

TOWN OF DEDHAM
COMMONWEALTH OF MASSACHUSETTS

John R. Bethoney, Chair
Michael A. Podolski, Esq., Vice Chair
James E. O'Brien IV, Member
Jessica L. Porter, Member
James McGrail, Esq., Member



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Jeremy Rosenberger
Town Planner

PLANNING BOARD MINUTES
October 3, 2019, 7:00 p.m., Lower Conference Room

Present: John R. Bethoney, Chair
Michael A. Podolski, Vice Chair
James E. O'Brien IV
Jessica L. Porter
James McGrail, Esq.
Ralph Steeves, Associate

Staff: Jeremy Rosenberger, Planning Director
Jennifer Doherty, Administrative Assistant

The Pledge of Allegiance was recited. Plans, documents, studies, etc., referred to are incorporated as part of the public records and are on file in the Planning and Zoning office.

Firearms Zoning Amendment

Chairman Bethoney stated the first item before the Board was a continuance of the public hearing related to the firearms zoning amendment. In accordance with the provisions of Massachusetts General Law Chapter 48, Section 5, the Planning Board will consider the proposed amendments to the zoning bylaw referred by the Board of Selectmen providing for the prohibition or regulation in all zoning districts of the Town of Dedham of retail and wholesale business involving the purchase and sale of fire arms. The text of the proposed amendment is available for inspection during regular business hours at the Town Clerk's Office and Planning and Zoning Office. This meeting is being continued from September 12, 2019.

The Chair asked Mr. Rosenberger to present his research, report and zoning maps on the Adult Use Overlay district within the Town of Dedham as well as other specific zoning districts designated in other communities for the purchase and sale of firearms.

Mr. Rosenberger stated he was providing:

- A comparison of Dedham's Adult Use Overlay with Everett's Adult Entertainment Land Use District
- 4 maps
- The proposed potential regulation for regulating firearms in Dedham.

The Chair then drew attention to Jonathan Eichman from KP Law who was present as Special Counsel to the Planning Board related to this Article.

Mr. Rosenberger began by saying that no town in Massachusetts prohibits the sale of firearms. The closest real regulation was in Everett where they regulate firearms in their Adult Entertainment Use district. State statutes require towns to provide a place that allows for adult uses. Starting on September 12, we began the legal proceedings as to how to regulate firearms in Dedham. Everett regulates through two principles: 1) They have defined two districts where it's allowed by special permit—their limited industrial district and industrial district; 2) They've created buffer zones. No firearms retailer can be near another one and they have to be a specific distance from parks, schools, churches, etc.

Mr. Rosenberger, taking that framework, provided comments in the sections that have been reviewed by town counsel.

He then went through the sections of Dedham's Adult Overlay District.

Purpose: Why Dedham is regulating adult entertainment. Everett does not stipulate a reason for regulating firearms.

Establishment of Adult Use Overlay District: Everett puts the firearms businesses in their industrial districts. We propose that it be in Dedham's Overlay District.

Definition of Terms: What is a firearm? What is a firearms business? Everett also defined these. Etc.

Who is the permitting authority? This would be the Board of Appeals, the special permit granting authority, which is the same as it is in Everett.

Special Permit Submittal Requirements: Not a lot of standards in Everett for that, but Dedham has robust regulations that such a business would need to meet.

Adult Use Requirements and Conditions: This section addresses buffers. Everett stipulates that there cannot be a firearms business within 1,000 feet of another one, and it must be 500 feet from churches, schools, recreation, etc. Dedham's Adult Use buffer is 150 feet, however Everett's industrial district is far from everything. A 1,000 foot buffer in Dedham would effectively be a prohibition.

Dedham's Adult Use District's regulations regarding signage, building appearance, parking, and lighting would equally apply to firearms businesses. Local, State and Federal level also have strict requirements for how a retail store presents itself. Termination reasons that meet State and Federal thresholds. Everett does not regulate as much as Dedham could in our Adult Use.

Dedham's Adult Use Entertainment District comprises 8 properties and currently 3 owners: Stergis Trust, Legacy Place, and National Amusements. This district went through a rigorous committee process and therefore might be the opportune place for the firearms district. There are no churches, schools, daycares (one is set to open about 1,000 feet from Legacy Place) in the near vicinity. To the south is highway and ramps.

Wigwam Pond and Fairbanks Park

Some of the properties in the Adult Use District are near these areas. Wigwam Pond could become a recreation area in the future. Fairbanks Park is within 1,000 feet and 500 feet is also a residential area. 150 feet provided the buffer; further than that gets close to prohibition.

