

Richmond Planning Board Meeting
Town Hall
Minutes
May 14, 2018

Members present: Rick Bell, John Hanson, Katherine Keenum, John Vittori (Chairman)

Member absent: Adeline Ellis

Others present: Patrick McColgan of Taconic Consultants; Christian Hanson of Balderdash Winery

Mr. Vittori opened the meeting at 6:30 P.M.

1. Acting in behalf of the estate of Stuart Annin Keith, Mr. McColgan presented a check for \$50.00 and an *Application for a Determination of Planning Board Jurisdiction and for Endorsement That Planning Board Approval under Subdivision Control Law Is Not Required (Form A)* with three copies of a plan for subdividing property on State Road to create a lot of 55.334 acres with 314.65 feet of road frontage. The application was unanimously approved.
2. Mr. Vittori made a motion to accept the minutes of the Hearing and Meeting of April 17, 2018, with the correction of minor typos. Mr. Bell seconded. The motion passed unanimously.

As the owner of an orchard, Mr. Vittori recused himself as chairman for the next item on the agenda (zoning for outdoor farm events); and John Hanson took the chair.

3. J. Hanson explained that the Planning Board had invited C. Hanson to come talk about his intentions for a winery on State Road because of a legal opinion from Cain Hibbard & Myers PC that in Richmond, although a winery on a property was an exempt agricultural use, hosting outdoor events was not (see Exhibit 1). The Board would be addressing issues raised in the memorandum and wanted input from the farmers and winery owners who would be directly affected.

C. Hanson said that he planned to reside on the property and to grow grapes and other crops (e.g., squash, pumpkin, and corn). On a 2-1/2 acre subdivision (see Planning Board minutes for March 12, 2018), a 5,000 square foot winery would be built where, in addition to eventually producing 6,000 gallons of wine annually, he could hold tastings and sell bottled wine. Only 10–25% of the fruit to be turned into wine could be grown on the property but all of the wine would be produced there. His business plan called for hosting as many as thirty-five weddings and other events at the winery each year. He would use field parking for visitors and probably create additional parking. He expected to have live music on Friday evenings from 5:00 P.M. to 7:00 or 8:00 P.M. Events would not last past 11:00 P.M. The building permit for the winery was based on 150-person occupancy maximum, with appropriate bathrooms. There would be no kitchen; food would have to be catered.

After C. Hanson had left, Mr. Vittori said that noise from outdoor events was the biggest cause of complaints from neighbors. He asked whether a subcommittee should be formed to

write a zoning by-law change. J. Hanson suggested that instead additional meetings of the Planning Board were in order if necessary to get a revised zoning by-law written expeditiously.

4. Mr. Hanson reported on the arrangements he had made with the Town Moderator for introducing at the Annual Town Meeting an amendment to the Short-Term Room Rental Business By-Law Change as it appeared on the Warrant. The amendment would add the language that the Planning Board voted on at its meeting on April 17, 2018.
5. Mr. Vittori called for a draft of the necessary zoning by-law change for regulating marijuana establishments in Richmond to be prepared by the July meeting of the Board so that it could go to the Selectmen and Town Counsel before a public hearing. The goal would be to have an article on the warrant of a special town meeting in November 2018.

The meeting was adjourned at 8:30 P.M.

Respectfully submitted,
Katherine Keenum, Clerk

Exhibit 1: Cain Hibbard & Myers PC Memo on Issues Concerning Farm-Winery/Event Zoning Use

CONFIDENTIAL MEMORANDUM

TO: Mark Pruhenski
FROM: Cain, Hibbard & Myers, PC (ECG and JAM)
RE: Issues Concerning Farm-Winery/Event Zoning Use
DATE: April 2, 2018

I. FACTS

We were informed that Christian Hanson is seeking to establish a farm-winery in Richmond on property located at 81 State Road, Richmond, MA. The Town Building Inspector, Paul Greene, was asked to issue a building permit. Mr. Greene spoke with Mr. Hanson, and gathered information from him on his intended uses. Mr. Greene has requested confirmation that the intended uses, which include outdoor events on the premises, are allowed by-right under the Zoning Bylaw. Mr. Greene identified the uses of the property to be a winery, with production, storage, tasting room, patio, retail sales and outdoor events. The property is about 2.5 acres and is located in the RA-C zone.

We assume for the purposes of this legal memorandum that the product to be sold at the property is grown on the site. If this is not correct, then there are limits to the percentage of products to be sold that are not produced from grapes grown at the property. We would need more information to address the sale of products not grown on-site.

II. ISSUE

Whether a winery with production, storage, tasting room, patio, retail sales and outdoor events is allowed as a by-right use under Richmond Zoning bylaws and Massachusetts law.

III. SUMMARY CONCLUSION

Under Massachusetts statute G.L. c. 40A §3, and the Richmond Zoning Bylaw Section 4.8A(7), the use of the property for a winery is an exempt agricultural use. However, we do not believe that hosting events, such as weddings, are considered exempt agricultural uses because the primary purpose of the event is not primarily to sell agricultural products. The Richmond zoning bylaw does not contain any other provisions authorizing the commercial use of hosting events, thus these events are not permitted under the current zoning bylaw.

