

**Zoning Appeal for Building Permit BP-2016-0166
Property Owned by Debra and Edwin Madera
401 Main Street, Bolton, MA**

**Brought by the neighborhood of the Bolton Plan
November 28, 2016**



Zoning Appeal for Building Permit BP-2016-0166
Property Owned by Debra and Edwin Madera, 401 Main Street
November 28, 2016

We the undersigned residents of the Bolton Pan are appealing the issuance of building permit BP-2016-0166 for 401 Main Street and more generally the use of the residential property there for a business operation. Our reasoning is contained herein.

Burnham Road

Nancy Skinner
Nancy Skinner #39

Linda & John Austin
Linda & John Austin #84

Mary H. McCarthy
Mary & Peter McCarthy #65

Louise Malloy
Louise Malloy #48

William & Judith Leonard
William & Judith Leonard #42

Kent & Meredith Pollock
Meredith Stanford & Kent Pollock #61

Dave & Ali Webb
Dave & Ali Webb #33

Justin & Tracy Arsenault
Justin & Tracy Arsenault #33

Dorothy Paquet
Dorothy Paquet #88

Chris & Nicole Soucie
Chris & Nicole Soucie, #103

Amy & David Barnes
Amy & David Barnes

Michael & Elisabeth Horesh
Michael & Elisabeth Horesh #56

Karen Skinner
Karen Skinner #64

John Austin

Peter McCarthy

Louise Malloy

William & Judith Leonard

Kent & Meredith Pollock

Meredith Stanford & Kent Pollock

Dave & Ali Webb

Justin & Tracy Arsenault

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Michael & Elisabeth Horesh

Michael Horesh, #56

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Burnham Road, p.2

Blanche Wagdespack
Blanche and Les Wagdespack # 91

Mareia Nonni
113 Burnham RD

Leslie J. Wagdespack
Mareia Nonni

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Main Street

Frederick Van Bennekorn 11/27/16 Christine Mudgett 11/27/16
Frederick Van Bennekorn, #421 Christine Mudgett, #421

Aaron Kotilainen 11/27/2016
Aaron Kotilainen, #443

Helen Kotilainen 11-27-2016
Helen Kotilainen, #443

William McCarthy 11/27/2016 Dean McCarthy 11-27-16
William McCarthy, #434

Martha Remington 11/28/2016
Martha Remington

Nate & Stephanie Melbourne 11/27/16 Stephanie Melbourne 11/27/16
Nate & Stephanie Melbourne, #418

John & Danielle Vanderkeyl 11-27-16 Danielle Vanderkeyl 11/27/16
John & Danielle Vanderkeyl, #435

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We ask that the future hearing be recorded and that we be able to record it.

Long Hill Road

Edward R Schroeder 27 Nov 16 Carol L. Schroeder 11-27-16
Edward & Carol Schroeder, #3

John E. Tremblay 11/27/16 Lynne Tremblay 11-26-16
John & Lynne Tremblay, #5

Susan Miles 11/26/16
Susan Miles #9

Steve Hastings 11/26/16
Steve Hastings #39

Susan Hastings 11/27/16
Susan Hastings #39

Introduction and Summary

Cultivate Counseling is a Limited Liability Corporation (LLC), ID # 001166244, operating in a residentially zoned area of Bolton. It is not licensed by the state as a mental health facility. The property owners, the Maderas, residents of Tewksbury, purchased 401 Main Street on September 6, 2016. Debra Madera owns 5% of Cultivate Counseling LLC. The managers of Cultivate Counseling, the Lapins, each own half of the remaining 95%. They reside in Littleton.

Two uses are set out for the property: 1) Cultivate Counseling that provides outpatient counseling, and 2) John Sawyer's Mill that provides inpatient substance abuse counseling. We believe that John Sawyer's Mill is legally organized under Cultivate Counseling LLC. Agricultural elements are used in its outpatient counseling.

Upon purchasing the property, work immediately began to prepare it for business use. The house and barn were renovated for the needs of the business. Trees were cut in the wetlands buffer for a horse paddock with no shelter for the horses. Two commercial trailers appeared on the property less than 100 feet from the property line on Burnham Road, a town-designated scenic road, without benefit of a permit. Codes Officer issued a cease and desist order.

Town Counsel on November 8, 2016 issued his advice to the Town that the businesses at 401 Main Street had certain legal protections based upon the agricultural use. We disagree with aspects of Counsel's legal findings and reasoning especially where no case law exists.

Our appeal to the permit BP-2016-0166 is based on several points, one process oriented, three regarding the legitimate application of relevant zoning laws. While the permit has prompted this appeal, we feel very strongly that the Town should have investigated the legal standing of Cultivate Counseling LLC to operate its businesses in a residential zone when it learned the intended use a month or more prior to the property's purchase. (Appendix G)

The Town has a right *and* a responsibility to apply its zoning laws. If the town does not assert its right to apply its non-discriminatory zoning laws, the precedent that will be set could effectively modify or void areas of those laws for future enforcement actions. The ramifications for this case extend far beyond the Bolton Pan to the Town's population as a whole. We feel a cease and desist order is warranted.

Specific areas for our appeal follow in four areas.:

- **Ascertaining Full and Complete Information** Before Rendering Judgment
- Applicability of Town Zoning Bylaws in Regards to **Congregate Living**
- Applicability of Town Zoning Bylaws in Regards to **Businesses Accessory to a Primary Residence**
- Applicability of Town Zoning Bylaws in Regards to **Agriculture/Business Accessory**

We ask that the future hearing be recorded and also that we be able to record it.

Ascertaining Full and Complete Information Before Rendering Judgment

Town Counsel in his written statements (Appendices C and D) repeatedly remarks that his decision was based upon information provided to him by Cultivate Counseling LLC, and that his opinion might change if he learns new information. He never specifies fully what information might lead him to change his opinion.

Time is of the essence here since the business becomes more entrenched each day. Given the dramatic impact this business will have upon town zoning precedents and the Bolton Pan neighborhood, we feel strongly that relevant facts should be identified and verified by the Town before this business continues its operations. The Town should not accept information as fact by those associated with the business who clearly have a vested interest.

Additionally, some of Town Counsel's comments were imprecise. His statement of 3 November noted:

Further, courts have held that uses accessory or incidental to a principal agricultural use benefit from the agricultural exemption, including offices connected to a farm which are necessary for the agricultural operation.

