



Planning Board Meeting Agenda

Time: 7:00p.m.

Date: Tuesday, May 3, 2021

Location: Meeting to be held Remotely via GoToMeeting

1. Agenda Packet - May 3, 2021

Documents:

[2021 04 05 PLANNING BOARD MINUTES-J.LADIK W CLUTCZA EDITS.PDF](#)
[NEW ENGLAND CRAFT CULTIVATORS MEMORANDUM TO PLANNING BOARD
APRIL 28 2021.PDF](#)

2. Call To Order

3. Acceptance Of Minutes

- a. April 5, 2021

4. Action Items

- a. Discussion On Interpretation Of Recreational Marijuana Bylaw
- b. New New England Craft Cultivators (NECC) - Deliberation

5. Reports/Correspondence/Discussion

(Matters may arise that the chair didn't reasonably anticipate)

- a. Stormwater ByLaw/Proposed Rules And Regulations
- b. Local Resources Recovery Planning Grant
- c. Master Plan Implementation Team Update
- d. NMCOG Update/DLTA Funding Request
- e. One Stop For Community Growth Expression Of Interest

6. Future Meetings

- a. May 17, 2021
- b. June 7, 2021

Planning Board Meeting Minutes

4/05/2021

Board Members

Present: Casey Campetti, Chuck Walkovich, Jennifer Gingras, Joyce Morrow

Absent: Paul Lonergan, Al Patenaude

Staff: Lisa Davis, Planning Consultant, Cheryl Lutzka, Administrative Assistant

Guests: Mark Matthews, MPIT; Paula Terrasi, Conservation; Tony Beattie, Select Board; Pat Harrington, DPW Board; Cathy Netburn

1) Agenda Packet (attachment)

2) Call to Order

The meeting was called to order by Chair Campetti at 7:00PM

3) Acceptance of Minutes

March 1, 2021 – Motion to accept the minutes as written by Mr. Walkovich, seconded by Ms. Morrow. All in favor

March 8, 2021* – Motion to accept the minutes as corrected by Ms. Morrow; seconded by Mr. Walkovich. All in favor. (*Note: There was a typo in the date on the agenda that stated these minutes were for March 8, 2015. The correct date of the minutes is March 8, 2021)

March 15, 2021 – Motion to accept the minutes as written by Ms. Morrow; seconded by Mr. Walkovich. All in favor

8b) Local Resource Recovery Planning Grant Update *(note addressed out of Agenda order)*

Ms. Davis reported that there was a kick-off meeting with the advisory group and NMCOG is getting underway. The first step is defining the study area – Main Street to RR Square, extending to Groton Street to the Covered Bridge, then including the Bank and Walgreens in the other direction. The Business Survey is due April 12 and Margaret Scarsdale, Selectwoman, worked with Maureen Bolger, Assessor, to locate and contact 60-80 businesses. The Survey is very proscribed, and the results are sent directly to the State. They tabulate the results but the group does not see the survey until the results are formalized. Beverly Woods from NMCOG was going to see if she could obtain the results of the business survey. NMCOG performed a site visit on Saturday in order to provide information for the required end of June plan. The advisory group needs to come up with recommendations and the State would provide funding. Some ideas were enhancing the Rail Trail signage, providing benches, better storefronts.

4) 7:05 pm – Continuation of the Public Hearings on Two (2) Special Permit Applications to Allow Construction of Two (2) Two-family residences at 4 Scotch Pine Farm Way (Lot 7A) and 6 Scotch Pine Farm Way (Lot 7B) (Applicants are Michael Quintal and Donna Quintal)

Mx. Campetti opened the Public Hearing for the two special permit applications at 4 and 6 Scotch Pine Farm Way and asked Mr. Jack Visniewski to present the updated plans for review.

Mr. Visniewski walked everyone through the changes requested by the Conservation Commission, Town Engineer, and Planning Board members, sharing plans on the video screen. Any existing conditions to the property have been resolved, the original dwelling will be removed, as well as the existing septic, demolition and erosion control permits will need to be required to restore the area.

