

Town of Stafford
Zoning Board of Appeals
Special Meeting
July 2, 2018
7:00 p.m. – Auditorium
Warren Memorial Town Hall

RECEIVED
STAFFORD, CT

2018 JUL -3 P 4:05


TOWN CLERK

Members Present: Tim Armstrong
Arlene Avery
Rich Longmore
Henry DaDalt
Dennis Kaba, Alternate

Also Present: David Perkins, ZEO
Edward Muska, Town Attorney
Attorney Mark Shipman representing the appellants
Kimberly Dion and Karl Milikowski, 21 Stafford Street
Public

Public Hearing

Appeal of agricultural permit #18-1 issued by Zoning Enforcement Officer for the Foster Hill Garden Shop, Owner: Karl Milikowski & Kimberly Dion, Location: 21 Stafford Street. Map 54, Lot 13.3, zone: AA

The public hearing was opened at 7:05p.m. in the Auditorium at Warren Memorial Town Hall. Alternate member Dennis Kaba was seated for Chairman Anthony Guardiani.

Rich Longmore made a motion, seconded by Arlene Avery to elect Dennis Kaba as Acting Chair for the public hearing. All were in favor. Dennis Kaba read the legal notice for the public hearing and explained the public hearing process.

Attorney Mark Shipman of Shipman, Shaiken & Schwefel, LLC, representing the appellants, Andrea Eldridge, Tyler Roberts and Martha Abromaitis provided a handout of materials dated July 2, 2018 regarding the Appeal of Issuance of a Permit for an Event in a Residential Zone. He provided an overview of the memo, stating that his clients are not challenging the agricultural regulations as they are written. He said the Milikowskis' property at 21 Stafford Street is in a residential zone and their roadside market is an accessory use, not a main use. He said they cannot have a retail operation at their property because it is not a farm, and their activities, which include the tagging and selling of plants has a retail component.

Attorney Shipman cited Section 7.2F in the regulations, stating that only one greenhouse is allowed on a property in a residential zone. He also said the Milikowskis' property is in a wetlands. He cited Section 3.16E of the regulations, that when an accessory use is an agricultural use, only one greenhouse is allowed. He said the Milikowski property is not a farm and doesn't meet the definition of a farm.

Attorney Shipman noted that Dave Perkins, the ZEO, had said a property can have two principal uses—both a farm and a residence. Attorney Shipman said he disagrees. He said the principal use of the Milikowski property is a residence, not a farm.

Attorney Shipman said the permit previously issued to the Milikowskis was for a single agricultural activity that has now gone past. However, he understands the Milikowskis plan to hold additional such activities. He said their keeping of 28 donkeys runs roughshod over the regulations.

Dave Perkins, ZEO, responded. He referenced the ZBA's role under Section 8.15 of the Zoning Regulations and Section D1. He said the appeal is for an event that has passed and the Board will need to consider if the issue is moot or if it could affect further decisions.

Dave Perkins said the permit was issued under Section 7.19, that the Roadside Stand was an accessory activity to an established agri-operation. He said the Foster Hill Farm is an established agri-operation. He referenced an April 19, 2018 letter from Timothy McGuire with the Department of Agriculture who concluded the activities on the property met general agricultural practices. Agriculture, he said, is defined as including cultivation of the soil, horticulture, and the keeping of livestock, among other things, and the Milikowskis' keeping of donkeys and growing plants are the keeping of livestock and horticulture.

Dave Perkins also noted that a farm is defined as a tract of land, not a lot, so a property can have a principal building (such as a residence) on one part of the property and another area for farming.

Dave Perkins said a roadside market is a retail use allowed in a residential zone by special permit, and a special permit was granted to the Milikowskis. He said their greenhouses are not in the wetlands and the Inland Wetlands Commission permitted them within 100 feet of the wetlands.

Dennis Kaba asked if the Board members had any questions. Tim Armstrong asked if the Milikowskis' property is still zoned AA residential. Dave Perkins said it is.

The public hearing was opened to public comment.

