

TOWN OF GERMANTOWN LAND USE LAW UPDATE

Project Number: 2223713

MEETING #6 SUMMARY NOTES

Location: Town Hall/Virtual

Date: March 20, 2023

Time: 6:30 pm

<u>Meeting Attendance</u>
Committee Members
Tony Albino
Austin Sullivan
David Rifenburg Co-Chair
Joe Guida
Jan Borchert
Ellen Jouret-Epstein
Tony Stagno
Consulting Team
Matt Rogers, LaBella
Kyle Hatch (Zoom)

SUMMARY NOTES

1. Matthew Rogers began the meeting by reviewing the meeting notes from Meeting #5. One correction regarding the existing meeting date was noted – the date will be corrected. The committee agreed to adopt the notes as amended.
2. Using a PowerPoint Presentation, Matthew gave a brief presentation on the Town's current Site Plan and Special Use Permit regulations and processes to provide the Committee with a broader understanding of the regulations which will help in future discussions of proposed amendments.
 - a. Site Plan: Matthew reviewed the Town's site plan requirements and process.
 - i. Projects identified on Schedule A: Permitted Uses as "Permitted as of right" require site plan approval.
 - ii. The site plan review process focuses primarily on the subject lot (can the project fit on the lot as proposed and comply with the applicable regulations?).

- iii. Matthew pointed out that public hearings are not required for site plan approval pursuant to NYS law. Germantown has public hearings as optional but doesn't clarify when one might be required. The site plan regulations will be revised to provide guidance regarding public hearings.
 - b. Matthew reviewed the Town's application requirements for site plans, including the Town-specific groundwater issues.
 - c. Matthew reviewed the site plan review process and the Planning Board's review checklist.
 - d. Special Use Permits: Matthew reviewed the Town's special use permit requirements and process.
 - i. Projects identified on Schedule A: "Special Use Permit" requires a special use permit along with site plan approval.
 - ii. Public hearings are required for all special use applications.
 - iii. Special use permit reviews allows a community to consider additional, detailed requirements relative not only to the site but also the neighborhood and community-wide implications.
3. A question was raised on agricultural structures being exempt from the NYS standards. Matthew will clarify the types of buildings and under what conditions agricultural structures may be exempt from NYS Building Code standards.
4. Question was raised on managing timelines when requesting feedback from entities outside of the planning/zoning board (e.g., Fire Dept, Highway Dept. , etc.), Matthew explained it is a matter of communicating deadlines and urgency, often a brief phone call is all that's needed to solicit immediate feedback. A deadline should be included in all referrals. County referrals require a minimum of 30 days by state law.
5. Matthew reviewed the first draft of the Town's draft cannabis regulations dated March 16, 2023.
 - a. Matthew clarified that the NYS Office of Cannabis Management is still in the process of drafting and adopting applicable regulations to implement the Marihuana Regulation and Taxation Act. Therefore, these draft regulations may need to be modified once the State adopts pending regulations. There is no schedule for the state to adopt their final regulations.
 - b. Matthew explained that these draft regulations propose (for law drafting purposes) grouping dispensaries and consumption lounges into "Cannabis Facility" along with cannabis cultivation, microbusinesses, nurseries, distributors, and processing facilities for discussion purposes. The Town is not required to allow distributors and processing facilities, while cultivation and nurseries if proposed within an agricultural district may be protected under NYS Ag. and Markets law.
 - c. Question was raised on the State's role in determining locations of businesses. Matthew noted that the State will look at where licenses have already been granted to avoid overconcentration of cannabis businesses in one location. *[Update: The State has released updated [guidance for Adult-Use Retail Dispensaries](#) which includes*

language regarding siting and locations. Pg. 18 of the document provides some clarification – “The licensed premises of the dispensary will only be approved if the dispensary is in a location consistent with public convenience and advantage standards, as determined by the Board.” A few factors that will influence their decision include the “classes, and character of other licenses in proximity to the location and in the particular municipality; where there is demonstrated need for such license; effect on pedestrian and vehicular traffic, existing noise levels; and other factors specified by law or regulation.]

