



# TOWN OF WARE

## Planning & Community Development

126 Main Street, Ware, Massachusetts 01082

t. 413.967.9648 ext. 120

## Zoning Board of Appeals / Planning Board

### Joint Meeting

Meeting Minutes from

**February 24, 2022**

Select Board Room, Town Hall

#### Zoning Board Members Present

Lewis Iadarola (Chairman)  
Jodi Chartier (Vice Chair)  
Greg Eaton  
Phil Hamel  
David Skoczylas (Alternate)

#### Zoning Board Members Absent

Chuck Dowd  
George Staiti (Alternate)

#### Planning Board Members Present

Josh Kusnierz (Chairman) - remote  
Rick Starodaj (Vice Chair)  
Ed Murphy, III - remote  
Kenneth Crosby  
Elizabeth Hancock (Alternate)

#### Planning Board Members Absent

Joseph Knight (Clerk)

#### Staff Members Present

Rob Watchilla (PCD Director)  
Anna Marques (Zoning Enforcement Officer)  
Stuart Beckley (Town Manager)  
Laura White (PCD Admin. Assistant)

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### PLEDGE OF ALLEGIANCE

Zoning Board Chairman L. Iadarola called the meeting to order at 7:00pm and led the Pledge of Allegiance.

### ADMINISTRATIVE

- **Approval of Zoning Board of Appeals meeting minutes from January 26, 2022**

**Motion** made by J. Chartier to approve the meeting minutes from January 26<sup>th</sup>. Seconded by L. Iadarola.

L. Iadarola	Aye
J. Chartier	Aye
G. Eaton	Aye
P. Hamel	Aye

All in favor. Approved 4/0/1.

- **Approval of Joint Planning Board and ZBA meeting minutes from February 10, 2022**

L. Iadarola requested to table the meeting minutes from February 10<sup>th</sup> until the next meeting.  
R. Starodaj agreed to table the meeting minutes.

## OLD BUSINESS

### Zoning Bylaw Updates

R. Watchilla informed the Boards of the next steps for submitting the proposed Bylaw changes for Town Meeting.

#### Earth Processing §4.3.27

R. Watchilla read the proposed §4.3.27 which states, *“Earth Processing (F-4) shall be defined as the processing of more than 1000 cubic yards of earth materials (soil, loam, peat, sand, gravel, or stone) brought on site or brought in and stored for processing in any 12-month period, this includes gravel pits. Earth processing may be allowed by special permit (see §7.2) in the Rural Residential (RR), Highway Commercial (HC), Commercial Industrial (CI) and Industrial (I) zoning districts. In addition to a special permit, earth processing operations shall warrant a site plan review by the Special Permit Granting Authority (SPGA). A special permit for earth processing may not be required if:*

- Conducted on the site of an earth removal operation that was allowed by special permit,*
- Conducted on the site of a privately owned subdivision for the sole purpose of developing the private roadway,*
- Conducted on the site of, incidental to, and in connection with earth removal necessary for the construction of a principal or accessory structure permitted by the Zoning Bylaw.”*

L. Iadarola stated concerns about the Bylaw allowing for an earth processing operation to stockpile 1,000 cubic yards of earth materials each year and allowing it to pile up.

J. Chartier suggested setting a limit of “no more than 1,000 cubic yards on site.”

R. Starodoj inquired whether the Bylaw should limit how much earth an operation should be allowed to stockpile for use.

The Boards discussed possible consequences of allowing an operation to stockpile earth.

J. Chartier asked if the Rural Residential (RR) zoning district should be removed from this section.

Members of the Planning Board stated concerns for over regulating businesses.

Members of the Zoning Board stated concerns about allowing for the disruption of peace in the Rural Residential zoning district.

R. Starodoj suggested setting a limit of 1,000 cubic yards in Rural Residential.

L. Iadarola suggested removing Rural Residential at least temporarily.

Both Boards agreed to remove Rural Residential and leave the proposed language as written for Town Meeting.

L. Iadarola stated concerns about compost fires at earth processing sites.

E. Hancock suggested adding the term “composting.”

R. Starodoj stated concerns about legal problems with the bullet points under this section.

E. Hancock stated concerns about the first bulleted point, which states, “Conducted on the site of an earth removal operation that was allowed by special permit,” creating a loophole that would allow it in Rural Residential.

