



TOWN OF WARE

Planning & Community Development
126 Main Street, Ware, Massachusetts 01082
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Planning Board
Meeting Minutes from
Thursday, December 2nd, 2021
Select Board Room, Town Hall

Planning Board Members Present:

Josh Kusnierz (Chairman), Rick Starodoj (Vice-Chairman), Ed Murphy (Remote), Ken Crosby (Remote), Joe Knight (Remote), Elizabeth Hancock (Alternate)

Staff Present:

Rob Watchilla, PCD Director
Alex Ziter, PCD Assistant
Anna Marques, Building Commissioner

Public in Attendance:

PLEDGE OF ALLEGIANCE

Chairman Josh Kusnierz called the meeting to order at 7:00 pm and led the Board in the Pledge of Allegiance.

ADMINISTRATIVE

Elizabeth Hancock recuses herself as a board member and addresses the minutes as a member of the public at 7:01 p.m.

- E. Hancock states that there is an issue with the minutes from October 21st. She explains that there is still a missing name of Karen Hubacs who works for Bond Construction Corp. Leading to a paragraph which reads like a fact, when it was a statement made by K. Hubacs to Planning Board member Ken Crosby. E. Hancock requests to add the statement made by K. Hubacs regarding the project phase 1 was completed and that she claimed the original permit was with the USDA. E. Hancock suggest that the original file was not a legitimate application.
- Minutes from October 21st are tabled until next meeting to correct the error.

Motion to approve the minutes from November 4th, 2021, made by Ed Murphy. Seconded by Rick Starodoj.

Josh Kusnierz	Aye
Rick Starodoj	Aye
Ken Crosby	Aye
Ed Murphy	Aye

All in Favor. 4/0/0. Approved

E. Hancock was invited back into the meeting as a Planning Board Alternate member by Chairman J. Kusnierz at 7:04 p.m.

- R. Watchilla informed the board about an Approval Not Required (ANR) application, which was seeking approval from the Board. R. Watchilla displayed the Mylar site plans to the board members and made them aware that it conforms to area and frontage requirements for the Rural Residential zoning district.

Joe Knight joined the meeting remotely at 7:07 p.m.

Motion to approve the ANR application made by R. Starodoj. Seconded by E. Murphy.

Josh Kusnierz	Aye
Rick Starodoj	Aye
Ken Crosby	Aye
Ed Murphy	Aye
Joe Knight	Aye

All in favor. Approved 5/0/0

Old Business – Discussion on Zoning Bylaw Changes

Cannabis (Marijuana)

- R. Watchilla provided the board members with a working recommendation document which was created by Alex Ziter to inform the board on additional definitions and sections included by neighboring towns, regional planning agencies, and the state's governing commission for cannabis regulation, the Cannabis Control Commission (CCC).
- The first recommendation read by R. Watchilla is to include a subsection within the scope and or purpose section of the cannabis bylaw which would be titled "impose reasonable protections". A. Ziter informed the board that this recommended inclusion would act as

a safety net for the town regarding natural environment protection, and provide definitive language to the purpose section of the cannabis bylaw.

- Ken Crosby expressed that it was necessary to provide a statement within the cannabis bylaw which will clearly acknowledge the rules and hierarchy of governance regarding any current existing uses and any proposed changes. Stating that this inclusion will preemptively deter any conflict from existing uses and proposed amendments.
- R. Watchilla read the recommendation for a "Resource Use Plan" to the board. This addition to the bylaw states that "All marijuana cultivators and marijuana product manufacturers shall submit a resource use plan to the Planning Board to demonstrate best practices for use of energy, water, waste disposal, other common resources, and to ensure there will be no undue damage to the natural environment. The plan shall include an electrical system overview, proposed energy demand and proposed electrical demand off-sets, ventilation system and air quality, proposed water system and utility demand."
- Anna Marques stated that as the zoning enforcement officer and building commissioner, these types of monitoring plans would help the town define the impact of a relatively new use for the town.
- The position of the Board is to not overstep their authority and to let the state requirements set the precedent for resource use monitoring plans.
- R. Watchilla asked the board if they wanted to consider the inclusion of social consumption within the bylaws, the definition for social consumption is stated as "A marijuana retailer licensed to purchase marijuana and marijuana products from a marijuana establishment and to sell marijuana and marijuana products on its premises and to allow customers to consume marijuana and marijuana products on its premises only."
- If included in the bylaw, this subsection would include language which states "Social consumption shall be permitted by special permit in _____ Zones: provided, however, that on-site social consumption of marijuana or marijuana products, as either a primary or accessory use, must first be approved by a local ballot initiative process pursuant to MGL c. 94G, § 3(b)."
- A. Ziter informed the board that this new type of cannabis establishment can be operationalized within the town if approved through a local ballot question during an election cycle, or by a majority vote during a town meeting.
- The board moved to table this recommended amendment for further research and future consideration.

