

**HARWINTON ZONING COMMISSION
MONDAY, AUGUST 22, 2022
TOWN HALL 7:00 P.M.**

Present: Chairman Daniel Thurston, Cynthia Kasey, Deborah Kovall, Theodore Root, Alternate Member Dave Foster, Alternate Member Michelle Whitford and Land Use Coordinator Polly Redmond

Also Present: Michael D. Rybak and Michael D. Rybak, Jr.

Absent: William Ponte and ZEO Don Truskauskas

1. OPEN MEETING – ESTABLISH QUORUM.

Chairman D. Thurston called the meeting to order at 7:00 p.m. All regular members present are seated with Alternate Member D. Foster seated for W. Ponte.

2. APPROVE MINUTES OF PREVIOUS MEETING: 8/8/2022

D. Kovall **motioned** to approve the minutes of the previous meeting, seconded by T. Root. Motion passed unanimously.

3. PUBLIC COMMENT.

None.

4. RICHARD & KAREN ZALESKI/ROCK INDUSTRIES, LLC – APPLICATION FOR SINGLE FAMILY DWELLING, 365 LITCHFIELD ROAD, B6-05-0034.

Richard Zaleski is present to represent. Plans by Hrica Associates titled Driveway Site Plan, prepared for Northland Site Development, Lot 2, Old Orchard View, dated 4/14/2006, revised 6/30/2006 for detention basin are reviewed. The application history dates back to 2006 when Northland Site Development (Authorized Agent Richard Zaleski) applied for a Wetlands approval for a driveway crossing. Plans showed the location of a single-family dwelling in the non-regulated area. The Wetlands Commission approved the application which then expired after five years with no activity started. Mr. Zaleski brought the application back to the Wetlands Commission and received an approval on 5/2/2022 under the application name of Rock Industries, LLC. Plans show the approximate 1100-foot-long driveway with two pull-offs and areas of the driveway at 15% grade. Mr. Zaleski informs the Commission that the Wetlands Commission is requiring the driveway to be paved. D. Kovall recommends perhaps adding a third pull-off up closer to the house with Commissioners suggesting that Dave Bousquet, DPW Supervisor, look at the driveway as Deputy Fire Chief, to perhaps suggest where a third pull-off could be added. ZEO Don Truskauskas could also discuss this with Dave Bousquet. T. Root **motioned** to approve the application with the condition that Dave Bousquet and Don Truskauskas review the plans and recommend where a third pull-off could be located. D. Kovall seconded the motion and it passed unanimously.

5. DISCUSSION/POSSIBLE DECISION - ZONING COMMISSION INITIATED PROPOSAL TO AMEND THE ZONING REGULATIONS DATED 12-3-2021 TO CONSIDER EITHER PROHIBITING OR ALLOWING CANNABIS ESTABLISHMENT USES IN TOWN PER PUBLIC ACT 21-1.

LUC Redmond reports that on 8/10/2022 the Planning Commission voted 3-2 in favor of the proposed regulation to prohibit Cannabis Establishments. D. Kovall **motioned** to approve and adopt the proposed regulation amendments to the Harwinton Zoning Regulations dated 12-3-2021 as follows:

To Add to Section 2.3 – Definitions

“Cannabis” means marijuana, as defined in C.G.S. section 21a-420.

“Cannabis establishment” means a producer, dispensary facility, cultivator, micro-cultivator, retailer, hybrid retailer, food and beverage manufacturer, product manufacturer, product packager, delivery service or transporter.

“Cannabis product” means cannabis that is in the form of a cannabis concentrate or a product that contains cannabis, which may be combined with other ingredients, and is intended for use or consumption. “Cannabis product” does not include the raw cannabis plant.

“Cultivator” means a person that is licensed to engage in the cultivation, growing and propagation of the cannabis plant at an establishment with not less than fifteen thousand square feet of grow space.

“Dispensary facility” means a place of business where cannabis may be dispensed, sold or distributed in accordance with chapter 420f and any regulations adopted thereunder, to qualifying patients and caregivers, and to which the department has issued a dispensary facility license under chapter 420f and any regulations adopted thereunder.

“Food and beverage manufacturer” means a person that is licensed to own and operate a place of business that acquires cannabis and creates food and beverages.

“Hybrid retailer” means a person that is licensed to purchase cannabis and sell cannabis and medical marijuana products.

“Manufacture”, as applied to cannabis, means to add or incorporate cannabis into other products or ingredients or create a cannabis product.