I have not identified any cases where outpatient treatment/counseling qualifies as accessory to an agricultural use. However, if this component of the proposed use is so intertwined with farming activities that it is indistinguishable from agriculture, then I *believe* the overall proposed use qualifies as an agricultural use. (emphasis added)

What specifically are those court rulings regarding accessory use? Below we will point out the impact of the above statement if true: our town bylaws regarding business operations accessory to agriculture will be seriously compromised as well as our zoning laws regarding businesses in residential zones that are not home occupations.

Many of the 44 signatories of this appeal have been residents of the town for 30, 40, 50 and even 60 years. Even absent the legal arguments put forth below, we feel the Town deserves a more in-depth legal review of the zoning challenges presented by Cultivate Counseling LLC given the immense impact that the decision will have not just on our neighborhood but also on the Town as a whole.

Applicability of Town Zoning Bylaws in Regards to Congregate Living

The John Sawyer's Mill business is an inpatient group home for those with substance abuse problems. That statement is based upon public statements by the owners. As the facility is not licensed by the state, the status of their clients as a protected class has not been established by a state agency.

Bolton's Schedule of Permitted Uses (Section 250-12) does not allow for congregate living homes in a residential zone. In his commentary on 14 October, Town Counsel dismissed the applicability of our town zoning for the congregate living:

I *believe* the proposed congregate living/treatment use is governed and protected by the Fair Housing Act, the Americans with Disabilities Act, and potentially the federal Rehabilitation Act. (emphasis added)

We believe our town zoning is fully applicable and we cite relevant law. MGL 40a Sec. 3 states:

Notwithstanding any general or special law to the contrary, local land use and health and safety laws, regulations, practices, ordinances, by-laws and decisions of a city or town shall not discriminate against a disabled person. Imposition of health and safety laws or land-use requirements on congregate living arrangements among non-related persons with disabilities *that are not imposed on families and groups of similar size or other unrelated persons* shall constitute discrimination.¹ (emphasis added)

Also, the US Department of Justice's website concurs with the position of above state law. We have put that text in Appendix A so that it can be read in full. Simply put, zoning laws can be applied to group homes for disabled if those laws are applied to *all* group homes. Discrimination would be present *only if laws specifically target the disabled*.

Further, our research has disclosed a November 15, 2016, decision from the U.S. District Court in Maine that examined the same body of law as Town Counsel. The ruling shows that a town ordinance is "legal" if it applies equally to all persons and does not single out any disabled group for special restrictions.² The city of Bangor wrote ordinances specifically to restrict methadone clinics.

In that case, at page 19, Judge John Woodcock states:

Although the First Circuit [which includes Massachusetts] has not directly addressed this issue, the Third, Sixth, and Ninth Circuits have held that "a law that singles out methadone clinics for special treatment for different zoning procedures is facially discriminatory under the ADA [Americans with Disability Act] and the Rehabilitation Act."

He then goes on to cite three Federal Circuit Court decisions and two Pennsylvania state court decisions that support his statement.

The court reasoned that zoning and regulatory decisions are a normal function of a government entity; at issue is whether the decisions target protected groups. Judge Woodcock stated that the city could amend "the ordinance to cure its flaws" by applying "non-discriminatory criteria." In contrast to Bangor, *our zoning ordinances contain no discriminatory criteria*. The rules

¹ Source: <https://malegislature.gov/Laws/GeneralLaws/PartI/TitleVII/Chapter40a/Section3>

² The case is not yet available online. A copy can be provided on request.

applied equally do not allow for congregated living in residential zones. That would meet requirements of Judge Woodcock's ruling.

In another section, we address the agricultural exemptions, but we note here that John Sawyer's Mill does not have a required agricultural component to its counseling. We cite website copy in Appendix B as evidence of this. Thus, the inpatient group home counseling business would not benefit from any agricultural exemption should one exist. That website copy will likely be changed. We feel original documents are most relevant to discern actual practice.

Let us understand the consequences of this decision. If this congregate living business is allowed to continue not grounded in law, it would effectively remove the restriction on congregated living quarters in a residentially zoned area. A dangerous precedent would be established for future application of this zoning law, for example, to a lodging home marketed through Airbnb or HomeAway.

We believe we have cited relevant law and legal ruling to assert the applicability of our town restriction on congregate living in residential zoned areas. The Town can and should apply its zoning laws in an even and non-discriminatory manner. Given the potential impact, we feel a cease and desist order is warranted or at minimum a deeper legal review.

Applicability of Town Zoning Bylaws in Regards to Businesses Accessory to a Primary Residence

Our zoning laws in the Schedule of Permitted Used (Section 250-12) do not allow for businesses in residential zones except as accessory businesses (Section 250-21). Cultivate Counseling LLC is not a business accessory to a primary residence. To be classified as an accessory home occupation requires:

- (1) The profession or home occupation is conducted by a resident of the premises.
- (2) The use is clearly incidental to and secondary to the use of the premises for residential purposes and the external character of the premises is that of a one-family residence.
- (3) Not more than two persons other than the residents of the dwelling and not more than a total of four are employed at any one time on the premises in the home occupation.

None of these exist at 401 Main Street.

- (1) The owners of the property (Maderas) do not live at 401 Main Street, despite the fact that they took out a residential mortgage coupled with a homestead declaration, affirming that they do (filings with Registrar of Deeds for Northern Middlesex). Evidence

of their legal residence in Tewksbury was provided to the Town in the building permit application (Appendix E). The managers of the business (Lapins) also do not live at 401 Main Street, but rather in Littleton. No one from 401 Main Street voted in this year's election in Bolton.

Thus, there is no "residential use" – as in a resident of the town of Bolton – as Town Counsel appears to believe in his statement on 3 November discussing the impact of "residential use" upon his conclusions. *We do not believe that Town Counsel was properly apprised that no one was a resident of the property and thus he did not even address this zoning requirement.*

(2) Even if the owners or managers moved into the property, the accessory use would clearly not be incidental to and secondary to a residential purpose. Further, the "external character" of the trailers that are supposedly used for agricultural processing and the large number of cars present is definitely not residential. They have a staff of 9 and expect 12 outpatient counseling sessions per day and 5 inpatient guests.

(3) Even if the owners or managers moved into the property, the staff level (9) as evidenced on their websites well exceeds four.

The fact that this is a business and not a residence or primarily an agricultural enterprise is demonstrated by several documents from Cultivate. First, Cultivate Counseling presents itself as a *counseling business* primarily, as evidenced by its website copy (see Appendix B). In their Form of Intent (Appendix E-2) for the building permit application, the intended use is stated as:

Provide mental health counseling services to teens and adults.

A counseling business, *not* a primary residence or agriculture, is the intended use.

Second, in that permit filing where asked for "Name of Owner," Mr. Lapin refers to himself as the owner. He is the owner – of the business – not of the property.

