

Planning Board Minutes: July, 30 2013

Attending: Bernie Cahill (BC), Chair; Max Lamson (ML), Vice Chair; Chuck Shea (CS); Gregory Tuzzolo (GT); Kevin Calzia (KC); Jason Kreil (JK), Alternate; Also attending representing the Town of Maynard, Eric R. Smith (ES), AICP, Town Planner.

At 7:00 P.M. BC called the meeting to order and provided an Introduction of the Board Members.

Public Hearing on Proposed Changes: Zoning General Definitions and Table of Uses.

Bylaw: 11.0 Supermarket Definition....Supermarket from “Y” to “SP

BC: Read into record the Legal Notice for this Public Hearing:

“Proposed Changes: Zoning General Definitions – To amend Section 11.0 by replacing the existing definition of Supermarket with the following definitions. Changes are in bold and underlined.

Supermarket: A retail establishment or full-service grocery store occupying a space no greater than 75,000 square feet, primarily selling primarily food and grocery items not limited to, fresh meats, fresh poultry, fresh seafood, organic foods, bakery products that are baked on the premises, a fresh produce department and a deli department offering freshly prepared foods and counter service. A Supermarket may contain a pharmacy and may sell other ~~merchandise such as~~ convenience items such as household supplies and cleaning products, hardware, food preparation materials, and personal care and health products.

Proposed Changes: Table of uses – To amend the Table of Uses in Section 3.1.2 Table A, Use Regulations, Principal Uses 4. Business Uses, by changing Supermarket under the Industrial district from “Y” to “Special Permit” with approval by the Planning Board.”

BC opened up the Hearing by asking for Planning Board member comment, noting the Board has received Greg Tuzzolo’s proposal not to touch supermarket definition at all and it would apply Town-wide. BC noted for this new proposal we would have to re-advertise as not within the four-corner of the ad.

GT: I am proposing a one sentence change. He noted his observation that the previous proposals that are the subject of this Public Hearing has been focusing on one specific use/property. Proposed change within Section 4.0 Dimension regulations. 4.1.2. Add following sentence to existing text: *“Lots with building coverage in excess of 75,000 square feet shall require a Special Permit from the Planning Board.”*

GT: I am proposing taking the 75,000-square footage that is in the NBOD and make it threshold for Special Permit. He still thinks to consider revisions to Supermarket definition. His understanding is that changes to Section 3 would not apply to 129 Parker Street.

BC: Correct, developers of 129 Parker Street did file an ANR. The 75,000 square-foot threshold allows some flexibility and then put a check in place for Special Permit, Bernie noted he has done some research on supermarket definition.

GT: Is my understanding that ZBA is also weighing on the definition.

KC: Concerns with definitions as it can be redefined. In favor of not putting limitations within the definition. But put size limitation in zoning.

ES: Noted Overlay District still has thresholds. Also there are the Zoning District Building Coverage provisions.

KC: What about Clock Tower?

BC: Go down the line of Board member on Continue with changing the definitions and table of use, pros and cons with consideration of Greg's proposals.

CS: This (Greg's proposal) similar to what I proposed to the Board on June 11th. Need something within Section 4 of the Bylaw. Not adequately sufficient in the definition section. Who said Bylaw had to be advertised? BC: Town Counsel.

ES: noted he wanted to be pro-active in getting a decision from Town Counsel before the Board's meeting.

CS: Would want to have some control, it is a good idea. What is implication on 129 Parker Street? BC: Impact if something to be over 75,000 square feet, they would come to us for Special Permit.

CS: Back on June 11th, Board was concerned about the Supermarket issue. But there is a bigger picture. Need to look at the Industrial Zone and control by Special Permit.

ML: In favor of Greg's proposal. Nice to put it in dimensional regulations. Can talk more on specifics later.

GT: How would the time line of his Bylaw proposal affect other proposals related to Town Meeting?

BC: Noted that no Special Town Meeting has been called. There are timelines.

ES: Noted posting requirements for newspaper, 14 days plus time to put ad in paper. Would research specific Statutes for Town Meeting and provide to Board.

KC: Pointed to Section 4 with Table B, Maximum Coverage, Would the proposed Section 4.1.2 be in conflict. ES: No, it is a different legislative approach.

