

PLANNING BOARD  
148 Peck Street  
Rehoboth, MA 02769  
(508) 252-6891 Telephone  
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Christopher Cooper, Chairman  
Robert Moitozo, Vice Chair  
Edward Bertozzi  
Tomas Ennis  
William Costa Sr.  
Michael Costello  
Leeann Bradley – Town Planner

**Meeting Minutes  
February 7, 2018  
Town Offices  
148 Peck Street  
Rehoboth, MA 02769  
7:00 PM**

RECEIVED  
18 APR 23 AM 8:29  
OFFICE OF THE TOWN CLERK  
REHOBOTH, MA

Present: Christopher Cooper, Robert Moitozo, Tomas Ennis, William Costa Sr.

Town Planner – Leeann Bradley

Absent: Edward Bertozzi, Michael Costello

Mr. Cooper began the meeting with the Pledge at 7:05p.m.

Form A

1. Dorrance – 2 Old Anawan St. – 18-02A – Ms. Rachel Smith from Otis Dyers office was present on behalf of the applicant. She began by stating the Planning Board is familiar with this land as the town is considering buying it. The applicant currently owns a good size parcel of land. It is made up of several parcels and the applicant was not overly concerned with lot lines until now since the town may be buying the majority of the land. They want to expand the lot around their house which is 6 Old Anawan Street. The lot line was relatively close to the back of the house which includes a shed. They want to expand the lot line to include that shed and then sell the rest of the property. The town is looking at parcel CR, Lot 2R and 348 Anawan Street which is 8.16 acres. They just want to change the line with parcel CR and Lot 2R. All the buildings meet the setbacks. There was no further discussion.

Mr. Moitozo motioned to endorse the Form A for Dorrance.

Mr. Costa seconded the motion. Motion passed.

2. Fontaine/Bowers – 134 Anawan St. – 18-03A - Ms. Rachel Smith from Otis Dyers office was present on behalf of the applicant. The applicant now owns 134 Anawan Street and wants to retain lot 1R which is 2.62 acres and has 260.92 feet of frontage with the house. They want to divide off a non- buildable parcel, which is parcel B, and is along the stone wall for future conveyance to an abutter. There are no setback issues. There was no further discussion.

Mr. motioned to endorse the Form A for Fontaine/Bowers.

Mr. Costa seconded the motion. Motion passed.

Public Hearings

## New Business

1. Recreational Marijuana Moratorium – Discussion – Selectman Muri – See end of minutes Items 1 and end of #2 discussion with Selectman Muri below.

2. Eastwood Estates – Construction Observations – northern slope – Mr. Moitozo stated he does not agree with the report and feels it is unacceptable. Ms. Bradley feels the road and grading are in the wrong location or the elevation is wrong. Mr. Moitozo feels one of three things have happened, either the surveyor, the designer or the contractor screwed up. Either way it is not the town of Rehoboth's problem, it's the developer's problem. If that means the developer has to get an easement from his neighbor to remedy the situation, that's not our problem. Putting boulders adjacent to the road is simply unacceptable. The picture they have with the segmental block wall is also unacceptable. There is no place for snow removal and it creates a hazard adjacent to the road. It becomes a safety hazard and maintenance issue. The developer has to come up with a suitable remedy. He also noted "Plate A" specifically states for the cross section in the road variations are only with the written approval of the Planning Board. He added this is a situation the developer created. Ms. Bradley feels the road is in the wrong place, and added InSite Engineering will be conducting a detailed topographic survey of this area to determine the front elevation. Mr. Moitozo stated that is step one of coming up with a solution. He asked Ms. Bradley to make sure Fuss & O'Neill come before the Planning Board regarding "Plate A" variations and the written approval requirement by the Planning Board.

3. Resignation of Michael Costa – fill vacancy – discussion – Mr. Cooper asked the board if they knew anyone who might be interested in filling the vacancy of Michael Costa. The Board of Selectman will appoint somebody if the Planning Board cannot find someone. Mr. Costa stated there is a caucus on Saturday and will ask if anyone is interested.

## Old Business

1. Zoning Bylaw Recodification – Discussion – Mr. Cooper began by asking Mr. Michael O'Hern to come forward and give the Planning Board a quick overview.