A firetruck turnaround was added to the site plan along the driveway to 7B (25' turn radius); Chief Borneman sent an email that he was pleased with this addition. Mr. Visniewski also noted the following:

- The culvert on the drive to 7B needs additional soil coverage and that will be accomplished
- The site plan identified snow storage areas throughout the property as per the 50' zone for wetlands.
- A turnout was added to the drive to 7B so that two vehicles could pass each other easily if needed.
- Foundation drains were included on the plan for each unit and the slope on the rear of the driveway for 7B was upgraded to include an additional 2' wide contoured shoulder.
- All utilities will be underground and the addresses were corrected on the Assessor's map for that 7A is now #4 and 7B is now #6 for street addresses to conform to the first two dwellings #1 and #3.

Mr. Visniewski commented that while he submitted his changes/revisions a week prior, he did not hear any comments from any Boards/Committees.

Mx. Campetti asked Ms. Gingras, Associate member to step in as a full voting member to participate in the Public Hearing and will act as Clerk tonight. Ms. Gingras read Chief Borneman's memo received March 16, 2021 approving the design of this Special Permit.

Ms. Davis confirmed there were no additional comments other than Mr. Kalinowski and Ms. Gendron who were comfortable with the design. Mx. Campetti asked the Board if there were any additional comments or questions. As there were none forthcoming, she opened the meeting up to the Public. No comments were made.

Mx. Campetti asked about waivers on the Special Permit. Mr. Visniewski reminded the Board that there had been one waiver from a concerned abutter but they were too far from the property for this to be an issue.

Ms. Davis suggested that the Public Hearing be closed but add a waiver regarding culvert failure as a condition. She suggested the Homeowners' Association be responsible for correcting any culvert failure. Ms. Davis also noted that she never received the elevation on the two new dwellings. Mr. Visniewski stated that they were similar to 1 and 3 but that he would send them to her so they can be referenced in the decision.

Mr. Walkovich moved to close the Public Hearing for 4 and 6 Scotch Pine Farm Way; seconded by Ms. Morrow. All in favor.

Ms. Morrow moved to grant the Special Permit Application to allow construction of two (2) two-family residences at 4 Scotch Pine Farm Way (Lot 7A) with conditions and elevations submitted by the Planner as previously discussed; Mr. Walkovich seconded. All in favor.

Ms. Morrow moved to grant the Special Permit Application to allow construction of two (2) two-family residences at 6 Scotch Pine Farm Way (Lot 7B) with conditions and elevations submitted by the Planner as previously discussed; Mr. Walkovich seconded. All in favor.

5) Voucher – WB Mason Invoice No. 218619537 - \$129.29 for General office supplies

Ms. Morrow moved to approve the payment to WB Mason for \$129.29 for office supplies; seconded by Ms. Gingras. All in favor.

6) Plan Endorsement (None)

7) Action Items

a. Robinson Hollow covenants

Ms. Davis opened the discussion by noting that a Covenant had inadvertently been left out of the documentation the Planning Board endorsed for Robinson Hollow project at the last meeting. This Covenant allows the applicant to move forward with the Roadway, without posting bond. The Covenant approves the costs of improvements to the property provided with a release for lots within 5 years without a security deposit. Cathy Netburn, Attorney for the Developer, called in with an additional explanation of the Covenant.

Mx. Campetti asked the Board if they had any questions. Ms. Davis explained that this property was deeding a portion to Fish and Game, and open space. The applicant will build a road and will request a bond for that construction at a later date. Ms. Terrasi, Conservation Commission, commented that any land donated does not need Town approval so the applicant should be all set once the Covenant is signed.

Ms. Davis suggested the Planning Board approve the Covenant. Ms. Morrow moved to approve the Covenant for Robinson Hollow as discussed; seconded by Mr. Walkovich. All in favor.

