

City of Hallowell
Planning Board Meeting
November 20, 2019
6:30 pm

1. Call to Order

Ms. Obery called the meeting to order.

2. Roll Call / Quorum

Ms. Obery took the roll call and established a quorum.

Present: Danielle Obery (Chair), Richard Bostwick, Darryl Brown, Judith Feinstein,
Melvin Morrison (1st alt.), Jane Orbeton, Lisa Rigoulot, Matthew Rolnick (2nd alt.)
Doug Ide, Code Enforcement Officer

Excused: Andrew Landry

Mr. Morrison will be voting; Mr. Rolnick will not be voting.

3. Public Comments (The Board has agreed to limit the time allotted to Public Comment to fifteen minutes.)

None.

4. Approval of Minutes of the October 16, 2019 Planning Board Meeting

Motion to approve the minutes of the October 16, 2019 meeting as presented.

Moved: Rolnick

Seconded: Brown

Unanimously approved,
Feinstein, Morrison and
Rigoulot abstaining

5. Certificate of Appropriateness for New Construction in the Historic District for Susan MacPherson and Richard Davies, 38 Summer Street, Map 10 Lot 2

Susan MacPherson, 38 Summer Street, presented an application for the replacement of a kitchen window and associated trim. She pointed out that the house is a 1970s ranch. She explained that they are remodeling the kitchen and want to replace the window. They are replacing a six-over-one with a three-over-one. The new window will slightly smaller to accommodate new counters inside. Trim style will not be changed. She confessed that the window has already been installed due to the contractor's time frame.

Motion to find the application complete.

Moved: Brown

Seconded: Bostwick

Unanimously approved

Motion to find the application in harmony with Historic District standards and approve the application as presented.

Moved: Brown

Seconded: Bostwick

Unanimously approved

6. Certificate of Appropriateness for New Construction in the Historic District for Hallowell House, LLC, 105 Second Street, Map 5 Lot 2

John Carroll, maintenance supervisor, represented Hallowell House, LLC in presenting an application for construction of a wooden fire escape on the west side of the building. He explained they want to add a fire escape to the back of the building. There is an existing second story door with nothing under it.

Ms. Feinstein asked for confirmation of the location and size. Mr. Carroll said the existing ledger board is about 6 feet long. He explained that the deck and stairs will be pressure-treated wood which will be painted

white to match the building. The railing will have balusters and caps as shown in the picture. Mr. Bostwick asked if the bulkhead will be moved; Mr. Carroll said it will not.

Motion to find the application complete.

Moved: Orbeton

Seconded: Brown

Unanimously approved

Motion to find the application in harmony with Historic District standards and approve the application as amended with the information that the pressure-treated lumber will be aged and painted white to match the building.

Moved: Orbeton

Seconded: Brown

Unanimously approved

7. Public Hearing and Conditional Use Application, Origins Cannabis Co., LLC, 268 Whitten Road, Map 19 Lot 62

David Vickers, proprietor of Origins Cannabis Co., LLC, presented an application for a conditional use permit for an indoor cannabis (marijuana) cultivation facility in an existing building at 268 Whitten Road. He explained that Origins Cannabis Co. is a medical marijuana provider in Manchester and would like to use the property as a cultivation site. He added that they expect to be able to apply to the State for a license on December 5, but he cannot do that until the municipality approves the use. They will be conscious of energy consumption and water usage. He described the state's approval requirements and process. He noted that this facility would be used for both medical and adult-use marijuana. He explained that adult-use marijuana cultivation has much stricter requirements than medical marijuana. He said that odor is not an issue if done correctly.

Ms. Feinstein asked for clarification that the only thing before the Board is the cultivation facility in this building and does not include retail sales; Mr. Vickers said that was so.

Ms. Obery asked Mr. Ide if the City was only handling medical marijuana at this point. Mr. Ide said that as far as zoning goes, the City makes no distinction between medical and adult-use marijuana; the distinction is made in the licensing process, which is handled by the City Council. Mr. Rolnick said he understood that the only thing before the Board is whether or not the building's use qualifies under the zoning restrictions; Ms. Obery confirmed this. Mr. Ide explained that the Board must consider the Conditional Use Approval Standards and some additional Performance Standards.

Mr. Bostwick asked how many employees Mr. Vickers would have at the facility; Mr. Vickers said there would be seven to ten employees. There will be minimal traffic in and out. Mr. Brown asked how often and what type of vehicles. Mr. Vickers said it would be driven by the harvest cycle and the needs of the retail store in Manchester. He said they will not move huge amounts at any one time, and the vehicles involved could be any type of vehicle from a private car to a small company truck.

