



City Of Attleboro, Massachusetts

ZONING BOARD OF APPEALS
GOVERNMENT CENTER, 77 PARK STREET
ATTLEBORO, MASSACHUSETTS 02703
TEL 508.223.2222 FAX 508.222.3046

MINUTES

SEPTEMBER 10, 2020

In accordance with the provisions of Massachusetts General Laws, Chapter 40A, as amended, the Zoning Board of Appeals held a public meeting on Thursday, September 10, 2020, at 6:30 p.m. remotely via Zoom, relative to the following:

Zoning Board Members Present: Chairwoman Cathy Merkle, Kathy Rautenstrauch, Kent Richards, and Sandra Varrieur

Zoning Board Members Absent: None

The Board heard the continued public hearing relative to Case #5502, the application of Green River Cannabis Co., Inc. for a special permit pursuant to §17-9.0 SPECIAL PERMITS under §17-10.15 MARIJUANA BUSINESS USES to establish a Marijuana Retailer, the subject premises being located at 1815 County Street, more specifically Assessor 's plat #26, lot #278D, located in the Industrial zoning district .

The Board read the letter and Form Z1 - Request to continue a public hearing to October 8, 2020, received from attorney Constant Poholek on behalf of Green River Cannabis Company, Inc., dated September 8, 2020.

Cathy Merkle made a motion to continue the public hearing relative to Green River Cannabis Co., Inc.'s application for a special permit, Case #5502. Kent Richards seconded the motion. All voted in favor to continue the public hearing.

The Board read the email from Scott Germadnik of 1797 County Street, received September 9, 2020, to the Zoning Board expressing opposition to Green River Cannabis' special permit application for property located at 1815 Count Street, Case #5502.

Speaking in favor of this application was Constant Poholek of Green River Cannabis Company who stated that they are in the process of addressing the concerns and questions raised by the Board, staff, and neighbors and looked forward to providing answers.

Speaking in opposition was Barbara Fernstrom of 636 Read Street who asked the status of a traffic study.

Director of Planning and Development Gary Ayrassian stated that the applicant is in the midst of preparing it.

Ms. Fernstrom stated that the by the Police Department provided her with statistics for the past five years regarding traffic congestion in the area. She stated that the data shows a significant number of accidents occurring at the intersection of Read Street and County Street as well as at the intersection of Jennie Way and County Street.

The Board asked that the data be submitted to the Planning Department.

Ms. Fernstrom also provided information about the area's crime statistics, which she stated was primarily larceny. She stated that her primary concern about the proposed marijuana business, however, is for pedestrian safety. She asserted that the data does not necessarily reflect all of potential traffic issues in that area, given that traffic is presently reduced due to COVID-19 and because the statistics do not include near-misses. She described other information that she has collected including news articles regarding the odor nuisance due to the marijuana retail shop in Fall River on William S. Canning Boulevard. She stated that the reports detail neighbors objecting to a constant marijuana odor around their homes as result of both the facility's normal operations and patrons consuming products outdoors in the area. She stated that some communities maintain setbacks for such facilities, which she found did not appear to be the case in Attleboro.

Mr. Ayrassian stated that a setback is not necessarily effective given that odors will travel. He stated that her opposition seems to relate to two separate odors - those from the facility itself, and those from patrons consuming products illegally outdoors. He asked whether the facility in Fall River is strictly a dispensary or if there is also a manufacturing component to the business.

Ms. Fernstrom replied that the Fall River facility is strictly a retail business. She stated her understanding that the nuisance odors are not as intense with retailers as it is with grow or manufacturing facilities. She stated that the Fall River facility has also faced a great deal of controversy from the City Council, residents, and the police relative to the extreme traffic issues in the area. She stated that weekends are particularly troublesome and one of the City Councilors estimated that it would cost \$1,320 per week to maintain police details at the site to address the traffic. She stated that the City should not have to shoulder that expense, which the taxpayers pay for.

Mr. Ayrassian stated that the City and taxpayers do not pay for police details. He stated that the entity needing the police is responsible for paying for it.

Ms. Fernstrom suggested that the City should proceed slowly with allowing such new uses, as the implications have yet to be determined. She stated that with the potential harm to the community, the City should be careful with where and how many they allow to open at one time. She stated that tax paying residents should be protected from such uses and suggested that they belong in industrial areas where they will not negatively impact families. She stated that she is not against pot shops, but that care should be taken in where they are approved so that no harm is done to existing neighborhoods.

