



Town of Plaistow
ZONING BOARD OF ADJUSTMENT
145 Main Street - Plaistow, NH 03865

ZONING BOARD OF ADJUSTMENT
MEETING MINUTES
October 27, 2022

The meeting was called to order at 6:33 pm

Roll Call: Peter Bealo, *Chair*
Dan Lloyd, *Vice Chair*
John Blinn, *excused*
Jonathan Gifford
Jim Unger
Michael Murray, *Alternate*
Jim O'Brien, *Alternate*

Dee Voss, *Interim Zoning Official, Administrative Assistant*

★ *M. Murray was appointed as a voting members for this meeting.*

P. Bealo explained the process the Board uses for hearing and deciding (deliberating) on each application. He noted that all motions are made in the affirmative "to grant" format, but that was not indicative as to how any member might vote on a particular application, including the maker of the motion, or the second. P. Bealo added that notices of decision will be sent within five (5) business days, but that no permits will be issued for thirty (30) days in order to allow for any appeals (requests for re-hearing) as per the NH RSAs

P. Bealo noted that there were five (5) voting members available at this meeting.

Minutes of September 29, 2022

★ *M. Murray moved, second by J. Unger, to approve the minutes from the September 29, 2022, meeting as written. There was no discussion on the motion.*

Roll Call Vote: P. Bealo – yes; D. Lloyd – abstain; J. Gifford – yes; J. Unger – yes; M. Murray – yes. The vote was 4-0-1 and the motion passed.

PUBLIC HEARINGS:

#22-16: A request from Jaime McHugh for a variance from Article V, Table 220-32I to allow a handicap access ramp to be placed 14' from the property line, where 35' is the minimum required. The property is at 25 Canterbury Forest, Tax Map 50, Lot 6 in the MDR Zoning District. The property owners of record are Jaime L. Romero (McHugh) and Edward J. McHugh.

Jaime McHugh and Edward McHugh, 25 Canterbury Forest, were present for the application.

J. McHugh explained that she was seeking a variance for an access ramp for her daughter to use when she is confined to a wheelchair. She noted in order to meet the clear their front door, provide a platform area and meet proper slope the ramp would need to be as close as fourteen (14') from the front property line.

P. Bealo, noting that any variance when granted goes with the land in perpetuity, adding he assumed that the need for the ramp would be temporary.

J. McHugh agreed that it would only be needed for as long as her daughter lived with her, or until she was to get better.

J. McHugh reviewed her responses to the variance criteria with the Board noting the following:

- The request is for variance relief from the 35' front setback for the construction of a wheelchair ramp for her 20-year old daughter who has been diagnosed with a neurological disorder. In order to build to construction codes, the ramp would end up within 14' of the front property line
- The proposed variance would not be Contrary to the Public Interest because the ramp is a temporary structure to aid in someone's health and wellbeing
- The Spirit and Intent of the Ordinance are preserved because the building application was denied in accordance with the setback ordinance, the applicant is seeking a variance based on a hardship set forth by said ordinance
- There is Substantial Justice in Granting the variance because any hardship suffered as a result of the interference with its right to use property, is an unnecessary hardship
- The Values of Surround Properties will not be Diminished because the wheelchair ramp will be built to code and will be visually appealing. It will be built in a manner that is least intrusive to the surrounding properties
- Literal enforcement of the provisions of the ordinance would result in an Unnecessary Hardship:
 - o No fair and substantial relationship exists between the general purpose of the ordinance provision and the specific application of that provision to the property because the restriction prohibits entry to the home by its resident. Relief can be granted temporarily and not change the effect of its purpose
 - o The proposed use is a reasonable one because this is a temporary variance once the ramp is either no longer needed or the occupant no longer resides in the dwelling the ramp can be removed. This is not being requested for personal gain.

