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**Planning Board**

**Michael A. Podolski, Esq., Chair**

**John R. Bethoney, Vice Chair**

**Robert D. Aldous, Clerk**

**Ralph I. Steeves**

**James E. O’Brien IV**

**Planning Director**

**Richard J. McCarthy Jr.**

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**TOWN OF DEDHAM**

**PLANNING BOARD**

**MEETING MINUTES**

**February 16, 2017, 6:00 p.m., Lower Conference Room**

**Present:** Michael A. Podolski, Esq., Chair

John R. Bethoney, Vice Chair

James E. O’Brien IV

Richard J. McCarthy, Jr., Planning Director

Call to order 7:00 p.m. The Pledge of Allegiance was recited. Plans, documents, studies, etc., referred to are incorporated as part of the public records and are on file in the Planning and Zoning office. It is to be noted that Mr. Aldous was not present due to illness, and Mr. Steeves was not present because he was out of town.

**DISCUSSION OF PROPOSED ZONING ARTICLES FOR ANNUAL TOWN MEETING, MAY 15, 2017**

***Recreational Marijuana Moratorium***

Mr. Podolski asked why this could not be put on hold until after the April ballot. Mr. O’Brien agreed. The Board could put the moratorium on in November and still give itself more time. Mr. McCarthy does not think this will be on the ballot in April due to time constraints; he will confirm this with Nancy Baker. If it was on the ballot in April, the article would not need to go to Town Meeting in May to put a ban on it. If the town votes not to have it, there would be no need for a moratorium. Mr. Podolski asked what would happen if someone wanted to open a marijuana shop before then. The Legislature has not voted on this, so it is still a potential bill. It has been extended to 2018, possibly until 2020. He asked why this cannot go on the April ballot if there is no ban to 2018. Mr. McCarthy will confirm this. Mr. McCarthy asked if the Board wanted to move the moratorium or add time to it if it cannot go on the ballot. This will be determined.

***Modification to Site Plan Review***

This allows the Board to make a determination and act on an insignificant modification at the same meeting; this is more efficient. Mr. McCarthy suggested that the time be increased to 45 days in case it needs peer review and notice. Mr. Bethoney moved to put this on the warrant, hold a hearing, vote on the article, and recommend that Town Meeting support the article, seconded by Mr. O’Brien, voted unanimously, 3-0.

***Add Brewery, Distillery, or Winery to Highway Business by Special Permit***

This had been discussed previously when Economic Development Director John Sisson came before the Board. The Zoning Board of Appeals would need to grant a Special Permit. Mr. Bethoney moved to support the change of Highway Business to include the definition of brewery, distillery, or winery to the Principal Use Table, seconded by Mr. O’Brien, voted unanimously, 3-0.

***Amend Zoning Bylaw Wireless Site Plan Review for In-Kind Replacement***

This would allow the Building Department to handle equipment replacements that do not change the wireless installation. Mr. Bethoney moved to support the amendment to Section 8.3.5 for applications that are replacing or swapping out existing wireless equipment to be administered by the Building Department, seconded by Mr. O’Brien, voted unanimously, 3-0.

***Substance Abuse Treatment Centers***

Mr. Aldous had mentioned medical offices and treatment for substance abuse, and asked if doctors would be prohibited from providing substance abuse treatment. Ultimately, the definition of a substance abuse treatment center was changed so that physicians can do this at facilities primarily dedicated to providing substance abuse treatment by Special Permit in the RDO, HB, and LMB zoning districts. Because the town is distinguishing it as a specific use in the Use Table, Town Counsel said defining outpatient facilities or medical offices is not necessary. If a patient is in an existing doctor’s office, regardless of location, it is fine for the doctor to treat him.