“Medical marijuana product” means cannabis that may be exclusively sold to qualifying patients and caregivers by dispensary facilities and hybrid retailers and which are designated by the Commissioner of Consumer Protection as reserved for sale to qualifying patients and caregivers and published on the department's Internet web site.

“Micro-cultivator” means a person licensed to engage in the cultivation, growing and propagation of the cannabis plant at an establishment containing not less than two thousand square feet and not more than ten thousand square feet of grow space, prior to any expansion authorized by the Commissioner of Consumer Protection.

“Producer”, as applied to cannabis, means a person that is licensed as a producer pursuant to section 21a-408i and any regulations adopted thereunder.

“Product manufacturer”, as applied to cannabis, means a person that is licensed to obtain cannabis, extract and manufacture products exclusive to such license type.

“Product packager”, as applied to cannabis, means a person that is licensed to package and label cannabis.

“Retailer”, as applied to cannabis, means a person, excluding a dispensary facility and hybrid retailer, that is licensed to purchase cannabis from producers, cultivators, micro-cultivators, product manufacturers and food and beverage manufacturers and to sell cannabis to consumers and research programs.

ADDITIONAL LANGUAGE:

Section 4 - Permitted Uses and Special Permit Uses for Each Zone, to include the following:

Prohibited Uses: Recreational and Hybrid Cannabis/Marijuana Establishments, including any producer, dispensary facility, cultivator, micro-cultivator, retailer, hybrid retailer, cannabis food and beverage manufacturer, cannabis product manufacturer, cannabis product packager as defined in the Connecticut Public Act Concerning Responsible and Equitable Regulation of Adult-Use Cannabis (Public Act 21-1), codified as C.G.S. Title 21a, Chapter 420h, Part I, as amended.

FINDINGS AND REASONS:

The Zoning Commission began discussions on this issue in August 2021, carefully considered the implication of the Connecticut Public Act Concerning Responsible and Equitable Regulation of Adult-Use Cannabis (Public Act 21-1), and concluded that a Moratorium on recreational and hybrid Cannabis Establishments would be required to more fully consider the issues raised by Public Act 21-1, codified as C.G.S. Title 21a, Chapter 420h, Part I, as amended. The Commission imposed a Moratorium on Cannabis Establishments on December 3, 2021 that expires December 3, 2022.

The Zoning Commission opened a public hearing on recreational and hybrid Cannabis Establishments on June 13, 2022 and concluded the hearing on July 25, 2022. The Commission has reviewed and considered the following items entered into the record:

- A. A copy of Public Act 21-1 An Act Concerning Responsible and Equitable Regulation of Adult-Use Cannabis.
- B. Zoning Regulations dated 12-3-2021
- C. Legal notice as published in the Republican American newspaper on July 1, 2022 and July 8, 2022
- D. Notice to Northwest Hills Council of Governments on April 26, 2022. Their response has been received finding that the proposal to prohibit or allow is *“not to be in conflict with any regional plans”*.
- E. Notice to Naugatuck Valley Council of Governments on April 26, 2022. Their response has been received finding that the proposal to prohibit or allow is *“found to be regionally insignificant”*.
- F. Notice given to Harwinton Planning Commission on April 22, 2022.
- G. Notice given to Harwinton Town clerk on May 2, 2022
- H. Notice given to the Board of Selectmen on May 2, 2022
- I. Notice given to Town Counsel Michael D. Rybak on May 2, 2022
- J. A copy of Public Act 21-1, Section 148 submitted by Atty. Rybak
- K. A copy of Public Act 22-103, Section 9, submitted by Atty. M. Rybak, that has repealed the limit of permits that can be issued. Originally, one permit for every 25,000 residents was to be issued but with PA 22-103 there is now no limit on the number of permits that can be issued within a municipality.
- L. A copy of the Naugatuck Valley Council of Governments Memorandum dated July 6, 2021 titled 07062021 Public Act No. 21-1 Cannabis Act Summary.

- M. A copy of State of Connecticut Office of Policy and Management Municipal Authority - Impact Overview on An Act Concerning Responsible and Equitable Regulation of Adult-Use Cannabis. (**It is noted that the Municipal chief zoning officials are required to report these zoning changes to the OPM Secretary and DCP (Department of Consumer Protection) – in writing – within 14 days after adopting regulation changes.*)
- N. A copy of the Town of Harwinton Zoning Commission's Temporary One-Year Moratorium on Cannabis Establishments, Section 4.0.1, that expires December 3, 2022.
- O. A copy of Statement of Purpose: *To Address the prohibition of allowance of retail sale of recreational cannabis/marijuana by Zoning Regulation.*

