



TOWN OF HOPEDALE
ZONING BOARD OF APPEALS
TOWN HALL
78 HOPEDALE STREET
HOPEDALE, MA 01747

Christopher P. Hodgens, Chairman
Nicholas A. Alexander, Member
Sandra E. Biagetti, Member
Louis J. Costanza, Member
Scott M. Savage, Member
Mary T. Arcudi, Alternate

**Hopedale Zoning Board of Appeals
Meeting Minutes
September 22, 2021**

Chairman Christopher Hodgens called the public meeting and public hearings to order on September 22, 2021 at 7:00 pm. Meeting was held in the Town Hall Draper Room, streamed live via Zoom and on Hopedale Cable Access.

Participation was made available through the following Zoom link:

Join Zoom Meeting

<https://us02web.zoom.us/j/89428044314?pwd=SUFVVmo3V2UydVRoN014a3cyT2tHZz09>

Meeting ID: 894 2804 4314

Passcode: 439560

Recorded meeting can be found on the Town of Hopedale website under meeting videos.

Members that were present for each case: Christopher Hodgens, Chairman

Nick Alexander

Sandra Biagetti

Scott Savage

Mary Arcudi

Secretary and Alternate:

Applicants and Representatives:

Amanda

Abutters and Guests:

Attorney Joe Antonellis, William Buckley, Andrea Kendal,
Attorney Amanda Cox, Attorney Mike Kaplan

Brian Keyes, Lou Arcudi, Glenda Hazard, Jayme Solomon
Zisu, Becca Solomon, Tim Watson, Ricardo Lima, Joe
Clar, Lewis Family, Carole Mullen, Tom Daige, Greg
Arthur, Renee DeWolf, Hilde Karpanion, Gail Brown, Len
Guertin, J. Martinez

Mr. Hodgens opened the meeting by announcing that the Board of Health (BOH) informed the ZBA that all residents attending the public hearing must wear a mask. Mr. Hodgens thanked the BOH for its concern for residents and addressed the notice posted to the ZBA website. Mr. Hodgens emphasized that ZBA meetings are open to the public. These meetings are not just public meetings but are also public hearings with legal implications that follow. No one is turned away from personal attendance at a ZBA public hearing, and masks will be provided to those who do not have one available. For the record, Mr. Hodgens stated that the Town Hall is presently open, and no one has been prevented from appearing in person.

Before opening the hearing, Mr. Hodgens read a letter that he sent to all with pending applications for a special permit. The letter, concerning the need for Site Plan Review, has also been posted on the ZBA website. Mr. Hodgens said that it has come to the attention of the Hopedale Zoning Board of Appeals that applications for special permits are being filed without obtaining site plan review before the Hopedale Planning Board. (see attached letter). The current practice is not correct and is inconsistent with the Hopedale Zoning By-Laws. The letter identifies the proper procedure.

Mr. Hodgens stated he shared a copy of the letter with the Planning Board Chairman and spoke to the Planning Board Chairman about the situation. According to Mr. Hodgens, the Planning Board Chairman concurs with the proper procedure outlined in the ZBA letter and will take up the site plan reviews that have not taken place as of yet.

Mr. Hodgens stated that the protocol outlined in the ZBA letter is now being followed in other pending cases. At the September 15, 2021, ZBA meeting, Lifted Genetics agreed to a continuation of its public hearing to October 20, and the public hearing will remain open until site plan review is complete, the Planning Board sends its recommendations on the special permit request to the ZBA, and the applicants are ready to proceed.

Case # 4 -2021

Mr. Hodgens opened the public hearing for GFI Partners. The applicant, GFI Partners, is seeking a special permit for new construction of a warehouse and distribution facility in a groundwater protection district at 75 Plain Street (Rosenfeld Concrete property). The hearing notice was published in the Milford Daily News on September 8 and 15, and the posting at the town hall was done on September 3, 2021. The certified abutter's list was obtained by the Assessor's Office and all abutters were sent a notice on September 4.

