



# Board of Appeals

Minutes of Monday, June 17, 2013

Chairman Mann called the meeting to order at 7:00 p.m.

**Board of Appeals members present:** Gerry Mann, Osa Flory, Charles Dudek, Andrew Quient

**Applicant Present:** Susan Fortgang & David Nehring

**Public Present:** Dick & Susan Briggs, Alan Seewald-Attorney., Michael J. Moran, Linda Rowley, Sherida Cone, Tom & Charonne Masters, Kevin Wilson, Phil & Diane Merritt, Fran Ryan-Reporter

It was noted that Don Turner, who sits on the board, recused himself from this hearing as he was related to the applicant.

Motion made by CD and seconded by OF to accept the minutes of 8/13/12 & 8/27/12. Motion so voted.

## **Fortgang & Nehring Public Hearing**

The public hearing was called in regard to an application received from Susan Fortgang & David Nehring of 34 Harrison Ave., Northampton, MA who own 16 Walpole Road, Williamsburg (Haydenville) for a Special Permit, as required by Section 3.2 of the Zoning Bylaws, to operate a seasonal wedding venue and seasonal farm stand/sugarhouse/food stand located at 16 Walpole Road, Williamsburg (Haydenville). The property is identified on the Assessor's Map G, Lots 65.0 & 65.A and Map K, Lot 14.

Ms. Fortgang, the applicant was asked to present her plan first.

They would like to do their plan in stages. The first stage is to build a farm stand and farm store where they would sell farm products, baked goods, maple products, maple soft serve, pumpkins, flowers, take-out food, honey, etc. It would be seasonal. She noted that it would be by the state agricultural guidelines that 25% would be grown on site, 50% would be locally sourced and the other 25% could come from elsewhere.

GM noted that this plan was according to the state agricultural act that says certain farm stands are exempt from local zoning bylaws provided they follow the guidelines Ms. Fortgang spoke about.

Ms. Fortgang noted they would only be open weekends, seasonally. This would be summer months and maple syrup season, February to October. They plan to put in a public bathroom which would be handicap accessible in the renovated farmhouse. They would have signage and parking on their property. This would be up by their barn which would be out of sight of their closest neighbor. They also plan to ask the state about putting a sign at the intersection of South Main St. by Route 9.

They also would like to have a tent area which could be leased for weddings and events. This would also have handicap accessible bathrooms. The limit would be up to 150 people. They plan to build

a caterer kitchen in the farmhouse. The caterer would be responsible for the liquor license. The applicant would be responsible for the land and tent. There would be a designee to manage the space and the event and any problem that may arise. They would also manage the level of noise from the event. They are basing their model by the way Quonquont Farm in Whately does. The applicants would have a noise measuring machine that would monitor the decibels. It would be a non-polluting decibel.

Presently, they are running a farm at 16 Walpole Road. They are growing hay, pumpkins, sunflowers, and doing maple sugaring. They have owned the property for a year and have been doing a lot of work improving the land. They are committed to keeping the land as a farm and plan to keep it in Chapter 61A. They are trying to preserve the land as farmland and hope to make enough money from the farm to keep it a farm.

The Board had no questions.

The public was asked to speak. Diane Merritt asked Ms. Fortgang if there would be a time limit for when the weddings would take place. Ms. Fortgang replied there would be a time limit. Ms. Fortgang felt that events needed a 12 hour window. Events could be morning or afternoon. They would not be before 9 am and not after 11 pm. AQ noted that the contract, which was from Quonquont Farm, and the applicant's would be modeled after, stated 9 am-11pm, and liquor would stop at 10 pm. OF noted that it would be an 11 or 12 hour window according to the contract that was submitted. GM noted that the contract was only a model and that the applicant's contract, if approved, would have to be modeled according to any conditions the board puts on the special permit.

CD asked if the caterers would be preparing food there in the kitchen. Ms. Fortgang stated no they would only be preparing it for serving. The kitchen still has to meet the codes for a restaurant kitchen.

