

TOWN OF EAST GREENBUSH ZONING BOARD OF APPEALS

TOWN HALL, 225 COLUMBIA TURNPIKE, RENSSELAER, NY 12144 (518) 694-4011 FAX (518)477-2386

MEMORANDUM

EAST GREENBUSH ZONING BOARD OF APPEALS MEETING MINUTES OCTOBER 8, 2019

Members

Jeff Pangburn, Chairman
Dan Smith
Bob Seward III
Scot Strevell
John Conway Jr.
Matt Ostiguy
Tom Hickey

Also Present:

William Hessney, Attorney
Alison Lovely, Zoning Board Secretary
Kateri Rhatigan, Stenographer

CALL TO ORDER / DETERMINATION OF QUORUM

Chairman Pangburn called the meeting to order and determined a quorum of seven (7) members were present. Introductions were made.

PUBLIC HEARINGS:

**ZBA Appeal #2019-12– Schlegel–103 Columbia Turnpike-Use Variance,
Automotive Sales & Service Facilities are prohibited in the PPB Zoning District.**

The following was read and/or referenced as being in the file.

- Legal Notice
- Rensselaer County Recommendation
- ZBA Application, Short EAF, Denial, Use Variance Criteria
- Bldg. Permit Application & Authorization Form
- Planning Board Recommendation with supplemental report by Don Panton

Peter Matzen was present representing the applicant. He handed out plans for each member. Chairman Pangburn marked this as exhibit #2019-12A. Peter Matzen stated that the applicant is looking to use the rear piece for his automotive sales & service business. Peter Matzen stated that the building has been empty for quite a long time. Chairman Pangburn asked the applicant if he could address the Use Variance criteria. Peter Matzen stated that the owner, Rudolph Schlegel's attorney Victor Caponero Jr. could not be present for the meeting tonight so he'd like to request an adjournment. Chairman Pangburn stated that they could table the public hearing for a future date.

Motion by Chairman Pangburn to table the public hearing until the October 22, 2019 meeting. Seconded by Bob Seward. Motion carried by a 7-0 vote.

ZBA Appeal #2019-13–Van Dorn/Desmaris–106 Moore Road-Interpretation, of the term “agriculture; horticulture and farming, general” found in the Comprehensive Zoning Law at Section IV for a property to be put into agricultural crop production with an on-site farm brewery within an existing barn

- Legal Notice
- ZBA Application, Short EAF, Supplemental Narrative
- Bldg. Permit Application & Authorization Form

Dave Brennan from Young Summer representing the applicant was present as well as the applicant, Richard Van Dorn. Dave Brennan stated that Richard Van Dorn and his wife Sarah Desmarais are looking to relocate due to a job opportunity that Sarah received and are looking to relocate in the area and have found a house in East Greenbush that they like at 106 Moore Road. Dave Brennan stated that the applicant, Richard Van Dorn is a craft brew hobbyist and was going to set up shop down in North Carolina before his wife got the job offer up here. Dave Brennan stated that the parcel consists of 5 acres and is located in the R-OS Zoning District. The brewery equipment would be set up in the barn and that the applicant wants to put the land back into agricultural production. The brewing would be enclosed and then the applicant would bring the product off site to sell at Farmer’s Market’s and retail accounts and then he eventually would like to open up a taproom somewhere in the Town. Dave Brennan referenced an eight page narrative with a one page Exhibit A that was submitted to the Board dated 9/25/19 & is in the file.

Chairman Pangburn asks the question does a farm brewery meet the definition of the Town’s Agricultural, Horticulture and Farming in general land use code. Chairman Pangburn read the “Guideline for Review of Local Laws Affecting Farm Operations Which Produce, Prepare and Market Crops for Wine, Beer, Cider and Distilled Spirits” and enters it into the record. Chairman Pangburn stated that the “Farm Brewery Law” requires the majority of crops (ingredients) to be grown on site and it also has a provision for start-ups (they will have to import most of the materials, while waiting for the crops to start growing). Chairman Pangburn stated that the Ag and Market Law, in particular section 305-A and also 301 subset 1 essentially does consider a farm operation the production, preparation & market of grains, grapes and other fruits that are part of a farm operation. The Department considers the processing, distillation, brewing and fermentation activity and the on-farm buildings and equipment which are needed to produce, store, distill, brew and/or ferment grains, grapes or other fruits as part of the farm operation to the extent that the distilled or brewed product, cider and/or wine that is prepared is composed predominantly of grain, hops, grapes or other fruits produced on the farm. Chairman Pangburn stated that Dave Brennan pointed out that page 84 under our Erosion & Sediment Control & Stormwater Management Section 3.13, Subsection 3.13.5 Definitions: Agriculture: The use of land for sound agricultural purposes, including farming, dairy, horse boarding, pasturing, grazing, horticulture, floriculture, viticulture, timber harvesting, animal and poultry husbandry, and those practices necessary for the on-farm production, preparation, and marketing of agricultural commodities. Agriculture does not include dude ranches or similar operations. Chairman Pangburn stated that he feels that those two things do weigh in pretty strongly for this case. Chairman Pangburn asked if there were any questions by the Board.

