



# TOWN OF NORTHBOROUGH PLANNING BOARD

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Approved 4.3.18

## Planning Board Meeting Minutes January 16, 2018

**Members in attendance:** Theresa Capobianco, Chair; Leslie Harrison; Amy Poretsky; Michelle Gillespie; George Pember

**Others in attendance:** Kathy Joubert, Town Planner; Elaine Rowe, Board Secretary

**Chair Theresa Capobianco called the meeting to order at 7:07PM.**

**Continued zoning discussion for 2018 Town Meeting** – Ms. Joubert noted that she had provided the board members with copies of the following 3 draft articles for the upcoming Town Meeting:

- Zoning article to prohibit recreational marijuana, with the Use Table attached
- General bylaw to prohibit recreational marijuana
- Proposed bylaw language in the event that the prohibition of recreational marijuana does not pass.

Ms. Joubert explained that the third article stipulates the location where the use will be allowed, should the prohibition fail at Town Meeting. She noted that the board had decided to allow it in the Highway Business district. Ms. Capobianco asked if the board needs to include a stipulation that no use variances will be allowed. Ms. Joubert indicated that we are not required to do so if the use is prohibited.

In response to a question from Ms. Capobianco, Ms. Joubert noted that the proposed bylaw is modeled after the medical marijuana bylaw that was previously proposed but did not pass.

Mr. Pember stated that he had sent an email to Ms. Joubert before Christmas indicating that he had been challenged to show the wording from Town Counsel stating that a medical marijuana facility would be permitted to sell recreational marijuana. Ms. Joubert indicated that she had sent the information to the board via email. Mr. Pember recalled that the wording he saw addressed only medical marijuana facilities established prior to July 2016 and questioned what would happen if someone came in later to do so. Ms. Joubert noted medical marijuana facilities are presently allowed in Northborough as there is no bylaw prohibiting. With the adoption of the ballot question, all marijuana facilities will now be under the Cannabis Control

Commission and not the Mass Department of Public Health. Since 2012 when medical marijuana was made legal in MA, no establishment has sought Northborough for its location. Staff has met with a couple of potential companies but the companies never continued the process with the State. The Board of Selectmen is interested in including both recreational marijuana and medical marijuana in the prohibition.

Ms. Poretsky asked about including medical marijuana in the bylaw, should a prohibition of recreational marijuana fail at Town Meeting, and questioned the certainty that the medical marijuana issue is, in fact, going away. Ms. Joubert confirmed that medical marijuana will no longer be handled by the MA Department of Public Health as all marijuana now falls under the purview of the Cannabis Control Commission (CCC).

Ms. Joubert reiterated that the article to allow the use in the Highway Business District will be passed over if the other two articles are approved. She also explained that Town Counsel had suggested revising the 300-foot buffer to be 500-feet that is allowed, but imposing a 500-foot buffer could result in a challenge as it would result in an effective prohibition. She voiced her understanding that there are two parcels of land that could potentially fall within the 500-foot buffer. Ms. Capobianco asked about other potential feasible parcels that could be created through the subdivision of larger lots. Ms. Joubert provided a map illustrating the viable parcels. In response to a question from Mr. Pember, Ms. Joubert also highlighted the location of car dealerships (Lexus and Honda) along Route 9.

Ms. Joubert noted that the board had previously questioned their ability to impose a limit in the bylaw to allow only one establishment in town. She explained that Town Counsel believed it to be too restrictive and advised against it, especially given that there are only two viable parcels available. Ms. Poretsky asked about social consumption, and expressed concern about the Casa Vallarta Restaurant, or any other restaurant that may be established in the highway district, potentially allowing it. Ms. Joubert indicated that the bylaw proposed also includes a prohibition of social consumption.

Ms. Capobianco noted that, on page 2, marijuana facilities are defined and asked if social consumption operations should also be referenced. Ms. Joubert agreed to find out if it is necessary to include the mention of social consumption operations every time a marijuana establishment is mentioned. Ms. Poretsky asked if it is possible to prohibit social consumption even if recreational marijuana use is allowed and reiterated her concerns about restaurants in the highway district such as Casa Vallarta. Ms. Joubert noted that it would not be allowed as the Casa Vallarta property falls within an area that would have to be buffered. She agreed to ask Town Counsel about whether social consumption can be prohibited if recreational marijuana establishments are allowed, and if it needs to be called out separately. Ms. Capobianco commented that there are only two lots where social consumption would be allowed. Ms. Poretsky again voiced concern about Casa Vallarta and the gun shop. Members of the board asked Ms. Joubert to seek Town Counsel's advice as to whether social consumption can be prohibited if recreational marijuana use is allowed. Ms. Harrison voiced her opinion that it would be worth knowing if it is even an option.

