

PLANNING, ZBA & TOWN MEETING

MONDAY, SEPTEMBER 18,

2023

MEMBERS PRESENT:        PLANNING: KATHY COLE, THOMAS MCGOVERN, CLARA MULLIGAN, KATHY MANNIX, COLLIN HAYES, CHRISTOPHER STERNER

ZBA:        JEFF MULLIGAN, BOB WESTFALL, DIANE ATTEA, CINDY KELLEN

ABSENT:                    BRIAN THORN (PLANNING)

OTHERS:                    BRIAN GLISE (CEO, AVON), MATTHEW SOUSA (MRB GROUP), JAMES CAMPBELL (TOWN ATTORNEY)

VISITORS:                  SYDNEY SHIVERS, JANET WARD, ROBERT DEMILIO, JUSTIN MERKEL

CLERK:                      KIM MCDOWELL

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Kathy Cole called the meeting to order.

Planning and ZBA Board members, as well as Brian Glise, Matthew Sousa, Jim Campbell, and Kim McDowell introduced themselves to those present.

Kathy Cole reviewed the emergency exits for all present.

MOTION TO OPEN THE MEETING WAS MADE BY BOB WESTFALL; SECONDED BY CLARA MULLIGAN.

JEFF MULLIGAN - AYE  
CINDY KELLEN- AYE  
BOB WESTFALL- AYE  
DIANE ATTEA - AYE  
VACANT -

KATHLEEN COLE -AYE  
THOMAS MCGOVERN - AYE  
COLLIN HAYES - AYE  
KATHLEEN MANNIX - AYE  
CLARA MULLIGAN - AYE  
BRIAN THORN - ABSENT  
CHRISTOPHER STERNER - AYE

CARRIED 10-0.

ZBA & PLANNING MOTION TO APPROVE THE MINUTES FROM AUGUST 21, 2023, MEETING SUBMITTED WAS MADE BY BOB WESTFALL; SECONDED BY CLARA MULLIGAN.

JEFF MULLIGAN - AYE  
CINDY KELLEN- ABSTAIN  
BOB WESTFALL- AYE  
DIANE ATTEA - AYE  
VACANT -

KATHLEEN COLE -AYE  
THOMAS MCGOVERN - AYE  
COLLIN HAYES - AYE  
KATHLEEN MANNIX - AYE  
CLARA MULLIGAN - AYE  
BRIAN THORN - ABSENT  
CHRISTOPHER STERNER - AYE

CARRIED 9-0.

DG SOLAR/5234 AVON-EAST AVON ROAD/TAX MAP#34.1-15.21/PERMIT  
EXTENSION REQUEST

Sydney Shivers (Developer), Janet Ward (Developer), Bob DeMilio (Civil Engineer) was present to discuss this request.

Sydney is the new developer and is preparing the documents to get this site into compliance. They are requesting an extension on the building permit, Special Use Permit, and Site Plan through May 30, 2024.

Since the violation was received in July 2021 their engineers have been in active communication with the Town's engineers to finalize and address the concerns of the violation. They are requesting till May to give them time to get the storm water issues fixed and the vegetation taken care of.

Matthew Sousa stated MRB Group has received answers to all their comments they submitted and will be sending a final comment letter within the next two days.

Jim Campbell stated there has been discussion between MRB Group (Engineer for Town), Brian Glise (Town Code Officer), and Jim Campbell (Town Attorney) regarding the modifications to this site. Jim feels that these modifications need to be documented with an amended site plan and special use permit applications.

It is important to have all the documents reflect the site plan changes and be current. Jim feels the developer has been working in good faith, but the Town can't grant an extension without having current applications and site plans submitted.

Jim feels that we shouldn't extend the project too far out, so the developer is motivated to move through the process quickly.

Jim suggested the dead trees be replaced now so that there is no opposition from the public. He also wanted everyone present to understand this is not an opportunity to deem the project as an inappropriate development for this parcel.

Jim would like the current tree bond renewed to five years from the date of the amended approval of the site plan and special use permit.

Kathy Cole asked Jim what the appropriate time frame is, six months?

Both Jim Campbell and Matthew Sousa stated that six months would be appropriate and that would start from the date of approval.

Jeff Mulligan feels the trees would need to be replaced quickly for them to grow and if there are more trees in the Spring that need replacing, that will give them enough time to do so.

Matthew Sousa stated an updated decommissioning and operation & maintenance agreements as well as the decommissioning bond should be submitted.

Jim feels SEQR needs to be revisited as well.

Jeff Mulligan asked what the corrective action is for the drainage.

Robert DeMilio explained they are restoring the landscape to predevelopment conditions by putting vegetation such as filter strips and eliminating the channelization. The goal is to slow the water down and change the regime to which it flows.

