

TOWN OF BOLTON – ZONING BOARD OF APPEALS MINUTES

Meeting Held in the training room of the Bolton Public Safety Center - 15 Wattaquaddock Hill Road

April 27, 2017 at 7:00 PM

Members Present: Gerard Ahearn (Chairman), Andy Kischitz, Bradley Reed, Jack Sargent, and Kay Stoner
Members Absent: Brian Holmes (Associate)
Also Present: Erica Uriarte (Town Planner)
Brian Falk from Mirick, O'Connell, DeMallie & Lougee, LLP (Town Counsel)

Call to order: 7:00 PM

Hearings

- o In accordance with Massachusetts General Laws, Chapter 40A, Section 15, notice was hereby given that the Bolton Zoning Board of Appeals held a public hearing on Thursday, April 27, 2017 at 7:00 p.m. in the training room of the Bolton Public Safety Center, 15 Wattaquaddock Hill Road, Bolton, MA to hear and act upon an administrative appeal filed by the Bolton Pan Neighborhood Group as persons aggrieved by the Building Inspector's Rejection of Request for Zoning Enforcement regarding Corporate Events and Wellness Programs (i.e., Family Farm Time, Goat Yoga, Wool n' Wine) operating at 401 Main Street; property owned by Debra and Edwin Madera.
 - On April 24, 2017, the Board of Appeals issued a decision finding that a counseling business (Cultivate Counseling, LLC) being operated at 401 Main Street was not covered by the Dover Amendment's agricultural exemption and was therefore not permitted under the Bolton Zoning Bylaw.
 - The current uses being appealed include Corporate Events (farm-based team building exercises involving animals for groups of up to ten people, with groups paying a fee for each event), Family Farm Time (events held twice a month for families with children, with families paying an entry fee for each event), Goat Yoga (yoga classes held among goats, with participants paying a fee for each class), and Wool n' Wine (classes on wool processing at which participant could also drink wine, with participants paying a fee for each class).
 - Michael Sauvageau, Bolton's Building Inspector, stated that he had spoken to Andrew Lapin from Cultivate Counseling, LLC regarding the additional uses at 401 Main Street. Sauvageau indicated that the uses were no different than the primary use which is providing counseling with animals. Sauvageau had requested input from the Agricultural Commission as part of his review. He believed the uses to be agriculturally exempt since the uses were another form of counseling. The agricultural Commission agreed that the additional uses were agriculture. Sauvageau stated that when you drive by 401 Main Street it looks like a farm even when counseling is in session; if it looks like a duck and quacks like a duck it is a duck. He added if you are going to the farm for the animals, it is a farm. Sauvageau suggested that other farms have hayrides, this farm has counseling with animals. Sauvageau believed the hayrides to be less closely related to the agriculture than the counseling. He specifically mentioned goat yoga which again requires the use of the animals and is agriculture.
 - Gerard Ahearn commented that the corporate events could be conducted without the use of the animals. Sauvageau responded stating his determination is based on the information presented to him by Cultivate Counseling, LLC which included corporate events as a form of counseling with animals.
 - A resident asked Sauvageau if the justification for his zoning determination was the same as the last appeal regarding 401 Main Street. Sauvageau replied that he used the same criteria.
 - Residents were concerned with the volume of cars parked on the road at 401 Main Street during one particular Saturday. There was a school bus that could not get down Burnham Road and the police were called.
 - Debra Madera, owner of 401 Main Street, stated that she now lived on the property which had been encouraged by the Board during the previous appeal. Madera

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addressed the parking issue stating they would only allow up to 15 cars on the property for the corporate events. Corporate events will be provided to small groups such as a management team or HR department. She indicated that parking is not an issue since the property can easily handle 40 cars.

- Sauvageau added that a special permit could not be required to regulate the uses since the agricultural exemption applied. However, the uses could be reasonably regulated through site plan approval such as parking.
- Sauvageau addressed home occupation stating that he would have to review the intent of the bylaw. Based on his current knowledge of Cultivate Counseling, LLC, the counseling was the primary use of the property, not residential. The home occupation would limit the number of employees and he believed home occupation would cripple the business.
- Teresa Sauer, Chairman of the Agricultural Commission, supported Sauvageau's zoning determination. She relayed that care farming is farming. In addition, our Right to Farm Bylaw allows for educational and recreational activities related to agriculture. She noted that other farms on Main Street do not require additional regulation regarding parking. Other farms have parking on the street especially during apple picking season. Sauer felt it was a slippery slope to regulate farms.
- John Tremblay of 5 Long Hill Road (Bolton Pan Neighborhood) stated that the uses are businesses which are not allowed in the residential district. He indicated that both the Nashoba valley Winery and Bolton Orchards received special permits. Tremblay also addressed the notion that if 401 Main Street was sold, it could be subdivided. He reiterated that the property could not be subdivided because of the wetlands.
- Fredrick Van Bennekomp of Main Street (Bolton Pan Neighborhood) stated that the uses do not qualify under the definition of agriculture, as agriculture is the raising of livestock which is different than the presence of livestock on the property; the uses are not accessory uses to agriculture; and the uses are less intertwined with farming and looser from the definition of agriculture than the counseling business. Van Bennekomp questioned how goat yoga fit into the definition of agriculture.
- Sauvageau responded by giving the example of a petting zoo which is not allowed in certain districts. However, a petting zoo could be allowed as part of a farm that received the agricultural exemption.
- Kay Stoner reiterated the requirements of the agricultural exemption under the Dover Amendment questioning what the primary use of the property was at 401 Main Street. Stoner indicated that for the agricultural exemption to apply, 25% product sales from harvest season based on gross sales dollars or volume have been produced by the owner of land which the facility is located, or at least 25% of such products for sale, based on either gross annual sales or annual volume, have been produced by the owner of the land on which the facility is located and at least an additional 50% of products for sale, based upon either gross annual sales or annual volume, have been produced in Massachusetts on land other than that on which the facility is located, used for the primary purpose of commercial agriculture. She questioned whether the requirement included services.
- **Bradley Reed motioned to close the hearing. 2nd by Jack Sargent. All in favor 5/0/0.**
- Based on the comments and evidence received, the ZBA members deliberated among themselves before Gerard Ahearn called for a motion.
- **Bradley Reed made a motion, seconded by Jack Sargent, that the Board of Appeals reverse the Building Inspector's March 1, 2017 and March 22, 2017 Zoning Determinations with respect to the use of 401 Main Street for Corporate Events and Wellness Programs (i.e., Family Farm Time, Goat Yoga and Wool n' Wine) pursuant to the Dover Amendment's agricultural exemption. The motion, as seconded, proposed the following reasons for the decision:**

1. In its April 24, 2017 decision, the Board of Appeals found that the agricultural exemption provided under the Dover Amendment did not apply to the counseling business being operated at 401 Main Street.
 2. The Uses are less closely related to the definition of agriculture under M.G.L. Chapter 128, Section 1A than the counseling business.
 3. The Uses are separate and distinct from the agricultural activities at 401 Main Street. The agricultural exemption provided under the Dover Amendment does not apply to the uses.
 4. The uses are not accessory uses that are customary to agriculture.
 5. The uses are not allowed in the Residential Zoning District in accordance with Section 250-12 of the Code of the Town of Bolton.
- **All in favor 5/0/0.**

Business

- None.

Administrative

- None.

Bradley Reed motioned to adjourn meeting at 8:20 pm. 2nd by Jack Sargent. All in favor 5/0/0.