

**Zoning Board of Appeals
October 2, 2019**

Site Visit before meeting

Meeting opened 7:02

Members Present: Bill Martin, Dick Stover, Wendy Laurin, Peter Killeen, Ina Wilhelm

Building Inspector/ZEO Present: Paul Greene

Community Members Present: John Vittori, Mark Fowler

Meeting to Order 7:00

Exhibits

1. Agenda
2. Applicants petition
3. Public Notice in Eagle
4. Abutters Notices
5. Letter August 22 to the owner and applicant confirming meeting
6. ZEO July 3rd 2019 letter which started the process
7. Chapter 13 of Richmond Bylaws.

Site visit at 6:30 with owner of property, 508 Caanan Rd

Review and Approve Minutes of August 21, 2019 meeting.

Motion to Approve and all members present voted in favor to accept minutes.

Variance Application from Balderdash and Prima Donna LLC has been withdrawn

Petition from Mark Fowler and Erena Langley of 482 Caanan Rd.

In regards to an appeal of an action of the ZEO with respect to activities at 508 Caanan Road also known as Hilltop Orchard.

Petitioner Mark Fowler

482 Caanan Road. Petitioned the town to enforce an action against the music at Hilltop which kept him from enjoying his property. He noted that the music has ceased and believes that the property is for sale.

Bill asked if petitioner wanted to pursue petition.
Could resubmit petition and would have to start clock again.

Mark wants to go forward.

Bill-Objecting about music. Asked petitioner if there were other things besides what was in the petition.

Petitioner wanted to include other items.
Said Roger Manzolini had said that the music was discernible from 1500 feet away.

Bill asked if music was played outside the 2 to 5pm.
Petitioner has the burden that there is some activity which is violation of the zoning by-law.

Mark said there had been events but not since the new farm ordinance.

Bill

Whether or not the playing of the music is in violation of the bylaw.

Put the playing of music in two different categories, music within retail operation and music with special event.

Will hear from property owner if there have been any events. Property owner would have to get a farm function permit.

Bill questioned petitioner if the music is in violation of which provisions of the bylaw

Mark

They are conducting a commercial operation which is not supported by the farm function.

Building inspector and ZEO, Paul Green

He had sent a letter to Hilltop and asked them to stop events. Once there was farm function act, said John was not going to do events. Anything that would trigger the farm function requirement was not going to happen. Paul said that the music was being played during the work day at the orchard. Paul said that there was legitimacy to Hilltop as an apple orchard and wine which includes wine tasting being produced due to the time it had been in business. It does lend to playing music and there has been music over the years. Paul made ruling that it was playing music during business and that it was not excessively loud. Paul was not aware of a noise ordinance in Richmond that would ban it.

Bill

A noise ordinance is not grandfathered. It goes into effect when it passes.

Paul

In his opinion playing of the music was part of the business. If there were weddings needed to apply for farm function permit.

John Vittori, owner of Hilltop Orchards.

They are an apple orchard which has existed from the 1920s and have operated as an orchard for 32 years. The music is part of their business operation and not part of an event. Have licenses with state and town for baking, wine tastings and apple orchard. Nothing they are doing is out of the ordinary from other orchards as part of their agricultural operation.

Wants to be a good neighbor and want to take into considerations concerns. Did stop in 2018, weddings and if they had an event they would apply for a special permit.

Bill

If someone came in and wanted to build an orchard and to sell apples and cider in a residential district what would be needed.

Paul

Would have to get permit

Bill

Than Hilltop is a prior nonconforming use that is permitted.

Paul

It has been for a long time.

Bill

Being asked whether the imposition of music in the retail operation is an expansion of the nonconforming use that would require a special permit or whether it does not require a special permit because it is a continuation of the operation.

Bill

How long has music been part of the operation?

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John

Had a retail business since 1987. Operated out of house than a shed which had the retail, all which was permitted by the town. Retail business has grown. Built building for production in 1997 for retail and wholesale and has licenses and permit. Has 187 acres is not in commercial zone but orchards are a commercial business but there are

right to farm bylaws. Agriculture is a business. It does not fit into a commercial business.

Paul

If business is given legitimacy and the music has been part of it for years and played during business hours then it is legitimate. If played Rock music at night that would be different.