Mr. Ide noted that he normally prepares Draft Findings of Fact after the Board approves an application, but he prepared Draft Findings of Fact ahead of time because the use is new to the Board and there are proposed conditions of approval at the end, including a condition that if there are three or more complaints regarding odor that the property owner must address the issue to the satisfaction of the Code Enforcement Officer.

Ms. Obery opened the Public Hearing.

Terry Shepherd, owner of 225 Whitten Road, spoke in opposition to the application. His primary points were the compliance with state and federal laws; the odor; the proximity to the ice arena and the bowling alley; and the effect on property values.

Mr. Vickers pointed out that the complaints currently being voiced are related to medical marijuana cultivation, for which the rules are much less stringent than the proposed rules for adult-use marijuana cultivation. He stressed that this facility will not present an odor problem.

Rick Conant, owner of RLC Engineering, 267 Whitten Road, spoke in opposition to the application. His concerns were the impact on his business and employees; the odor; the effect on property values.

Eric Perry, 11 Perry Lane, spoke in opposition to the application. His biggest concern was the odor.

Linda Johnson, 25 Shady Lane, spoke in opposition to the application. She echoed the concerns of the odor and the effect on property values.

Andy Couture, owner of Sparetime Recreation and the Ground Round Sports Grille, 215 Whitten Road, spoke in opposition to the application. His concerns were the odor and the effect on his businesses.

Mr. Vickers stressed the stringency of the rules on adult-use marijuana cultivation. He cited the State's Adult-Use Program Rules and Regulations §2.4.4 which deals with cultivation facilities and states "plans for ventilation and filtration systems must prevent potential plant odors from significantly altering the environmental odors outside." He noted that if cultivators violate these rules they lose their licenses. He pointed out that this will not be the first cultivation facility in Hallowell, and he assumes there have not been complaints about them. He explained that they do not bring air in from outside; the grows are sanitary grows and the doors have vapor locks; with a proper filtration system odor is not a concern.

Mr. Rolnick asked if there are guidelines and standards for assessment of odor; Mr. Ide explained that the condition regarding odor proposed in the draft Findings of Fact is subjective and requires the CEO to meet with the property owner and determine whether or not the complaints have a legitimate basis. He added that there is no way to measure odor; it is subjective. Mr. Rolnick expressed concern that a subjective standard could cause problems, but he also understood that odor is a mitigatable problem.

Ms. Feinstein observed that the concerns regarding property values are a real thing and are also somewhat subjective.

Mr. Vickers noted that under current law individuals are allowed to grow multiple cannabis plants outdoors on their property without any odor mitigation. He added that this facility will be a very large investment, and he will have experienced engineers involved in this. There will not be air exchange in and out of the building; there are many things that can be done to mitigate odor, and he is willing to make the investment.

Terry Shepherd pointed out that he knows of three places between Hallowell and Gardiner where odor is a problem: a place near J&S Oil in Farmingdale, the old Sheldon Street School, and the old Gardiner Railroad Station. Mr. Vickers pointed out that these are not adult-use grow facilities. He stated that he has not played games with the regulations and has done everything by the state law. He is preparing a 120-page application for the State, and he is not going to jeopardize that.

Rick Conant reiterated his concerns at great length.

Rick Seymour, 6 Sampsons Row, identified himself as the Deputy Code Enforcement Officer. He asked Mr. Ide how enforcement would be handled after receiving three complaints. Mr. Ide said fines could be assessed or the permit revoked. Mr. Seymour asked if Mr. Vickers could grow medical marijuana at the facility under different ventilation requirements; Mr. Ide said that was his understanding. Mr. Vickers said his application is for an adult-use cultivation facility; they will be able to grow medical marijuana in the facility under the adult-use guidelines and standards. He added that the size of the building [15,500 sq. ft.] may cause concern, but their application is for a Tier III license, which is for up to 7,000 square feet of canopy grow space. There are other grows in the area that are much bigger. They are not planning to be an industrial cultivation company and will concentrate on a high-quality product. The filter system will be a carbon filter system that can eliminate 99.9% of the odors, and as a sanitary grow facility it must be air-tight. The problems cited during the public hearing are not sanitary facilities, are not air-tight, and will not pass the testing that is coming up.

Mr. Conant asked for clarification of how air exchange works and how much air will be exchanged from exterior to interior. Mr. Vickers said that no air will be exchanged. Interior air will be scrubbed and recirculated with CO₂ added. Ms. Rigoulot asked about Mr. Vickers' statement in his application regarding research on whether to use a trane system or mini-splits. Mr. Vickers said they will use a mini-split system.

Clint Michaud, a grower for The Frost Factory, explained that closed grow rooms are made to prevent contaminants from coming in from outside. They use negative pressure so nothing comes out. CO₂ is either brought in in canisters or produced with generators.