Ms. Davis asked Ms. Netburn to send the original Covenant to the Town Clerk so that the Planning Board members can come and sign off.

b. Reedy Meadows Update Regarding Performance Security

Town Counsel recommends pulling this item from the agenda until we have definitive information.

8) Reports/Correspondence/Discussion
(Matters may arise that the chair didn't reasonably anticipate)

a. Stormwater Bylaw/Proposed Rules and Regulations

Mx. Campetti introduced the discussion on the Stormwater Bylaw. At the last meeting she asked for an updated Bylaw and the Planning Board received it last week. Ms. Davis identified the Planning Board as the body to recommend the Bylaw and since it is not a Zoning Bylaw, there is no Public Hearing required, and no report. It would be important, however, to endorse the Bylaw. Since no one attended this meeting to represent the Bylaw, Mx. Campetti recommended moving the discussion to the next meeting. She then asked if there were any questions from the Planning Board members. None were forthcoming.

Mr. Tony Beattie, 56 Oak Hill Rd, Selectman, questioned how the Bylaw would affect farmers and those residents who own agricultural property. Mr. Beattie was hoping that these residents would be exempt from the Bylaw and any fee involved. Ms. Davis commented that Mr. Beattie might be confusing the Stormwater fee through the DPW Enterprise Fund with this Bylaw and that the two were not the same. Mx. Campetti cited an excerpt from the Bylaw about exemptions for agricultural use. She noted that specific details would be worked out later in the Rules and Regulations, and that the mechanics of the Bylaw were pretty broad based in reference to exemptions. The Planning Board is not in charge of this Bylaw, and are only being asked to make recommendations and comments.

Mr. Beattie understood that the DPW was opposed to any agricultural exemptions on the Stormwater fee. Ms. Davis noted that this Bylaw is concerned with disturbance of land over an acre and that his discussion on Stormwater fees is not relevant to this Bylaw.

Pat Harrington, DPW Board member, asked who drafted the Bylaw and where he could get a copy. Ms. Davis stated that the State prepared the model Bylaw and that NMCOG and Tighe and Bond were collaborating with the advisory group. It has been sent to Town Counsel for comment. Ms. Davis said she can send Mr. Harrington a copy, but that the Bylaw should be posted on the Town website.

Mx. Campetti then asked the Board if they had any further questions or comments and if they felt comfortable recommending this version of the Bylaw. It was decided to move the vote to the next meeting, pending any changes that might be forthcoming in the hopes of additional clarification as to a final draft.

b. Local Resource Recovery Planning Grant (taken out of order and discussed at beginning of meeting)

c. Master Plan Implementation Team Update

Mr. Walkovich reported the committee has sent notes to the responsible parties reminding them of the deadline for the 1st quarter status report. They have received good responses so far and will continue with the follow up so they can compile a report for the Planning Board. Mx. Campetti noted that the Planning Board had some new comments from Board members but would get their report to the MPIT committee as soon as possible.

d. NMCOG Update/DLTA Funding Request

Mr. Walkovich - The next NMCOG meeting is in two weeks.

DLTA – Ms. Davis commented that they held a meeting regarding Open Space. They have not received any update from the State. Beverly Woods from NMCOG suggests that we finish the Local Resource Recovery grant first as that will provide recommendations for design guidelines. Mx. Campetti asked if there was room for discussion on guidelines for design standards. Mx. Morrow commented that the guidelines Mx. Campetti mentioned are more in line with form based codes. Currently, there are no requirements for design standards, however complementary standards in some areas or the entire town could be discussed as they were recommended from the Master Plan. Ms. Davis commented that Margaret Scarsdale, Selectwoman, is looking at the current zoning bylaws and form-based codes. Ms. Morrow stated that we need to have standards in place for consistency to carry out the Village-like theme.

e. One Stop for Community Growth Expression of Interest

Ms. Davis commented that they submitted an Expression of Interest on April 1, 2021 and hope to hear back from the State. Once the State responds, we can move forward. Ms. Morrow asked Mx. Campetti if she saw a draft of that Expression of Interest. Mx. Campetti said she had.

f. Hazard Mitigation

Ms. Davis stated that they finally submitted their report to MEMA and NMCOG with changes. It takes a few months to be approved.