- R. Watchilla read a recommendation to include or alter outdoor cultivation considerations. The language which was recommended states that "cultivation may occur in open areas provided that; screening, security, and other provisions complies with 935 CMR500. Operations must not be near a hemp production facility to prevent cross pollination. Ensure that no fertilizers, compost, soils, materials, machinery, or equipment shall be stored within the required front, side, and rear yard setbacks.
- Chairman J. Kusnierz expressed his concerns on the amount of phosphorus being used during the fertilization process of cultivation with open areas do to the abundant about already within the soil composition of the town. He raised concerns about the extended period of fertilizer leeching into one particular area, and having adverse effects to the existing conditions of the soil composition, which already has a high amount of phosphorus.
- The board recognizes that this provision attempts to protect the town's agricultural community, and suggests that this be recommended amendment be tabled to further refine the language and determine a set linear distance from outdoor open space cultivators, CBD cultivator and agricultural hemp farmers to prevent loss of economic value through cross pollination of crops.
- R. Watchilla read the definition of "Craft Marijuana Cooperative" to the board and stated that the language used for this recommended definition states "a marijuana cultivator comprised of residents of the Commonwealth and organized as a limited liability company, limited liability partnership, or cooperative corporation under the laws of the Commonwealth. A cooperative is licensed to cultivate, obtain, manufacture, process, package and brand marijuana or marijuana products and to transport marijuana to Marijuana Establishments, but not to consumers."
- R. Watchilla read the definition of "Microbusiness" which states "a co-located Marijuana Establishment that can be either a Tier 1 Marijuana Cultivator or Marijuana Product Manufacturer or both, in compliance with the operating procedures for each license. A Microbusiness that is a Marijuana Product Manufacturer may purchase no more than 2,000 pounds of marijuana per year from other Marijuana Establishments."
- The board wished to consider this recommended amendment to the bylaw.
- R. Watchilla informed the board about the recommendation to include a subsection regarding marijuana delivery. This was a suggested topic to include by the town manager, and is designated through various definitions including an agreement, endorsement, and licensee.
- The board wished to consider this recommended amendment to the bylaw.

Earth Removal

- R. Watchilla read proposed changes in the bylaw language to section C.2 – exceptions. Which states "Excavation and grading needed for construction of a structure may be completed within 100 feet of the proposed principal structure and for any roadway necessary to access the structure."
- R. Watchilla read proposed changes in the bylaw language to section D.2 – operational standards. Which states "No excavation below the natural grade of any property boundary shall be permitted nearer than 50 feet to such boundary unless special consideration is granted by written agreement of an abutter and super-majority vote of the Planning Board."
- R. Watchilla read a recommended definition inclusion for "Earth Processing" which states "Earth processing shall be defined as the processing of more than 1000 cu yards of earth materials brought on site or brought in and stored for processing in any 12-month period. Earth processing shall be by special permit only and may require a site plan review by the planning board. Earth processing due to noise, odor, fire safety, traffic and other considerations shall be limited to industrial zones only."
- R. Watchilla recommended to the board that there be an amendment made to the zoning bylaw use table as well to reflect this definition of "Earth Processing".
- R. Starodoj voiced his concern for this use within industrial zones.
- R. Watchilla suggested a change in language to refer to the commercial industrial zones as opposed to the industrial zones.
- R. Starodoj requests that there be an inclusion of an "urban soils" subsection, to regulate the areas were gravel pits, building material, and other non-hazardous but previously processed natural materials can be located within the town.
- R. Starodoj proposed a strike down to the language under section C.1 which states "provided that no such movement shall take place across or within the street."
- R. Starodoj suggested the addition of language under section D.6. which states that monitor wells shall be installed and maintained, and gauged quarterly to track the range fluctuation.
- Ken Crosby stated that he was concerned about the decibel level produced by the earth removal and processing uses.

