

NORTH BERWICK, ME 03906

MINUTES OF PLANNING BOARD OCTOBER 27, 2016

Present: Chairman Geoffrey Aleva, Jon Morse, Anne Whitten, Matthew Qualls, Roger Frechette, CEO

Absent: Rick Reynolds, Barry Chase

Also Present: Jason Hayes, Joshua Seymour, Aaron Barth, Jill Cramer, Brad Morin, Mark Adler, Charles Barto, Shirley Barto, Lorinda Hilton, Chris Volovski, Jay Boston, Heidi M. Chandler, William Chandler, Tracy Mason, Carol Campbell, Brenda Boston

1. Call To Order:

Chairman Geoffrey Aleva called the meeting to order at 6:30 pm.

Chairman Aleva moved Matthew Qualls up to full voting status.

2. Review Previous Minutes:

Matthew Qualls motioned to approve the minutes of October 27, 2016 as written. Jon Morse seconded the motion. VOTE: 3-0 Abstain: 1

3. Current Business:

3.1 Conditional Use Application review submitted by Jackson, Drysdale & Associates of 19 Buffum Rd. (Tax Map 015 Lot 003) propose to change two of the existing units to Medical Marijuana Care Givers. 4.2 Change of Use Similar to Conditional Uses

Chairman Aleva asked Roger Frechette to give a description of what the application is about. Roger Frechette stated that when this building first came about it was in an Industrial Zone. Now the zoning has changed to a Residential Zone. The attorneys told Mr. Frechette that because the building was there while it was an Industrial Zone it is grandfathered for 6 uses. He stated that they need at least an acre for each use so they have 6 acres so they can have 6 uses. These uses can be just about anything that they want. He stated that if they had a warehouse before and another warehouse wants to come in, they are all set. However, because they want to change the use, they need to come before the Planning Board for a Conditional Use Permit.

Chairman Aleva asked the applicant to step forward and go over his proposal. Mark Adler from Jackson, Drysdale & Associates, LLC is the property manager for the building. He stated that

they currently have 2 open units and they are looking to put caregivers into those 2 units. He is in the final stages of negotiating leases with the tenants. He stated that one of the problems that they have had in the past, with this kind of use, is the odor. The new leases require industry best practices in regards to odor and moisture control. He stated that they have a caretaker in the building now that has done their building appropriately. They had another tenant in the building that did not do their buildout appropriately and there were odor issues and moisture issues. He stated that they have learned their lesson with that one and they certainly want to be good neighbors not only to the nearby property owners but also to the other tenants in the building. They currently have a CrossFit Gym in there and it is hard for them to get new athletes to come in if the place reeks of marijuana.

Chairman Aleva opened the Public Hearing at 6:36 pm.

Charles Barto stated that he lives on Union Lane and is one of the closest neighbors to this property. He stated that it definitely was stinky before. He stated that he wasn't sure exactly where the new units were going to be and asked if they could show him. Mr. Adler showed everyone his design, that he had brought, where each of the units were located. He stated that the bottom of the map is Buffum Road and the top of the map is the railroad tracks. He stated that Unit 1 currently has a caregiver in it but he is taking the use that was in Unit 3. They will have 2 caregivers in Units 1 and 2. The 5,800 sf for Unit 3 is going to be the CrossFit Gym. They were in Unit 2 but they are moving to Unit 3 because they wanted more space. Unit 4 is for 8,220 sf and currently has a mover in it. They are looking to putting caregivers in Units 5 and 6.

Charles Barto stated that the definitions under caregivers in our book doesn't mention marijuana at all other than in regards to dispensaries. He feels that this is a far reach for them to consider marijuana as agriculture. He feels that it is a drug store. He stated that they grow the marijuana and sell it to the people that have medical marijuana cards. He stated that it is an illegal substance by legal standards and he doesn't care what the State says it is. He stated that even if it is approved at the election, it is still illegal by Federal standards. He stated that the permit should be denied based on our Ordinances. In our Conditional Use applications, it has nothing about medical marijuana in our book under the land uses. Mr. Frechette stated that it doesn't have it on the Tables but we do have it in the Ordinance.

Chris Volovski stated that he lives at 103 Buffum Road. He would like clarification as to what a caregiver is. He was wondering if it was the person leasing the property. Mark Adler stated that in their perspective, they are tenants and they will be coming in to use the space. Brad Morin, the attorney for the applicant stated that a caregiver is defined by State law. Caregivers are designated by someone who has a medical marijuana card to grow the marijuana for them.

