

**AMHERST PLANNING BOARD**  
**Wednesday, April 4, 2018, 7:00 PM**  
**Town Room, Town Hall**  
**MINUTES**

**PRESENT:** Stephen Schreiber, Chair, Greg Stutsman, Robert Crowner, Maria Chao, Michael Birtwistle, Christine Gray-Mullen, David Levenstein, and Jack Jemsek

**ABSENT:** Pari Riahi

**STAFF:** Christine Brestrup, Planning Director  
Steven McCarthy, Administrative Assistant  
Alan Snow, Tree Warden

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Mr. Schreiber opened the meeting at 7:00 PM.

**I. MINUTES** - none

**II. JOINT PUBLIC HEARING WITH TREE WARDEN – SCENIC ROADS**

**Scenic Road tree removal to allow relocation of a driveway and curb cut for Parcel 2D-1 and Parcel 2D-14 to access a proposed new solar installation – Pulpit Hill Road (25 to 50 feet west of 320 Pulpit Hill Road)**

Public Shade Trees impacted by this project include the following trees (Sizes indicate “diameter at breast height” – DBH):

14 inch Oak

30 inch Oak

24 inch White Pine

Mr. Schreiber read the preamble, and described the trees proposed to be removed: a 14” oak, a 30” oak, and a 24” white pine.

Kevin Sullivan, employee of Lodestar Energy, stated the trees needed to be removed to access a solar project which had already been approved and begun construction. Access to the site had traditionally been done through an abutter’s property, but the solar company needs to have formal access for their operations. The applicant did not realize the requirement for this shade tree removal application until late in the process.

Mr. Sullivan, a licensed arborist and former Tree Warden in Connecticut, described the condition of the trees in the area on the street; nearly  $\frac{3}{4}$  are in poor health in some way. He described the economic difficulties the solar company was experiencing without a clean title, which a proper driveway would resolve.

Mr. Snow agreed that there are many trees in poor health on the street, but that does add to the character of the street; the trees in question are healthy and in good shape.

Henry Lappen, chair of the Public Shade Tree Committee, described the site visit; the trees are in good health. The APSTC felt it was important to preserve the trees in question. Currently, the construction vehicles are using an abutting driveway, so they do have access to the site.

Mr. Birtwistle described the Planning Board's site visit; they also saw the driveway access currently being used, although it is not 'legal'.

Mr. Jemsek asked if the Robert Frost trail goes through the site; it does. He also noted there is no legal long term access to the site; construction vehicles are using the abutting driveway.

Michael Pill, attorney for W.D. Cowls, noted that the driveway proposed is the only legal access to the site. There is no prescriptive easement on the neighboring party. He noted the case *Anzalone v. Metropolitan District Commission of Commonwealth of Massachusetts* (257 Mass. 32 (1926)) holds that a landowner cannot be prevented from entering his land upon a way which the public has a right to use. This is the only possible access strip to property. He noted Cowls are ardent foresters, owning 85,000 trees in the Town of Amherst, and the payment they will give for the trees removal can enhance the shade trees in town elsewhere.

Mr. Crouner asked why the parcel could not be accessed from Montague Road or another street.

Mr. Sullivan described site issues that made the access strip necessary. He noted that safety vehicles, skiers, and the Town needed access to the site.

Ms. Gray-Mullen spoke in support of removing the trees.

Mr. Snow emphasized the importance of the process, and clarified that nobody was intending to deny the applicant access to their property. He described how the applicant would pay a fee if the trees were allowed to be removed.

Mr. Birtwistle asked how the site had been accessed up to this point if there was no formal access. Mr. Pill described how many Cowls lands across Western Massachusetts had been accessed informally for centuries, and financing for this project cannot be granted without formal access.

Mr. Birtwistle asked why there could not be some kind of land swap with the abutter. Mr. Pill noted the neighbor had no obligation to sell or grant an easement; Mr. Sullivan noted that to have an appropriate radius for fire access on the neighboring property, they would still have to cut down two or three Town trees. The abutting house would also not have enough frontage were property conveyed.