Attorney Joe Antonellis, representing the applicant, stated that this application is for relief from section 17 Groundwater Protection District Regulations and Compliance. No relief is needed from section 18.4 of the Zoning Bylaws, as a warehouse is an allowed use. The site plan review will be running concurrently with the ZBA special permit request. Based on the information presented by Mr. Hodgens, Mr. Antonellis felt it beneficial to provide evidence to the board related to the Ground Water Protection District.

According to the applicant, this site is currently owned by Boston Sand and Gravel and is engaged in negotiations with GFI to purchase the 144.6-acre property. The nature of this petition is directed at section 17 (Groundwater Protection District), which is to promote and ensure an adequate water supply and to make sure there is no contamination of the environment. Mr. Antonellis believes this project will meet these objectives. GFI will also have to meet all state and local regulations regarding ground water protection. The Hopedale Board of Health requires a 4-foot vertical separation between the proposed site grades and seasonal high ground water levels.

Doug Hartnett from High Point Engineering detailed the proposed project. The zoning bylaw, 17.6 (c) (6) states to permit a use that will render impervious more than 15% or 2500 square feet of any lot. The applicant seeks approval of a special permit to allow 28.7% impervious cover on 144.6 acres previously developed and altered site. Remaining open space is 71.3% (103 acres) Mr. Hartnett's presentation included the zoning district map showing it is in the limited industrial district. The plan is for a 616,875 square foot single story warehouse building set within the center of the property. The site history was shared with the board and residents. The site development plan shows the realigning of the driveway, discouraging traffic to Newton and Mellen Street. The front of the site facing Plain Street will be landscaped to include ground cover screening and open fencing.

This proposed structure will be a single or multi tenant warehouse with loading on the north and south side of the building. Mr. Hartnett detailed Section 17 as follows:

17.1 (a) – Promote health, safety, and general welfare of the community by ensuring adequate quality and quantity of water.

17.1 (b) – Preserve and protect existing and potential sources of drinking water supplies.

17.1 (c) - Conserve the natural resources of the Town.

17.1 (d) – Prevent temporary and permanent contamination of the environment.

Mr. Hartnett said the proposed project complies with and meets the objectives of the regulations as follows:

- Eliminates potential for future gravel mining for commercial purposes.
- Eliminates industrial manufacturing operations, buildings, equipment, and stockpiles throughout the site within/adjacent to sensitive environmental areas and their buffer zones. Includes removal of all fueling facilities and UST's.
- Eliminates barren and degraded soil areas. Install new landscape and ground cover to all disturbed areas, filter runoff and promote nutrient uptake prior to groundwater recharge.
- Implements stormwater Best Management Practices (BMP's) to treat 1" of runoff from all impervious surfaces prior to groundwater recharge and surface discharge to sensitive environmental areas.
- Maintain a minimum 4: vertical separation between the proposed site grades and seasonal high groundwater elevations in accordance with Board of Health regulations.
- Prohibit hazardous materials storage outside of building.

Mr. Hodgins paused the GFI public hearing to take a moment to inquire whether the second applicant on the agenda from MACA Industries wanted to open its public hearing as well tonight due to the notice time restrictions. If MACA simply intended to continue the hearing, Mr. Hodgins did not want to keep people waiting during the GFI public hearing. Mr. Hodgins asked Attorney Cox (on Zoom) if she wanted to be heard on this issue, but Attorney Mike Kaplan (present at the meeting and partner with MACA) stated that he would be agreeing to the continuance, but he wanted to address the ZBA tonight with some of his concerns.

Mr. Hodgins said that Mr. Kaplan would have a chance to be heard tonight. Mr. Hodgins then returned to the GFI public hearing and invited questions and comments. Sandra Biagetti had a question regarding the multi-tenant facility and was interested in hearing who the tenants were going to be. Mr. Antonellis stated that the applicant does not have identified tenants but there is significant interest.

Questions and comments were posed by the following residents:

Mr. Bond of Plain Street requested information on why only abutters within 300 feet were informed. Mr. Hodgins stated that this is based on the Massachusetts General Laws and is not a local decision.