GM spoke that the applicant's property is in two zones. They are in the Village Residential Zone and the Rural Zone. A restaurant is not allowed in the Village Residential Zone. It is noted that all of Walpole Road is Village Residential. Village Residential is more restrictive.

Mr. Seewald who is an attorney and represents the Brigg's family who are the closest neighbors to 16 Walpole Road asked to speak. He asked to submit some papers into the record which were photographs taken from the Brigg's property and a report by a sound engineer. The photos showed the view from the Brigg's home. In the photos they show the area that, according to the applicant's plan would be a designated parking area. It was noted be in view from the Brigg's home from their front porch. The second group of photos was of Walpole Road. Mr. Seewald noted that the photos show the road is narrow and winding. He noted that two cars cannot pass on this road. He noted that for the Board to issue a special permit, the use has to be a use that is allowed according to the town bylaw. He noted that the application stated they wanted a restaurant. Restaurants are not allowed in that zone, seasonal or otherwise. He also noted that a banquet facility is not allowed in that zone either. Mr. Seewald noted that he was an attorney involved with Quonquont Farm. He also stated this was a totally different plan and use than Quonquont Farm's plan. GM asked if Mr. Seewald's remarks were for the VR area or the Rural area. Mr. Seewald stated that if the farmhouse is used in any shape or form of the plan either in the plan or as an access it is not allowed. He noted that if the property is in a split zone, the property is always controlled by the more restrictive zone.

He stated it was case law for at least 28 years in which he has practiced law. GM asked for a citation as two members of the board are retired lawyers and would like to see a citation for the case law. Mr. Seewald would provide one.

Mr. Seewald spoke of the traffic. He noted that the road could not handle that traffic that would be generated by this use. He noted that 100 guests, caterers, flowers, band, tables, chairs, etc. would generate a lot of traffic. No traffic study has been done. He also noted that at 11 pm in the dark what the traffic would be on the steep, dark, narrow, winding road. This would be a safety issue.

Mr. Seewald brought up the noise and how it would be monitored. He had submitted a report by Herb Singleton who is a sound engineer. A DJ or rock band would generate 90-95 decibel range at the speaker. He asked who would monitor the sound, and what the training would be. He noted that background ambient noise would probably be around 40 decibels so anything above 60 decibels would violate the noise level for noise pollution.

Mr. Seewald asked about trash and where it would be stored. GM asked Mr. Seewald to allow the applicants to respond to some of his issues he was bringing forth.

Mr. Fortgang stated that he has not had a problem with two cars passing on the road. Over the winter, he was able to pass the plow truck with no problems. Ms. Fortgang also noted the plan for the farm stand would also generate traffic. The town would have to address any issues with the road. As far as the sound, there would be a monitor, who would be either, Ms. Fortgang, Mr. Nehring or a designee who would be trained.

Linda Rowley asked to speak. She noted that in the plan it stated if there were over 100 guests at an event, they would bring in Port-a-potties which would generate more traffic. She stated that she lives at 3 Hatfield Street. Right now she does not see anything due to leaf cover but after the leaves fall, she can see everything. She also noted that the noise echoes in this area and on some days, she can hear the noise from Look Park in Northampton when they have music. She is bothered if they have night weddings that the lights would be terrible.

Dick Briggs spoke next. He measured the road at one particular point. It measured 13 ½' and there was a tree 18" beyond that. He measured the width of his vehicle and it was 7' 2" and there is no way two vehicles can pass in that area. One of the vehicles would need to swerve into Mr. Wilson's driveway so they could pass. The other issue would be that when the farm stand is operating while there is an event, there would be two-way traffic.

Kevin Wilson of 5 Walpole Road noted that Ms. Fortgang had stopped to speak to him regarding the farm stand but had not mentioned the wedding venue. He noted that he would be most impacted by the traffic. When there was a horse training farm at 16 Walpole, the traffic was horrendous, as light as it was. He noted the problem has been made worse by the guardrails that were recently installed. The only way the road could be made wider would involve taking of property which he was not in favor of.

Mr. Seewald was asked to be more specific regarding access for the VR and Rural zones. He stated that access to a business in a less restrictive zone could not be made through a more restrictive zone.