Mark

Two prong test

1. Is Apple orchard legitimate?
2. And is music part of it.

Paul

That is part of it in his opinion.

Bill

Taken off the table of events for farm function events. There are no special events and if there were they would have to apply.

Mark

If advertised events with musician does that not make it a special event.

Bill

Farm Function is defined a closed event for which a fee is paid.

Buying apples and having a glass of wine is not an event and does not fit farm function.

Farm Function

Any event or concert held on a farm for any function that is paid held for a fee, to supplement farm income and to promote the sustainability of the farm.

Farm function is separate from normal farm stand, retail activity that farm has had.

Activities under the definition farm function are not permitted by prior function.

John agreed to that.

Is music accessory to the retail operation or and expansion of business.

Mark

Is the orchard considered a farm by bylaws of town.?

Paul

One of the ways to decide legitimacy besides time is by looking at taxes. What is orchard taxed at?

John

Not taxed as home. Pay close to 13,000 has never taken provision of Chapter 61A which would reduce tax liability wanted to give money to town.

Bill

Chapter 13, Right to farm.

Farm is property exclusively used for agricultural and its components. Like to hear how an apple orchard doesn't fit that description.

Mark

It is a place that offers skiing, tourism as an event for weddings which excludes that statement. Activities void the exclusivity of that statement.

Bill

Wants a recorded vote if Hilltop Orchard is a farm under the definition of a farm.

Read Chapter 13, Section 2

Asked Board is of the view that Hilltop is a farm.

Motion was moved

Mark

Commercial activates in petition

Bill

Complaint was about music.

Discussion

Amplified Music on Saturdays and Sunday that keeps them from enjoying property from 2 to 5

Paul

Weddings have stopped. The other issue was about the Moonlight tour.

All through MA, farms do walking tours.

Found legitimacy that Farms are doing walking tours. Farms are doing a lot of things. So that is why he came up with the skiing is like a walking tour

Mark

Particular requirements in planning

Bill

Is Hilltop a farm within the definition of a farm.

The motion was moved, seconded and all members voted yes.

Bill

The petition was in regards to music on the arm

Mark

Was asked about other items brought up.

Bill

Hilltop is a farm.

Now, the question is the playing of music an extension of a non-conforming use that would require them to get a special permit?

Asked Mark, Is the adding of music enough of a change to trigger a special permit for the change.

What triggers a need for special permit?

John

Is their provision in the Richmond bylaws for amplified music, believes there is.

Paul

Is their MA state law that does allow amplified music but does not think that Richmond has ordinance.

Bill

New law from 11pm to 7am

John

It does allow amplified music. Don't believe that Hilltop is in violation of existing by-laws. State law does allow amplified music

Mark

There is state law. Indicated state law which talks about increasing sound level.

John

Amplified music is allowed and with new noise ordinance from Richmond it is allowed.

Ina

What is the amplified music?

John

Guitar vocalist with small amplified

Mark

Vocal and Iso recorded music

Ina

How does that affect your living on your property

Mark

Can hear in house with windows closed. House is about a 100 feet from where the music is played

John

House is several hundred feet away

Music is background music they can carry on conversations while played.

Dick

Similar as in a restaurant where there is a piano player?

John

Yes, like Price Chopper where they have music.

Mark

Would argue that. Can hear in house and Roger Manzolini's investigation where he could hear at his house across 295.

John

Can also hear trucks driving down the road, there is a lot of noise.

Ina

Can the music move?

John

Not sure that moving music would make a difference, since it is in the country and sound carries. Can hear people talking.

Mark had come to John to hold event, which they did.

Bill

Preliminary issue is whether noise violates noise bylaw.

Discussion about new noise bylaw since there was not a copy but Mark agreed that noise is not in violation of bylaw

Bill

Point 1 Have board vote whether the zoning bylaw itself can be violated with respect to noise. If it is not in violation of the noise ordinance is there anything that the ZEO can do about noise. Paul-no.

There is nothing in ZBA jurisdiction that could trigger a violation of the noise ordinance.

Point 2

Orchard going from selling apples to music to entice customer to come. Refer to expansion in bylaw that refers to a substantial different purpose, etc. Have to consider adding music is an expansion that would require a permit.

Dick

Does music increase traffic?

John

Hard to say, have a lot of customers, but people enjoy the music. Couldn't put a number to it

Ina

To bring in business or to augment business?