Kim Dion (Milikowksi) of 21 Stafford Street said the principal uses of their property are as a farm and residence. She said the Connecticut General Statutes define farming to include the growing of plants (horticulture) and the keeping of livestock, two things they do on their property. She referenced Section 7.19 of the new regulations, noting their activity was not fee-based and they were allowed to have up to 20 cars at any one time on their property for the event.

Kim Dion said they are required to grow at least 50 percent of their products on their property. She said they far exceed that amount, growing 93 percent on their property. She said she can provide documentation for this.

Kim Dion said the cease and desist order on their property was issued by the former ZEO, David Palmberg, under regulations that predate the existing regulations. She said she and her husband worked with David Palmberg to get compliant. She said they have fifty acres and keep about 30 donkeys. She said Section 7.4A of the Zoning Regulations exempts parcels of 10 acres or greater, so they fall under that regulation. However, if she applied the allowable acreage for donkeys/horses, she could keep up to 97 donkeys on the property.

Kim Dion said she had a 2016 letter from the Department of Agriculture that stated they are compliant with Department of Agriculture standards. She said she has another letter from Tim McGuire from this past April that noted their greenhouses were full of seedling plants and that indicated their animals were being properly cared for. She said in May of 2016, the IWWC determined their greenhouses were permitted as an as of right use in their current location.

Kim Dion said that a neighbor had contacted the Department of Energy and Environmental Protection (DEEP) for possible violations, but DEEP found that as of right uses include farming, gardening, and nurseries in wetlands. She said farms include greenhouses and hoop houses. Kim said a neighbor also contacted the Army Corps of Engineers who sent out two representatives on May 30, 2018 and they determined that the greenhouses were not in the wetlands, and therefore not under their jurisdiction. They found no indication that wetlands had been filled, and no construction on Foster Pond. She said they found no violations of federal law and closed the file. Kim further said a neighbor again contacted DEEP with concerns they were allowing chemicals to run off into the pond. She said a Mr. James Kenny from DEEP found no violations. Kim Dion also turned in a petition signed by several residents in support of their agri-activity.

Dave Mordasky of 21 Buckley Highway, Chair of the Agricultural Advisory Committee (AAC), said his group worked hard on trying to put together agri-regulations. He said there have been issues for years between farming residents and non-farming residents co-existing together in Stafford but the town has chosen to have agriculture as part of their community. As a result, the AAC tries to be as fair as possible to all residents when considering proposed regulations.

Martha Abromaitis of 11 Stafford Street said she feels the Milikowskis don't always follow the zoning regulations.

Michael Milikowski of 28 Dunay Road noted that several agencies have inspected Kim and Karl Milikowski's property, as many as ten visits, and each time issues have been addressed satisfactorily.

John Wilson of 119 Stafford Street said the Milikowski property is a farm and has been farmed for years. He said years ago, people worked in the nearby mills, but also came home to tend their cows and chickens and other livestock. He said he has been on the IWWC for thirty years and the Milikowskis are not in violation of any wetlands regulations. He said too much time and money has been spent on this issue and feels it is enough.

Amorette Bianchi of 103 Stafford Street spoke in support of the Milikowskis. She said they maintain their property well and also feels this issue is a waste of the town's money.

Dennis Kaba read a letter in support of the Milikowskis from Donald Passardi of Stafford Springs.

Karl Milikowski of 21 Stafford Street asked that the petition his wife turned in be read into the public record. Dennis Kaba read the letter, noting there were about 20 signatures. A few additional residents in the audience said they wanted to sign the petition as well.

Carol Erling of 197 Sartori Road expressed her support for the Milikowskis.

David Mordasky asked for a show of hands of those who supported the Milikowskis. Most of the audience raised their hands. Attorney Shipman noted for the record that with the exception of the appellants, most of the people in attendance were opposed to their appeal.

Attorney Shipman said it does not matter what DEEP or the Army Corps of Engineers say. He said the ZBA must go by the definitions in their own zoning regulations, and he said the Milikowskis' property is not a farm. He said the sale of horticulture at their property is incidental to ordinary farming. He stated that Stafford's zoning regulations separate the definition of agriculture from a farm. He said the Table of Uses does not allow the sale of agriculture in a residential zone. He referenced Sections 3.16H and 3.16E. He said the regulations allow only one greenhouse in a residential zone. He also said the pond cannot be counted as toward the acreage of the property, and questioned if forestland could be counted as well.

