



# City Of Attleboro, Massachusetts

**ZONING BOARD OF APPEALS**  
GOVERNMENT CENTER, 77 PARK STREET  
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## MINUTES

MAY 11, 2023

In accordance with the provisions of the General Laws of Massachusetts, Chapter 40A, as amended, public hearings were held on Thursday, May 11, 2023 at 6:30 p.m. in the Municipal Council Chambers located at Government Center, 77 Park Street, Attleboro, MA 02703, relative to the following:

Zoning Board Members Present: Chairwoman Cathy Merkle, Kathy Rautenstrauch, and Sandra Varrieur

Members Absent: Johnny Bender and Kent Richards

The Board heard the continued public hearing for Case #5639, the application of Abram Agayby for a special permit pursuant to §17-9.0 SPECIAL PERMITS under §17-16.9 TABLE OF PERMITTED SIGNS & DIMENSIONAL REGULATIONS to accommodate an electronic message center on an existing sign, the subject premises being located at 289 County Street, more specifically Assessor's plat #44, lot #594, located in the General Business zoning district and Single Residence -A zoning district.

Senior Land Use Planner Stephanie Davies informed the Board that although Mr. Agayby indicated that would likely be withdrawing the application, he has not yet submitted a formal request.

There being no one else to speak, the public hearing was continued.

The Board heard the continued public hearing for Case #5660, the application of Michael Gelinias for a special permit pursuant to §17-9.0 SPECIAL PERMITS under §17-3.5(#19) TABLE OF ACCESSORY USE REGULATIONS for the accessory storage of liquid nitrogen; the subject premises being located at 45 Frank Mossberg Drive, more specifically Assessor's plat #147, lot #10A, located in the Industrial zoning district.

The Board read the email from Michael Gelinias of Mini Systems, Inc., dated May 11, 2023, to Senior Land Use Planner Stephanie Davies requesting that the Board continued the public hearing to June 8, 2023 relative to the special permit application for 45 Frank Mossberg Drive, Case #5660.

There being no one else to speak, the public hearing was continued.

The Board heard the continued public hearing for Case #5651, the application of 42 County Street LLC for special permit pursuant to §17-9.0 SPECIAL PERMITS from the provisions of §17-5.9(F) GENERAL PARKING AND LOADING SPACE STANDARDS to reduce the required minimum number of off-street parking stalls, §17-9.0 SPECIAL PERMITS under §17-5.1 OFF-STREET PARKING REQUIREMENTS to reduce the required dimensions of off-street parking stalls, §17-9.0 SPECIAL PERMITS under §17-5.6(A) LOCATION OF PARKING AND LOADING SPACES to allow the use of off-site private parking stalls located within three hundred (300') feet of the principal lot, §17-9.0 SPECIAL PERMITS under §17-5.7 MUNICIPAL PARKING LOTS to allow the use of off-site municipal parking facilities located within one thousand (1,000') feet of the principal lot, §17-9.0 SPECIAL PERMITS under §17-12.0 FLOOD PLAIN DISTRICT to accommodate work/excavation within the 100-year floodplain and floodway, as well as for variances pursuant to §17-8.9 VARIANCES from the minimum lot area, from the maximum building height, and from the minimum side yard setback requirements pursuant to §17-4.9 TABLE OF DIMENSIONAL AND DENSITY REGULATIONS in association with the construction of a nine story,

**80-unit mixed residential/business use; the subject premises being located at 42 County Street, more specifically Assessor 's plat #31, lot #243, located in the Central Business zoning district.**

Speaking in favor was attorney Jack Jacobi of Coogan Smith, LLP who requesting that the Board continued the public hearing to June 8, 2023. He stated that they are preparing responses to the city's consultant engineer's stormwater peer review and wetland peer review. He stated that after they finish and submit their response to both matters, they will be ready to move forward.

There being no one else to speak, the public hearing was continued.

**The Board heard the continued public hearing for Case #5661, the application of Joao B. Monteiro for a special permit pursuant to §17-9.0 SPECIAL PERMITS under §17-3.4(#15A) TABLE OF USE REGULATIONS - PRINCIPAL USES - RETAIL, SERVICE, COMMERCIAL to accommodate an automobile rental office, the subject premises being located at 967 Washington Street, more specifically, Assessor's plat #3, lot #227, located in the General Business zoning district.**

Speaking in favor of the application was Joao Monteiro. He stated that as a follow-up to the last meeting, he was unable obtain a letter from JD Byrider affirming his use of their abutting parking lot for display purposes. He stated that he nonetheless was able to obtain a letter from another local car dealer, Continental Auto Sales, which is located about fifteen minutes from the subject premises. He submitted the letter from Continental Auto Sales to the Board and noted that the letter states that they will permit him to park up to five display cars at their lot. He stated that he will have access to those cars during the dealership's business hours, Monday through Saturday from 9:00 a.m. to 5:00 p.m. He stated that he would park five displays cars at the 967 Washington Street location. He submitted photographs to the Board that showed that the vehicles would park on the left side of the building. He noted that all of the businesses on site, his, the tattoo shop, and the hair dresser operate by appointment, which will likely avoid any customer parking conflicts.