Chairman Aleva asked if the people were actually going to be coming to the property to get their marijuana. Aaron Barth, one of the caregivers that is applying for the space, stated that as far as the State goes, customers have the ability to come to the caregiver to pick up their medicine if

they need to. He said that it is a possibility that they would have the patients come if it is convenient for them. He stated that some patients that might have small children or parents prefer that caregivers do not come to their home. Mr. Barth stated that the whole point of them going into a building like this is to get it out of our home and put it in a safer environment for the patients to come to.

Chris Volovski stated that they are putting in an application for medical marijuana. On the State level, there is a bill on the docket for voting in recreational marijuana. Will that also encompass this space if it gets voted in? Chairman Aleva stated that he honestly does not know and it is something that he wants to ask the town attorney about how that would work. He stated that he knows that there are very clear distinctions between medical and recreational marijuana and he believes that they are 2 totally separately situations. Roger Frechette stated that he is not sure yet on how it will work with the recreational use.

Matthew Qualls asked for clarification as to what the service was that they are looking to approve tonight. Roger said that it is for caregivers. He stated that they are allowed to go into the building. The only thing that we can put restrictions on is the building itself. It does not say anywhere where they can or cannot be. He said that there are a lot of rules that the caregivers need to follow through the State. Chairman Aleva stated that there has been discussions between our town attorney and the attorneys for the applicant to discuss the rules and regulations on how this works. He stated that there is very little regulation as to where this can happen so we cannot deny the use but we can address any concerns and make conditions to go along with the use.

Jon Morse asked if the conditional use permit is approved do the caregivers have to go to the State to get a State license. Chairman Aleva stated that the caregivers already have their license. Mr. Morse asked the caregivers if they were just looking for a place to grow it now that they are licensed. The caregivers present are already growing it mostly out of their homes. They are looking to do it in a more safe and secure place.

Aaron Barth stated that the vote on Election Day would really not affect their space. He stated that if it passes, the State is going to give out so many square feet of cannabis space. Because they already have a specific space that they are already occupying, it wouldn't increase or decrease their operation. It would only affect them if they had the ability to add on to the building. Because they are rental tenants, it really will not impact them. Chris Volovski asked if they were going to be the only dispensary in Southern Maine. Mr. Barth stated that they are not a dispensary. Chairman Aleva stated that there is a definite difference between what a caregiver is and what a dispensary is.

Joshua Seymour stated that it sounded like some of the people were concerned with the number of people coming in and out of there. He stated that each caregiver is limited to 6 registered patients which includes 5 registered patients plus himself. That is a maximum of 36 plants. We are only allowed 1 caregiver per unit. This means that there would be a maximum of 5 patients coming to their unit and the other caregiver would have a maximum of 5 as well for legal sales.

Jason Hayes stated that there is only one dispensary allowed per county and that already exists in York County so there wouldn't be any expansion to that.

William Chandler wanted to discuss the smell. He stated that he just came from Buffum Road and there is a smell there. He feels that it definitely needs to be addressed. Mr. Chandler stated that if the voting is in favor for recreational marijuana, what can we do to make sure that we have zoning in place to make sure that we don't have stores in this town? He also wanted to know what they can do to make sure that agricultural actually goes in the agricultural zones and not the residential zones. Chairman Aleva stated that he will talk to Dwayne to get more information regarding the stores. He told Mr. Chandler to come to the next Planning Board meeting and he will have answers regarding this. Chairman Aleva stated that in our Ordinance right now, it states that we will only allow one dispensing facility in the town. It is limited to 2500 sf and has other restrictions as well. This is in our Ordinance under Section 5.2.

Tracy Mason stated that she lives on Buffum Road and they have small children and teenagers that are going to start driving. She stated that she has no problem with medical marijuana and she knows that there is a place for it. She stated that it really does smell and she feels that something needs to be done about it. She was also wondering if there was a way that we allow them to grow it there but not to sell it from there. She is worried about people picking it up and using it there. It is a substance and she is worried about them driving down the road after taking it because they have kids and pets. She stated that it is different from a bar in town because this is a Residential area. She also wants to know about the security that they will have because she is concerned with break-ins.

Aaron Barth stated that he knows that odor in a lot of these places is an issue. He stated that he is investing over \$6,000 in an air filtration system to make sure that they minimize the odor control. It is carbon filters that neutralizes the odor from cannabis. He is intending on putting in at least 11 filtration systems to try and minimize that. The last thing he wants is angry neighbors. Joshua Seymour stated that he does not know what the other people that are in there have for filtration but they are investing a lot of money to do it the right way.