Mr. O'Hern began by stating that he reviewed the bylaw that was created. He noted that at the last meeting he stated the Planning Board was more interested in format as opposed to actual content in terms of changing the bylaws. Mr. Cooper agreed. Mr. O'Hern went through and marked what he thought would change the bylaw and make it different than what they have. He added that what he marked up may not be clear to them but was glad to explain his notations. He added that he changed several things such as granting special permit authority to the Planning Board rather than the ZBA. The ones he changed were basically use lights if they required a special permit for use. He feels that should remain with the ZBA if it's required. Other things such as Site Plan Review would obviously stay with the Planning Board, adding that is done prior to people moving on to their property. He stated that was originally done by the Building Department when he was building inspector but they did not have the time or the resources to do it. He feels the Planning board has done a very good job with that. The Wind power and Solar is done basically for commercial type work and should remain completely with the Planning Board. When it comes time for a special permit to stack lumber in the backyard for example that is a ZBA matter not the Planning Board. This is why he made some of these changes.

Mr. Cooper stated he does not have any objection to anything Mr. O'Hern said. They seem reasonable enough.

Mr. O'Hern questioned why the definitions are at the end of the bylaw. The zoning codes

definitions are usually in the second chapter. He stated it is not an important point but just wanted to bring it up.

Mr. Moitozo guessed this is more typical at the state level and that everything in town is formatted a particular way.

Mr. O'Hern stated it doesn't make any difference. It is just formatting.

He went on to page six which was C. Agricultural Uses, item 1 reciting the bylaw as: The use of land for the primary purpose of Agriculture, Horticulture, Floriculture or Viticulture on a parcel of more than 5 acres in area of 2 qualified acres. Mr. O'Hern did not understand that. Rehoboth is a right to farm community and residents can have agriculture on any piece of residential property at this point. Does this mean they need 5 acres? Are they restricted to five acres and if so, he is dead set against it. He does not want to change the idea of being a little town where you can have a garden or a couple of chickens. He asked the Planning Board for an explanation of what that means. He feels it should be eliminated. The Planning Board agreed.

Mr. Cooper stated it doesn't make sense to have 5 acres and you can only use 2 acres if it qualifies.

Mr. O'Hern referred further down the page to Farm noting it can't be in an industrial area. He doesn't see why it can't and it should be changed to "Yes".

Mr. William Costa Sr. referred to #6 under Recreational and Open Space Uses, Firing Range. Mr. O'Hern does not think a firing range should be allowed in a residential area unless it is approved by the ZBA. He added that one year they had problems with a firing range that was teaching machine guns/automatic weapons and residents were getting a little scared. He is not opposed to firing ranges such as gun clubs have. They are currently allowed in a residential area and require a lot of land. They can't be in a business district. He feels if they meet the restrictions it should be allowed in business and residential district.

He referred the Other Organized Recreation #3. He feels is okay as being approved by the ZBA. Mr. O'Hern noted Fairs and Carnivals are events that last for 2 or 3 days and there is not time to go through a ZBA process. They should require a permit and should be allowed in residential districts. He feels the Board of Selectmen should get approval from the Board of Selectmen with their right to impose conditions. The Planning Board agreed.

Mr. Cooper noted under E. Temporary Uses, mobile homes or trailers. Mr. O'Hern stated this is a Board of Selectmen matter and always has been. He does not feel it should change. This is used for residents who have had catastrophic events and are forced out of their homes need housing for a limited period of time.

Mr. O'Hern moved on to F. Motor Vehicle Related Uses, #3 Motor Vehicle repair shops. They must be in a business zones. They are all over town. He noted that Truck Wash is ok.

Mr. O'Hern went on to G. Office Uses, Civic Administration. He asked for an explanation of that.

Mr. Moitozo could not find the definition in the bylaw. Also, General office had no definition either. Mr. Cooper stated they would have to follow up on that.

