

Richmond Planning Board Meeting
Town Hall
Minutes
September 18, 2017

Members present: Rick Bell, Adeline Ellis, John Hanson, Katherine Keenum, John Vittori
(Chairman)

Others present: John and Kerry Hamilton of 186 View Drive, Richmond; Shawn Schaffer of 272
View Drive, Richmond; Peter Nikitas of Foresight Land Services, Pittsfield

Mr. Vittori opened the meeting at 6:30 P.M.

1. The Hamiltons and Ms. Schaffer were added to the agenda to allow them to express their concerns about a nuisance at the property between their two houses.

Mr. Hamilton said that out-of-town owners were running the house at 200 View Drive as an Airbnb. Starting in May, they had rented the house out every weekend and sometimes during the week, accommodating up to sixteen persons at a time, with attendant noise, lights, and increased traffic. Ms. Schaffer reported that water pressure dropped at her house when too many people were at No. 200. Mr. Hamilton read laudatory reviews from the Airbnb website for the scenic beauty and quietness of the location—qualities that were being ruined for fulltime residents by the presence of so many strangers.

Ms. Ellis summarized the situation: “You live in a residential neighborhood and he’s running a business.” Mr. Hanson said that he did not see anywhere in the Zoning By-laws that running an Airbnb is a permitted use in a residential area but added that a review by legal counsel was needed.

Mr. Vittori agreed that keeping Richmond a quiet, safe neighborhood was what everyone wanted. He said that legislation at the state level was under way to regulate Airbnb’s, and the Town Administrator had asked the Planning Board to discuss the matter at the October meeting. Mr. Hanson recommended that, meanwhile, the three complainants should meet with the Zoning Enforcement Officer.

2. Mr. Nikitas presented a completed *Application for a Determination of Planning Board Jurisdiction and for Endorsement that Planning Board Approval under Subdivision Control Law Is Not Required—Form A*, a check for \$50.00, and a plan prepared for Christian Hanson to subdivide the Clark Farm at 81 State Road (Route 41). All was in order. Mr. Hanson moved that the board approve the submission. The motion was seconded and passed unanimously.

3. The minutes for the meeting on August 14, 2017, were distributed. Mr. Vittori made a motion to accept them. The motion was seconded and the minutes were approved unanimously.

4. To began a discussion of how Richmond should handle Massachusetts' legalization of growing, processing, and selling recreational marijuana in 2018, Mr. Vittori called on Mr. Hanson, Ms. Ellis, and Mr. Bell to report on an informational meeting, "Municipal Actions on Marijuana Legalization," which was held by the Berkshire Regional Planning Commission on August 31, 2017.

Mr. Bell said that Raymond Miyares, the lawyer who conducted the workshop, handed out a copy of M. G. L. Chapter 94G [<https://malegislature.gov/Laws/GeneralLaws/PartI/TitleXV/Chapter94G>] and a sample zoning by-law that towns could use as a model for a moratorium on marijuana establishments if they wished to wait until commonwealth's Cannabis Control Commission (CCC) had promulgated regulations before enacting their own local regulatory by-laws (see Appendix 1 below). Chapter 94G requires that the CCC issue its regulations by March 15, 2018.

Mr. Hanson said that the new state law requires that marijuana be cultivated, processed, and sold in secure locations. The crop would be classified as "other" rather than agriculture, horticulture, or floriculture. He pointed to a potential problem for Richmond: according to the town's zoning by-laws, if a land use is not specifically permitted, then it is not allowed, which puts the by-law in violation of state law because medical marijuana dispensaries are not specified and the new state law requires that such dispensaries be allowed. He recommended seeking the advice of legal counsel.

Mr. Vittori said that state law trumps local law, but it would be best to bring the town's by-laws into harmony with the state. If the by-law is left as is, however, either a dispensary or a retail store could be allowed in a commercial zone by special permit.

Ms. Keenum suggested that since it was highly unlikely that application would be made for either a medical dispensary or a retail store in Richmond any time soon, the simplest thing to do would be wait until the CCC issued its regulations and then determine whether the town needed to take action.

