

TOWN OF DARTMOUTH PLANNING BOARD



REGULAR MEETING MINUTES

Date: September 9, 2019 – 7:00 p.m.
Planning Board's Meeting Room #315
Town Office Building, 400 Slocum Road, Dartmouth, MA

Present

Lorri-Ann Miller, Chairwoman
Kevin Melo, Vice Chairman
John Sousa
Margaret Sweet
Kathleen DelSordo, Alternate Member

Christine O'Grady, AICP, Planning Director

Absent

Stephen Taylor, Clerk

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DARTMOUTH TOWN CLERK

Chairman Miller opened the Board's regular meeting at 7:00 p.m.

Margaret Sweet recused herself from participating in the scheduled public hearing. Kathleen DelSordo was present in her place.

Kevin Melo motioned to open the public hearing, which was seconded by John Sousa, and voted (4 yes; 1 absent).

Public Hearing

(1) Special Permit – 375 Faunce Corner Road

Applicant: Health Circle, Inc.

Chairman Miller opened the public hearing¹ at 7:00 p.m. concerning the application of Health Circle, Inc., who is seeking a Special Permit pursuant to Section 375-4.3 of the Town's Zoning Bylaws. The applicant is seeking to renovate an existing commercial space at 375 Faunce Corner Road, Dartmouth, MA for the purpose of operating an Adult Use Marijuana Retail Establishment in accordance with MGL c.94G, 935 CMR 500.00 et. seq. and Dartmouth Zoning By-Law Article 4 - Marijuana Establishments Overlay District. The subject property is located in the Office Industrial District/Marijuana Establishments Overlay District, owned by Stanley Street Holdings, LLC, and identified on Assessor's Map 63 as Lot 16.

Action: The public hearing was continued to September 23, 2019.

The Board's regular meeting resumed at 7:45 p.m.

¹ For more information, see public hearing minutes for "Special Permit – 375 Faunce Corner Road"

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Administrative Items

(2) Planning Board Reports and Recommendations for Fall Town Meeting
Proposed Zoning Bylaw Amendment Articles for the Town Meeting Warrant

The Planning Director stated that the members present on August 19, 2019 gave a favorable recommendation on the proposed zoning bylaw amendment articles. With regard to the two Citizen's Petition articles, the Board gave a favorable recommendation with the general concept but asked the Planning Director to work with Town Counsel to craft floor amendments. These reports referenced the floor amendment language for review. She requested the Board's signature on the final reports, which will be forwarded to the Town Clerk.

John Sousa and Margaret Sweet were not present for the public hearing and did not vote on the zoning articles or sign these reports.

Chairman Miller mentioned that the Select Board may present a different floor amendment to the Citizen's petition regarding the Marijuana Establishments Overlay District at Town Meeting.

7:50 p.m. Planning Board member Margaret Sweet returned to the meeting.

(3) Site Plan Review – Slocum Road – Stadium Parking Lot Layout

Present: Deborah Wender, Director of Economic Development

Deborah Wender stated that the Town is proposing to create an auxiliary parking lot behind the stadium now that the turf field has been completed. Since parking is difficult during the athletic games, the Town is looking to create a parking lot with 64 spaces with solar canopies. If the canopies don't work out, there will be lighting from the back of the stadium shining down onto the new parking lot. She stated that the new parking lot is not handicapped accessible, but the parking lot at Town Hall will be revamped to include additional handicapped parking spaces. She stated that the Building Commissioner has reviewed and approved the plans.

A Board member stated that the application requires an attached list of variances, and questioned where the list was. He did not believe the Town was exempt from Site Plan Review.

Deborah Wender explained that the proposal is for a simple lot with no landscaping

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because it's hidden from view from the street and is really only for overflow parking.

The same Board member stated that the bylaw does not allow the Planning Board to issue variances from Site Plan Review. Deborah Wender stated that the Building Commissioner signed off on the parking lot as submitted. This member stated that the Planning Board is the permit granting authority and not the Building Commissioner. He stated that the plan is missing numerous design standards required for Site Plan Review and did not believe the Town was exempt from bylaw compliance.

Chairman Miller questioned if the Town planned on going before the Zoning Board of Appeals for variances. Deborah Wender stated that she will go before the Zoning Board of Appeals.

Chairman Miller took the following agenda item out of order.