- R. Watchilla informed K. Crosby and the board that both of the uses in question are required to go through the special permitting process, which has a noise decibel, and days and hours of operations conditions.
- R. Watchilla suggested that a special condition for noise be added to the existing list of special permit conditions.
- R. Starodoj commented on section F.3 stating that there should be an inclusion of language which requires an update every five years of a topographical map, which is consistent with USGS. This is to monitor the progress of earth removal.
- The board tabled this suggested comment upon further research.

Use Table

- R. Watchilla informed the board that in Section E of the use table, the use of Adult Entertainment was permissible by special permit in every zone within the town, where it should only be allowed in the Rural Residential zone, as stated in the bylaw.
- J. Kusnierz stated he would like to see this use only in the Commercial and industrial zones.
- R. Starodoj stated that he would like to see these conditions changed as well.
- R. Watchilla informed the board of a footnote number five, in Section E.20 outdoor recreation, where amusement parks area allowed by right in Rural Residential zones.
- The recommends that the use of amusement parks is removed, and considered only under special permit for all zones which currently say yes by right.
- R. Watchilla brought up the use of fast food restaurants being allowed by special permit in many of the zones.
- J. Kusnierz inquired if food trucks, carts, and other establishments considered fast food eateries. He requested to confirm if this issue was a use and zoning issue or a town issue.
- The board recognizes that this is an increasing business model, and that they should consider how to best define and zone for these short-term, and mobile eatery establishments.
- The Board recognizes that this topic goes beyond zoning and requires full understanding and corporation with the town and the different involved departments.

- R. Watchilla suggested that the board postpone the discussion of Battery Storage and Junk Yard sections till next meeting so that the board can be provided with more research material.
- The board agrees to table the two topics until their next meeting.

New Business

- A. Marques asked the board about their view on a new use of "Distilleries".
- R. Starodoj suggested that they look at towns in Western Massachusetts such as Agawam and others, which have ongoing grain alcohol production, manufacturing, and tastings operations.
- A. Marques asked to clarify if the new use of "Distilleries" in the bylaws will be separate from others such as bar, pub, and restaurant where food and alcoholic beverages are sold.
- They board agreed that it should be a separate defined use with its own category in the use table, much like a brewery or winery would be defined separately. This category can have specific language in the bylaw to include the preparation and service of food.
- A. Marques asked the board their thoughts on how to best enforce the zoning for this new use.
- R. Starodoj stated that there should be an asterisks within the use table which states "for any use not specifically listed in the use table, the Zoning Enforcement Officer shall make a determination as to the closest applicable category or determination that the proposed use does not fit appropriately in any category and deny the with a written explanation".

Town Planner Update

- R. Watchilla informed the board of the status for the "Right to Farm" bylaw survey sent to the town's agricultural community members. Stating that the department has received approximately a third of the responses and would wait till receiving fifty percent before conducting any analysis.
- R. Watchilla stated that a reminder post card would be sent out on December 3rd or 6th to the remaining addresses who have yet to respond.

- R. Watchilla informed the board of his progress with the edits for the subdivision regulations. Stating that he was nearly finished with them and would be providing copies to the board for a lengthy review.
- R. Watchilla informed the board that the Mass Trails grant is now open for the year 2022. He suggested that this grant funding be used to create wayfinding and signage for unmarked trails within town.

Motion to adjourn made by R. Starodoj at 8:53 p.m., Seconded by E. Murphy

Josh Kusnierz	Aye
Rick Starodoj	Aye
Ken Crosby	Aye
Ed Murphy	Aye
Joe Knight	Aye

All in favor. Approved 5/0/0

The next meeting is scheduled for Thursday, December 16th, 2021 at 7 pm.

Minutes from December 2nd, 2021

Respectfully submitted by,

Alex Ziter,
Planning Assistant,
Planning & Community Development

Minutes Approved on: 12/16/21

Kusnierz _____

Starodoj RaJ

Knight _____

Murphy _____

Crosby _____