Chairman Aleva asked the applicant when the tenant that moved out had done so. Mark Adler stated that they moved out about a month or two ago. He stated that the place has been closed but the Cross Fit gym has been airing it out to get ready to move in. There must be some residual odor in the ventilation so that is where he suspects some of the smell is coming from.

Mr. Adler stated that the building is grandfathered Industrial so anything that is approved in Land Use Table for Industrial, they can put into the building. There are things that require Conditional Use and there are things that are not allowed. He believes that there are some approved land uses that would put out smoke and things that would be much more noxious and toxic. He stated that they definitely want to minimize the problem. They are trying to come up with a low impact use that will not bother the neighbors as much.

Aaron Barth stated that are several different ways to grow cannabis and the way he is going to do it is in a sealed system. He will have an air tight room that will have its own odor control within that room. Obviously, when the door is open, some of the smell will go into the common space. This is where he has added in additional filtration. There is a locked security room before you even come into the space. They are making it as airtight as they can to minimize the odor. Any air that leaves the room goes through a carbon filter. Mr. Barth stated that he has 5 children himself that range from 20 years old to 9 months so he totally understands the concern regarding the children. He stated that the majority of their patients that they see are elderly patients and they don't see too many young patients.

Tracy Mason asked again about allowing them to grow there but not have patients pick up. Chairman Aleva stated that they cannot restrict this per State law.

Chairman Aleva stated that Section 5.1.3 in our Ordinance covers Air Emissions and Section 5.1.4 covers Odors. This gives responsibility to the Code Enforcement Officer to make sure that items are correct. There is always an opportunity for residents and abutters to file a complaint with the CEO. The CEO will do an investigation and then there is remediation where there is opportunities to fix the violations. Chairman Aleva stated that he has worked on a couple of these and if the system goes in similar to what Mr. Barth was describing, it will significantly eliminate the smell.

Charles Barto stated that the area was always Residential with an Industrial building on it and then the town changed it to Industrial. There was a citizen's petition that brought it back to how it was. He is concerned about security. He would like to see them use infrared cameras. He would rather not have a big spotlight coming on in the middle of the night or big spots on the building. He is just about a half block away from property so he doesn't want a spotlight in his window.

Shirley Barto stated that they have been growing some there for at least a year. She said that it came to their attention in April when they had a private detective come to their house and asking about some complaints. They went to Stephen Peasley and they were told that there was nothing they could do. They were informed to call the State. They called the State and were told that they are the ones that would need to inspect and because they don't have enough people, they can only do it about once a year. Mrs. Barto asked who was going to police them. Chairman Aleva stated the conditions that are put on the applicant are enforceable by our CEO.

Jon Morse asked if the odor was harmful and Joshua Seymour stated that it was not and that it will not get you high.

Lorinda Hilton stated that she also lives on Buffum Road. She asked if their patients were all Maine residents and if they were all North Berwick residents. Joshua Seymour stated that they are all Maine residents but not all North Berwick residents.

Heidi Chandler from Buffum Road asked what would stop people from breaking in and then driving down the road fast to get away from the police. Anne Whitten stated that she cannot answer that question specifically. She did say that in Sanford there are numerous caregivers and she does not know of any that have had any issues. She stated that the caregivers do not want to put their lives in danger and she believes that the security measures that they will be talking about are going to be pretty hefty.

Tracy Mason asked again about how they can make sure that the patients don't take the medicine in the parking lot after picking it up. Anne Whitten stated that it is impossible to stop somebody from doing that. She stated that if she smokes a cigarette in her car with a child in it and nobody sees her, she can get away with it even though it is against the law. She stated that it is against the law to smoke any marijuana in public. You can smoke it in the privacy of your home.

Aaron Barth stated that his insurance company mandates that he has certain paperwork for the patient to fill out. It holds them liable to understand the knowledge that they are not allowed to use cannabis on his premises or on the premises that they rent. This includes inside the building and in the parking lot. Mr. Barth stated that if they find somebody using cannabis on their property, they have the right to fire them as patients. They don't want to put themselves in that risk of losing their insurance or have any type of legal action.

Chris Volovski stated that he understands that they cannot control what people do, however, he is also concerned with the safety on the roads. He said that Buffum Road has become a racetrack and it is a safety issue. He stated that the police department is not up to the task because they are a small department. Jon Morse stated that the Police Department has a small budget so they can only do so much. Joshua Seymour stated that he grew up walking distance to this building and grew up in North Berwick so he is very familiar with the area.

