

Town of Leicester Planning Board
Meeting Minutes

MEMBERS PRESENT: Jason Grimshaw, Chair; Debra Friedman, Sharon Nist; Alaa AbuSalah, Andrew Kularski

ASSOCIATE MEMBER:

MEMBERS ABSENT: Robyn Zwicker

IN ATTENDANCE: Michelle Buck, Town Planner; Barbara Knox, Board Secretary; Harry Brooks, Select Board

MEETING DATE: **January 23, 2018**

MEETING TIME: 7:00PM

AGENDA:

- 7:00PM General Discussion:
 Potential Zoning Bylaw Amendments (Marijuana)
- 8:00PM General Discussion, Potential Zoning Bylaw Amendment
- A. Backyard Poultry
- B. "Housekeeping" Amendments
- 1 Open Space Residential Development (correction of errors)
- 2 Use Regulations (clarification of confusing language)
- 3 Correction of alphanumeric references and cross-references
- 8:15PM Approval of Minutes
- 1/2/2018
- 7:30PM Town Planner Report/General Discussion:
- A. Miscellaneous Project Updates

Mr. Grimshaw called the meeting to order at 7:00PM

General Discussion/Public Information Meeting:

Potential Zoning Bylaw Amendments (Marijuana)

Mr. Grimshaw gave instructions on meeting procedures and then opened the meeting to discussion.

Ms. Buck started with a brief power point introduction. The public handout distributed was the starting point for discussion, as well as a review of the current Bylaw in effect.

The Town adopted a Bylaw in May 2013 after the State legalized medical marijuana in 2012. Medical Marijuana was allowed in several of the Town's commercial zoning districts with large setbacks of 1,000 feet from schools, religious facilities, childcare, parks, playgrounds, drug and alcohol rehab facilities, other medical marijuana facilities, and residential zoning districts.

In terms of recreational marijuana, in November 2016, there was a State ballot question approved to allow recreational marijuana. This past July 2017, there was a complete overhaul of the State laws that regulate medical and non-medical marijuana and the Cannabis Control Commission (CCC) was created. This CCC issued draft marijuana regulations in December 2017 that will be finalized in March 2018. Applications will be accepted in April 2018 and licenses issued as soon as June 2018.

The reason for tonight's discussion was the Town needed to have a Bylaw in place and the Planning Board would like to have a Bylaw Amendment in place for the May Town Meeting.

Ms. Buck further explained because majority of the Town's residents voted in favor of the November 2016 ballot question, it made the process to regulate recreational marijuana more difficult. The law states Towns cannot be more restrictive when the majority voted in favor. For example, to prohibit a total number of recreational marijuana establishments would require both a Bylaw amendment and a local ballot vote. Tonight's proposal being discussed does not contain that requirement and existing licensed medical marijuana facilities will be allowed, under the new law, to convert to recreational sales. Towns are allowed to adopt reasonable regulations and bylaws that regulate where recreational facilities can go, as long as those regulations aren't unreasonable.

Ms. Buck noted that the current proposal is very preliminary and for discussion purposes. The handout for discussion shows 4 basic sections to the proposed amendments: definitions, districts and permits required, setbacks, as well as special permit requirements. The amendment includes several definitions for discussion purposes only, because the Board will need to decide whether to regulate certain categories for marijuana use. For example, have retail in one area and non-retail in different area. Also, which uses should be allowed in which zoning district and which uses should be allowed by-right versus by special permit. By-right means the local permitting department will issue the permit and the special permit process requires a public hearing through the Planning Board and public notification, etc.

Use Table

Ms. Buck reviewed the various uses in the proposed changes to the use table, with several uses listed: Medical marijuana Treatment Centers, Marijuana Cultivator, Marijuana Product Manufacturer, Marijuana Social Consumption facility, Marijuana Retailer, Marijuana Transportation or Distribution Facility. None of these uses would be allowed in SA, R1, R2 (residential districts)' other uses would be N, SP, or Y (by-right) depending on the district. Social Consumption Facilities are proposed to be prohibited.