P. Bealo asked the Board if they had any questions, there were none.

J. McHugh read a statement for the Board noting:

- There were a number of standards and regulations for Fair Housing and Americans with Disabilities Act that would support her variance application

- Explained her daughter's condition and the challenges she faces with day-to-day activities, trying to finish school, and quality of life and the need for the wheelchair
- Time constraints on trying to get the ramp built before the winter weather comes and how the 30-day appeal period would detrimentally impact their timeline
- Noting that she had a letter signed by all her neighbors in support of her application and how unlikely it was that someone would contest the Board's granting her the variance
- Requesting a waiver of the 30-day appeal period so the building permit could be issued
- Thanking a number of local civic/service agencies and the Fire Department for the assistance and support they have been providing

P. Bealo noted that it was within the Board's purview to waive the 30-day appeal period, however, it would be at the applicant's peril and if a request from someone of standing is received within the 30 days they would have to stop construction and/or use of the ramp until such time as any re-hearing request is considered. The applicant acknowledged the conditions of a potential waiver.

P. Bealo asked if there was anyone speaking in favor or, or in opposition to the application. There was no one. It was also noted no emails or letters regarding this application were received prior to the meeting. The public hearing was closed.

DELIBERATIONS:

Variance Request:

★ J. Unger moved, second by D. Lloyd, to grant the variance request for 25 Canterbury Forest Tax Map 50, Lot 6 to allow an access ramp structure to be placed 14' from the front property line where 35' is the minimum requirement, with the following condition:

- ***In accordance with NH RSA 674:33.V, the variance is granted until such time as the intended user either no longer resides at the premises and/or no longer needs the accessibility provided by the ramp***

The Board reviewed the criteria for the granting of a variance with the following findings:

- Granting the variance will not be contrary to the Public Interest because it will allow ingress/egress for the resident as well as any first responders
- The Spirit and Intent of the ordinance are preserved because the structure will be temporary.
- There is Substantial Justice in granting the application because there is no gain to the public in the denial of the application and there would be a loss to the applicant for safe egress from the property.
- Surrounding Property Values will not be Diminished because the ramp will be built to code and will be temporary
- Literal enforcement of the provisions of the ordinance would result in unnecessary hardship as it would impede safe ingress/egress for the resident as well as any emergency personnel.

Roll Call Vote: D. Lloyd – yes; J. Gifford – yes; J. Unger – yes; M. Murray – yes; P. Bealo - yes. The vote was 5-0-0 U/A.

Appeal Period waiver request:

★ *D. Lloyd moved, second by J. Unger, to grant the requested waiver of the 30-day re-hearing appeal period for the variance granted to 25 Canterbury Forest Tax Map 50, Lot 6 and allow that a building permit be issued with the following condition(s):*

- *The property owner agrees that if a valid request for re-hearing is received within the required 30-day time limits of the NH RSAs, all construction and/or use of the ramp for which the variance was granted shall cease until such time as the re-hearing request is completely adjudicated.*

There was no discussion on the motion.

Roll Call Vote: J. Gifford – yes; J. Unger – yes; M. Murray – yes; P. Bealo – yes; D. Lloyd – yes. The vote was 5-0-0 U/A.

Continued to from July 28, 2022 to October 27, 2022

#22-11: A request from Sweet Hill Farm, LLC to Appeal the Administrative Decision of the Building Inspector/Code Enforcement Officer's issuance of a Stop Work Order. The property is located at 82 Newton Rd, Tax Map 68, Lot 8 in both the ICR and LDR Zoning Districts. The applicant is the property owner of record.

Dan Kane, Property Owner; Thomas MacMillan, Esq., with offices in Bradford, MA; Kristin Yasenka, Esq. with offices in Portsmouth, NH and Charlie Zilch, SEC Associates, were all present for the application.

P. Bealo note the Zoning Board of Adjustment does not have jurisdiction over matters of the Building Code, building permitting or building inspection and for that reason we will not be hearing testimony or deliberating on any matters related to those areas. The ZBA only has jurisdiction over the Plaistow Zoning Ordinances and that is the narrow scope of that will be considered at this meeting.

