

NORTH BERWICK PLANNING BOARD

MINUTES OF PLANNING BOARD DECEMBER 13, 2018

Present: Chairman Geoffrey Aleva, Jon Morse, Matthew Qualls, Annette Hume joined meeting at 6:34 pm, Roger Frechette, CEO

Absent: Anne Whitten, David Ballard, Scott Strynar

Also Present: Dwayne Morin

1. Call To Order:

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

2. Review Previous Minutes:

Jon Morse stated that on Page 5 in the 5th paragraph, the first sentence reads, "...a large animal vet line up for the cattle.". It should read, "...a large animal vet lined up for the cattle.". Also, on Page 8 in the 3rd paragraph, the 7th sentence currently reads, "Mr. Bisson, II said that they left there because they are trying to use the 650 sf for the living space.". It should read, "Mr. Bisson, II said that they left the space there because they are trying to use the 650 sf for the living space.". Also on Page 8, the first sentence in the 5th paragraph currently reads, "Scott Strynar had a question about garage and living space.". It should read, "Scott Strynar had a question about the garage and living space.". Mr. Morse also stated that on Page 9 in the 2nd paragraph, the last sentence the name Mr. Wishwell was spelled incorrectly. It should be Mr. Wiswell.

Jon Morse motioned to approve the minutes of November 8, 2018 as amended. Matthew Qualls seconded the motion. VOTE: 4-0

3. Current Business:

3.1 Planning Board Member Workshop Proposed Medical Marijuana Zoning Ordinance Change

Chairman Aleva stated that Roger Frechette had sent out the proposed Zoning Ordinance changes to the Planning Board members last week. He stated that Dwayne Morin was present to discuss the draft Ordinance.

Dwayne stated that everything that is in the proposed Ordinance came from the meeting that the Planning Board had with the Board of Selectmen. He has basically taken everything that was talked about and put it into some sort of writing form so they can start to review it and get things going to have something to present in April at the Town Meeting.

He stated that Home Cultivation would be allowed in all of the zones. Medical Commercial Cultivation would be allowed as a Conditional Use in the Village Center, Farm/Forest, Commercial District, Commercial II District and Industrial District. Medical Marijuana Retail Store, Testing Facility and Manufacturing Facility would be allowed as a Conditional Use in the Village Center, Commercial District, Commercial II District and Industrial District. He stated that the Medical Marijuana Dispensary is already in our Ordinance and it is only allowed by Conditional Use in the Village Center. Everything is an allowed only with a Conditional Use so it all has to come before the Planning Board for review.

Dwayne went on to the list of the definitions. He stated that they are all from the State law. Each definition has a State Law reference so there is no debating what it is, what it isn't, who it is or who it isn't. He stated that there has been a lot of discussions and some lawsuits filed in other communities as to what their Ordinance says versus what State Law says. To eliminate that, we just kept everything that the State has so there would be no discrepancies. Dwayne stated that this all relates only to medical marijuana. They have not done anything with the recreation side yet with the exception of home cultivation.

Dwayne stated that the next section was regarding dispensaries. He stated that this is currently in our Ordinance but we need to do some amendments to it. Our current Ordinance talks about registered dispensaries and registered cultivation facilities because that is how they were grouped together in the original Law. Now the new Law separates them. We now have Dispensaries and Cultivation facilities. Regarding the Dispensaries section, all the places where it says "and registered cultivation facilities" is struck out. Cultivation will be talked about in another section.

The other change that was discussed was the setbacks from schools, public libraries, daycare, playground or public parks be put at a 1000 foot setback which is what the State law has. Dwayne said that we can go up to 1000 feet. He stated that they changed the 200 feet from church, chapel, parish house and other places of worship to 500 feet. Dwayne stated that the Board of Selectmen had a very lengthy discussion regarding setbacks and they are firm about the 1000 feet from schools. He stated that under the definition of schools, it includes both public and private schools, daycares and anything that educates children. Regarding setbacks for other things like churches and parks, this is where the discrepancy comes in. Some of the Selectmen feel that it should be 1000 feet from parks just like it is for schools. There are some that believe that it should be as low as 250 feet. He stated that, regarding the Selectmen, 2 people wanted the 1000 feet, 2 people wanted the 500 feet and 1 person wanted 250 feet.