Director of Planning and Development Gary Ayrassian sought confirmation that Mr. Monteiro would be amenable to limiting the number of rental display cars at 967 Washington Street to five.

Mr. Monteiro replied yes.

There being no one else to speak, the public hearing was closed.

**The Board heard the continued public hearing for Case #5664, the application of Dream Homes Realty, Inc. for a special permit pursuant to §17-9.0 SPECIAL PERMITS under §17-3.4(#6) TABLE OF USE REGULATIONS - RESIDENTIAL to convert an existing single-family dwelling to a three-family dwelling; the subject premises being located at 7-9 Forest Street, more specifically Assessor's plat #28, lot #214A, located in the General Business zoning district.**

Speaking in favor of the application was Amir Rasheed. He stated that a three-unit building was located on the property ten to fifteen years ago. He stated that it was later converted to a single-family home. He stated that he is requesting a special permit to convert the single-family dwelling back to a three-unit multi-family dwelling.

Cathy Merkle inquired when the building stopped being used as a three-family dwelling.

Ms. Davies stated that the building was used as a three-family dwelling until 2005 at which point it was converted to a Group Home, which the Building Inspector designated as being a single-family dwelling.

Mr. Rasheed stated that the house is designed to contain three units. He stated that it has sprinklers. He stated that they have more than the required parking spaces for the units.

Cathy Merkle questioned whether the units will all have proper egress under the Building Code.

Mr. Rasheed replied yes.

There being no one else to speak, the public hearing was closed.

**The Board heard the continued public hearing for Case #5650, the application of Canna-Farm LLC for a special permit pursuant to §17-9.0 SPECIAL PERMITS under §17-10.15 MARIJUANA BUSINESS USES to establish a marijuana business (cultivation and manufacturing), the subject premises being located at 1 Turner Street, more specifically Assessor 's plat #1, lot #12, located in the Industrial zoning district.**

Speaking in favor was attorney Daniel Glissman of Prince, Lobel, Tye, LLP who stated that they met with the Police Chief several times and that he recently approved the updated security plans for the site. He stated that the site plan revisions include additional parking, a walkway for pedestrian safety, updated lighting fixtures throughout the entire property along with addition of lights along the pedestrian pathway, a redesigned rear gate, and a vehicle trap for product delivery and pick-up by sprinter vans. He noted that they also have a loading dock for other, non-marijuana related, deliveries. He pointed out that. He stated that additional detail has been submitted relative to the construction and build-out plan. He stated that new elevations with details on window treatments and security have been submitted. He stated that the business will be secured with locked access doors, requiring the use of key fobs to pass-through. He stated that they are also continuing to work with the Wastewater Superintendent to ensure they meet all of his requirements.

Speaking in favor was Kurt Smith of Fuss and O'Neill who explained that wastewater from the building flows to the sewer from two separate locations, allowing them to isolate the sanitary wastewater from that of the processed water for testing. He stated they are finalizing the location for the manhole. He stated that the Wastewater Superintendent may require a flow study be performed, along with improvements to the lift station, if the anticipated output for the site exceeds the station's capacity.

Mr. Ayrassian questioned who would pay for the third-party flow study if is ultimately required to be performed.

Mr. Smith stated his understanding that the applicant would be responsible.

Mr. Ayrassian inquired how would this be memorialized.

Attorney Glissman stated the record's minutes.

Mr. Ayrassian stated that while the Zoning Clerk takes excellent minutes, she is not a professional stenographer and that such a burden ought not rely on being captured by minutes that could be easily interpreted.

He urged the Board to require that the applicant submit a written testament acknowledging their consent to pay for a flow study, if it is required, to be performed by a third-party selected by the Wastewater Department as well as to pay for all construction costs resulting from the flow study related to the use.

Attorney Glissman agreed to submit the letter.

Ms. Davies noted that she had spoken with the Wastewater Superintendent in the morning and that he was satisfied with these items being conditions of the Board's decision.

Mr. Ayrassian inquired about previous discussions regarding water consumption and requested confirmation regarding Canna-Farm's consent to change their original systems operations such that they recycle and reuse water in the marijuana cultivation and manufacturing daily operations.

Mr. Smith explained that the system that they will design and build will collect condensate, which is sent to a tank for treatment and then reused within the system.

Mr. Ayrassian requested that this too be acknowledged in a written testimonial addressed to the Board.

Attorney Glissman agreed to submit a letter acknowledging both matters.

Mr. Ayrassian asked that that their consent to perform the flow study test and construction of any infrastructure improvements and their consent to design and build a marijuana cultivation and manufacturing that will collect condensate that is sent to a tank for treatment and then reused rather than a system that continuously consuming more water be acknowledged in two separate letters addressed to the Board.