Third, the primacy of the counseling business is shown by copy on the Cultivate website (Appendix B):

As much as we believe in the farm based approach, we also recognize that sometimes it is more appropriate to process inside one of our private offices.

For the John Sawyer's Mill congregate home, they also state that the agriculture elements are not required, but that guests are "invited" and "encouraged."

Fourth, we understand that Cultivate may be applying to be licensed by the state as a mental health delivery facility, not as an agricultural entity. We understand that the license is necessary to accept insurance payments, including government insurance. Farmers don't generate agricultural revenue through insurance.

Finally, in the home improvement contractor law supplement to permit application (Appendix E-7), a section asks why registration is not required. “Other” was checked with “Industrial” written in as the reason. This means a building permit was issued for a small-scale industrial processing plant (see language used in Appendix F also) that uses unpaid workers. This stretches the definition of agriculture. A textile mill is not agricultural even though it works with an agricultural raw material, cotton. At some point in the value-added processing steps, the nature of the process transitions from agricultural to industrial, and that is what will be happening in the “factory” on site.

Despite the evidence just cited, Town Counsel seems to argue that the primary purpose of this residential property may not be either residential, business, or industrial, but rather agricultural and thus subject to exemptions that a non-accessory business would not.

Further, courts have held that uses accessory or incidental to a principal agricultural use benefit from the agricultural exemption, including offices connected to a farm which are necessary for the agricultural operation.

The offices that a farm might use are for administrative uses. Such “back office” functions are necessary for any organization, whether profit or not-for-profit. Some of the “offices” discussed here in the Cultivate context will be administrative, but others are places where a value-added service delivery – the counseling events – is conducted. Any exemption anticipated by Town Counsel may not flow through to these offices.

MGL 40a Sec. 3 states that restrictions are not allowed where the “primary purpose” is agricultural, but does the property have such a primary purpose of agriculture as defined:

... provided that either during the months of June, July, August and September of each year or during the harvest season of the *primary crop* raised on land of the owner or lessee... (emphasis added)³

It continues:

For the purposes of this section, the term "agriculture" shall be as defined in section 1A of chapter 128,

Here is that definition:

MGL, Part 1, Title XIX, Chapter 128, Section 1A: Farming, agriculture, farmer; definitions⁴

Section 1A. "Farming" or "agriculture" shall include farming in all of its branches and the cultivation and tillage of the soil, dairying, the production, cultivation, growing and harvesting of any agricultural, aquacultural, floricultural or horticultural commodities,

³ <https://malegislature.gov/Laws/GeneralLaws/PartI/TitleVII/Chapter40a/Section3>

⁴ <https://malegislature.gov/Laws/GeneralLaws/PartI/TitleXIX/Chapter128/Section1A>

the growing and harvesting of forest products upon forest land, the raising of livestock including horses, the keeping of horses as a commercial enterprise, the keeping and raising of poultry, swine, cattle and other domesticated animals used for food purposes, bees, fur-bearing animals, and any forestry or lumbering operations, performed by a farmer, who is hereby defined as one engaged in agriculture or farming as herein defined, or on a farm as an incident to or in conjunction with such farming operations, including preparations for market, delivery to storage or to market or to carriers for transportation to market.

Taken as a whole it is hard to see how Cultivate qualifies an agricultural enterprise. Yet, Town Counsel states.

I have not identified any cases where outpatient treatment/counseling qualifies as accessory to an agricultural use. However, if this component of the proposed use is so intertwined with farming activities that it is indistinguishable from agriculture, then I *believe* the overall proposed use qualifies as an agricultural use. (emphasis added)

To argue that counseling *services* constitute an agricultural *product* requires a stretch of logic that we feel is worthy of a legal challenge. To follow Town Counsel's advice based upon what he *believes* case law *would find* seems an irresponsible choice of action given the immense implications for our town's ability to regulate. In the next section, we present the type of contrivances that might ensue to bypass the zoning regulations.

All this evidence supports the conclusion that Cultivate Counseling LLC is a business, and not an accessory home occupation or primarily an agricultural enterprise. Applying the legal arguments presented in the section on congregated living, it is *not* discriminatory to apply the Town's zoning laws to 401 Main Street. All other residents must follow these zoning requirements; no protected group is targeted.

In summary, Town Counsel did not directly address the applicability of this zoning law in part we believe because he was not presented full and complete information. We ask that he reconsider his decision. We feel that Cultivate Counseling LLC is a business operating in a residentially zoned area. We feel the Town's bylaw is applicable and should result in a cease and desist order.

Applicability of Town Zoning Bylaws in Regards to Agriculture/Business Accessory.

Town and state law provide considerable flexibility to agricultural enterprises. We concur in the public benefit from these laws so long as the work is truly agriculture. However, as seen with the previous owners of 401 Main Street, being a right-to-farm community is not carte blanche to do anything. Town Counsel focuses heavily on the agricultural component of Cultivate Counseling's business.

As argued above, we feel that logic dictates that this is a counseling business with agricultural and industrial activities as accessory, allowing application of our zoning laws apply regarding operation of a business in a residential zone. Now, let's assume the opposite: that Cultivate Counseling LLC is primarily an agricultural enterprise.

In this scenario, the counseling and industrial businesses are an "accessory business" to the agriculture. Our town's zoning laws require a Special Permit for accessory business to agriculture in a residential zone. (Section 250-21E.) To our knowledge, Cultivate Counseling LLC has not applied for and received a Special Permit from the Select Board –nor even inquired about the need. Note that MGL 40a Sec. 3 states a permit is not required to engage in agriculture as a primary purpose. Accessory businesses have no such protection.

If Cultivate Counseling LLC does apply for a Special Permit, its business is not one of the allowable accessory businesses enumerated in Section 250-21E, nor is it even close to any of the allowable uses.

- (a) Retail sales of farm products, crafts and similar retail products, as well as newspapers or magazines, including serving and consumption of baked goods and other prepared foods on the premises during hours of operation as defined in the special permit;
- (b) Large and small animal veterinary services;
- (c) Hosting or staging of revenue-generating events, tours, weddings, and functions which are appropriate in scale to the premises and surrounding residential area, including the preparation and serving of food and beverages for such events.
- (d) Wireless communication facility(s), as defined in § 250-25...

Most importantly, ***it does not meet the criterion laid out in Section 250-21E (4).*** Note the requirement for the accessory business:

- (d) Total annual projected sales from the accessory use when fully operational do not exceed total sales derived from agriculture, horticulture, floriculture, or viticulture;

The purpose of the accessory business provisions is to allow farms to supplement their income but the restrictive criteria ensure that farms are truly farms and that the agriculture enterprise is not a pretext for a broader business.