Chairman Aleva had a question about section I under Security and oversight requirements for Dispensaries which reads, "No more than one registered dispensing facility may exist in the Town of North Berwick and is limited to 2500 square feet.". Chairman Aleva wondered where the "one" facility came from. Dwayne stated that this is our Town law. Chairman Aleva asked when this was set up and Dwayne said it was done about 10 years ago. Chairman Aleva asked if there had been talk about changing it with the Selectmen. Dwayne said that it had been discussed and the Selectmen discussed having 0 or 1 of them. Chairman Aleva asked why?

Dwayne stated that dispensaries are State run and they only allow so many dispensaries in the State of Maine. Currently, the Law allows for 8 of them but they are expanding that to 16. Chairman Aleva asked how a dispensary is different from a retail store. Dwayne said that at some point there will be no difference. Right now the difference is that the dispensaries are licensed by the State and for the Medical retail stores, you are licensed by the towns. Dwayne does not feel that we will ever have a dispensary in our town. They will go to where the hubs are like Bangor, Portland and Lewiston. Dwayne stated there is not a lot of difference between the dispensaries and the retail stores. It is just in the way that they are licensed. A registered dispensary is licensed by the State of Maine and usually involves multiple caregivers that are getting multiple products from different locations. A retail store is a singular caregiver generating his own product and selling it.

Dwayne moved on to discuss home cultivation. He stated that this is the only thing where they put something in as it relates to the recreational part of marijuana. The reason they did this is because there is nothing in the law that says that a town can stop home cultivation but we can regulate it. Home cultivation is that which happens in somebody's house and is limited to ¼ of their total square footage of their dwelling unit or 120 square feet, whichever is less. Chairman Aleva asked if this was just for the home cultivator growing it for himself or if this included the caregivers that grow to sell it to patients. Dwayne said that if you are doing medical marijuana you would have to be a caregiver and you can grow in your house. You can grow enough for so many clients. On the recreational side, it is limited as to how many plants you can have but anyone can do it. The idea is to protect the citizens as it relates to the growth of marijuana. They would limit the size so that it is not huge and state that they need to screen it so neighbors don't see it. It is not for their own use and not for commercial sale or if you are a caregiver you have to follow the State rules of a caregiver. The caregiver needs to meet Health & Safety codes and use chemicals that meet the FIFRA definition which are more organically based chemicals and pesticides. They also need to meet some odor management requirements and making sure that when they are doing their waste disposal, they are grinding it up so somebody can't come and steal it out of the trash. They also included that if the person wanting to grow is renting from somebody, the landlord has to provide a letter giving permission to do so. Dwayne stated that they took most of this language from Sanford and South Portland.

Dwayne stated that for the next sections on Commercial Cultivation, Medical Marijuana Testing Facilities, Medical Manufacturing Facility and Retail Medical Marijuana Store, we have individual requirements for each of them. We then have General Standards that apply to all of them. Dwayne said that Commercial Cultivation is anything in excess of 120 square feet but no more than 2500 square feet. Chairman Aleva asked where they came up with that number. Dwayne stated that it was a joint approval by the Planning Board and Selectmen when they met to discuss this Ordinance. Chairman Aleva stated that he was not present at that meeting and stated that he feels the 2500 square feet is too small. He stated that all of the buildings that he has helped design through his work have been bigger than 2500 square feet. Matthew Qualls stated that it was to discourage big companies and big buildings. Chairman Aleva said that this prevents somebody from coming in and building a complex and having several caregivers in it.

Now each building has to be 2500 square feet and can't be connected. He said that they can't have a 5000 square foot building with 2 people in it. Dwayne said that if there were 2 people in it, they could do it. He said that it is each facility so if you had a building that was divided into 2 tenants, they could have 2 units. Matthew Qualls asked if that would be considered 2 facilities. Dwayne said that they can't collocate but if they had 2 facilities, they could do that.

Dwayne said that when listening to everyone at the meeting, it was to preclude large commercial growths. He said that most towns are limiting them to 10,000 square feet but the feeling that he got from our Boards was that nobody wanted to see anything near that. The other concern was regarding outdoor cultivating. He said that they do state that all cultivation outside of the Farm and Forest zone has to be indoors. Anything in Farm and Forest can be outside but it will need to be in a locked facility, screened and has to be 100 feet from the front lot line and 75 feet from the rear and side property lines.

