



TOWN OF WARE

Planning & Community Development
126 Main Street, Ware, Massachusetts 01082

t. 413.967.9648 ext. 120

Planning Board

Meeting Minutes from

Thursday, September 2, 2021

Select Board Room, Town Hall

Planning Board Members Present:

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

Staff Present:

Rob Watchilla, Director
Stuart Beckley, Town Manager

Public in Attendance:

Lori Sinclair, Megan Sinclair, Mark Jarvis, Jim Valeriani Esq., Nicole Costanzo Esq., Blake Mensing Esq., Matthew O'Boyle

PLEDGE OF ALLEGIANCE

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

ADMINISTRATIVE

- Approval of Minutes from August 5th and August 19th

Motion by R. Starodoj to approve the meeting minutes from August 5th and August 19th, 2021.
E. Murphy seconds. Roll call vote:

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

All in favor. Passes 4/0/1.

K. CROSBY ARRIVES AT 7:04PM -----

- General Announcements

Chairman Kusnierz announced to the public that from now on, the Planning Board will only do roll call votes for all voting related matters. The Chairman will call on each individual voting board member during this roll call voting process.

PUBLIC HEARINGS

- **Continued Discussion - 7:45 PM SP-2021-07/SPR-2021-02: B'Leaf Wellness, LLC** is requesting approval to reuse an existing building as a Recreational Cannabis Retail Establishment under Section 4.8.8, of the Zoning Bylaw, and pursuant to MGL Chapter 40A. The site is located at 24 West Main Street, Ware, MA. Deed recorded in the Hampshire County Registry of Deeds, Book 4571, Page 153, and Book 7100, Page 71. Assessor's Parcel 60-0-151. Zoned: Downtown Commercial (DTC).

The applicant was represented by J. Valeriani and M. Jarvis. The conditions of this special permit application were announced by the Planning Board at the previous meeting (August 19th) but the Planning Board never took a vote. J. Valeriani stated that the applicant has met the site plan and parking requirements stated in the Zoning Bylaw. The discussion is focused on section 4.8.8 (Marijuana Uses) of the Zoning Bylaw pertaining to intent and setbacks. K. Crosby asks of Town Counsel (N. Costanzo) to give their assessment on the matter.

N. Costanzo states that the language "places where children commonly congregate" is only present in the intent section and not in the setbacks section. Therefore, there is no express authority in this particular bylaw that provides for the Planning Board to impose a setback on "places where children commonly congregate". When the Massachusetts Department of Public Health (DPH) first had authority over medical and recreational marijuana establishments, there was a 500-foot buffer zone from places where children commonly congregate. When these regulations were transferred from DPH to the Cannabis Control Commission (CCC), the DPH regulations were rescinded and the CCC issued its own regulations. As a result, there is no state requirement that mandates that the setback must be from "places where children commonly congregate".

J. Valeriani mentions that the current language of section 4.8.8 proposes a "business risk" since there is no plain meaning in regard to setback in the bylaw. The areas that are affected by the setback requirements are explicitly stated in section 4.8.8 subsection E. A dance studio was not one of these areas stated in that particular section. The Zoning Bylaw is in conflict with Mass General Law section 94G. The intent section and its relation to the setback section is technically void for vagueness according to J. Valeriani.

B. Mensing interjected by highlighting that section 4.8.8 subsection E of the Zoning Bylaws gives measurements and exact points the setback applies to, but a dance studio is not one of these points. The intent clause of section 4.8.8 is seen as the preamble.

J. Valeriani stated that the current language of section 4.8.8. of the Zoning Bylaws gives the SPGA the ability to act on their own discretion, since the language is considered vague. It is claimed that the Board is going against the Zoning Act.

S. Beckley suggested to the Planning Board that implementing a 300 ft setback in this situation may not be wise. Proposing mitigation tactics such as shading for the dance studio seen as a viable avenue.

B. Mensing commented by ensuring that no Cannabis (Marijuana) will be visible from the street and children will not see it. There will be staff onsite to enforce rules against loitering and on-site consumption.

Chairman Kusnierz added the importance of conducting a traffic study to the proposed conditions, as this business could affect traffic patterns.

K. Crosby expressed concerns that the road (West Main Street) will most likely be backed up as a result. The parking lot could be easily full and result in cars backing up onto the road itself.

J. Valeriani suggested having a parking attendant on site to help with directing traffic in the parking lot.

Additional Conditions

- The Applicant will hire a parking attendant for a period of no less than six (6) months, with working hours no earlier than 9am and no later than 6pm, falling into the time frame of 9am to 6pm. If the Applicant needs to change these set hours, they can bring this matter forth to the Planning Board to be dealt with administratively without the need for a public hearing. If it becomes apparent prior to the end of the six (6)-month period that the parking attendant does not seem to be necessary, then the Applicant may bring a request to modify the requirement for the parking attendant to the Planning Board to be dealt with administratively without the need for an additional public hearing;
- Six (6) months after the Recreational Marijuana Dispensary has opened for business, the Planning Board may require a traffic study based on traffic incident logs from the local police that occur at 24 West Main Street. It is the Planning Board's discretion with such data to determine the necessity of imposing a traffic study;

Motion by E. Murphy to approve SP-2021-07 & SPR-2021-02 and to close the public hearing. Seconded by J. Knight. Roll call vote:

Josh Kusnierz, Chair	Aye
Rick Starodoj	Aye
Ken Crosby	Nay

Ed Murphy Aye
Joe Knight Aye

Majority in favor. Approved 4/1/0. Special permit granted and site plan approved.

OLD BUSINESS

- Scenic Road Bylaws

Major changes were done to the Scenic Road bylaw draft including the regulation of solar setbacks and tree pollarding. The board focused most of its discussion on the process of designating a road as scenic. In regard to the petition of designating a scenic road, the Board feels that instead of "a petition of 10 citizens who live in town", the language should state "a petition of 10 citizens who live on the road in question." A section should be included that indicates that all residents who live on a scenic road candidate street, should be notified of the public hearing. The Board suggests that the designation of a scenic road should be done at Town Meeting with residents of the proposed street as the decision makers.

- Right to Farm Designation

The main discussion of the Right to Farm Designation focused on the responsibility of realtors in notifying potential buyers on the Right to Farm status of the Town that the property is located in. The model bylaw proposes a \$300 fine for those who fail to inform potential home buyers of Right to Farm designation. E. Murphy mentioned that the language was confusing in terms of designating who was responsible for informing potential property buyers, whether it's a realtor, the seller, or the farmers themselves. At the end of the discussion, it became clearer that the language (as written) puts this responsibility on the landowner who is selling the land/property. This discussion will most likely continue at future Board of Selectman meetings.

- Subdivision Regulations Update

Subdivision regulations were not discussed during this meeting.

NEW BUSINESS

None

TOWN PLANNER UPDATE

None

Motion by E. Murphy to adjourn the meeting at 9:03 pm. Seconded by R. Starodoj. Roll call vote:

Ken Crosby Aye

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

All in favor. Approved 5/0/0

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

Minutes from September 2nd, 2021

Respectfully submitted by,

Robert Watchilla,
Director,
Planning & Community Development

Minutes Approved on:	<u>9/16/21</u>
Kusnierz	_____
Starodoj	<u>RAS</u>
Knight	_____
Murphy	<u>[Signature]</u>
Crosby	_____