Speaking in opposition was Lynn Ferreira of 30 Jennie Way who stated that she is in opposition to the project and is awaiting further answers from the applicant. She said she will be attending the October meeting.

Mr. Ayrassian stated that the Board directed the applicant to prepare and submit a traffic study and that after the Board receives it, it will be available to the public. He stated that the Board will also have an independent third party peer review traffic engineer evaluate the traffic study.

Speaking in opposition was Amy Burgin of 1797 County Street who stated that there are protected wetlands immediately behind her property and that her home is the only residential property within the required legal notification range. She expressed concern that any runoff from the parking lot has the potential to travel downhill to neighboring gardens and wetlands. She stated that it was misleading for Green River to suggest at the outreach meeting there was no opposition to their proposal, as she had attended and remains in opposition. She stated that although she understands the business is within the letter of the law regarding their notification procedures, she stated that she felt it was manipulative to not reach out further. She stated that her largest concern is with traffic on Venus Way, as the road is less than a quarter mile in length and that the area will not be able to support the traffic the way an industrial park is designed to. She stated that she anticipates patrons will just circle until they can find a parking space and end up on the nearby residential roads and driveways. She stated that they already suffer from a great deal of tractor trailer traffic and that she feels it will be definitely worsen should the marijuana business open. She expressed concern about potential

contamination on site due to the auto repair service and that additional paving on the site is likely to push more stormwater towards the 10 Mile River which is only a quarter mile down the street. She stated that she would like to see the soil tested for contaminants.

Mr. Ayrassian noted that the auto repair business is existing, so the concerns she is expressing is an existing issue and would not be associated with the proposed marijuana business. He stated that conceivably, paving over contaminated soil will cap it and prevent the sheet runoff of contaminate stormwater.

Speaking in opposition was Scott Germandnik of 1797 County Street who stated that he felt it would be safer for the soil to provide a natural filter rather than increasing the amount of asphalt on site.

Ms. Burgin stated that she is not against cannabis in general, but that she is concerned about the impacts of patrons smoking the product outside of the shop. She asked what will prevent people from driving from the site incapacitated and asserted that pedestrians will be at risk. She stated that the proposed marijuana business would be directly in front of her house. She said she is going to suffer from nuisance smells the most. She stated that she feels that she should not have to be subjected to nuisance odors 24-hours a day and that there must be a better place for such a business that is further away from residential neighborhoods.

Mr. Germadnik asserted that this location was chosen solely for its proximity to the Rhode Island border so that it could cater to out-of-state clientele.

Mr. Ayrassian replied that why a business choses a particular location is irrelevant to the Board. He emphasized that no one is obligated to divulge as a part of the application their business plan as to why one selects a site to conduct business studies.

Speaking in opposition was attorney Michael Mineau, representing Nova Farms, LLC. He reminded the Board that he had submitted a letter in opposition on July 16th and that the letter detailed their concerns that the proposed business would increase traffic and parking conflicts in the area. He stated that he does not feel that the proposed parking lot will be adequate. He stated that they are also concerned with protecting the nearby wetlands and the impact the proposed business could have on the utility easement located on site. He stated that they also have objections to the layout for entrances and exits and that the concerns raised cannot be addressed with the given layout and size of the property.

There being no one else to speak, the public hearing was continued.

The Board heard the continued public hearing relative to Case #5508, the application of Zachary M. Nigro for a special permit pursuant to §17-9.0 SPECIAL PERMITS under §17-3.4(#10) TABLE OF USE REGULATIONS - RESIDENTIAL to construct twelve (12) multi-family dwelling units contained in three (3) buildings for the elderly and handicapped, the subject premises being located at 868 Pleasant Street, more specifically Assessor's plat #124, lot #1, located in the Single Residence -D zoning district .

The Board read the Form Z3 - Request to withdraw petition submitted by Zachary M. Nigro, received September 10, 2020, relative to his special permit application, Case #5508.

Cathy Merkle made a motion to approve the applicant's request to withdraw his special permit application without prejudice, Case #5508. Kathy Rautenstrauch seconded the motion. All voted in favor via roll call to approve the applicant's request to withdraw his special permit application without prejudice, Case #5508.

