Community Agreement (HCA). He said the Select Board of Scituate have the ability to chose which applicant they want, where they want it to go and there is really no remedy for the applicant.

Mr. Romano also discussed a situation in Haverhill. He opined Haverhill did not thoughtfully allocate and keep track of where HCA money was being spent. He said Scituate Facts would be a great place to spend this money; there is a nexus between the perceived harms. Ms. Ferguson said there are several Towns across the State now, Lee, Gloucester, and Haverhill that are losing their impact fee license.

Town Counsel said at the moment everyone is entitled to ask for these impact fees, as more and more establishments open, the regulating community is starting to challenge it; she said she would not be surprised if in the next few years the regulations change, but at the moment Towns can still ask for the fees and would be wise to spent it in a manner that makes sense. She would not be surprised to see the revue stream dry up over time. Mr. Romano said that is a good reason to get one in now and get a five-year contract. Right now, the Town would receive 3% off a retailer. He said he disagrees with Town Counsel and does not think it will go away. Mr. Romano provided some examples of Towns that are opting out of Cannabis impact fees.

Mr. Saunders said the fact the Towns are opting out of Cannabis impact fees, is telling; when the Town legalizes Cannabis retail in Town there are no discernable negative impacts that can be accounted for.

Ms. Lambert asked the Chair to close the public hearing.

Motion:

Mr. Pritchard moved to close the public hearing.

Ms. Lewis seconded the motion; a vote was taken and was unanimously in favor.

Motion: Break at 9:35

Ms. Burbine made a motion to take a five-minute break.

Ms. Lewis seconded the motion; a vote was taken and unanimously in favor

Motion: Reconvene at 9:42

Ms. Burbine made a motion to reconvene the meeting.

Ms. Lewis seconded the motion; a vote was taken and unanimously in favor

Discussion/Follow up from Public Hearing:

Ms. Joseph said she will write favorable recommendations for the three other Zoning amendments. She said there will be six warrant articles for Marijuana, now is the time to ask question of Town Counsel. Ms. Joseph needs some direction on how to write the reports to Town Meeting on these articles.

There was discussion if the Board is required to make a recommendation to Town Meeting. Mr. Pritchard said the Board is not required to make a recommendation; under Chapter 40A if the Board waits 21 days nothing has to be done; Town Counsel advised the Board to make a recommendation.

Ms. Lambert opined Mr. Pritchard does not want to be associated with Marijuana. Mr. Pritchard said he is not bringing this forward to Town Meeting and recommending it, but he does not think it needs to be written that way and indicated he provided Ms. Joseph with some wording. He said he wrote that the Board is not making a recommendation, but is recommending the Town makes the decision. Ms. Joseph said she provided the Board with verbiage too, that if the Town chooses to lift the ban then the Zoning proposed is what the Board would recommend.

Mr. Pritchard said he is not supportive of the Planning Board going to the floor and pushing for this decision; particularly for the decision to be perceived as “you should lift the ban”. He said he is not in favor of that.

Town Counsel said there does not have to be unanimous vote on the recommendations, any of the Board members can get up at Town Meeting and say they are speaking out as individuals not as a Planning Board Member and say your position; you will be recognized like any other citizen by the Moderator, but you must say you are speaking on your own. She said the original citizens petition was to lift the Ban on all establishments that is what the Board was charged with doing the Board put together a Bylaw the Board believes/or does not believe is the best Zoning for the Town in the circumstance the Town decides to allow Marijuana in Scituate. After conversations with the AG and the CCC, the uses cannot be limited to only certain types of uses without a ballot question. If the uses were limited the Attorney General would strike that portion of the Bylaw and leave the rest in tact or strike the entire Bylaw, there was no clear answer given on what action the AG would take. Town Counsel said by putting all the uses in, the Town is protected if the Town votes to adopt Marijuana; establishments will have been put where the Board feels they are most appropriately located. She said the reality is there will not be a flood of people or all these uses for all the reasons spoken of tonight. She said to be clear the law does not allow you to pick and choose among establishments without going to a ballot question and the original Citizen Petition was for all or none. She further said the Board does not have to recommend to lift Ban or not lift the Ban the Board can say they believe this is the best Zoning if the Town decides to lift the Ban; it can be said as benignly as the Board is not supporting for or against but the Board is recommending that if you

vote “yes” this is the best course of action from a land use perspective. If a Special Permit does come up and the site is not good then a Special Permit does not have to be issued. She said the fact that the Board is proposing Zoning is only saying that if the Town is going to have this, this is what the Board believes to be the most sensible way to implement it; there does not have to have a unanimous vote of the Board.

Mr. Pritchard said his assessment is the Zoning will pass and the Ban will stay in place; will the Town still be in jeopardy of illusory Zoning with the language that has been added in place. Town Counsel said as written she thinks it substantially decreases anyone’s likelihood of challenging it, but if that was the case she would advocate that it be reconsidered. She said the Board has put in belt and suspenders in the Zoning, but the AG has the final say. The AG does not like to see inconsistency, the AG does allow you to put in when things can take effect and certain limitations. She opined the language is good in the Bylaw, but she is not the AG office. She said to make sure, if the Zoning passes and the Ban doesn’t someone should move to reconsider and see what the vote does. She said there are no guarantees on any of this, but she believes the Board has thoughtfully looked at the land use implications of whether or not Marijuana comes to Scituate where it would go and how it should go.