T. MacMillan offered that it would not change his presentation, but that he appreciated the notification. He noted the following:

- This is an appeal of the Stop Work Order (SWO) that was issued by the Building Inspector on June 28, 2022
- There was an additional memorandum of support filed the previous day
- An email copy was provided to the Board's counsel with all the exhibits

P. Bealo noted that the Board had only received the 57 pages of information that morning.

T. MacMillan reiterated that he had sent it via email the day before.

- Exhibit 1 is the SWO with the reasons for issuance being noted as:
 - There has been no Building Permit issued for ANY work at this location
 - There is no Planning Board approved Site plan for this location

T. MacMillan stress the “ANY” notation in the SWO and the moved on to Exhibit #2, which was the Tax Assessor’s Field Card for the subject property and noted a number of building permits that had been issued over time. He also drew the Board’s attention to Exhibits 5A through 5D, which were copies of building and demolition permits, and the supporting application materials, that had been issued to the property, as well as 5E which was the Certificate of Occupancy (CO) for the “Market.”

P. Bealo noted that a permit issued in 2018 noted the property owner as Goudreault, not Mr. Kane.

T. MacMillan offered that Mr. Kane purchased the property in 2018. He noted that no site plan was required for any of the building-related permits that had been previously obtained. He also noted that the SWO was issued on a building that a legal permit had been obtained for.

P. Bealo suggested that the description of “storage” on the permit was a little ambiguous as he had been at the property as a customer when the footings where being dug. He recalled asked Mr. Kane is he was building a “World War I type of trench”, and Mr. Kane’s response was that he was preparing the building to be a gelato stand and bakery. He also noted that Mr. Kane was quoted in the Eagle Tribune newspaper earlier in the week as saying the building would be for storage and food processing, which is also different from the description on the building permit.

T. MacMillan responded that the building permit was issued for agricultural storage and the CO would be issued once the building is completed based on that description. He added that if there was something different then the Town should address that then. He also noted that if Mr. Kane wanted to put in plumbing that wasn’t needed now, but would suit a future use, then there was nothing to prevent that. In doing so, he wouldn’t have to tear up the concrete to install it in the future.

D. Lloyd asked if the building would be for storage only, no retail.

T. MacMillan answered that it was not for retail and that the building has been left as it was before the SWO was issued. He reiterated that if the finished building is not what the permit was issued for then the Town wouldn’t be issuing the CO. He also noted that the SWO was issued for not have any building permits, yet they had already talked about two (2). He described the remaining exhibits depicting the building-related permits that had been issued, noting that this should deal with the first issue raised in the SWO, as clearly permits had been issued and are confirmed on the tax card. He added that he didn’t think that portion of the SWO could be upheld as permits had been issued and inspection had taken place.

T. MacMillan also noted a December 2021 letter to the Building Inspector citing his difficulties in getting a plumbing permit issued.

T. MacMillan explained that the Building Inspector visited the site for purposes of an inspection on June 21, 2022, and at that time noted a couple of minor issued related to hurricane brackets and the header beams but didn’t mention anything about the building permit or a site plan. Then the SWO was issued on June 28, 2022.

T. MacMillan expressed the following with regard to the need for a site plan:

- The tax card describes the property as a farm
- The property has been a farm for over 300 years and continues as a farm today
- There has always been agricultural use of the property
- There is a farm stand, house, pasture, crops, hops and greenhouses on the property, all which are part of the agricultural use
- Agricultural is a permitted residential use in the Integrated Commercial Residential (ICR) and Low Density Residential (LDR) Zoning Districts (A copy of Table 220-32G ICR District Requirements, and Table 220-32F LDR District Requirements were provided as exhibits for the Board)
- The Zoning Ordinances do not give a definition of a farm, so the State definition is what is being provided to the Board (Copy of NHRSA 21:34-a) and Sweet Hill Farm qualifies under that definition

C. Zilch noted that he has worked with Mr. Kane over the last four (4) years to help develop a future plan for the farm when they are ready to take the next step and improve the farm. He noted that he has been developing and updating a plan for the eventual need of a site plan review. He noted the following about the property:

- 1300' feet of frontage on Newton Road
- 25A parcel that was once larger, but some land had been subdivided off and sold to the Rockingham Church
- The parcel is in two (2) zoning districts, the first 500' being ICR and the remainder being LDR, cutting the parcel nearly in half between the two districts
- Both ICR and LDR allows agriculture as a permitted use
- The farm started over 300 years ago with the White family in 1794
- The barn and silo have been preserved
- Many of the greenhouses are new
- The soils are high quality and well suited for farming
- There are two small wetland pockets, one that is used as an irrigation pond in support of the agricultural use
- Much of the farming is organic
- There is no bathroom in the farmstand

P. Bealo offered that he understood that 35% of the product must be produced onsite, and from his times at the market as a customer he estimated that 85% of the product appeared to be from outside sources, noting Zorvino wines, oils from other companies and the like, which were noted to be "all good stuff". He added that next to Shaw's and Market Basket, this was the 3rd largest market in Town.