CS: You were wrestling in June with how encompassing you wanted to be, if just Supermarket or beyond, and Town wide. Do we want to go back and look at these uses that are the Industrial Zone or just this proposal?

ML: Wanted to get away from the individual uses, but wanted to focus on dimensional. Maybe a different exercise.

KC: Agreed that would be a different project and approach. ML: Thought would be a separate warrant article in case one part got shot down.

ML: I don't understand the six week piece. I thought if we wanted to call a meeting it is 48 hours' notice. ES: Noted that the zoning changes have to be posted in accordance with Chapter 40A and minimum legislatively is 14 days. But the process to get to newspaper including publication deadlines and date is more like 24-25 days. ML: noted we could do different paper. JK: MetroWest Daily.

BC: Noted we are going to open for the public input and comment.

Greg McColm, 11 Sherman Street. He supports the original intent of the hearing as advertised of 75,000 square-foot limit of supermarket. One is a prohibition; other does allow developer to construct still and he sees is as a loophole and supermarket can be anywhere in Town not Industrial-Zone specific.

Karen Grimes, 4 Field Street, noted in the Town of Wayland at Wayland Commons did go to the dimensional change but did put in a max but allows developer to mix and match within the overall limit.

Lynda Thayer, 14 Chandler Street. Would you consider a cap beyond the 75,000 square feet special permit threshold? BC said sure that is something we could look into.

There was a question on 35% referenced earlier. BC noted that is from Building Coverage in Table B.

ML: noted we want to account for unintended consequences. Noted if we put cap in place, but had a proposal for 4-story office building with great tenants.

Eric R. Smith noted he has not conducted research on cap limits. Noted Town of Westminster limits retail building of 25,000 square feet. Ashburnham Village Center has retail size of 10,000 square feet per floor. ML noted Acton 65,000 square feet. BC indicated Westford 60,000 square feet.

GT: Still willing to look into changes to Supermarket definition.

BC: Introduced Eric as the new Town Planner and this is his first meeting as Chair.

Sally Bubier, Question Special Permit does require Public Hearing Process? Board answers yes. Noted use protections at 129 Parker for 3 years, but still supported Board looking into these zoning changes.

Michelle Booth, 2 Field Street: Can Developer use both I and NBOD. Eric was not sure, wanted clarification. CS: you have two parcels one could be developed industrial and NBOD, either or, etc. Michelle Booth: Supports putting limitations in place. GT: Concerned about developer developing under the base, as does not allow review.

Elizabeth Steiner Milligan: Why don't you limit the 75,000 square feet to Parker? Or why are you thinking Town-wide now. BC: Could do both? But use regulations the property is protected for 3 years. Elizabeth supported change to a specific definition of Supermarket. BC noted his research believes better to have broader definition due to changing definition of Supermarket.

ML: Noted thanks for wanting to give Board the Power, but what if Board membership changed?

David Gavin, 9 Cutting Drive: I'm paranoid on Special Permit, we had all those public hearings. Believes Public should have a vote on process. Appointed Board members may not have public interest. Without direct Public Involvement, something is missing. The May Town Meeting Vote, it didn't go way of public opinion. GT: Your right the Planning Board could vote on something that is not wanted by the full public. GT: The NBOD has the public approval process but underlying Industrial zoning doesn't. One way to go is make development under the Industrial Zone difficult and help promote NBOD.

CS: Building Coverage is not Square footage, just percentage of ground floor area. Greg's got a good idea, it just needs refinement.

A comment was received on the 2011 Zoning Bylaw missing the footnotes. Eric noted one of his charges is to fix that Zoning Bylaw to get the footnotes back into the Zoning Bylaw.

The Board discussed this building coverage matter as well discussed possible language

CS: Noted we do not have maximums square footage requirements in the Bylaw.

BC: Noted this matter is not the topic of this Public Hearing. The Board then discussed options for dropping the proposed changes to Supermarket definition.

The Town Planner did note that a letter was received from Marie Gunnerson, 119 Parker Street, regarding 129 Parker Street changes we are discussing tonight (Letter from Ms. Gunnerson on file at the Planning Office). Eric noted she was looking to have % requirements be included in the Supermarket definition.

