



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 10, 2022

Select Board Room, Town Hall

Zoning Board Members Present:

Lewis Iadarola (Chairman)
Jodi Chartier (Vice Chair)
Chuck Dowd
Phil Hamel
David Skoczylas (Alternate)

Zoning Board Members Absent:

Greg Eaton
George Staiti (Alternate)

Planning Board Members Present:

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

Planning Board Members Absent:

Joseph Knight (Clerk)

Staff Present:

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

Public in Attendance:

PLEDGE OF ALLEGIANCE

Chairmen L. Iadarola and J. Kusnierz called the meeting to order at 7:00pm and led the Pledge of Allegiance.

ADMINISTRATIVE

- **D. Skoczylas recognized as a voting member of the Board**

Zoning Board Chairman L. Iadarola recognized D. Skoczylas as a voting member of the Board for the duration of the meeting.

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

L. Iadarola requested to table the meeting minutes from January 26th until the next meeting.

- **Approval of Planning Board meeting minutes from February 3, 2022**

J. Kusnierz requested to table the meeting minutes from February 3rd until the next meeting.

OLD BUSINESS

Zoning Bylaw Updates

Earth Removal (§4.8.5)

- **Section C - Exemptions**

Point 1

Point 1 of Section C states, *“For moving earth within the limits of a parcel or contiguous parcels in common ownership, provided that no such moving shall take place across or within a street.”* At a previous meeting, the Planning Board suggested removing *“provided that no such moving shall take place across or within a street.”* The Zoning Board suggested leaving it in.

R. Starodoj stated that those with a large parcel separated by a road, should be allowed to move earth from one part of their property to another.

Members of the Zoning Board stated concerns for public safety in allowing someone to cross a public way for an earth removal project without a special permit.

Members of the Planning Board stated concerns for too much oversight if a property owner wants to reach another part of a parcel on the same side of the road.

Both Boards agreed crossing the road should require a special permit, but driving down the road to another section of the property should not require one.

A. Marques read a definition for Contiguous Parcels which states, *“Contiguous parcels under common ownership, that together constitute the same farm, may be counted toward the requirement. Contiguous parcels include lots in single ownership that are only separated only by a public way.”*

R. Watchilla suggested leaving Point 1, as written, but adding, *“For the purposes of section 4.8.5, properties separated by a public way are not considered contiguous.”*

The Boards agreed to this addition.

Point 2

R. Watchilla read Point 2, section “a” which states, *“For the purpose of Earth Removal, the definition of ‘structure’ within §4.8.5 shall not include: pole, sign, fence, wall, any small constructs (less than 100 sq.ft.), or any part of the above.”*

The Planning Board previously suggested adding subsection “i” which states, *“Any garages, sheds, barns or similar structures between 100 to 1000 sq.ft. can be exempt from this definition at the discretion of the Special Permit Granting Authority.”* The Board also suggested adding section “b” which states, *“Excavation and grading needed for construction of a structure, septic system, leech field, or well, may be completed within 100’ of proposed principal structure and for any roadway necessary to access the structure.”*

L. Iadarola asked if section “b” was already in the bylaw.

R. Watchilla stated he would look into it.

L. Iadarola inquired about the reasoning behind subsection “i.”

R. Starodoj stated this would apply to larger, unheated outbuildings, such as chicken coops, sheds, etc.

L. Iadarola suggested using 750ft² instead of “100 to 1000 sq.ft.”

J. Kusnierz suggested using “Less than 750ft².”

- **Section D - Operational Standards**

Point 2

R. Watchilla read what the Zoning Board proposed for Point 2, which states *“No Excavation below the natural grade of any property boundary shall be permitted nearer than 50 feet to such boundary.”*

The Planning Board proposed adding to Point 2, *“If an abutting property is conducting an earth removal operation, a waiver of the 50 foot buffer on the shared property boundary 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.”*

L. Iadarola stated the bylaw must be made for the land in Town, not just for the current owners.

Members of the Planning Board stated that allowing an agreement between two earth removal projects would allow the possibility of a smooth transition between two properties, instead of an egg carton effect. It would also allow both parties to remove more dirt from their own properties.

Members of the Zoning Board stated concerns about drainage if two different earth removal projects, potentially at two different stages, removed the buffer completely.

L. Iadarola suggested removing the buffer between the two properties, and adjusting from a 2:1 slope to a 3:1 slope for uneven properties.

R. Watchilla proposed changing Point 2 to say, *“No excavation below the natural grade of any property 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.”*

The Boards agreed to these changes.

