

NORTH BERWICK PLANNING BOARD

MINUTES OF PLANNING BOARD AUGUST 23, 2018

Present: Chairman Geoffrey Aleva, Jon Morse, Anne Whitten, David Ballard, Annette Hume, Matthew Qualls, Roger Frechette, CEO

Absent: Scott Strynar

Also Present: Lee Jay Feldman from SMPDC, Dana Libby, Steve Spence, Chris Piecuch, Calvin Akers, Will Conway, Mark Patterson, Shawn Douston, Cameron Geeslin

1. Call To Order:

Chairman Geoffrey Aleva opened the meeting at 6:30 pm.

2. Review Previous Minutes:

Anne Whitten stated that she was not present at the last meeting. She did read the minutes and then spoke with Lee Jay Feldman about the fact that it stated, "Jon Morse thought that they had talked about having a note regarding the actual well not just the cover. Mr. Feldman does not recall discussing this.". She discussed this with Mr. Feldman and he states that he did not say that. Mr. Feldman stated that he remembers having a lot of discussion about making sure the markup deeds for that parcel would have the wording in it and that Note 23 indicates the deed references the requirements to allow the property owner to go on that property for maintenance of the well cover and line if necessary. The Board agreed to remove the sentence, "Mr. Feldman does not recall discussing this.".

Jon Morse motioned to approve the minutes of August 9, 2018 as amended. Matthew Qualls seconded the motion. VOTE: 4-0 Abstain: 2

3. Current Business:

3.1 Public Hearing review of a 3 lot subdivision on land owned by Adam Blaikie & Associates located on Oak Woods Rd. (Map 004 Lot 007)

Chairman Aleva asked Lee Jay Feldman if he had any comments to make at this time. Mr. Feldman stated that the applicant had been working with them as late as this afternoon and have been revising the plans. Mr. Feldman stated that he has reviewed the plans that were given to the Board members tonight. These covered a couple of issues that they needed to have clarified including having a certified plan from Mark Hampton on the wetlands. This has been included as part of their package tonight. Mr. Feldman stated that he will need to make one change to the

Findings of Fact because he did not have time to correct it before the meeting. The applicant has made the statement on the notes regarding solid waste being taken to the Transfer Station. Mr. Feldman will have to make a minor change in his Findings regarding this.

Dana Libby from Corner Post Land Surveying stepped forward to discuss the project and introduced Mark Patterson from Adam Blaikie & Associates. They are proposing a 3 lot subdivision on Oak Woods Road consisting of 22.7 acres. All 3 lots meet town requirements for lot size, frontage and setbacks. The soil tests have been done and wetlands have been mapped by Mark Hampton and are located on the plan. All site distances have been done and all 3 driveways meet minimum town requirements. It is also located partly in a Resource Protection District associated with Great Works River and some unnamed streams.

Chairman Aleva opened the Public Hearing at 6:37 pm.

There were no public comments.

Chairman Aleva closed the Public Hearing at 6:38 pm.

David Ballard asked for clarification between Lot 6 and 7. Mr. Libby showed it to him on the plan.

Mr. Libby stated that there was one thing that they wanted to change on this plan. They want to strike Note 16. It was a note that was placed on the plan but was not edited. It should say under Fire Protection, None Proposed.

Chairman Aleva said that he had a few comments. One of the things he is questioning is regarding Note #10 regarding Soil Information. Chairman Aleva said that Mr. Libby had stated earlier that Mark Hampton had done the soil surveys but that is not what is stated on Note #10. Chairman Aleva said that the note should be adjusted to indicate this. Mr. Libby stated that Mr. Hampton did the soil testing which is indicated in Note #15. Note #10 has to do with soil mapping.

Chairman Aleva said that for Lot 7A-1, it is listed as 15.7 acres and give an area outside of the wetland which meets our requirements. Chairman Aleva stated that he doesn't see that for Lot 7A-2 and 7A-3. He thinks that it would make sense to have the square footage of the developable area listed for the 2 lots as well. Mr. Libby stated that 7A-3 is entirely outside of the wetland and 7A-2 has just 2 small areas. Chairman Aleva said that they should be consistent because our Ordinance talks about square footage and not acreage.