An unidentified woman: Feels it's still important to look at the Grocery Store definition. Sees importance to do both have size limitation and better grocery store definition.

George ____ (*Did not sign in; is it Kulik?*) 6 Field Street: Greg's proposal doesn't say the building can't be built bigger than 75,000 square feet. I hope people got the message from vote at last Town Meeting.

Paul Chiodo, 2 Cutting Drive: Question on Town Council's opinion of Building Commissioner. ES noted that is the ZBA matter rescheduled for August 19, 2013. Town Council opinion is saying Building Commissioners opinion is non-binding as it was given not for a specific project.

Lynda Thayer, Chandler Street: Why can't you both? Re-define Supermarket and redo the dimensional limitations. Noted the Supermarket definition was done with intent based on proposal at the time. Town has Protective Zoning Bylaws to Protect the Town and Residents.

Vic Tomy: Is Planning Board wise enough to properly define Supermarket. Noted Zoning is a permissive Bylaw. Supermarkets now carrying all sorts of things. Impact of these businesses selling his product. Even grocery stores worried about drug stores, like CVS carrying food items.

GT: Wanted more specifics in the Supermarket definition

Greg McColm: The 75,000 square foot maximum in Supermarket definition is the line in the sand.

BC: Motion to Continue Public Hearing to next Tuesday, August 6th @ 7:00p.m. Second by CS. Vote to Approve 5 to 0.

KC: Motion to Advertise a Public Hearing for Proposed Amendments, Section 4.0, Dimensional Regulations, Tuesday, August 27th @ 7p.m. Second by CS. Vote to Approve 5 to 0.

Approval of Minutes from July 9, 2013

CS: Noted misspell of "Steiner Milligan", two names. Eric noted misspell of Vic Tomy. BC: Sentence on 75,000 square feet was a question, not statement. BC: Motion to approve July 9, 2013, subject to identified changes. Second by CS. Vote to Approve 5 to 0

Medical Marijuana Zoning Bylaw Discussion

BC opened up discussion noting that the Town Planner has prepared a Draft Medical Marijuana Zoning Bylaw Amendment Proposal, based on Board's input (The Draft Proposal on file at the Planning Office). The proposal would be to allow Medical Marijuana in the Town of Maynard and to be considered for the B, CB and HCI Zoning District. Would have new definition of Medical Marijuana Dispensary and set of spacing requirements

BC started discussion. Do we want to allow Medical Marijuana by SP? Do we want to use MDPH definition of Registered Marijuana Dispensary? Principal uses would be in B, CB and HCI. Started discussion on location. Invite Joe Mullin to talk.

Joe Mullin, Clock Tower Place (CTP): He noted Maura Flynn is here too tonight. Legislation was passed in Massachusetts by the voters. Was not in Original mission of CTP, but if the Town voters wish to include, they would be ok. Mr. Mullin noted a couple concerns. There is violation of Federal Law. The Board should contact School Superintendent and Police Chief, they are concern. HCI is zone of CTP. During Telecommunications Zoning Bylaw considerations, CTP came forward to allow such array on the CTP HCI Zone.

ML: On Board with HCI and the B District. With limited understanding of the facilities, know they can understand regionally. Eric noted Minimum one per county, with maximum 5 per county and he brought copy of Middlesex County Map (on file on the Planning Office).

CS: Look at this two ways: dispensing and cultivation. Reviewing other towns that have been a putting some cultivation location in different places from dispensing. For Cultivation, Does it belong in the Industrial Zone? Just throwing it out there for discussion. Some towns using Industrial for both, some using business and some separating. I know we want to keep simple, but might want to keep cultivation outside of downtown.

BC: Asked Maura Flynn if the Medical Marijuana could be delivered. Ms. Flynn: Yes

ES noted that he has seen discussions on MassPlanners ListServe of towns considering separating dispensing and cultivation facilities in their Zoning Bylaws.

Question on putting in the MMD Zoning to apply to only one property.

GT: Parking considerations of this use, per Section 6.1. Put next to Medical Health Care in Table C. Talked about putting amendment in the Public Hearing posting.

GT: Discussed spacing requirements, including day care, which there is one located at the CTP. Joe Mullin noted it is a good point. We have 13 buildings.