There being no one else to speak, the public hearing was continued.

**The Board heard the continued public hearing for Case #5663, the application of SOWA, LLC for a special permit pursuant to §17-9.0 SPECIAL PERMITS under §17-3.5(#23) TABLE OF ACCESSORY USE REGULATIONS to expand a drive-through window in association with a restaurant and a special permit pursuant to §17-9.0 SPECIAL PERMITS under §17-5.9(E) GENERAL PARKING AND LOADING SPACE STANDARDS to reduce the required number of off-street parking stalls, the subject premises being located at 1 Highland Avenue and 5 Route 1A, more specifically Assessor 's plat #64, lot #1A and #1B, located in the General Business zoning district.**

Speaking in favor of the application was attorney Jack Jacobi of Coogan Smith, LLP who stated that they are proposing to increase the drive-thru queuing at the Chick-fil-A located on Route 1A. He submitted a revised plan and stated that it will result in the loss of 15 parking spaces, four more than what was proposed in the original site plan. He stated that the redesign before the Board will accommodate 48 cars to stack in three drive-thru lanes. He stated that circulation will be such that you no longer cross in front of the building, past the other parking, to access the drive through. He noted that the dumpsters had also been relocated.

Cathy Merkle stated that she felt the revisions were an improvement.

Mr. Ayrassian asked what assurances can be provided to the Board that queuing of 48 cars will be sufficient to prevent the backing up of traffic into the parking lot and on to Angeline Street.

Attorney Jacobi replied that the current site can accommodate about 20 cars and they are more than doubling that capacity. He asserted his client's opinion that we believe the design will be sufficient.

Mr. Ayrassian counted that 48 cars are shown only because that is the maximum number of cars they can provide on the premises but that number does not necessarily mean that it is the correct number to design for. He what is their average wait time.

Attorney Jacobi replied that that information is proprietary and that they cannot provide it to the Board.

Mr. Ayrassian stated then what assurances can be provided to the Board that queuing of 48 cars will be sufficient to prevent the backing up of traffic into the parking lot and on to Angeline Street aside from "We believe".

Cathy Merkle asked if they could provide the average length of time it takes from when a car places an order and when they get to the window to pick-up their order.

Attorney Jacobi explained that such statistics are highly guarded corporate secrets. He noted that the third drive-thru lane will be for expedited mobile app users who have ordered and paid in advance.

Cathy Merkle sought to confirm that the statistic for the number of cars that would be in the mobile lane is included in the 48 car stacking figure.

Attorney Jacobi replied yes. He stated that they anticipate the same level of traffic as they have now, just that they will be better distributed.

Ms. Davies pointed out that the location of the order board has not changed and neither has the number of lanes between the order board and the pick-up area and that with these remaining constant as in the first plan, she sees that there are far fewer than 48 cars in the queue.

Attorney Jacobi stated that more spaces have been added to the lanes for before ordering, but the lanes still merge down to two, so there appears to be the need for some internal change in the restaurant's operating practices to ensure that food is prepared faster to ensure delivery in a timely fashion. He also pointed out that the pick-up window is being converted to a door so employees can be delivering food to multiple cars at once. He noted that they are also proposing an overflow pull-off, where patrons can wait if their order is not ready.

Ms. Davies argued that the pick-up window is being converted to a door and that the overflow pull-off only accommodates one car.

Mr. Ayrassian suggested that while the availability of an app that allows patrons to order and pay expedites matters and may entice more patrons, he rebukes Chick-fil-A's refusal to provide any data to statistically corroborate their claim based on the premise that the data is proprietary. He argued that the Board cannot just take the applicant's attestation and that some sort of metrics to support the capacity of the queuing must be provided.

Cathy Merkle suggested that at some point, Chick-fil-A must have performed a study that anticipated app users to be a particular percentage of patrons. She asked whether the data from such a study could be translated into how many cars are expected to be shifted from the traditional drive through to the app lane.

Speaking in favor was Joey Fonseca of Bohler Engineering who stated that when Chick-fil-A designs new stores, they design the stacking lanes to accommodate between 30 to 35 cars. He stated that this store was originally built based on a prior prototype that required a significantly smaller stacking amount. He stated that this new design seeks to segregate the parking traffic from the drive-thru traffic. He stated that the third lane adds 270 feet that did not previously exist, which has allowed for increases in the lengths in the other two ordering lanes. He stated that the menu board is designed to be in relationship to the pick-up window with usually eight to ten car spacing to ensure that food is prepared before the patron arrives to pick it up.

Mr. Ayrassian stated that the plans and data that were presented tonight show what can be accommodated but what is missing is that there is no data illustrating what the actual demand is or will be.

Ms. Davies questioned what informs the need for the extra stacking space.

Cathy Merkle asked if drive-thru patrons exceed the proposed capacity of the lanes, is there enough space at the Angeline Street entrance to accommodate waiting cars without the queue backing up into the intersection. She pointed out that the entrance is used by other plaza patrons, as well as Chick-fil-A.