Chairman Aleva stated that, for the wetland certification, he sees that it is signed by Mark Hampton. However, he believes that they should also list his Soil Scientist number in the note.

Anne Whitten motioned to approve the 3 lot subdivision on land owned by Adam Blaikie & Associates located on Oak Woods Rd with the following conditions:

1. Modify Note #16.
2. Add Soil Scientist number to signature.
3. Add square footage areas outside of wetlands for the lots.

Jon Morse seconded the motion. VOTE: 5-0

3.2 Public Hearing of a Condition Use Application submitted by Calvin Akers and Chris Piecuch located at 50 Elm Street (Map 017 Lot 040). Applicants are requesting to move East Coast Roots from the back of the building to the front of the building (Formerly Home Town Video) and add additional space for selling apparel.

Chairman Aleva stated that the Board had a copy of their application, proposed floor plan and a memo from the Town Manager to review. He read Dwayne Morin's memo into the minutes.

TO: Planning Board
FROM: Dwayne Morin, Town Manager
RE: East Coast Roots Proposed retail store/Medical marijuana counseling
DATE: August 23, 2018

Dear Planning Board members:

I am unable to attend the Public Hearing on the proposal by East Coast Roots, however, I wanted to make recommendations to the Planning Board in their deliberations on the proposed land uses, especially in light of the Town of North Berwick voters approving a moratorium on medical marijuana retail stores that took effect on June 30, 2018.

General: According to their email to the Code Enforcement Officer dated August 3, 2018, the applicant proposes to provide medical marijuana products containing THC to their patients only, have general apparel for sale and CBD products, items included non-psychoactive hemp derived cbd.

The proposal should be separated into two land uses; a retail store and a counseling office.

Retail Store:

Medical Marijuana: After consultation with the Town's legal counsel, I offer the following recommendations. With the passage of the moratorium, the sale of medical marijuana in a retail setting is not allowed within the Town of North Berwick. The Planning Board should condition any permit issued as follows: "The permittee shall not use the premises to furnish or sell

marijuana, prepared marijuana, or marijuana products to qualifying patients, as those terms are defined in 22 M.R.S. § 2422.” This would include display of sales or “off the street” sales of any product meeting the State of Maine Definition.

As they are also proposing a counseling office for their medical marijuana caregiver operation, the Planning Board should require a separate entrance for the retail sales and the counseling operation to eliminate any potential for violating the Town’s moratorium. There should be no access between the retail establishment and the counseling area as they are two separate land uses. By including the condition as recommended by the town’s legal counsel as stated above, it will be important to separate the two land uses to prevent a violation of the Town’s recently adopted moratorium. This requirement will eliminate any perception of a medical marijuana retail store operation and assist the Code Enforcement Office with enforcement of the Town’s Ordinance. This will not require any undue financial burden on the applicant as they have already proposed a wall with a door between the retail space and the counseling space. After consultation with the Code Enforcement Officer, I have supplied two options for meeting this requirement.

Apparel: I have no recommendations as this is allowed under the Town’s Zoning Ordinance.

CBD products: After consultation with the Town’s legal counsel, the Planning Board should condition the permit with the following language as stated previously: “The permittee shall not use the premises to furnish or sell marijuana, prepared marijuana, or marijuana products to qualifying patients, as those terms are defined in 22 M.R.S. § 2422.” This would prohibit the sale of CBD products made by the applicant or caregiver as this would fall under the moratorium language approved by the voters. Third party or “commercial” CBD products are not regulated by the Town’s moratorium, however, the applicant is responsible for ensuring that any CBD products sold are legal under the State of Maine and Federal laws relating to CBD products.

Due the close proximity of the land use to the North Berwick Elementary School, the proposed land use is 510 feet from the school property, I would recommend that the Planning Board consider conditioning the retail sale of any legal CBD edibles such as candy for the health, safety and welfare of the children in North Berwick.

Medical Marijuana Counseling Office:

The applicant already has a counseling office located in the building and will be moving the office to a different location within the building. As stated before, the counseling office should be separated from the retail establishment in order to meet the recently approved moratorium language. A separate entrance is required and no access between the store and counseling office should be allowed. This will prevent the perception of the retail store selling marijuana, prepared marijuana, or marijuana products to qualifying patients, as those terms are defined in 22 M.R.S. § 2422.

