



TOWN OF SALISBURY
Office of the BOARD OF APPEALS
5 BEACH ROAD
SALISBURY, MASSACHUSETTS 01952
978-462-7839

October 27th, 2015

7:00 P.M.

MINUTES

Members Present:

Susan Pawlisheck, Derek DePetrillo, Linda Tremblay, Beth Gandelman, Joseph Stucker, Kevin Henderson

Old Business

**Case No. 15-16 Mark and Stacie Warcewicz
 2 Red Ridge Road (Map 10 Lot 42)**

Request for a Special Permit to determine if use of a farm for both agritourism and the hosting of weddings is allowed in this residential/agricultural district.

Attorney Frank Di Luna, representing the applicants, states that the abutters were not interested in having mediation with the applicants. The applicants have met with the abutters and discussed options, though nothing is solidified. There are two issues currently: a request to overturn the Building Inspector's decision and to work with the abutters. He would like to meet next year about the weddings and discuss options with the abutters in the meantime.

ABUTTERS

Attorney Bill Zall, representing Stacey Robinson and Chris McGuire, questions whether weddings are considered agritourism in this district. He believes the building inspector laid out the requirements and what the applicants needed to do. He believes there was an agreement between the applicants and the town to address the code violations. His clients never saw the documentation. He also does not think this addresses whether this is considered agritourism and they need more details and specification. Any documentation has not done that, and any meetings have not utilized the mediation offered by the town. They have met and there is no agreement that gives them the right to use the drift way. Susan explains that they gave the abutters an opportunity to come to an agreement if at all possible. It is not the purview of the Board to decide if the drift way can be used by the applicants. The Board must focus on the agritourism. There was a meeting set up after the last Zoning meeting, but it did not occur. The parties did eventually meet, but no options satisfy both parties. Attorney Di Luna provided a memo that included basic pieces of requirements to be agritourism. One requirement is that the agritourism activities do not supersede the agricultural activities. Is this a farm hosting weddings or weddings taking place on a farm? No evidence has been brought forth to prove it is agritourism. The state regulations say the ultimate goal of agritourism is the purchase of agricultural products.

The purpose of the mediated meetings was to minimize the background of the abutter's and applicant's concerns. This would allow the Board to be focused on the matter of agritourism. According to Attorney Zall, there are no cases about whether weddings count as agritourism. The agritourism is being used as a loophole to justify actions after the fact. There is nothing proving that they can use that to that purpose.

Mark Warcewicz claims that they have reached an agreement with David Fowler about the right of way and came to an agreement. It would take a long time to develop other options related to the right of way. Attorney Di Luna claims that the Building Inspector needed to attend a wedding in order to have evidence, so they would not see until next year in 2016. Susan asks how they do not have results from the 14-15 wedding held in 2015. Stacey Warcewicz claims they did not have documentation to show the sales from their farm, other farms, and caterers. They have contracts with caterers and marrying couples for the 2016 season. Scott needed to see the percentages and correlations to show their compliance with agritourism.

QUESTIONS FROM THE BOARD

Linda asks Scott if he had changed his opinion. He had talked to the Massachusetts Department of Agriculture, other towns, and legal counsel. They suggested that each town should make decisions based upon the needs of their town. He wanted the applicants to make a case, so the Board could make a decision. They were looking at code conformance at the time as well for life safety. Many of the things he mentioned in the letter are being solved or are in the process of being resolved. These were not the problem of the abutters; they are in the purview of the Building Inspector and the Zoning Board, so he did not present the letter to them. As the applicants come into compliance with code and they prove they continue to do agritourism and agrientertainment, he supports their presentation as a farm.

Will McGuire

264 North End Boulevard

He asks if this was a working farm before and if this is the ancillary income. He questions the criteria to performing agritourism as a farm and believes that the town and board have further due diligence.

Mark Warcewicz explains they have been a farm since 1978. They file as a farm and qualify. Susan asks how they do not know the money they make from weddings compared to what they made just as a farm. They file at the end of the year rather than in quarterlies.

Attorney Di Luna asks to meet in a year and prove they've been in compliance during that time.

Kevin has no problem with agritourism but is against their using a drift way as a commercial road. Linda also feels uncomfortable about the right of way. Beth agrees with Scott and that the right of way is not in their purview. It is a civil matter. However, they must also consider the abutters' best interests. Beth feels that if they decide this is agritourism, the next decision would focus on the use of the right of the way, and if it was not allowed, their decision would not matter.

