

**FREEPORT PLANNING BOARD MINUTES
FREEPORT TOWN OFFICES COUNCIL CHAMBERS
Wednesday, November 1, 2017
6:00 PM**

PRESENT: Wendy Caisse (Chairperson), Robert Ball, Aaron Canaan, Sam Kapala (arrived late), Greg Savona, Jamel Torres, Lonny Winrich and Donna Larson (Town Planner).

Chairperson Caisse called the meeting to order at 6:03 PM.

1. Informational exchange

Ms. Caisse noted that many people are still out of power. People can charge their devices if needed. Ms. Larson stated that this meeting would not be broadcast live tonight, but it would be available on demand.

2. Public Hearings

Ms. Caisse noted that the Town Attorney did look at this language, and there are still some questions on how to move forward. She does not see the Board making a decision tonight, but there will be a discussion. They are trying to closely mirror the State language. If they cannot answer questions tonight, they will get answers to questions.

Ms. Larson noted that the item on parking required additional changes to additional sections, so there will be a hearing, but there will need to be another public hearing to properly advertise. Ms. Caisse clarified that there would not be action take on either item at tonight's meeting.

Mr. Winrich/ Mr. Cannan moved to open the public hearing. Vote: 7 Ayes/ 0 Nays

1. Amendments regarding medical marijuana

a. Sec. 104 - Definitions - add definitions of "marijuana for medical use", "primary caregiver", "qualifying patient", "voluntary registered patient", "non-registered patient", and "medical marijuana production facility"

Ms. Caisse stated that these are the definitions that are the same as the State. She asked if anyone had comments.

Dave Swan, owner of 24 Noble Drive, was surprised that his tenant (who does medical marijuana) was not here tonight. He is here as a businessman; if people have specific questions. His tenant is David Stephenson and he wants clarification on the topic. He is not an expert, but is looking for it as an investment that he is trying to protect. He is a taxpayer.

Mr. Winrich stated that there were a couple of terms on the agenda that were not in the definitions. Ms. Caisse stated that some were vetted out by the Town Attorney for various reasons. This is one of the reasons why the Board is not taking action tonight.

b. Sec. 406.B - Medium Density District A & B - add medical marijuana production facility as a permitted use subject to Site Plan Review. Facilities can be no larger than 10,000 square feet, all facilities must have a carbon filtration system and they must be at least 1,000 feet away from a public or private school (as defined by this Ordinance) and as measured along roads.

Ms. Caisse clarified that this would be one of the permitted uses in the noted districts. The language is what is proposed to be added to that section.

Mr. Swan asked about the carbon filter noted on the agenda. Ms. Caisse noted that was no longer included in the language. Ms. Larson stated that Section 533 would require some air purification system. Ms. Caisse stated that if the Ordinance does not list something as permitted or required, then by Ordinance it would not be allowed.

Stephen Taylor, resident, asked if there was a size for such facilities before this language. Ms. Caisse stated that they discussed the 10,000 s.f. based upon other buildings in the zone and did the math regarding the number of plants and how much space would be needed to make the business viable. This is probably a size that would work, but it is a point that is open to discussion. Ms. Larson stated that it would probably be comparable to the Boat, Bike and Ski Store. Ms. Caisse noted that this would allow room for growing and office space etc. This activity is allowed under our Ordinance today as manufacturing and processing. Mr. Ball asked about the term of gross floor area. Ms. Larson stated that it was a definition existing in the Ordinance.

Hank Gallant, Noble Drive, asked how marijuana was considered manufacturing and processing. Ms. Larson stated that our definition of agriculture does not include growing for medical use and the Department of Agriculture does not consider medical marijuana as an agricultural use. The Maine Municipal Association, who provides guidance to municipalities, advised to consider it manufacturing and processing. These changes would limit the number of places it is allowed and provide standards and adopt an actual use; they would be more heavily regulated with the new language.

Mr. Gallant asked about the standard to require an air purification system and how they would define limiting odors coming from a facility. Ms. Caisse noted that it would be more of a reassurance or safety mechanism for neighbors to enjoy their property. Mr. Gallant stated that he lives next to the existing medical marijuana facility and he has never smelled an odor. Ms. Caisse stated that it is possible, and they need to protect the people that live here. The mentioned business might be running a good business and have something to control odor.

Ms. Caisse clarified that the agenda was written before the attorney vetted the language. It serves as a guide and people need to refer to the language which is on one sheet of paper. Mr. Torres asked when they would discuss Section 533. Ms. Caisse stated that it would be penciled in at the end.

