



TOWN OF CARVER

Zoning Board of Appeals
108 Main Street
Carver, MA 02330
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approved

12/3/19

Meeting Minutes of October 29, 2019
@ 7:00 PM
Carver Town Hall Room #4

Present: Stephen G. Gray; Chairman, Sharon Clarke; Vice-Chairperson, Members: Eric Mueller, Frances Mellow, and Alan Germain.

Also present: Mark Poirier, Alternate Member and Recording Secretary, Kelly Dicarli

Meeting Opened: 7:01 P.M.

A. Minutes: Reviewed October 1, 2019 minutes.

Member Germain made a motion to accept the minutes. Seconded by Member Mellow Voted and passed unanimously, 5-0

B. Public Hearing: Case No. 52-1 (Continued): Petitioner: Capeway Cannabis Inc., requesting a Variance pursuant to Article 27, Zoning By-Law Changes - Section 5000.5 (2) Location and Dimensional Controls to allow a non-medical marijuana establishment within 500 feet of a religious facility. Property is located at 316 Tremont Street in Carver, MA (Assessor's Map 127, Lot 8-0-R) in a General Business District.

Chairman Gray noted, on October 8, 2019 the Zoning Board of Appeals received a letter via email from Edward Angley, Esq. (absent) representing petitioner, Kevin Hough (absent) to withdraw the appeal without prejudice.

A Motion was made to close the Public Hearing: Case No. 52-1 and duly seconded. Voted and passed unanimously, 5 - 0.

Member Mellow made a motion to allow the request to be withdrawn without prejudice for the variance pursuant to Article 27, Zoning By-Law Changes - Section 5000.5 (2). Seconded by Member Poirier. Voted and passed unanimously, 5-0

C. Public Hearing: Case No. 125-9-107 (Continued): Petitioner: Deborah Myers requesting a Special Permit pursuant to Sections 2242 of the Carver Zoning by Law, for property located at 13 Priscilla Mullens Way in Carver, MA (Assessors Map 125-Lot 9-107R) in order to operate a home-based horse stable business in a Residential Agricultural District.

Chairman Gray noted that Zoning Board Members conducted a site visit on October, 19, 2019. Chairman Gray continued to summarize observations of the property and neighborhood, and invited Deborah Myers with any additional questions or comments.

Ms. Myers noted she has photos after the dirt from property was removed. Ms. Myers stated she trying to operate the horse stable business for a second source of income and opened any questions from the Board Members.

Vice-Chairperson Clarke initiated her discussion that she reviewed the letters from the abutters and neighbors which complimented the member. Vice-Chairperson Clarke had additional questions for Ms. Myers regarding her horse stable business which includes 1. The number of horses on the property versus the number of horses she permitted to house 2. If she plans to build another stall 3. Status and plans of the Exterior lighting around the stalls and property and 4. Visiting hours for the horse stable business?

Ms. Myers responded she is permitted by the Board of Health to house eight (8) horses, however, currently has five (5) on her property. Ms. Myers reported she has no intention to buy/build another stall. Ms. Myers noted she had an electrician come to her property and plans to light only the riding arenas so she can ride and exercise the horses. The lights will be located in the back of her property on the side of her barn and will not include flood lights. Ms. Myers also noted visiting hours for her business will be from 8am to 7pm (the times from 4:30PM to 6:30PM will be used for feeding the horses). Ms. Myers noted she exercises her horses for 20 minutes and no lights will be on after 7PM.

Member Germain discussed with Ms. Myers how the abutters dislike the odor from the horses and would like to see the lighting restriction and fence separating both parties to avoid future discrepancies. Member Germain further questioned the frequency of the manure removal. Ms. Myers firstly noted that fencing will be placed along side of her property line abutting her neighbors to which she previously noted a tree line separates her property from her neighbors. Secondary, Ms. Myers reported to the board she is in process of setting up the manure removal by a company name "Newman Enterprise". However, during storage of the manure, it will encompass a lidded contained to suppress the odor and placed on the other side of the property, away from the opposing abutters.

Member Mellow noted that Ms. Myers has her "hands tied" as she already received permits for the stalls and house the horses. Member Mellow reiterated, Ms. Myers has only 1.38 acres of land and referenced briefly Section 2245 (c) of the Town of Carver Zoning By-Law.

Ms. Myers noted she has no intent to have riding lessons and her business is for boarding and riding only. The Board of Health permit expires in December, 2019 which is then renewed annually. Ms. Myers noted there is no current electricity or plumbing in stalls. The riding arena measurement is 135x55 and currently boards five (5) horses to which two (2) are hers. Hours of operation includes six (6) days a week (Monday-Saturday) and hours are from 8AM to 7PM. Member Germain clarified that if he had a horse boarding at her stable and wanted to see his horse on Sunday, he cannot see his horse to which Ms. Myers agreed.

