

Zoning Board of Appeals Minutes
Conference Room, Middleborough Town Hall
10 Nickerson Avenue, Middleborough, MA 02346
February 22, 2018

Chairman Darrin DeGrazia, Dr. Edward Braun, Dorothy Pulsifer, Joseph Freitas, Liz Elgosin, and Jack Healey were present.

7:30 P.M. Minutes

Upon a motion made by Liz Elgosin and seconded by Dorothy Pulsifer, the board

VOTED: to approve the minutes of January 25, 2018.

Unanimous Vote.

7:30 P.M. Elva Abair by John Scanlon Construction – West Street

Chairman Darrin DeGrazia read into the record the legal advertisement and declared the hearing open. Chairman Darrin DeGrazia informed the board that they have received a request from Attorney Robert Mather requesting that this meeting be continued until March 8, 2018.

Upon a motion made by Liz Elgosin and seconded by Dorothy Pulsifer, the board

VOTED: to continue the hearing until March 8, 2018.

Unanimous Vote.

7:31 P.M. Michael O'Shaughnessy, Esq – 136 Wood Street

Chairman Darrin DeGrazia read into the record the legal advertisement and declared the hearing open.

Michael O'Shaughnessy informed the board that he is present tonight on behalf of the petitioner 136 Wood Street, LLC; Andy Martenson is the manager and owner of the property. They are seeking a special permit to authorize a piece of property in the General Use District to be used as a multi-family. There was an existing home, a garage was added to it, all done with proper permits and they would like to convert the space above the garage into a one bedroom apartment.

This lot is 65,520 square feet and the conversion of the premises to a multi-family is allowed in the General Use District by special permit. The premise will be served by a new Title V septic system; each unit will be served by the existing paved driveway; there will be two indoor parking spaces and four outdoor parking spaces; there are no wetlands on site and the proposed structure does not create any new nonconformity with the zoning requirements;

Michael O'Shaughnessy reviewed, in detail, compliance with section 7.1 and section 9.4.2 of the bylaw.

Chairman Darrin DeGrazia asked what the total number of bedrooms in the existing house is. Michael O'Shaughnessy said three, so there will now be a total of four. Michael O'Shaughnessy said he believes the septic was designed for five bedrooms.

Dr. Edward Braun said the site plan shows there are two garages on it. Andy Martenson said there is another garage on site but it is only for storage of lawnmowers, maintenance equipment etc. Dr. Edward Braun asked if the shed is still located there. Andy Martenson said the shed is supposed to be

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removed once the garage is built. Discussion ensued regarding the site plan. Dr. Edward Braun asked how many cars would fit in the garage. Andy Martenson said two.

Discussion ensued regarding adequate parking.

Liz Elgosin read into the record a letter dated February 21, 2018, from Robert Whalen, Building Commissioner who supports this request.

Chairman Darrin DeGrazia asked if anyone would like to be heard on this matter. Hearing no comments Chairman Darrin DeGrazia closed the hearing and called for a motion.

Upon a motion made by Dr. Edward Braun and seconded by Joseph Freitas, the board

VOTED: to approve the petition of Michael P. O'Shaughnessy, Esq. on behalf of 136 Wood Street, LLC, 70 East Grove Street, Middleborough, MA 02346 relative to his request to allow for the construction of a multifamily dwelling located at 136 Wood Street. The subject property is located at 136 Wood Street, Middleborough Assessor's Map 065, lot 99, in the General Use Zoning District. This is approved subject to the following stipulations:

- 1. Subject to the plan received and dated January 22, 2018.**
- 2. The shed and trash bin as shown on the site plan shall be removed.**

Chairman Darrin DeGrazia, Dr. Edward Braun, Joseph Freitas, Dorothy Pulsifer and Liz Elgosin were in favor. (5-0)

Upon a motion made by Dr. Edward Braun and seconded by Liz Elgosin, the board

VOTED: to adopt the following findings:

- 1. The proposed site is appropriate for the use and structure, it is noted that this is in the General Use District.**
- 2. Adequate and appropriate facilities have been provided to insure the proper operation of the use and structure;**
- 3. Traffic flow and safety, including parking and loading are adequate and there will be no nuisance or serious hazard to vehicles or pedestrians;**
- 4. Adequate water, sewer, and other utilities as well as other public and private services are available or will be provided;**
- 5. The use involved will not be detrimental to the established or future character of the neighborhood and town and is subject to appropriate conditions or safeguards if deemed necessary.**

Chairman Darrin DeGrazia, Dr. Edward Braun, Joseph Freitas, Dorothy Pulsifer and Liz Elgosin were in favor. (5-0)

7:50 P.M. James Reynolds – 410 Plymouth Street

Chairman Darrin DeGrazia read into the record the legal advertisement and declared the hearing open.

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James Reynolds informed the board that he has owned the flower shop and gift business here for 54 years. The business started as a green house, and they have evolved into more gifts. They do gift baskets, wine and cheese baskets, floral arrangements, etc. Approximately three or four years ago, during the bad winter, they had their first greenhouse collapse. The foot print and foundation are still there. They would like to build a 21' x 40' one and a half story building, and focus more on the gift and floral area rather than the growing area. This would be retail space on the first floor and office/studio space on the second floor for his personal use. This will also have the addition of a 200 gallon a day septic system.

Chairman Darrin DeGrazia asked if they existing greenhouses are going to stay. James Reynolds said yes. Dr. Edward Braun said as he understands they were approved previously to sell additional products and this request is basically to do it in a newly constructed building. James Reynolds said yes, they would like to upgrade their facility by replacing something that was there, that is no longer there. Dr. Edward Braun asked if they will be doing the same kind of business that was approved by this board. James Reynolds said yes, in a larger location.

Lengthy discussion ensued regarding parking. The board would like the applicant to come back with a plan showing the present and proposed parking for this additional retail space.

Liz Elgosin read into the record the following letters: letter dated February 21, 2018, from Robert Whalen, Building Commissioner; letter dated February 1, 2018 from Patricia Cassady, Conservation Agent and a letter dated February 5, 2018 from Paul Fellini, Planning Department.

Chairman Darrin DeGrazia asked if anyone would like to be heard on this matter. Hearing no comments Chairman Darrin DeGrazia closed the hearing and called for a motion.

Upon a motion made by Liz Elgosin and seconded by Dorothy Pulsifer, the board

VOTED: *to continue the hearing until March 08, 2018.*

Unanimous Vote.

8:15 Mukesh Patel (Green Harbor Dispensary) - 29 Abbey Lane

Chairman Darrin DeGrazia read into the record the legal advertisement and declared the hearing open.

Bob Carp, CEO of Green Harbor Dispensaries thanked the board for their time this evening and reviewed the reasons they have chosen Middleborough for their location. The board was given a package of information including proposed security, site plan, architectural plans etc.

Chairman Darrin DeGrazia said this is not only a dispensary but cultivating as well. Bob Carp said that is correct. One of the important parts about the location is this is a destination. You don't just turn onto this road just to take a tour. They are comfortable with the fact that hopefully the right people will be there, and the wrong people will be very easily noticed. They have done a very thorough inspection of the building, security review and are comfortable with the fact that this will live up to the towns standards. These licenses are issued and renewable annually. You will find the Commission is fairly new, they are taking everything very strictly, and they understand compliance. He has found the biggest concern with

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most towns is security and diversion. Towns are very worried things will go out the back door and not the front door. He reviewed, in detail, the security system for this facility.

Joseph Freitas asked if they will be growing everything they sell on their property, or will you be bringing some in. Bob Carp said they are hoping to grow everything they sell but the State does allow for every dispensary to purchase up to 30 percent outside because of a particular demand for a patient.

Liz Elgosin asked what the hours of operation would be. Bob Carp said they are looking for Monday thru Friday from 9am to 7pm and Saturday and Sunday from 9am to 6pm. Dr. Edward Braun asked if they would have home delivery. Bob Carp said it is mandated that they have home delivery; they do not have an option. Discussion ensued as to how these products are shipped and/or delivered.