Ms. Joubert noted that Ms. Poretsky has also inquired about adopting a local tax option. She explained that the matter does not fall under zoning, so is not something that the board needs to bring to Town Meeting. She agreed to discuss the matter with the Town Administrator.

Ms. Joubert explained that towns have the option to allow recreational marijuana establishments either by right or by special permit and, based on conversations from a couple of years ago, she has shown it as allowed by right. She indicated that it is entirely up to the board if they wish to change it and asked for input. Mr. Pember asked about specifics for a special permit. Ms. Joubert noted that a special permit affords the board an opportunity to impose additional conditions and as always, the Board must follow Section 7-03-040 Special Permits C. Criteria when determining if a special permit should be granted.

Ms. Harrison and Mr. Pember did not see a need for the use to require a special permit. Ms. Gillespie and Ms. Poretsky disagreed, as a special permit would allow the board the ability to impose conditions.

Ms. Capobianco recalled that the original medical marijuana bylaw contained considerable security measures with regards to the buildings themselves and asked if this statute has the same. Ms. Joubert agreed to investigate.

Ms. Poretsky noted that the town can decide that the buffer can be reduced by 25% and the applicant can be required to demonstrate that the marijuana establishment will employ adequate security measures, and suggested that a special permit would allow the town to decide what those adequate security measures might be. Ms. Capobianco stated that her concern is with the security of the building/property. She expressed a desire to take a closer look at the provisions before deciding about whether she would want to require a special permit for these facilities. Ms. Joubert agreed to ask Town Counsel how the CCC has laid out security for these establishments or if it should be taken into consideration with a special permit.

Ms. Capobianco reiterated that there are three articles on the town warrant for recreational marijuana use. She commented that, because we have a moratorium in place and have proposed bylaws ready to go, it is her understanding that our moratorium is sufficient to defeat an application should anyone seek a license through the CCC after the April 1, 2018 application date. Ms. Joubert agreed, and noted that Town Counsel has confirmed that moratoriums are considered the law of the Commonwealth, and the moratorium on recreational marijuana is not being treated any differently than any other moratorium. Ms. Gillespie noted that restaurants operations that include alcoholic beverage service do require a special permit.

Ms. Joubert reiterated the concerns that the board has asked her to address with Town Counsel as follows:

- Extend the reference to social consumption throughout the rest of the bylaw

- Can social consumption be called out separately in the bylaw and potentially be prohibited?
- Should the board require a special permit for marijuana facilities?
- Enforcement of security measures

Ms. Joubert explained that the CCC will be holding a round of public hearings about the issue, and she plans to participate in the session scheduled for the morning of February 7, 2018 at the Worcester Public Library. She agreed to follow up with Town Counsel and have responses in time for the board's January 24, 2018 meeting.

Ms. Joubert discussed plans to coordinate a joint hearing with the Board of Selectmen. She also noted that the board's January 24<sup>th</sup> meeting will primarily be devoted to the duplex law. Three members of the board indicated that they are unable to attend the board's meeting scheduled for February 20, 2018.

Ms. Capobianco referenced an email received from Town Counsel earlier in the day. Ms. Joubert commented that the said email specifically addresses the issue of limiting the number of recreational marijuana establishments and the option for local taxation.

Ms. Joubert voiced her understanding that Judi Barrett is preparing a memo for the board in which she summarizes the survey responses and provides suggestions for changes to the duplex bylaw that might be proposed for Town Meeting. In addition, a map showing the locations of duplexes in town and information from the Assessor's office will also be provided as requested by Ms. Poretsky.

**Minutes of the Meeting of November 15, 2017** - George Pember made a motion to accept the Minutes of the Meeting of November 15, 2017 as amended. Leslie Harrison seconded; motion carries by unanimous vote.

In response to a question from Ms., Gillespie, Ms. Joubert noted that the town website has a page that contains agendas and minutes for all town boards. She explained that the approved minutes are sent to the Town Clerk's office where they are converted to a pdf document and posted on the website.

Ms. Poretsky voiced concern about signage, specifically the sign located at the dentist's office at 293 West Main Street and similar. She explained that she had done some research and noted that the sign at CVS in the downtown area is internally lit but contains letters that are placed by hand whereas the sign at the dental office is a new type of technology known as an Electronic Message Center (EMC). She noted that Marlborough does not allow EMC signs in their downtown area because of the bright illumination as they do not want their Main Street to take on the appearance of the Vegas Strip. She explained that Marlborough has a separate definition in their bylaw for EMC signs, and asked if the board might be interested in having a bylaw to address EMC signs since they differ so much from standard internally lit signs. She emphasized a desire to retain the charm and character of the town, and voiced concerns about the downtown area being proliferated with illuminated signs. Ms. Harrison agreed. Ms.

