

TOWN OF BOLTON – ZONING BOARD OF APPEALS MINUTES

Meeting Held at the Bolton Library Conference Room – 738 Main Street on **February 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)

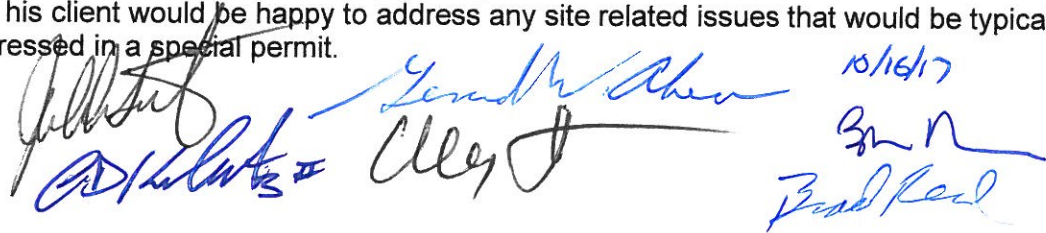
Robert Gibbons from Mirick, O'Connell, DeMallie & Lougee, LLP (Town Counsel)

Michael Sauvageau (Building Inspector & Zoning Enforcement Officer)

Call to order: 7:00 PM

Hearings

- 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 property at 401 Main Street is owned by Debra and Edwin Madera. The entities operating on the property include John Sawyer's Mill and Cultivate Counseling, LLC.
 - The temporary modular building is being used for counseling/agricultural purposes. The Bolton Pan Neighborhood filed an appeal of the building permit issued for the temporary structure.
 - The Bolton Pan Neighborhood submitted a Request for Zoning Enforcement with Michael Sauvageau, Building Inspector, asserting that Cultivate Counseling, LLC was operating a counseling business in violation of the Bolton Zoning Bylaw, and that this use was not protected by the Dover Amendment (exemptions set forth under M.G.L. Chapter 40A, Section 3). Sauvageau responded to the request determining that all of the uses on the property either complied with the Bolton Zoning Bylaw or are exempt under the Dover Amendment. The neighborhood group subsequently filed an appeal claiming that the counseling center and congregate living are in violation of local zoning bylaws and are not entitled to exemption under the Dover Amendment.
 - Andrew Lapin is the founder and creator of the Cultivate Counseling Center. Andrew is an Equine Therapy Specialist. Debra Madera serves as the Clinical Director and a therapist at Cultivate Counseling Center. Debra is a Licensed Mental Health Counselor and has been counseling for 13 years.
 - Attorney Robert Anctil from Perkins & Anctil P.C. representing 401 Main Street indicated that Cultivate Counseling, LLC began on a farm in Acton in 2015. Cultivate Counseling's model is based upon the relationship between animal husbandry and therapy. Without the animals, the therapy model would not exist. The property contains one (1) dog, two (2) rabbits, three (3) horses, four (4) cats, five (5) sheep, ten (10) Goats, and 30 chickens. A typical session with a patient is 60 minutes. Currently there are four clinicians with a goal to have eight. No more than 18 total people are permitted on the property at any one time. The most common age for a patient is 14 years old and the average age is 18 years old. Anctil noted that the animals are integral to the counseling and 99% of the counseling is conducted outside on the farm. The John Sawyer's Mill, the single-family dwelling located at 401 Main Street, had provided congregate living of disabled persons recovering from drug/alcohol addiction. Zoning bylaws restricting congregate living housing is in violation of the Fair Housing Amendments Act (FHAA). Anctil indicated that the congregate living was not currently being conducted. However, he reserved the right of his client to operate the congregate living in the future.
 - Anctil had contacted the neighborhood group numerous times for resolution. His client also conducted a forum/open house to address any neighborhood questions regarding the counseling center. However, none of the neighbors attended. Anctil welcomed neighbors to visit the property. He also suggested providing comments on his client's website. Anctil indicated that his client would be happy to address any site related issues that would be typically addressed in a special permit.



