



TOWN OF BOLTON

ZONING BOARD OF APPEALS

Town Hall, 663 Main Street, Bolton, MA 01740

Phone: 978-779-3308 Fax: 978-779-5461

**Amended Decision on Building Inspector's Zoning Determination
Regarding 401 Main Street – Counseling Use, and Building Inspector's Zoning
Determination Regarding 401 Main Street – Congregate Living**

Petition: Administrative Appeal of the Building Inspector's Zoning Determination to allow Cultivate Counseling, LLC to operate at 401 Main Street, Bolton, MA.

Petitioners: Frederick C. Van Bennekom, 421 Main Street, Bolton, MA 01740
Linda Skinner Austin, 84 Burnham Road, Bolton, MA 01740
Mary McCarthy, 65 Burnham Road, Bolton, MA 01740
On behalf of Bolton Pan Neighborhood Group

Premises: 401 Main Street, Bolton, MA 01740
Bolton Assessor's Map 4.D Parcel 20
Residential Zoning District

Owners: Owners of the Premises are Edwin P. and Debra L. Madera. Owners of Cultivate Counseling, LLC and John Sawyer's Mill are Debra L. Madera and Andrew Lapin.

Date Petition filed with Town Clerk: February 6, 2017

PROCEDURAL HISTORY AND BACKGROUND

1. On December 29, 2016, the Petitioners submitted a Request for Zoning Enforcement pursuant to M.G.L. c. 40A, § 7 with the Building Inspector asserting that Cultivate Counseling, LLC was operating a counseling business at the Premises in violation of the Bolton Zoning Bylaw, and that this use was not protected by the agricultural exemption set forth in M.G.L. c. 40A, § 3 (the so-called "Dover Amendment").
2. The Building Inspector responded to the Zoning Enforcement Request in a letter dated January 9, 2017. The letter stated that the current uses at the Premises had been reviewed per the request and it was determined that all of the uses on the Premises complied with the Bolton Zoning Bylaw or are exempt under Massachusetts General Laws.

3. On February 6, 2017, the Petitioners, pursuant to M.G.L. c. 40A, §§ 8 and 15, filed an Administrative Appeal with the Zoning Board of Appeals (“ZBA”) appealing the Zoning Determination by the Bolton Building Inspector.
4. A public hearing on the Petition was noticed for Tuesday, February 28, 2017. Notice of the public hearing was published in The Clinton Item on February 10, 2017 and February 17, 2017. Both notices were posted for 14 days in the Bolton Town Hall, and mailed to parties of interest at least 14 days before the public hearing. The ZBA commenced the public hearing on the Petition on Tuesday, February 28, 2017 at the Bolton Public Library, 738 Main Street, Bolton, MA at 7:05 p.m. at which time all those opposed or in favor could be heard.
5. The ZBA continued the public hearing to March 28, 2017 and April 11, 2017 to provide for additional time to receive supplemental comments and information, and to conduct a site visit of the Premises. The continued hearing on Tuesday, March 28, 2017, was held at the Bolton Public Library, 738 Main Street, Bolton, MA at 7:00 p.m. The continued hearing on Tuesday, April 11, 2017, was held at the Bolton Public Safety Center, 15 Wattaquodock Hill Road, Bolton, MA at 7:00 p.m. The ZBA closed the hearing on April 11, 2017.
6. Members of the ZBA attended all sessions of the public hearing. Deliberating and voting on the Petition were ZBA Chairman Gerard Ahearn, and ZBA Members Jack Sargent, Bradley Reed, Kay Stoner and Andy Kischitz.
7. The Petitioners or their representatives were in attendance at all sessions of the public hearing. The Petitioners representatives were Atty. Jason R. Talerman from Mead, Talerman & Costa, LLC on February 28, 2017, and Atty. Adam J. Costa from Mead, Talerman & Costa, LLC for the remainder of the public hearing sessions.
8. The Owners or their representatives were in attendance at all sessions of the public hearing. The Owners’ representative was Atty. Robert W. Anctil of Perkins & Anctil.
9. The Building Inspector was in attendance at the public hearing session on February 28, 2017.
10. Town Counsel (Mirick, O’Connell, DeMallie & Lougee, LLP) was in attendance at the public hearing on February 28, 2017 and March 28, 2017.
11. Throughout its deliberations, the ZBA was mindful of the statements of the Petitioners, the Owners, representatives, and the comments of the general public, all as made or received at the public hearing.

