

## Board of Appeals

Minutes of Monday, July 30, 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 **Public Present**: Dick & Susan Briggs

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 June 24, 2013. The motion was so voted.

## Fortgang & Nehring Decision Hearing

Decision hearing was called to order by GM.

GM noted that the right to have a farm stand is under the State Agricultural Law and the Right to Farm Bylaw. He feels the board has the right to limit the hours, parking, lighting, etc under the local bylaws but not the right to have a farm stand.

OF noted that the bylaws when written states that the zone that governs an area goes 400 feet or to the end of the lot when there is a change in the zoning area. GM noted that the paragraph she referred to was written for Route 9. OF noted that if you have five acres in the Village Residential zone you can have a farm stand by right. GM felt that did not apply to this hearing.

GM noted the State Agricultural Law overrides the local bylaw as it says the applicant can do a farm stand. He also noted the board can regulate some aspects of the farm stand which are community issues. OF noted the state law states the town can impose reasonable regulations. GM noted that farm stands are excluded from zoning but the board can regulate the hours of operation, traffic, lighting, road safety, and signage. CD agreed with GM along with the seasonal use.

GM proposed that the operation be allowed during daylight hours.

GM brought up traffic. Parking should be allowed in the rural area and not on the street. He proposed that the end of Walpole Road would end the Village Residential Zoning and would end that zone. OF again brought up the paragraph that states the zoning does not change until you go 400 feet past the zoned area or end of lot. It was noted that by the zoning bylaw, all of Walpole Road is in the Village Residential.

GM stated that the board cannot say that a farm stand can't be in Village Residential but it can limit the parking in that zone. OF stated that the parking would have to be 400 feet past where the road

ends. GM stated that the board can say 200, 100 or 75 feet from the end of the road. GM noted that farm stands can be located across street from the farm if need be. OF noted that if the use is more residential than agricultural than the siting of the farm stand can be regulated. CD noted that the farm stand does not have to be in the rural zone but 25% of the produce has to be grown on the land where the farm stand is located.

GM feels parking is the main issue. He does not want the parking or traffic to impede potential emergency vehicles. He proposed 100 ft from the road end should be where the parking lot is that should minimize the impact for traffic. GM noted the area designated for parking that was pointed out to them during the site visit was at least 100 feet from the end of the road.

## Conditions:

Lighting was discussed by the board. GM feels that is regulated by our zoning bylaws but they could say that any lighting would illuminate the parking area and farm stand only but not any public way.

Signs are covered by the local bylaws.

A condition of the special permit would also limit hours of operation to daylight hours and could be June, July, August and September of each year or until the harvest of the crop being produced has ended. (This is from the State Agricultural Law).

GM again brought up parking. It was noted by the board that 75 feet is a reasonable set back. CD agreed with 75 feet. AQ noted that an average persons pace is three feet. To walk 75 feet would be approximately 25 steps which is reasonable. Handicap parking would be regulated by ADA laws.

The board unanimously approved the special permit with the conditions noted. The applicant was told of the need to go to the Registry of Deeds to put the special permit on her deed or it would expire in two years.

Motion made by CD and seconded by OF to adjourn the hearing. Motion so voted.

Meeting adjourned 7:42 pm

Respectfully submitted,

Brenda Lessard, Secretary