The Board heard Case #5513, the application of Kristina's Critters, LLC for a special permit pursuant to §17-9.0 SPECIAL PERMITS under §17-3.4(#3) TABLE OF USE REGULATIONS - AGRICULTURE to operate a commercial kennel, more specifically a dog training facility, the subject premises being located at 13 Bank Street, Assessor's plat #28, lot #25 and #26, located in the Central Business zoning district.

Speaking in favor of the application was attorney Edward Casey who explained that his client has applied for a special permit to open a 1,600 square foot dog training facility on Bank Street. He explained that the owner of building, who is related to his client, Ms. O'Keefe, understands and supports the application. He stated that the business will consist of private dog training sessions that will last up to 1.5 hours and occasional group classes on Saturdays. He stated that the proposed business hours are Monday through Saturday, 9:00 a.m. to 8:00 p.m. He stated that Ms. O'Keefe would be the only employee. He stated that the maximum number of dogs proposed on the site at any one time would be five (5) and that the maximum number of people who might be on the premises at any one time would be ten (10) people. He stated that the dog training facility would be cleaned after each session and any waste produced by the dogs would be disposed of in a dumpster. He stated that the floors will have rubber matting and the walls will also be treated. He emphasized that the business model does not involve overnight boarding of dogs and that at no time would dogs be left alone on the premises. He stated that they anticipate any nuisance noise to be minimal, as the trainer will be present and working with dogs at all times. He stated that the only municipal service to be utilized will be water, which will be used to wash and clean the floors. He stated that there will be minimal disturbance to other tenants as Ms. O'Keefe's group class customers may use the parking lot at the rear of the building on Saturdays when other businesses are closed for the weekend. He suggested that with the continued goal of revitalizing the downtown, this business would be an asset to the downtown, as it will contribute to foot traffic and could lead to clients patronizing other area businesses.

Mr. Ayrassian asked if business hours are proposed on Sundays.

Attorney Casey replied no.

Cathy Merkle asked whether the business will operate by appointments only, walk-ins only, or a combination of both.

Attorney Casey stated his understanding that the business will operate by appointment only, especially given the current hazards of COVID-19.

Cathy Merkle asked whether the business will include retail sales such as leashes, collars, food products, or other related items.

Speaking in favor of the application was Kristina O'Keefe who replied no. She stated that the facility will strictly be utilized for dog training purposes.

Attorney Casey asked Ms. O'Keefe to describe to the Board her background and qualifications.

Ms. O'Keefe explained that she pursued a pre-veterinary education and served as the North Attleborough Animal Control officer for three years. She stated that during that time, she saw the need for dogs and owners to get help with behavioral issues before they got to the point of feeling the need to surrender their pets. She stated that the training she provides is force-free and focuses on opening the lines of communication between the owner and the dog that can ultimately lead to them having a life together that is less frustrating.

Mr. Ayrassian asked whether any business signage is proposed.

Attorney Casey replied no, other than decals on the door.

Mr. Ayrassian asked how clients will know where the business is located without signage.

Ms. O'Keefe replied that all of her business is performed by appointment and word-of-mouth.

Mr. Ayrassian suggested that signage could be helpful when the City sponsors downtown promotional festivities.

Attorney Casey replied that if it would result in needing relief for a non-conformity, he would advise against it.

Senior Land Use Planner Stephanie Davies stated that she felt that given the property's frontage, a small sign could meet the requirements of the sign ordinance without triggering the ordinance's non-conformity section.

Cathy Merkle inquired about the location for customer parking.

Ms. Davies stated that the business has an agreement to lease five parking spaces in the parking lot located at the rear of the building. She noted that the only other use in the subject building that she is aware of is an accounting office which only operates Mondays through Fridays. She stated that as such, she does not anticipate any parking conflicts during the week or on Saturdays.

Mr. Ayrassian asked Ms. O'Keefe if she intends to walk the dogs in the downtown.

Ms. O'Keefe replied no. She stated that all business operations will be indoors.

There being no one else to speak, the public hearing was closed.

The Board heard Case #5514, the application of Tonda L. Sison for a special permit pursuant to §17-9.0 SPECIAL PERMITS under §17-6.0 NON-CONFORMING USES, STRUCTURES, AND LOTS to alter a pre-existing, non-conforming structure, and a variance pursuant to §17-8.9 VARIANCES from the minimum front yard setback requirement pursuant to §17-4.9 TABLE OF DIMENSIONAL AND DENSITY REGULATIONS to construct a porch, the subject premises being located at 37 Chestnut Street, more specifically Assessor's plat #60, lot #334, located in the General Residence -A zoning district.