Point 4

The Boards agreed to Point 4, as written, which states, *"All excavated areas shall upon completion of the operation or within two years of the issuance of the permit, be covered with not less than four inches of loam suitable for seeding, brought to the finish grade and seeded in a manner complying with Mass DOT standards."*

Point 6

R. Watchilla read what was proposed by both Boards for Point 6 which states, *"For Earth Removal Projects requiring a special permit, no excavation shall be made at less than 10 feet above the annual high water table, as established from test pits, soil borings, and monitoring wells, which are installed and gauged quarterly."*

The Boards agreed to the wording of Point 6, as written.

- **Section F - Decision**

Point 1d

Point 1 states, *"The SPGA shall take into consideration the following in reaching its decision:"*

The Boards agreed to Point 1d, as written, which states, *"The removal will not violate section 4.3.24 of this zoning bylaw in regard to vibration and noise."*

R. Starodoj added §4.3.24 should be looked at more closely to be ensure it makes sense and is up to date.

Point 2c

Point 2 states, *"The SPGA may impose conditions pertaining to:"*

For Point 2c, the Planning Board proposed, *"Hours of operation to be set by the SPGA on a case by case basis."*

The Zoning Board proposed, *"Hours of operation to be set by the SPGA on a zoning district basis."*

R. Starodoj stated both would be appropriate. J. Kusnierz seconded this.

R. Watchilla proposed changing Point 2c to state, *"Hours of operation to be set by the SPGA on a case by case basis and / or zoning district basis."*

The Boards agreed to the proposed amendment to Point 2c.

Point 2h

Point 2h states, *“an updated topography map of the project site showing the current grade with volume calculations shall be sent to the SPGA every 5 years or as determined otherwise by the SPGA.”*

The Boards discussed Point 2h.

The Boards agreed to Point 2h, as written.

Point 2i

Point 2i states, *“The SPGA may request as a condition that the applicant furnish a performance bond, of cash certified check or a surety company to the Town as obligee in a penal sum to be fixed by said SPGA as it shall deem sufficient to cover the cost of the performance of all the conditions, limitations, and safeguards may be imposed by said SPGA in connection with the removal of the particular earth substances for which the permit has been issued.”*

J. Chartier stated concerns about using the word “may.”

S. Beckley stated “shall” is a better word to use.

The Boards agreed to change “may” to “shall,” in Point 2i.

Subsection “i”

Subsection “i” under Point 2i states, *“The bonds, check or cash deposit shall be held by the Town Treasurer until all conditions of the permit have been met to the satisfaction of the SPGA. If after (18) eighteen months from the issuance of the permit, or extension thereof, all conditions as required in the permit have not been met (especially grading and seeding), the SPGA shall cause the monies to restore the site to its natural state.”*

Article 2 - Definitions

Junk and Junkyards

The proposed definition for Junk states, *“Any article or material or collection thereof which is worn out, cast off or discarded and which is ready for destruction or has been collected or stored for salvage or conversion. Any article or material which, unaltered or unchanged and without further reconditioning, can be used for its original purpose as readily as when new shall not be considered junk. Unregistered inoperative automobiles stored outdoors for more than _____?_____ shall be considered junk.”*

The proposed definition for Junkyards states, *“An establishment or place of business which is maintained, operated, or used for storing, keeping, buying, or selling junk. This term shall not include garbage dumps, sanitary fills, and auto salvage.”*

A. Marques stated the importance of having a definition for Junk and Junkyard, for making a determination when addressing complaints.

L. Iadarola stated concerns about adding these definitions to the bylaw, as it may allow for grandfathering of businesses that may not necessarily be registered with the Town.

L. Iadarola suggested “metal recycling” may be a better term to use.

J. Kusnierz asked if any members have heard anything about Massachusetts limiting or no longer issuing “Class 3’ Licenses for the time being.

R. Starodoj raised the issue of waste removal / cleanup and EPA standards and suggested asking for help from anyone with more knowledge or experience.

A. Marques stated that, in Athol, the town learned a junkyard had grown, which allowed for all departments to inspect and sign off on it.

J. Kusnierz referenced MGL c. 140, §59A and asked if it should be added somewhere in the Bylaw that a junkyard would have to follow all guidelines through the licensing authority.

D. Skoczylas asked what was the biggest problem facing the Town; abandoned cars left in yards, junk like filing cabinets and inside furniture laying around outside, or just trash.

J. Chartier asked A. Marques what can be done about rodents that are attracted to these properties.

A. Marques stated, when she receives a complaint, she makes a determination and forwards it to the other departments, including the health department. If another department has the authority to do something, they will step in.