Mr. Stutsman MOVED that the Planning Board grant the request to remove the above mentioned shade trees. Ms. Gray-Mullen seconded. The vote was 7-1-0 (Birtwistle opposed). The motion passed.

Mr. Snow was in favor of removing the trees.

Mr. Snow asked that the applicant restore the current de facto road to original condition; Mr. Pill and Mr. Sullivan made a binding promise to restore the existing, informal access drive to pristine condition, vegetate the area, and plant a shade tree of Mr. Snow's choosing.

Mr. Crowner MOVED to close the Public Hearing. Ms. Gray-Mullen seconded. The vote was 8-0. The motion passed.

## **II. PUBLIC HEARINGS – ZONING AMENDMENTS**

### **A-08-18 Zoning – Demolition Delay (Historical Commission)**

To see if the Town will amend Article 13, Demolition Delay for Structures of Historical or Architectural Significance, of the Zoning Bylaw, by deleting Article 13 in its entirety and replacing it with a new Article 13, Demolition Delay for Structures of Historical or Architectural Significance, to clarify which projects are required to be reviewed by the Historical Commission and to clarify applicability, public hearing and other procedures.

Ms. Brestrup reported that the Historical Commission had withdrawn the proposed amendment from this Town Meeting warrant pending further refinement.

Mr. Stutsman MOVED to close the Public Hearing. Ms. Gray-Mullen seconded. The vote was 8-0. The motion passed.

### **A-10-18 Zoning – Marijuana Uses (Planning Board)**

To see if the Town will amend Article 3, Use Regulations, Section 3.3, Use Classifications and Standards, Section 3.363 Marijuana Uses, to add a number of marijuana-related uses as described in the regulations of the Massachusetts Cannabis Control Commission, to include the classification, permitting requirements for these uses and to add or clarify associated standards and conditions, and to amend Article 12, Definitions, to add definitions for these marijuana-related uses.

Mr. Crowner described the purpose of the amendment, which was to add into the Zoning Bylaw use categories for all of the marijuana uses within the Cannabis Control Commission's regulations, as well as to streamline and clean up conditions. Since the last time this was discussed, a new use has been added; a 'marijuana social club', which is a 'BYOB' social club – one that would not serve or sell marijuana, but would allow guests to consume their own marijuana products. That use will not be allowed at this time. The buffer for marijuana uses around schools have also been changed to 500 feet to match the state's rules. It was also clarified that the existing 300' buffer measurement is now building to use. The new buffer zone of 500' around schools would be measured property line to property line.

The ZSC recommends this article.

Mr. Levenstein asked why these regulations proposed use categories that the Cannabis Control Commission has not recognized – this could be creating more work and anticipation for the Town.

Mr. Crowner said that the Town had been caught by surprise when the state allowed medical dispensaries to convert to recreational sales, and putting these definitions in the Zoning Bylaw now and prohibiting them allows the Planning Board to have control in the future if those uses should arise.

Geoff Kravitz, Economic Development Director for the Town of Amherst, said the marijuana social club category was based on Easthampton's newly passed zoning which has no basis in state regulations, and they did not think it would be good for Amherst at this time.

Mr. Stutsman pointed out a line in the regulations that may be read to prohibit private use of marijuana in a home - "...in other private grounds". Ms. Gray-Mullen agreed and thought that there should be a differentiation between a business transaction at a club and personal use.

Mr. Kravitz noted representatives from the Board of Health had requested that the buffer be added to preschools as well, not just K-12 schools.

Ms. Brestrup noted that since the warrant had been signed already, the scope of the article could not be expanded - adding preschools would be expanding the article.

Ms. Brestrup noted some of the uses, such as marijuana research facilities and testing laboratories, are proposed to be allowed by SPR in certain business districts.

Mr. Crowner MOVED to close the Public Hearing and recommend to Town Meeting that it pass the zoning article, marijuana uses.

Mr. Birtwistle thought it would be useful for a map to be prepared detailing all the sites where marijuana uses could be sited. Mr. Stutsman thought that could be a very tall order given the myriad regulations for the several different use categories.

The vote was 6-0-2 (Birtwistle, Levenstein abstaining).