Mr. Hanson presented wording for a by-law to ban all marijuana activity except for the personal use and medical dispensaries required under Chapter 94G (see Appendix 2 below).

Stating that what the Planning Board had been asked to do at this time was to make recommendations to the Board of Selectmen, Mr. Vittori proposed asking legal counsel to review three options:

- (a) Mr. Hanson's proposed total ban;
- (b) a moratorium until December 2018;
- (c) reliance on existing by-laws

After receiving advice, the Planning Board could then take a vote on which option to recommend when all three were sent to the Select Board.

The discussion concluded with two action items:

- (a) Mr. Vittori would speak to the town's attorney about the three options.

(b) Mr. Hanson would make a progress report to Mark Pruhenski, the Town Administrator.

5. The Board discussed the construction of a house at 20 Swamp Road (the former Girl Scouts' Camp Marion White). Mr. Bell had noticed that work had begun without a site plan's having been presented to the Planning Board for review and contacted Mr. Pruhenski. In response to that inquiry and a conversation with Mr. Hanson, Mr. Pruhenski sent an e-mail to all members of the board, stating that in the opinion of the town's legal counsel the property did not require a site plan review (see Appendix 3 below). Mr. Hanson said that the attorney was correct but the owners were ill advised to proceed without a site plan review because findings by the building inspector could later be contested; Ms. Ellis agreed that it was very risky. Mr. Hanson also observed that if there were complaints later about the size or appearance of the building, the Town Administrator would be in a better position if he could say that it had passed a site plan review.

Mr. Vittori noted that when someone applies for a building permit through the town's website, there is no filter in place to route the application to the Planning Board.

As an action item, Mr. Vittori said he would meet with Mr. Pruhenski to discuss the matter of ensuring that site plan reviews for new construction were presented to the Planning Board when appropriate.

After a motion and vote, Mr. Vittori adjourned the meeting at 8:35 p.m.

Respectfully submitted,
Katherine Keenum, Clerk

Appendix 1
Sample Zoning By-law To Impose a Marijuana Moratorium

Annotation at top by Mr. Bell: 2c 8/14/17 PB Agenda. Town of Arlington

ARTICLE 2 ZONING BYLAW AMENDMENT/RECREATIONAL MARIJUANA MORATORIUM

To see if the Town will vote to amend the Town's Zoning Bylaws by adding a new section 11.10, TEMPORARY MORATORIUM ON RECREATIONAL MARIJUANA ESTABLISHMENTS, which would provide as follows, and further to amend the Table of Contents to add Section 11.10, "Temporary Moratorium on Recreational Marijuana Establishments."

Section 11.10.1 Purpose

By vote at the State election on November 8, 2016, the voters of the Commonwealth approved a law regulating the cultivation, processing, distribution, possession and use of marijuana for recreational purposes (G.L. c. 94G, "Regulation of the Use and Distribution of Marijuana Not Medically Prescribed"). Effective December 15, 2016, the law allowed certain personal use and possession of marijuana, and further requires the Cannabis Control Commission to issue regulations regarding the licensing of commercial marijuana activities on or before March 15, 2018, and subsequently, to accept license applications for commercial operations beginning on April 1, 2018. Non-medical Marijuana Establishments as defined by G.L. c. 94 are not otherwise contemplated or addressed under the present Zoning Bylaw. The regulations to be promulgated by the Cannabis Control Commission may provide important guidance on aspects of local regulation of Recreational Marijuana Establishments, as well as details on how the Town may further restrict commercial sales of recreational marijuana by local ballot questions. Moreover, the regulation of recreational marijuana raises novel legal, planning and public safety issues, potentially necessitating time to study and consider study and consider the regulation of Recreational Marijuana Establishments and address such issues, as well as to address the potential impact of the aforementioned State regulations on local

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zoning; and to undertake a planning process to consider amending the Zoning Bylaw regarding regulation of Recreational Marijuana Establishments. The Town intends to adopt a temporary moratorium on the use of land and structures in the Town for Recreational Marijuana Establishments so as to allow the Town sufficient time to engage in a planning process to address the effects of such structures and uses in the Town and to adopt provisions of the Zoning Bylaw in a manner consistent with sound land use planning goals and objectives.