Cultivate says in a letter to Town Planner it will generate \$9500 annually from agricultural operations. (Appendix F. Other numbers are provided but all are less than \$10,000.) Clearly, to support a staff of nine (per their websites) and the expenses of the facility (mortgage, taxes, insurance, house and animal maintenance), revenue from the counseling business must be far more than a magnitude greater than the expected revenue of the agricultural enterprise.

In a draft of a state filing, Clinic Presurvey for Licensure, Cultivate Counseling expects 75 sessions per week at \$30/session. (Appendix G provides similar numbers.) That equates to \$117,000 per year. This figure does not include expected revenue from the congregate living. Total pro forma revenue for the non-agricultural businesses likely exceeds \$200,000.

Further, it is questionable that Cultivate can meet the footprint requirements:

(e) Facilities and structures constructed for the accessory use are compatible with other agricultural facilities on the property in function, visually, and in scale such that the total footprint of all accessory facilities does not exceed 50% of the footprint of all agricultural facilities on the property;

There are only two ways around this dilemma of which is the primary product. One, assert that no laws can restrict what Cultivate Counseling LLC does. This is refuted by the above stated case law by Judge Woodcock. Towns have a right to regulate.

Two, assert that counseling services are not accessory to but are an agricultural product. As indicated in the previous section Town Counsel indicates he *believes* this is the case but states no legal precedents. This point is refuted by previously cited Massachusetts state law on the definition of agriculture. It is also refuted by Cultivate Counseling's communications to the town where it clearly views its agricultural product revenue as separate from its counseling service revenue.

We reiterate a critical point: to argue that counseling **services** constitute an agricultural **product** requires an immense stretch of logic that we feel is worthy of a legal challenge.

What are the ramifications of following Town Counsel's current advice? We can expect other situations where an accessory business is claimed as agricultural product. Consider these simple examples:

- The farmer's hay ride now becomes an agricultural product since the hay is from the farm, allowing for more accessory business.
- Someone buys a residential property and converts it into a movie studio. As film settings, they use onsite vegetable fields, vineyards, and farm animals. The movie would become an agricultural product.

To follow Town Counsel's advice based upon what he believes case law would find seems an irresponsible choice of action given the implications. The section of the bylaws regarding businesses accessory to an agricultural enterprise may be effectively void due to the established precedent. The Town would have difficulty challenging a similar circumstance in the future. The Town can and should apply this zoning law to the business at 401 Main Street resulting in a cease and desist order.

Conclusion

The businesses at 401 Main Street, a residentially zoned property:

- Have a congregate living situation
- Are not a home occupation accessory to a home occupation
- Will have accessory business revenue far exceeding agricultural revenue

Each is in violation of town zoning bylaws for residential property. We respectfully ask the Town Counsel to reconsider his recommendation and the Zoning Board of Appeals to exercise its right and its responsibility to apply our zoning laws in an even and non-discriminatory manner, voiding permit BP-2016-0166 and disallowing the businesses to operate at 401 Main Street.

Appendix A

JOINT STATEMENT OF THE DEPARTMENT OF JUSTICE AND THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

<https://www.justice.gov/crt/joint-statement-department-justice-and-department-housing-and-urban-development-1>

Since the federal Fair Housing Act ("the Act") was amended by Congress in 1988 to add protections for persons with disabilities and families with children, there has been a great deal of litigation concerning the Act's effect on the ability of local governments to exercise control over group living arrangements, particularly for persons with disabilities. The Department of Justice has taken an active part in much of this litigation, often following referral of a matter by the Department of Housing and Urban Development ("HUD"). This joint statement provides an overview of the Fair Housing Act's requirements in this area. Specific topics are addressed in more depth in the attached Questions and Answers.

The Fair Housing Act prohibits a broad range of practices that discriminate against individuals on the basis of race, color, religion, sex, national origin, familial status, and disability. (1) **The Act does not pre-empt local zoning laws. However, the Act applies to municipalities and other local government entities and prohibits them from making zoning or land use decisions or implementing land use policies that exclude or otherwise discriminate** against protected persons, including individuals with disabilities. (emphasis added)

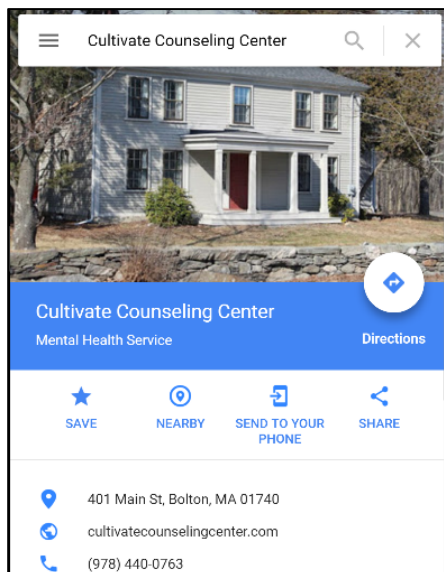
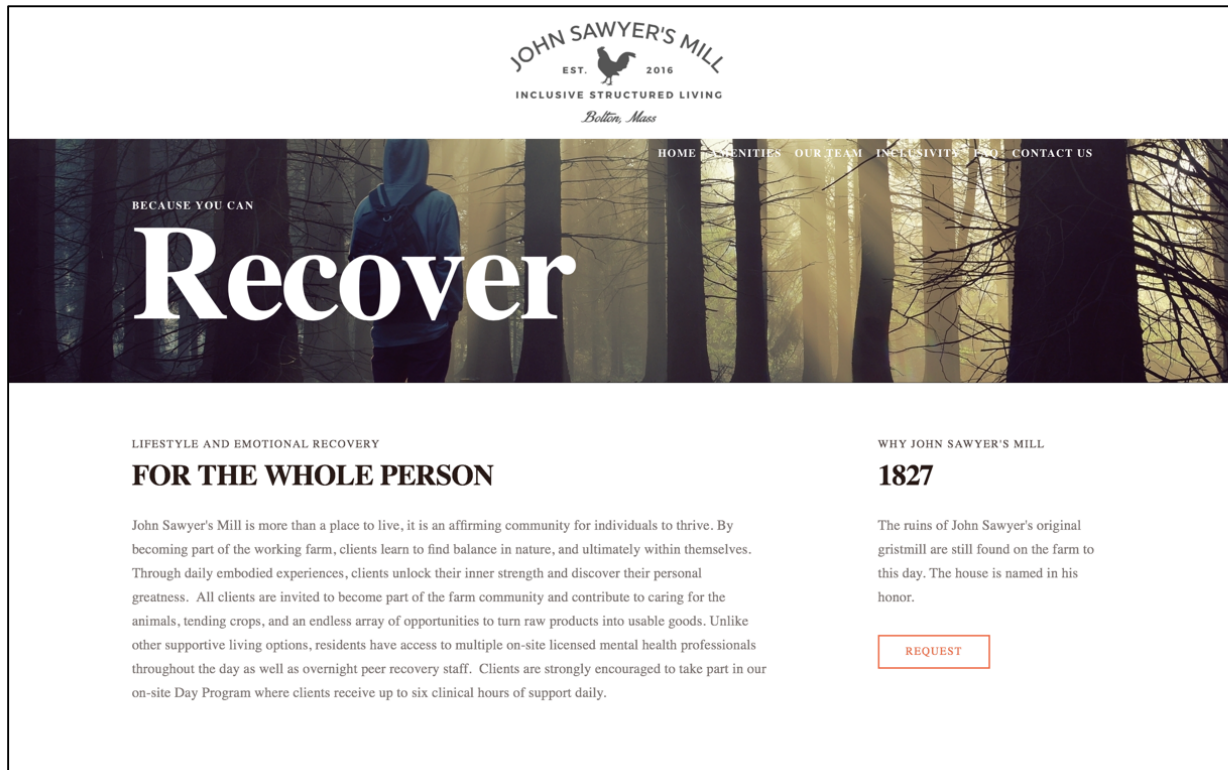
The Fair Housing Act makes it unlawful --