D. Kane explained that what could be seen in the market was the tip of the ice berg as to what is produced on the property. He noted that most of the on-site income is from annuals and fall mums.

C. Zilch offered that he had developed and updated an existing conditions plan for Sweet Hill Farm as each new agricultural building was added, so that if a use is added that would trigger site plan review then the base plan could be converted for a site plan application. He added that the site has always been agricultural as long as he's been involved.

T. MacMillan discussed the enabling statute for the Planning Board's authority over site plan review (NH RSA 674:43) for non-residential and multifamily dwelling units, noting the similarity to the Planning Board's Site Plan Review Regulations. He noted that the statute does not require that residential agricultural use file for site plan review until this property falls out of compliance with an agricultural use. He added that a number of building permits were issued without the need for site plan approval. Therefore, the SWO should not have been issued for lack of a site plan.

M. Murray noted that in the ICR District it notes that agricultural is an allowed use, not that it is a residential use. Adding that he differed with Mr. MacMillan's opinion.

J. Unger also noted that a mausoleum is also a permitted use in the ICR, but certainly wasn't a residential use.

P. Bealo offered that the listed permitted uses were there because they are compatible with residential uses, not because they are residential uses in and of themselves.

T. MacMillan noted that the residential section of the ICR permitted uses table lists agricultural as a residential use, which he suggested removed any doubt that the agricultural use is also a residential use.

There was additional discussion regarding the interpretation of the permitted uses in each section of the ICR district.

P. Bealo noted that the sign section of the ICR requirements table limits the square footage of a residential sign to three (3) square feet. He suggested that the entrance sign alone was larger than twenty (20) square feet, which exceed what is allowed for a commercial sign in the ICR district. He further noted that there were more signs on the buildings and the site far in excess of what is allowed for residential or commercial use and that there were no permits obtained for any of the signs that he was aware of. P. Bealo suggested that this was indicative of the commercial use of the property.

T. MacMillan suggested that the amount of signage was not what was before the Board at this meeting, it was the SWO.

P. Bealo offered that what was before the Board this evening was whether or not a site plan would be required, and that the Board would not be addressing the SWO. He added that was stated at the beginning of the meeting. He added that in his opinion the property is being used in a commercial manner, it is agriculture, but it's very much commercial.

P. Bealo also offered that based on the tax card that was provided by the applicant, this property has three (3) dwelling units, which requires site plan approval. He added that no one is saying that

this is not a great use of the land, and no one is saying it's not an asset to the community, only that they should be treated the same as every other business in town that is required to have a site plan.

There was discussion regarding the number of residential units in the house on the property. Mr. Kane noted for the record that there were only two (2) dwelling units in the house. P. Bealo noted that the tax card that reports three (3) units was submitted into the evidence by the applicant and that three (3) units would trigger site plan review.

T. MacMillan offered that none of the issues regarding the signage had been brought to the owner's attention by the Code Enforcement Officer.

P. Bealo offered that the conditions of the land, the market, the signage, the three (3) units shown on the tax card were all triggers for site plan and that he felt the matter could have been resolved long before this if a site plan had been submitted to the Planning Board for review.

T. MacMillan explained that he couldn't account for what the tax card notes about the number of units.

J. Unger added that the table of permitted uses notes that the residential use, combined with another use, needs a site plan.

T. MacMillan noted that there was nothing combined, it was all an agricultural use.

P. Bealo offered that an issue with taking a narrow perspective is if there were all of a sudden a huge factory structure to process chicken could be erected on the property, could be to kill, defeather and process chickens, could "stink up the whole town" and the Planning Board would have no say or site plan oversight. He noted that he didn't think that Mr. Kane was going to put a chicken processing plant on the property.