Peter Moulton asked if there would be another public hearing. Ms. Caisse stated yes. He asked how big the Noble Drive building is. Mr. Swan stated 9,600 s.f.

c. Sec. 409. B - Commercial District 1 - add medical marijuana production facility as a permitted use subject to Site Plan Review. Facilities can be no larger than 10,000 square feet, all facilities must have a carbon filtration system and they must be at least 1~000 feet away from a public or private school (as defined by this Ordinance) and as measured along roads.

Ms. Caisse noted that this would be the same language in a different zone.

Andrew Arsenault, resident of Route One, asked if the Noble Drive business was running now. Mr. Swan stated yes. Mr. Arsenault asked why additional districts were being added. Ms. Caisse stated that based on previous discussion, the idea was to permit it in commercial districts and Route One South was noted as being suitable. Mr. Arsenault was not aware of previous discussions. Ms. Caisse suggested that he give feedback on why or why not it be appropriate in that district. Ms. Larson summarized the year long discussion the Board has held on medical marijuana. At the last meeting they discussed where it would be permitted and this District came up.

Mr. Arsenault stated that he is against it and does not think it fits in with an area that has open space, business and professional offices and not much manufacturing. He personally has nothing against it, but he does not know if it fits in with what is going on down there. It seems in the past, it has been a dumping place for uses. It is a weird zone and has many restrictions and now the Board wants to dump this down there and he does not think it is a good spot for it. Mr. Torres asked what Maine Beer Company is for a use. Ms. Larson noted that they were approved as manufacturing and processing but would now be considered artisan food and beverage. Cold River Vodka would be the same.

Mr. Cannan asked if now these facilities could go anywhere. Ms. Larson noted that they would be permitted anywhere that manufacturing and processing was allowed.

Ms. Caisse stated that the Board would now discuss Section 533: Medical Marijuana Production Facility.

Bill Hamlin, Route One, asked if there would be a limitation on quantity for such businesses. Ms. Larson stated that there would be no sale shops for medical marijuana facilities allowed as she does not feel they are permitted and she has told people they would need to get it approved by DHHS (Department of Health and Human Services). This definition is only growing and cultivating and would allow it to be turned into another product or to store it. There is nothing here saying that it can be sold on site. Mr. Hamlin asked if they have security plans. Ms. Caisse quoted the proposed language for the security plan noting that it needs to be reviewed and approved by the Police Chief. Mr. Hamlin is concerned how this might impact neighborhoods. He wondered if there is signage or if it was subtle. Ms. Caisse stated that there was discussion on a standard to limit graphics on signage, but the Town Attorney stated that was not permitted due to limitations of freedom of speech. Mr. Hamlin stated that he can

smell it at his property, but he is not sure where it is coming from. It was noted that it is legal for recreational use. Mr. Hamlin asked what could be done if there was a regular reoccurring smell. Ms. Caisse referred to the proposed language, which does have some limitations and would require some air purification. She stated that the Board would need to be careful to not specifically limit types as there may be improvements in purification. Mr. Hamlin asked if there would be recourse in the future. Ms. Larson stated that existing uses would be grandfathered, but in such cases of smells, we do try to work with the landowners.

Ms. Larson stated that we know where a couple of these locations are, but if they are in locations previously approved for manufacturing and processing, they do not need to come in for approval, so we do not always know where they are. They register with the State, but the Town is not notified. This would give us the ability to review and approve such uses and apply some standards. On the ones she is aware of, there is no signage on them as they do not want to draw attention.

Mr. Swan stated that his tenant picked this building as it is away from neighbors, its secure, it steel and it's homogeneous. He covers his business as he does not want people in the building and rooms.

Ms. Caisse reviewed the proposed language for Section 533, summarizing the ten standards.

Mr. Moulton asked if there are any applications for this purpose. Ms. Larson stated no. There were applications that have been processed in the Route One North area. Mr. Moulton asked if there was one where the radio station used to be. Ms. Larson stated yes; it was review and approved as manufacturing and processing. These standards did not exist when they came in.

Mr. Ball clarified that the use would only be in these proposed zones, so it would be significantly limited. The question was asked where manufacturing and processing was allowed. Ms. Larson noted some of the existing districts and the parts of Town including the Medium Density Districts, the Commercial Districts, some of the Industrial Districts and Village Commercial. Mr. Ball stated that the proposal would go from six or seven district to three. Mr. Hamlin wanted to know if there would be a limit to the number of manufacturers. Ms. Larson stated that we let the free market dictate this. Recreational Marijuana is prohibited in Freeport, but it would have allowed provisions on how many were allowed.

Mr. Gallant stated that he thought the notice mentioned two acres. The notice was reviewed and there was no mention of acreage on it.

Ms. Caisse continued to summarize Section 533. She noted that there was a parking requirement. Ms. Larson noted this could be done as an existing use or listed as a new use in the parking section. Right now, as written, it would require one space per 1,000 s.f., but the Board may discuss this and it may be too much as the public does not go to these places. Ms. Caisse noted that there are also limits on signage.