Proposed Setbacks

This proposal is basically to treat retail differently from non-retail. For retail facilities that will directly sell marijuana and marijuana products to the public, the buffer would remain 1,000-foot buffers, as the existing bylaws. For non-retail, the proposed buffers are 200 feet from residential districts boundaries and 500 feet from the churches, parks, schools, etc.

In terms of what the State requires, if a Town Bylaw says nothing about buffers, then it defaults to 500-feet from schools, childcare, etc., but a Town can make their buffers whatever they want. The proposed setbacks come from a previous bylaw proposal in 2016 and it may make better sense that all non-retail has the same buffer. Ms. Buck reviewed maps reviewed showing comparisons in the 200 & 500 buffer requirements.

Special Permit Requirements

The Planning Board is designated as the Special Permit Granting Authority. The facilities will have to meet all Massachusetts requirements, as well as providing adequate security measures. Additional requirements for discussion are, limitation on hours, language related to potential odor, etc.

Ms. Buck noted the next step after tonight's discussion was submitting a draft Bylaw to the Select Board by February 1, 2018 and then the Planning Board will schedule a public hearing. After the public hearing process, a final draft will then be submitted to the Select Board by April 1, 2018 and acted upon at Town Meeting scheduled for May 1, 2018. All Zoning Bylaw Amendments require a 2/3 vote approval at Town Meeting.

Mr. Grimshaw opened discussion to the Board.

Ms. Friedman asked how the Town currently regulates alcohol facilities. Were there regulations in place for someone who wanted to open a bar or package store. Ms. Buck said not through the Zoning Bylaws, but allowed in most of the commercial districts. Ms. Friedman asked if they had regulated setbacks from churches, daycares, etc. and whether that was taken into consideration when they are licensed. Ms. Buck wasn't sure, noting the Select Board did alcohol licensing.

Mr. Harry Brooks said for a facility to get a license, came from the State. Mr. Grimshaw asked once it's approved through the State, would it then come before the Select Board. Ms. Friedman asked in order for the Select Board to approve an alcohol facility, did they look at how far it was from a church, daycare, school, etc. or does that not matter. Mr. Brooks said that was not part of the review.

Ms. Friedman questioned whether the Board should look at marijuana in the same way as alcohol facilities were looked at. Ms. AbuSalah asked if there was ever a situation where an alcohol facility was denied a license. Mr. Brooks said he was not aware of any.

Mr. David Genereux, Town Administrator, explained the Select Board looks at the State application filed. The State application was not set up to look at location or buffers to where to allow a package store. The Town's Zoning regulations defaults where to allow a package store. The Select Board allows the State to take the lead on that and then the Board's vote would be based on whether the State finds anything wrong with that application.

Ms. Buck said when zoning was put in place for medical marijuana facilities; the Board used the Town's existing Bylaw for adult uses, using the same setbacks. Ms. Friedman questioned it might be something the Board should go back and review again.

Mr. Kularski asked why medical growing facilities were barred from the SA District. Ms. Buck said marijuana cultivation was all done inside and considered more of a manufacturing use, but it's also specifically excluded from State agricultural exemptions.

Mr. Grimshaw opened discussion to the public.

Mr. Stephen Derrick, 680 Pleasant Street, asked the distinction between retail and non-retail facilities in relation to marijuana. Ms. Buck explained a retail marijuana facility would be a facility directly selling marijuana products to the public. Non-retail is a cultivator or someone growing the plant, but not selling it. Also activities such as taking the raw product, making infused food products, tinctures or lotions, etc., and not directly retailing the product to the public. Mr. Derrick questioned facilities being allowed to do both. Ms. Buck agreed some could.

Mr. Grimshaw reviewed samples amendments from Grafton, Easthampton, and Athol included in the meeting packet. He liked the simplicity of Athol's use table combining all marijuana-related uses into one category: licensed marijuana establishments. He asked if that was something Leicester could propose.

Ms. Buck explained the example referenced licensed marijuana establishments are regulated the same regardless of type (either allowed, not allowed, or requiring a special permit). She said Leicester could condense the Bylaw, if the Planning Board decides, to allow several different categories to be exactly the same in multiple districts. The draft was split into multiple categories so the Board could decide whether or not to regulate different categories differently.