Ms. Terrasi reported that she is working on two projects and has applied for an Action Grant regarding the continuity of streams and dam removal/culverts. The purpose of the grant is to support the many waterways and remove barriers to animals and protect vulnerable species. Climate change and street flooding cause irreparable damage and removing barriers, such as culvert repair and dam removal can detract beavers, and create open waterways that stimulate and improve water quality. These projects can cost between \$800,000-\$900,000, but with grants and private donations, the projects are doable. DPW is very supportive of these projects. She is working closely with the Mass Division of Ecological Restoration and Nashoba Wildlife.

Future Meeting(s)

a. April 20, 2021 - Tuesday

b. May 3, 2021

The meeting was adjourned at 8:15PM by motion from Ms. Morrow, seconded by Mr. Walkovich. All in favor.

Respectfully submitted by Joan Ladik

To: Pepperell Planning Board
Town of Pepperell

From: New England Craft Cultivators, LLC
Wes Ritchie, Esq.

Date: April 28, 2021

RE: Pepperell Marijuana Zoning Bylaw Interpretation

Dear Pepperell Planning Board Members:

We have attached a memorandum detailing our belief that the Pepperell Planning Board has the authority to grant two special permits to cannabis retailers in town.

Over the past 10 months we have provided two in-house legal memorandums outlining the legal rationale undergirding our belief about the number of available special permits can be 2. Rather than just providing our thinking alone, we have engaged a reputable cannabis law firm to analyze the issue as you weigh this decision before you.

The lead memo attorney, Courtney Elgart, is a Massachusetts-licensed attorney with deep legal and policy backgrounds. She served as a staff member in the Massachusetts Legislature to now-Senate President Karen Spilka and has served as an elected Framingham Town Meeting member. She has extensive experience in Massachusetts state and municipal government.

As we have hoped from the beginning of this process, we remain truly thrilled and optimistic about becoming contributing members of the Pepperell business community. As you can see from our detailed plans to occupy a long-vacant unit in town and redevelop the whole mall as a new commerce center, we are committed to being long-term economic development partners with the town.

If you have any questions, please do not hesitate to contact us.

Sincerely,



Wes Ritchie
Co-CEO
New England Craft Cultivators



Tyre Turnbull
Co-CEO
New England Craft Cultivators

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To: New England Craft Cultivators, LLC
From: Courtney A. Elgart, Gillian C. Kuhlmann
Date: April 27, 2021
Subject: Town of Pepperell Planning Board Licensure Decision

You engaged us to analyze whether the Town of Pepperell Planning Board has authority to issue a second special permit to New England Craft Cultivators, LLC (“NECC”) under the relevant laws. This memorandum summarizes our research and analysis.

I. Short Answer

Yes. The Town of Pepperell Planning Board has the authority to issue a second special permit to NECC based on the number of off-premises licenses available within the Town. The Planning Board has considerable authority to adopt reasonable interpretations of the zoning bylaws. It is our opinion that it would be reasonable to interpret the Recreational Marijuana Zoning Bylaw Amendment to allow for two special-use permits for at least four reasons:

1. The language of the Recreational Use Bylaw is consistent with fixing the number of special-use permits to the number of off-premises licenses available within the Town;
2. State law calls for a permissive approach in municipalities such as Pepperell whose voters supported legalization;
3. Other municipalities have interpreted similar bylaws to fix the number of special-use permits to the number of off-premises licenses available; and
4. Practical considerations militate in favor of fixing the number of special-use permits to the number of off-premises licenses available within the Town.