Attorney Jacobi stated that there is sufficient space and that if people cannot fit in the drive-thru, they can drive around and park in the lot. He argued that there is nowhere else on site to put the drive-thru traffic. He stated that the typical Chick-fil-A store requires stacking for 30 to 35 cars and that 48 is not anticipated for this site even though this is what they have designed. He stated that they have simply maximized the queuing capacity to alleviate the concerns of the Boards.

Mr. Ayrassian countered that the curb cut for Angeline Street could be shifted to create more stacking space.

Attorney Jacobi suggested that people will use common sense and not block the Angeline Street intersection.

There being no one else to speak, the public hearing was continued.

**The Board heard CASE #5667, the application of Keith A. Greim for a variance pursuant to §17-8.9 VARIANCES from the minimum front yard setback requirement under §17-4.9 TABLE OF DIMENSIONAL AND DENSITY REGULATIONS to construct a two-story addition onto an existing single-family dwelling and a special permit pursuant to §17-9.0 SPECIAL PERMITS and §17-6.0 NON-CONFORMING USES, STRUCTURES, AND LOTS to alter a pre-existing, non-conforming residential structure, the subject premises being located at 54 Payson Street, more specifically Assessor 's plat #49, lot #16, located in the Single Residence -B zoning district.**

Speaking in favor of the application was architect Steve Nelson who stated that they are seeking a front yard setback variance from Blackburn Road to construct a two-story addition onto an existing one-family dwelling. He stated that the property is a corner lot and that the lots tapers along Blackburn Road, which means that the house does not have a uniform setback from the streets. He stated that in order to minimize the request of the variance plus avoid creating a greater non-conformity, the addition has been designed to be recessed a few feet back from Blackburn Road so that its front yard setback is equal with the furthest front yard setback of the existing dwelling. He stated that the existing porch and deck will be removed to accommodate the addition. He noted that the detached garage on the opposite side of the house constrains the positioning of the addition.

Mr. Ayrassian inquired whether the proposed two-story addition would be higher than the existing house's height.

Mr. Nelson answered no.

He stated that they are also seeking a special permit to alter a pre-existing, non-conforming structure. He stated that the proposed addition would not increase the number of persons who reside in the house and therefore do not anticipate negative impacts on traffic or utilities. He said that he feels the addition would be an enhancement to the neighborhood.

Cathy Merkle inquired whether the addition would have a full basement.

Mr. Nelson answered yes, with a bulkhead.

There being no one else to speak, the public hearing was closed.

**The Board heard CASE #5666, the application of Nova Farms, LLC for a special permit pursuant to §17-9.0 SPECIAL PERMITS under §17-10.15 MARIJUANA BUSINESS USES to establish a marijuana business retail business and a medical marijuana treatment center, the subject premises being located at 1000 Washington Street, more specifically Assessor 's plat #16, lot #226, located in the General Business zoning district.**

Attorney Michael Mineau introduced himself.

Mr. Ayrassian interceded and informed the Board that there was a technical deficiency with the application, as Nova Farms does not yet have a Host Community Agreement executed with the city for this site. He stated that it is a requirement of their application submission. He stated that he informed attorney Mineau as well as Mr Blair Fish and attorney John Kenyon of Nova Farms, LLC of this matter a few minutes before the meeting. He stated that all of concurred that the Host Community Agreement had not yet executed and were amenable to his advice to continue the public hearing until June with the hope that the agreement would be signed by then. He recommended that the Board open the public hearing and then continue it without taking testimony from the applicant or from the public.

There being no one else to speak, the public hearing was continued.

**The Board held a business meeting.**

**With an appointment to speak before the Board was Timothy Caponigro of Woodlark Development Corp. regarding the special permit for the construction of a 38-unit multi-family development at 0 Pond Street, which was originally granted to a Mr. Stephen Yellin from whom Mr. Caponigro purchase the project, Case #5533.**

The Board read the letter submitted by Timothy Caponigro of Woodlark Development Corp, received April 18, 2023, relative to the special permit for the construction of a 38-unit multi-family development at 0 Pond Street, which was originally granted to a Mr. Stephen Yellin from whom Mr. Caponigro purchase the project, Case #5533.

Mr. Caponigro stated that the decision references two Assessors lots, #lot 82 and lot #99A. He stated that there is a title issue with Assessors lot #99A preventing him from obtaining financing. He stated that no work is proposed on lot #99A, so he is requesting that it be removed from the decision. He stated that lot #99A is actually the pond.

Ms. Davies confirmed that deleting the reference to lot #99A from the decision would not affect or alter any of the optics of the approved site plan or decision, such as for example but not limited to density and setback.

Mr. Ayrassian pointed out that lot #99A was not even included in the Local Stormwater Management and Notice of Intent applications that were filed with the Conservation Commission, which were ultimately approved by the Commission for. He advise the Board that the staff recommends that the Board amend the decision by deleting the reference to lot #99A.