#### **IV. PLANNING & ZONING**

- A. ZSC Report – none
- B. Public Comment – none
- C. Other

Mass DEP is changing dock regulations. The Planning Board now has the option of reviewing docks in waterways within Town.

#### **V. TOWN MEETING**

- A. Warrant Review
- B. Movers & Speakers
- C. Planning Board Reports
- D. TMCC and LWV Warrant Review – Tuesday, April 10, 7:00 p.m. Town Room – Mr. Crowner said he would present all zoning amendments for this meeting except for the marijuana articles, which Mr. Kravitz will present.
- E. TMCC – Zoning Forum – Tuesday, April 17, 7:00 p.m. Bangs Center, Large Activity Room

#### **VI. OLD BUSINESS**

Topics not reasonably anticipated 48 hours prior to the meeting – none

**VII. NEW BUSINESS**

**A. *Planning Board Transitions due to New Charter***

Mr. Schreiber said the charter provides for a seven member Planning Board which will take effect when the new government begins. Four current Planning Board members' terms expire on June 30th. The Town Manager can appoint committee members, but only to get to a number equaling a quorum +1, which would be 7 for the Planning Board. He also noted that the standard applicants must meet will be higher, as the same real number of members must approve a Special Permit or SPR, despite the smaller board – 6 out of 9 vs 6 out of 7.

It is also a question if Planning Board members can serve beyond their expiration date until their slot is filled. It has been done in the past and was said to be legal, but the Select Board communicated it was not to be the practice in Amherst.

Ms. Brestrup said she would investigate these issues.

It was also said that Town Meeting can only pass essential items until the new government is instituted. What is the implication on the zoning amendments?

Ms. Brestrup noted that Town Counsel has advised caution and said the marijuana articles were very important. The Select Board determined all the zoning amendments should go on the warrant. The Town Attorney will be coming before Town Meeting on the first night to talk about how Town Meeting should operate given that the charter is in place. Town officials will get advice from the attorney.

Mr. Schreiber noted that the Charter Commission could reconvene within a month of the vote.

- B.** Topics not reasonably anticipated 48 hours prior to the meeting – Herbology Group, Inc., a medical marijuana operator that is seeking to be permitted to operate in town, will hold a Community Outreach Meeting on April 11<sup>th</sup>.

**VIII. FORM A (ANR) SUBDIVISION APPLICATIONS - none**

**IX. UPCOMING ZBA APPLICATIONS - none**

**X. UPCOMING SPP/SPR/SUB APPLICATIONS**

The mixed use building on University Drive, adjacent to the recently approved pizza restaurant, will soon be coming before the Board, as well as a request from the developers of the Applebrook Subdivision relating to a crosswalk; Elsie Fetterman on Logtown Road has applied to remove a reservation the Town has on her property. On May 2<sup>nd</sup>, All About Learning, a daycare center, will be requesting approval from the Board to relocate its operation.

**XI. PLANNING BOARD COMMITTEE & LIAISON REPORTS**

Pioneer Valley Planning Commission – Jack Jemsek and Christine Gray-Mullen – The representatives cannot attend the next meeting.

Community Preservation Act Committee – Pari Riahi – not present

Agricultural Commission – Stephen Schreiber – Has not met since last meeting

Design Review Board – Michael Birtwistle – Has not met since last meeting

Amherst Municipal Affordable Housing Trust – Greg Stutsman – Meeting next Thursday

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Zoning Subcommittee – Rob Crowner, Greg Stutsman and Maria Chao – already reported

UTAC (University and Town of Amherst Collaborative) – Greg Stutsman and Christine Gray-Mullen – no report

Downtown Parking Working Group – Christine Gray-Mullen – Waiting on a shortlist to bring to the Select Board.

**XII. REPORT OF THE CHAIR - none**

**XIII. REPORT OF STAFF - none**

**XIV. ADJOURNMENT**

The meeting was adjourned at 8:40 PM.

Respectfully submitted:

Approved:

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Steven McCarthy  
Administrative Assistant

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Stephen Schreiber, Chair

DATE: \_\_\_\_\_