GT: Noted communities in Middlesex County with larger population, but we should do this to protect the Town, but doesn't see an imminent threat.

Maura Flynn: Got to be same entity who runs separate cultivation facility that runs dispensing.

Vic Tomyl: You can't separate growing; growing on separate site. CS: You would then have to define Cultivation from Dispensing. Vic Tomyl: Day Care is considered an educational facility under State Zoning Law, so it comes under Dover Amendment.

David Gavin noted there is the school at the church on the other side. Eric indicated we can use MassGIS for measurements.

CS: 500 feet from where children commonly congregate. It is in the DPH Regs already. Concord is 3,000 feet.

The Planning Board members considered using the State limits. Maura indicated could you just reference the State requirements. Eric noted that you could draft the requirements as such.

KC: Some questions about the zones. Cultivation seems to be an industrial process. Would CB, B fall out then.

Maura: Regulations define dispensary as entity that does cultivation.

CS: Joe, what is your opinion as a landlord related to Federal Law? Joe: I did attend couple seminars and did receive a letter from Department of Justice indicated a pursuit of dispensaries and caregivers to terminally ill patients not a priority of the Federal Government. Maura: Spoke of Medical Marijuana facilities not even having signage.

CS: related to the CB, B zones. There will be quite strict in the security. Downtown is storefront businesses. This will not be a storefront business. He thinks Industrial is a better place, along with HCI.

David Gavin: Supports the availability of Medical Marijuana. We have Industrial Zones in Maynard is in a neighborhood. If you want less political pushback, and have a central place, the HCI zoning, Clock Tower Place, is the place to go.

JK: We have neighborhoods around the CTP. I agree we should not put in the CB.

GT: Asked about our Plan B, that is to extend the Moratorium. BC: agreed, we need to have a back-up Article extending Moratorium to June 30, 2014.

David Gavin noted we limited at Town Meeting for six month.

There was discussion of agricultural-exemptions. With spacing requirements be limited with agricultural.

Eric wanted clarification of definitions used in the Bylaw. Jason indicated to be consistent with the State definition. CS noted "Registered Medical Dispensary" or RMD is term suggested to use throughout the proposed Bylaw.

Board discussed allowing by Special Permit. JK don't see having to allow Special Permit for something you have to have. Max thinks it is reasonable. GT agreed with JK. CS: Think you want to have Special Permit, most Bylaws he has reviewed has Special Permit. Some are renewable and there is ownership change consideration. Then there is the burning of bad marijuana on site. KC: Special Permit allows Board to put on some standards.

ML: I'd rather see more districts with Special Permit approval. Eric asked for what Districts to include for drafting of the Public Ad. Kevin talked about the neighborhood comment, as even the HCI has neighbors around it. The Board agreed to advertise to allow RMDs by Special Permit in the B, HCI and I Zoning Districts. The Board also discussed having the parking requirement amended to include "Registered Marijuana Dispensary".

CS: Noted Police Chiefs concern. The Medical Marijuana Act only defines felon of the Substance Control Act.

ML: Motion to advertise a Public Hearing for proposed bylaw changes for Registered Marijuana Dispensaries as amended here tonight for August 27, 7:30p.m. CS Second. Vote 5 to 0 in favor.

Eric noted you wanted to have a motion to advertise a Public Hearing. BC: Motion to have the advertisement for the Medical Marijuana Moratorium Extension Zoning Bylaw. Board discussion. CS second. Vote 5 to 0 in favor.

BC: Read other information from Agenda. Noted Fine Arts Sign Special Permit, scheduled for August 27th. Then Fowler Street Extension Definitive Plan September 10th.

BC: I spoke with David Gavin today. Strategy changed today getting comments for the Assabet River Rail Trail. Going to do a joint Board of Selectmen/Planning Board letter to the new consultant. Get comments back from Board members by the end of August. JK: noted he has provided his comments to Eric today.

GT: I am providing my initial ideas on submission requirements to the Board. JK: Noted that the Rules and Regulations were pulled out of the Zoning Bylaw, but Max noted still exists not in the Bylaw.

ES shared other Correspondence to the Planning Board with the Chairman and other members.

KC Motion to adjourn. CS Second. Vote 5 to 0 in favor

Prepared by: Eric R. Smith, AICP, Town Planner