Cathy Merkle made a motion to amend the decision originally issued to Stephen Yellin for 0 Pond Street, Case #5533 by deleting the reference to Assessor's lot #99A. Sandy Varrieur seconded the motion. A discussion followed. All voted in favor to delete the reference to Assessor's lot #99A in Decision #5533.

**With an appointment to speak before the Board was John Ferreira of 220 ONEIL, LLC regarding the special permit for his marijuana retail business 220 O'Neil Boulevard, case #5556.**

The Board read the email from John Ferreira, received May 3, 2023, relative to the matter.

Mr. Ferreira explained stated that he owns 220 ONEIL, LLC and that special permit decision calls for an 8-foot high chain link fence to be installed around the entire perimeter of the site with sliding access gates along the property's frontage on O'Neil Boulevard. He stated that his fence contractor pointed out that it does not make sense to installed the fence on the property line along O'Neil Boulevard because whoever is to open the gate will have to park on the street and that this will create a circulation issue. He also pointed out that several other recent cannabis establishments have been approved by the Zoning Board without fencing around the entire site. He explained also his understanding that the Police Chief has substantially changed his stance on enclosing such businesses with fencing now that they are operating and he can see firsthand that crime has not increased. He noted that retail marijuana businesses are no longer required to have armored trucks make deliveries and are being treated more like pharmacies and liquor stores.

Mr. Ayrassian pointed out that the Police Chief is still requiring vehicle traps and sally ports.

Mr. Ferreira stated that he is not asked the Board to change those features of the site plan. He stated he is strictly requesting the Board only to waive the requirement to construct the 8-foot high chain link on the perimeter of the parking lot on the site. He stated that there is existing 6-foot fencing across the entire rear property line and that would remain.

Cathy Merkle stated that the approved plan included fences that were dictated by the Police Chief. She stated that for her to support altering the plan, she would need the Police Chief's opinion in writing that the fence is no longer needed.

Mr. Ferreira agreed to submit his request to the Police Chief for his opinion.

The Board tabled the matter.

**With an appointment to speak before the Board was Michael Kocheckian of Zahara Cannabis requesting to extend the hours of operation of the marijuana retail business located at 70 Frank Mossberg Drive, from 8:00 p.m. to 11:00 p.m. on Thursdays, Fridays, and Saturdays, relative to the special permit issued to The Leonard Irving Center Inc. and Ashli 's.**

The Board read the letter from General Manager Michael Kocheckian of Zahara Cannabis, received April 13, 2023, relative to the matter.

Ms. Davies explained that they are seeking to expand their retail facility hours from 8:00 a.m. to 11:00 p.m. on Thursdays, Fridays, and Saturdays. She noted that the Municipal Council recently amended the Zoning Ordinance, allowing the expansion of marijuana retail store hours from 8:00 p.m. to 11:00 p.m.

Mr. Kocheckian stated that they are requesting to extend their closing time from 8:00 p.m. to 11:00 p.m. on Thursday, Fridays, and Saturdays. He stated that Chief Heagney had no objections to the change and that he does not anticipate an impact on the neighbors.

Cathy Merkle asked the reason for the extension of the hours.

Mr. Kocheckian stated that they see 400 or more customers a day and they are busy enough to warrant the extended hours.

Mr. Ayrassian noted that Mr. Kocheckian stated that he does not anticipate an impact on the neighbors yet he just stated how busy they are and that they to expand the hours for more business. He stated that the change in hours will have to an impact on the neighborhood. He argued that business cannot both be booming and extension of the hours have no impact.

Mr. Kocheckian stated that other businesses in the industrial park are closed during those hours, so would be unaffected.

Mr. Ayrassian asked whether this request had already been made previously.

Mr. Kocheckian answered yes, but that he had been unable to appear and present the request at that time.

Mr. Ayrassian asked what has changed since the Board last denied the same request about a month ago. Mr. Kocheckian replied that they had gotten written support from the Police Chief. He emphasized that it will not be a detriment to the area.

Mr. Ayrassian inquired if the marijuana business is open seven days a week.

Mr. Kocheckian answered yes, from 8:00 a.m. to 8:00 p.m.

Mr. Ayrassian reaffirmed that the marijuana business is currently open 12-hours a day and the request is to expand that further to 15-hours on three of the seven days.

Cathy Merkle stated that the discussion held at last month's meeting that precipitated the denial was that the Board did not see a salient reason to extend the hours. She asserted that she did not see herself changing her position on the matter at this time. She argued that it is not the Board's purview to facilitate the business hours just to make more money. She stated that the Board granted hours from 8:00 a.m. to 8:00 p.m. and she did not see a valid reason to extend those hours further.

Mr. Kocheckian asked why the Board would not consider the change.



Cathy Merkle replied that she did not see the necessity for the change and that she stands by the original decision.

Mr. Ayrassian pointed out that when the legal counsel representing the marijuana facility on Forest Street approached the Board a year prior to change their hours, their argument was that their business was not nearly as busy as they anticipated.