Chairman Gray asked the Board Members their thoughts regarding the limit of horses to be boarded versus the number of horses granted by the Board of Health.

Ms. Myers noted she has had a maximum of six (6) horses boarding at one point for the longest period of time of four (4) months. Ms. Myers indicated she never had seven (7) horses boarding at one time. Vice-Chairperson Clarke discussed that despite being granted eight (8) horses by the Board of Health, she's suggesting limiting the maximum of horses to seven (7). Member Mellow disagreed and felt six (6) would be a better number given the size of her property, to which Member Germain agreed with Member Mellow.

Ms. Myers is advocating for seven (7) horses rather than six (6) due to financial reasons. Ms. Myers bought the stalls to board specifically board seven (7) horses and if the six (6) limit horse is granted she would have to get rid of a set of two (2) stalls because she has two (2) sets of two (2) stalls and one (1) set of a three sized (3) stall. Ms. Myers concluded that this is possible to return of the buildings back and get 1 (one) used stall however she's leasing these buildings and would accrue

additional costs for standing back the stall. Vice-Chairperson Clarke agreed Ms. Myers not to exceed seven (7) horses and at the time of renewal if she didn't show a constant number of seven (7) horses being boarded, then the number of boarded horses will be reduced to six (6). The Board members are also in agreement with four (4) structures supporting Ms. Myers business.

Member Alternate Poirier circled back to discuss the fence. At this point Ms. Myers reported the fence is 6 feet high and will be approximately 30-40 feet in length of property line. At this point Jonathan Dunn, 11 Priscilla Mullins Way, noted that the length of the property line is about 90-100 feet. Member Mueller inquired the length of the carrel to the front fence on the property line. Ms. Myers noted this to be around 40 feet.

Vice-Chairperson Clarke noted if this special permit is granted, it will be renewed every two (2) years instead of three (3) to which Member Germain agreed and to remove as little greenery as possible during fence placement.

Chairman Gray then opened the meeting for public comment.

Jonathan Dunn (present), 11 Priscilla Mullins Way, a neighbor and direct abutter, who is opposed to the request of the Petitioner to operate a home-based horse stable business agreed to have Ms. Myers board only six (6) horses at any given time.

A Motion was made to close the Public Hearing; Case No. 125-9-107 and duly seconded. Voted and passed unanimously, 5 – 0.

Member Germain made a motion the Board finds that the pursuant to M.G.L 40A Section 3, the Board has authority to require a special permit under the specific circumstances of this case, as the subject lot is less than 5 acres in the Residential- Agriculture (RA) district. Seconded by Member Mellow. Voted and passed unanimously, 5-0.

Member Germain made a motion the Board finds that the "Right to Farm Bylaw" at Section 9.5.3 of the General Bylaws of the Town, does not impose any land use regulation which is properly the subject of state statute, regulation, or zoning law. Seconded by Member Mueller. Voted and passed unanimously, 5-0.

Member Germain made a motion the Board finds that the General bylaw, the "Right to Farm by-law" may not be used to override or modify subjects regulated by existing Zoning By-Laws. Seconded by Member Mellow. Voted and passed unanimously, 5-0.

Member Germain made a motion the Board finds that the benefits of the proposed use outweigh its detrimental impacts of the Town and the neighborhood, in view of the particular characteristics of the site, and of the proposal in relation to that site. Seconded by Vice-Chairperson Clarke. Voted and passed unanimously, 5-0.

Vice-Chairperson Clarke made a motion to grant a special permit for two (2) under the authority given to the Board, under the authority given to the Board under Article V, Section 5221, as well as under Article II, Sections 2241 (a, b, and g) and 2242, and Article V, Section 5330. Seconded by Member Germain. Voted and passed unanimously, 5-0.

Vice-Chairperson Clarke made a Motion that the grant of the variance be conditioned as follows:

1. Hours of operation: Monday – Saturday. Hours: 8A.M.-7P.M.
2. Number of horses kept on the property not to exceed Seven (7)
3. Number of structures used in support of business is limited to four (4) on property currently
4. Outside lighting to be angled downward located on side of barn at tall tines and not placed on elevated poles
5. Fence shall be installed from the front corner corral to exiting fence line that's closes to 11 Priscilla Mullens Way
6. A manure container, with lid, shall be installed North-Wests of the subject property on the side away from 11 Priscilla Mullens Way. No manure may be kept or piled outside this container and manure to be removed every two (2) weeks in the summer.

Seconded by Member Germain. Voted and passed unanimously, 5-0.