Beth Fox of 1 Mill Street was concerned about the large facility being built and its affect on the wetlands and if the testing is done just by the applicant. Has the state come in to test as well? Mr. Antonellis stated that professional experts completed the research, and the Planning Board will hire peer reviews as well. The Conservation Commission is responsible for considering any impact on the wetlands. The building has been professionally designed by engineers in a manner they feel is most appropriate.

Mr. Hodgins emphasized that this question highlights why the ZBA is deferring action to allow the Planning Board to initiate site plan review. During site plan review all boards and town officials would have an opportunity to review project details and send any concerns to the ZBA.

The ZBA would then consider those concerns and would likely incorporate them into the special permit decision.

Jeff Bond asked again who the tenant was, and Mr. Antonellis indicated that the applicant is not hiding this information from the public and it is not unique in the industry not to have a tenant at this time.

Steve Saravara of 16 Mill street is grateful the area is being repurposed and questions the septic design. He is hopeful a solution could be that this area of Hopedale would have town sewer. Joe Antonellis said the project would be served by municipal sewer. Plans will be presented to the Planning Board.

Chris Mantia of 98 Plain Street was curious about sidewalks in this area. Mr. Antonellis reported that this information would be part of the presentation to the Planning Board. Becca Solomon, a member of the Open Space Committee, asked Mr. Mantia to address this concern with this committee.

Ricardo Lima, Ben's Way and Whitney Road, asked about consideration to include developing some of the grassy area as town fields or a track. Doug Hartnett said at this time they have not contemplated this.

Tim Desmeule, 35 Mill Street, had a concern about the property on the north side and would a buffer zone be considered for that area. Mr. Hartnett stated that there is no activity planned on this side. No commercial business could be added as that area is residentially zoned.

Mr. Martinez questioned the timeline of the project, and Mr. Antonellis stated that the permitting is a lengthy process and construction may not begin for quite some time.

Joe Clar of 116 Plain Street asked if this would be a mixed used facility that might include anything open to the public. Joe Antonellis replied that there would be no public access as it is only being considered for a warehouse.

After the public questions were completed, Mr. Hodgins asked Mr. Antonellis if the applicant is interested in continuing this hearing, as the ZBA will keep this project on its monthly agendas. Mr. Antonellis agreed with the process outlined by the ZBA letter on site plan review and stated that it is most appropriate to wait to hear from the Conservation Commission and the Planning Board before the ZBA votes on the special permit.

Nick Alexander made a motion to continue the public hearing for GFI to October 20, 2021, for a special permit for new construction of a warehouse and distribution facility in a groundwater protection district at 75 Plain Street. Motion seconded by Sandra Biagetti and all were in favor.

The applicant will be emailed a Continuation Form to be signed and returned to the Town Clerk.

Case # 5 -2021 8:26 pm

Mr. Hodgins opened the public hearing for MACA Industries, LLC. The applicant, MACA Industries, LLC, is seeking a special permit for construction of a two-story marijuana cultivation facility at 2 Condon Way. The hearing notice was published in the Milford Daily News on September 8 and 15, and the agenda was posted at the Town Hall on September 3, 2021. The

certified abutter's list was obtained by the Assessor's Office and all abutters were sent a notice on September 4.

Attorney Mike Kaplan is a partner of MACA Industries and presented the ZBA with a timeline outlining the difficulties he has faced in getting his project approved in Hopedale. The process began on December 4, 2017. At that time Town Counsel informed the applicant that the town is only zoned for retail marijuana and does not include marijuana cultivation. Additional zoning needed to be put into place. Mr. Kaplan said it was incumbent on the town to change its by-laws. In the meantime, MACA Industries entered into a host agreement with the Hopedale Board of Selectmen in June of 2019, and in April of 2020 MACA purchased the property. Mr. Kaplan then detailed problems encountered with various town officials. The applicant encountered challenges in receiving the special permit forms from the Town Administrator from June 2020 and finally received the application in December of 2020. The applicant applied to the Planning Board and was placed on the agenda for February 2, 2021 for a site plan review. At that meeting the Planning Board continued the hearing pending safety and fencing concerns and requested input from the Hopedale Police Chief. The evening before the March 2020 Planning Board meeting, the applicant was informed that marijuana cultivation was not listed as a use on the Hopedale Zoning Bylaw table of uses. MACA and the Planning Board brought this to the attention of the Board of Selectmen. The Board of Selectmen added an article to the warrant for the Annual Town Meeting in May in an effort to amend the Hopedale Zoning By-Laws to accommodate the use contemplated by MACA. The Chairman of the Planning Board then informed Mr. Kaplan that he needed to go through the ZBA special permitting process before coming back to the Planning Board for a site review.