Cathy Merkle reminded everyone that the Board granted that increase in hours on a temporary basis.

Mr. Ayrassian agreed, and stated that the business made a cogent presentation to the Board about the amount of traffic being generated and the anticipated increases given the change in hours. He stated that they are required to return to the Board to evaluate the impacts at the end of the six month period. He stated his support for the Board's denial in this case. He stated that it has only been a month since the prior request made for this site and it was denied.

Ms. Davies stated that the specific location of this site is a concern. She stated that it is not normal for an industrial park to have hours generating traffic until 11:00 p.m. She argued that there are residents on County Street that have the potential to be impacted by that traffic.

Mr. Kocheckian stated that they have performed customer surveys and patrons have requested the facility be open later.

Cathy Merkle noted that the Board denied the Forest Street marijuana retailer the first time they made their request. She stated that they then went back and had neighborhood meetings for feedback on the proposed change in hours before submitting their second request.

Mr. Ayrassian stated that the CCC approved the change in hours and paving the way for municipalities to do the same. He explained, however, that granting the change in hours is done on a case-by-case basis. He stated he imagined that the request in the change in hours was precipitated by the Municipal Council's recent vote to amend the ordinance and adopt the 8:00-11:00 hours as well as allowing the use in General Business and Planned Highway Business zoning districts.

Cathy Merkle agreed, and stated that there is not a guarantee to those hours, as the use is still governed by special permit.

Mr. Ayrassian agreed that the change in the ordinance gives the Board the latitude to allow operations as late as 11:00 p.m., but does not automatically extend them because the hours of operation are a condition of each special permit approval.

Sandy Varrieur questioned the customer surveys that Mr. Kocheckian discussed earlier.

Mr. Kocheckian explained that they frequently have customers coming in at 8:00 p.m. trying to pick up orders. Ms. Davies stated that the Board is less concerned with what the customers want and more so with the impacts on the neighbors.

Cathy Merkle stated that County Street has become increasingly more residential over the years. She stated that she would be interested to see the impacts of the change in hours for existing businesses throughout the state, before entertaining changes.

Mr. Kocheckian pointed out that the dispensary in North Attleborough is open until 10:00 p.m.

Cathy Merkle stated that is irrelevant, as this decision is specific to the location in question.

Cathy Merkle made a motion to approve the request of General Manager Michael Kochejian of Zahara Cannabis to amend Condition #9 contained in the decision and allow business hours at the retail marijuana business located at 70 Frank Mossberg Drive to expand from 8:00 a.m. to 8:00 p.m. to 8:00 a.m. to 11:00 p.m. on Thursdays, Fridays, and Saturdays. Kent Richards seconded the motion. All voted in opposition. The motion failed and the request to amend Condition #9 contained in Decision Case #5484 and allow business hours at the retail marijuana business located at 70 Frank Mossberg Drive to expand to from 8:00 a.m. to 8:00 p.m. to 8:00 a.m. to 11:00 p.m. on Thursdays, Fridays, and Saturdays is denied.

**With an appointment to speak before the Board was Blair Fish of Nova Farms, LLC requesting to extend the hours of operation of the marijuana retail business located at 34 Extension Street, from 8:00 p.m. to 11:00 p.m. seven days a week, relative to the special permit issued to BWCW, Inc.**

The Board read the letter from Chief Executive Officer Derek A. Ross of Nova Farms, dated April 25, 2023, to the Zoning Board regarding this matter. The Board read the letter from Security Team Leader Blaze Barboza, dated April 25, 2023, to the City Clerk opposing the change in hours. The Board read the letter from Safety Loss Prevention Manager Matt Yaffe of Nova Farms, dated May 3, 2023, to the City Clerk rebutting Mr. Barboza's opposition.

Mr. Fish stated that their facility has been open for three years and they are echoing the request to extending their hours of operation. He argued that their competition, Native Sun in North Attleborough, is open until 10:00 p.m. He stated that Rhode Island will be legalizing recreational marijuana in December, so they will be facing additional competition at that time. He stated that they are trying to compete in the market and that sales are down since Rhode Island legalized medicinal marijuana. He stated that their company has facilities in New Jersey, Maine, and elsewhere that all operate until 11:00 p.m. and that Attleboro is the only municipality that only permits operations until 8:00 p.m. He admitted that they had begun operating until 11:00 p.m. after the Municipal Council recently amended the ordinance because they mistakenly assumed that the additional hours automatically applied to all marijuana businesses. He said that they operated until 11:00 p.m. for nine days without issue until they were contacted by the Building Inspector that they could not do that. He stated that he did not understand why the City voted to extend the hours for marijuana businesses if the Zoning Board is not willing to permit the extension of hours for existing businesses. He stated that Attleboro is a business-friendly city but he felt not extending the hours was business friendly. He asserted that the surrounding towns' marijuana dispensaries are busiest when Nova Farms on Extension Street closes for the day. He suggested that all of that potential tax revenue is going to other municipalities.