II. Background

It is our understanding that the following has occurred:

In November 2016, Massachusetts voters voted to legalize the recreational use of marijuana by a margin of 53.3% to 44.4%.¹ The ballot initiative received even more support in the Town of Pepperell, with 54.4% of voters voting in favor of legalization.² Indeed, legalization won the majority of support in all three of the Town's precincts.³

In December 2016, the Massachusetts Legislature passed a regulatory framework implementing legalized recreational marijuana.⁴ This law is codified at Massachusetts General Law Chapter 94G. The law, among other things, restricts the ability of municipalities like Pepperell to limit the number of licenses. Specifically, a municipality whose voters voted in favor of legalization cannot restrict the number of marijuana retailers "to fewer than 20 per cent of the number of licenses issued within the city or town for the retail sale of alcoholic beverages not to be drunk on the premises where sold under section 15 of chapter 138."⁵

In May 2019, the Town amended its zoning bylaws to adopt the Recreational Marijuana Zoning Bylaw Amendment.⁶ Section 6640.5 of the Recreational Use Bylaw provides that "consistent with M.G.L. c. 94G, § 3(b)(2), ... [t]he number of Marijuana Retailers shall not exceed twenty percent (20%) of the number of alcohol licenses issued pursuant to M.G.L. c. 138, §15 for retail sale of alcohol not to be drunk on the premises in the Town of Pepperell, said 20% figure to be rounded up to the next whole number."

In 2019, NECC approached the Town about opening a retail marijuana dispensary. The Town indicated that it believed its zoning bylaw allowed for two retail stores and it set forth a process where the Town would only engage in conversations with two retail companies at a time.⁷ The Town then issued a Host Community Agreement to two companies, one of which is NECC.

¹ Secretary of the Commonwealth, *Election Results 2016 Middlesex County Question 4* (accessed April 27, 2021), available at https://electionstats.state.ma.us/ballot_questions/view/7297/filter_by_county:Middlesex.

² *Id.*

³ *Id.*

⁴ 2016 Mass. Legis. Serv. Ch. 334 (H.B. 3932) (Dec. 15, 2016).

⁵ Mass. Gen. Laws ch. 94G, § 3(a)(2)(ii).

⁶ Town of Pepperell, *By-Laws/Rules & Planning Documents* (accessed April 27, 2021), available at <https://town.pepperell.ma.us/262/By-LawsRules-Planning-Documents>.

⁷ Town of Pepperell, *Select Board Meeting Minutes* (Oct. 14, 2020), available at https://town.pepperell.ma.us/AgendaCenter/ViewFile/Minutes/_10142020-2671 ("In working with the Planning

In August 2020, NECC became the first company to achieve Provisional Licensure status in Pepperell with the Cannabis Control Commission (“CCC”). As part of this process, the Town was required to certify to the CCC that NECC complied with local zoning laws.

Around the same time, NECC learned that the Town began debating whether it could issue two special permits because it had only granted three off-premises licenses even though it was allotted eight of them.

In March 2021, Town Meeting voted on an amendment to the Recreational Use Bylaw which would have struck the current language in Section 6640.5 and replaced it with language fixing the number of licenses at two.⁸ It is our understanding that the amendment gained a majority vote but fell just short of passing a two-thirds vote. We also understand that Town Meeting voted to reject an amendment that would have limited the number of licenses to one.

III. Analysis

The Planning Board has considerable authority to adopt reasonable interpretations of the zoning bylaws.⁹ It would be reasonable to interpret the Recreational Use Bylaw to fix the number of special-use permits to the number of off-premises licenses available within the town for at least four reasons.

A. The language of the Recreational Use Bylaw is consistent with fixing the number of special-use permits to the number of off-premises licenses available within the Town.