T. MacMillan reiterated as long as the use is agricultural, then a site plan is not required. He added that there would still be safe guards in place. He noted that a building permits would still be required.

D. Lloyd noted that there were building permits pulled without site plan before.

T. MacMillan offered that was the point, he didn't need to have a site plan then, he doesn't need to now. It was not required when the farm stand was done, nor for the garage or other agricultural storage.

D. Lloyd offered that he felt that to be an oversight.

T. MacMillan responded that he disagreed that it was an oversight.

J. Gifford noted that the building inspector at the time may have may not have known all the rules and that it was an oversight.

P. Bealo added that the current building inspector was asking for it.

T. MacMillan offered that the building inspector was an agent of the Town when he issued the building permits.

J. Gifford suggested that things not go backwards on this matter but move forward and they weren't addressing the formerly issued building permits or calling them invalid. Moving forward the new building inspector is up to code, and caught some of the issues, and the lack of a site plan.

T. MacMillan offered that when the building inspector visited the site on June 21 and made a couple of recommendations on the changes. He did not say that the building permit was being revoked.

J. Gifford suggested that he may have wanted to go back and find the site plan to see the engineered document and found that there wasn't one.

T. MacMillan asked why then the stop work order said there weren't ANY permits issued.

M. Murray suggested it could have meant there were no valid permits.

D. Lloyd added without the site plan.

T. MacMillan offered that things were begin read into the situation. He noted that it was their position as long as the request is for an agricultural use, then a site plan would not be required. He added that while the Board may think it simple and that a site plan could have been filed already, the owner shouldn't be subject to another level of regulation by having to file a site plan for an agricultural use. T. MacMillan noted that they did try to go see the Planning Board but were unsuccessful at that attempt.

P. Bealo asked if there was a site plan for the Planning Board then he didn't understand why they were at this meeting.

T. MacMillan responded that they didn't do a site plan, but an existing conditions/as-built plan to show where everything was, because that was the understanding after the December 2021 meeting. He added that was all that was asked for, no site plan was requested. He added that once you are under the jurisdiction of the Planning Board with a site plan, then everything that is changed going forward is subject to review, whether agricultural or not. Aside from regulation, that's a death knell for a property that's already on the edge, and the Town shouldn't be making it easier.

P. Bealo offered that Mr. Kane should be treated the same as any other business in town with a commercial use. He noted that with the use and the signage on the site this resembles a commercial use in his opinion.

There was discussion regarding the signage and if it were removed whether or not it would then be an agricultural (vs. commercial) use.

P. Bealo offered that he considered it to be a agricultural-commercial use by virtue of the magnitude of the development of the site, and the house being a three-unit requiring a site plan. He added that they want the family to be successful, it's very good for the Town, but he felt that it was important to treat all businesses the same.

T. MacMillan offered there was a distinction between a regular business and a farm or agritourism and that's why the State Statutes make allowance for these types of uses to preserve their economic viability. And as such not requiring a site plan.

D. Kane offered that this was a little like Jeopardy, you already have the answers and you're looking for the right questions. He offered that he's watched the Board before and they are generally a good deliberative board and try to do the best job. However, in the promotion of the farm I talk about the future, and what I'd like to do. He added that what he's currently doing on the farm is nothing that he'd like to do in the future. He's noted that he has met with the Planning Department, and they know that once he is ready to come in with commercial plans for the farm he will be in with a site plan. Commercial uses are right now unrealistic, there is no separate water or sewer which are all considerations all of which will require a large capital investment. Mr. Kane explained that all he's done so far is to step up and try to keep the place a farm, and he's "ashamed to say" how much money has been spent to do that much. He reminded that he lived in Town as everyone else does. Someone wants him to take the sign down, fine, he didn't trip into a commercial use. He noted that he built the farmstand that size because he needed to attract people to the farm to make it economically viable. The biggest way the farm stays a farm is to get more people come to the farm, it noted that it's still not a viably economic at this time. He explained the agricultural storage uses on his property, noting that different types of crops required different handling procedures. He offered that he didn't see the advantage to the Town to be a "regulation in search of a victim." He added that he contributes to the Town's benefit, he's not moving, he's not going to take his marbles and go home and turn the farm into something else. He's committed to keeping it a farm, and if he needs to seek relief that's what he's going to do. He's a good New Hampshire Yankee and he doesn't want to subject himself to more regulation than he needs to. He added that we live in New Hampshire for a reason and he's passionate about the farm. If he's talked before it was time, or installed a sign that was too large, it wasn't done with the wrong intent, he's just promoting the farm. He added that the former building inspector never said anything about the sign, or he would have rectified that issue. He closed with the farm is important and people to see it the way it important, and his goal is to get that to the 35% which means the farm is viable.