Dwayne stated that they cannot collocate. After he read about it, he told Chairman Aleva that what he had stated earlier about having 2 people in a 5000 square foot building could be done, but it can't. It is prohibited. Dwayne stated that they also have to use only pesticides and chemicals that are required by FIFRA. Chairman Aleva said that most of the good growers are doing this. He said that the growers that he has dealt with have clean rooms. Dwayne stated that they also require that they don't use carbon dioxide, sulfur dioxide, butane and ozone generators.

Chairman Aleva stated that they do not have a full Board tonight but they probably want to have a full Board to discuss the 2500 square foot limitation. He stated that they can have one commercial cultivation facility of 2500 square feet and they can't be combined. Dwayne stated that he thinks they took that from State law because State law says that you can't collocate. Chairman Aleva said that he knows you can't share the space but you can have a building that has 4 or 5 different spaces in it. Dwayne stated that they may want to look at it and say that you can't collocate but you can be on the same property. Chairman Aleva stated that if they are looking to allow this business into the town, then we should make so that people want to come in here. Matthew Qualls said that they could change the wording to say that they can be in the same building. He asked what the intent or reason was for wanting to keep it separate. Is it just so it is not too concentrated in one area or is it to avoid having 1 person running it all. Dwayne believes that the Selectmen are wary of large growth facilities. Chairman Aleva said that he had a client that had a building that was 12,000 square foot and was sectioned off into 4,000 square foot portions for medical marijuana growing. He state that they were all independent growers and are not connected to each other. Chairman Aleva stated that they would not be able to do that with the Ordinance we are drafting. He said that if he went and bought a piece of property in one of the allowed zones and he wanted to have a building so he could rent it out to a bunch of different caregivers, he would have to build a 2500 square foot building for one, 2500 square foot building for another one and so on. He could have 10 different buildings on it. He would actually have to create a subdivision to do it. He stated that this would prevent people from coming in and doing it new in town because there is really not a space that could do it now.

Dwayne asked the Planning Board if they want him to propose to the Selectmen an option that allows for colocation. He thinks that the one thing that will come up is that the Selectmen will want to set a limit or cap size on the facility. Chairman Aleva doesn't see why they should. He stated that if someone came in and wanted to build an office park with a bunch of 2500 square foot units, are they going to want to have that capped? He said that it would be dictated by what the property can hold. He said that the buildings that he has worked on, the owners are worried about security, quality control and other things like that. Dwayne stated that the flip side of that is that there is a stigma attached to medical marijuana and marijuana in general and there are some unscrupulous people that may not be as concerned as some of the clients that Chairman Aleva has worked with. He said that they need to make sure that these type of people not ruin it. Chairman Aleva said that he can live with the 2500 square feet but he thinks that there ought to be an opportunity for someone to come in and invest in North Berwick to be able to do that. Dwayne stated that he will discuss it further with the Board of Selectmen. Jon Morse agrees with Chairman Aleva about the 2500 square foot limitation. Matthew Qualls asked if they had had any issues with the ones located on Buffum Road that have 3 separate caregivers in one building. Roger stated that there have a few odor complaints and they have always cleaned it up right away after being notified. Dwayne stated that issue is usually because they have left the doors open and it is based on negative pressure. When the door is open, the negative pressure goes away and the scrubbers don't work.

Dwayne stated that they can propose for Section E to read, "Caregivers are prohibited from co-locating cultivation facilities.". This would allow for a mall type setting or one building with multiple uses as long as the uses are not co-locating. He will discuss it with the Selectmen.

Dwayne moved on to discuss the Medical Marijuana Testing and Manufacturing Facilities. He said that they have very little requirements. They may not be located or co-located with any other medical marijuana establishment. Dwayne stated that this is a State law. Chairman Aleva stated that they can have a cultivation facility and a separate building for testing on the same property. Dwayne said that they could but it typically wouldn't happen because you have to have independent testing. Dwayne stated that Selectman Galemme was largely involved in this conversation and he said that a testing facility is basically a lab. Usually when a lab sets up, it doesn't want to be anywhere near a grow facility because then they are not considered independent. The whole idea behind a testing facility is that it has to be independent. Most of the labs are not to test the plants but they do test the things like the edibles. They have to check for uniformity in their product. Dwayne said that there are not setbacks from sensitive areas and there are not going to be any odor issues. Dwayne stated that for the Manufacturing Facilities, they cannot be co-located with anything else.