- To utilize land use policies or actions that treat groups of persons with disabilities less favorably than groups of non-disabled persons. *An example would be an ordinance prohibiting housing for persons with disabilities or a specific type of disability, such as mental illness, from locating in a particular area, while allowing other groups of unrelated individuals to live together in that area.* (emphasis added)
- To take action against, or deny a permit, for a home because of the disability of individuals who live or would live there. An example would be denying a building permit for a home because it was intended to provide housing for persons with mental retardation.
- To refuse to make reasonable accommodations in land use and zoning policies and procedures where such accommodations may be necessary to afford persons or groups of persons with disabilities an equal opportunity to use and enjoy housing.
- What constitutes a reasonable accommodation is a case-by-case determination.
- Not all requested modifications of rules or policies are reasonable. If a requested modification imposes an undue financial or administrative burden on a local

government, or if a modification creates a fundamental alteration in a local government's land use and zoning scheme, it is not a "reasonable" accommodation.

The disability discrimination provisions of the Fair Housing Act do not extend to persons who claim to be disabled solely on the basis of having been adjudicated a juvenile delinquent, having a criminal record, or being a sex offender. Furthermore, the Fair Housing Act does not protect persons who currently use illegal drugs, persons who have been convicted of the manufacture or sale of illegal drugs, or persons with or without disabilities who present a direct threat to the persons or property of others.

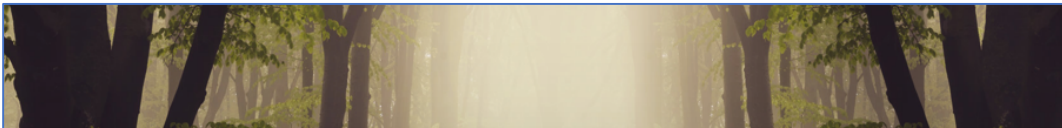
Appendix B
Website Copy John Sawyer's Mill and for Cultivate Counseling LLC
All screen shots taken between November 17 and 22, 2016





Our History

Founded in 2015 in Acton, Massachusetts, Cultivate Counseling Center has become the premier Farm Based Therapy outpatient program in the country offering services for adolescents and adults. What started as a couple of clinicians looking to challenge the status quo of mental health, has become a living farm where individuals come to heal and grow in Bolton, Massachusetts.



Based on a centuries-old Dutch model of social inclusion and mental healing, Cultivate Counseling Center invites individuals to venture outside the traditional counseling setting, and reconnect to the natural world. The farm, and nature at large, acts as a metaphor for emotional pain, and through hands-on experiences clients are able to work through that pain and find lasting peace. Clients have an opportunity to interact with dozens of animals while engaging in therapeutic growth on the farm. Every session and interaction at Cultivate Counseling Center is unique and tailored to the specific needs of every individual. Cultivate Counseling is not focused on diagnosis, but on recovery and wellness, we are honored to serve people regardless of their challenges. As an outpatient mental health center, we aim to include teens and adults who have been hesitant to engage or re-engage in therapy and offer an alternative to traditional counseling. We welcome individuals struggling with an array of emotional, developmental, and psychological challenges to join us on a journey of self-discovery and lasting change through the cultivation of one's mind, body, and environment.



401 Main Street Bolton, MA 01740

(978) 440-0763



Individual Therapy

Individual Therapy at Cultivate Counseling Center is different than therapy anywhere else. For instance, we strive to move the session outside and into nature. Clients should expect to spend the majority of time interacting with animals or working in nature. However, As much as we believe in the farm based approach, we also recognize that sometimes it is more appropriate to process inside one of our private offices. Every client is given the opportunity to get to know the farm and identify which spaces feel comfortable and with which animals they personally connect. From this information, we create individualized treatment plans and create a highly specialized therapeutic experience. Moving around the farm takes time, consequently session can last up to ninety minutes depending on the needs and abilities of the client.

We also offer couples and family counseling when appropriate, please contact us for more details about couples and family counseling.

Appendix C
Town Counsel Statement October 14, 2016

From: Falk, Brian R. [<mailto:bfalk@MirickOConnell.com>]
Sent: Friday, October 14, 2016 10:09 AM
To: 'Erica Uriarte' <townplanner@townofbolton.com>
Cc: 'Don Lowe' <townadministrator@townofbolton.com>; msauvageau@lunenburgonline.com; Gibbons, Robert B. <rgibbons@mirickoconnell.com>
Subject: RE: Town Counsel Determination - Cultivate Counseling at 401 Main St

Hi Erica,

As we discussed yesterday, based upon the information you provided, I believe the proposed congregate living/treatment use is governed and protected by the Fair Housing Act, the Americans with Disabilities Act, and potentially the federal Rehabilitation Act. In addition, the use likely benefits from the protections for disabled persons set forth in the Dover Amendment. Further, it appears that the proposed farming use may benefit from the agricultural exemption set forth in M.G.L. c. 40A, Sec. 3.