Chairman Gray noted any persons aggrieved by this decision may appeal to the court of competent jurisdiction pursuant of the M.G. L. c 40A, Section 17, within twenty (20) days of the date of this decision is filed in the Office of the Town Clerk.

- D. Public Hearing: Case No. 127-10-1: Petitioner: RosenBuds LLC, requesting a Variance pursuant to Article 27, Zoning By-Law Changes - Section 5000.5 (2) Location and Dimensional Controls to allow a non-medical marijuana establishment within 500 feet of a religious facility. Property is located at 318 Tremont Street in Carver, MA (Assessor's Map 127, Lot 10-1) in the Industrial A District.

The reason for the requested relief is because the Petitioner, RosenBuds LLC, is seeking a variance to allow for a setback of 250 feet from a religious facility instead of at least 500 feet as required under the by-Law

Chairman Gray initiated the hearing by noting to the public there will be time allowed for public comment and concerns whether the public is opposed or in favor of the Petitioner. However, the Board is reviewing this case under the by-Laws and discussion by the public regarding the legalization or the use of non-medical cannabis for recreation purposes will not be re-visited.

Blake Mensing, Esq. (present) representing Petitioner, RosenBuds LLC reviewed to the Board the rationale for the petitioner's request. Blake Mensing, Esq. noted in this situation the uniqueness of this property to grant the variance is the structure of the land, issues about measurement on the map, and financial hardship for the petitioner. Blake Mensing, Esq. noted the driveway from the requested address is over 500 feet away from the religious establishment. Blake Mensing, Esq. reported the establishment will be prohibited to be open during church services. Blake Mensing, Esq. noting they are 75 feet short, looking for 15% deviation from the by-Law and current no residential buffer in the by-Law itself. Member Mellow followed up with Blake Mensing, Esq. if the measurements are from land to land or structure to structure, to which Blake Mensing, Esq. reported the measurements are both.

Chairman Gray inquired to Blake Mensing, Esq. that, in order for any variance to be granted by the Board, it must make a finding that there is something distinctive or unusual about the subject property, i.e. shape, soil, or topography, that would allow the Board to "break the Bylaw" as a literal enforcement would cause hardship to a petitioner. However, Blake Mensing, Esq. reported there is no uniqueness about the shape, soil, or topography.

Chairman Gray then opened the meeting for any comments from the Board Members.

Vice-Chairperson Clarke educated the petitioners that the Zoning Board of Appeals measure lot line to lot line not door to door.

Blake Mensing, Esq. gave the Zoning Board of Appeals the definition of a buffer zone and noted the legal age for cannabis is 21.

Rob Rosen, 150 Plain Street, Taunton, noted unable to provide a newer version of map due to lack of availability, however Blake Mensing, Esq. sight plan.

Vice-Chairperson Clarke inquired to Mr. Rosen where the buildings are located on property to which Mr. Rosen noted buildings are 300 feet apart with intervening driveway (side by side).

Member Germain reinstated the notion of the town vote not to have a non-medical marijuana dispensary 500 feet from the church and agreed with Chairman Grey there is no uniqueness to the lands soil, shape, or topography to break the bylaw. No further questions or comments noted from Member Germain or Member Mellow.

Blake Mensing, Esq. noted in final comments that the Church property might be for sale

Chairman Gray then opened the meeting for public comment.

Barry Hanson, 307 Tremont Street, the Pastor of the Church located approximately 250 feet from the proposed facility, opposes the variance request responded there is no formal offers on the property

Laura McNamera, 246 Tremont Street opposing petitioner due to safety concerns stated to the Board "This is my home" and distributed a newsletter pertaining to the number of accidents on Tremont Street from June to August 2019. Chairman Grey summarized Ms. McNamera noting her concern also appears to be traffic issues. Ms. McNamera noted that Tremont street is being overburdening and needs safety structures.

Donna Forand, 27-8 South Meadow Village, also spoke in opposition to the request of the Petitioner for a dimensional variance voiced petitioner cannot uphold town meeting

Chairman Gray opened the discussion up to the Board Members

Member Germain stated if the church is for sale, would the petitioner consider case continuance or having the Board vote.

Blake Mensing, Esq. allotted for a case continuance.

Vice-Chairperson Clarke requesting a site walk.

Member Germain made a motion to conduct a site visit on November 2, 2019, which motion was duly seconded by Member Mueller. Voted and passed unanimously, 5-0.

Member Germain made a motion to continue the Public Hearing: Case No. 127-10-1 for next meeting on December 3, 2019 at 7 P.M., which motion was duly seconded by Member Mellow. Voted and passed unanimously, 5-0.