He then questioned a written notation by Mr. O'Hern at the bottom of page 7 referring to #9 Fairs and Carnivals. Mr. Moitozo stated this referred to D1, Recreational and Open Space Uses. Mr. O'Hern stated there was a restriction to motorized vehicles that was put in due to an attempt to put in a motocross race track on Fairfield St. It was limited to 5 or 6 motorized recreational vehicles at a time. However when there is a fair at Redway Plain there are more recreational vehicles than are

regulated and suggested limiting it to 5 vehicles except by special permission by the Board of Selectmen. That would take care of any potential problems

Mr. Cooper went on to Section 3.3.1 Home Occupations. Mr. O'Hern is a little confused. Does it mean you can't have a home occupation? He added that animal clinics and veterinarians sometimes work out of farms which may not be in a business area. By right it should be in a business zone.

He feels under current zoning bylaws it should be allowed in a residential area by the ZBA under home occupation. He added the same thing applies to a print shop that was once in business that turned into a home occupation. He feels they need to distinguish what a home occupation is and is not. They need to have reasonable judgement. The business has to be operated by the resident of the property and maybe one other employee. Mr. Cooper asked about a welding shop as a home occupation. Mr. O'Hern feels it should be restricted to a business district and it should stay the way it is.

Mr. O'Hern discussed under Industrial Uses, #5 Laboratory Testing or Research. He feels should be regulated and that it should be allowed in a business district only with ZBA approval. The Planning Board agreed. Mr. Cooper added they need to know what they are doing there. The discussion touched back to Home Occupation. Mr. O'Hern feels the definition of Home Occupation should stay the way it is and the use should be determined by the zoning officer. ZBA should determine if it's a home occupation or not. If someone doesn't agree with that, they have the right to appeal.

Mr. Ennis questioned the welding business on Oak St. and that it would be considered a home occupation since it is run by the person living at that home. Mr. O'Hern believes that was a home occupation according to the definition. There are other standard regulations regarding noise, obnoxiousness and so on. If there is a business run by the occupant of the property that becomes an annoyance it may fit the definition of home occupation but it is in violation of something else therefore they can't do it. If they correct it they are ok.

Mr. Cooper went on to page 10, #9 under Accessory Uses– Residential, noting that Mr. O'Hern has changed it to be approved by the ZBA as opposed to the Planning Board. Mr. O'Hern noted it is for commercial use not a home occupation. It is for something a person is not a resident to. He does not understand if you're in a business zone why you would need a special permit for that. He does not think it should be allowed in an agricultural or residential district. He suggested that it be changed to include being allowed in a residential district by special permit by the ZBA by right, in the business zone.

Mr. Cooper questioned again under Accessory Uses, the storage of something noxious like fertilizer, pool chemicals etc. Storing dirt is okay. They would want to know if chemicals are being stored. Mr. O'Hern stated if they are storing chemicals they need to meet the fire and building code regulations that are very tight on that kind of stuff. Mr. Cooper noted that at the end it reads "contractor's yard for the storage of commercial landscaping equipment; and materials; a yard for the storage of the goods and materials of a plumber, carpenter, or other trade"...leaves it wide open for interpretation. Mr. O'Hern suggested removing language that states having a yard for the storage of material for a plumber, carpenter or other trade.

Mr. O'Hern questioned Accessory Uses – Non Residential and was not clear on #2. Mr. Moitozo stated there have been issues with golf courses accessory uses in a residential zone. Mr. O'Hern

does not understand what accessory use is associated with a special permit. If it were a golf course would it be a driving range? Mr. O'Hern feels this section should be removed. The board discussed that an accessory building could also be a driving range and a restaurant at a golf course. They went on to #4 Accessory use in connection with scientific research or development. This was not clear to the Planning Board or Mr. O'Hern. Mr. O'Hern feels it's worth leaving in there but should be approved by the ZBA.