However, the outpatient treatment component of the use is not clearly covered by the educational exemption set forth in the Dover Amendment. Such a use must be predominantly educational. Although nontraditional treatment programs often qualify under the educational exemption, the land hosting this use must be owned or leased by "a nonprofit educational corporation" under the Dover Amendment. Cultivate Counseling, LLC is a not organized as a nonprofit corporation. I have not identified any case law conferring "nonprofit educational corporation" status on an LLC for purposes of the Dover Amendment.

Ultimately, the applicant should provide more information about the outpatient use and its educational purposes, and reevaluate its organizational structure, if it seeks protection under the Dover Amendment's educational exemption.

Appendix D
Town Counsel Statement October 14, 2016

From: Falk, Brian R. [<mailto:bfalk@MirickOConnell.com>]
Sent: Thursday, November 03, 2016 9:48 AM
To: Erica Uriarte <townplanner@townofbolton.com>;
'msauvageau@lunenburgonline.com' <msauvageau@lunenburgonline.com>
Cc: 'Don Lowe' <townadministrator@townofbolton.com>; Gibbons, Robert
B. <rgibbons@mirickoconnell.com>
Subject: RE: FW: Agricultural Use 401 Main Street

Erica and Mike,

Based upon the information provided by Adam Lapin, it appears that the use proposed by Cultivate Counselling qualifies as an agricultural use and is therefore eligible to commence operations at 401 Main Street, assuming compliance with any necessary building permits or other approvals.

As you know, agricultural uses are allowed in all Bolton zoning districts as of right, and are not subject to Site Plan Review. In addition, the agricultural exemption under M.G.L. c. 40A, Sec. 3 provides that a zoning bylaw shall not "unreasonably regulate, or require a special permit for the use of land for the primary purpose of commercial agriculture..." Parcels with at least two acres in an area zoned for agriculture benefit from this exemption.

Under M.G.L. c. 40A, Sec. 3, the land in question must be used "for the primary purposes of commercial agriculture." Based upon the information provided by Mr. Lapin, the property (which exceeds 7 acres) will be used for various agricultural activities in order to produce agricultural products for sale, with a group home occupying an existing residential structure on the property, and a new modular building installed for processing agricultural products and office/administrative space related to the agricultural operation. Clients undergoing outpatient mental health counselling/treatment will carry out agricultural work along with Cultivate Counselling's staff.

Massachusetts courts have held that a residential use concurrent with an agricultural use does not defeat the "primary purpose" requirement under

M.G.L. c. 40A, Sec. 3. Further, courts have held that uses accessory or incidental to a principal agricultural use benefit from the agricultural exemption, including offices connected to a farm which are necessary for the agricultural operation.

I have not identified any cases where outpatient treatment/counseling qualifies as accessory to an agricultural use. However, if this component of the proposed use is so intertwined with farming activities that it is indistinguishable from agriculture, then I believe the overall proposed use qualifies as an agricultural use.

Based upon the foregoing, it appears that Cultivate Counseling's proposed operation qualifies as an agricultural use. Please note that this interpretation relies on the information I have received to date. If the actual use of the property includes additional uses (classrooms, counseling rooms, or other components not clearly related or necessary to agricultural operations), then the Town may need to reexamine whether Cultivate Counseling's use has a "primary purpose" of commercial agriculture.

As noted previously, relying on the Dover Amendment's educational use exemption for other aspects of Cultivate Counseling's operation may be problematic if Cultivate Counseling is not organized as a "non-profit educational corporation."

Please let me know if you have any additional questions.



Thanks,
Brian



MIRICK O'CONNELL

ATTORNEYS AT LAW

**Appendix E-1
Permit Filings with Town**

401 MAIN ST		BP-2016-0166	
GIS #:	1040	 <p>COMMONWEALTH OF MASSACHUSETTS TOWN OF BOLTON</p> <p>BUILDING PERMIT</p>	
Map:	004.D		
Block:	0000		
Lot:	0020.0		
Category:	New Structure		
Permit #	BP-2016-0166		
Project #	JS-2016-000588		
Est. Cost:	\$59,792.00		
Fee Charged:	\$597.92		
Balance Due:	\$.00		
Const. Class:		<p>PERMISSION IS HEREBY GRANTED TO:</p> <p>Contractor: Willaim Scotsman License: CSL - cs-086979 Expires:</p> <p>Owner: Andrew Lapin</p> <p>Applicant: Willaim Scotsman</p> <p>AT: 401 MAIN ST</p>	
Use Group:			
Lot Size(sq. ft.):	314503.2		
Zoning:			
Units Gained:	0		
Units Lost:	0		
Dig Safe #:			
ISSUED ON: 08-Nov-2016		AMENDED ON:	
		EXPIRES ON: 08-May-2017	
TO PERFORM THE FOLLOWING WORK:			
Temporary Modular Building for Agricultural Use for a period of no longer than 12 months from Occupancy			
POST THIS CARD SO IT IS VISIBLE FROM THE STREET			
Electric	Gas	Plumbing	Building
Underground:	Underground:	Underground:	Excavation:
Service:	Meter:		Footings:
Rough:	Rough:	Rough:	Foundation:
Final:	Final:	Final:	Rough Frame:
			Fireplace/Chimney:
D.P.W.	Fire	Health	Insulation:
Meter:	Oil:		Final:
House #	Smoke:		Treasury:
Water:	Alarm:	Assessor	
Sewer:	Sprinklers:	Final:	
<p>THIS PERMIT MAY BE REVOKED BY THE TOWN OF BOLTON UPON VIOLATION OF ANY OF ITS RULES AND REGULATIONS.</p>			
<p>Signature: </p>			
Fee Type:	Receipt No:	Date Paid:	Check No:
Building Permit	REC-2016-001249	22-Sep-16	Auth#: 005794960911
			Amount: \$597.92
<p>663 Main Street, Phone:(978) 779-3301, Fax:(978) 779-5461, Email:boh@townofbolton.com</p> <p>GeoTMS® 2016 Des Lauriers Municipal Solutions, Inc.</p>			

**Appendix E-2
Permit Filings with Town**



Town of Bolton Building Department
Michael J. Sauvageau
Building Inspector
663 Main Street, Bolton, MA 01740
Phone: 978-779-3312 Fax: 978-779-5461

Town Hall Hours:
Mon, Wed, Sat – 8 am-9am
Tuesday Night 7 – 8 pm

FORM OF INTENT

Date 9/27/16

Zoning district: _____
Map/Parcel _____ Lot # _____
(office use only)

Please print the following:

Name of Owner: Andrew Lapin

Location of Business 401 Main st.

Name of Business Cultivate Counseling Center

Mailing Address 401 Main st.