Dwayne moved on to discuss Retail Medical Marijuana Store. He stated that they are only going to allow 1 store in the town and it would be based on a lottery. Chairman Aleva asked why they were just allowing one. He asked about the operation at Buffum Road if that was considered a retail store because people were coming in and there were money transaction. Dwayne said that it was not because they are caregivers. Chairman Aleva asked if a retail store meant that he

could have 52 caregivers bring their products in to 1 store. Dwayne stated that it wasn't. He said that a retail store is a store front for one caregiver. Chairman Aleva stated that it is basically taking away the idea of a counseling center and making it a store. Chairman Aleva asked if we were still going to allow counseling. Dwayne said that there is nothing in the law about counseling and it is not even considered a land use. Dwayne stated that counseling would most probably be considered a caregiver and would probably be classified as a retail store. Chairman Aleva stated that if there is a caregiver that has a building to grow but he doesn't want any of his customers to come to his building. He has security around the building and it is a very valuable place so he doesn't any issues there and he doesn't even want people to know where it is. If he doesn't have a retail store, he would have to deliver it to the customer, meet them in a parking lot or rent an office and do the transaction there. This would then be considered a retail store because he is selling it to patients.

Dwayne read the definition of a Medical marijuana retail store. It reads:

A "medical marijuana store" is a retail establishment operated by a single medical marijuana registered caregiver to furnish or sell medical marijuana, prepared medical marijuana, or medical marijuana products to qualifying patients, as those terms are defined in 22 M.R.S.A. § 2422, by that medical marijuana registered caregiver to medical marijuana qualifying patients for patients' medical use and may include an area for consultation with patients. Two or more medical marijuana registered caregivers are prohibited from forming, owning or operating a medical marijuana retail store as a single medical marijuana retail store. A medical marijuana retail store is only authorized as a principal use, and not as an accessory use, and only where expressly allowed as a permitted or conditional use.

Chairman Aleva stated that this meant that only 1 person would be able to sell from a controlled area. He stated that he understands that people are concerned but this doesn't make sense to him. He said that now there is no control. Dwayne stated that, typically when you think of a medical marijuana retail store you think of having products for display. Dwayne stated that maybe they need to create a definition for a separate type of use and call it an office setting where there is no marijuana is stored but just a transaction occurs. Chairman Aleva agreed with this. Dwayne will put together something for the Board to review.

Dwayne went on to say that Retail stores cannot have a drive-thru and cannot provide home delivery services from the store.

Dwayne went on to the General Performance Standards. The first part is that you have to own the property. If you don't own it you have to get written permission from the owner. It has to be in an enclosed locked facility. It has to have security and oversight requirements which is currently in our Ordinance but we are putting it as a general standard. They have to comply with health and safety codes. Chairman Aleva stated that the last sentence is not needed. It reads, "The structure shall be required to include an internal sprinkler and/or fire suppressant system approved by the Fire Chief.". Dwayne stated that our Fire Chief requested this. Chairman Aleva

stated that if you are building a small enough building the code clearly states that you don't have to have a sprinkler system. He said that sprinklers are made to save lives, not property. These growing facilities will have 1 or 2 people in there. He stated that it is another cost of doing business. Annette Hume said that they are probably worried about the smell of the marijuana when it is on fire and going everywhere. Roger Frechette stated that they are looking at public safety. Chairman Aleva stated that if the Building Code requires it then obviously they should have them otherwise it should not be needed. Matthew Qualls agreed. He said that if it is covered in other areas it is not needed here. Dwayne will bring it to the Selectmen to review.

Dwayne stated that the next section is where the Selectmen wanted some input. It is regarding setbacks from sensitive uses. He stated that the Board of Selectmen unanimously agree with a 1000 foot setback for public or private school or child-care providers. There is a difference of opinion as to what the setback should be from parks, playgrounds and churches. The minimum setback that they discussed is 250-300 feet with a maximum of 1000 feet. Chairman Aleva stated that people are not going to change their minds about the 1000 feet for schools but he thinks that they should have the other setback for parks and playgrounds should be 250 feet. Matthew Qualls said that with the medical marijuana establishments that we already have, if a child care provider wanted to open up but was within 1000 feet, they couldn't open one. Dwayne stated that the child care provider would be notified that it is there and if they decide to open up, it is on them. Jon Morse said that he doesn't think that churches should be included in the setbacks. Roger stated that they are having setbacks in places where there may be lots of kids. The Board were in agreement that the setback for the parks, playgrounds and churches should be 250 feet.