Mr. Morrison pointed out that even if the Board approves the Conditional Use Permit the applicant still has a number of hurdles to cross; he questioned whether the questions being raised are pertinent to the conditional use of the property versus the other steps toward licensing the facility. If they are not, perhaps the Board should focus on the permitted uses in the various districts and whether this is the best place to have this business. Ms. Rigoulot disagreed and cited the general standards in the Ordinance for conditional uses.

Ms. Johnson asked if the employees will be subjected to drug testing and how frequently testing will be done. Mr. Vickers said there is a required back-ground check. He said he is not sure about drug testing; it is his job to make sure there is no consumption on the property. Ms. Obery agreed that this question is beyond the scope of the Conditional Use Approval.

Ms. Obery closed the Public Hearing.

Mr. Bostwick asked Mr. Ide if the soccer field at the ice arena was considered a recreational area; Mr. Ide said it was not because it is privately owned, therefore the setback requirement does not apply. He pointed out that the Ordinance exempts the Rail Trail, Granite City Park, and Vaughan Field from that requirement. He also pointed out several additional Performance Standards that might apply to the application: 1) the Performance Standard for Fumes, but that standard addresses only fumes that damage health; 2) the State's requirement for exterior lighting for ten feet at each entrance, but with shielded lighting that does not conflict with the performance standard; 3) the requirement for landscaping does not apply because it is not adjacent to any residential use; and 4) the standard for parking does not apply because, even with the change of use, there is no increase in parking.

Mr. Rolnick said he felt the concerns about smell were legitimate and asked if there was a way to address the issue. Mr. Morrison asked if these types of concerns are addressed by the City Council during approval of the businesses license; Mr. Ide said they were not. Mr. Bostwick asked if there are examples of similar air-filtration systems; Mr. Vickers said there are several large grow facilities throughout Maine using such systems. He referred to Mr. Michaud's statements. He pointed out that just because some growers don't control odor doesn't mean they can't. He reiterated that they will be following the adult-use regulations which are very stringent. Ms. Obery told the Board that she has visited a large grow facility and could only identify it by the number of surveillance cameras.

Ms. Rigoulot noted that another concern was the impact on property values due to the publicity about this use. She asked Mr. Ide if it was possible to attach a performance guarantee or a surety bond to the conditional use to confirm that the systems are in place, perhaps a surety bond under §9-723. Mr. Ide said that could be done. Ms. Orbeton pointed out that the general standards require the applicant to prove that they are in compliance; she expressed doubt that the Board has sufficient information to consider the application complete in regard to water usage, disposal of waste water, and the odor mitigation system.

Ms. Feinstein pointed out that there are nineteen approval standards and the Board is hearing and discussing only two of them. Mr. Ide pointed out that these are both subjective issues. He noted that generally speaking it is difficult to prove an operation is going to have an impact on property value.

Ms. Orbeton observed that the Board must decide whether to vote on each of the nineteen standards or to discuss each of the standards and take a single vote on approval.

Mr. Brown expressed concern about the requirement for compliance with state and federal law, because at this point this use is not compliant with federal law. Mr. Ide noted that the Board has approved a conditional use permit for a medical marijuana dispensary; he also felt that the City Solicitor would say that it is legal in Maine and has not been federally enforced. He pointed out that in the draft Findings of Fact he has omitted reference to federal laws.

Mr. Bostwick asked how unused portions of the plants would be disposed of. Mr. Vickers explained the tracking system the State has put in place. The unused portion of the plants must be weighed and disposed of in a way that cannot be used in any other form. He plans to mix the plant waste with wood chips.

Ms. Rigoulot noted the requirement for setbacks. There was discussion of the language in §9-646. Mr. Ide confirmed that the property is over 2,000 ft. from any of the facilities listed in the ordinance. Mr. Rolnick observed that the fact that this is specifically not a retail facility decreases his concern about this issue.

Mr. Ide noted that the applicant has requested two waivers, but since the site plan includes a perimeter survey, only the request to waive the requirement to show current and proposed contours needs the Board's consideration. It is not applicable because the lot's contours will not be changed.

Ms. Obery asked if there were any more comments from the public.

Mr. Conant asked what the zoning status was; Mr. Ide explained that the property is in the BB District and in that district this is a Conditional Use. There was discussion of derivation of the ordinance.

Mr. Shepherd reiterated his concerns about compliance with federal laws, odor, and impact on property values. He also stressed his concern regarding children using the soccer field. Mr. Brown observed that under an adult-use license odor must be strictly controlled and expressed confidence that Mr. Vickers will comply with the restrictions. Ms. Rigoulot pointed out that the adult-use licensing is not yet in effect. Mr. Vickers clarified that the State will begin accepting applications on December 5, and the work of preparing an application is extensive. He outlined the licensing process the State has created. Ms. Rigoulot expressed doubt that the City's general standards will be met. There was extensive discussion of enforcement issues.