(7) Endorsement of Definitive OSRD Subdivision Plan entitled "Westview Estates"
21-lot subdivision located off of 824 Tucker Road Map 43 / Lot 4

Present: Kenneth Steen, AIS Real Estate Development Corporation
Brian Cruise, Assistant Town Counsel

Margaret Sweet recused herself. Kathleen DelSordo was present.

Mr. Steen submitted Trust Document and a Tri-Party Agreement for Westview Estates, which was forwarded to Town Counsel for review. Town Counsel forwarded a red-lined version to the applicant and the Board for this meeting.

Mr. Steen stated that his attorney is still reviewing the red-lined documents. He did not believe that it should hold up the plan endorsement or Board signature on the Performance Covenant. He thought the Declaration of Trust and Tri-Party Agreement could be submitted after the fact.

The Planning Director stated that the DPW has not provided a surety estimate to date. Attorney Cruise stated that separately, the Board could determine a dollar amount that the HOA should always have on hand to address road maintenance or open space maintenance in the future. He noted that it is not a legal requirement, but a policy decision.

Mr. Steen noted that the money that Attorney Cruise is referencing is money that

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would be in an account after the developer completes the subdivision and turns everything over to the homeowner's association, which was confirmed by Attorney Cruise.

Mr. Steen stated that he did this in another Town where a budget was developed to include the annual operation expenses such as plowing and maintenance of the drainage facilities, and long term capital improvements such as road maintenance. He stated that he could put a budget together for Westview Estates, and suggested that the budget could be a one-year reserve for the development so that the Association would always be one-year ahead.

The Board requested that Mr. Steen put a budget together for this subdivision and provide the figure for the HOA fee.

John Sousa motioned to endorse the plan and approve the Declaration of Trust and Tri-Party Agreement contingent upon Town Counsel's final review and approval, surety being posted in the amount determined by the DPW, and Mr. Steen providing a figure for the HOA account. The motion was seconded by Kevin Melo and unanimously voted.

8:26 p.m. Planning Board member Margaret Sweet returned to the meeting.

(4) Endorsement of Approval Not Required (ANR) Plan
Wilbur Ave./Bryant Street Map 178 / Lots 136 & 137

The Planning Director explained that the ANR reconfigures existing lots. She stated that it meets the criteria for endorsement.

John Sousa motioned to endorse the above-referenced ANR plan, which was seconded by Kevin Melo and unanimously voted.

(5) Endorsement of Approval Not Required (ANR) Plan
Horseneck Road Map 13 / Lot 38

The Planning Director explained that this ANR plan will divide lot 38 into 2 lots. She stated that it meets the criteria for endorsement.

John Sousa motioned to endorse the above-referenced ANR plan, which was seconded by Kevin Melo and unanimously voted.

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- (6) **Endorsement of Approval Not Required (ANR) Plan**
Smith Neck Road Map 90 / Lots 5 & 6

The Planning Director explained that the ANR reconfigures existing lots. She noted that minor changes need to be made to the mylar plan but stated that the plan meets the criteria for endorsement.

John Sousa motioned to endorse the above-referenced ANR plan contingent upon receipt of a revised mylar being submitted for signature. The motion was seconded by Kevin Melo and unanimously voted.

- (8) **Endorsement of Definitive Subdivision Plan entitled "Lyla Belle Estates"**
2-lot subdivision on the east side of Hixville Road Map 183 / Lot 70

The Planning Director stated that the Performance Covenant has been submitted. She stated that the plan can be endorsed.

John Sousa motioned to endorse the above-referenced Definitive Subdivision plan, which was seconded by Kevin Melo and unanimously voted.

- (9) **Approval of Minutes**

Regular Meeting of July 22, 2019

John Sousa motioned to approve the regular meeting minutes of July 22, 2019, which was seconded by Kevin Melo and unanimously voted.

Public Hearing Minutes of July 22, 2019 – "Bakerville Woods" Subdivision

John Sousa motioned to approve the public hearing minutes of July 22, 2019, which was seconded by Kevin Melo and unanimously voted.

Regular Meeting of August 5, 2019

Kevin Melo motioned to approve the regular meeting minutes of August 5, 2019, which was seconded by Margaret Sweet and voted (3 yes; 1 abstain).

Regular Meeting of August 19, 2019

Kevin Melo motioned to approve the regular meeting minutes of August 19, 2019, which

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was seconded by Margaret Sweet and voted (3 yes; 1 abstain).

Public Hearing Minutes of August 19, 2019 – "Zoning Articles for Fall Town Meeting"

Kevin Melo motioned to approve the above-referenced public hearing minutes. The motion was seconded by Lorri-Ann Miller and voted (2 yes; 2 abstain).

