

TOWN OF BOLTON – ZONING BOARD OF APPEALS MINUTES

Meeting Held at the Bolton Library Conference Room – 738 Main Street on **March 28, 2017** at 7:00 PM

Members Present: Gerard Ahearn (Chairman), Andy Kischitz, Bradley Reed, Jack Sargent, and Kay Stoner (Members), Bryan Holmes (Associate)

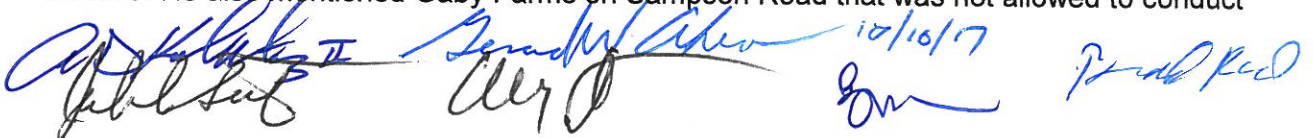
Also Present: Erica Uriarte (Town Planner)

Robert Gibbons 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, the Board of Appeals held a public hearing to hear and act upon appeals filed by the Bolton Pan Neighborhood as persons aggrieved by the Building Inspector's Rejection of Request for Zoning Enforcement at 401 Main Street and the issuance of Building Permit BP-2016-0166 for a temporary modular building at 401 Main Street.
 - The Board of Appeals conducted a site visit on March 11, 2017 at 401 Main Street. Chris Slade from Board of Health was present along with Andrew Lapin and Debra Madera.
 - The Board of Appeals summarized their observations during the site visit. Gerard Ahearn indicated that he had observed more of a farm than a residence. There were animals, barns, stables, and a caretaker that lived on the property. He stated that the farming and counseling could not be easily separated. It appeared to Ahearn that Cultivate Counseling, LLC wanted to be a good neighbor and addressed many of the abutters' previous concerns including the removal of a manure pile near the wetlands, removal of the dumpster and temporary modular building, and reduced parking. Andy Kischitz indicated that the property was clean with well-cared for animals. He noted that the interior of the house was clean where he witnessed a waiting area for parents, office space and a wool room that also housed baby chicks and rabbits. He noted that there were bedrooms upstairs that were not observed because of the caretaker quarters. Ahearn and Kischitz both commented on how the farming was incorporated into the counseling and how each individual animal or group of animals was used during counseling. No counseling was witnessed during the visit. Jack Sargent stated that many of his questions were answered during the site visit including how the property was managed and how the counseling was conducted with the animals. He indicated that the counseling center was a well-run operation and worthwhile for residents to observe and understand. Bradley Reed agreed that the site was clean and the animals were healthy. He also agreed that the owners had done a good job cleaning up the property from the previous owners. However, he believed there to be a zoning implication because of the counseling. There are no previous court cases supporting that counseling can be agriculture. Reed agreed that there was an agricultural component with the farm. Kay Stoner was unable to visit the site with the other board members, but did attend separately on her own. The site visit allowed her to understand the relationship between the counseling and the farming. She indicated that the original issues had been resolved related to the temporary modular building and congregate living. However, Stoner wondered the implications to the Town over time. Bryan Holmes agreed that the site was clean and the counseling center was a well-run operation. However, he questioned how zoning applied to the counseling center.
 - Gerard Ahearn stated that the Massachusetts Farm Bureau Federation, Inc. verified that the agricultural exemption applied to Cultivate Counseling, LLC based on requirements met for acreage, income and definition of agriculture in accordance with M.G.L. Chapter 128, Section 1A. This information was received during the site visit.
 - John Tremblay of 5 Long Hill Road (Bolton Pan Neighborhood) expressed his concerns given the history of the property: The property was to be owner occupied then it was not, the temporary modular building was delivered to the site prior to receiving a building permit, the uses are continuously evolving and expanding on the counseling center's website, there are issues with street parking, and there is no guarantee that the congregate living will remain inactive. He also mentioned Gaby Farms on Sampson Road that was not allowed to conduct

Handwritten signatures of Gerard Ahearn, Andy Kischitz, Bradley Reed, and Jack Sargent. The date 10/10/17 is written in blue ink.

veterinary services by the Conservation Commission. Tremblay felt this was a precedence for the Board to consider.