Mr. Arsenault asked about the selling of the product. Ms. Larson noted that these are caregivers that are growing and they can only grow for qualified patients and they have to deliver the product. Mr.

Arsenault asked if the customer comes to the site. Ms. Caisse stated they are not permitted to do so by law.

Ms. Caisse noted the last standard for outdoor growing. The Town Attorney stated that it might not be something that the Town can limit. Mr. Torres suggested that maybe it could be screened. Ms. Caisse stated that it would create additional security issues. Ms. Larson stated that if it were going to be outside, there would need to be strict guidance on things like screening and security so kids cannot get in there. Ms. Larson stated that she would double check with the Attorney on this as he did not seem terribly concerned. Ms. Caisse would like to have it be required to be inside. Ms. Larson stated if it has to be allowed outside; the Board should come up with strict rules.

Stephen Taylor, resident, stated that his son lives in the western part of the state there is growing outside and when driving by, you know what it is and can smell it. He asked if Towns can be more restrictive than the State. Ms. Larson stated that usually Towns can, but this language is atypical and states that Towns cannot be more restrictive. Since the Town has prohibited recreational marijuana, requests for medical marijuana have slowed as preference for State licenses would be given to people that were already growing for medical reasons. Many Towns are like Freeport and are limiting recreational marijuana.

Mr. Taylor asked if both floors of a building were included in gross square footage. Ms. Caisse stated yes.

Mr. Swan feels that if other towns are allowing people to grow outside, then we should look carefully at this further restriction as it may be more costly and people may go elsewhere. His property, as opposed to the C-1 District, has a backyard and is out of the way and more secure. Mr. Torres stated that if it is allowed outside, he feels it should be part of the 10,000 s.f.

Ms. Larson stated that the Board would want to come up with something if they were going to grow outside as they would want it to be secure. Mr. Cannan asked why we weren't just adopting the State laws if we cannot be more restrictive. Ms. Larson noted that the Town can do certain things like limit square footage; the law also contradicts itself. Mr. Cannan asked if the recreational laws passed by the State, if there would be two sets of growers and uses etc. Ms. Larson stated that there could be limits for Town's to set, but there would need to be a system. The State allows for a lot more such as growing, production, testing, and retail stores and social clubs. Towns would be able to allow some or all; the Council has take action on this already and banned it.

Mr. Moulton asked if people came to apply today, if they have to say how they are licensed and if they were limited by the State for square footage. Ms. Larson stated that there is currently a moratorium that is about to expire. So if that happens and if this language is not yet adopted, they could be permitted as manufacturing and processing. The State law for caregivers allows a number of patients; recreational is limited by the State for square footage and total number of recreational growers. There is not a square footage limitation for medical growers by the State, but they do limit the number of

plants they can have. With this language, they would need to show proof that they are a licensed caregiver by the State.

Mr. Gallant stated that now anyone could come in and grow as a caregiver and no one is notified. Ms. Larson stated that if a building is approved for a use, when a different occupant of the same use comes in, they do not need review and approval and can just go in. The one near Mr. Gallant's was previously approved as manufacturing and processing. Ms. Caisse clarified that many things could be processed under that use currently. Mr. Gallant feels it is agronomy; not manufacturing and processing. Ms. Caisse stated that is why it would be its own use. Mr. Gallant hears nothing about notifying abutters. Mr. Larson noted that since it would be subject to Site Plan Review, abutters within 200 feet would be notified. Mr. Winrich stated that if these rules are adopted people would be notified. Mr. Torres noted that caregivers can grow in their home without review and approval. Ms. Larson noted that anytime there is a change of use, if Site Plan Review is required, abutters are notified.

Mr. Gallant stated that he thought if something were controversial, abutters would be notified. Mr. Arsenault noted that a new facility would require abutters to be notified. He suggested that the abutter notification requirements should be extended to match the radius for smell. Ms. Larson stated no, as we already have standard notification requirements in place which are within 200 feet of the property line. The standard referenced was just pertaining to air purification if in certain distances from residence. Mr. Savona clarified how the distances would be measured.

Valerie Taylor, resident, referenced item ten about activity outside the building; she suggested that it could be things beyond growing such as packaging and that could bring other concerns. People could also use drones to see what was going on even if screened; she thinks they would need a very good security plan. Ms. Caisse stated that her understanding is that serious growers want to grow inside in a controlled environment, but she wants to do what is required by State law. Mr. Cannan stated that there are stricter rules per the State for outdoor growing. Mr. Torres suggested getting input from a caregiver. Mr. Cannan was in agreement that there needed to be some clarification from the attorney. Ms. Larson suggested that maybe there could be a square footage limitation for outdoor growing. Mr. Winrich would like more information about what the State rules on outdoor growing are. He thinks that the growers would want good security and the language would require the Police Chief to review and approve the plan. Ms. Caisse stated that we do need for information on the State language, but the purpose of tonight was to get feedback from the public.