•John Conway Jr. stated that he wanted to understand the size of the operation. He asked if he was hearing correctly that the application would be producing 4 barrel batches & how many would he produce in a given year. Richard Van Dorn stated that is correct and that he would be brewing no more than 2 days a week and it wouldn’t be every week and would be at most two weeks during a month and would probably be about 200 barrels a year.

John Conway Jr. asked how much of that content the applicant would be able to grow on his 5 acres. Richard Van Dorn stated it would have to be 51% eventually. Richard Van Dorn stated that he would be concentrating on hops, grains and fruits within 3 years. John Conway Jr. asked if the applicant expected to be making money on this. Richard Van Dorn stated that he is not naïve about this, eventually he wants to open up a taproom in Town, maybe like 3 or 4 years out. John Conway Jr. stated that the taproom would not be on site. Richard Van Dorn stated that he does not want people at his house drinking and buying beer.

•Tom Hickey asked if their wish is to go through a definition as opposed to a variance of some type, either based on the research they've done or the guidance they've been given by the Building Department and the Planning Board. Dave Brennan stated that at the end of the meeting he would expect the Board to come to a resolution on the definition and come up with something written on their decision. Chairman Pangburn stated that the applicant via conference call and the applicant's representative were both at a Project Review Team meeting and it was left to the Code Enforcement Officer to attempt to make a decision of whether it fit or not or if he was still unsure to refer the applicant to the Zoning Board for an Interpretation.

•Dan Smith stated then that this is a strategic plan to get it under this definition verses going for a permit. Chairman Pangburn stated that this is simply a question as it's not clear within our Code to the applicant or the Code Enforcement Officer of whether or not "Farm Brewery" fits underneath the definition of a permitted use which is "Agriculture, Horticulture and Farming".

•Matt Ostiguy asked if the applicant has come across a precedence or other jurisdiction where they've seen this. Dave Brennan stated that he worked on one outside of Cooperstown that was a farm distillery that had its own unique set of problems. Dave Brennan stated that the Legislature has set up these categories of use and is promoting them. Chairman Pangburn stated that he did want to clarify that the Board is only entertaining the idea of a "Farm Brewery". A Farm Brewery is a defined term in NYS Ag & Markets Law and has requirements that 51% of ingredients are farmed on site. So that is part of this applicant also and part of the request is that does a "Farm Brewery" meet the definition of Agriculture, not a brewery in general.

•Dan Smith asked if that 3 year term is in that law; that they have to be growing the 51% in that time period. Chairman Pangburn stated that there is no definition of the time period, but the 51% is in there and Ag & Markets will weigh in. Dan Smith stated so there is no time table to grow their own products so for now they would be purchasing it and bringing it in. Chairman Pangburn stated that Ag & Markets recognizes that until they can get the crops established and growing to a level that then you can use them onsite. If there is not an attempt to do this, then they would lose their Ag & Market's certification to be a Farm Brewery. Dan Smith stated that there is no defined time table. Richard Van Dorn stated that there is no defined time table in the Ag & Markets Law, but what he remembers seeing is the word reasonable. Richard Van Dorn also stated to answer an earlier question that he knows the Town of Poughkeepsie and the Town of Millerton have both approved Farm Breweries and there are a couple other local ones as well.

Chairman Pangburn asked if there were any other questions. There were none. Chairman Pangburn asked if there was anyone in the public that wanted to speak.