- Attorney Jason Talerma from Mead, Talerma & Costa, LLC representing the Bolton Pan Neighborhood focused his presentation on the counseling center claiming the counseling breaks the limits of the agricultural use that is exempt under the Dover Amendment. The exemption allows for the raising and keeping of horses for commercial enterprise. In *Rosenfeld v. Zoning Bd. Of Appeals of Mendon* the use of the land was for a horse training facility which fits within the agricultural use exception. There is no case law to date that upholds the notion that counseling and farming are so intertwined that they are one in the same. In this instance, the agriculture and counseling are separate uses. The other claim is that the counseling center is accessory to the agriculture. Again, there is no case law to date where counseling has been deemed accessory to agriculture. Typical and customary accessory uses include a caretaker's cottage, garage/barn and farm stand. It would appear that Cultivate Counseling, LLC is not incidental and dictates the agricultural use of the property. As Talerma stated numerous times, it is a case of the "tail wagging the dog". Talerma also noted that even if the counseling was accessory to agriculture, a special permit would have been required under Section 250-21.E of the Code of the Town of Bolton. Bolton's Agricultural/Business Use Bylaw requires a special permit from Board of Selectmen for specific accessory business uses listed in the bylaw. It was noted that counseling is not on this list.
- Michael Sauvageau, Building Inspector and Zoning Enforcement Officer, stated that Cultivate Counseling, LLC is an exempt use under the Dover Amendment. Under M.G.L. Chapter 40A, Section 3, it states that "no ordinance or bylaw shall prohibit, unreasonably regulate or require a special permit for the use of land for the primary purpose of commercial agriculture". Bolton is a "Right to Farm" community which also limits local regulation on farms. He indicated that the counseling is agriculture; without the animals there is no therapy. The Building Inspector conducted an unannounced site visit at 401 Main Street where he observed farming activities. Inside the temporary structure related to the counseling were a spinning wheel to spin yarn from the wool collected by the sheep, a rabbit to brush and collect its fur, and soap making from the goat's milk. The Building Inspector indicated that the Bolton Agricultural Commission agreed with his determination. A similar care farm resides in Lunenburg called Flying High Farms which was permitted in the Residential District. Sauvageau indicated that just because there is no case law, does not mean it is not agriculture, and should be vetted in court. Sauvageau noted the *Rosenfeld* case allows for horse training because it had been vetted. He stated that the congregate living at John Sawyer's Mill is an exempt use under the Dover Amendment. Under M.G.L. Chapter 40A, Section 3, it states "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". Therefore, the John Sawyer's Mill is an exempt use. In addition, congregate living facilities with five or fewer occupants maintain their single-family status under the State Board of Building Regulations and Standards (780 CMR).
- Sauvageau made the original zoning determination. He was contacted by Andrew Lapin regarding the counseling and congregate living uses. As Bolton's Zoning Official, he is charged with protecting the town, abutters and applicants to make determinations that are unbiased for all three.
- Sauvageau reiterated that Town Counsel did weigh in indicating that if the agriculture and counseling were so intertwined that they were one in the same, then the counseling would be afforded the same exemption under the Dover Amendment. Town Counsel did not know of any case law related to the counseling.
- Sauvageau noted there is case law related to accessory uses that are incidental to the raising and keeping of horses such as hayrides, grooming and education.
- Sauvageau stated that the temporary structure at 401 Main Street can only remain for 12 months. The use within the structure would need to be relocated to the house or barn once the permit expires.
- Bradley Reed indicated that the counseling center was located in a residential neighborhood. He believed the counseling to be the primary use of the property which he viewed as a business. He also noted that congregate living is only allowed in the limited business district. He stated that these uses don't belong in the residential district, but in the limited business district.

He feared that if the Town allows the counseling, it will set a precedence and allow other businesses to locate into the residential district. Anctil responded that if the counseling program were purely counseling, his client would have saved his time, money and aggravation and opened in an office park. Erica Uriarte, Town Planner, also indicated that the congregate living established in Bolton's Zoning Bylaw only refers to senior housing, not the congregate living that is exempt under the State Zoning Act.

- John Tremblay of 5 Long Hill Road (Bolton Neighborhood Group) questioned whether Board of Health and Conservation Commission reviewed the current uses at 401 Main Street. Sauvageau indicated that both Board of Health and Conservation signed off on the building permit for the temporary modular building. Tremblay was also concerned with the uses at 401 Main Street continuously evolving and expanding as noted on the counseling center's website.
- It was questioned how the Counseling Center derived its income from agriculture. It was stated that as part of therapy, clients make byproducts from the animals on the property (e.g., yarn, soap). These byproducts are sold to provide revenue generation in accordance with Mass. General Law CH.40A, Section 3. This year alone, counseling center had sold \$3,000 in agricultural product.
- It was noted that the amount of revenue generated from the farming or animal byproducts must be significantly less than the revenue generated from the counseling.
- There was concern that the temporary modular building was brought onto the property prior to the issuance of a building permit. There was also concern regarding a dumpster on the property for a period of time.
- It was questioned whether the counseling center was licensed. Lapin indicated that they were not required to be licensed since they were a private practice. However, the individual counselors were licensed. There are three counselors that are licensed. Lapin is not licensed, but does not counsel patients. There are also two interns in training working with Madera.
- A member of the Agricultural Commission noted that the current owner of 401 Main Street has improved the property. The member also noted that farming is difficult and farmers need alternative ways to generate revenue. These types of facilities are common in Germany.
- There were public comments indicating that counseling with animals is not the same as farming, therapy can be conducted without the animals. An analogy was provided that if a law firm allowed attorneys to have pets in their office would it be considered agriculture? Anctil replied that pets are not an integral part of the law firm, animals are integral to Cultivate Counseling, LLC.
- The Board of appeals agreed to conduct a site visit at 401 Main Street prior to their next meeting.
- **Gerard Ahearn motioned to continue the hearing to March 28, 2017 at 7 p.m. in the Bolton Public Library – Conference Room. 2nd by Bradley Reed. All in favor 5/0/0.**

Business

- Mark O'Hagan - Craftsman Village at Brigham Farm – Condominium Documents
 - The Board reviewed the final condominium documents for the 40B development.
 - Mark O'Hagan incorporated the edits as requested by Town Counsel and will also include modifications from Board of Health.
 - **Bradley Reed motioned to accept the condominium documents as presented by Craftsman Village, LLC. 2nd by Andy Kischitz. All in favor 5/0/0.**

Administrative

- None.

Bradley Reed motioned to adjourn meeting at 9:00 pm. 2nd by Gerard Ahearn. All in favor 5/0/0.