William Chandler asked what was going on with Unit 1. He was wondering if they were expanding to Unit 2. Mark Adler said that yes they were. They are under the same regulations that these applicants will be under. Mr. Chandler asked what it would take for the Board to turn this application down. Jon Morse stated that we cannot turn it down legally. All we can do is put conditions on them. Chairman Aleva stated that the Board could vote no but then the applicants could take the Town to court and the Town would lose.

Jason Hayes stated that the reason they are here is because they want to get into a commercial space. He stated that he could buy a house next door to one of them, put up a 6 foot fence in the backyard, not put in any kind of filtration system or security system and grow 6 plants just because he is a medical patient. They are here because they want to do it the right way. Mr. Hayes stated that the amount of money and equipment that they are putting into this is costing more than his first mortgage. He does not want to lose any of that money. He has even contacted a metal fabricator to reinforce the windows with bars and the bay doors with extra security so they can't be pushed open.

Carol Campbell stated that she was here last year when the trucking company came in and there were a lot of conditions put into place. She stated that she appreciates the extra care that they

want to put into this operation to pay attention to filtration and security. Her overall concern is if they are successful, want to expand and leave that unit. There has been a conditional use approved already for this type of operation so going forward, there is not guarantee that the next people coming in are going to observe the same conditions. Chairman Aleva stated that they can put a condition on this use that if the caregiver changes, they would have to come back to the Board. Carol Campbell stated that she would like for this to happen because the conditions are only as good as the tenants that are willing to follow them. Chairman Aleva stated that their application is not with the 3 gentlemen that are here as caregivers. It is with Mr. Adler who is the manager of the building. The conditions go with the building and it is up to him to enforce them with the tenants and make the satisfaction to the CEO before they can get an occupancy permit for operations.

Chairman Aleva closed the Public Hearing at 7:28 pm.

Brad Morin stated that we have established that it is allowed and now we just need to decide on the conditions. He urges the Board to not create an administrative problem when there is already a lot of State law governing the security measures that they have to take. He said that if you track what is required by State law, this at least gives the town a chance to verify these things. You also don't want to make a whole new level of regulations for the applicant that make it harder for the town to enforce. He believes that anything regarding odor is more of an enforcement issue. He stated that the State can also impose fines on a per day basis for any land use violation. He stated that the tenants will not want to create a bad environment for the other tenants that are not caregivers.

Mr. Morin stated he does have a concern regarding future conditional use permits for a new tenant. He thinks this could be problematic. The Conditional Use is being applied for by Jackson, Drysdale & Associates, LLC not the individual tenants that are caregivers. If a marijuana grower is in the unit and another marijuana grower comes in when they leave, it should not require a new Conditional Use permit. Whoever goes to get their caregiver license, has to go through the State process and meet all of the same requirements. The Town can make sure that what they are doing in the Unit is what the Board was expecting them to do. He would appreciate the Board to not make extra conditions above what the State requires that would be extra costly for the tenant.

Matthew Qualls asked to go through the security and oversight requirements from Ordinance. Chairman Aleva stated that these requirements from our Ordinance are for dispensaries. Chairman Aleva read through them:

1. There shall be no outdoor cultivation of marijuana.
2. Alarm Systems-Registered dispensaries and registered cultivation facilities shall have door and window intrusion alarms with audible and police notification components.

3. Exterior security lighting – registered dispensaries and registered cultivation facilities shall have spot lights with motion sensors covering the full perimeter of the facility.

4. Video surveillance – registered dispensaries and registered cultivation facilities shall have recorded video surveillance covering all plants and the entire exterior. For registered cultivation facilities, the recorded video surveillance shall operate 24 hours a day, seven days a week and for registered dispensaries shall, at a minimum, operate at all times that the facility is not open to patients. Records of surveillance shall be kept for a minimum of 30 days.
5. Registered dispensaries and registered cultivation facilities may not continue to employ an employee who is convicted of any state or federal controlled substance law while employed at the registered dispensary or registered cultivation facility. If a principal officer or board member of a registered dispensary or registered cultivation facility, that registered dispensary or registered cultivation facility shall immediately be considered in violation of this ordinance.
6. A registered dispensary may not be open to the public between the hours of 8:00 pm and 7:00 am.
7. Sufficient measures must be in place at all times to prevent smoke or odor from exiting a registered dispensary or registered cultivation facility.