Attorney Shipman reiterated that the principal use of the Milikowski property is a residence, saying that is what is was originally permitted for. He said the raising of horticulture is a permitted accessory use, but that they cannot have retail at that location.

Attorney Shipman said his April 28, 2018 letter outlines the reasons for his clients' opposition. He said they are not opposed to farms having retail uses, but that the Milikowski property is not a farm. He questioned why if it was a farm, why they would have filed for a special permit. He reiterated that this is an accessory use in a residential zone.

Dave Perkins countered that the Milikowski property does meet the definition of a farm and definition of agriculture. He said all they needed to do was to determine if the roadside market was an accessory use to an established agri-operation. He submitted his letter responding to Attorney Shipman's letter into the record.

Mark Botticello of Stafford said he has a house on his farm, and doesn't understand the issue between a residence and a farm. He said he supported the Milikowskis.

Lauren Dafoe of 27 Lakeshore Road said she felt Attorney Shipman's argument was about what constitutes a main use. She asked him how he defined a main use, and he referred to the definition under Section 4.2. Lauren Dafoe noted that a main use is defined as how it is designed, arranged or intended, noting that "original" use is not in the definition. She said the intended use of the Milikowski property is for farming. She asked the Milikowskis how much of their income comes from farming on their property. They said over 50 percent of their income comes from their farming operation.

Attorney Shipman said that the ZEO, the Milikowskis and the Zoning Board of Appeals recognized that the Milikowskis' application was for an accessory use, which would mean it is not a main use. He said they applied for an accessory use, making clear it was not a main use.

There were no further questions or comments. Arlene Avery made a motion to close the public hearing, seconded by Tim Armstrong. All were in favor.

SPECIAL MEETING AGENDA:

1. Call to order.
2. Establish a quorum.
3. Discussion and possible action – Appeal of agricultural permit #18-1 issued by Zoning Enforcement Officer for the Foster Hill Garden Shop, Owner: Karl Milikowski & Kimberly Dion, Location: 21 Stafford St., Map 54, Lot 13.3, Zone: AA.
4. Adjournment.

1. Call to order.

Tim Armstrong made a motion, seconded by Arlene Avery to seat Dennis Kaba for the Special Meeting for Anthony Guardiani. All were in favor.

Tim Armstrong made a motion, seconded by Arlene Avery to elect Dennis Kaba as Acting Chair for the Special Meeting. All were in favor.

The Special Meeting was called to order at 8:00 p.m.

2. Establish a quorum.

A quorum was established with Dennis Kaba, Acting Chair, Arlene Avery, Tim Armstrong, Rich Longmore, and Henry DaDalt.

3. Discussion and possible action – Appeal of agricultural permit #18-1 issued by Zoning Enforcement Officer for the Foster Hill Garden Shop, Owner: Karl Milikowski & Kimberly Dion, Location: 21 Stafford St., Map 54, Lot 13.3, Zone: AA.

Town Attorney Edward Muska said the decision of the ZEO is being appealed, and that the appellants believe the ZEO acted wrongfully in granting an agricultural permit for the Foster Hill Garden Shop. He said the Board must determine if the ZEO's actions were compliant with the regulations.

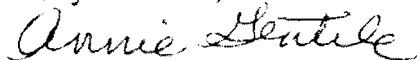
Arlene Avery asked how long the Board has to make their decision. Attorney Muska said they have 65 days. Arlene Avery said she would prefer to table a decision until their next meeting to give Board members time to digest the significant information they were presented with this evening.

Arlene Avery made a motion, seconded by Rich Longmore, to table this decision to their next meeting on the first Thursday in August. All were in favor. Attorney Muska cautioned members that because the public hearing is closed, they cannot take any other communications on this matter from the public or other sources, nor can they discuss it amongst each other.