John

For the experience, not to bring in additional customers.

Dick, Mark do you think it brings in more customers.

Mark

Don't know answer to that.

Dick

Mark said in opening statement that it did

Mark

I honestly can't say if did or didn't

Peter

John how long music has played

John

Always had music since 1997. Seven days a week have music in building.

Limited time during harvest time and July, August, September and October.

Paul

Farms has right to make noise like tractors. Looked at music as part of business and that is why he ruled as he did.

Mark

As counter if music is ambience could they have the shooting on property? Motor cross racing?

Paul

Motor cross racing, probably not but Farms can have target shooting so they can ward off foxes. But he is playing music

Bill

Wants to frame a question if ZBA has any enforcement tools for noise ordinance and if not the petition is denied.

And ZBA thinks whether or not whether the music is part of the retail business is an expansion of a non-conforming music. But has heard that music is part of the business since beginning.

Any more comment that music is in violation of bylaw? Wants public hearing to close? Is there any more material to support the petition.

Mark

Clarification. ZBA argued if noise is part of the bylaw and then if that is not true than the petition is dead.

Bill

Think if ZBA doesn't have authority to say that then the ZEO could issue an enforcement letter and ZBA would support ZEO

Bill

Wants on record that if appeal were ZBA proven wrong on point 1 than there is a pretty good chance that the board would find that the music is not an alteration of non-conforming use. Would probably find that the operation of the orchard is a non-confirming use and ancillary to that use is the retail operation which includes music.

Final point would like to have a vote that events that would be subject to the Farm Function by-law that special events that are held for a fee are not pre-existing uses and if property owner wants to engage in those events the property owner would have to get a permit.

Mark

What ruling are you relying on for non-confirming use?

Bill

Existence of apple orchard is a non-confirming use. Could not just start an apple orchard.

Mark

Music since 1997? Also, till question about type and intensity of music.

Bill

Haven't heard anything that would rebut that it.

Burden of proof is on applicant to bring in that music has changed

John

Said since beginning has been outdoor, amplified music.

Dick

Don't understand why saying non-confirming use. It has been in use for a long time.

Bill

If land was vacant and wanted to start apple orchard would require a special permit.

Paul agreed. Orchard has legitimacy as to when it was established and that is why he ruled the way he did. And music is part of that.

Close public meeting 8:06

Established it is a farm

Need to agree that established with the ZEO to respect of issue with noise.
That the zoning bylaw does not have a provision so can't enforce noise independently.

Vote to approve ZEO's refusal of an enforcement meeting. Can't independently enforce
can't enforce noise in any event.

Dick

Don't know if there is a specific noise ordinance.

Bill

We do know

Dick

What about state

Ina

Night time

Dick

Time limit on Balderdash

Bill

That is a farm function

Bylaw doesn't give enforcement for noise and there is no claim about any other violation. The complaint to the ZEO was about noise and nothing else. And doesn't know if ZBA would be enforcing the new noise by-law.

Entertain a motion. Does board agree with ZEO that the zoning bylaw does not provide an enforcement tool specific about noise?

Motion moved, seconded and all members approved.

Bill wants to create a record about non-conforming use.

Whether the music is part of the orchard retail and winery operation since the 1990s and whether it has had an expansion since it started.

Bill looks at 48 section 6 and if an expansion specifically talks about an expansion whether substantially different in purpose that doesn't seem to apply. For the same purpose in a substantially different matter and that doesn't seem to apply, or to a substantially to a greater extent.

Would like a motion of whether the music being played in conjunction for a retail operation and not for a separate charge and that music is an ancillary use to the farm activities which are allowed as non-conforming use.

Motion to support the ZEO that the music does not violate the bylaw as long as there is no separate charge for it and performed in conjunction with hours of retail operation.

Motion was seconded and all ZBA members voted in favor.

Property has not had a consistent record of farm function where events have a separate charge that is beyond buying apples or wine. Those events that would not have the protection of a non-conforming use and would require a separate permit.

Special events and farm function events are not grandfathered.

Motion seconded and voted for approval by all ZBA members present.

Decision is to affirm ZEO refusal to issue an enforcement order in response to applicant's request which is subject of petition

Motion moved, seconded and ZBA members present voted in favor.

Motion to adjourn and voted to close meeting.