Ms. Friedman said the Use Table can be confusing and liked the simplicity of Athol because the average person reading all the regulations becomes overwhelmed. She asked if there was a way having one category for commercial use and one for retail use. Ms. Buck said this could be done. Ms. Buck noted some communities also have a category called, Social Consumption Facilities. Those facilities aren't legal yet, but will be eventually. She suggested putting the use under definitions and then eventually making it part of the use table.

Mr. Grimshaw felt the bigger question was with the buffers. Ms. Friedman agreed, but also felt social facilities could be the bigger issue.

Mr. Grimshaw noticed the first 4 districts listed, referenced "N" in every category, other than testing facilities that are allowed by special permit in the Business district. He asked why that would be allowed by special permit in business, and nothing else was allowed. Ms. Buck said her thought was this would typically be a smaller type of facility.

Ms. Friedman questioned whether a product manufacturer would have its own testing facility. Mr. Rob Lally of Cultivate said it would not be likely testing facilities would come into Town, because there were several already setup within the State.

Mr. Grimshaw asked whether removing that entire row from the Use Table, would hinder the industry. Mr. Lally said there would only be a small percentage looking for that type of facility. It would be high paying technical jobs, hiring people with knowledgeable backgrounds. He suggested testing facilities be allowed by right in every zone. He felt the average person would never know it was there, there's a small amount of the product that would be secured within the facility and really shouldn't be considered a marijuana facility.

Mr. Grimshaw was concerned that category being perceived as making the Bylaw more restrictive or one that was not business friendly.

Ms. Friedman suggested including it under another category. Ms. Buck suggested to include testing facilities under the non-retail marijuana category. All agreed, as well as keeping the special permit requirement.

Ms. Friedman noted there was also the buffer concern.

Ms. Buck said the consensus of the Board was consolidating the use table into 3 categories: retail, non-retail, and social consumption. Social consumption prohibited; the other categories requiring a special permit. In addition, whether to allow any by right and determining the buffers. Mr. Grimshaw agreed and in addition, adding language within definitions.

There was discussion related to a category called "Craft marijuana cultivator cooperative." Mr. Lally said similar setups in other states have a landlord preside over large buildings, if it was to be built out for multiple tenants and instead of one company, there could be multiple companies within the same facility, but all operating with their own separate setups. Mr. Green asked if that included home growers, who may want to grow in a facility, as opposed to their home. Mr. Lally said that could be included, but they would not be able to sell.

Ms. Buck asked whether the Board wanted to keep the same mix with current buffer requirements. Mr. Grimshaw suggested keeping 500ft for retail.

Ms. Buck reviewed the Zoning Maps that showed current buffers and proposed buffers. Ms. Friedman said the 500ft buffer from churches, schools, daycares, playgrounds, etc. eliminates a lot on where a facility can go. Doing a 200ft buffer, would expand where a facility could go, but would still be limited by other things already in existence.

Mr. Grimshaw asked the percentage of Leicester residents who voted in favor of the Recreational Marijuana referendum question. Ms. Buck said 52%.

Mr. Derrick asked if a new daycare opened where facilities were currently allowed, would that change the venue and not allow a facility to locate in that area. In addition, would a marijuana facility already in existence, prohibit the opening of a church, daycare or another similar facility?

Ms. Buck said a new childcare, new church, etc. would limit the ability of a marijuana facility locating in that area. As far as a facility restricting the ability of a childcare, church, etc. from opening, she did not think it would restrict a future use locating nearby. Ms. Friedman agreed a childcare locating near a marijuana, would not affect the permit for the existing facility.

Ms. AbuSalah asked where the restrictions originated from for schools, childcare, because there were no restrictions noted for liquor stores. Ms. Buck said restrictions for marijuana facilities came from the State, but the Town can specify which restrictions they want to have. Although, if there was nothing in the Bylaw, it defaults to State restrictions. Ms. AbuSalah asked during the research process, were there any communities who did not have buffers. Ms. Buck said there

aren't many communities who have Bylaws on Recreational Marijuana, because most communities adopted a temporary moratorium.