Fred Johnson, Assistant Building Inspector, disagreed with Town Counsel, and said the more specific definition there is in the ZBL, the better. Having definitions puts more responsibility on the applicant to be specific in his application. When an application is taken in, the Building Commissioner can ask the applicant what the medical facility will be used for, and ask for specific information; there are multiple definitions of outpatient facilities, i.e., substance abuse and medical office. The more gray areas there are, the more difficult it is for the Building Commissioner to pigeonhole exactly what it is. If the Building Commissioner denied the application, it would be referred to the ZBA. He said the Board should stick to a definition for outpatient facilities, stick to a definition for a medical office, and stick to a definition for a doctor’s office. Mr. O’Brien agreed, saying that if someone has a problem with it, they could challenge it later on. He did not feel it should be left wide open to interpretation by a regular lawyer. Town Counsel told Mr. McCarthy that there was no need for a definition of an outpatient facility, but if one is done, it needs to be very clear that it is distinguishable from the other definitions. Mr. Johnson suggested that in the definition of a medical office, it can say that a substance abuse treatment center is not a medical office, and an outpatient facility is not a substance abuse treatment center.

Mr. McCarthy said the whole purpose is to define substance abuse treatment centers. Mr. Podolski did not disagree with Mr. Johnson, but this will be taken up at a later time because it is too late to put it in now. Mr. McCarthy can write it for the next meeting if the Board wants to try to flesh it out. Mr. Podolski said this is adding to definitions that a medical office, which has multiple practitioners, is not a substance abuse treatment center, and a single doctor’s office is a single doctor’s office. Mr. Bethoney asked him if this meant he did not want a treatment center coming in disguise as a medical office or an outpatient facility. Mr. Johnson said yes.

Mr. McCarthy said this has to be done and cannot wait for an outpatient definition. Mr. Bethoney asked if adding an outpatient definition would go beyond the scope of the article. Mr. McCarthy said it would not. Mr. Podolski suggested adding a sentence of two to this definition saying what it is not: it is not a medical office or an outpatient facility. Mr. McCarthy will discuss this with Town Counsel. Mr. Bethoney moved to support the article as presented and request further amendment by Town Counsel, seconded by Mr. O’Brien, and voted unanimously 3-0.

***Dimensional Change for One-Story Detached Accessory Building***

A new footnote #15 will specify that the walls not be greater than 10 feet in height above the finished grade and the overall height of the one-story detached accessory building shall not be higher than 15 feet above the finished grade with a peak of no greater than 38 feet. Mr. Podolski said this should indicate that the first one is for residential one-story detached accessory buildings and the second is for commercial one-story detached buildings. Mr. Bethoney moved to support this with the modifications discussed, seconded by Mr. O’Brien, and voted unanimously 3-0.

***Change to Mixed Use Submittal Requirements Not Requiring Major Nonresidential Project***

The question was raised about whether mixed use projects should follow Major Nonresidential Section 9.4 of the Zoning Bylaw. Mixed use developments are Special Permits, but follow the general Special Permit requirements in Site Plan Review, Section 9.5, not the Major Nonresidential Special Permit requirements. This is an administrative change. The ZBL says both need to be done, and Town Counsel agreed. The proposal is that applicants for mixed use developments only use Section 9.3, which is the criteria that the ZBA uses in issuing Special Permits. If the Board wants further clarification, Mr. McCarthy said the Board can vote and then he can then provide this. Mr. Podolski was concerned that Town Meeting would be overwhelmed with all of this. Mr. McCarthy said this article can be held off. Mr. O’Brien moved to withdraw the proposal to change 7.4.4, seconded by Mr. Podolski, and voted unanimously 2-0. Mr. Bethoney did not vote on this.

***Change to Use Table for Outpatient Facility and Medical Office***

These are not Special Permits in the current Zoning Bylaw. Mr. Bethoney asked that, in the rationale, the Board explain the difference between a Special Permit and matter of right. The public does not understand whether a Special Permit is an easier hurdle or a heavier burden. Normally, when Town Meeting learns that the Board is looking for heavier burdens on any developer, it is more favorable. Mr. McCarthy said that in LMA, LMB, HB, and CB, the category is all by right. This will change it to Special Permit. Mr. Bethoney moved to change §3.1.3 to make Category 6 Special Permits in LMA, LMB, HB, and CB, seconded by Mr. O’Brien, and voted unanimously 3-0.

***Create Definition for Lodging House and Amend Use Table to Not Allow Lodging Houses***

This is a companion to Transient Dwelling. There are two parts to the article: 1) create a definition, and 2) put it in the Use Table to not be allowed in any zone. Town Counsel has made a few changes in the definition. In the case of an Airbnb where one bedroom in the house is being rented out to transient occupants, a Special Permit can be obtained from the Zoning Board of Appeals. A lodging house, in his opinion, is four or more renters, which is like a mini-hotel or bed and breakfast operation. In the latter, a residential single family house rents out its bedrooms.