Attorney Zall explains that the other farms engaged in agritourism are full time farms. They also need criteria to prove that the applicants can access the property without disturbing their abutters. The applicants have deeded access in one particular instance: use of the field for agricultural means, not wedding-based means. The applicants are asking for a year but not providing any proof now.

Kristina Perrin, a caterer on the farm, lists the farms and local businesses from which she purchases. She buys beef from them and will buy all meat from them should the weddings continue. She has documentation of this. She also caters at Pettengill Farm in Salisbury.

David Fowler, representing his father Bill Fowler, met with Mark and Stacey. They are continuing to discuss options including insurance and future growth. Insofar, they do not have a solution but they have had civil conversations.

Attorney Di Luna asks to introduce the deed that shows the applicants have access to the right of way.

Attorney Harold Beede, representing the Fowlers, explains that one subdivision has deeded access. That property includes the drift way. The applicants have that property. The lot where the weddings are held is to the East. There is no deeded right of way to access where the weddings occur.

Derek says the issue is about agritourism and opening up the issue to the right of way only muddles what the Board must consider.

Joseph mentions a letter dated June 14th, 2015 from Attorney Di Luna that discusses Salisbury bylaw. This defines agritourism as being allowed as long as it minimizes conflict between applicants and abutters. Derek mentions that they cannot become involved in a private matter.

Kevin makes a motion to repeal the building inspector's decision that this is not agritourism in the form of weddings. No second. 0, 4. Motion fails.

Linda states that the initial motion was to deny because she did not feel it fell in the purview of agritourism. She required the correlation. She wants to add that the property issue is not within their purview and other such conditions. Derek wants facts that show correlation. Linda asks what numbers they would need to show the correlation between agricultural use and agritourism use.

Joseph rereads the Salisbury bylaw stating the need for farms to function with minimal conflict. Beth believes the presence of lawyers implies a persistence of conflict. Joseph believes that the issue of the right of way causes greater detriment to the neighborhood, including traffic.

Susan agrees with Linda that there is no standard criteria set upon which they can make their decision. She asks Scott about materials with which the Board can educate itself. She asks if the Board can continue the case in order to educate themselves. They can take field trips together as long as they inform the public. Derek asks if they can condition their decision; they can. Beth asks how they can separate the two issues of the right of way as it affects the abutters and the

agritourism. Scott mentions that disputes can be solved by the Selectman. The applicant will eventually have to go before the Selectman for a business license.

Susan believes that unless they educate themselves or the applicants provide further education, continuing the case would be erroneous.

Lisa Robinson

38 Baker Road

She claims the music goes late into the night.

Kevin asks about conditions on other farms in the town. Scott says the conditions may have been set by the Selectman. The farms need to get business licenses to perform weddings.

Beth asks if violation of conditions can be grounds for termination. Kevin believes that this would be the job of the Police Chief and Fire Chief depending upon the situation. They do not know about conditions in other towns.

Joseph motions to continue to two weeks from now on the conditions that they meet with town counsel, contact the Agricultural Commission, have a work shop, receive clarification about the bylaw clause about harm to abutters, the abutters continue in mediation to resolve outlying issues, and have the applicants project income based on previous year's taxes. Linda seconds. Susan votes to approve. Derek, Kevin vote to deny. 3, 2. Motion fails.

Derek motions to overturn the Building Inspector's decision and condition that the applicants meet with the Inspector in a year about the weddings. Kevin seconds. Linda votes to approve. Susan, Joseph vote to deny. 3, 2. Motion fails.

Susan wants evidence showing what they make as a farm and as a wedding host because they need to know what is commercial and what is agricultural. The farm/agriculture has to be primary over the wedding in terms of revenue. Derek feels they have not yet had the opportunity to work under the conditions required. Susan asks what they charge per wedding. Stacey mentions it is in the ball park of \$2,000. Mark says the caterers spend roughly \$2,500 from other farms. The total should be less than what they make as a farm.

Derek makes a motion to continue to November 3rd, 2015 and condition to meet with town counsel to discuss conditions to place on this farm and have a work shop. Kevin seconds. Susan, Joseph, Linda vote to approve. 5 in favor, 0 opposed. Motion passes.