Mr. Ayrassian countered that the Zoning Board is not responsible for overseeing sales taxes. He argued that there are many differences between the two municipalities on how various issues are dealt with and that the Board feels 8:00 a.m. to 8:00 p.m. is sufficient in this instance.

Ms. Davies pointed out that the situation, and the decision, is location specific. She suggested that other locations, that the ZBA may find more appropriate for late hours traffic, may be granted permission to operate later in the evening.

Cathy Merkle stated that just because the Municipal Council voted to have the city's ordinance match the state regulations, they did not vote to condone those hours for all marijuana businesses in the City. She stated that the Zoning Board regulates each location individually, including what, if any holidays they can operate, and whether they are open on Sunday or not. She stated that these details vary from location to location and are case specific. She argued that it is not the Board's responsibility to maximize a business's profits. She stated that it is the Board's responsibility to weight the costs and benefits of a request given the circumstances of each individual case. She stated that she has concerns regarding the impacts on the surrounding residential homes and the Police and Fire that have to provide service in the event of an emergency.

Mr. Fish argued that they met with the Police Chief and he approved of the change.

Cathy Merkle reminded Mr. Fish that the Police Chief provides the Board with a recommendation and that his recommendation are factored into the Board's consideration.

Mr. Ayrassian asserted that the Board did not deny Zahara's request just because it can. He recommended that if the business can return to the Board with some data to justify the change, the Board may reconsider it. He argued that it was not fair to label the City or the Board as anti-business given the fact that the Zoning Board permitted the marijuana businesses in the first place.

Mr. Fish sought to confirm that the Board may be amenable to extended hours at an alternative location in a more commercial neighborhood.

Cathy Merkle stated that their decision is entirely context dependent and that she imagines the Board would consider different hours in different neighborhoods with different composition.

Cathy Merkle made a motion to approve the request of Chief Executive Officer Derek A. Ross of Nova Farms to amend Condition #12 contained in the decision and allow business hours at the retail marijuana business located at 34 Extension Street to expand from 8:00 a.m. to 8:00 p.m. to 8:00 a.m. to 11:00 p.m. on seven days a week. Sandy Varrieur seconded the motion. All voted in opposition. The motion failed and the request to amend Condition #12 contained in the decision and allow business hours at the retail marijuana business located at 34 Extension Street to expand from 8:00 a.m. to 8:00 p.m. to 8:00 a.m. to 11:00 p.m. on seven days a week is denied.

**With an appointment to speak before the Board was attorney Jack Jacobi of Coogan Smith, LLP requesting the Board to amend the approved site plan relative to the special permit issued to Pacifico Energy North America, LLC for a photovoltaic array located 0 Richardson Avenue, Case #5591.**

The Board read the letter from attorney Jack Jacobi, dated May 5, 2023.

Attorney Jacobi stated that they requested a revision to the approved stormwater management system and that the plan amendments are pending before the Conservation Commission. He stated that the plan amendments include expanding the infiltration basins for better water quality treatment, replacing the original fencing with an "agricultural" fencing which has a gap between the ground and the bottom so as not obstruct wildlife corridors, an alteration to the location of the southern access drive and elimination of the northern access drive that which will result in an 85% reduction of the site's impervious area. He noted that they received the consent of the Fire Department to reduce the width of the access drive, which contributed to the reduction in the impervious area. He stated that he thinks the Commission will likely take up these plan amendments at its next meeting and that he is expecting an approval. He stated that they have also requested a couple of minor changes to the construction sequencing. He stated that the same plan amendments are being made to the Zoning Board. He asked for the Board's approval.

Cathy Merkle made a motion to approve the plan amendments presented by attorney Jacobi and as shown on the site plan entitled "ATTLEBORO RENEWABLE ENERGY" engineered by Dagmawi Geremew, PE of TRC Companies, Inc., 650 Suffolk Street, Lowell, MA 01854 dated April 27, 2023. Sandy Varrieur seconded the motion. A discussion followed. All voted in favor of the plan amendments, as shown on the site plan entitled "ATTLEBORO RENEWABLE ENERGY" engineered by Dagmawi Geremew, PE dated April 27, 2023.

The Board directed the staff that the Certificate of Vote is not be prepared and filed with the City Clerk unless and until such time as the Conservation Commission approves the same amendment contained in the Commission's Local Stormwater Management permit and Orders of Condition.

**The Board read the letter from Gary Demers of Dodge Mill Realty, LLC, received May 3, 2023, to Zoning Board Chairwoman Catherine Merkle requesting a one (1) year extension of time for the special permit issued to Dodge Mill Realty, LLC for property located at 200 North Main Street, Case #5601.**

Mr. Ayrassian explained the complications with construction have delayed the ice cream store to open, as explained to him by the McKearneys and Mr. Demers.