Poretzky discussed recent positive changes to the downtown area, including the Town Common, and suggested that illuminated signs will alter the town's character. She provided the board with information from the Marlborough bylaw for consideration.

Ms. Gillespie questioned the intent of the change. She noted that the board has always addressed how signs are portrayed but has not tried to regulate content. Ms. Capobianco voiced her opinion that Ms. Poretzky is not suggesting we do so. Ms. Poretzky referred to the classic sign at Avidia Bank as the type of signage that she would prefer to see in the downtown area. She commented that town residents have expressed an interest in cleaning up the downtown area and retaining the small town character, and reiterated her opinion that illuminated signs do not belong. Ms. Harrison agreed, and suggested that they also be prohibited in the Business East and Business West districts as well. Ms. Capobianco voiced her opinion that digital messaging signs like the one at St. Bernadette's should be included as they are equally unappealing.

Ms. Poretzky asked if it would be possible to address the issue at Town Meeting before it becomes a problem. Ms. Joubert stated that it is likely not possible to address the issue at this year's Town Meeting, given the timeline for submission of warrant articles. She noted that, when the sign bylaw was previously addressed, Ms. Gillespie and Mr. Leif spent over a year discussing the sign matter with residents and business owners. She emphasized the amount of time it took to incorporate changeable message signs into the bylaw and that all of the board members had agreed to include electronic messages. She commented that the bylaw changes reflect a compromise that came about based on a year of discussion. She noted that, while she agrees that technology is constantly changing, signs are a hot button issue and she advised against acting hastily. She suggested that taking another look at the sign bylaw may be warranted, but there is not a lot of time to do so before this year's Town Meeting. Ms. Poretzky stated that she would like to move forward with a proposal to prohibit these illuminated signs in the downtown area. She indicated that she recalls the previous discussions but at the time did not picture what these signs would look like. Ms. Gillespie commented that the sign bylaw aimed to replace the sandwich board signs that littered the town. Ms. Poretzky reiterated concerns about illumination in the downtown area. Ms. Gillespie suggested that signage could be incorporated as part of the Design Review process. Ms. Joubert noted that, if these signs are not allowed in the bylaw, then the DRC would not have any leeway to be creative about such signage.

Ms. Capobianco asked about the possibility of putting a moratorium on these signs to give the board time to explore it further. Ms. Joubert stated that, since the town has a sign bylaw, she is uncertain whether a moratorium would be supported by the Attorney General. She also commented that, if wattage is the real concern, it might be a matter that the Building Inspector can investigate further. She noted that he had already expressed an interest in having the local inspector start working on the issue of signs in town. She stated that the board can certainly propose something, but based on experience and how long it took us to get where we are, she thinks it would be prudent for the board to go through a similar process as before. Ms. Gillespie suggested that the issue be addressed as part of the Master Plan process. Ms. Poretzky expressed concern that more of these signs could be installed before the board has

the ability to regulate them. Ms. Capobianco echoed Ms. Joubert's sentiments about the amount and degree of work that was done with business owners to get where we are currently, and to shut it down without similar effort would not be advised. Ms. Harrison commented that a big part of the previous effort was the format of the signs and not the technology behind them. She voiced support for a moratorium on the warrant for this year's Town Meeting. Mr. Pember agreed, and suggested that the board could provide examples of the types of signage that they find to be offensive. Ms. Joubert reiterated concerns about such a move, given that the town does have a sign bylaw. Ms. Capobianco commented that, when the board previously developed the bylaw, this type of technology was just evolving and therefore was not something that could have been anticipated. She suggested that the moratorium would not be on signs themselves, but would be on the technology and degree of illumination. Ms. Gillespie asked if it might be possible to simply reduce the brightness on these signs.

Ms. Harrison expressed a preference to maintain the town's charm and character, and stated that she is in favor of the classic wooden signs similar to that of Andrew Abu Real Estate in the center of town. Ms. Gillespie voiced her desire not to go backwards, which she believes would be the case with this proposal. Ms. Capobianco reiterated that it might simply be a question of dimming the signs a bit. Ms. Gillespie commented that Northborough is trying to be a business-friendly town, and she would not be in favor of reverting back to the use of signs with removable letters. Ms. Poretsky stated that EMC signs are different and much more offensive. Ms. Capobianco questioned whether the issue can be resolved with a reduction in lumens and asked if this falls under the jurisdiction of the local Zoning Enforcement Officer. Ms. Joubert voiced her opinion that it is, and agreed to discuss the matter with the Building Inspector.