Speaking in favor of the application was Tonda Sison who stated that she would like to update and improve the appearance of her home by constructing a porch that is partially covered by a trellis. She stated that she is proposing to remove the old awning and to construct an approximately 4-foot wide, porch along the full length of the front of her house. She stated that she spoke with her next door neighbor and the neighbor across the street and that they both expressed their support of the proposal, as they felt it would be an aesthetic improvement for the home and the area as a whole.

Cathy Merkle asked Ms. Sison if she was certain of the length of the front yard setback variance she was asking.

Ms. Sison replied yes, that it is 16-feet from the edge of the porch out to the edge of the sidewalk.

Cathy Merkle asked if there are steps connecting the porch to the grade of the front yard.

Ms. Sison answered two steps.

Mr. Ayrassian stated that the Board will need to consider the variance as measured from the edge of the sidewalk to the edge of the bottom step.

Ms. Sison admitted that she was unsure of the additional distance the step would add.

Senior Land Use Planner Stephanie Davies estimated that the variance would need to be increased by 2-feet to accommodate the step.

Cathy Merkle stated that a variance of 16-feet would be required rather than 14-foot variance requested in the application.

Ms. Davies sought confirmation that the proposed porch will run along the entire front of the house, including the addition that bumps-out.

Ms. Sison replied yes and stated that they are proposing only a trellis in front of the addition.

Ms. Davies stated that a side yard setback variance is likely required in addition to the front yard setback.

Mr. Ayrassian agreed, stating that even without a roof, the base of the porch is still part of the principal structure.

Ms. Sison requested to amend her application and request a 12-foot side yard setback variance.

Cathy Merkle made a motion to amend the application for a 12-foot side yard setback variance.

Sandy Varrieur seconded the motion. All voted in favor to amend the application via roll call.

There being no one else to speak, the public hearing was closed.

The Board then held a business meeting.

The Board read the letter from John F. D. Jacobi, III of Coogan Smith, LLP, dated September 8, 2020 to the Zoning Board of Appeals requesting a one (1) year extension of time relative to GAM Realty, LLC's special permit and variance decision for property located at 37 Union Street, Case #5476A.

Ms. Davies asked whether the Form A filed by the applicant would constitute acting on the permit.

Mr. Ayrassian answered no, the Form A application was a passive, sideline action.

Cathy Merkle made a motion to grant a six month extension of time to GAM Realty, LLC to exercise its special permit and variance decision for property located at 37 Union Street, Case #5476A. Kent Richards seconded the motion. All voted in favor to grant an extension of six month relative to GAM Realty, LLC to that it may exercise its special permit and variance decision for property located at 37 Union Street, Case #5476A.

The Board read the letter from attorney Edward J. Casey of Coogan Smith, LLP, dated August 18, 2020 to Chairwoman Catherine Merkle of Zoning Board of Appeals requesting a one (1) year extension of time to act on the special permit decision issued to Briarleaf, LLC for 527 Pleasant Street, Case #5454.

Speaking was attorney Edward Casey who stated that his client has been struggling to obtain both local and state permitting as well as financing, which is an arduous process for a facility that contains marijuana manufacturing, cultivation, and dispensary uses. He stated that his client is optimistic they will be able to open by the end of the year and requested a one year extension of time to act on the decision granted.

Mr. Ayrassian recommended the Board grant the extension.

Cathy Merkle made a motion to grant a one year extension of time to Briarleaf, LLC to exercise its special permit and variance decision for property located at 527 Pleasant Street, Case #5454. Kent Richards seconded the motion. All voted in favor to grant an extension of one year relative to Briarleaf, LLC to exercise its special permit and variance decision for property located at 527 Pleasant Street, Case #5454.

With an appointment to speak was attorney Edward Casey on behalf of William Allard regarding their request for an extension of time to act on the permit granted relative to 40 Evergreen Road, Case #5472.