Cathy Merkle made a motion to grant a one (1) year extension of time for Dodge Mill Realty, LLC to exercise the benefits authorized by the special permit issued for property located at 200 North Main Street, Case #5601. Sandy Varrieur seconded the motion. All voted in favor to grant a one (1) year extension of time.

**The Board reviewed the pending minutes.**

Cathy Merkle made a motion to approve the pending minutes for March 9, 2023 and April 13, 2023. Sandy Varrieur seconded the motion. All voted in favor to approve the pending minutes for March 9, 2023 and April 13, 2023.

The Board reviewed all remaining correspondence.

**The Board discussed Case #5667, the application of Keith A. Greim for a variance pursuant to §17-8.9 VARIANCES from the minimum front yard setback requirement under §17-4.9 TABLE OF DIMENSIONAL AND DENSITY REGULATIONS to construct a two-story addition onto an existing single-family dwelling and a special permit pursuant to §17-9.0 SPECIAL PERMITS and §17-6.0 NON-CONFORMING USES, STRUCTURES, AND LOTS to alter a pre-existing, non-conforming residential structure, the subject premises being located at 54 Payson Street, more specifically Assessor 's plat #49, lot #16, located in the Single Residence -B zoning district .**

Cathy Merkle made a motion to grant a variance pursuant to §17-8.9 VARIANCES of six (6') feet from the minimum front yard setback requirement of thirty (30') feet from Blackbourn Road pursuant to §17-4.9 TABLE OF DIMENSIONAL AND DENSITY to construct a two-story addition onto an existing single family dwelling, as shown on the site plan, entitled "PROPOSED ADDITION AND ALTERATIONS, 54 PAYSON STREET, ATTLEBORO, MA" drawn by Stephen Nelson of Stephen R. Nelson Associates Architects, 129 Bank Street, Attleboro, MA 02703, dated March 24, 2023. Sandra Varrieur seconded the motion. A discussion followed. All voted in favor. Cathy Merkle made a motion to grant a special permit pursuant to §17-9.0 SPECIAL PERMITS under §17-6.0 NON-CONFORMING USES, STRUCTURES, AND LOTS to alter a pre-existing, non-conforming, structure to construct a two-story addition onto an existing single family dwelling, as shown on the site plan, entitled "PROPOSED ADDITION AND ALTERATIONS, 54 PAYSON STREET, ATTLEBORO, MA" drawn by Stephen Nelson of Stephen R. Nelson Associates Architects, 129 Bank Street, Attleboro, MA 02703, dated March 24, 2023. Sandra Varrieur seconded the motion. A discussion followed. All voted in favor. Cathy Merkle made a motion to grant a special permit pursuant to §17-6.0 NON-CONFORMING USES, STRUCTURES, AND LOTS to alter a pre-existing, non-conforming, structure to construct a two-story addition onto an existing single family dwelling, as shown on the site plan, entitled "PROPOSED ADDITION AND ALTERATIONS, 54 PAYSON STREET, ATTLEBORO, MA" drawn by Stephen Nelson of Stephen R. Nelson Associates Architects, 129 Bank Street, Attleboro, MA 02703, dated March 24, 2023. Sandra Varrieur seconded the motion. A discussion followed. All voted in favor. The Board attached conditions.

**The Board discussed Case #5664, the application of Dream Homes Realty, Inc. for a special permit pursuant to §17-9.0 SPECIAL PERMITS under §17-3.4(#6) TABLE OF USE REGULATIONS - RESIDENTIAL to convert an existing single-family dwelling to a three-family dwelling; the subject premises being located at 7-9 Forest Street, more specifically Assessor 's plat #28, lot #214A, located in the General Business zoning district .**

Cathy Merkle made a motion to grant a special permit pursuant to §17-9.0 SPECIAL PERMITS under §17-3.4 (6) TABLE OF USE REGULATIONS - RESIDENTIAL to convert an existing single-family dwelling to a three-family dwelling, as shown on the site plan. Sandra Varrieur seconded the motion. A discussion followed. All voted in favor. The Board attached conditions.

**The Board discussed Case #5661, the application of Joao B. Monteiro for a special permit pursuant to §17-9.0 SPECIAL PERMITS under §17-3.4(#15A) TABLE OF USE REGULATIONS - PRINCIPAL USES - RETAIL, SERVICE, COMMERCIAL to accommodate an automobile rental office, the subject premises being located at**

**967 Washington Street, more specifically, Assessor's plat #3, lot #227, located in the General Business zoning district .**

Cathy Merkle made a motion to grant a special permit pursuant to §17-9.0 SPECIAL PERMITS under §17-3.4(#15A) TABLE OF USE REGULATIONS - PRINCIPAL USES - RETAIL, SERVICE, COMMERCIAL to allow the petitioner to establish an automobile rental office at the shopping plaza located at 967 Washington Street, as described herein. Sandy Varrieur seconded the motion. A discussion followed. All voted in favor. The Board attached conditions.

The meeting adjourned at 9:15 p.m.