I would recommend that the Planning Board condition that the counseling office in the same manner the previous counseling office was conditioned with the necessary safety precautions included in the previous approval.

Retail and Counseling Office Uses:

The applicant has not proposed any signs other than their company logo which does not depict any medical marijuana symbols or language. However, under the new State law, 22 MRSA § 2429-B, that will take effect in October it prohibits signs, advertising and marketing used by or on behalf of a registered caregiver be placed or otherwise used within 1000 feet of the property line of a preexisting public or private school. Since these land uses are located approximately 510 feet from the North Berwick Elementary School and although the law takes effect in October, for the health, safety and welfare of the community, I would suggest ensuring that the applicant does not place any signs (other than the proposed company name and logo proposed), advertise or market within the 1000 foot requirements.

Should the Planning Board like any further information or would like to discuss the proposal prior to issuing a conditional use, please feel free to contact me.

The next 2 pages attached to the memo are ideas for the layout of the space as recommended by the Town Manager.

Chairman Aleva asked the applicants if they would like to continue on with the discussion or stop now, think about and come back at another meeting. Chairman Aleva asked Roger if he had any additional concerns. Mr. Frechette said that he did not. After Dwayne talked to our legal counsel, Roger does not think it is a good idea to have the 2 uses connected. Mr. Piecuch stated that they were going to access the store for the apparel part and the office would be out back in a separate area. Roger said that it would still be one door to get to 2 different places. He said that because they have 2 uses they have to have 2 separate door entrances.

Calvin Akers asked for clarification on something. He said that because of the 510 foot and the upcoming law in October, they can just have the sign with the name and the logo they currently have that does not depict cannabis on it. Roger said that they could. Mr. Akers asked if they can sell their CBD products in the front store as long as they are not manufactured by them. Roger stated that they could not sell CBD products manufactured by them or another caregiver. Roger stated that because they are just using 2 uses, when they take the back office where they are currently counseling out of there, the landlord will have no use for it. He will have to combine it with something else or the applicants can keep it as their office and use the whole front for apparel.

Matthew Qualls asked about the separate entrances. He stated that if someone opens a gas station and also has a convenience store, they don't have to have 2 entrances. Roger said that this is different because of the medical aspects of it.

Chairman Aleva asked the applicants if they wanted to continue with the review tonight and they said they did.

Chairman Aleva opened the Public Hearing at 7:00 pm.

There were no public comments.

Chairman Aleva closed the Public Hearing at 7:00 pm.

Anne Whitten asked how someone would know if the caregiver made the CBD products or if it a legal CBD. Chris Piecuch said that it would be difficult to tell. He said that he could own a company and have an online store and also be a caregiver. It could be a total different name. It would be hard to discern who owns the companies. Mr. Piecuch stated that he does not personally produce CBD products so they would be looking at taking them in from other sources. Anne Whitten asked who else produces them other than caregivers. Mr. Piecuch stated that are companies all over the country that produce them. Calvin Akers said that they will probably have to source it from out of state. Their goal was to source it from in state. They will have to research and try to find some that are produced by someone other than caregivers.

David Ballard asked if there was any requirement for the food to have labeling of any kind. Mr. Piecuch said they do have to provide a label stating what the ingredients are. Mr. Akers said that it would not however say if it was produce by a caregiver.

Anne Whitten stated that the Town Manager also mentioned in his memo about not allowing edibles. She asked the applicants what their thoughts were about this. Calvin Akers said that it would make it difficult because it would limit them to basically lotions. Chairman Aleva asked if there was an age restriction to who can enter the store. Mr. Piecuch said that it is 21 unless they have a medical marijuana card. Mr. Piecuch said that he has seen a lot of gas stations that have CBD gum, candies and gummy bears already on their shelves. He stated that to limit a place that is already adults only unless you are medically registered, to not be able to have a big part of the CBD products would be very odd to him. Anne Whitten said that the Town Manager stated it was mostly because of the close proximity to the school. Roger said that it was also the attorney's concern. Annette Hume said that the CBD candies are not going to make you high because they are not psychoactive. The worse it would do is to relieve your anxiety a little bit.