•A resident of the Town-David Terpening stated he can't understand how a 5 acre parcel is going to support this operation. Is it going to be a hobby or commercial operation. Will you receive any tax exemptions for the property. He wants to know what the benefit is to the Town of East Greenbush. Chairman Pangburn asked to applicant just to address the question on how the property is going to support the 51%.

Richard Van Dorn stated that they will be using supplemental grains/hops & fruits that they grow as well as what they need to purchase to meet the 51% to generate a Farm Brewery. Richard Van Dorn stated he's not sure how to answer the question about commercial vs. hobby. He enjoy brewing but he also has a full time job and needs to work, that's why he'll only be brewing two times a week.

Chairman Pangburn stated that the proposal is contain all the brewery equipment in the two buildings behind the main house. Richard Van Dorn stated that is correct.

Chairman Pangburn read in the Ag & Markets Law that there are guide lines that states, "such farm operation may consist of one or more parcels of owned or rented land, which parcels maybe contiguous or noncontiguous to each other.

- David Terpening asked who would handle any complaints regarding the operation.

Chairman Pangburn stated that both Ag & Market's & the Code Enforcement Officer would be responsible for follow up on any complaints.

- A resident spoke and stated that he's in favor of the application.

Motion by Matt Ostiguy to close the public hearing. Seconded by Scot Strevell. Motion carried by a 7-0 vote.

SEQR DETERMINATIONS & RECOMMENDATIONS:

ZBA Appeal #2019-13–Van Dorn/Desmaris–106 Moore Road-Interpretation, of the term “agriculture; horticulture and farming, general” found in the Comprehensive Zoning Law at Section IV for a property to be put into agricultural crop production with an on-site farm brewery within an existing barn

In regards to Appeal #2019-14: Van Dorn-Desmaris- Application for an Interpretation, the Zoning Board of Appeals has considered this project under SEQR and determines that this project meets the requirements for a Type II Action and no further SEQR review is required.

ZBA Appeal #2019-13–Van Dorn/Desmaris–106 Moore Road-Interpretation, of the term “agriculture; horticulture and farming, general” found in the Comprehensive Zoning Law at Section IV for a property to be put into agricultural crop production with an on-site farm brewery within an existing barn

Resolved, That consistent with Sections 4.2.2 & 4.2.3 of the Comprehensive Zoning Law, the following Sections and definitions of The Comprehensive Zoning Law and resources are referenced:

1. 3.3.5 Definitions, Agriculture
2. 4.5 Agriculture; Horticulture and Farming, General
3. NYS AG & Markets “Guidelines for Review of Local Laws Affecting Farm Operations Which Produce, Prepare and Market Crops for Wine, Beer, Cider and Distilled Spirits”.

Resolved, That consistent with Section 4.5 of the Comprehensive Zoning Law, the Board of Appeals makes the following interpretation of The Comprehensive Zoning Law:

1. That "Farm Brewery" as defined by NYS AG & Markets is allowed within the Agriculture; Horticulture and Farming, General Land Use.

This resolution was moved by Jeff Pangburn and seconded by John Conway at a meeting duly held on October 8, 2019.

A vote was taken as follows:

John Conway	<u>Yes</u>
Matt Ostiguy	<u>Yes</u>
Tom Hickey	<u>Yes</u>
Jeff Pangburn	<u>Yes</u>
Bob Seward III	<u>Yes</u>
Dan Smith	<u>Yes</u>
Scot Strevell	<u>Yes</u>

Motion carried 7-0

NEXT MEETING: The next meeting is on October 22, 2019

APPROVAL OF MINUTES:

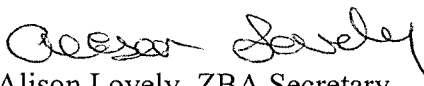
Motion by Chairman Pangburn to approve the meeting minutes from the July 9, 2019 meeting. Seconded by Tom Hickey. Motion carried by a 4-0-3 vote. John Conway, Dan Smith & Scot Strevell abstain.

Motion by Chairman Pangburn to approve the meeting minutes from the August 27, 2019 meeting. Seconded by Scot Strevell. Motion carried by a 5-0-2 vote. Matt Ostiguy & Bob Seward abstain.

MOTION TO ADJOURN

There being no further business before the Board, the meeting was adjourned upon a motion by Bob Seward. Seconded by Scot Strevell. Motion Carried by a 7-0 vote.

Respectfully Submitted


Alison Lovely, ZBA Secretary