

Meeting Minutes**APPROVED****Planning Board**

Wednesday, March 20, 2019

Newbury Municipal Offices

Members Present: Rachel McManus, Chair; Peter Paicos; George Morse; Larry Murphy; Martha Leahy (Associate Member)

Members Absent: Kristen Grubbs

Staff Present: Martha Taylor, Town Planner

Rachel McManus, Chair, called the meeting to order at 7:02 p.m.

A. Town Planner's Report

M. Taylor reported that there is a possibility that the 40B on Pearson Drive, Byfield Estates, could come back before the Board with a different developer. There have been a couple of inquiries. They will have to start the process from the beginning, this developer has done four 40Bs before, so he is familiar with the process. That may happen relatively soon.

B. CPTC Conference Report

P. Paicos reported on the Citizen Planner Training Collaborative (CPTC) Conference that took place the previous Saturday. M. Taylor, R. McManus, and P. Paicos attended the conference.

R. McManus reported on the portion of the conference she attended regarding Site Plan Review. She said that it was very helpful and reminded them what the purpose is. She also attended a talk on resiliency planning for climate change and a session on Salem's experience with permitting recreational marijuana, which was interesting because they were one of the first communities to permit this use.

M. Taylor reported on the sessions she attended. First was one on Open Space Residential Development, specifically Natural Resource Protection Zoning. She said there are some changes that they are looking at, such as not having minimum lot size or frontage requirements other than state requirements, which would still kick in. She also attended the Marijuana session. Last she attended a talk on exactions and mitigations, concerning the things you can request from a developer to mitigate the impact of the project.

P. Paicos said that he attended sessions that had the Mass Audubon in common. The last session was the most valuable, in which they talked about the visions for the future and where you are taking your community. It initiated a conversation of how they can be creative and think outside the box, how to bring in different types of housing systems considering the types of resources the Town has.

M. Taylor reported that Carol Thomas, a fellow of the American Institute of Planners, passed away – Ms. Thomas had worked with the Town on the 2006 Master Plan.

C. Public Hearing – Proposed Amendments to Code of the Town of Newbury, Chapter 97, Zoning

R. McManus opened the public hearing on the proposed amendments to the Code of the Town of Newbury, Chapter 97, Zoning.

L. Murphy read the public hearing notice.

L. Murphy started the PowerPoint presentation on the proposed amendments. The first item was Marijuana. The current bylaw was passed April 2018. The Board wrote this bylaw with the intent of coming back to it once the Cannabis Control Commission (CCC) came out with their code.

There are multiple types of marijuana establishments including retailers, cultivators, cultivator cooperatives, product manufacturers, and testing facilities. A Special permit from the Planning Board is required for all of these establishments, as well as a license from the Selectmen. Currently the retailers are only allowed in the Business and light industrial (BLI), which is basically along route 1 from Boston Road north to the Newburyport Line. The other forms of establishments are allowed there and in the commercial highway (CH) district, except for a small piece where the prime gas station is.

L. Murphy reported what the buffer zones are for retail marijuana under the current zoning. These buffers are 1000 feet property line to property line from pre-existing public or private school K through 12, daycare centers, or similar facilities where minors congregate. For cultivators, manufacturer, and testing sites it is 500 feet property line to property line from those uses. For all types of marijuana uses it is 300 feet property line to property line from pre-existing residential use.

Under the CCC Marijuana establishments may not be located within 500 feet property line to property line from a pre-existing public or private school K through 12. The CCC Regulations are silent on residential buffers. There is not a lot of guidance on how much local bylaws can vary from their regulations, but they do state that local regulations can not be unreasonably impractical.

L. Murphy said that one of the concerns is that there are few if any practical locations for any marijuana establishment because the current buffer zones are so restrictive. The town and the state voted to permit these establishments, but the sense is that our current buffer zones are so restrictive that there is no practical locations for them.

L. Murphy and M. Taylor showed maps of the BLI with the buffer zones from Schools and residential properties, which illustrated the lack of viable lots for these establishments. Many of the few lots that remain have wetlands that would make them unsuitable. They looked at the CH district which with the residential buffer is all zoned out.

L. Murphy then presented what the Board is proposing, which is that the buffer zones for all marijuana establishments to pre-existing schools and daycare centers be 500 feet property line to property line. For the residential buffer zone the Board is proposing 150 feet from structure to structure. They also have added a provision which would allow the planning Board to reduce the buffer zones by up to 25% if the applicant can demonstrate

that the marijuana establishment would otherwise be prohibited in town or the protected use and the marijuana establishment are separated by a significant barrier, such as a state highway, significant wetlands, perennial stream, railroad tracks and other such barriers.

M. Taylor commented that these amendments would allow retail establishments in the CH district and all to the Commercial Highway A district which is the district where the Newbury Town Hall currently resides.

R. McManus opened comment to the public.

Damon Jespersen, 4 Marsh Meadow Lane, said that one of the Town's best sources of revenue could be a marijuana establishment and he thinks that the buffer from a daycare is not necessary because it is not a concern with children of daycare age.

The Board moved on to the Wireless bylaw amendments. R. McManus explained why the Board started looking at the wireless bylaw, because it is dated, written in 2001, and at this point out of compliance with Federal law with respect to being able to adjust to existing facilities. In 2012 an act was passed which made modifications to existing facilities possible as long as it did not change the dimensions of the facility. This means collocation of transmission equipment and/or removal of transmission equipment and/or replacement of transmission equipment is allowed. This is what the Board has done to amend the Towns bylaws and that is why they did it. Anything that is within this definition will be up to the Building inspector to allow.