Mr. Matthew Ball, 39 Winslow Ave. asked the requirement on increasing the buffer higher than the State if the Town Bylaw was silent. Ms. Buck said initially the Town adopted a Bylaw in 2013 and basically just copied what the Town already had for adult uses, because Medical Marijuana was a new use. Now the Board was revisiting the issue, to combine both medical and recreational marijuana uses.

Mr. Genereux asked the Board to consider making boundaries on non-retail less restrictive. He explained receiving several phone calls and emails on from companies looking towards establishing a growing facility. By keeping the special permit process in place, the Board would still have the ability to regulate concerns on odor or things like that. He said the State law was specific on distribution facilities that they are not to be marked and not to be full of symbolism that would encourage marijuana consumption. From an economic development standpoint, the Town has enough challenges right now. He felt the Board needed to do what they felt made sense, but on the non-retail side of things, he would like to encourage having more options for development.

Ms. Friedman agreed, noting an example that the Cultivate facility was not an intrusive business. She would support (for all categories: retail and non-retail) a 200ft buffer from residential zoning districts, and 500ft from schools, childcare and anywhere children congregate.

Mr. Derrick asked whether there were restrictions on signage for retail. He noted a business on Pleasant Street, near where he lives, whose store sign covered the entire side of the building. He asked if something similar would be expected from a retail marijuana facility or were there restrictions on signage that already exist. Ms. Buck understood there were some restrictions related to signage within the State regulations and something the Town could supplement in their local Bylaws. The store sign being referenced would not comply with the current Zoning Bylaw.

Mr. Derrick asked how that could be avoided with a new marijuana facility, if it was not being enforced now. For residents who do not want to see an intrusive sign advertising a marijuana facility, what was their recourse? Ms. Buck explained the Town does not have a sign enforcement office that drives around looking for violations. Violations were enforced when a complaint was submitted to the Zoning Enforcement Officer.

Ms. Friedman further explained through the special permit process, any new business application coming in, was required to submit information related to signage, i.e. size, type, etc. In addition, with a special permit, all abutting property owners would receive notification in the mail when the public hearing would be. Mr. Derrick said otherwise, someone would have to pay attention to the Town website. Mr. Grimshaw agreed.

Mr. Derrick didn't agree with increasing the amount of presence with something that he personally did not like or want to see in Town. He asked for the zoning to be as restrictive as possible, so companies, who are looking to locate in Town, find that space was not available.

Ms. Buck recapped discussion.

- Condense Use Table to 3 categories; retail, non-retail, and social consumption
- Allowed in most commercial districts
- Special permit required in all districts
- Eliminate 1,000ft buffer
- All categories of marijuana establishments: 200ft buffer from residential zoning districts, 500 foot buffer from schools, parks, childcare, etc;
- Social consumption prohibited in all zoning districts

Mr. Grimshaw questioned number of retail facilities and whether it should be in relation to liquor licenses permitted. Ms. Buck explained that the Town of Leicester could choose to limit the number of category uses in retail to a percentage of liquor licenses. In order to do that, and because the majority of Leicester residence voted in favor of the ballot question, would require a bylaw amendment and a ballot vote.

Ms. Friedman questioned whether the Town could revisit proposing an amendment and ballot vote, if it's being inundated with inquiries and wanted to start limit licensing. She felt because surrounding communities had moratoriums; facilities would be looking at Leicester. Ms. Buck said the Town could revisit the amendment and ballot vote issue.

Mr. Brooks asked to consider buffers for growing facilities 200ft and retail 500ft. Ms. Buck said the two different buffers were from residential zoning districts (200 feet) and childcare, schools, parks, etc. (500 feet), regardless of retail or non-retail. Mr. Brooks considered 200ft for a growing facility (for all categories), because it would allow the use of empty factory buildings. Ms. Friedman noted a 500ft buffer on retail would limit where a facility could go. Mr. Brooks agreed and then the Town wouldn't need to worry about the Bylaw later on.