R. Starodoj suggested clarifying “only earth materials generated on site.”

L. Iadarola suggested adding “compost” to the other list of earth materials in this section of the Bylaw.

Both Boards agreed to the proposed changes made to §4.3.27 of the Town Bylaw.

#### **Auto Salvage §4.3.25**

R. Watchilla read the current proposed §4.3.25 which states, “*Auto Salvage (F-1) is permitted by special permit and site plan review in the Industrial (I) district, Unregistered motor vehicles that are stored on site for the purpose of reselling, disassembling, or reusing for parts shall be stored for a period no greater than three (3) years. No person shall establish, operate or maintain an auto salvage yard within one-thousand (1000) feet of the nearest edge of the right-of-way of any interstate or primary highway, unless such auto salvage yard is:*

- *screened by natural objects, plantings, fences, or other appropriate means so as to not be visible from the main traveled way of the system, or otherwise removed from sight, or*
- *located within an area within the Industrial (I) zoning district, or*
- *is not visible from the main traveled way of the road system.”*

L. Iadarola inquired about what is considered a primary highway in the Town, and if there should be setbacks or screening for side roads.

R. Starodoj suggested specifying Routes 9 and 32 in this section of the Bylaw after “primary highway.”

R. Starodoj suggested adding “as specified by the Special Permit Granting Authority (SPGA)” after “or otherwise removed from sight” in this section of the Bylaw.

R. Starodoj suggested 100’ setbacks from primary highways, and 50’ setbacks from side roads.

Both Boards agreed to this addition.

S. Beckley stated Massachusetts General Law requires a 1,000’ setback from State roads.

R. Starodoj suggested a 1,000’ setback from State roads, a 100’ setback from the property frontage, and a 50’ setback from the side property boundaries.

J. Chartier suggested a 100’ setback from any abutting residential properties.

L. Iadarola asked if a barrier would negate setback standards.



S. Beckley stated Auto Salvage is only allowed, by special permit, in the Industrial zoning district.

The Boards discussed the property setbacks.

S. Beckley suggested moving the setbacks to after the bulleted points.

L. Iadarola suggested clarifying that setbacks should be “at least” as far back as the Bylaw states.

R. Starodoj suggested adding “and properly screened, as determined by the Special Permit Granting Authority” to the end of this section.

R. Watchilla read the updated proposal for the §4.3.25 of the Town Bylaw, which states, “*Auto Salvage (F-1) is permitted by special permit and site plan review in the Industrial (I) district. Unregistered motor vehicles that are stored on site for the purpose of reselling, disassembling, or reusing for parts shall be stored for a period no greater than three (3) years. No person shall establish, operate or maintain an auto salvage yard within one-thousand (1000) feet of the nearest edge of the right-of-way of any interstate or primary highway (Routes 9 and 32) unless such auto salvage yard is:*

- *screened by natural objects, plantings, fences, or other appropriate means so as to not be visible from the main traveled way of the system, or otherwise removed from sight as specified by the Special Permit Granting Authority, or*
- *located within an area within the Industrial (I) zoning district, or*
- *is not visible from the main traveled way of the road system.*

*Auto salvage yards shall be placed at least one-hundred (100) feet from the front of property line, fifty (50) feet from the side property lines, and one-hundred (100) feet from any residential property line and properly screened as determined by the Special Permit Granting Authority.”*

**Motion** made by J. Chartier to approve the proposed changes to §4.3.25 and §4.3.27 of the Town Bylaw, as written. Seconded by P. Hamel.

L. Iadarola	Aye
J. Chartier	Aye
G. Eaton	Aye
P. Hamel	Aye

All in favor. Approved 4/0/1.

**Motion** made by R. Starodoj to approve the proposed changes to §4.3.25 and §4.3.27 of the Town Bylaw, as written. Seconded by E. Murphy.

J. Kusnierz	Aye
R. Starodoj	Aye
E. Murphy	Aye
K. Crosby	Aye

All in favor. Approved 4/0/1.