J. Kusnierz suggested tabling this section of the Bylaw until more research can be done.

R. Watchilla suggested looking at the definition of Auto Salvage instead which states, “*A lot and / or structure where the principal purpose is to acquire, store, resell, disassemble, or otherwise be involved with motor vehicles that are in some way inoperative. This include but is not limited to businesses requiring a Class 3 license pursuant to MGL c. 140 §58.*”

The Boards discussed Auto Salvage versus Junkyard.

J. Kusnierz left Town Hall and joined meeting remotely at 8:39pm

The Boards discussed public safety in regards to junkyards.

The Boards agreed to table discussion until the next joint meeting.

J. Chartier suggested looking into what other communities are doing in their bylaws regarding these definitions.

C. Dowd suggested changing “automobiles” to “vehicles” in the definition of Junk in order to include campers, tractors, trailers, boats, etc.

The Board agreed, if the definition of Junk is added to the Bylaw, this change should be made to it.

Park

The proposed definition of Park states, *"A municipally, state, or privately owned area that is used principally for active or passive recreation, which may include equipment and facilities for active recreation and play such as playfields, play structures, swings, slides, dog parks, pools, splash parks, public assembly and accessory uses such as restrooms. 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."*

L. Iadarola inquired about whether this definition covered historic parks or historic sites.

The Boards discussed whether this would fit in the definition of park.

E. Hancock read a definition she found for Passive Park *"A public area designated as a park, but does not afford facilities or equipment for exercise or play. It can have benches or trails, but is not conducive for any active use."* Examples listed under this definition include, *"nature parks, greenspaces, commons, war memorials, square, monuments, plazas, historic sites."*

E. Hancock suggested creating separate definitions for Passive Park and Recreational Park.

P. Hamel stated concerns about marijuana facilities opening near veterans parks.

S. Beckley stated that Massachusetts has voted to make marijuana facilities as legal as liquor stores in the state, so if it's seen by the state as using a tactic to effectively outlaw these facilities in Town, it would not be allowed.

R. Watchilla stated that Massachusetts state law only states that marijuana facilities must be 500' away from school zones, and that municipalities may shorten that if they choose to. The Town of Ware went an extra step to prohibit them from being near parks as well.

The current proposed Separation and Setbacks for Marijuana 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."

J. Chartier stated there is a lot of property available in Ware, the Board only wants to keep marijuana facilities away from schools and parks.

S. Beckley stated the Millyard is a historic site, so a marijuana facility would not be permitted with what the Board is proposing.

E. Hancock stated it is not just about marijuana facilities, the Town may want to protect its parks and historic sites from large developments opening close to them.

The Boards agreed to move on to another topic.

Both Boards agreed to meet again at a joint meeting on Thursday, February 24th at 7:00pm to discuss the following topics:

- Earth Processing
- Earth Removal
- Marijuana
- Auto Salvage

The Boards briefly discussed the Battery Storage and both Boards agreed to propose a moratorium.

E. Hancock suggested looking into Medway's bylaw regarding the Battery Storage Moratorium.

ADJOURN

Motion made by J. Chartier to adjourn at 9:12pm. Seconded by L. Iadarola.

L. Iadarola	Aye
J. Chartier	Aye
C. Dowd	Aye
P. Hamel	Aye
D. Skoczylas	Aye

All in favor. Approved 5/0/2.

Motion made by R. Starodoj to adjourn at 9:12pm. Seconded by E. Murphy.

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, February 17, 2022 at 7:00pm

NEXT ZONING BOARD / PLANNING BOARD JOINT MEETING DATE:

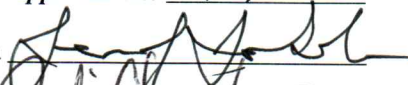
Thursday, February 24, 2022 at 7:00pm

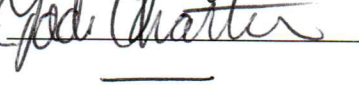
Minutes from February 10, 2022
Respectfully submitted by,

Laura White
Administrative Assistant
Planning & Community Development

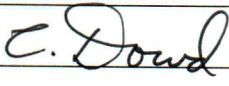
Zoning Board of Appeals

Minutes Approved on: 5/1/22

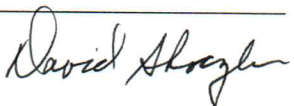
Iadarola 

Chartier 

Hamel _____

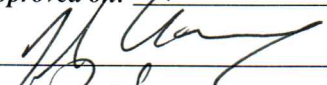
Dowd 


Eaton _____

Skoczylas - David Shrago 


Planning Board

Minutes Approved on: 3/17/22

Kusnierz 

Starodoj 

Knight _____

Crosby 

Murphy 