Mr. O'Hern went on to section 3.2.3 Certain Occupations – Mr. Cooper stated it restates what was discussed in section 9 above. Mr. O'Hern questioned if a carpenter works out of his home does he need a special permit for a bringing home lumber to be used at a later date or is it a use allowed by right as long as my lot is conforming? Mr. Cooper stated there have been issues in the past regarding equipment stored on property and work beginning at 5:00am with neighbors on either side

Mr. Muri was in the audience and shed some light on this issue by stating that instead of a “by right” it becomes a special permit issuing authority responsibility once the business size increases. Mr. O'Hern feels this takes away from accessory use. This is almost “by right” giving someone a right to use residential property for commercial use without a home occupation. Why would they want to do that? They are allowing residential property to be used commercially on a large scale. Mr. Cooper added that it should be noted that it should be associated with a home occupation and the owner living on the property. Mr. O'Hern feels it should be eliminated and does not protect the residential area. Mr. Cooper wants to make sure if they delete it here, it is captured elsewhere in the bylaw. Mr. Muri feels it should be a special permit situation or eliminate the accessory use. Mr. Cooper noted that section K notes accessory uses in residential for a home occupation are permitted by right. Mr. Muri state they need to be very careful with that because someone will grow a business beyond what was originally envisioned. Mr. Ennis stated he knows several businesses in town that would have to close their business if they weren't able to store equipment on their property. He noted Waste Tech as a business that was storing equipment on his property on Summer Street and is not supposed to store equipment at his business on Route 44. He wonders where the equipment is being stored. He also noted several landscaping companies that store equipment on their property. Mr. O'Hern feels residents should be allowed to use their property to some extent. Again, Mr. O'Hern does not feel this section should be in there. Mr. Cooper feels they should leave it the way it is with the exception of changing “subject to the grant of a special permit by the Planning Board” to ZBA.

The discussion continued regarding home occupations utilizing exterior storage on their property. Mr. Cooper felt the change made in section 3.2.3 Certain Occupations would cover them in section 3.3.1 Home Occupations with regard to needing a special permit by ZBA for storing material. Mr. Cooper noted this is a situation a company starts out small and then grows. If they eliminate #4 complete there will be no limit on what can be stored in a home occupation. Mr. O'Hern reminded him there are other standards regarding a home occupation. He used Ben Munroe as an example asking if he needs a special permit to store the logs on his property and he is against that. Mr. Ennis brought up an example of approximately ½ acre of landscape debris being stored and was informed by the health agent this was okay to store and also checked with the fire department. Mr. O'Hern disagreed completely stating it is a fire hazard and this is an enforcement issue and a violation of the standards. Mr. Ennis totally agreed with Mr. O'Hern. Mr. Ennis feels a home occupation is one home that conducts solely on the premises and solely by the person who occupies the dwelling as the primary residence. He feels if they start hiring outside help it is no longer a home occupation. Mr. O'Hern agreed. He feels they should ad language stating they can have 1 employee. Mr.

O'Hern stated the zoning officer is the one who determines if it is a home occupation. A used car lot is not a home occupation. He is against 3.3.2 Home Occupation stating it is a substantial variation from the current zoning. Language was added to section 3.3.1 #1 adding not more than one employee is allowed. Mr. O'Hern feels they should stick to the formatting of the existing bylaw and if there are still issues should then be taken as proposed changes at the next town meeting. He does not suggest a radical change and they will not win with a radical change. Mr. Cooper does not want to make things dramatically different or worse.

They moved on to section 4. Mr. O'Hern found confusion in the maximum stories allowed language. He stated residential zone homes can be 2 ½ stories, business district 3 stories with the maximum height of building as 30 feet. He feels "stories" needs to be defined as it is not a height. He suggested not defining by stories. A 2 ½ story structure can exceed 30 feet. There is no 30 foot restriction in a residential zone and suggested removing the "30 foot" language. Mr. Moitozo added there are no building height restrictions for residential homes but they cannot be higher than 2 ½ stories. He added that industrial zone has a maximum height of 30' but does not mention stories.

Mr. O'Hern discussed 4.2.3 Gerrymandered Lots. And noted he would leave it as it, but he spoke to lawyers who informed him it's very hard to enforce that.

The next topic was section 4.3.2 Accessory Building in the Business and Industrial Districts. Mr. O'Hern needed clarification on this. He doesn't see why a 30' buffer zone is needed in front of a business. A language changes was suggested stating a 30' buffer should be between the business and any residential district or property.