## **Earth Removal §4.8.5**

### **§4.8.5 Point D - Operational Standards**

J. Chartier stated concerns about §4.8.5 Point D (Operational Standards) Section 2 which states, *"No excavation below the natural grade of any property boundary shall be permitted nearer than 50 feet to such boundary. If an abutting property is conducting an earth removal operation, a buffer transition with a slope of 3 to 1 on the shared property line may be granted by written agreement of the involved parties and an approval of the modification of the applicable existing earth removal permit by the Special Permit Granting Authority."*

J. Chartier stated no other bylaws, within the State, allow for this and it is setting a precedent of creating a bylaw for only two existing properties.

R. Watchilla stated he found no bylaws with setback waivers for shared property boundaries, but there were Towns that did not have any setback requirements on the sides or back of the property at all.

The Boards discussed this section and agreed to remove the setback waiver.

**Motion** made by J. Chartier to remove the setback waiver from §4.8.5 Point D (Operational Standards) Section 2. Seconded by P. Hamel.

L. Iadarola	Aye
J. Chartier	Aye
G. Eaton	Aye
P. Hamel	Aye

All in favor. Approved 4/0/1.

**Motion** made by R. Starodaj to remove the setback waiver from §4.8.5 Point D (Operational Standards) Section 2. Seconded by E. Murphy.

J. Kusnierz	Aye
R. Starodaj	Aye
E. Murphy	Aye
K. Crosby	Aye

All in favor. Approved 4/0/1.

## **Marijuana §4.8.8**

### **Point C - Definitions**

R. Watchilla read the proposed definitions for:

- **Marijuana Delivery Agreement**
- **Marijuana Delivery Endorsement**
- **Marijuana Delivery License**
- **Marijuana Delivery Licensee**
- **Marijuana Delivery Operator (MDO)**
- **Marijuana Microbusiness**



The Boards discussed taxation on marijuana delivery services as well as the possibility of limiting to delivery from local marijuana establishments only.

**Point E - Separations and Setbacks**

R. Watchilla informed the Boards of concerns stated by an attorney present in the B'Leaf Wellness special permit hearing held in August of 2021. R. Watchilla informed the Boards the attorney stated the language was problematic and the sentence "areas where children commonly congregate," prompted void for vagueness. R. Watchilla also stated Town Counsel agreed with this statement.

R. Watchilla read parts of the proposed Separation and Setbacks section which states, "*No Registered Medical, Recreational and Hybrid Marijuana Facility, Marijuana Cultivation Site, and/or Marijuana Delivery Operator may be located closer than three hundred feet (300') (measured from door to door) of a facility used, at the time of the first notice of the public hearing, for a park, playground, pre-school, kindergarten, elementary, middle or high school, state-licensed child day care center, public library, recreation facilities, and other areas where children commonly congregate in an organized, ongoing, formal basis. This measurement shall be the distance between the Registered Medical, Recreational and Hybrid Marijuana Facility, Marijuana Cultivation Site, and/or Marijuana Delivery Operator and the front entrance of the building in question.*

*Such uses shall not be prohibited from locating within three hundred feet (300') of a Registered Medical, Recreational and Hybrid Marijuana Facility, a Marijuana Cultivation Site, and/or a Marijuana Delivery Operator nor shall a Registered Medical, Recreational and Hybrid Marijuana Facility, Marijuana Cultivation Site, and/or Marijuana Delivery Operator become nonconforming under the Zoning Bylaw if a park, playground, elementary, middle or high school, state-licensed child day care center, or other areas where children commonly congregate in an organized, ongoing, formal basis later locates within three hundred feet (300') of a preexisting Registered Medical, Recreational and Hybrid Marijuana Facility, Marijuana Cultivation Site, and/or Marijuana delivery Operator."*

R. Watchilla stated, after reading from this section, the language may be problematic as it could be seen as too vague.

E. Hancock informed the Boards the attorney present claimed the language was from the Department of Public Health (DPH) and not the Cannabis Control Commission (CCC), so it only applied to medical marijuana, not recreational. However, in doing more research, Ms. Hancock found the CCC adopted the same language as the DPH for medical marijuana in the Guidance for Municipalities.

E. Hancock suggested adding, "or which are dedicated to the use of children" after, "...and other areas where children commonly congregate in an organized, ongoing, formal basis."