Bob Carp said a lot of people are also concerned with traffic. This is an off street. The average dispensary in Massachusetts, the total traffic is not equal to Dunkin Donuts between 7:00 am to 7:20 am. There are fewer cars.

Mike Terrizzi, Security Director with Platinum Protection Systems reviewed, in detail, the security system that will be installed for this site. Dr. Edward Braun said they seem to have a lot of security for their place, but what about Mass Tank still operating there, and the surrounding buildings as well. It seems illogical to him that there would be a lot of security and back ground checks on one place and right next store they don't do the same thing. Mark Rochette said there is no access from Mass Tank to this facility unless they used the front door. Dr. Edward Braun asked how many employees are with Mass Tank. Randy Kupferberg, owner of Mass Tank said 17. Dr. Edward Braun asked if there is any relation to back ground checks between the two businesses. Randy Kupferberg said no but he would have no problem with his people doing a back ground check.

Chairman Darrin DeGrazia asked if there is any fencing around this. Bill Madden, GAF Engineering said there is perimeter fencing around the site currently.

Chairman Darrin DeGrazia asked if the Police Department would have access to the videos of all the inner workings. Bob Carp said everything except the restrooms. Bob Carp said they could do it from a smart phone, and will have all access to indoor and outdoor cameras.

Chairman Darrin DeGrazia asked how many facilities in Massachusetts are up and running and for how long. Bob Carp said thirteen and they range from 24 months to as recent as last month. Dr. Edward Braun asked what the closest one to Middleborough is. Bob Carp said Bridgewater. Dr. Edward Braun asked if there is a total cap on the total number that will exist in the future. Bob Carp said originally the State had capped it at five per county for a total of 65. This was challenged, rewritten, and currently there is no cap.

Jack Healey said he learned today that medical marijuana facilities, under the law, cannot be stopped from operating as recreational facilities. He asked if that is true. Bob Carp said that is not true. Jack Healey said he read the law. Bob Carp said the law is one thing, the regulations are another. They are still drafting the regulations. The Town has the ability to say they cannot sell recreational marijuana. The town has the right to ban it. They are looking for medical. He thinks at some point they will want

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recreational, but right now the focus is on medical. There are a tremendous number of underserved patients. The demand is such in Massachusetts there will not be enough to supply recreation to start. Demand is too much on the medical side to help recreational. That could turn upside down, but at this point there are not enough products.

Jack Healey asked if this company would get into recreational, in the future, at this location. Bob Carp said probably so. Jack Healey asked how it is then that the town can prohibit that. Bob Carp said the town has certain rights, especially through zoning, to make that part of their decision. The board does not have to turn their permit into something else.

Chairman Darrin DeGrazia asked if anyone would like to be heard on this matter. Tracy Marzelli, 108 South Main Street said she has with her tonight the Commonwealth of Mass Guidance for municipalities who are considering this. She has heard some discrepancies tonight. In the document it states that facilities are allowed to bring in 45 percent of their product usage in any given year, and that home delivery is not required, but permitted. The State on its website already has a conversion plan available for nonprofits to go commercial. The documents are online and they are already encouraging them. The State gets 17 percent, and the local community gets three (3) percent. Those numbers are a little different with the medical marijuana.

Tracy Marzelli questioned the fencing around the perimeter. She works at 23 Abbey Lane and said there is not a fence all around the property. She said this is not a public street, this is a private road. Right now all of the business owners on that road pay for the care of the road. She knows that traffic is not a concern for them but it is a concern for her and the businesses. This will increase traffic on the road; the hours of operations are such that on the weekends there is not a lot of traffic in there. Now the care and condition of the road becomes their responsibility. Not every tenant in that industrial park pays for snow removal and sanding. This is going to increase traffic, increase wear and tear on the road and increase the cost for the business owners there. If this goes commercial that is going to further increase the traffic on a private road. Public safety is an issue and should be considered by this board.

Tracy Marzelli said she thinks the business model is great, the plan is great; she likes everything about it but the location. Chairman Darrin DeGrazia asked if there is an association for the road or is it owned by multiple tenants. Tracy Marzelli said it is owned by multiple tenants. Chairman Darrin DeGrazia asked if there is one source for collecting for the upkeep. Tracy Marzelli said no, it's whoever wants to pay and who ever doesn't, doesn't.