Janet Ward thought they were just requesting an extension to the building permit and the reason we requested a May deadline was to get the final approval from the Town and get it contracted out and the work done would take some time.

Janet was not anticipating making an amendment to the applications and since this is being requested, they may need to have the deadline extended to June instead.

Jim stated that the amendment wouldn't need to be multiply meetings, but he would like the dead trees replaced soon.

Janet stated she has already requested to have that taken care of but doesn't know when it will be done.

Jim asked the Board members if they all agree that the extension on the permit process should run parallel to the site plan and special use amendment applications; and they did.

Janet asked exactly what is needed to submit to the Town. Jim stated it doesn't have to be a whole new application just an amendment, any new drawings that show what they are doing to rectify the drainage, SEQR showing the changes relating to the amendment.

Janet asked about the SEQR process and Jim stated it will only be a short form and there will be a public hearing for all modified applications.

Janet asked about doing a SWPPP and Matthew said there is an open SWPPP, and it will capture the changes to drainage.

Janet reiterated that once they get the final MRB Group comment letter stating the plan is approved, she can get the special use and site plan amendment application, short form SEQR, project narrative with the history of the project, civil drawings, and updated tree bond to the Town of Avon.

Matthew stated the decommissioning plan, O & M agreement, and decommissioning bond are also needed.

Bob asked if we give them an extension and they don't meet that extension what happens, and Jim said it could possibly trigger decommissioning.

Jim reiterated that the applicants need to put a deadline date that can be met when submitting the applications, so we don't have to get to the point of decommissioning.

Kathy Cole asked if it is reasonable if they got the information in a timely manner can MRB Group get it reviewed for the October meeting; it was determined that the November meeting would be

the public hearing and the submission deadline is October 30, 2023.

Brian Glise asked what the actual construction timeframe would be, and Robert DeMilio can't give an answer right now since he doesn't know the exact measures to come into compliance.

Clara Mulligan asked if this is a whole different owner, and it is not just different staff members.

There was discussion on what the date will be for the completion of the project based on when approvals are granted and then contracting the project and the actual construction as well as when the best time to do the construction. It was determined that the amended application should state exactly what the completion deadline will be.

JUSTIN MERKEL, CANNABIS GROWER, DISCUSSING THE POSSIBILITY OF HAVING A SHOWCASE IN THE TOWN OF AVON

Jim Campbell stated that Mr. Merkel has been a client in the past but there is no conflict of interest for this discussion.

Mr. Merkel is a resident of Geneseo, he owns a Heating and Cooling company, co-founder of the Cannabis Farmers Alliance of NY, licensed cannabis grower out of Geneseo and he has been given an opportunity by NYS to have a cannabis showcase.

Mr. Merkel feels these showcases are a benefit to everyone, the State pulls 13% tax from each product sold and municipalities would get 4% of all sales.

He has participated in five other showcases and has gotten a good idea of how to make this successful. The biggest issue has been the location of the showcases and not being allowed to advertise properly.

Mr. Merkel would like to have the showcase in the Tops parking lot and Brian stated that is in the Village not the Town.

The process starts with the municipality stating it would be allowed in the Town, Mr. Merkel submitted a sample letter for the Town to send over to NYS with his credentials. If NYS deems it to be within all the parameters, then they OK it, as of right

now the last date for these showcases is December 31, 2023 unless it gets extended.

At a showcase event, NYS requires three growers and then they can or can't have a processor which has edibles and cartridges. He has been at the NYS Fair showcase and that was good.

The application process is straightforward, there needs to be a site plan which includes photo, staffing plan, security plan, advanced notification, and municipality approval.

Mr. Merkel stated that Rochester is doing between \$30,000 - \$40,000 a day. He feels that would be beneficial to the Town if there were showcases until the end of the year.

The restrictions are they must be 200 feet from churches, 500 feet from schools, and 1,000 feet from dispensaries. Mr. Merkel must have \$2,000,000 insurance coverage and everyone at the showcase must have their own insurance as well. There is always security on site and protocols for keeping a safe on site.

Brian asked who controls things to make sure the protocols are being done properly and Mr. Merkel would be responsible for that as well as the security staff on site.

Mr. Merkel also stated that there are three tiers in NYS, distribution, production, and sales and they are not intertwined. The sales are usually POS with cards some cash but not much.

Kathy Cole asked what other locations he is looking into, and he is looking in Rochester (public market) and any Kolokouris properties, but he doesn't really know the difference between the Town and Village. He asked for suggestions from the Board members.

Mr. Merkel would like a location that is easily accessible and has good parking, along with a safe area. He has seen a blowup big room that could be used if he couldn't find a brick-and-mortar location.

Matthew stated that the discussions they have had on cannabis is to codify it as a retail establishment which would require it to be brick-and-mortar and only in the zoning districts that allow retail. It will require a site plan application approval before having a showcase.