Mr. Pritchard said he is questioning the order it is done in and use the analogy of putting all the furniture out and building the house around it; why not vote the Ban first. Town Counsel disagreed with him and said if the Ban goes first there is the risk that the Zoning does not pass. Mr. Pritchard said the votes should be at the same time; then it is a “nay” or “yeah” vote. It was discussed that the Zoning Bylaw Ban and the Zoning Bylaw are both 2/3rds vote, the General Bylaw Ban vote is majority.

Mr. MacLean said it is a catch twenty-two and the language under Applicability #3 is trying to protect the Town as much as possible.

Mr. Pritchard said what he doesn’t understand is why there needs to be two different votes and why they cannot be put together. Town Counsel said because they are different questions, even if they were under one article there would be two motions because they are separate questions. She said the Board can discuss with the Town Moderator about putting them together. Town Counsel said the General Bylaw absolutely cannot be rolled into the Zoning. The General Bylaw Ban will come after the Zoning. Town Counsel explained there are two bans that need to be lifted the General Bylaw and the Zoning Bylaw Ban in order to have Marijuana allowed in Scituate and the General Bylaw cannot be rolled into a Zoning Bylaw discussion. Ms. Joseph said the Board does not have to do a report to Town Meeting on the General Bylaw; the Board is sponsoring the General Bylaw removal because it is consistent with the approach for Zoning.

There was discussion on how the Board is leaning for the articles. Ms. Joseph explained the articles so she could begin work on the reports to Town Meeting.

- Medical Marijuana
 - Replacing current Registered Marijuana Dispensary with Medical Marijuana Treatment Center
 - Updated to include current terminology from CCC
 - Removed Department of Public Health, Department is no longer involved, CCC regulates all Marijuana
 - Board will support
- Article for Adult Use Marijuana Zoning

- Article to remove the Zoning Ban
- Article to remove Temporary Moratorium – language is obsolete
- Article for Excise Tax
- Article of General Bylaw Ban

Ms. Joseph suggest a simple report to the Town Meeting with language saying,” ...this is the Zoning the Board recommends should the Ban be lifted...” repeated under the Zoning article and the Ban article. There was discussion about how to present the articles. Mr. MacLean said it does not mean you have to like it personally, but this is what is being presented for Town Meeting.

Town Counsel also said the Board could ask the Moderator if he would let the Board put the articles together; she does not think the Moderator will. It is the Moderator’s choice, they are separate questions and always come up as separate votes. Town Counsel said the Board can reach out to the Moderator.

Mr. Pritchard explained why he does not think they are separate questions; people are making the decision to lift the Ban or not lift the Ban based on what would go in place if the Ban if it is lifted. They have to be considered at the same time. He said the way it is being done is people need consider what is in place if the Ban is lifted and then need to decide whether to lift the Ban or not. Town Counsel said that is the way the AG suggests doing it and that is the way other cities and towns have done it; it is done this way whenever there is a prohibition on something and then allowing something, even unrelated to Marijuana. The projection goes in first and then lift what needs to get taking out to take effect. She said there is the saving language in Bylaw which should protect the Town. She said realistically people will make up their minds if they want to have Marijuana Establishments; it not typically seen that a vote goes one way and the companion goes another.

Ms. Lambert said if you want Cannabis use in the Town you will vote for the Zoning, if you don’t want Cannabis use in the Town you will not vote for the Zoning. Ms. Lewis said until this meeting she has been talking to people saying the Board is trying to put Zoning in place in case the Ban ever got lifted. She said she was going to vote “yes” on the Zoning and “no” on the Ban, so the Zoning would be in place whether the Ban is lifted now or in two years from now. Town Counsel said the AG’s office would question why the Town would have inconsistent zoning, it does not make sense. Town Counsel said the concern is if the Ban gets lifted to have the Zoning Bylaw in place; if the Zoning Bylaw gets shot down the Ban would stay in place. The people who are want to stop Marijuana are going to stop it at the Zoning level first. If that does not pass it would be really bazar for the Ban to be lifted.

Ms. Lambert said that Town Meeting is about getting butts in seats.

Ms. Joseph will draft reports and send to the Board and Town Counsel. Town Counsel asked that when the draft reports are circulated they also be circulated to the Moderator.

Ms. Lambert also said the Citizen’s Petition is dead, it was withdrawn.

Ms. Lambert read a statement that is supposed to be read before every meeting as voted on by the Select Board in December of 2021.

Documents

- Email to the Board from Shari Young dated 2.18.22 with meeting agenda 2.24.22 and DRAFT minutes 1.27.22
- Email to the Board from Karen Joseph dated 2.18.22 with meeting materials for

These items were distributed to the Board electronically.

Ms. Burbine moved to adjourn the meeting at 10:30 p.m. Ms. Lambert seconded the motion; the vote was unanimously in favor.

Respectfully submitted,

Shari Young
Planning Board Administrative Assistant

Rebecca Lewis, Clerk

Date Approved: March 24, 2022