R. Watchilla also added this phrase to the same sentence in the second paragraph of this section.

E. Hancock inquired about how to measure the buffer between a marijuana facility and a park. The proposed Bylaw states, "measured from door to door."

J. Chartier suggested adding "measured from door of establishment to property line of park or playground" after "park," and "playground."

R. Starodoj and S. Beckley suggested adding to the definition of Park “the most recently updated list as established and maintained by the parks commission.”

**Motion** made by J. Chartier to approve the proposed changes to §4.8.8, as written. Seconded by G. Eaton.

L. Iadarola	Aye
J. Chartier	Aye
G. Eaton	Aye
P. Hamel	Aye

All in favor. Approved 4/0/1.

**Motion** made by R. Starodoj to approve the proposed changes to §4.8.8, as written. Seconded by K. Crosby.

J. Kusnierz	Aye
R. Starodoj	Aye
E. Murphy	Aye
K. Crosby	Aye

All in favor. Approved 4/0/1.

#### **Use Table §4.2**

L. Iadarola suggested allowing Microbreweries, Craft Distilleries, and Wineries by Special Permit in the Suburban Residential (SR) zoning district.

**Motion** made by J. Chartier to approve the proposed changes to the Use Table §4.2, as written. Seconded by G. Eaton.

L. Iadarola	Aye
J. Chartier	Aye
G. Eaton	Aye
P. Hamel	Aye

All in favor. Approved 4/0/1.

**Motion** made by R. Starodoj to approve the proposed changes to the Use Table §4.2, as written. Seconded by K. Crosby.

J. Kusnierz	Aye
R. Starodoj	Aye
E. Murphy	Aye
K. Crosby	Aye

All in favor. Approved 4/0/1.

## Article 2 - Definitions

R. Watchilla read the proposed definitions for:

- **Craft Distillery**
- **Farm**
- **Hemp**
- **Microbrewery**
- **Park**

### **Park**

E. Hancock stated concerns about the proposed definition of Park which states, *"A municipally, state, or privately owned area that is used for active or passive recreation, which may include equipment and facilities for active recreation and play such as playfields, play structures, courts, swings, slides, dog parks, pools, splash parks, public assembly and accessory uses such as restrooms. It may also include areas for passive recreation such as gardens, walking/hiking trails, picnic areas, benches, tables, seating areas, and undeveloped open space. A park may also serve as an area for formalized sanctioned events, accommodate related municipal uses such as educational facilities, and facilities for storage and maintenance of equipment used in the park. This definition does not include historic sites or historic structures."*

After reviewing M.G.L. Chapter 45, §1 Definitions, E. Hancock suggested adding "or a place dedicated to the use of the public," after "...and undeveloped open space" in this definition.

E. Hancock suggested adding "civic gatherings, a place for reflection and remembrance such as a monument park," after "A park may also serve as an area for formalized sanctioned events."

E. Hancock suggested removing the last sentence of the definition which states, "This definition does not include historic sites or historic structures."

The Boards agreed to add "or a place dedicated to the use of public," after "A municipally, state, or privately owned area that is used for active or passive recreation."

## **ADJOURN**

**Motion** made by J. Chartier to adjourn at 9:19pm. Seconded by G. Eaton.

L. Iadarola	Aye
J. Chartier	Aye
G. Eaton	Aye
P. Hamel	Aye

All in favor. Approved 4/0/1.

**Motion** made by R. Starodoj to adjourn at 9:19pm. Seconded by K. Crosby.

R. Starodoj	Aye
E. Murphy	Aye
K. Crosby	Aye
J. Kusnierz	Aye



All in favor. Approved 4/0/1.  
**NEXT PLANNING BOARD MEETING DATE:**  
Thursday, March 3, 2022 at 7:00pm

Minutes from February 24, 2022  
Respectfully submitted by,

Laura White  
Administrative Assistant  
Planning & Community Development

**Zoning Board of Appeals**

Minutes Approved on: 5/1/22  
Iadarola [Signature]  
Chartier [Signature]  
Hamel [Signature]  
Dowd [Signature]  
Eaton [Signature]  
Skoczyla David Skoczyla

**Planning Board**

Minutes Approved on: 3/17/22  
Kusnierz [Signature]  
Starodoj [Signature]  
Knight [Signature]  
Crosby [Signature]  
Murphy [Signature]