Ms. Orbeton recused herself from further participation on Item 7 due to her work for the Legislature as a Senior Legal Analyst. Both Mr. Morrison and Mr. Rolnick will be voting.

Mr. Vickers cited LD719, as enacted, regarding the State's enforcement of licensing regulations. There was additional discussion.

Mr. Rolnick asked whether the conditional use approval was specific to the owner or traveled with the property; Mr. Ide said the use can continue with a new owner with the same restrictions unless there is a lapse of eighteen months. Ms. Orbeton reminded the Board of its approval of a conditional use for Jonathan Ives with a limitation to his ownership of the building.

The Board recessed for five minutes.

The Board reconvened.

Motion to approve a waiver for the requirement for showing the original and proposed contours.

Moved: Brown

Seconded: Rolnick

Unanimously approved

Ms. Feinstein noted that there are two items in the application checklist that are blank. Mr. Ide told the Board that Item H was blank because there are no catch basins, storm drains, etc. on the property. He added that Item U is blank because no building permit is required.

Motion to find the application complete.

Moved: Rolnick

Seconded: Brown

Ms. Feinstein said she was not sure that the information about the air filter system is sufficient. There was a brief discussion. Mr. Bostwick asked what approvals the CEO would have to make; Mr. Ide said he would have to approve any structural or plumbing permits that were needed, and he would have to receive copies of any state and city licenses prior to issuing an Occupancy Permit, but he would not need to approve any HVAC installations. Mr. Vickers added that the HVAC system is part of the state application approval.

Vote:

Unanimously approved

Motion to address all conditional use standards at once rather than individually.

Moved: Rolnick

Mr. Bostwick asked for clarification that in the final approval Board members could vote against approval if they felt any one or more of the standards was not met. Mr. Ide said that was so.

Seconded: Brown

Yea: Bostwick, Brown, Feinstein,
Morrison, Obery, Rolnick

Nay: Rigoulot

Motion carries.

Mr. Rolnick suggested that the Board add a condition to require the odor mitigation standards that are most strict under the state regulations as well as the conditions Mr. Ide has already provided in the draft approval. Mr. Bostwick recommended that the condition could be included as condition Number 6; Mr. Ide suggested incorporating it in condition Number 5.

Motion to approve the application with conditions as drafted and the additional condition that the applicant shall install an odor mitigation system which is in compliance with the State adult-use marijuana standards or the State medical marijuana standards, whichever is more stringent.

Moved: Rolnick

Seconded: Brown

Ms. Rigoulot said she did not feel that Standards 1 and 8 have been met; she also disapproved of the amended condition Number 5. Ms. Feinstein echoed Ms. Rigoulot's objections.

Vote:

Yea: Bostwick, Brown, Morrison,
Obery, Rolnick

Nay: Feinstein, Rigoulot

Motion carries.

Mr. Vickers said he takes the issues he has heard seriously and thanked the Board.

Mr. Rolnick will not be voting.

8. Approval of Findings of Fact

- A. Certificate of Appropriateness for New Construction in the Historic District, Larry Dibble and Wendy Springborn, 24 Union Street, Map 9 Lot 67**
- B. Certificate of Appropriateness for New Construction in the Historic District, Steve Krupinsky, 42 Winthrop Street, Map 6 Lot 41**
- C. Certificate of Appropriateness for New Construction in the Historic District, Nathan Sennett, 181 Water Street, Map 9 Lot 147**
- D. Site Plan Review – Minor Project, FEM Katherine Dr., LLC, 26 Katherine Drive, Map 2 Lot 1D**

Ms. Obery noted that the Board has received an amendment to the application from Mad Brew, LLC. Mr. Bostwick suggested the Board vote on all of the Findings of Fact except the one for Mad Brew.

Motion to approve items 8A–8D as presented.

Moved: Bostwick

Seconded: Rolnick

Unanimously approved

- E. Certificate of Appropriateness for New Construction in the Historic District, Mad Brew, LLC, and Alley Cat, LLC, 113 and 117 Water Street, Map 5 Lots 143 and 144**

Jamie Houghton represented Mad Brew, LLC and Alley Cat, LLC in presenting an after-the-fact amendment to the application. The application was amended to include a seasonal walkway enclosure. Mr. Ide told the Board that a seasonal enclosure has been placed on the walkway between the two buildings. He said it seemed appropriate that the Board should follow the precedent of its consideration and approval of the seasonal vestibule at Slates Restaurant. Ms. Houghton confirmed that the enclosure