Daytime Phone Number: _____ Cell Number (208) 201-5096

Briefly explain your intentions:

Provide mental health counseling services
to teens and adults

Signature [Signature] Date 9/27/16

In order for us to process your application, the following information is required:

1. Floor plan of how the business is going to be set up;
2. Certified plot plan showing where adequate off street parking is provided, if applicable.
(Obtained in the Assessor's Office)

Please Note: All new signs require a Sign Permit. (Initial request made in writing, including picture or sketch, to the Board of Selectmen)

☐ Business Certificate must be filed in the office of the Town Clerk.

Approvals:

[Signature] 11/8/16
Town Planner Date

[Signature] 11/8/16
Building Inspector Date

[Signature] 11/9/16
Tax Collector Date

1-2013

Appendix E-3
Permit Filings with Town

TOWN OF BOLTON
BUILDING PERMIT APPLICATION FORM

Date: Oct 18, 2016 Estimated Cost: 59,000

Address of Project (include house #) 401 Main St. Bolton, MA 01740
Unit No. _____ Subdivision Name and/or Lot No. _____

Assessor Map No. _____ Assessor Parcel No. 4.D-20

Lot Frontage 412 ft. Lot Area _____ sq. ft., or 7.2 acres
Type of Lot: Standard ☒ Backland _____ FOSPRD _____
Setbacks, ft: Front 130 Rear 500 Right side 266 Left Side 100

Purpose of Construction (check all that apply):
New Dwelling _____ Addition _____ Alteration _____ Garage _____ Shed _____
Porch _____ Deck _____ Barn _____ Siding _____ Roofing _____
In-ground Pool _____ Above ground Pool _____ Accessory Apartment _____
Industrial ☒ Commercial _____ Other _____

Explanation:
Mobile modular office - temporary 1yr only

Type of Driveway:
Private ☒ Shared _____ Common Driveway _____

Zoning District:
Residential ☒ Business _____ Limited Business _____
Limited Recreation Business _____ Industrial _____

Total square footage of proposed construction:
1st floor 1536 2nd floor 0 3rd floor 0 Finished Basement 0
Basement 0 Deck 0 Porch 0 Garage 0; No. of Cars 0

No. of Stories 1 No. of Rooms 8 No. of Baths 2 No. of Bedrooms 0
No. of Fireplaces 0 Garage Attached 0 Detached 0 Under 0

Owner's Name Debra Madesa Mailing Address 295 Whipple rd.
City/Town Newbury State & ZIP MA 01876 Phone 978-621-0535

Builder's Name Cedar Grove Contracting Mailing Address _____
City/Town 352 Shaker Rd Wakefield State & ZIP MA 01885 Phone (413) 992-8034

Appendix E-4
Permit Filings with Town

Signatures of the Reviewing Departments must be obtained by the applicant prior to submitting the application to the building inspector.

Required signatures may be obtained at the Conservation Commission, Board of Health and Planning Board offices located at the Town Hall during open hours unless otherwise required to meet with the Commission or Board.

*** Signatures (except Tax Collector) are not required for Roofs, Windows, Wood Stoves and Vinyl Siding. ***

Conservation Commission: [Signature] Date: 11/7/2016
Comments: non-jurisdictional area on property unless moved throughout property. If moved greater than 30ft. in any direction on property.

Board of Health: [Signature] Date: _____
Comments: temporary trailer w/ holding tank Not applicable.

Planning Board: Erica Urante Date: 11/8/16
Comments: temporary trailer at 401 Main St. in accordance w/ Belton zoning Bylaws - Dimensional Schedule.

Tax Collector: Michelle Carls Date: 11/7/16
Comments: _____

[Signature] 10/18/16
Signature of Owner (required) Date
Debra Madera 10/18/16
Owner's Name (Print) Date

* I understand that no work, authorized under the permit approved under this application shall commence until said permit is duly posted as required by the State Building Code. Work commenced without such permit being posted will result in a reinspection fee.

[Signature] 10/18/16 CS-108996
Signature of Builder (required) Date CSL HIP
Chadwick Berndt 10/18/16 CS-108996
Builder's Name (Print) Date CSL HIP

FOR USE BY BUILDING INSPECTOR ONLY--DO NOT WRITE IN THIS SPACE

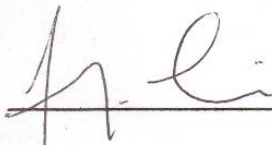
Septic ___ Water ___ Driveway ___ Energy ___ Smoke Detectors ___ Plot Plan ___ FEE: \$ ___
Special Permit ___ Order of Conditions ___ Other permits ___