The Zoning Commission is authorized by Section 148 of Public Act 21-1, C.G.S. Section 21a-422f, to amend the Harwinton Zoning Regulations to: (1) prohibit the establishment of a Cannabis Establishment, or (2) establish reasonable restrictions regarding the hours and signage within the limits of such municipality, or (3) establish restrictions on the proximity of Cannabis Establishments to any of the establishments listed in subsection (a) of subdivision (1) of section 30-46 of the General Statutes. Having previously established a moratorium on Cannabis Establishments, the Commission considered the three possible courses of action set forth in Public Act 21-1, C.G.S. Section 21a-422f. After conducting public hearings and reviewing the record thereof, the Commission concluded that a total prohibition on retail and hybrid Cannabis Establishments was most appropriate for the following reasons:

1. The Zoning Commission is authorized to regulate the uses of buildings and land, to divide the town into zones by type of use, to adopt regulations governing such uses in accordance with a comprehensive plan, to protect public health, safety, convenience and property values, to promote the general welfare and to conserve the value of buildings and encourage the most appropriate use of land throughout the town. Harwinton has very little land zoned for retail service uses, most of which is within close proximity to the town's three churches, the Consolidated School, and the Town Hall. Harwinton has very little land zoned for industrial uses, most of which is adjacent to the towns of Burlington and Torrington, or parcels classified as such by pre-zoning usage since 1955.

The Commission's policy is to ensure that this limited amount of land and buildings is reserved for essential retail stores and services while preserving the historic, rural character of Harwinton. A marijuana retail or production facility is not an essential service or industry, and is not in keeping with the rural character of Harwinton or its Plan of Conservation and Development. Such uses do not promote public health, safety or the general welfare, do not conserve property values and are not, in the opinion of a majority of the Commission, the most appropriate use of the town's limited retail or industrially zoned land.

2. The Harwinton Zoning Regulations are "permissive type" zoning regulations and clearly state: "Any use which is not specifically permitted in a zone is prohibited in the entire Town." (§1.31) "Uses of land, buildings, or structures not clearly permitted in the various zones are prohibited." (§2.2) "Uses of land or structures not clearly permitted in the various zones are prohibited."

3. The Commission reviewed its existing Zoning Regulations (Exhibit B) and noted that since 2015, Medical Marijuana Dispensary Facilities and Medical Marijuana Production Facilities have been prohibited in all zones in Harwinton. A prohibition on recreational and hybrid Cannabis Establishments is consistent with the existing prohibition on Medical Marijuana Dispensary Facilities and Production Facilities. This additional prohibition creates a consistent overall scheme of zoning, and equal treatment, where all Cannabis Establishments are prohibited in all zones in Harwinton, regardless of whether that establishment is for medical, recreational or hybrid purposes.
4. The Planning Commission's report states they are in agreement with the Zoning Commission's draft proposal to prohibit Cannabis Establishment Uses and that the proposal is in keeping with the Plan of Conservation and Development to keep the rural character of the town.

AUTHORIZATION

Pursuant to Section 148 of Public Act 21-1, C.G.S. Section 21a-422f, the chief zoning official of Harwinton shall report, in writing, the foregoing zoning changes adopted by this Commission regarding Cannabis Establishments pursuant to this subsection to the Secretary of the Office of Policy and Management and to the Connecticut Department of Consumer Protection not later than fourteen (14) days after the adoption of these changes.

T. Root seconded the motion and it passed unanimously.

Revised Zoning Regulations on Cannabis Establishment Uses will become effective upon date of publication.

6. COMPLAINTS/ENFORCEMENT ACTIONS.

Lillian Busse, 15 Hannah Way, is in the audience and asks for clarification on whether the Zoning Commission is still requiring Len Lopardo, developer of Sunset Ridge, to obtain an engineer, other than his own, to go out to the property and inspect the sink hole the residents have been complaining about. L. Busse states that at an unofficial Association meeting, Mr. Lopardo told her that ZEO D. Truskauskas told him that he now didn't need to get an engineering report from an unbiased engineer. Commissioners state that they are certain ZEO Truskauskas did not say this to Mr. Lopardo and that they now want Mr. Lopardo to attend their next Zoning meeting on September 12, 2022 at 7:00 p.m. to discuss the lack of receiving an engineering report.

7. ANY OTHER BUSINESS. None.

8. INVOICES. None.

9. ADJOURN.

C. Kasey **motioned** to adjourn the meeting at 7:32 p.m., seconded by T. Root. Motion passed unanimously.

Respectfully submitted,

Polly Redmond
Land Use Coordinator