Mr. Kaplan was prepared to present to the Zoning Board at this hearing but was notified of an email sent to Attorney Amanda Cox from Mr. Hodgins. This letter detailed what came to light during a previous ZBA meeting, that applicants must obtain a site plan review and approval from the Planning Board before filing for special permits. (This letter is the letter Mr. Hodgins read at the beginning of the meeting this evening). Mr. Kaplan expressed his displeasure at the delays he has encountered and said that he hopes the ZBA is not offended by what he has said.

Mr. Hodgins said that he takes no offense at all to what Mr. Kaplan has said because 90% of what he said has nothing to do with the ZBA. Mr. Hodgins added that he knows a number of the people mentioned by Mr. Kaplan and said that they are hard working people who have the best interests of the town in mind. Mr. Hodgins added that it is not fair to call out people who are not present at the meeting and do not have an opportunity to defend themselves. Mr. Hodgins asked Mr. Kaplan if he had taken any of these matters up with the people being criticized. Mr. Kaplan said that he had not. Mr. Hodgins suggested that Mr. Kaplan take these issues up with the people and boards mentioned, and perhaps he will get some satisfactory responses. Ms. Biagetti said that she did not take Mr. Kaplan's remarks as criticism but more of an outline of the long road that has led him to the ZBA. Mr. Alexander said that Mr. Kaplan did call people by name with specific criticism. Mrs. Arcudi added that it certainly appears that the applicant has encountered some difficulties.

Mr. Hodgins then addressed the purpose of the ZBA letter being sent to the applicant regarding the need for site plan review. Mr. Hodgins said the ZBA is faced with three options: (1) deny the petition because it is incomplete without site plan review; (2) allow the applicant to withdraw the petition until site plan review is obtained; or (3) keep the public hearing open and continue the matter until site plan review is complete, and the applicant is ready to proceed with the special permit application. Mr. Hodgins said the first option seems unfair. Denial of the incomplete application, though possible, would not be the right approach. Mr. Hodgins said the

second option, though possible, would result in added time and expense for the applicant. Mr. Hodgins said the third option seemed to be the best way to deal with the situation confronting the applicant. Mr. Hodgins asked Mr. Kaplan what he wanted the ZBA to do. Mr. Kaplan agreed that the third option (continuance) was the best way to deal with the situation, and he handed a signed copy of the continuance agreement to Mr. Hodgins.

Mr. Hodgins entertained further questions and comments with the understanding that the hearing was going to be continued. Mr. Jeff Bond asked about odor mitigation, and Joe Clar asked about the location. Mr. Kaplan informed Mr. Bond that this will be a small 2 level cultivation building and will be using carbon scrubbers to eliminate any odor. He will be using Boston Environmental to test the odor when the business is up and running. He discussed the location chosen was due to limited locations with the appropriate zoning for marijuana cultivation.

Scott Savage made a motion to continue the public hearing to October 20, 2021, for MACA Industries for a special permit for construction of a cultivation facility at 2 Condon Way. Sandra Biagetti seconded the motion and all were in favor.

As a matter of procedure, Nick Alexander made a motion to continue the public hearing to October 20, 2021 for Lifted Genetics for a special permit for construction of a two-story marijuana cultivation facility at 6 Condon Way lot 14. Motion seconded by Sandra Biagetti and all were in favor.

Motion to adjourn made, seconded, and passed unanimously at 9:15 pm.

Respectfully submitted,

Mary Arcudi
ZBA Secretary