- E. Public Hearing: Case No. 50-8 & 10A: Petitioner: SunRaise Development LLC, requesting a Variance pursuant to Sections 2230 and 5222 of the Carver Zoning by Law for property located at 0 Fuller Street in Carver, MA (Assessor's Map 50, Lots 8 & 10A) seeking a variance from minimum 150 linear feet of frontage for property with approximately 40 linear feet of frontage along Forest Street for a proposed 5 MW large scale ground mounted solar photovoltaic installation in a Residential Agriculture area.

Chairman Gray initiated the hearing by reading a letter received from the Building Commissioner on September 3, 2019 addressed to Sarah Sterns, Beals & Thomas Inc., representing the petitioner. The petitioner is seeking 40 feet of frontage and needs 150 feet of frontage variance granted by the Zoning Board to continue with project.

Ms. Sterns filed variance request in August 2019 for the above variance request for a Solar Project to be built on a portion of a 213-acre Residential Agriculture (RA) lot and the existing property only has 40 feet frontage existing today along forest street. Since then, Ms. Sterns met with the Building Commissioner, Planning Board, Conservation Committee, and Carver Fire Department. The Carver Fire Department had no issues with accessibility in question. Ms. Sterns noted the plan moving forward is to obtain permit for project and then formalize the project regarding the egress and access to the cranberry bogs. To note, this project has not been started.

Chairman Gray referenced the M.G.L. c 40A requires that, in order for any variance to be granted by the Board, it must make a finding that there is something distinctive or unusual about the subject property, i.e. shape, soil, or topography, that would allow the Board to "break the Bylaw" as a literal enforcement would cause hardship to a petitioner.

Ms. Sterns noted the soil makes this property distinctive. Ms. Sterns noted it's a large site for Agriculture purposes and consistent entirely cranberry bogs, vegetative natural land-wet site and little opportunity for access for public way. The land is un-developmental to which this is the only use to make use of the land on this particular plot of land. Ms. Stearns also noted the land is low in elevation limiting its development ability. The existing access to this land comes in 40 feet along Forest Street near Fuller Street. There is no residential access to this site. Ms. Sterns proposes to have this road access paved back to bogs.

Member Mellow inquired if the lands belong to someone else? To which Ms. Sterns noted this land does belongs to Van Johnson (present) to which he does have access and this has been going on since 1990.

Van Johnson, 315 Purchase Street, Middleboro, noted no one can access this road except through forest street, which part of this lot has never been used and cannot drive on this due to wooded area.

Member Mellow inquired to Ms. Stearns not clear why need frontage. Ms. Stearns noted she asked the building commissioner and was not clear with the by-Law if they need the 150 foot frontage relief, and sta. Ms. Stearns noted that the current developed property has current access and the only issues is the lot does not meet for RA district. Ms. Stearns noted they are targeting bogs one(1) and two (2) from the map, however no official plot plans have been created.

Chairman Gray then opened the meeting for public comments

No comments from public

Vice-Chairperson Clarke noted difficulty granting variance without plot plans to which Chairman Grey agreed. Ms. Stearns noted she was trying not to create full plan until the

projected is granted. But proposed a Schematic plan. Ms. Stearns noted this will be a five (5) megawatt solar project plan on a 200 + acre site.

Member Germain commended Ms. Stearns on her presentation and integrity.

Member Mellow made a motion to continue the Public Hearing: Case No. 50-8 & 10A for next meeting on December 2, 2019 at 7 P.M., which motion was duly seconded by Member Mueller. Voted and passed unanimously, 5-0.

Vice-Chairperson Clarke noted to the Board to amend the above motion due to incorrect next Zoning Board of Appeal date.

Member Mellow made a motion to continue the Public Hearing: Case No. 50-8 & 10A and for Ms. Stearns to provide a detailed schematic plan for next meeting on December 3, 2019 at 7 P.M., which motion was duly seconded by Member Mueller. Voted and passed unanimously, 5-0.

Ms. Stearns will also send the schematic plan via PDF style to the Planning Board.

- F. Correspondence (if any): None
- G. Possible Executive Session: To discuss strategy with respect to pending litigation in the Land Court case of John J. Caprarella, co-Trustee of the Caprarella Family Trust, dated June 30, 2009, et. al., Docket #: 19 MISC 000360, if an open meeting may have a detrimental effect on the litigation position of the public body and the Chair so declares.
- H. A Motion was made to conduct an Executive Session with the Board not to return in open public session. Voted and passed unanimously, 5 — 0, after an individual roll call of all Members.
- I. Next Zoning Board Meeting: Tuesday, December 3, 2019 at 7 P.M.

Meeting adjourned at 9:23P.M.

Respectfully submitted,
Kelly DiCarli