4.3.7 Location of Accessory Building – Mr. Moitozo wonders why does anyone care if the accessory structure is closer to the principle structure? Mr. O'Hern stated it doesn't matter but noted he's seen accessory buildings that are closer than the height of the principle structure in the past. He does not feel this should apply to the principle structure. The Planning Board agreed. Section 5.1.4. Variance Required. Mr. O'Hern understands this as, if you have a house on a property and its 15' from the property line non-conforming, and your house and the line are parallel, and you want to add on to the back of the house you can add on and still keep that 15' distance by special permit from the ZBA with no variance required. His interpretation is saying if you ad-on to your structure and it doesn't come any close to where you are already are you only need a ZBA special permit. The Planning Board agreed and Mr. O'Hern had no problem with that. Mr. O'Hern questioned section 5.1.5 subsection #3, which discusses an alteration to a structure which encroaches upon one or more required yard or setback areas. Mr. O'Hern did not understand this section. Mr. Moitozo feels this is for a non-conforming structure. Mr. O'Hern does not think this is necessary but he thinks it can be done anyway

On section 5.1.7 Reconstruction after Catastrophe or Demolition. Mr. O'Hern noted the issue is if the structure is unsafe you don't need a special permit for demolition. The building inspector by law can order the demolition of that structure. He noted they may want to indicate that "for cause" a demolition permit can be ordered or issued by the building inspector. Mr. Ennis feels this pertains to reconstruction after a catastrophe or demolition. Mr. O'Hern stated that a couple of things could happen. If the building inspector says it's unsafe the building inspector can say "make it safe" if it's determined it is reasonable to make it safe, or if they choose not to make it safe, the building inspector can hire someone to demolish it and lien the property.

Mr. O'Hern stated that section 6.3.4. Special Permit, should be approved by the ZBA not the Planning Board. The Planning Board agreed.

The discussion touched upon Signs, Section 6.3 and that temporary signs are approved by the Board of Selectmen. Mr. O'Hern feels the whole section should be taken out. Mr. Cooper stated this section will be replaced by the new sign bylaw.

Section 6.4 Performance Standards were discussed. Mr. O'Hern stated agricultural uses are by right exempt by bylaws. People with farms will put out manure and be up at daybreak on certain days to harvest. He stated people will complain about tractor noise or manure smell. He believes there is a "Right to Farm" bylaw in this bylaw. If someone wants to raise pigs or horses they need special permits from the Board of Health. Mr. Cooper suggested adding some language stipulating that Rehoboth is a right to farm community.

They then discuss section 6.4.3 Measurement at Lot Line. Mr. Cooper stated Mr. O'Hern made a comment about the cost of measurements. Mr. O'Hern stated this is a problem. He gave an example of noise levels, stating measurements require almost a day on the site using calibrated and certified equipment. For Rehoboth to pay a certified individual with certified equipment to come out to get an average that could take 1 or 2 days is expensive. He feels if the applicant is insisting on having noise measurements determined, the applicant should be the one paying for this.

Section 6.4.6 Special Permit. Mr. O'Hern feels this should fall under the ZBA not the Planning Board. The Planning Board agreed.

Mr. O'Hern noted section 7.6.3 Conditions, subsection #2, noting language pertaining to predominately wood siding. Mr. O'Hern stated that types of materials to be used in construction are specifically determined by the state building code. He does not feel they can say they can't use vinyl siding for example. He does not think they should indicate specific materials in the language. The building code allows both.

Section 8.1 External Solid Fuel Burning Boilers. Mr. O'Hern stated the last word in the last sentence should read "required" not "allowed".

On page 51, section 10.1 Groundwater Protection. Mr. O'Hern felt 10.2.6 was redundant. Mr. William Costa felt this should come under the Board of Health. Mr. Moitozo stated 10.2.6 lays out all the permitted uses. Section 10.2.5 tells you what to do if you have non-permitted uses.

Section 10.2.11 Rules and Regulations, subsection 1 Application Fee. Mr. O'Hern questioned language within the bylaw stating they can waive the fee on smaller projects. Ms. Bradley stated if the applicant requests a fee waiver the Planning Board can grant it. Mr. Moitozo stated there is nothing in writing regarding this. Mr. O'Hern asked if they need something to cover themselves if they do waive a fee. Mr. O'Hern stated he is in favor of waiving some fees but it is at the discretion of the Planning Board.