D. Kane noted that there are only two (2) units in the farmhouse. He admitted that he hadn't check the tax card, but for the record is stating that there are only two (2) dwelling units.

T. MacMillan offered that the ordinance requires a site plan when there are more than two (2) units, and except for testimony he's not sure how else to prove it. He offered that the tax card is incorrect. He added that he wasn't going to belabor the SWO order but note that they weren't waiving any of the arguments presented at this meeting.

P. Bealo explained that it was not within the Board's purview.

T. MacMillan offered that they were required by statute to bring the appeal to this Board.

P. Bealo asked if the Board had any questions.

J. Gifford asked about the \$150,000 in flowers and what percentage of the farm that constitutes.

D. Kane replied that it was 30%, and fruits and vegetables were another 10%.

J. Gifford offered that the 35% was one of his stop points, the other was the three (3) dwelling units, both of which he felt had been addressed.

D. Lloyd offered that the farm was a phenomenal asset to the Town and his comments were in no way to take away from that.

P. Bealo asked if there was anyone speaking in favor of the application.

D. Voss noted that she had received twenty-eight (28) emails all in favor of the application. She offered to read them into the record, or to provide copies to the applicant and attach them to the approved minutes.

The applicant agreed that they did not need to be read into the record but could be attached to the minutes. Copies of the emails were provided to the applicant.

Elaine Barker, Haverhill, MA, noted that she is the sister of Lucine Goudreault, prior owner of the farm and she offered the following:

- Her sister had a stroke and is unable to attend this meeting but for 58 years had kept this as a farm, and agricultural use for the community
- They were very happy to sell to Mr. Kane because they knew he intended to retain and preserve the farm and has added to it (fruit trees, vegetables, greenhouses the market place
- The additional buildings were all positive to the progress of the farm and the surrounding community
- She ended with that she was very proud of all the accomplishments of Mr. Kane
- D. Kane should be allowed to continue the work on the agricultural building and will bring much to Plaistow and the surrounding communities

Cory St. Pierre, 5 Eugenia Lane, Plaistow

- Does all the plumbing for the farm, and it's more than just a property
- He brings his kids out to enjoy all the farm has to offer
- There is lots of maintenance to the farm and he doesn't need to spend any more money on these other things and that should be kept in mind

Steven Ranlett, Haverhill, MA, former Plaistow Planning Board Member

- There are lots of rumors regarding what Mr. Kane would like to do on the farm, but unless he pulls the trigger on them, he is an agricultural use and should not need a site plan
- It's all agricultural
- In 2018 when Mike Dorman (former Building Inspector) brought it to the Planning Board it was determined that as long as it was agricultural, a site plan was not required

Kate Martin, Haverhill Chamber of Commerce, Lives in Newburyport MA

- Sweet Hill Farm is a member in good standing of the Chamber
- Award winners with the Chamber
- They are a valued member of the community
- They are important in the support of sustained food security and to help the community and the region

Theresa Kane, 64 Main St (D. Kane's wife), part owner of the farm

- The farm is D. Kane's passion, and he has put his heart and soul into it
- To see what has transpired is disturbing
- They own another business (hospice) and their integrity is intact
- There were a number of related employees and contractors here at the meeting in support of the farm
- It would be a disservice to the community to not rethink your thoughts, it's a good farm
- There is a lot of support
- Dan will do what needs to be done and will do the right thing, she asks that the Board do the same
- She spoke about some of the employees that worked on the farm as well as some of the other things that they do for the community
- Dan has taken the time to learning what the farm needs and has brought it back
- They have partnered with UNH (University of New Hampshire) and other businesses to make sure that they are doing the right thing