- d. Concerns related to oversaturation in Germantown – Matthew noted that in addition to siting decisions made by NYS, the locations of dispensaries and lounges will also be driven by the market and therefore, there should be little concern about local oversaturation. In addition, it was clarified that NYS is not expected to weigh the decision of a dispensary based on proximity to a cultivation facility.
- e. 1,000 ft. buffer. The Committee discussed the currently proposed 1,000 ft. buffer which as drafted, covers all defined cannabis facilities (e.g., no cannabis facility would be permitted within 1,000 ft of another cannabis facility). *[UPDATE: Municipalities with populations under 20,000, can institute a buffer of up to 2,000 between dispensaries.]*
- f. NYS requires all product be grown in NYS.
- g. Question was raised on whether there are volume caps placed on the microbusiness license. Matthew said he is unaware of any cap on how much a microbusiness can grow/sell and clarified that cannabis grown in a microbusiness can only be sold by the microbusiness – it cannot be distributed to other businesses. This will self-limit the amount grown. *[Update: The State has yet to promulgate regulations for microbusinesses which may include product limits.]*
- h. Matthew reviewed the definitions for “School Grounds” and “Library.”
- i. Matthew reviewed the draft use table for cannabis facilities and associated separation distances.
 - i. There was consensus to include cultivation uses be added to the HMU District as a special use since other agricultural uses are allowed there.
 - ii. Using the draft setback back, Matthew reviewed how setbacks from other uses would impact the HMU District.
 - 1. The Committee discussed including the dog park within the public parks category. It was agreed the dog park should be included. The map will be revised accordingly.
 - iii. The setbacks were clarified – under NYS law, the setbacks only apply when the cannabis facility and the protected uses are on the same street. When a use is located on a corner, the use is considered located on both streets.
 - iv. Question was raised about the Town’s ability to limit hours. The Town does have the authority to limit hours but cannot limit hours to less than 70/week.

- v. A discussion of parking requirements took place. It was decided Cannabis Facilities should not have additional parking requirements that are unique to them as it would create unnecessary additional parking.
 - j. The Committee discussed the pros and cons of adding dispensaries to the HMU District. After discussion, there was consensus to add dispensaries to the HMU District with a special use permit.
 - k. It was decided that microbusinesses would be an appropriate use in the HMU District with a special use permit. Matthew noted that NYS has not clarified if cultivation associated with the microbusiness could be located on a separate lot or if it has to be contained within the same building.
 - l. There was consensus to include cultivation facilities to the AR, NR, BD districts as special uses.
 - m. Matthew reviewed the draft site plan approval requirements for different cannabis facility uses.
 - i. There was agreement to revise the draft law to allow walk-up and drive-thru window service.
 - n. Matthew described the process by which an applicant will be required to notify municipalities with a NYS issued form. Upon receipt of the form, municipalities have 30 days to provide an "opinion" on approvability. NYS has yet to clarify the extent of local reviews and what an "opinion" would constitute.
6. Matthew reviewed the revised Accessory Dwelling Unit Regulations dated March 16, 2023.
- a. The definition for accessory apartments is proposed to be revised to allow for apartments that are detached from the primary structure for the purposes of to increasing access to housing.
 - i. Concerns about short term rentals were brought up. The Town is addressing short-term rentals through a separate process. It will be key to ensure consistency between the code update and short-term rental law drafting process.
 - ii. Matthew noted that communities can add restrictions to the accessory apartment regulations to limit their use as short-term rentals.
 - iii. There was a discussion on the differences between accessory apartments and accessory dwellings: The draft short-term rental law unit may not allow for kitchen facilities.
 - iv. Clarification on accessory residential structures: The current Code uses accessory apartment and accessory residential structure interchangeably. The Code will be revised to use only one term to avoid future confusion.
 - b. Matthew briefly reviewed the legal definition of a manufactured home.
 - c. Meeting #7 will pick up at the top of pg.2 of the Draft Residential Amendments, addressing manufactured homes.
7. The vacant parcel adjacent to Palatine Manor was identified as possibly the only feasible location for future affordable multi-family housing. The Code update process will ensure

the site is zoned to allow for multi-family housing. However, the Code update process cannot preserve the site for this use. If the Town would like to preserve the site for future affordable housing use, it will need to address the issue separate from this process, which may include negotiating a right of first refusal.

Adjourned: 8:40pm

Meeting #7: April 17, at 6:30PM

The preceding minutes represent the author's understanding of the matters discussed and decisions reached. The Committee will determine completeness and accuracy at their next scheduled meeting.

Respectfully submitted,

LABELLA ASSOCIATES, D.P.C.

Matthew Rogers, Senior Planner, LaBella Associates

Cc: All Attendees