Anne Whitten asked Brad Morin if the State already had security rules and regulations attached to them. Mr. Morin said that they do have to have it in a locked facility. Mr. Morin stated that Section 2.7 of the State Regulations talks about cultivation of marijuana. It has to take place in an indoor locked facility or an enclosed outdoor facility.

Chairman Aleva asked the owner what currently exists for security on the property. Mark Adler stated that there is some exterior lighting and locks on the doors. There is no alarm system at this time.

Chairman Aleva asked Mr. Morin how the owner is notified if a caregiver is in violation. The landlord can be expected to have the caregiver show them proof of all of their licenses and certifications.

Matthew Qualls was wondering if we have had anything come up in the past that would have required them to have surveillance. Chairman Aleva did not recall anything like that.

Chairman Aleva stated that he wrote down a few conditions. Regarding odor, he stated that we cannot put a condition on the odor. What we can say is that the odor control shall meet the Ordinance. He also feels that they have alarm system that is tied into the Police Department for notification. He stated that the building shall have security lights but they need to be protective of spilling over into abutting properties. He is also recommending that there be video surveillance that will be recorded for the entrances of the building. Also, if a caregiver leaves and a new one comes in and they need to come back either to this Board for a Conditional Use or at least to the CEO for an occupancy permit. The conditions established for this application will follow through to the new caregivers. We can also restrict a time period for when the patients can come pick up their medication.

Anne Whitten asked the caregivers what they are planning for security. Jason Hayes stated that they are planning to use a third party surveillance. They will hire a professional security to come in and monitor the front door, garage door, internal space, common space and office space

through the use of cameras. Joshua Seymour stated that they will have motion detection and infrared which will all be recorded at all entrances and both sides of the building. He stated that security is their top priority because this is their livelihood. If they get broken in to, we have lost our investment. They want to get the cameras that capture the quality of image.

Anne Whitten asked what they planned on for outside lighting. Jason Hayes stated that everything that had been recommended by Chairman Aleva is reasonable. He would like to do the shielded wall packs at the perimeter of leased spaces. The wall packs point straight down.

Charles Barto said that they could put in a relay for the lights so if a window gets broken, all the lights come on. The caregivers said that they could do that.

Jon Morse asked the caregivers what they would consider for hours for patient pickup. He also asked how often the patients came in to pick up their prescriptions. Joshua Seymour stated that they are allowed to have 2.5 ounces every 15 days. They can space it out any way they want.

Anne Whitten motioned to approve the Conditional Use Permit application submitted by Jackson, Drysdale & Associates of 19 Buffum Road (Tax Map 015 Lot 003) proposed to change two of the existing units to Medical Marijuana Care Givers 4.2 Change of Use Similar to Conditional Uses with the following conditions:

1. All odor controls be met.
2. Alarm system in place with notification to North Berwick Police Department.
3. Exterior lighting will be protective of over spilling to the abutters.
4. Video surveillance be in place to the Medical Marijuana units to apply basically for egress and ingress and where patients can access the building or patient pickup.
5. All Conditional Uses go with the permit.
6. Hours of operation will be from 7 am to 7 pm for patient pickup 7 days a week.

Matthew Qualls seconded the motion.

Chairman Aleva asked what happens if they lose power in the building. Mark Adler stated that every alarm system has battery backup.

VOTE: 4-0

3.2 Discuss potential Zoning Ordinance Changes for Town Meeting

Roger Frechette stated that the Board of Selectmen will be coming to one of the meetings to go over some changes. One of the changes is regarding chickens and the other is regarding Category

3 surveys. Roger stated that there is nothing in our Ordinance that they need to have a survey at a certain time but only that they have it by the time the structure is built. What is happening is that they are building and then they find out that they are over so they have to move it or demolish and start over.

3.3 Other Business:

Jon Morse stated that we had a CU permit for Portico Realty that required that they get a section of the parking lot paved before the end of October and they still haven't done it. Roger will look into it.

Roger stated that the gentlemen that owns the Catwear business wants to change from a business to a residence. He is looking to add another apartment in the building.

4. Adjournment:

Jon Morse motioned to adjourn the meeting at 8:41 pm. Anne Whitten seconded the motion.
VOTE: 4-0

Roger Frechette
Planning Coordinator

Respectively submitted,
Susan Niehoff, Stenographer

Barry Chase

Rick Reynolds

Jon Morse

Anne Whitten

Matthew Qualls