Attorney Casey stated that the Board granted variances to allow for the subdivision of the Allard's land. He stated that the endeavor is meant to raise money to pay off their daughter's college debt. He reminded the Board the Allard's intent to continue living in their house and sell the neighboring lot, a concept to which none of their neighbors objected. He explained that due to the COVID-19 pandemic, they have not been able to come to terms with the buyer as quickly as they had hoped. He stated that the prospective buyer has affirmed his intent to acquire the property, if the Board would grant a six month extension for the decision. He emphasized that the house would be built in conformation with others in the neighborhood.

Cathy Merkle made a motion to grant a six month extension of time to William Allard to exercise his variance decision for property located at 40 Evergreen Road, Case #5472. Kent Richards seconded the motion. All voted in favor to grant an extension of six months relative to Briarleaf, LLC to exercise its variance decision for property located at 527 Pleasant Street, Case #5454.

The Board discussed Case #5513, the application of Kristina's Critters, LLC for a special permit pursuant to §17-9.0 SPECIAL PERMITS under §17-3.4(#3) TABLE OF USE REGULATIONS - AGRICULTURE to operate a commercial kennel, more specifically a dog training facility, the subject premises being located at 13 Bank Street, Assessor's plat #28, lots #25 & #26, located in the Central Business zoning district.

Cathy Merkle made a motion to grant a special permit pursuant to §17-9.0 SPECIAL PERMITS under §17-3.4(#3) TABLE OF USE REGULATIONS - AGRICULTURE to operate a commercial kennel, more specifically a dog training facility, the subject premises being located at 13 Bank Street, as shown on the site plan. Kathy Rautenstrauch seconded the motion. A discussion followed. All voted in favor. The Board attached conditions.

The Board discussed Case #5514, the application of Tonda L. Sison for a special permit pursuant to §17-9.0 SPECIAL PERMITS under §17-6.0 NON-CONFORMING USES, STRUCTURES, AND LOTS to alter a pre-existing, non-conforming structure, and a variance pursuant to §17-8.9 VARIANCES from the minimum front yard setback requirement pursuant to §17-4.9 TABLE OF DIMENSIONAL AND DENSITY REGULATIONS to construct a porch, the subject premises being located at 37 Chestnut Street, more specifically Assessor's plat #60, lot #334, located in the General Residence -A zoning district.

Catherine Merkle made a motion to grant a variance pursuant to §17-8.9 VARIANCES of sixteen (16') feet from the minimum front yard setback requirement of thirty (30') feet pursuant to §17-4.9 TABLE OF DIMENSIONAL AND DENSITY to construct a porch, as shown on the site plan. Sandra Varrieur seconded the motion. A discussion followed. All voted in favor. Catherine Merkle made a motion to grant a variance pursuant to §17-8.9 VARIANCES of twelve (12') feet from the minimum side yard setback requirement of fifteen (15') feet pursuant to §17-4.9 TABLE OF DIMENSIONAL AND DENSITY to construct a porch, as shown on the site. Sandra Varrieur seconded the motion. A discussion followed. All voted in favor. Catherine Merkle made a motion to grant a special permit pursuant to §17-9.0 SPECIAL PERMITS under §17-6.0 NON-CONFORMING USES, STRUCTURES, AND LOTS to alter a pre-existing non-conforming structure to accommodate the construction of a porch, as shown on the site plan. Sandra Varrieur seconded the motion. A discussion followed. All voted in favor. Catherine Merkle made a motion to grant a special permit pursuant to §17-6.0 NON-CONFORMING USES, STRUCTURES AND LOTS to alter a pre-existing non-conforming structure to accommodate the construction of a porch, as shown on the site plan. Sandra Varrieur seconded the motion. A discussion followed. All voted in favor. The Board attached conditions.

The Board tabled the email and plan from Geoff Lewis of Ajax Partners, received November 9, 2019, to Director of Planning and Development Gary Ayrassian, proposing minor alterations to the New England Sports Complex site access.

The Board tabled the letter from Director of Planning and Development Gary G. Ayrassian, dated October 8, 2019, to Planning Board Chairman Paul Danesi and Zoning Board of Appeals Chairwoman Catherine Merkle, regarding proposed changes to processes relative to public hearing legal advertisements.

The Board reviewed all remaining correspondence.

The Board tabled the pending minutes of November 14, 2019, December 12, 2019, January 9, 2020, February 20, 2020, May 21, 2020, June 25, 2020, July 9, 2020, and August 13, 2020.

The meeting adjourned at 7:55 p.m.