The Chair requested questions from Board Members.

To Mr. O'Brien's question as to what would happen if the district was fully occupied, Mr. Rosenberger replied that the new applicant would have to go elsewhere.

Mr. O'Brien then asked if Dedham could make the adult zone the size of a stamp.

A Board member said when they established the Adult Use Overlay 9-10 years ago, they tried to create as many parcels as possible within the district to pass Constitutional oversight by the Attorney General's office. He asked if Dedham would be restricted to the existing size of the overlay district or could Dedham make the gun district portion smaller within the adult district and still pass regulatory muster. Attorney Eichman answered that these parcels must have feasible use. It is possible to shrink the size of it, but it has to be useful or the Town invites scrutiny.

Chairman Bethoney stated that when developing the Adult Use district, Betsy Lane of KP Law emphasized not just the number of parcels, but also the number of land owners. If the district has one landowner and that owner is biased against adult uses, it's basically a prohibition. He asked if that was still true today. Attorney Eichman replied, yes, that it was good advice.

The Chairman then asked about if the intent is there to make it available. Mr. Eichman advised that it's wise to have parcels with different ownership to prevent legal trouble around the bias of one owner.

The Chair asked if a commercial landlord could choose not to rent to a particular retailer and Attorney Eichman confirmed they had that right.

Mr. McGrail noted for the record that Fairbanks Park is not accessible by foot to the Adult Overlay District. There is a lot in between that must be circumnavigated. He then asked if the proposed bylaw would make Dedham the town with the most restrictive gun bylaw in the state? The bylaw treats a firearms business in the same manner as an adult use business. Mr. Rosenberger replied that it would be much more restrictive than other towns, but added that Everett's bylaw was approved by the Attorney General.

To Mr. McGrail's comment that the daycare center was not easily accessible, Mr. Rosenberger responded that distance is usually measured as the crow flies. He also brought attention to two closer residences, Avalon and one other to the south, that reinforce the reason for the 150 foot buffer zone.

The Chairman then opened the discussion to the public for questions and there were none. He confirmed with Attorney Eichman that he worked with Jeremy on the proposed bylaw and had listened to the comments of the community and elected appointed officials. He asked Attorney Eichman if this bylaw as presented would regulate the purchase and sale of firearms to the extent where many of those concerns have been addressed. Attorney Eichman stated that the greatest concern in the hearings he attended was that the firearms businesses not be close to children, churches, etc., which was the purpose of putting it in the Adult Use District and by special permit.

Chairman Bethoney asked Attorney Eichman if he agreed with Mr. Rosenberger's opinion that Dedham would be considered stricter than most if not all communities in the Commonwealth. Attorney Eichman agreed that this bylaw would be somewhat, but not extraordinarily stricter. It has more criteria and requirements for the location of these businesses than Everett's.

Ms. Porter asked Attorney Eichman how often communities in general revisit Adult Use Districts once they've been set up based on how development occurs, to which he responded that he has not seen a revisit unless there was a challenge, but it's always a possibility.

Chairman Bethoney asked if the town can regulate the total number of establishments in the district. Attorney Eichman said that kind of regulation is problematic because would encroach upon the requirement that all districts be regulated uniformly. He would not advise it.

Mr. McGrail stated that at the top of Stergis Way are 3 parcels owned by the Trust. He asked if it would be advisable to eliminate 2 of those parcels (3B and 7A) from the firearms control district and still be able to pass regulatory muster. Attorney Eichman replied that it's possible legally, but do the remaining parcels provide a reasonable option for someone to locate there? You're taking advantage of an existing overlay district. By eliminating the 2 parcels, you'd have to create a separate firearm overlay district or place it within an existing district so it gets a little more complicated.

Ms. Porter stated that rather than eliminating the 2 parcels, a 300 foot buffer zone instead of 150 would essentially accomplish the same thing. Attorney Eichman stated another option may be to amend the Overlay District and remove those parcels entirely.

Chairman Bethoney confirmed with Attorney Eichman that that would be beyond the scope of the Article, but could be considered in May.

He then opened the discussion to the community.

Ms. Marisa Howard-Karp
96 Garfield Road

Ms. Howard-Karp followed up on Ms. Porter's questions saying that Avalon, with 250 units and over 750-1,000 people, and Jefferson Station were both created after the Adult Use Overlay district. She asked if that would create an argument for a greater buffer zone.

Mr. Rosenberger clarified that there are 500+ units across both projects to the south. Chairman Bethoney answered that Mr. Rosenberger stated in his presentation that a larger buffer would eliminate the ability to put a use there and asked him to further explain.