Mr. Arsenault asked if there was a limit on the number of plants. It was noted that growers were limited to six patients. Ms. Caisse noted that six plants were permitted. Mr. Arsenault stated that each caregiver could only have 36 plants. The Board clarified that there would be six patients, but there could be various plants at various stages of growth and there could be multiple caregivers in a building. Mr. Arsenault brought up the issue of the money from these businesses and how it is handled.

Mr. Swan asked about the process. Ms. Caisse stated that the Council has seen the language before. No action would be taken tonight as there needs to be proper legal notice. The Planning Board would have another meeting and then send it to the Town Council for review and more discussion. Mr. Swan noted he had seen some previous conversations on this at the Council level and there is a negative

stereotype on supporting the use publically. Ms. Caisse noted that the Council could change the language too.

Mr. Moulton asked if they would be notified again. Ms. Larson stated yes.

Ms. Caisse asked about process. For Section 533, number five needs discussion for the parking requirement and number ten, needs clarification from the attorney. Ms. Larson asked about number two and the distances; Ms. Caisse was fine with them as written. Ms. Larson stated that she would like to talk to a caregiver about the parking.

Mr. Savona/ Mr. Ball moved close the public hearing. Vote: 7 Ayes/ 0 Nays

2. Sec. 514.B.5 - Off-street parking and loading - to clarify how to measure the square feet of a building for the purpose of calculating the required parking.

Mr. Cannan / Mr. Savona moved to open the public hearing. Vote: 7 Ayes/ 0 Nays

Ms. Larson stated that some of these recommendations were from the Task Force such as adding uses to be eligible for the reduction. It also suggested clarifying how the square footage is measured for the requirement.

Bill Hamlin asked if restaurants would get the reduction. Ms. Larson stated that this is a standard that only applies in the Village Commercial I District.

Ms. Caisse clarified how gross floor area was measured. Mr. Ball noted that as written, it would be hard to measure and maybe leasable space would be better. Ms. Larson clarified how parking calculations are done now, and numbers are provided on the plan. We have to be careful how this change is made; she's not sure how much of a change this is and maybe we hold off on other changes until the dust settles.

We would send notice to people about how the parking is measured, how it changed, and they would need to contact us with detailed information if they wanted it reviewed. We should also add recalculating parking spaces as a staff approval in Section 602.

Mr. Torres asked if floor plans would be required. Ms. Larson stated that something would be needed in writing.

Ms. Larson stated that there are about 3,000 parking spaces now and we want to keep things in balance. We do not want people not maintaining or blocking spaces. The Task Force agreed that there is ample parking now. There is not a lot of space to build more parking unless we go up, but part of the balance too is that some places like the Historical Society lease parking spaces for income. There is a balance. There are some places that do not provide any parking right now. This would pull everyone into the mix. Mr. Cannan stated that there is some uncertainty in the mix; he suggested phasing the bullets in. Mr. Ball suggested collecting data. Ms. Larson stated that the bullet points do not require

any parking at all and she suggested taking out the second paragraph. The winter is a good time for this to roll out and we could re-evaluate in the early summer and have better data.

Ms. Larson brought the Board's attention to an existing clause about grandfathering expiring. Ms. Caisse read the language. Ms. Larson clarified that it has not been enforced this way, but rather only if there were only a change of use. We will go through and look at vacancies for some of these by looking at personal property records and then notify those people so they are aware what they need to do when they lease the space.

Ms. Pelletier noted that outdoor seating was not included in the square footage calculation. Ms. Larson noted that should be included and noted that we adjust that based on seasonal use.

Ms. Caisse noted some other changes that are shown are to clean up the existing language. Ms. Larson noted that in the Commercial Districts, applicants determine their parking requirement, and in most cases that works. There was discussion on notification of this discussion. Although not required, she suggested that we notify property owners for the December meeting when there is final language. This has been going on for forty years, but this is adding consistency. This is a very emotional issue and people will come and speak. There are expenses to owning parking lots and some other people have no requirements. There is a very small quantity of business owners who provide the majority of parking and there is another whole group who do not pay to provide any parking; this is a big deal.

Mr. Cannan feels we should ease into these changes.

Mr. Cannan/ Mr. Torres moved to close the public hearing. Vote: 7 Ayes/ 0 Nays

Ms. Larson noted the clarifications she would make to the language. Ms. Caisse noted that there was previous discussion to add museum and art gallery to the parking table.

Meeting adjourned at 8:14 pm

Recorded by Caroline Crean Pelletier