4. Adjournment

Arlene Avery made a motion to adjourn the meeting, seconded by Rich Longmore. All were in favor. The July 2, 2018 Zoning Board of Appeals Special Meeting was adjourned at 8:11 p.m.

Respectfully submitted,



Annie Gentile
Recording Secretary

RECEIVED
STAFFORD, CT

2018 JUL -5 A 10:49

Town of Stafford Selectman's Office, Zoning Board of Appeals
and Planning & Zoning Commission

Warren Memorial Town Hall
One Main Street
Stafford Springs, CT 06076



TOWN CLERK

June 26, 2018

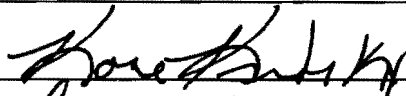


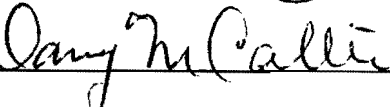
To whom it may concern:

As residents of Stafford, it has been brought to our attention that there is an appeal filed against permitting issued to Foster Hill Farm and Garden for their roadside market. We find this disheartening because this business and its owners are truly a valued part of our community.

In addition to providing a local plant business right here in Stafford, when we've lost so many others, Foster Hill Farm and Garden's beautiful property voluntarily hosts tours to the public, field trips for our children, and participates in the annual farm day event. The lovely gardens and miniature donkeys are beloved by so many in Stafford.

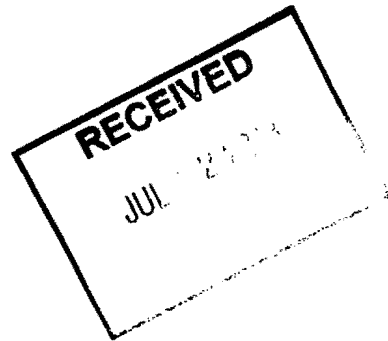
Without knowing the specifics of the complaint that is the basis for the appeal, it's known that it relates to a question of the roadside plant sale business permits being within the zoning regulations. We as Stafford residents feel that business activities of Foster Hill Farm and Garden are as much of an asset to our town, as its voluntary support is to our people and events. Our Zoning regulations should be such to attract more businesses like this one. If it is found that a valid Zoning concern exists, we strongly urge the Town to work with Foster Hill Farm and Garden to accommodate this business as Stafford is fortunate to have is as a part of our community.

Sincerely,
The undersigned residents of Stafford, CT

	RESIDENT NAME	STREET ADDRESS
1		22 Goodall Rd
2		Dwmg Rd.
3		Hampden Rd.
4		140 West Main St Apt 2

5	Ken M. Delany	140 West Stafford Rd Apt 2
6	Curt M. Williams	47 Prospect St
7	Alfred J. Gunt	47 Prospect St
8	Walter F. M. ...	37 Shore Dr. Wales, MA
9	John McQuinn	37 Shore Dr. Wales, MA
10	Robert ...	73 ...
11	Chun Hjan	4 Sunseaside Stafford, CT
12	Raymond Farrington	17 Clearview Dr
13	Robert Alexander	20 Woodland Drive
14	Brook Zeltz	342 East St. Apt C
15	Connie J. Brown	11 Park St Stafford CT
16	Frank Post	47 Old Mansen Rd, Stafford, CT
17	Gary Wilson	STAFFORD ST. STAFFORD
18	Cathy Blason	Stafford Springs
19	Alvin J. ...	Stafford Springs 11 Wales Rd
20	Lisa Roberts	29 Forest Rd, Stafford CT
21	Nisa Gagnon	15 Westford Rd S. Spgs
22	Priscilla Gagnon	15 Westford Rd S. Spgs
23		
24		
25		
26		

27		
28		
29		
30		
31		
32		
33		
34		
35		
36		
37		
38		
39		
40		
41		
42		
43		
44		
45		
46		
47		
48		



ZBA- 7-2-18

To the ~~Agricultural~~ Commission,

I am not opposed in any way of the growing + selling of plants from the Foster Hill Farm on 21 Stafford Street.

As a current neighbor I have not had any issues with the farm or its owners.

DONALD PASSARDI

Donald Passardi-