Mr. Rosenberger stated that a lot of thought went into the existing district and that it provides a good foundation. If it needs to be altered in the future, that can be done. A 1,000 or 500 foot buffer definitely reaches residential property from Legacy Place. If Dedham allowed parcels up at Stergis or some of the other ones to have a firearms business, that would not be an impediment to the residential areas down here. Ms. Porter stated that it would take out National Amusements, but not Legacy Place. Mr. Rosenberger said 300 feet would be really close and that the 150 foot buffer was reasonable. Chairman Bethoney stated that the Board would consider a greater buffer zone.

Mr. Rosenberger said a determination for the warrant publication would be needed before November 1. Chairman Bethoney informed that the next Board meetings were on October 10 and 24. Between today and October 10 is a full agenda, so between today and October 24, he asked that the Board think about the bylaw proposal and address any comments to Mr. Rosenberger or Attorney Eichman. The Board will revisit it and make a recommendation at the Town Meeting on October 24.

The Chairman asked Ms. Kijas to email the bullets she provided at the hearing to the committee for review and to make comments to Mr. Rosenberger. He also asked that most of them be incorporated into the regulations.

Ms. Porter asked for maps for the next meeting with the residential areas and new mixed use to see 150, 300 and 500 foot buffer zones.

Motion: Chairman Bethoney sought a motion to continue the public hearing until October 24, 2019. It was so moved by Ms. Porter and seconded by Mr. O'Brien.

Motion amended: During discussion, Chairman Bethoney asked Ms. Porter to amend her motion to include that the location will be at Town Hall. Ms. Porter so moved, Mr. O'Brien seconded.

Vote: The vote was unanimous at 5-0.

Dedham Active Transportation Committee Appointment

Chairman Bethoney introduced the next item on the agenda and stated the candidates: Mr. Studley, Ms. Larsen, and Mr. Celata. Board members had already received a description of the committee, resumes and letters of interest. He asked the members for their votes.

Mr. Podolski:	Mr. Celata
Mr. O'Brien:	Celata
Ms. Porter:	Ms. Larsen
Mr. McGrail:	
Chairman Bethoney:	Steven Celata

After polling the Board, Chairman Bethoney sought the nomination. Mr. Podolski nominated Mr. Celata. Mr. McGrail seconded. There were no other nominations. The Chair said he will seek a vote on the nomination of Mr. Celata. All were in favor.

Chairman Bethoney said he received a call from Mr. Jim Mahr of the Park & Recreation Commission. He was appointed to the Dedham Square Planning Committee by Park & Rec., but they were unaware there was no appointment for a member for the Dedham Square Study Committee on the Park & Rec. Mr. Marr posed reasonable arguments as to why there should be a member of Park & Rec. Chairman Bethoney spoke to Ms. Porter since she was at the meeting and she agreed. Since he had already been appointed, the Chairman suggested he be considered. This would require a restructure of that committee to include a member of the Park & Recs committee.

Motion: Mr. Podolski moved that the Dedham Square Planning Committee be expanded to include an additional member from Parks & Rec. It was seconded by Mr. McGrail.

Vote: The vote was unanimous at 5-0.

Motion: Chairman Bethoney sought a motion to support the appointment of Mr. Marr from Parks & Recreation to the Dedham Square Committee. The motion was made and seconded by Mr. McGrail.

Vote: The vote was unanimous at 5-0.

The Chair then instructed Mr. Rosenberger to ask Parks & Rec. and to contact Mr. Marr.

Old/New Business

Mr. O'Brien asked the Board if it was pertinent to review the minutes of the Building Construction Committee in regard to Phase 2 of the Public Safety Building before the vote.

Per Mr. O'Brien's request, Mr. Rosenberger had asked Mr. Sullivan for the minutes, but found they contained mostly line items and votes.

Mr. O'Brien stated that the Board has been asking for information in any format from the consultant and Town Manager in order to make a proper vote on what will be involved to build Phase 2 of the Public Safety Building. He asked that it be documented that this was all that was provided. He asked Mr. Rosenberger to get the minutes for Phase 2 only.

Ms. Porter stated there will be a Mixed-Use Open House on October 22 as part of the study from 5:00 – 8:00 pm at the Dedham Middle School on Whiting Ave. It will be a drop-in format for the public to give their opinion.

Adjourn

Motion: Mr. McGrail moved to adjourn, seconded by Mr. Steeves.

Vote: The vote was unanimous at 5-0.