IV. ANALYSIS

A. Agricultural Exemption for Viticulture and the Sale of Wine Under G.L. 40A § 3

G.L. c. 40A §3 states that viticulture and the construction of structures for the primary purpose of viticulture cannot be subject to prohibition, unreasonable regulation or the requirement of a special permits in an agricultural zone.¹ "Structures," as described in the statute, include facilities for the sale of wine.

¹ G.L. 40A § 3 states in relevant part:

No zoning ordinance or by-law shall regulate or restrict the use of materials, or methods of construction of structures regulated by the state building code, nor shall any such ordinance or by-law prohibit, unreasonably regulate, or require a special permit for the use of land for the primary purpose of commercial agriculture... or viticulture, nor prohibit, unreasonably regulate or require a special permit for the use, expansion, reconstruction or construction of structures thereon., except that all such activities may be limited to parcels of 5 acres or more or to parcels 2 acres or more if the sale of products produced from the

Thus, agricultural use that consists of growing grapes, producing wine from the grapes and selling the wine on the premises is a by-right use.

B. Agricultural Uses Permitted in the RA-C Zone

The Richmond Zoning Bylaw, Section 4.8A(7) allows the winery use. It states that “the use of land for the primary purpose of agriculture, horticulture, or floriculture provided ... during June, July, August and September, every year, or during the harvest season of the primary crop raised on the land ... the majority of such products for sale, based on either gross sales or volume, have been produced by the owner...” As noted above, we are assuming for the purposes of this memo that the owner is producing the majority of products sold on-site. If that is true, then the fact that this property is less than five acres is not material and the use as a winery, including the sale of the wine, and wine tasting, are all permitted by right under the Zoning Bylaw. The Zoning Bylaw also exempts agricultural buildings and structures from height regulations. *See* Section 5.5.

We note that the state definition of agricultural use allows the sale of products even if the owner is producing only 25% of the products on site (if 50% of the products are from Massachusetts).² This conflicts with the Town’s requirements that the majority of products sold are produced on site and the state definition would control here.

C. Farm-Winery Use Does Not Include Events

The Richmond Zoning Bylaw only allows the uses provided by law or in the Bylaw. We do not find a category or use description, whether principal or accessory, which allows the winery to hold events that are not primarily related to the sale of the product. Thus, sales of the wine by glass and wine-tasting events are allowed, by right, but not purely commercial events, such as weddings or concerts. As events at farms are very popular and a good way to support the sustainability of farms and the local economy, we suggest that the Town might want to consider adopting zoning bylaws to permit and regulate this use. We have attached a bylaw concerning events on farm property from the Town of Williamstown as an example.

D. Alcoholic Beverages Control Commission License Required.

Also, you should be aware that there is a specific ABCC alcoholic beverages license available for a “farmer-winery.” A “farmer-winery”, is defined as “any plant or premise where wine is produced, rectified, blended or fortified from fruits, flowers, herbs or vegetables.” G.L. c. 138, § 1. The statute allows for the sale of wine at wholesale, at retail by the bottle and the glass, and by tasting. *See* G.L. c. 138, § 19B(g). Under the statute, a “winegrower may be licensed by local licensing authorities to sell wine

agriculture, aquaculture, silviculture, horticulture, floriculture or viticulture use on the parcel annually generates at least \$1,000 per acre based on gross sales dollars in area not zoned for agriculture, aquaculture, silviculture, horticulture, floriculture or viticulture.

² G.L. c. 40A, Section 3 states:

either during the months of June, July, August and September of each year or during the harvest season of the primary crop raised on land of the owner or lessee, 25 per cent of such products for sale, based on either gross sales dollars or volume, have been produced by the owner or lessee of the land on which the facility is located, or at least 25 per cent of such products for sale, based on either gross annual sales or annual volume, have been produced by the owner or lessee of the land on which the facility is located and at least an additional 50 per cent of such products for sale, based upon either gross annual sales or annual volume, have been produced in Massachusetts on land other than that on which the facility is located, used for the primary purpose of commercial agriculture, aquaculture, silviculture, horticulture, floriculture or viticulture, whether by the owner or lessee of the land on which the facility is located or by another, except that all such activities may be limited to parcels of 5 acres or more or to parcels 2 acres or more if the sale of products produced from the agriculture, aquaculture, silviculture, horticulture, floriculture or viticulture use on the parcel annually generates at least \$1,000 per acre based on gross sales dollars in area not zoned for agriculture, aquaculture, silviculture, horticulture, floriculture or viticulture.

for consumption on the winery premises in accordance with this section and with such regulations as the commission may prescribe.” G.L. c. 138, § 19B(i). Additionally, G.L. c. 138, § 15F provides for a special licensing for sale of wine produced by farmer-winery for off-premises consumption at an indoor or outdoor agricultural event, such as a farmer’s market or agricultural fair.

It is not clear that the “farmer-winery” license allows the sale of alcoholic beverages at events, and it does not seem likely that the sale of alcohol for these events would be limited to the products grown at the winery. If the Town does adopt a new zoning bylaw allowing the events, further research will be warranted regarding the alcohol beverages licensing requirements for these events.

Conclusion

In conclusion, the intended uses of a winery with production, storage, tasting room, patio, and retail sales are permitted by right. A Zoning Bylaw amendment will be necessary to permit the winery to hold outdoor events where the primary purpose of the event is not the sale of products grown on-site.