Ms. AbuSalah asked if the Board could consider reducing the 500ft buffer within the HB-2 District. Her concern was the Route 56/Huntoon Memorial Highway corridor, where there were several empty manufacturing buildings and that one house or one childcare could stop the use of an entire building. Ms. Buck noted there was some pushback at a previous Town Meeting on making the buffer smaller than the State's recommendation.

She said the process before Town Meeting was, a draft amendment would be rewritten based on tonight's meeting and submitted to the Select Board by February 1, 2018. A public hearing will be scheduled sometime in February; it will be advertised in the local newspaper as well as on the Town's web page. Depending on comments received after the public hearing, adjustments would be made to the draft and the hearing continued to the March meeting.

A final draft will then be submitted to the Select Board by April 1, 2018, and Town Meeting will be May 1st. The amendment needs a 2/3 vote to pass.

General Discussion, Potential Zoning Bylaw Amendments

A. Backyard Poultry

The Planning Board agreed setting up a Sub-committee for Backyard Poultry Bylaw. The Sub-committee would have 2 representatives from the Planning Board, 1-Agricultural Commission, 1-Board of Health, 1-Animal Control Officer and 2-At Large residents.

Mr. Kularski agreed to sit on the committee.

MOTION: Ms. Nist moved that the Planning Board establish a Sub-Committee for the Backyard Poultry Bylaw.

SECONDED: Ms. AbuSalah – Discussion: None – VOTE: All in Favor

B. “Housekeeping” Amendments

Ms. Buck gave a brief overview of the other Zoning Bylaw Amendments to be considered for the May 1, 2018 Town Meeting:

1. Open Space Residential Development (correction of errors)
2. Use Regulations (clarification of confusing language)
3. Correction of alphanumeric references and cross-references

Town Planner Report/General Discussion:

LaFlash Boutilier Solar

All work completed except reseed the area, install security gate, and installation of rip rap near the entrance. A surety bond was required for the gate to ensure installation and the applicant has submitted an \$8,000 surety.

MOTION: Ms. Friedman moved to approve the Performance Surety Agreement for LaFlash Boutilier Solar Project.

SECONDED: Ms. Nist – Discussion: None – VOTE: All in Favor

General Discussion

Mr. Kularski asked about considering changing the name Suburban Agriculture to Residential Rural, because of the agricultural language causing so much confusion. Ms. Buck noted a name change would only involve a simple amendment.

Approval of Minutes

1/2/2018

MOTION: Ms. Nist moved to approve the minutes of January 2, 2018

SECONDED: Ms. AbuSalah – Discussion: None – VOTE: All in Favor

Committee Reports

Ms. Friedman gave an overview of CMRPC’s quarterly meeting.

Ms. AbuSalah provided an update on Economic Development Committee activities.

Hearing no further comments or questions, Mr. Grimshaw asked for a motion to adjourn.

MOTION: Ms. Nist moved to adjourn meeting

SECONDED: Ms. AbuSalah – Discussion: None – VOTE: All in Favor

Meeting adjourned at 8:45PM

Respectfully submitted:

Barbara Knox

Barbara Knox

Documents included in meeting packet:

- Agenda
- Memo to the Planning Board from Michelle Buck, Town Planner regarding January 2, 2018 Planning Board Meeting
- Draft copy of Marijuana Establishment Zoning Bylaw Handout for Discussion at Planning Board meeting 1/23/2018
- Copy of proposed amendments to the Grafton Zoning Bylaw for new medical marijuana establishments
- Copy of the Town of Grafton's Use Table
- Copy of the City of Easthampton proposed amendments to zoning ordinance, zoning for recreational marijuana
- Copy of the City of Easthampton Use Table
- Copy of the Town of Athol's proposed zoning provisions for licensed marijuana establishments, not medically prescribed.
- Draft copy of the Town of Leicester's Zoning Bylaw "Housekeeping" Amendments
- Planning Board minutes of January 2, 2018

Documents submitted at meeting:

- Handout for Discussion, Marijuana Establishment Zoning Bylaw
- Town of Leicester Zoning Map showing 500ft buffers & 200ft buffers from residential districts