New Business

Case No. 15-15 Jerry V. Klima

15 Second Street (Map 7 Lot 56)

Request for a Variance to divide the existing lot into Lot A-2, which will contain the existing residence and detached garage and Lot A-1, which will not be buildable but used as a field and garden area.

Linda Tremblay recused herself because she is an abutter.

Lisa Mead, representing the applicant, explains that the property has preexisting nonconformities. The purpose of this Variance is to rejoin the parcel containing the barn and house to sell while retain the other lot for gardening. This lot will be nonbuildable. The side setback is preexisting nonconforming at 6.1', and the front setback remains nonconforming at 3'. They are separating Lot 1 and 2 because that much land may deter people from purchasing the home. It will remain gardened. Wet soils exist on that lot, creating a hardship. They will have to go to the Planning Board afterwards.

Susan says one cannot create a hardship. She asks if they would need any Variance if they were not separating lots. They would not. Lisa Mead explains that they did not create any new hardships by way of soil. The hardships exist in the land and the shape of the lot, which is not created by the separation. Beth asks if they approve this Variance, will Mr. Klima maintain lot A? Yes, they will maintain it. Susan asks what if future individuals want to build on Lot A after it is deemed unbuildable. The applicant is willing to put a deed restriction. Susan maintains that they do not need a Variance if they do not attempt to split the property back to its original dimensions.

ABUTTERS:

Linda Tremblay

13 Second Street

Mrs. Tremblay abuts both of the lots, and she does not believe that a house could be placed on lot A even if they tried. All of Ring's Island is nonconforming. She would prefer the land be maintained than not.

QUESTIONS FROM BOARD:

Derek asks what would happen if they do not grant the Variance. They would try to sell the land as one piece.

Susan believes the applicant has the latitude to become conforming on front setback and side setback. They would remain nonconforming on area and the setbacks on the two existing structures. These new dimensions will be added to the plan before going to the Planning Board.

Derek makes a motion to grant the Variance as the applicant has presented the hardships of soil, lot shape, and topography with the specified lot dimensions that allow for frontage. Kevin seconds. Susan, Beth, Joseph vote to approve. 5 in favor, 0 opposed. Motion passes.

Case No. 15-17 Ben LeGare

128 Ferry Road (Map 14 Lot 32)

Request for a Special Permit to have a preexisting accessory apartment.

Lisa Mead presents approval letters from the Planning Board and Board of Health. When the owner went to pull a permit for building, he discovered that the permit for an accessory apartment had not been in place. They need that permission in order to maintain the preexisting space. The accessory apartment is less than 25% of the total property at a total of 8.5%. The owners will be living in the main portion of the house. There are two means of egress. They have access to water and sewage. It has been used historically as an accessory apartment.

QUESTIONS FROM THE BOARD:

Susan asks what the permit was for. It was for house renovation. It was being taxed as a two family and marketed as such. That is why he did not know it was an accessory apartment.

Kevin motions to grant the Special Permit as it meets the criteria for a permitted use as an accessory apartment. Derek seconds. Beth, Susan, Linda vote to approve. 5 in favor, 0 opposed. Motion passes.

Minutes

September 22nd, 2015

Kevin motions to accept the minutes. Derek seconds. Joseph, Susan, Linda vote to approve. 5 in favor, 0 opposed. Motion passes.

Correspondence

Citizen Planner Training Collaborative Fall 2015 Workshops

Fall Workshop 2015 workshops run through mid-December if anyone is interested in attending.

The secretary asks if the minutes could be at the beginning of the meeting. Beth and Derek prefer to have them at the end.

Susan will reach out to town counsel about Red Ridge Farm and potential conditions for the farm's agritourism. She will send a summary to the Board about what is required of them. This is not considered deliberation as she will only be sharing information the Board was taxed to provide.

Adjourn

Derek makes a motion to adjourn. Kevin seconds. Susan, Linda, Beth vote to approve. 5 in favor, 0 opposed. Motion passes.

Adjourn

Date: _____

Susan Pawlisheck—Chairperson

Derek DePetrillo – Clerk

Kevin Henderson

Beth Gandelman

Linda Tremblay

Joseph Stucker

Respectfully submitted by Catherine Scott

Catherine Scott

Date