Bonnie Griskevich, Newton, NH

- Spoke of the importance in the preservation of barns
- Long term customer of the Goudreault Farm
- When went up for sale and caused concern over what would happen to the land
- When Sweet Hill Farm opened she went in and became a long time customer
- Barns are being lost at the rate of one (1) per day regionally
- The preservation of the existing barns and the addition of new barns speaks volume of Mr. Kane
- Barns are part of the New Hampshire identity
- Reaching for reasons not to do this, instead of support
- Driving up Route 125 and seeing the general deterioration of the landscape and the addition of AutoZone signs and smoke shops, made of cement and plastic and steel the State is being lost

- Mr. Kane has a vision, and the Town should be finding reasons to work with him, opposed to shifting gears and bringing in lawyers
- The reasons for the hearing don't seem to be the reason of the meeting
- Mr. Kane brings a reason to come to Plaistow
- People are doing Agritourism and referenced Cider Hill Farm.
- Not sure, but understands there to be a full-time mason on site
- Should be embracing instead of tearing down
- Growing hops, great, been to other local breweries to support them, and recommended that the Board members check them out
- There is a tourism aspect to farming
- Appreciates the plants grow and finds them to be of high quality, with insect pouches
- Everything that is touched is researched and brought to perfection
- As a native New Hampshire person please preserve the part that brought them to the State to begin with instead of plowing it under for more asphalt

Jeff Pentz, 6 Windsor Court, Plaistow

- Moved to Plaistow 1 year ago, neighbor gave them a mug from the farm as a welcome gift
- Went to check out the farm and were amazed with the quality
- Symbolized Plaistow and would hate to see it go away
- Know there is a right decision to make and that's to support the farm

D. Lloyd, there is no one in the room that thinks D. Kane is not doing a great job, he brags about the farm all the time. But he wanted people to know that the Board has a job to do, and they don't get paid for it, they are volunteers trying to do the right thing for the Town. The Board dissects each application and have certain rules to follow in deciding the matters that come before them. No one wants to penalize Mr. Kane, just trying to do the best job they can. He asked the public to put themselves in their shoes and noted that they take everyone's input into consideration. He added that the Board is pretty compassionate when it comes to things.

C. Zilch noted that he has put together an existing conditions plan for the farm. Agreed that he lacks a site plan, but all buildings are supportive of the agricultural use so far, there are no improper intrusions into the wetlands and all building setbacks are compliant. The existing conditions plan establishes all the boundaries, setback for buildings and wetlands, locates the crops and the buildings. When Mr. Kane has an idea for a new building, he has brought it to C. Zilch who has been able to guide him, so it's not done randomly and without thought. C. Zilch noted that the existing conditions plan was brought up to date to include the provisions of the recently updated wetlands setbacks. The land serves them well for a farm and anything if the time comes that something on the property triggers a site plan, they will be prepared to come before the Planning Board and complete that process.

P. Bealo asked if there was anyone speaking in opposition to the application.

Rick Foye, Plaistow Building Inspector/Code Enforcement Officer

- He has nothing against what Mr. Kane wants to do with the property

- The day he was initially on site was his first day and he was brought in to do the inspection
- He never said that the structure was built well, as had been attributed to him
- He asked to see the engineered plan as what he saw didn't look right to him, and was told that there were no engineered plans
- He didn't see the permit onsite that day
- It was his understanding that a site plan was required under §220-2.1 and was looking for that site plan
- He reiterated that he had nothing against Mr. Kane, but that it was his responsibility to make sure that structures are being built to code and are safe
- The engineered plans would give him confidence that the design was structurally sound
- All of the above lead him to issue the SWO
- The amount of extensive plumbing (6 sinks, 6 floor drains, several bathrooms) in the building was converse to the use as agricultural storage
- In his opinion what was applied for and what was being constructed were not the same
- He is not trying to prevent them from moving forward or hurt the business, he wanted to fill in the missing pieces by getting the engineered plan and move forward

P. Bealo offered that the Board was only looking at the requirement for a site plan, and it was not within their purview to exam the SWO.