Bob Westfall feels the Town hasn't addressed cannabis in the regulations and he feels it should be in a brick-and-mortar and have regulations like alcohol and we need to be careful in how we present it to the public.

Jim Campbell stated the Town will be doing a Comprehensive Plan update and will be looking at the bigger picture, which includes dispensaries. This is a temporary situation for the cannabis showcases due to a lawsuit with NYS. The Town of Avon didn't opt out of cannabis, and we can control it by the zoning district and hours of operations. If we treat it as retail, then it triggers the site plan application and approval that we can control the process.

Since Mr. Merkel is only a grower, he can't make the showcases a permanent business unless NYS extends this provision for him to sell his product. He would like to have a microbusiness which means he can have one retail location and still be a grower of 3,500 feet and process his own products.

Jim stated when the Town gets an application for cannabis, the Town must act and there is no moratorium for cannabis since we didn't opt out. Ultimately, it is not the Town Board that makes the determination of the code, it starts with the Code Enforcement Office and then after it would be the ZBA making an interpretation.

Kathy Cole asked if this is just for our thoughts on these showcases and not an actual application, and that is correct, he is looking for support from the Board to be able to apply.

Matthew stated he needs support from the Town for him to apply to NYS to get approval to have one of these growers showcases.

Mr. Merkel passed around the packaging that would be used for his product (no sample included). The packaging is very restrictive - it can't look like any type of candy, and it has labels on it. There is a QR code that goes directly to the lab results.

Diane Attea wanted to clarify that there are no decisions today just getting information about what the showcase entails, and that is correct.

Jim stated he would need to apply for a location that is in the Town and then it would be a site plan application approval process.

Kathy Cole feels that if it was in the correct location, she doesn't have a problem with it.

Clara Mulligan questioned the timing, how can this happen for you to get something up and running by December 31, 2023.

Jim Campbell feels that what he is reading and hearing is this will be extended to have showcases into next year.

Clara Mulligan asked if the Village of Avon had opted out and they did not.

Mr. Merkel stated the only legal place to buy cannabis is East Avenue near Wegmans in Rochester.

Jim brought up Kolokouris property, particularly the Royal Springs area and it wouldn't be permitted use since it is a PUD. Mr. Merkel stated he would never do a showcase in that area.

Chris Sterner asked if we could do a blanket approval without a location and we cannot without a location.

Mr. Merkel asked if the flea market would be a good location if he got permission from the owner and they said since it is being considered retail it would need brick-and-mortar.

Jim asked the Board if viewing any cannabis application as retail is aggregable and they concurred.

There was discussion on what the regulations are for cannabis showcases. There are three different types of licenses (grower, distribution, and processing) and one person can not have two licenses simultaneously.

Mr. Merkel asked if he wanted to do a harvest festival event in a particular location and that could trigger getting a special use permit for a particular date/time, and that is a possibility.

Jeff Mulligan suggested having a one-time event so he could get something done before the end of the year.

Mr. Merkel asked how quickly a one-time event would take to get approved and if he gets an application in could possibly get approval at the October meeting.



Jim stated that a one-time event (which could be full weekend or a one day) is a different process than a continuous showcase.

Kathy Cole asked if there were any other questions from Mr. Merkel.

Mr. Merkel was informed our next meeting is October 16, 2023 with an application deadline of October 2, 2023. Depending on which way he decides will dictate the application that would be submitted.

Kathy Cole asked if there were any concerns from the Board members or Jim, Brian, or Matthew.

Clara Mulligan stated that solar array on Route 15 towards rush has planted huge trees, they must be 8-10 feet tall. Jim stated those will die quickly since they are so tall.

Jim stated the solar committee has been making great progress on updating the solar code. There should be a couple more meetings, then Jim will draft the updated code and once it has been OK'd by the committee it will then be sent to the Planning and ZBA Boards as well as the Town Board.

Brian asked if volunteers for the comprehensive plan committee were being requested and Jim said not yet. The Town Board is still in the process of getting this started.

Brian Thorn and Jeff Mulligan stated they were interested in being on the comprehensive plan committee.

MOTION TO CLOSE THE MEETING WAS MADE BY TOM MCGOVERN; SECONDED BY JEFF MULLIGAN.

JEFF MULLIGAN - AYE  
CINDY KELLEN- AYE  
BOB WESTFALL- AYE  
DIANE ATTEA - AYE  
VACANT -

KATHLEEN COLE -AYE  
THOMAS MCGOVERN - AYE  
COLLIN HAYES - AYE  
KATHLEEN MANNIX - AYE  
CLARA MULLIGAN - AYE  
BRIAN THORN - ABSENT  
CHRISTOPHER STERNER - AYE

CARRIED 10-0.

MEETING CLOSED.