Mr. O'Hern noted on page 58, Section 11.2.3 Powers of the Zoning Board of Appeals. He stated that the planning board is sometimes the SPGA under zoning regulations. He reads this as if someone is aggrieved by a decision they can make an appeal to the ZBA. He believes that something should be added to cover that. There was no further discussion.

\*\*Mr. Jim Muri asked to come before the Planning Board with 2 items.

Item #1. He heard from the state on the question of the recreational marijuana the state has finally

finalized their rules and guidelines. Ms. Bradley stated it was only a draft. He agreed it was a draft but that the moratoriums are going to end on May 31, 2018. Mr. Muri was at the meeting requesting that this board put together a bylaw that deals with recreational marijuana. They already have medical marijuana facilities codified in the bylaw. He suggests it be relegated to the industrial district.

Item #2 is the matter concerning a Planning Board member who has resigned. He has been asked to notify the Planning Board that they have 7 days from the date of resignation to appoint somebody. If the Planning Board does not appoint somebody the Planning Board and the Board of Selectmen will meet jointly to appoint somebody if they can find someone who is interested. The hard deadline is the election on April 2, 2018 when Michael Costa and Mike Costello's terms both end. He just wanted to bring this to the Planning Boards attention.

Continuing the Recreational Marijuana discussion, Mr. Cooper asked what the tax benefits would be with a recreational marijuana facility. Mr. Muri stated it is the same as any other business. Mr. Costa stated if they consume the marijuana on site a meal tax can be added and he believes the state is taking its normal 6.25% on sales, as well as a similar alcohol type tax and a town tax. Mr. Moitozo had a thought regarding the industrial zone and wonders if they would be able to issue a piggy back liquor license since they already have regulated substances being distributed at a location. Where identification is being checked and cameras in place. Would it make sense to allow recreational marijuana at a place such as a liquor store. He feels they kind of go hand in hand. Mr. Muri's personal feeling is from the perspective of Rehoboth and people coming in from other communities. He doesn't want to be the center of recreational marijuana facilities in Massachusetts. He prefers to be way behind the curve on that one. People will come in from all over the state and that will create problems. Mr. Moitozo asked how many recreational marijuana licenses can be issued and added that the town allows only a certain number of liquor licenses. Mr. Muri added there is a limitation on the number of licenses that can be issued. He does not know what that number is though. Mr. Costa stated it is 20% of 5 (five) liquor licenses currently issued in town which would allow 1 (one) recreational marijuana license in Rehoboth. He added that other communities that have recreational marijuana shops try to keep them out of strip malls and more as an independent facility by itself.

Mr. Muri stated that medical marijuana which he considers to be a greater "by right" sort of thing that's relegated to the industrial district. He feels they should either loosen up the reigns a bit or make recreational marijuana as stringent as medical marijuana. Mr. Muri confirmed with Mr. Moitozo that this is a zoning issue and could go before the town meeting. Mr. Costa also noted that customers can only pay with cash. No credit cards or checks. Mr. Muri stated he had a conversation with chief Trombetta on this matter. This is another reason he is opposed to this because of the cash basis. A lot of cash on hand attracts potential crime.

Ms. Bradley added that town counsel will help with the language on this once they know what the town wants. The Planning Board went on to discuss security issues and what other communities and states allow. There was no further discussion.

#### Minutes

1. October 18, 2017                      2. December 6, 2017                      3. December 20, 2017

Mr. Ennis motioned to approve the above minutes.

Mr. Costa seconded the motion. Motion passed.



Invoices

1. Fuss & O'Neill – Eastwood Estates - \$1,776.30
2. Fuss & O'Neill – Idlewoods Estates - \$906.24
3. Fuss & O'Neill – The Preserve - \$1,484.08

Mr. Costa motioned to submit payment to Fuss & O'Neill for the above invoices.

Mr. Ennis seconded the motion. Motion passed.

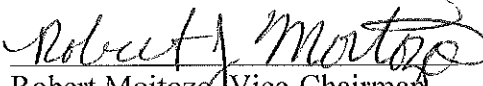
Adjournment

Mr. Moitozo motioned to adjourn at 9:50pm

Mr. Costa seconded the motion. Motion passed.

Respectfully Submitted

  
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Christopher Cooper, Chairman

  
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Robert Moitozo, Vice-Chairman