Dwayne stated that there would be an annual license for all of the establishments. They would have to create an Operations Manual and a Safety Plan as well as an Odor Control Plan. Dwayne stated that the other big thing is regarding Signage. The Selectmen do not want to see a big giant pot leaf on the sign. If they have the word "marijuana" or "cannabis", it must be preceded by the word "medical". They also want everything in black and white and no color. He said that the window signage will count toward the total amount of signage allowed in our Signage Ordinance.

Dwayne stated he will bring all of the changes and suggestions to the Board of Selectmen for their review.

Dwayne stated that they have one more change to the Road Standards Ordinance. He said that when they put this Ordinance together, they thought this was already in it but when it got printed, it wasn't done correctly. The change is in 2.6.A.7 regarding Private Roads. If a private road had more than 2 houses on it at the time of adoption, we weren't going to say that they couldn't build on that road. They would have to upgrade it but they could still build on it because our Private Road Standard said you can only have 2 houses on it. At the time of the adoption of this Ordinance, they would allow this. He stated that for some reason, the words "at the time of

adoption”, was not there when they printed it. They have now added it as well as a list of all the roads that meet the criteria. He said that they had an instance on Case Road and on Pine Meadow Court where their attorney is asking “why?”. By adding this information, it will answer this question.

Chairman Aleva stated that there is another issue that he would like to bring to the voters. He said that when the subdivision on Oak Woods Road came before the Planning Board, they talked about the side setbacks being very large. He wondered if the members felt that it is something they should discuss at a future meeting when they have a full board. They are currently 60 feet and they would like them smaller. Matthew Qualls said that they could probably have more discussions about the changing of some of the zones like Rte 4 going towards Sanford to bring more businesses there. Dwayne stated that the Selectmen have also discussed that. He believes that there would be a lot of support for that.

3.2 Bergandahl C.U. Permit Signing

Chairman Aleva stated that there was some discrepancy with Condition #4 on the permit. The attorneys for the town and for the applicant have been talking about what the rewording for that condition should be. Chairman Aleva referred to the email from the applicant’s attorney dated December 12, 2018 to the town. She is agreeing to the changes that were discussed for Condition #4. He stated that Condition #1 - #3 and Condition #5 will remain the same. Condition #4 reads, “No caregiver and no employee of the business, while working on the premises, may provide prices or take orders for, either orally or in writing, or otherwise furnish or sell medical marijuana or medical marijuana products.”

Chairman Aleva said that the way it is written is more in tune with the information about the retail store and making sure that this doesn’t become that. Jon Morse feels that this wording still would allow them to have the catalog on the premises. Annette Hume stated that the catalog is telling them what is out there and shows what is available but he can’t sell. Matthew Qualls stated that this would fall under the “furnish” part so they couldn’t have it. Dwayne stated that the attorney feels that this is the strongest language that we can use.

Dwayne stated that the problem with the original condition was that we stated that the catalog could not be distributed. We never banned the catalog. He stated that distributing catalogs could be as easy as having a stack of catalogs or brochures in the corner of the store that people can pick up.

Jon Morse motioned that they accept the Conditional Use Permit Map 18 Lot 82 for Eric Bergandahl for a retail accessory shop with the 5 conditions approved dated October 11, 2018.

Matthew Qualls stated that since the intent is changing and that they are merely clarifying a condition, he seconded the motion. VOTE: 3-0 Abstain: 1

4. Other Business:

Roger stated that at the next meeting they will have just a lot split. The meeting is on December 27. Chairman Aleva stated that they will not be here. Matthew Qualls stated that he may not be either. Roger will also not be available. Since there may not be a quorum, they decided to cancel this meeting.

Chairman Aleva motioned to cancel the December 27, 2018 meeting due to not having enough people present. Matthew Qualls seconded the meeting. VOTE: 4-0

5. Adjournment:

Matthew Qualls motioned to adjourn the meeting at 8:20 pm. Jon Morse seconded the motion. VOTE: 4-0

Roger Frechette
Planning Coordinator

Respectively submitted,
Susan Niehoff, Stenographer

Chairman Geoffrey Aleva

Jon Morse

Anne Whitten

Matthew Qualls

David Ballard

Annette Hume

Scott Strynar