R. Foye responded that he only wanted to set the record straight.

P. Bealo asked if there was anyone else who wanted to speak. There was no one and the public hearing was closed. He noted that there could not be any additional input.

The Chair called for a break at 8:49 P.M. The meeting was called back to order at 8:57 P.M.

DELIBERATIONS:

★ J. Unger moved, second by M. Murray, to grant the appeal of administrative decision filed by Sweet Hill Farms, LLC, that a Planning Board-approved site plan is not required for the residential-agricultural use of the property located at 82 Newton Rd, Tax Map 68, Lot 8 in the ICR Zoning District.

The Board takes no position on the appeal of administrative decision regarding the issuance of a Stop Work Order for building permit and/or building code violations.

P. Bealo offered that this

J. Gifford explained that he walked in looking at this as dotting "I's" and crossing "T's". He offered that if he knew when he was pouring a foundation and had a future plan for a brewery that he would plan for that as part of the foundation work. His concern was whether or not the 35% onsite production was being met, and the three (3) dwelling units. He added that both those were addressed to his satisfaction by Mr. Kane, whom he found to be an honorable man. J. Gifford offered that there are some errors in paperwork that need to be corrected, but in his opinion this is an agricultural operation, and they don't need a site plan.

P. Bealo offered that he was ill at ease to call this purely agricultural. He reminded that the attorney acknowledged that they could have a 1M chicken processing facility and call it agricultural and not in need of a site plan.

J. Gifford said that would be halted when they went for a building permit.

P. Bealo disagreed and said that the Building Inspector would be issuing the building permit based on the building alone.

J. Gifford offered that he didn't think it would get to that level.

P. Bealo responded that he was trying to avoid absurd and unjust outcomes further down the road.

J. Gifford noted that he could expand from three (3) pigs to 250 pigs, and there needs to be trust that someone won't do that to their neighbor.

P. Bealo offered that the existing business out there has grown beyond just an agricultural use.

J. Gifford reminded that the requirement for the farm stand was 35% produced onsite, doesn't matter on the size of the building. It does bring in customers, and it's a large building. It was reported that the flowers bring in 30%.

P. Bealo offered that the ordinances read that the Planning Board can require a site plan.

M. Murray offered that he has been switching back and forth, is this agricultural in the residential and requires a site plan, or the fact that it's listed in the residential mean that it doesn't require a site plan. He added that he felt it was unclear in the zoning.

J. Unger noted that there were permitted uses that were footnoted as requiring a site plan, and agricultural was not. He suggested that the Planning Board needs to make this more specific. He acknowledged P. Bealo's comment about the chicken processing but added that he didn't think that Mr. Kane would be doing anything like that.

D. Lloyd offered that agricultural has changed, you have to get people in your door. These are all local products, with a majority of "mom and pops" selling their products. He meets the 35% criteria. He added that C. Zilch acknowledged that if something other than agricultural is done with that building then Mr. Kane would have to come back to the Planning Board for a site plan review.

J. Gifford added that if Mr. Kane wants to put a brewery in or bring it up to that kind of commercial level, then he's going to need a site plan. He added that he also trusts C. Zilch's statement that he's not adding commercial uses. He reiterated that his stopping point was the 35%.

There was discussion about the types of products that are grown on the site, including vegetables and the hops and what revenue value they would bring to the farm.

J. Unger noted that they were still going to have to satisfy the Building Inspector in order to get the SWO lifted. He added that someone needed to see the plans to make sure that things are right.

There was no additional discussion of the motion.

Roll Call Vote: J. Unger – yes; M. Murray – yes; P. Bealo – no; D. Lloyd – yes; J. Gifford – yes. The vote was 4-1-0 and the motion passed.

There was no additional business before the Board and the meeting was adjourned at 9:09 p.m.

Respectfully Submitted

Dee Voss
Administrative Assistant