Anne Whitten stated that she wishes that she would have received the email before the meeting. She understands where the applicants are coming from, but as a caregiver to the town she wants to make sure she understands their reasons for it. Mr. Piecuch asked if they could move forward and keep the candies off the table for now. They could come back and represent it after the Board has had a chance to research it further.

Chairman Aleva asked how they control the people that access their store. Mr. Piecuch said that they would be carded right away. Chairman Aleva asked if they would have a sign on the door stating that only 21 or older are allowed. They said that they can do that. Mr. Piecuch said that they want to show the town that this can be operated well, so if they have to take baby steps, then they will. They know that it is new and it can be scary for some people.

Roger stated that the Board could go ahead and approve the counseling part of it and when everyone is okay with the retail part of it they can come back. The application says that it is a caregiver/retail so they would have to separate them. Annette Hume asked the applicant's if they thought they would do well with a retail store instead of online. It's a lot more money for the rental. Mr. Piecuch said that he gets a lot of texts, emails and phone calls inquiring about CBD products so that is why they are looking into the retail. Ms. Hume said that they could still do the online store and Mr. Piecuch said it may still be something that they will look into. He stated that they are extremely busy right now but it may get to that point sometime.

Mr. Piecuch said that before they presented this the first time, it was going to be categorized almost like a CVS. When he goes in to get a prescription at CVS I leave out of the same door. If I go in to buy some socks I leave out of the same door. He is wondering what is different about their business. Roger stated that the only thing that he can think of as to why that can happen is that what CVS is selling is federally legal and what the applicants want to sell is not. Roger stated that with the front section, the only issue is with the CBD products. Everything else is okay to sell.

Anne Whitten stated that when someone walks into a medical marijuana establishment, you usually walk into a lobby. In that lobby, there is someone behind a wall or glass window that you have to show your card to. After that, you are allowed to walk into another door. She asked the applicants who was going to police that in their scenario. Are they just going to be sitting there and have several people in the regular store and then someone will ask for medical marijuana so they need to go into the office part. Mr. Piecuch said that they would need to see what customer flow will be like. He doesn't believe that there will be a large number of people at one time and people are usually in and out. He said that it wouldn't be like he would have 10 people in the store buying shirts and CBD products while he is trying to service a patient out back. If they find that this happens, they will need to bring on another employee to service the front of the store while the caregiver is out back seeing patients. Ms. Whitten asked if they were planning on having 2 people on at all times. Mr. Piecuch said that they have been discussing this. If they should run into a jam, patients are very reasonable so he could go and help the person in the store and come back to them. Anne Whitten asked if he could legally leave them alone in the office with the medical marijuana. Mr. Piecuch said that everything is locked up. Calvin Akers said that, in all likelihood, there will be 2 people working at the same time. David Ballard said that if he was out back with a patient, he doesn't know how he would know that someone was on the other side in the store unless you lock the door, have a buzzer, have a window that you could see through or a camera. Annette Hume stated that the store will have to

be kept locked. Mr. Piecuch stated that the store part and the limited amount of money that they will make selling apparel is making him think that they can maybe do something down the road with that. They can get the caregiver office opened up for now.

Jon Morse said that it was his understanding that the patients are seen by appointment. Mr. Piecuch said that this was correct so they would always know when they would need to be available to counsel a patient. When this happens, they could always put a note on the door saying that they will be back in a certain amount of time. Jon Morse asked if there were times that people just showed up. Mr. Piecuch said that it doesn't happen often because usually the patient wants to know what they have available and what strands are available. They don't always have what the patient wants in stock. Jon Morse said that if they are in the office working on the computer or paperwork, they will not always be watching the cameras. If people walk into the store, they may not always see them. Mr. Piecuch said that, especially since the Town Manager wants them to be separated by not just a quick path thru door connecting one to the other, this is an issue. They would have to go out the door, go around and come back in and Mr. Piecuch stated that it is making the retail part look to be not as feasible. Right now, he feels that they should probably hold off on it. Jon Morse said that he doesn't like the idea of the 2 entrances being out in the hall, but he also doesn't want some sliding doors for people to see in the other room. He said that it looks like they would definitely need to have a second person there.