Discussion ensued regarding the responsibility of the private road.

Charles Gillis, partner at AMI said they have been here for over twenty years and have a reputable business. They have a high end precision machine shop, and have customers coming in from all over the Country. They took a ride down to the facility in Bridgewater today and you could not believe the people that came in and out of the facility. Some people came out of the building and were smoking in their cars, and then they are going to drive away. All you can smell at this facility is weed. This is a private road, there is a dance studio on the way out and this does not seem like a fit for this area.

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Randy Kupferberg, owner of Mass Tank said he has been here for almost 18 years and he thinks they will agree that they have been pretty good neighbors. Discussion ensued as the traffic, upkeep and speed on that road.

Marc Rochette, Rochette Consulting said he is currently the builder over at the site in Bridgewater and said that is a sealed system with no exhaust out. When the front door is used the smell does get out but that is the reason it needs to be 500' away from certain businesses. He said he has been there for three weeks and has never seen someone smoking on premises. Discussion ensued regarding the system used for odor control.

Bob Carp said they want to be a good neighbor and will work with them to put in speed bumps, signs etc. They want to make sure they work with the neighbors and are not trying to do anything that would harm their business. If they come across technology that they believe would help with odor and/or traffic, they would embrace it.

Charles Gillis said again they have a lot of money in machinery at their property and people traveling from all over. They do not need people coming there and smelling marijuana. It will not look good for them. Bob Carp said he understands his concerns and he would be happy to sit down with him and address these concerns the best way they can.

Dr. Edward Braun said if this got to the point for an approval the town, through this board, can put stipulations on this permit. They can monitor hours, maintenance of road, use of commercial marijuana etc.

Rob Kirschner, Kirschner associates asked what part of the building they are planning on using for this facility. Randy Kupferberg said the front downstairs and the first three bays.

Discussion ensued regarding the process of growing the plants and harvesting them.

Liz Elgosin read into the record the following letters: letter dated February 14, 2018, from Captain Tim Reed, Fire Department; letter dated February 21, 2018 from Robert Whalen, Building Commissioner; letter dated February 12, 2018, from Christopher Peck, DPW Director and referenced a letter dated February 2, 2018, from the Planning Department.

Brian Raymond, Ashley Lane asked if they have done a risk assessment for the community including the businesses on Abby Lane, and also the residences that surround this, and what were the results of that assessment. Bob Carp said a risk assessment is limited to complying with State regulations. Their security people have put together a very efficient and professional plan that covers the risk around the perimeter of the building and the building itself. For their neighbors they do not have access to the property, or enough information, but the risk they have it is their belief it will not be increased by what they are doing. There is no real plan for anything existing there. They are designing this so they are self-contained. Discussion ensued regarding security. Brian Raymond said this is very big concern for him and the residential community.

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Lengthy discussion ensued regarding recreational marijuana vs. medical. Jack Healey said as he understands it this board cannot prevent a medical marijuana facility from becoming a recreational facility. Chairman Darrin DeGrazia and Bob Carp both disagree with that statement.

Laurie Amberman, 101 Ashley Lane asked if there is any information for potential property values going down. Chairman Darrin DeGrazia said he would say almost any improvement of a property does not drive down the property values of another. She is also very concerned with the smell coming from this business. Discussion ensued with the compliance of the State regulations regarding this.

Discussion ensued regarding continuing tonight's hearing and re-advertise this as a dispensary and cultivating facility. Dr. Edward Braun would like to ask Town Counsel to look into whether or not this board has the capacity to restrict commercial marijuana if it approves medical marijuana.

Hearing no further comments Chairman Darrin DeGrazia called for a motion.

Upon a motion made by Liz Elgosin and seconded by Dorothy Pulsifer, the board

VOTED: to continue the hearing until March 22, 2018 and re-advertise the hearing as a dispensary and cultivating facility.

Unanimous Vote.

Upon a motion made by Liz Elgosin and seconded by Dorothy Pulsifer, the board

VOTED: to adjourn at 10:00 P.M.

Unanimous Vote.