GM noted that until they read the citation, it is only Mr. Seewald's interpretation.

Linda Rowley asked again about the lighting. GM noted that any lighting would be within the zoning bylaw. Any signs would also be within the present bylaw.

Ms. Fortgang also noted that the plan they submitted did include a parking area that would be across from the Brigg's property but they were willing to provide parking that could be out of sight of the Briggs home.

Diane Merritt asked about a maple restaurant. Ms. Fortgang stated it would not be a restaurant. It would be a take-out stand that would have maple food products.

Tom Masters of Fort Hill Road who owns a property that overlooks 16 Walpole Road. He has no problem with a farm stand but he does have concerns over the noise from a wedding venue. He feels it is inappropriate to have a business in that area with that much noise.

Susan Briggs spoke next. She feels there is a discrepancy in the plan that was submitted regarding the set-backs and where the property lines are. She felt that their property lines were not accurately represented. The Briggs felt that the tent will actually be closer than what the plans show.

Susan Fortgang stated the bylaw says the structure must be at least 300' from the property line and they have no problem moving it to a different location to ensure it is within the bylaw.

Mr. Seewald was the next speaker. He spoke about the criteria in Section 5.5 regarding the issuance of special permits. He cited Section 5.5a that says the use has to be within the character and scale of other uses as of right within the zoned area. He noted the only uses as of right allowed were single and two-family homes, upper floor apartments in mixed use buildings, home occupations, siting of a temporary mobile home, and parking of one trailer, mobile home or RV. He felt putting 100-150 people on this hill after they were served alcohol is not compatible with the character and scale of the permitted uses as of right. He then cited 5.5b which requires the board to protect the adjacent properties from nuisance noise levels. He stated that the Briggs has lived on Walpole Road since 1979 and this use will devastate them. He noted the public present would not be there if it was just a farm stand. It is the nuisance noise of the people, cars, and music that bothers those present that are the abutters.

Mr. Briggs spoke again. He felt the "events" area of the contract was sketchy. Most of the contract dealt with weddings and did not address events. They are not against a farm stand even though the parking does concern them. He also felt that the plan for the farm stand/take-out was very vague. He noted they mentioned maple soft serve, baked goods and waffles but when does a take-out cross the line to being a restaurant. He also noted that the applicants have done a beautiful job of restoring the farmhouse but if people will be eating from the take-out on the front porch of the farmhouse it could be considered a restaurant. Mr. Briggs wanted to know what kind of events the permit will be limited to. He noted family reunions, birthday parties, graduation parties etc. He felt the contract was vague on what would be allowed for those kinds of events. Mr. Briggs also felt that the time for the events would be more than allowed. Time would be needed for the caterer, ceremony, pictures, the event itself, etc. and the time could stretch to 17 hours. He also wanted to know who would be there to oversee the events. The plan calls for a farm manager, wedding coordinator, the applicants, farm staff, and an event liaison (provided by client). They asked who would be in charge and who does someone go to in case of a problem. They also asked who would monitor how many guests will be there. The plan says it will be 150 but who will keep track. The

plans also call grills for food. That would mean that food would be prepared for guests on site. The next issue Mr. Briggs had was concerning alcohol. The caterer would be responsible for getting the one day permit but who would oversee who would be served, how much is served and keep control. He would like that to be further addressed. Mr. Briggs would like to see a traffic impact study done. He feels traffic is a real safety issue. He would like the highway department, police, fire and ambulance departments to weigh in. He also had a problem with the noise and lighting in a parking area. He also spoke about sound issues and how much is reasonable noise to different people. He feels there will be parking noises, traffic noises, doors slamming, work people setting up etc. The noise that will be monitored will be the music but what about the other noise. He feels the plan needs refinement.

The board feels there were a lot of issues that need clarification. GM feels that an email should go to the highway department, fire department, and police department to get their input. The board unanimously decided to continue the hearing to Monday, June 24, 2013 to get further information.

Meeting adjourned at 8:20 pm

Respectfully submitted,

Brenda Lessard, Secretary