(10) Correspondence

Legal Notices from City of New Bedford
Legal Notices from City of Fall River
Legal Notices from Town of Westport

Kevin Melo motioned to acknowledge and file the above-referenced correspondence, which was seconded by John Sousa and unanimously voted.

(11) For Your Information/New Business

Planner's Report

Stephen Taylor "Opportunities" for Planning Board Discussion

- Joint meetings with Westport Planning Board
- Sea-Level Rise Information

The Planning Director stated that Board member Stephen Taylor requested that these items be placed on the agenda for discussion. He submitted a letter to the Board in advance of this meeting explaining the details since he knew he would be absent.

A Board member expressed interest in attending a joint meeting if the Westport Planning Board was agreeable. Other Board members believed that Dartmouth needed to be the focus at this time but would be agreeable in the future. Concluding, the Board will discuss this again when Mr. Taylor is present.

New Business

A Board member requested that the Planning Director reach out to DCTV to try and obtain another microphone for Planning Board meetings.

With no further business to discuss, Chairman Miller called for a motion to adjourn.

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John Sousa motioned to adjourn the meeting, which was seconded by Kevin Melo, and unanimously voted.

8:45 p.m. Meeting adjourned.

The next Planning Board meeting is scheduled for September 23, 2019 in Room #315, Town Office Building, 400 Slocum Road.

Respectfully submitted,
Jane Kirby, Planning Aide

<p>APPROVED BY: The Dartmouth Planning Board</p> <p><i>Rosie Ann Mills</i></p> <hr/> <hr/> <hr/>
<p>Date of Approval: September 23, 2019</p>

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PUBLIC HEARING MINUTES

SPECIAL PERMIT – 375 FAUNCE CORNER ROAD

Date: September 9, 2019 – 7:00 p.m.

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Present

Lorri-Ann Miller, Chairwoman

Kevin Melo, Vice Chairman

John Sousa

Margaret Sweet

Kathleen DelSordo, Alternate Member

Christine O'Grady, AICP, Planning Director

Absent

Stephen Taylor, Clerk

Board member Margaret Sweet recused herself and left the room. Kathleen DelSordo, Alternate Board member, was present in her place.

Chairman Miller opened the public hearing at 7:00 p.m. concerning the application of Health Circle, Inc., who is seeking a Special Permit pursuant to Section 375-4.3 of the Town's Zoning Bylaws. The applicant is seeking to renovate an existing commercial space at 375 Faunce Corner Road, Dartmouth, MA for the purpose of operating an Adult Use Marijuana Retail Establishment in accordance with MGL c.94G, 935 CMR 500.00 et. seq. and Dartmouth Zoning By-Law Article 4 - Marijuana Establishments Overlay District. The subject property is located in the Office Industrial District/Marijuana Establishments Overlay District, owned by Stanley Street Holdings, LLC, and identified on Assessor's Map 63 as Lot 16.

Application and related plans submitted to the Planning Office on August 12, 2019.

Legal advertisement published in Dartmouth Week on August 22 & August 29, 2019.

Also on file: Memorandum from Steven Gioiosa, P.E. dated 8/27/19
 Dartmouth ZBA Variance decision dated 10/23/18
 • Variance plan dated July 30, 2018
 Traffic Impact Statement received 8/27/19
 Project narrative from Health Circle received 9/3/19

Correspondence received: Letter from Building Commissioner/Zoning Enforcement Officer David Riquinha to Stanley Street Holdings, LLC dated 8/9/19

Also present: Phil Silverman, Esq. from Vicente Sederberg LLP, Representing Health Circle, Inc.
 Michael Westort, CEO Health Circle, Inc.

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Steven Gioiosa, P.E., SITEC, Inc. – Civil Engineer for Health Circle
James Charrier, Abutter

John Sousa motioned to waive reading the legal notice into the record. The motion was seconded by Kevin Melo, and unanimously voted.

Attorney Phil Silverman

Attorney Silverman stated that his client is seeking a Special Permit to operate an Adult Use Marijuana Retail Establishment at 375 Faunce Corner Road, which is located in the Marijuana Establishments Overlay District. He stated that as proposed, approximately 3,750 s.f. of commercial space within the existing 189,354 s.f. building will be renovated for the retail sale of adult use marijuana products with no cultivation, product manufacturing, or social consumption occurring on site.