11.10.2 Definitions

“Recreational Marijuana Establishment” shall mean a non-medical “marijuana cultivator, marijuana testing facility, marijuana product manufacturer, marijuana retailer or any other type of licensed marijuana-related business.”

11.10.3 Temporary Moratorium

For the reasons set forth above and notwithstanding any other provision of the Zoning Bylaw to the contrary, the Town hereby adopts a temporary moratorium on the use of land or structures for Recreational Marijuana Establishments. The moratorium shall be in effect through June 30, 2018, or until such time as the Town adopts Zoning Bylaw amendments that regulate Recreational Marijuana Establishments, whichever occurs earlier. During the moratorium period, the Town shall undertake a planning process to address the potential impacts of recreational marijuana in the Town, consider the Cannabis Control Commission regulations regarding Recreational Marijuana Establishments and related uses, and shall consider adopting new Zoning Bylaws in response to these new issues.

11.10.4 Severability

The provisions of this by-law are severable. If any provision, paragraph, sentence, or clause of this bylaw or the application thereof to any person, establishment, or circumstances shall be held invalid, such invalidity shall not affect the other provisions or application of this bylaw.”

Or take any action related thereto.

(Inserted at the request of the Town Manager)

Appendix 2

A Zoning By-Law To Prohibit Marijuana Establishments Proposed by Mr. Hanson

Article 1 : Marijuana Establishments

To see if the Town will vote to amend the Zoning Bylaw by adding to Section 4, Use Regulations: a new paragraph 4.6 and revising Section 4.8 A. PERMITTED PRINCIPAL USES

Section 4: Use Regulations

Add a new paragraph 4.6 as follows:

4.6 The following uses are prohibited in all zoning districts: Recreational marijuana establishments, consistent with Chapter 94G of Massachusetts General Laws, all types of marijuana establishments as defined in Chapter 94G, including marijuana cultivators, marijuana testing facilities, marijuana product manufacturers, marijuana retailers or any other types of licensed marijuana-related businesses, but not to include Registered Marijuana Dispensaries as defined by Massachusetts Law and regulated under Section 4.8 A. PERMITTED PRINCIPAL USES, of this By-Law.

Revise Section 4.8 A. by adding paragraph 15 as follows:

Section 4.8 A. PERMITTED PRINCIPAL USES	RA-A
Continued:	RA-C SR COMM

15. Registered Medical Marijuana Dispensary as defined by Massachusetts Law	NO	NO	SPS
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or take any other action in relation thereto.

Appendix 3. E-mail communication from Mark Pruhenski

Mark Pruhenski <Townadmin@richmondma.org>

To: Rick Bell <rickbell@rnetworx.com>

Cc: John Vittori <mashman@berkshire.rr.com>, John Hanson <jhanson1@berkshire.rr.com>, adeline ellis <aelawmass@gmail.com>, Katherine Keenum <kkeenum@nycap.rr.com>, paulgreenesec@gmail.com

RE: Concern regarding the old Girl's Club Property starting construction without Site Plan approval

All,

I spoke with our attorney today to try and clarify this. It is her opinion that this property does *not* need site plan review, and I'll try to explain why below:

The prior use was a pre-existing/non-conforming camp, currently proposed to be a single-family dwelling. Section 6 of our zoning bylaw (Special Provisions) lists exemptions for non-conforming structures, "*uses*", and lots. 6.1.1 (c) states as an exemption: The alteration, reconstruction, extension, or structural change *to a one-family* or two family dwelling provided this does not increase the non-conforming nature of such structure". Under G.L. c. 40A Section 6, pre-existing nonconforming structures and *uses* may be extended or altered as follows:

Pre-existing nonconforming structures or uses may be extended or altered, provided, that no such extension or alteration shall be permitted unless there is a finding by the permit granting authority (Building Inspector in this case) or by the special permit granting authority designated by ordinance or by-law that such change, extension or alteration shall not be substantially more detrimental than the existing nonconforming use to the neighborhood.

Regardless of what our zoning bylaw states, MGL would override it if our local requirements are more restrictive, which is the case here.

Hopefully this clears it up, but please feel free to discuss this as a group if you wish. -m