Building Inspector's Signature: [Signature] Reviewed: 11/7/16
Form 08-28-12

Appendix E-5
Permit Filings with Town

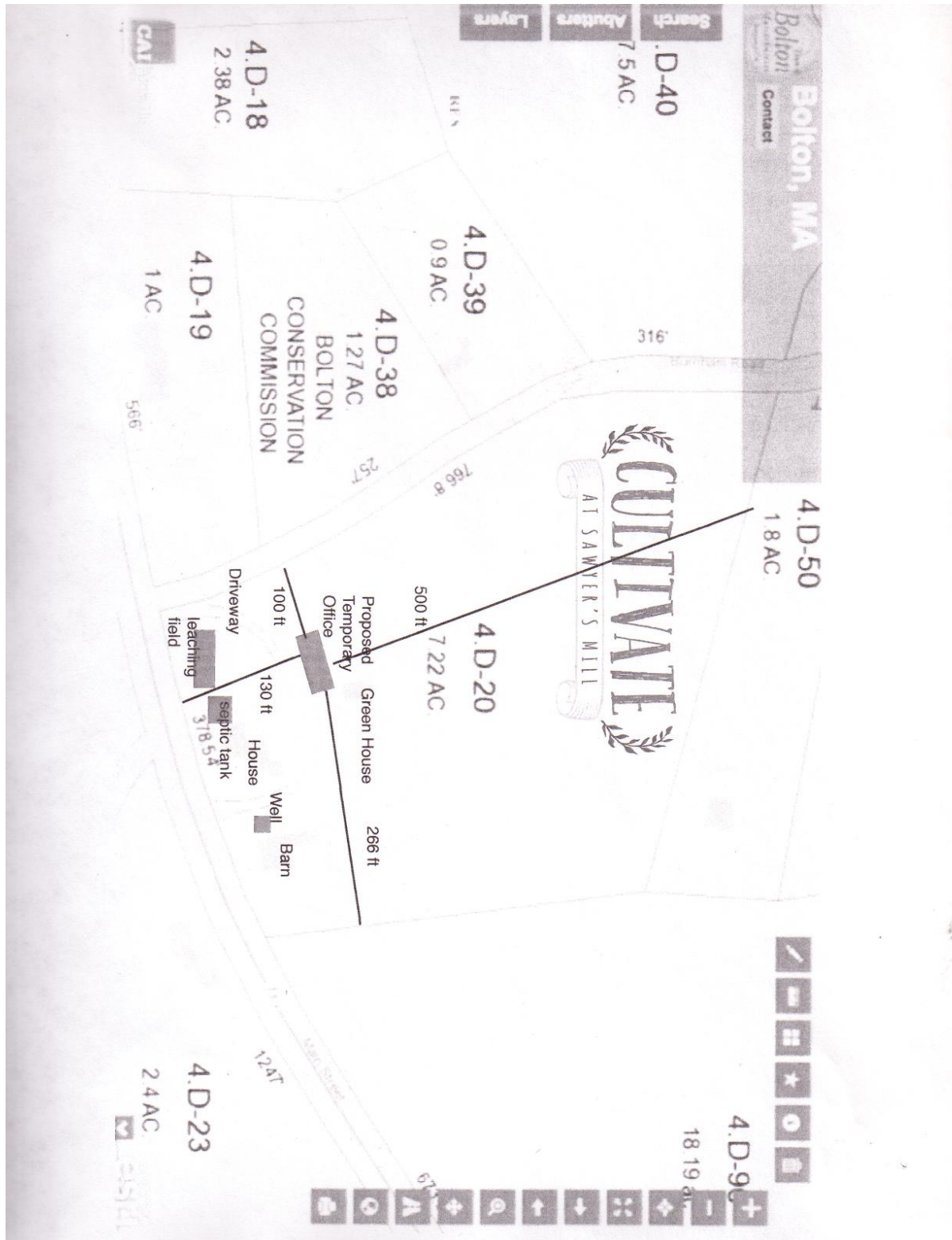
November 8, 2016

I, Andrew Lapin, owner of Cultivate Counseling Center understand that the mobile modular office permitted by building permit #BP-2016-0166, is deemed temporary in nature and is allowed for a maximum of one year from the date of occupancy. After that date it will need to be removed.



Andrew Lapin

Appendix E-6
Permit Filings with Town



Appendix E-7
Permit Filings with Town

AFFIDAVIT
Home Improvement Contractor Law
Supplement to Permit Application

MGL c. 142A requires that "reconstruction, alteration, renovation, repair, modernization, conversion, improvement, removal, demolition, or construction of an addition to any pre-existing owner-occupied building containing at least one, but not more than, four dwellings units...or to structures which are adjacent to such residence or building" be done by registered contractor, with certain exceptions, along with other requirements.

Type of Work: Mobil Modular Office Estimated Cost: 59,000

Address of Work: 401 Main St. Bolton, MA 01740

Name of Business: Cultivate Counseling Center

Owner Name: Andrew Lapin / Debra Madera

Date of Permit Application: 10/18/16

I HEREBY CERTIFY THAT:

Registration is not required for the following reason(s):

- ☐ Work Excluded by Law
- ☐ Job under \$1,000
- ☐ Building not owner occupied
- ☐ Owner pulling own permit
- ☒ Other (specify) Industrial

Notice is given that:

OWNERS PULLING THEIR OWN PERMIT OR DEALING WITH UNREGISTERED CONTRACTORS FOR APPLICABLE HOME IMPROVEMENT WORK, DO NOT HAVE ACCESS TO THE ARBITRATION PROGRAM OR GUARANTY FUND UNDER MGL c. 142A.

Signed under penalties of perjury:

I hereby apply for a permit as the agent of the owner:

 10/19/16
Signature Date

Or

Notwithstanding the above notice, I hereby apply for a permit as the owner of the above property.

Owner Signature Date

Appendix F
Letter to Town Planner, October 19, 2016

From: Cultivate Admin [<mailto:info@cultivatecounselingcenter.com>]
Sent: Wednesday, October 19, 2016 10:30 AM
To: Erica Uriarte <townplanner@townofbolton.com>
Cc: Deb Madera <deb@cultivatecounselingcenter.com>
Subject: Agricultural Use

Erica,

Thank you for your time today and for helping us navigate the process as we are a unique sort of business. Regarding the agricultural use, the proposed building is central to our operations and necessary for agricultural use. If our work did not center on agriculture we would exist in a traditional office space, not a working farm. We work with our counseling clients to process goat milk into soap and lotion and require a clean, climate controlled, sanitary environment to do so, an environment which is provided by the proposed building. Additionally, we process our sheep's wool and utilize the space for spinning, dyeing, and processing wool to bring to market. The dyeing process requires specific conditions which are only achieved in a controlled environment. We also intend to use the space for planning, marketing, and distributing goods from the farm to prepare them for market. We need this building in order to operate our agri-business. We do work with clients from a mental health perspective, but the work is all agriculturally based and requires this building for our agricultural operations.

Furthermore, we intend to produce goods in the following value annually:

Goat Soap:	\$3,000
Goat Milk Lotion	\$2,000
Wool Product:	\$ 2,500
Sale of goat kids:	\$2,000

If you have any further questions please feel free to ask.

Andrew Lapin, M.S., M.A.

Owner, Cultivate Counseling Center

Appendix G
Letter to Town Planner, August 4, 2016

Erica Uriarte

From: andrew@cultivatecounselingcenter.com
Sent: Thursday, August 04, 2016 9:08 AM
To: townplanner@townofbolton.com
Subject: 401 Main St.

Hello Erica,

I was able to meet with the town planner this past Saturday, he was incredibly helpful and suggested I reach out with a narrative of what we intend to do.

Cultivate Counseling Center intends to utilize 401 Main St. as a place to offer outpatient counseling services to adults. Our program model works best with small groups and we intend to max out at fifteen clients per day. As of now, most of our clients are dropped off in the morning either by family or from their respective sober houses, or they arrive via commuter rail to Acton and we pick them up. The property features a barn which has previously been used as a greenhouse, we intend to demolish that structure and build an accessory professional building in the form of a barn to be used for an office, waiting room, and bathroom for clients to use during treatment days. A very important aspect of our program is agriculture. We plan to produce several types of agricultural goods on the farm to exceed an annual value of \$7,500. Additionally we plan to construct an indoor riding facility, made of steel and fabric with the approximate dimensions of 26x48. We will present plans for both structures in the coming weeks.

I hope this helps in understanding our intent with the property.

Andrew Lapin, M.S., M.A.
Executive Director
Cultivate Counseling Center
217 Nagog Hill Road
Acton, MA 01720
o- (978) 440-0763
c-(208) 201-5046
Andrew@CultivateCounselingCenter.com
www.CultivateCounselingCenter.com