At bottom, the Recreational Use Bylaw is worded in such a way that allows for well-meaning parties to have different interpretations of what it requires. The Bylaw fixes the number of special permits to the number of off-premises licenses “issued ... in the Town.” And the Recreational Use Bylaw references Massachusetts General Laws ch. 138, § 15, which itself is unclear but primarily discusses a local licensing authority “grant[ing],” not “issuing,” an application for an off-premises liquor licenses.¹⁰ In other words,

Board and the Planning Department for more than a year, and with the applicants for almost a year, we have been operating under a two retailer premise until very recently.”).

⁸ Town of Pepperell, *Warrant Article for Zoning Bylaw Amendment* (accessed April 27, 2021), available at https://town.pepperell.ma.us/DocumentCenter/View/5845/marijuana_zoning_amend_number_of_establishments.

⁹ *Lundberg v. Dimes*, No. 09 MISC 396124(AHS), 2011 WL 285639, at *5 (Mass. Land Ct. Jan. 19, 2011) (citing *Livoli v. Zoning Bd. Of Appeals of Southborough*, 22 Mass. App. Ct. 473, 479 (1986)); cf. *Pelullo v. Croft*, 18 N.E.3d 1092, 1095 (Mass. App. Ct. 2014).

¹⁰ See Mass. Gen. Laws ch. 138, § 15 (“The local licensing authorities in any city or town which votes to authorize the **granting of licenses** for the sale of all alcoholic beverages, and such authorities in any city or town which votes to authorize the **granting of licenses** for the sale of wines and malt beverages only, **may grant licenses** for the sale at retail of such alcoholic beverages or wines and malt beverages, as the case may be, not to be drunk on the premises,

the Bylaw does not specifically fix the number of special-use permits to either the number of off-premises licenses allotted to the town, which would result in two permits, nor to the number of off-premises licenses granted by the Town, which would result in one permit. But either could reasonably be considered the number of off-premises licenses “issued ... in the Town.”

B. State law calls for a permissive approach in municipalities such as Pepperell whose voters supported legalization.

Massachusetts General Laws ch. 94G, § 3 requires municipalities to abide by the will of the voters in setting limits on marijuana retail establishments. In any city or town where the voters supported legalization, the municipal government cannot severely restrict marijuana retail establishments without getting approval from the voters themselves.

In other words, the state law is specifically structured to favor a permissive approach in municipalities where the voters voted in favor of legalizing recreational marijuana. In Pepperell, legalization passed by an even greater margin than it did across the Commonwealth. Thus, this state law policy favoring a permissive approach to licensing militates in favor of interpreting the Recreational Use Bylaw to permit the issuance of two licenses.

C. Other municipalities have interpreted similar bylaws to fix the number of special-use permits to the number of off-premises licenses available.

Other municipalities have interpreted similar bylaws to fix the number of special-use permits to the number of off-premises licenses available, not to the number of off-premises licenses granted. Indeed, Pepperell would join the City of Worcester, Massachusetts’s second-largest municipality, in interpreting a substantively identical bylaw to require the issuance of special-use permits equal to 20 percent of the off-premises licenses available within in the City.

Worcester reasonably interpreted Massachusetts General Law ch. 94G, § 3 to require the City to base the number of special-use permits on the number of off-premises licenses allotted to the City.¹¹ Accordingly,

to applicants therefor who are citizens and residents of the commonwealth.” (emphasis added)); *see Weiner v. Attorney General*, 484 Mass. 687, 689 (2020) (“Most licenses for such sales are granted by cities and towns, subject to the approval of the alcoholic beverages control commission (commission).” (citing Mass. Gen. Laws ch. 138, § 15)); *see also* Mass. Gen. Laws ch. 138, § 17 (“[T]he local licensing authorities may also **grant** one license under the provisions of section fifteen for each population unit of five thousand or additional fraction thereof, but may, regardless of population, grant at least two licenses under said section fifteen.” (emphasis added)).