The State Building Code has created a definition for lodging houses. A copy was forwarded to Town Counsel, who varied from what the State Building Code requires; however, it is very similar to the proposed definition. The goal is to delineate what is an Airbnb, what is a bed and breakfast, and what is a hotel. A bed and breakfast with five bedrooms is considered a hotel. Under the town’s ZBL for the definition of family, you can have up to three people not related by blood living with the family. There is no definition for how long that relationship lasts. This requires a Special Permit from the ZBA, who will listen to neighbors, iron out any issues that are a problem, and put conditions in a Special Permit. Lodging houses are entirely different; they are like running a hotel in a neighborhood. They allow four or more persons unrelated per the new definition. If there are three or less, you would be either a transient occupant or a boarder. The Building Department could take violators to Dedham District Court and show a judge that these people are violating the Zoning Bylaw, but there must be a definition in the ZBL. There are two properties in town about which significant complaints have been received. A transient dwelling unit would allow three or fewer occupants for less than 30 days. A boarder stays longer.

Mr. Podolski said it should be stated what each is and is not. He felt that the way the town structures the zoning code is haphazard and hard to follow. Mr. Johnson explained the reason a number cannot be put on a transient dwelling. Mr. O’Brien said that people from outside need protection. He cited various reviews of the property at 39 Court Street including some saying beware of the place because it is not a hotel. Checks on the Internet show that it calls itself a bed and breakfast. Mr. Cimeno is aware of it, has spoken with the owners numerous times, and they contend that these people are boarders. The owner has been uncooperative. Mr. McCarthy said the owner had originally spoken with him about a bed and breakfast, and he said the Zoning Bylaw does not allow this. He told them that they should come to the Planning Board to discuss this, but they never came.

Lodging houses are not allowed in Dedham. Transient occupant dwelling units are allowed in SRA, SRB, Local Business, and General Business. Mr. Podolski asked if the town should be doing this to its residents who want to rent out three or less rooms because they need the income. It would make them go through the grind process of government. Mr. Johnson said the biggest issue is parking. He noted that people at 39 Court Street park all over the street and do not respect the neighborhood. The Special Permit process with the ZBA should be very simple: where will these people park their cars and what hours can they arrive so they do not disturb neighbors.

Mr. Podolski did not think the ZBA would ever grant a Special Permit under Mr. Johnson’s criteria, but Mr. Johnson disagreed, saying there may be enough parking on the property. Mr. Podolski said it mostly bothers him for economic reasons, i.e., the owner cannot afford taxes, house expenses, and maintenance. Mr. Bethoney said the people at 39 Court Street are self-regulating by misrepresenting and giving poor service. He asked if the Board should create a regulatory process for something that has been identified in only one or two cases. On the other hand, if a regulatory process is created for only one or two, it will not affect anyone. He did not mind putting the definition is the Zoning Bylaw. He asked what would happen with the two properties that are doing this now if a bylaw came into place, and whether they would be subjected to it. Town Counsel would have to be consulted but most zoning changes are forward, never retroactive.

Mr. Johnson said that there is a decent case to be made for the property on Court Street, which is in violation of the town’s current bylaw. No permits were ever obtained. It will go to court once the town has the bylaw and the owner is cited and does not cease and desist. With regard to Fairfield Street, the Building Department can ask them to get a Special Permit unless they can prove that they are lawfully an Airbnb with a contract; if they prove that, they would probably get to stay. At the least, the town would have a new bylaw with regulations, i.e., parking. The proposal is not to stop anyone from doing this, but to provide regulations for the Special Permit.

The question was raised as to whether the Court Street property would fall under lodging house. Mr. Johnson said it would be based on neighbors’ complaints. However, they have been unable to get in the house to see what is going on. The Building Department has no tools. Mr. McCarthy suggested a compromise. If the Board did the lodging house definition and then said it was not allowed, it would allow the development of more criteria for the transient dwelling in November. Mr. Podolski said he does not have much of a problem saying the town did not need people renting out four or more rooms in a residential zone; this is becoming a hotel. He does have a problem with the next part of the proposal. Mr. McCarthy said he would like to spend more time on that. Mr. Podolski wants to be sure that this does not impinge on property rights that people have now. Mr. McCarthy said they could possibly create criteria where, if met, people could just do it. This could be a tier. The Board liked this idea.