He proceeded to review the project narrative in detail for the Board; including the security plan, access to the facility, traffic and parking, customer education, and how the project meets the standards for granting the Special Permit.

Chairman Miller invited public comment.

James Charrier, Abutter

Mr. Charrier questioned the distance between the proposed marijuana establishment and the Healthtrax Fitness and Wellness Center, which is located in the same building.

Mr. Gioiosa responded that there is 250 feet between Healthtrax and the proposed marijuana establishment.

Mr. Charrier stated that the Healthtrax Fitness and Wellness Center has a daycare, and did not meet the 500 foot setback.

The Planning Director read the letter from the Zoning Enforcement Officer into the record. She stated that Zoning Enforcement Officer has determined that the structure meets the requirements set forth for a recreational marijuana facility at this location. She read the State's interpretation of "where children commonly congregate" as defined for Medical Marijuana facilities.

Mr. Charrier stated that there are structured activities at Healthtrax, whether through youth programs or the daycare offered at the facility. The age group for the programs run from 8 months to 16 years old. He did not believe the project met the setback

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requirements of the bylaw.

Board members questioned the Zoning Enforcement Officer's definition of daycare and wondered if Healthtrax was in the building during his review since it has only been at 375 Faunce Corner Road for a short period of time. A Board member believed that the daycare is not the primary function of Healthtrax and wondered if it was a daycare that was registered with the State.

Mr. Charrier explained that he followed the drafting of both the Medical Marijuana Bylaw and the Marijuana Establishments Overlay District Bylaw, and the most important concern expressed by the Board throughout the process was protecting the children. He noted that the Medical Marijuana Bylaw requires a 500 foot setback from the residential district but the Retail Marijuana Use requires a 500 foot setback from a residence to protect families with children. He believed that this proposal goes against the spirit of the bylaw.

The Planning Director stated that this location went through the RFQ process for a Host Agreement with the Town and the subject property was deemed an acceptable location.

Mr. Charrier stated that he received a pamphlet in the mail from Healthtrax and it offers numerous structured kid activities and a daycare, and he believed it fell under the definition of "a place where children commonly congregate".

A Board member pointed out that the Planning Board is the Special Permit granting authority, not the other Town entities that reviewed the proposal for a Host Agreement. He stated that the Board is charged with looking at all the facts of the proposal. He stressed that the setback from "where children commonly congregate" needed to be clarified because he believed that it applies to Healthtrax and noted that there is also a dance studio located across the street that he thought was within the 500 foot setback. He stated that the Board's intention for the 500 foot setback from "where children commonly congregate" did not go by the State's definition but was meant to protect the children in the Town of Dartmouth. This Board member stated that the proposal is located within 500 feet of a place where children commonly congregate and did not meet the criteria to grant the Special Permit. He requested that the Zoning Enforcement Officer be asked to clarify his determination. He stressed that it is ultimately the Planning Board's determination as the Special Permit granting authority as to whether or not the facility meets the setbacks, and not the Zoning Enforcement Officers determination.

Steven Gioiosa

Mr. Gioiosa stated that the Zoning Enforcement Officer was aware of the fact that

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Healthtrax was located in the same building prior to making his determination. His interpretation was that the facility does not meet the State's interpretation of a daycare.

The Board member stated that he is not saying that Healthtrax is operating as a daycare, but is considered a facility where children commonly congregate. He wanted the applicant to know that if this location does not meet the standards for granting the Special Permit at this location that he hoped he would find a different location because the business is welcome in Town.

Attorney Phil Silverman

Attorney Silverman requested that the public hearing be continued to allow time to obtain more information for the Board.

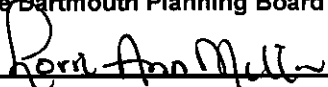
Chairman Miller invited Board questions and comments at this time.

Board members continued questioning the proposal in terms of ventilation, security, follow up procedures, product packaging, educational materials regarding federal marijuana law, employee count, hours and days of operation, and record keeping system etc., with Attorney Silverman answering as many as he could. He will provide more information to the Board for the next meeting.

Chairman Miller invited public questions or comments at this time. No further public comment or questions received.

John Sousa motioned to continue this public hearing to Monday, September 23, 2019, which was seconded by Kathleen DelSordo, and unanimously voted.

Respectfully submitted,
Jane Kirby, Planning Aide

<p>APPROVED BY: The Dartmouth Planning Board</p> <p></p> <hr/> <hr/> <hr/>
<p>Date of Approval: September 23, 2019</p>