Chairman Aleva stated that they should probably table the application at this point and give the applicants a chance to think about it. Mr. Akers stated that they will just move forward with moving the office for now. Mr. Piecuch said this would also help out the landlord tenant situation because the landlord would like to know if they will rent it or not. Chairman Aleva stated that their changing the office from one location to the other doesn't require a conditional use permit. Roger said that it did because where they are moving the office was once a video store. They now have to set up all of the security and other conditions that were set up for the other office. Roger said that their current application is for both the office and retail. They will need to modify their application and come back in 2 weeks. Roger said that he cannot let the Board approve it because it is an application for the 2 uses. They need to amend it to just the one use.

Jon Morse motioned to table the Conditional Use application for Calvin Akers and Chris Piecuch to move East Coast Roots from the back of the building to the front of the building at 50 Elm Street until the next meeting. David Ballard seconded the motion. VOTE: 5-0

3.3 Amendment review to Porter Farms Subdivision located on Turkey Street (Map 005 Lot 046-3). The applicant is proposing a change to the preapproved building units.

Chairman Aleva asked Roger if he had any issues or comments regarding the project. Roger stated that they need to review the sketch and establish an escrow.

Will Conway, a landscape architect with Sebago Technics, stepped forward to discuss the project. He introduced Shawn Douston who is the President of Porter Land Preservation. Mr. Conway stated that this project was approved in 2004. It is located on Turkey Street and includes a public street called Quarter Farms Way which has been built. It was approved as a 10 unit multifamily project. He stated that 2 units have been built. The original proposal had included 3 duplexes and 1 fourplex unit. Since the original duplex was built and sold, they have had a very soft market activity. The applicant has determined that the building type that was originally approved is not marketable. Mr. Conway said that it is a very simple amendment. The unit mix has not changed. They are still proposing 3 duplexes and 1 fourplex unit in the same location. They are just different building types which they have determined to be more marketable. In terms of the infrastructure, road has been built, public water has been installed, underground power has been installed, 2 transformers have been set and 2 of the septic systems have been built. He stated that the nitrate study that was done in 2004 is still valid. There is no change in the number of bedrooms. In terms of stormwater management, he stated that there was no change with the exception that there is a slight decrease in impervious area. Mr. Conway stated that they view this as more of a building floor plan change amendment and is pretty minor as far as site impact.

Anne Whitten asked what exactly was changed on the floor plan. Shawn Douston said that they reduced the footprint size. They had some pretty large units proposed last time at about 2,600 to 3,000 sf. They have reduced them down to about 1,800 sf. Ms. Whitten asked if the houses were in the same place. Mr. Conway said that they generally were but the footprints are different.

Chairman Aleva said that, for the next submission, they should give the Board a copy the approved plan. He said that they also mentioned that the amount of impervious area has decreased. They will need to tell them what the amounts are. Chairman Aleva said that they need to set up an escrow account to cover the costs of peer review, advertising and letters to the abbutters. The Town Manager has determined that they will need to set up \$2,000 for the escrow.

Anne Whitten motioned to approve \$2,000 to be set up in an escrow account per the recommendation of the Town Manager. David Ballard seconded the motion. VOTE: 5-0

Anne Whitten motioned to accept the sketch plan for Porter Farms Subdivision located on Turkey Street. Jon Morse seconded the motion. VOTE: 5-0

4. Other Business:

Roger stated that the Board need to accept the Findings of Fact for the 2 lot subdivision for Harold Shaw.

Jon Morse motioned to accept the Findings of Fact for the 2 lot subdivision for Harold Shaw on Ford Quint Road. Matthew Qualls seconded the motion.

Chairman Aleva moved Annette Hume up to full voting status.

VOTE: 5-0

5. Adjournment:

Anne Whitten motioned to adjourn the meeting at 7:43 pm. Jon Morse seconded the motion.

VOTE: 5-0

Roger Frechette
Planning Coordinator

Respectively submitted,
Susan Niehoff, Stenographer

Chairman Geoffrey Aleva

Jon Morse

Anne Whitten

Matthew Qualls

David Ballard

Annette Hume

Scott Strynar