12. On April 24, 2017, the ZBA issued its Decision to Reverse the Building Inspector's Zoning Determination Regarding 401 Main Street – Counseling Use (“Counseling Use Decision”) finding that the agricultural exemption under the “Dover Amendment” does not apply to Cultivate Counseling’s business.
13. On April 24, 2017, the Board issued its Decision to Reverse the Building Inspector's Zoning Determination Regarding 401 Main Street – Congregate Living (“Congregate Living Decision”).
14. On April 24, 2017, the Board issued its Decision to Uphold the Issuance of Building Permit BP-2016-0166 Regarding 401 Main Street (“Building Permit Decision”).
15. On May 9, 2017, Cultivate Counseling Center, LLC, Edwin P. Madera, Debra L. Madera and Andrew J. Lapin filed their Verified Complaint in Cultivate Counseling Center, LLC et al v. Gerard Ahern et al, Massachusetts Land Court, Case No. 17MISC000253, (“Litigation”) appealing the Counseling Use Decision and the Congregate Living Decision and alleging, among other things, that their use of the Premises was protected under the Dover Amendment as an agricultural use.
16. On May 25, 2017, Debra Madera filed a Charge of Discrimination against the ZBA with the Massachusetts Commission Against Discrimination in Debra L. Madera v. Town of Bolton – Zoning Board, MCAD Case No. 17WPR01243 (“MCAD Charge”) alleging the Board in issuing the Counseling Use Decision and Congregate Living Decision discriminated against her on the basis of Gender Identity (LGBTQ) and Disability (Recovering from Substance Abuse) in violation of M.G.L. c. 151B, § 4, ¶ 7 and Title VII of the federal Civil Rights Act of 1964, 42 U.S.C. § 2000e et seq.
17. In order to avoid the cost, delay and uncertainty of litigation, and without any admission of liability whatsoever, the Town Defendants and Cultivate Counseling entered into a Settlement Agreement on March 7, 2019 to memorialize the terms and conditions associated with the resolution of the Litigation, the MCAD Charge and any and all claims, debts, demands and causes of action Cultivate Counseling may have against the Town Defendants under any legal, statutory, common law or equitable theory.
18. Under the terms of the Settlement Agreement, the Board is required, after notice to abutters, publication in a newspaper of general circulation, and a public hearing in accordance with M.G.L. c. 40A, to issue this Amended Decision amending its prior Counseling Use Decision and its Congregate Living Decision.
19. A public hearing on the Amended Decision was noticed for May 7, 2019. Notice of the public hearing was published in The Clinton Item on April 19, 2019 and

April 26, 2019. Both notices were posted for 14 days in the Bolton Town Hall, and mailed to parties of interest at least 14 days before the public hearing.

20. The ZBA commenced the public hearing on the Amended Decision on May 7, 2019 at the Bolton Town Hall, Board of Selectmen Room, 663 Main Street, Bolton, MA at 7:00 p.m. at which time all those opposed or in favor could be heard.
21. Members of the ZBA attending the public hearing, deliberating and voting on the Amended Decision were Chairman Gerard Ahearn, and Members Bradley Reed, Kay Stoner and Andy Kischitz.
22. The Petitioners or their representatives were in attendance at the public hearing.
23. The Owners or their representatives were in attendance at the public hearing. The Owners' representative was Atty. Robert W. Ancil of Perkins & Ancil.
24. Town Counsel David McCay of Mirick, O'Connell, DeMallie & Lougee, LLP was in attendance at the public hearing on May 7, 2019.
25. Throughout its deliberations, the ZBA was mindful of the terms of the Settlement Agreement, the statements of the Petitioners, the Owners, representatives, and the comments of the general public, all as made or received at the public hearing.

RECORD DOCUMENTS

True copies of the Petition, the Settlement Agreement and all materials submitted to the ZBA relevant to the Petition and the Settlement Agreement by the Petitioners, the Owners, and others, and the notices of the public hearing, are made a part of the record of this Amended Decision and listed in Appendix A. These materials are on file with the Office of the Town Planner.

DISCUSSION AND FINDINGS

1. Over the course of the hearing, the ZBA heard testimony as summarized in the discussion and findings set forth below.
2. Testimony was heard from the Owners' representative and members of the public attending the hearing. It was clarified that the Premises remains within the residential zoning district. An overview of the Parking Plan, required as part of the Settlement Agreement, was presented showing access to the Premises off of Main Street and Burnham Road via an existing gravel driveway. The plan also showed 20 parking spaces, each 9 ft. wide by 18 ft. long, behind the existing dwelling. Poor drainage was noted in the vicinity of the parking area, but is currently being managed by crushed stone and wood chips. As part of the negotiations of the Settlement Agreement, the perimeter fence surrounding the

property was removed. Any future perimeter fencing would need to be approved by the ZBA and meet applicable Zoning Bylaws, in accordance with Condition 8 below. It was confirmed by the Owners' representative that the Premises was not owner occupied. However, a fulltime caretaker lives on the property to care for the animals. Lastly, it was noted that special events allow up to 50 people, as specified in Condition 6 below, which number includes the employees of Cultivate Counseling.

3. Based on the comments and evidence received, the ZBA members deliberated among themselves before the Chair called for a motion.