Ms. Capobianco stated that, given the late date, it is likely not the best time to suggest a complete change in the sign bylaw, but it might make sense to explore what we can do in a more immediate sense and spend some time to figure out whether we need a new bylaw or the issue can be worked out through the DRC and Building Inspector.

Ms. Harrison and Mr. Pember agreed that the issue is more complex than originally thought, and requires more investigation. Ms. Capobianco reiterated that there is insufficient time to prepare a warrant article for this year's Town Meeting.

**Zoning Board of Appeals (ZBA)** – Ms. Joubert informed the board about the following hearings scheduled for upcoming ZBA meetings:

**89 West Main Street** – the applicant has requested a continuance to the ZBA's February meeting.

**200 Bartlett Street** – the applicant has moved out of the facility and is withdrawing his application. Ms. Joubert noted that the applicant was operating without the necessary permits, and the town had asked him to file an application but it was subsequently discovered that the business had multiple fire and building violations, so the applicant opted to relocate his business elsewhere.

**Herb Chambers Honda (Route 9)** – Ms. Joubert noted that the dealership is approximately 95% within the Town of Westborough but the entrance off of Route 9 is in Northborough. She explained that the applicant is proposing to construct a small addition (under 2500 square feet) to the service building and has made a request of both towns to amend the original special permit and site plan approval. She noted that the project has been before the DRC who made some suggestions for directional signage on the pavement to aid the flow of traffic in and out of the service area. She also indicated that they are seeking a variance so that they can have additional signage to differentiate between service and showroom areas.

Mr. Pember noted that an Operations and Maintenance (O&M) Plan was a condition of the original dealership decision and required the business owner to inspect and clean the stormwater system twice a year but it appears that this work was never done. He voiced skepticism that, though the applicant failed to comply with the requirement in the past, they claim that they will do so going forward. He emphasized that the GAC had recommended that the ZBA make sure that the applicant is in compliance with the condition before considering granting further approvals. He expressed concern about noncompliance with O&M Plans by many property owners and the eventual damage to the environment it will cause. Mr. Pember noted that no reports were ever filed with the Town of Northborough for this property.

Ms. Gillespie mentioned that, when the DRC addressed the issue of signage, they had asked the application to delineate between the service area and the showroom and, since they indicated that they were not clear about the traffic flow, the DRC requested directional signage on the pavement.

Ms. Poretsky also voiced concern about the impacts to the groundwater and asked if there is anything further that the town can do. Ms. Capobianco commented that the town has neither the resources to police these things nor the capacity to fine property owners for noncompliance. Ms. Joubert explained that these matters typically come to light and get addressed when a business owner needs to revise or renew a permit. Mr. Pember indicated that the town has the ability to revoke a permit and close a business down until the issue is resolved, and suggested that we consider doing so.

**Former UniSign Building on Main Street** – Ms. Gillespie explained that the former UniSign building on Main Street will be demolished and a new building constructed that will feature commercial space on the first floor and residential space on the second floor.

**King Street parcel** – Ms. Joubert explained that the applicant who had originally proposed 16 dwelling units in 2 buildings on this parcel will be back before the ZBA on February 27<sup>th</sup> seeking approval for a proposed assisted living facility with 66 beds. She indicated that the applicant had been before the DRC on a very preliminary basis and they provided a fair amount of feedback. Ms. Gillespie commented that the project appears to be a bit oversized for the site and needs to be scaled down by approximately one third. She also noted that the Fire Department cannot get access to the back of the building, where all of the social activities are planned to take place. She explained that this facility is not a skilled nursing facility like others

in town and will strictly be an assisted living operation. She voiced her opinion that, if the size of the project is scaled down, it will be a nice project.

**Board Dinner** – Ms. Gillespie reminded the board members about the upcoming board dinner on Thursday, January 25<sup>th</sup>, beginning at 6:00PM.

**Bearfoot Road** – Ms. Joubert informed the board that she received an application for a contractor’s condo development on Bearfoot Road. She explained that this is not a self-storage facility, but will house small units for contractors similar to the facility on Otis Street.

**February meetings** – Members of the board discussed the meeting schedule for the month of February and agreed to meet on February 13<sup>th</sup>.

**Town Meeting** – Ms. Joubert confirmed that Town Meeting starts on April 23, 2018.

**Meeting adjourned at 8:44PM.**

Respectfully submitted,

Elaine Rowe  
Board Secretary