Mr. Bethoney moved to approve the insertion of the lodging house definition into the ZBL under §3.1.3 and §10 Definitions. Mr. O’Brien seconded the motion. The vote was unanimous at 3-0. The second half was tabled.

**OLD/NEW BUSINESS**

**Discussion of Gonzalez Field Peer Review:**  E. Patrick Maguire, MLA, RLA, CLARB, LEED AP® and Dan Hart were present. They are close to moving forward with permitting for the field; they are seeing the Conservation Commission today. There is a question of full or limited peer review for the 34 proposed new parking spaces next to the field, which will be accessed off Route One or through the Staples parking lot. This is a town project, and Mr. Podolski said he hated the idea of spending a lot of money on a peer review. During the design phase, the question also arose as to whether parking should be reconfigured at the town lot on High Street/East Street, which can be used by anyone, not just for those going to the field. If they reconfigure it, they will lose spaces. The Board of Selectmen’s concern is the limited parking already available, and an expanding need in that specific area. Park and Rec was looking at different options based on community feedback, and wanted the entire project to create more of a park-like setting than just an athletic field. Mr. Maguire said that there is wasted, odd-shaped area on the Staples side of the field that does not lend itself to even a practice area. Additional parking could be created coming in from Route One, which may also help alleviate the lower parking lot congestion. They would not touch the lower lot other than installing curbing or a sidewalk. Parking would remain the same.

Mr. McCarthy received a proposal from Steven Findlen of McMahon Associates on February 3, 2017, and told him there may be a consideration for limited review. Mr. Findlen said he would re-evaluate the limited review under the guidance of the Planning Board. The intersection was reviewed by McMahon for a proposed project in front of TGI Friday’s, as well as for the new town hall. They will be re-examining it in greater depth with the Public Safety Building. There are over 10 parking spaces, which triggers full site plan review. The Board could entertain a limited scope by way of the modification of the site. Jason Mammone, P.E., Director of Engineering, met with the Planning Board a couple of years ago for the handicapped spots by the field. The Board has a prior approval of the site, which could limit the peer review almost identically to what it did with 100 Meadow Road; in this case, a determination was made that notice was not needed, but limited peer review was necessary. The Board has the ability to scope it differently if it so desires.

Mr. Bethoney asked anything can be done by the Board of Selectmen with the lower lot to make it more functional and attractive; it would not be within the Park and Rec budget. Mr. Maguire has looked at a number of ways to make improvements and create new configurations. Mr. Bethoney said that since there is going to be parking in the upper lot, it could actually make the lower lot more attractive with landscaping. Mr. Maguire said that reconfiguring does not gain many spaces, but the amount of pavement can be limited, snow storage space can be added, and landscaping can be installed.

The site has landscaping, lighting, and will be dealing with all their storm water management. They are just asking that the peer review of traffic and the big cost be limited. The Board determined that it would do a limited peer review, and will give McMahon specific direction in what they are and are not interested.

**Discussion: Trash at East Dedham Dunkin Donuts Drive-Thru:** The Board of Selectmen has had complaints about trash at the drive-thru and requested that there be a trash receptacle near the drive-thru lane. Mr. O’Brien went to the site today and there is a trash barrel there, but it was full. The outside also needs to be cleaned up. He said this is a management issue, and that someone should be responsible for emptying it. Mr. McCarthy e-mailed them and said it is part of the business, and they need to manage it. Mr. Podolski told the Board of Selectmen that the Planning Board would address this. Mr. O’Brien asked that this include the Dunkin Donuts at the Bed, Bath and Beyond site; there are two dumpsters there, but they are always full. Mr. Podolski said someone told him that the barrel at that Dunkin Donuts was turned around so people could not use it. Mr. McCarthy will speak with the Board of Health about investigating this; the Planning Board is regulatory and has no enforcement authority.

Mr. Bethoney moved to adjourn, seconded by Mr. O’Brien, and voted unanimously 3-0. The meeting ended at 8:30 p.m.

Respectfully submitted,

Michael A. Podolski, Chair

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