AMENDED DECISION

Following the public hearing on May 7, 2019, Bradley Reed made a motion, seconded by Kay Stoner, that the ZBA allow Cultivate Counseling's use of the Premises subject to and in accordance with the following conditions:

1. Cultivate Counseling's use and operations at the Premises will be limited to farming and agriculture, providing outpatient counseling services using farm animals and licensed therapists in the delivery of counseling services, and uses otherwise permitted in the Residential Zoning District. All other uses are prohibited.
2. Cultivate Counseling will have no more than 14 total employees on the Premises at any time, including owners or partners in Cultivate Counseling and resident workers.
3. Hours of operation are limited to 8 a.m. to 7 p.m. Monday, Tuesday, Wednesday and Friday; 8 a.m. to 8 p.m. on Thursdays; and 9:00 a.m. to 3:00 p.m. on Saturdays.
4. In addition to the maximum 14 total employees as set forth above, and except for Special Events as defined below, no more than 25 people will be permitted on the Premises at any time.
5. Cultivate Counseling will provide on-site parking sufficient for 20 vehicles and in accordance with the dimensional requirements of § 250-17.C.(11) of the Zoning Bylaw and as set forth in the Site Plan. Paved on-site parking is not required. Cultivate Counseling will operate in accordance with the Site Plan as approved by the ZBA, and any amendments or changes to the Site Plan must be approved by the ZBA.
6. Special Events shall be limited to no more than 50 people in attendance, shall be "ticketed" with only those holding a printed or electronic ticket allowed on the Premises, and shall be approved in advance by the Chief of Police and the Board

of Selectmen. There shall be no more than 12 Special Events permitted in any calendar year. If a police detail and/or off-site parking and shuttle service is necessary in the discretion of the Chief of Police or the Board of Selectmen, Cultivate Counseling will provide same. Cultivate Counseling will pay the Town the normal, customary charge for any police detail.

7. Any signage at the Premises will be permitted only in accordance with § 250-18.E. of the Zoning Bylaw and upon written permission by the Board of Selectmen.
8. Fencing: Any new fencing at the Premises that is visible from the roadway shall be professionally installed and of a design and material subject to the approval of the Zoning Board of Appeals. All fencing shall otherwise conform with the requirements of the Zoning Bylaw.
9. This Amended Decision shall apply only to Cultivate Counseling and shall not "run with the land" or be transferrable to another organization, entity or owner.

This Amended Decision is made pursuant to the Settlement Agreement and in settlement of disputed claims, is made without any admission of liability by the Town or the ZBA, and is without prejudice to and sets no precedent for any future zoning or permitting issue that may come before the Town, its officials, boards or committees with respect to any other property or use, including but not limited to any use allegedly allowed under the Dover Amendment, G.L. c. 40A, § 3.

RECORD OF VOTE

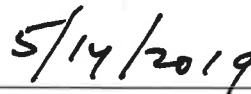
The ZBA voted as follows: Gerard Ahearn, Andy Kischitz, Bradley Reed and Kay Stoner. Cultivate Counseling's use of the Premises is allowed subject to and in accordance with the conditions set forth here with a vote of four (4) in favor and zero (0) opposed.

Gerard Ahearn – YES
Bradley Reed – YES

Andy Kischitz – YES
Kay Stoner – YES



Gerard Ahearn, Chairman
On behalf of the Zoning Board of Appeals



Dated

Appeals, if any, to this Amended Decision must be made pursuant to M.G.L. c. 40A, § 17 and must be filed within twenty (20) days after the date of filing of this Amended Decision in the office of the Bolton Town Clerk.

This Amended Decision shall not take effect until a copy of this Amended Decision bearing the certification of the Town Clerk that twenty (20) days have elapsed after this Amended Decision has been filed in the office of the Town Clerk, and that no appeal has been filed within said twenty (20) days; or that, if such appeal has been filed, that it has been dismissed or denied.

FILED WITH THE TOWN CLERK

2019 MAY 14 PM 3:16

Filed with the Town Clerk on May 14, 2019.

Pamela H. Powell

Pamela Powell, Town Clerk

CERTIFICATE OF NO APPEAL

The undersigned, being the Town Clerk of the Town of Bolton, certifies that the 20-day appeal period on this Amended Decision has passed and there have been no appeals made to this office.

Date: _____, 2019.

Pamela Powell, Town Clerk

Copy of Amended Decision mailed to:

Abutters

Surrounding Towns

Bolton Boards and Committees

Petitioners

Owners

APPENDIX A: RECORD DOCUMENTS

1. Settlement Agreement between Town Defendants and Cultivate Counseling dated March 7, 2019.
2. Site Plan entitled "Parking Plan, 401 Main Street, Bolton, Massachusetts" prepared by Ducharme & Dillis Civil Design Group, Inc. for Cultivate Counseling Center, 401 Main Street, Bolton, Massachusetts, dated March 27, 2019.