The other changes in the wireless bylaw have to do with reducing the buffers for towers from 900 feet to 300 feet and abutter notifications. The Board has extended the fall zone for the tower to one and a half times the height of the tower, because that seemed to be the way that many other towns are handling it.

D. Jespersen said that he did not see the benefit to increasing the fall zone, it is not the same sort of thing as when a wind turbine falls. He commented that they are having trouble with service in town so the less restrictive the bylaws are the better.

Next, M. Taylor presented a correction, to add the Planning Board and the Zoning Board of Appeals as Special Permit Granting Authorities in the Agricultural-Residential District, as already designated in the current Table of Use Regulations. This is not a change to the bylaws, it is just a correction of an inconsistency.

Leslie Matthews, 111 Main Street, asked if this would be the Planning Board and the Zoning Board of Appeals getting materials together to submit them to the Board of Selectmen.

M. Taylor said no, this clarifies who the Permitting Authority is for Applications that are submitted in the Residential-Agricultural District. For example, the Planning Board is designated in the Table of Use Regulations as the Special Permit Granting Authority for Marijuana establishments. So the Planning Board would act on that independently, would hold a public hearing, come to a decision, and issue the Special Permit.

L. Matthews asked if this would include a small business that wanted to open in the Agricultural-Residential zone and work as a home based business.

M. Taylor said if it met the customary home occupation provisions, it would not require any sort of a special permit. If it is something outside of that, like a retail business, it would require a special permit from the Board of Selectmen.

The final amendment was suggested by the Building Inspector that he has come across multiple times, which is if a builder buys a parcel and wants to build a new house on it and there is an existing dwelling on the property that is no longer being lived in, this would allow the contractor to use the existing dwelling as a temporary construction site office while a new dwelling is being built until a certificate of occupancy is issued for the new dwelling, at which time the existing dwelling would be demolished. The Building Inspector doesn't have any authority to allow this under the current by laws.

The Board discussed the removal of Daycare in the Marijuana buffer as D. Jespersen suggested. L. Murphy said there is good argument for both ways, his concern was initially that the town might not be favorable to an amendment that did not include daycare in the buffer. Maybe the thing to do would be to leave it in and let someone move at Town Meeting to take it out.

P. Paicos said there is something to be said for following the lead of the CCC just for consistency.

M. Leahy asked if other towns are following the CCC.

L. Murphy said that he looked at Rowley and they have very little by way of regulation.

The Board concluded that they should leave daycare in and if D. Jespersen would like to move to take it out at Town meeting he could do so.

M. Leahy asked who in Town would know how many licensed daycares there are.

L. Matthews asked doesn't the state have a list of licensed daycare facilities?

M. Leahy said they should.

L. Matthews said they are also required to have a fence to keep the children from wandering outside the facility.

M. Taylor said that the concern that was raised to her was not about the kids being exposed to it but the parents being uncomfortable that their kids might be exposed to it.

The Board then moved on to the comment from D. Jespersen about reducing the fall zone of the tower to the height of the tower.

P. Paicos said that if something is significant enough to take the tower down it could move it around, so he is comfortable with one and a half.

G. Morse suggested one and a quarter. He asked what the height of most towers in town are.

R. McManus said around 65 feet.

G. Morse asked if it would make sense for M. Taylor to talk to the Daycare operator to give her a heads up and see what her feeling is.

M. Leahy asked if the setback is increased for the towers would that restrict where they can go?

M. Taylor said it might rule out some properties.

The Board concluded that they should return the setback to one time the height of the tower.

Motion: A motion was made by P. Paicos and seconded by G. Morse to amend the proposal to allow for the previously existing one time the vertical height. The motion passed unanimously.

Motion: A motion was made by L. Murphy and seconded by P. Paicos to accept the additional language regarding the removal of an existing dwelling. The motion passed unanimously.

M. Taylor suggested the possibility of having a separate article for the discretionary reduction of setbacks where significant barriers are present. Then if the rest doesn't pass, maybe this article would. The Board would have to hold a separate public hearing for it and there is just enough time before Town Meeting.

R. McManus asked if the Board has any serious inquiries before us for marijuana establishments.

M. Taylor the only one so far is someone who is interested in buying some of Bill DiFrancesco's property to set up a retail establishment. This would not be allowed as the bylaw currently stands.

L. Murphy asked if there is any reason that someone couldn't move for approval of that particular provision if the rest of the article is turned down. His thought was to move forward as if we will have a separate article, but in the meantime talk to town counsel and see if that is necessary.

Motion: A motion was made by L. Murphy and seconded by G. Morse to approve the warrant articles as amended and recommend them to the Board of Selectmen for inclusion on the warrant for Town meeting. The motion passed unanimously.

Motion: A motion was made by P. Paicos and seconded by G. Morse to close the public hearing on this matter. The motion passed unanimously.

D. Liaison Reports

M. Taylor reported on the last Board of Selectmen meeting. It was a short meeting the main topic was that they voted not to accept the Upper Green Project as a gift. R. McManus reported on the Conservation Commission, she said most of the items were continued, the Governors Old Road widening project public hearing was closed. Proposal at 28 Riverfront to relocate some existing paved area and remove some invasive species was also continued because they are waiting on a number from DEP. G. Morse said there is no report for ZBA tonight.

Tony Matthews, 111 Main Street, asked if they allow people to live in a house while another one is being built.

M. Taylor said they do. After construction of the new dwelling is complete, the existing dwelling has to come down because there can only be one primary dwelling on a lot. This would be a good question for the Building Inspector.

On a motion made by G. Morse and seconded by L. Murphy, the meeting was adjourned at 8:21 p.m.

Respectfully Submitted,

Emily Noble
Planning Board Administrator