- Jack Sargent asked whether the counseling center considered home occupation. Attorney Ancil indicated that the counseling center did not fit within the bylaw of home occupation. He stated that home occupations are typically for people doing computer work and felt applying the home occupation would be circumventing the bylaws. E. Uriarte also indicated that Michael Sauvageau, Building Inspector, when vetting out the zoning, determined that the counseling center did not meet the requirements for home occupation.
- Bradley Reed was concerned with the expanding uses at 401 Main Street without the requirement of a special permit. He reiterated that the counseling center is a business appropriate for the limited business district.
- Attorney Robert Ancil from Perkins & Ancil P.C. representing 401 Main Street had reached out to the Bolton Pan Neighborhood on several occasions to resolve the issues with the abutters. He strongly encouraged the Board of Appeals to consider applying "special permit" like conditions to allow the property to operate in harmony with the neighborhood. Ancil suggested providing conditions related to screening, parking, hours of operation, etc. to which his client would be bound. He indicated that applying the agricultural exemption does not mean the counseling center can operate without restriction.
- Attorney Adam Costa from Mead, Talerman & Costa, LLC representing the Bolton Pan Neighborhood confirmed that Ancil had reached out to the Bolton Pan Neighborhood to help resolve the issues. However, Costa reiterated that his client was not seeking site mitigation measures, but believed the counseling center was not an appropriate use within the residential district and should not receive the exemptions afforded under the Dover Amendment.
- Attorney Costa noted in the *Steege v. Board of Appeals of Stow*, 26 Mass. App. Ct. 970 (1988), the operation of a boarding stable for horses and a riding academy were an agricultural use protected by the Dover Amendment; each use was part of one whole which constituted agriculture raising, training, riding of horses. Costa relied on the plain and ordinary meaning of agriculture in this case law that might determine that the property itself is a farm, but not the counseling business. There is no case law to date that upholds Town Counsel's notion that counseling and farming are so intertwined that one use is indistinguishable from the other. Attorney Ancil disagreed stating that the *Steege* case was analogous to the counseling center.
- A member of the Agricultural Commission indicated that the reason the agricultural exemption is broadly applied is because it is difficult to farm. She reiterated that Bolton is a right to farm community and it's important to support local farms to keep Bolton's agricultural character. She stated that it is financially difficult to be a farmer and incorporating the animal therapy with the farming allows the farm to be sustainable. She also stated that integrated animal therapy is an established practice used worldwide. She felt that some of the residents were trying to drive Cultivate Counseling, LLC out of Bolton. She was concerned with who would purchase the property moving forward since it cost so much to maintain and would it be foreclosed or neglected.
- Richard Pelletier, owner of the Nashoba Valley Winery, stated that the counseling center should be held to the same standards as the other farms in Bolton. The Nashoba Valley Winery is regulated by a special permit for its accessory businesses. The same regulations should be applied to the counseling business.
- A public comment was made that therapy animals are not farm animals. Farm animals are to provide warmth and food.
- A public comment was made that the patients are required to be paid if they are doing the farm work.
- There was public concern about the parking at 401 Main Street. It was indicated that the parking was similar to a commercial business with 10 to 15 cars parked on a weekday.

- A public comment was made by a previous patient of the counseling center who indicated that that the counseling was 100% agriculture. Her treatment involved being in the barn with the goats and in the field with the horses.
- **Gerard Ahearn motioned to continue the hearing to April 11, 2017 at 7 p.m. in the Bolton Public Library – Conference Room. 2nd by Kay Stoner. All in favor 5/0/0.**

Business

- Robert and Carol Davis, 196 Berlin Road – Request for Variance
 - The Board of Appeals informally discussed a potential variance application for the addition of a two car garage at 196 Berlin Road. Robert and Carol Davis would like to construct a 22 ft. by 24 ft. garage that would encroach 25 ft. into the front yard setback. The garage would be located within the existing paved driveway. The lot is pre-existing nonconforming (1.58 acres) and there are wetland resource areas on the property with sloping grades.
 - Gerard Ahearn summarized to the Davis's the requirements of a variance which includes a site constraint relating to soil/shape/topography, presence of a hardship, provide relief that would not be detrimental to the neighborhood, and provide relief that would not derogate from the intent of the bylaw.
 - Jack Sargent asked the Davis's to consider relocating the proposed garage to the rear of their house where no wetlands exist. If the garage is located to the rear, the front yard setback could be met. Davis's will review with Board of Health.

Administrative

- None.

Bradley Reed motioned to adjourn meeting at 8:40 pm. 2nd by Kay Stoner. All in favor 5/0/0.