¹¹ Edward M. Augustus, City Manager, *Memo to the Worcester City Council on Implementation of Recreational Marijuana Use Law* (Sept. 19, 2017) (“The highest limit is the ‘no fewer than 20% of the off-premise alcohol licenses.’ The city has been allotted 74 off-premises licenses. Twenty percent of 74 is 15 (14.8). Therefore, the city may limit the number of recreational marihuana establishments operating in the city to 15.”); *see also* Cannabis

it adopted a bylaw that reads, “The number of Marijuana Retailers that shall be permitted is limited to 20% of the number of licenses issued within the city of Worcester for the retail sale of alcoholic beverages not be drunk on the premises where sold under section 15 of chapter 138.”¹² And it interpreted the bylaw to allow for 15 licenses, which represent 20 percent of the 74 off-premises licenses allotted to the City.¹³ We know this because the City has only granted 57 off-premises licenses, which, if used as the measurement of special-use permits available, would restrict the number of special-use permits to 12.

Following Worcester’s example, the Town would have two special-use permits available.

D. Practical considerations militate in favor of fixing the number of special-use permits to the number of off-premises licenses available.

Practical considerations strongly favor interpreting the number of licenses “issued ... in the Town” to refer to the number of licenses allotted to the Town and not to the number of licenses granted by the Town. If the Town ties the number of available special-use permits to the number of off-premises licenses currently in use (as opposed to the number allotted under the quota system), it necessarily makes the availability of a special-use permit uncertain and wholly dependent on the business successes or failures of one or more off-premises liquor stores in town.

The number of special-use permits available would rise and fall with the number of off-premises licenses in use. Accordingly, if not all of the off-premises licenses are in use, a business could manipulate the number of special-use permits available by applying for off-premises licenses to increase the total in use. On the flip side, if multiple special-use permits are granted because of an increase in the number of off-premises licenses, the status of those permits could be in flux if, for any reason at any time in the future, one or more package store owners close their stores, let their licenses lapse, or have their local licenses revoked by the Town.

Control Commission, *Guidance for Municipalities* at 10 (Feb. 25, 2019) (“A municipality may pass a bylaw or ordinance limiting the number of marijuana retailers to 20% or more of the number of liquor licenses issued pursuant to M.G.L. c.138 §15 (sale for off-premises consumption) in that municipality. For example, if a municipality **has** 100 such liquor licenses, that municipality may set a maximum limit for 20 marijuana retailers.” (emphasis added)).

¹² City of Worcester Zoning Ordinance § 15(E)(2), available at <http://www.worcesterma.gov/uploads/27/13/2713f492f23bacf1f30773b1b8c079d8/rec-marijuana-zoning-amendment.pdf>.

¹³ See City of Worcester, *Marijuana Regulations* (accessed April 27, 2021), available at <http://www.worcesterma.gov/planning-regulatory/planning-initiatives/marijuana-regulations> (“In accordance with M.G.L. c. 94G and its implementing regulations 935 CMR 500, Worcester is required to facilitate the establishment of 15 regulated Marijuana Retailers.”).

Additionally, tying the number of special-use licenses to those off-premises licenses actually granted allows a municipality to create a de facto ban on special-use permits by manipulating the number of off-premises licenses it grants. This outcome contradicts the spirit and the letter of the state law which prohibits the government of a city or town that voted in favor of legalization from severely restricting or banning the number of marijuana retailers in that municipality without a vote of the people.¹⁴

On the other hand, the number of allotted off-premises licenses is tied to population, a much more stable and reasonable measure of how many special-use permits should be available within a given community.¹⁵ Accordingly, the Planning Board should consider these very real practical considerations, which militate in favor of fixing the number of special-use permits to the number of off-premises licenses available not the number granted within the Town.

IV. Conclusion

For these reasons, we conclude that the Pepperell Planning Board has authority to issue a second special-use permit based on the number of off-premises licenses available in the Town. We are available to answer any questions you have.

¹⁴ Mass. Gen. Laws ch. 94G, § 3(e).

¹⁵ Mass. Gen. Laws ch. 138, § 17.