

Zoning Board of Appeals

Meeting Minutes

Wednesday, April 20th, 2022

Those present: Chairman Thomas Heidgerd, Vice Chairman Donald Thurston, Member Robert Clewell, Member Kevin Reilley and Assoc. Member Karla Chaffee. Assoc. Member Joseph Anderson and Member Donna Thibodeau are not in attendance.

I. Call to Order

7:03 pm Chairman Heidgerd reads the agenda for the record. Chairman appoints Associate Member Chaffee to sit on case #22.05 as a voting member.

II. New Business

7:05 - #22.05 – Timothy Toomey -366 Central Street – Appeal of Insp of Bldg. Decision
Board Members working case: Chairman Heidgerd, Vice Chair Thurston, Member Reilley, Member Clewell, Assoc Member Chaffee. Chairman Heidgerd opens the hearing and reads the PHS for the record. Chairman Heidgerd asks the public to ‘address the Chair’ if points are to be made and explains the meeting procedure. Chairman Heidgerd further states this meeting is a rather unique appeal situation because most of the time the Board is faced with an appeal where the Applicant is the property owner. The property owner is usually disputing the BI decision. This is not the case.

Chairman Heidgerd states there are a number of variables that have been brought to the Board’s attention (wetlands, etc). Reminds the Board they are only to look at ‘zoning’ related matters. The Board doesn’t have the jurisdiction to make judgements about any other Board’s actions in town whether they in any shape or form have an impact on anything other than zoning. The Board’s intent is to simply look at the application as submitted from Mr. Toomey and attempt to reach a decision based upon whether or not the Board can uphold the Building Inspector’s original decision on the property or whether the Board should approve or deny it under some sort of conditions relevant to the case.

Chairman Heidgerd reads Applicant application for the record and continues to read for the record Mr. Toomey’s letter/list. Chairman Heidgerd mentions the ‘right to farm law’ for the record.

Applicant Mr. Toomey thanks the Board for hearing his case and begins to state his case. Says his request is specifically designed for the Zoning Enforcement Official and not the BI although they’re both the same. Says he put the appeal together based on all the facts and records available from the town.

Attorney for the Applicant, Mr. Mochella, thanks the Board. Attorney mentions other town departments (highway dept, planning dept, concomm dept) Says doesn’t want to have a neighborhood dispute, just wants the town to do the right thing and follow the right procedures. Otherwise the protective zoning bylaws means nothing.

Corey Head of CHF thanks the Board for the opportunity to speak.

Says she wants to make a distinction of the difference between the parties involved at 366 Central St.

366 Central St – owned by CHF Trust – Pamela Head Trustee

366 Central St – CHF Services – Jeff & Cory DBA -reside on property

366 Central St – CHF Farm – 2 separate entities with one classified as a farm and one is not. Says in response to an ongoing remark about a ‘curb cut’ - a curb cut was not required. No curbing existed. The parking area was not approved by Patrick Snow as implied in the application. (Mr. Snow is town highway

surveyor) The letter given to Ken Ward from Mr. Snow stated a town approved right of way. Says the farm stand was purchased from Home Depot as a shed. It is 16 x 24 feet. It is a non-permanent structure. No foundation, no running water. Constructed in one day. We market our crops and yes, we sell products that are not produced by us and we are allowed to sell a certain percentage of resale products. We do meet the requirements to qualify it as an agricultural structure.

Jeff Head of 366 Central St says they have wetlands - has 5 acres of xmas trees and lease over 40 acres of land between Rowley (14) Byfield & (20) Georgetown that we plant crops on and bring back to our farm stand. We farm all over the place.

Cory Head of 366 Central St -with regards to landscape co. on the property, yes, we operate a landscape co and have been for 21 years – with regards to firewood, yes, we operate a firewood business up there. We do not consider firewood protected under the agricultural act as we purchase the logs. We do not harvest timber off of our property. We have also done for 21 years. Cory asks why after such a long period of time is this being brought up now.

Clewell speaks and says he would ask the applicant to address chapter 40A sec 3 in specifics and how it's violating. Says the agriculture exemption is reason is whether this farm stand is entitled to Agriculture exemption. Applicant says the percentage of goods sold at the farm stand isn't public so it isn't known. Applicant's attorney says information was submitted with application and he's relying on the information from Facebook for the percentages.

Jeff Head says his biggest seller is corn, tomatoes and xmas trees. Says he advertises on Facebook of other local company's products brought in to the farmstand to help their business. Such as support your local businesses.

Clewell asks Jeff Head if he has evidence he's willing to provide to this Board, percentages, agricultural products sold at the farm stand relative to what is produced and what is sold and Cory Head answers yes.

Chairman Heidgerd asks the audience if anyone would like to comment.

Amber Hovey of Bradford St speaks on behalf of CHF

Amy Marley of Central St speaks on behalf of CHF

Patty Arsenault - A joy to work at farmstand

Chaffee says the Board needs to be clear as to what law applies and what standard comparing to. Says she believes if the Applicant and his lawyer read chap 40A sec 3 they will see the exemptions for farm stands and what type of farm stands comply. Says to also read Rowley's Right to Farm Bylaw.

Chairman Heidgerd asks about operation-Cory Head says CHF operates typically May to December.

Chair – Trust owns property, Jeff Hill CHF owns Farmstand. It is not part of Services

Clewell states mass law deals with what is grown on your own property and in Massachusetts. Says he would like to see written submittals as to what is sold at farm stand, what is grown on property and what is sold that is not grown on property such as on other farms in Massachusetts.

Cory asks how far back would the Board like information on and Clewell says 12 months.

There is discussion on the grandfathering of the selling of the wood between the Applicant, Applicant's Lawyer and Chair.

Chaffee states the complaint is so huge with to talk of 2 big issues. One, is the farmstand and whether it meets the agricultural assessment and second is the issue of the operation on the property that the operators don't consider agricultural and is that a legal non-conforming use.

Clewell states for the record, what the Board is talking about is a prior existing non-conforming use. Was the business there before the bylaw was? So that a permit was not needed for the business at that location. What the Board needs to know, because the bylaw then says as the prior existing non-conforming use expanded. We need to know when it started, the extent of the business then, and the extent of the business now. We'll need to know when the firewood business started, what it's volume was then, and says he believes it's been reduced-put it in an affidavit or letter stating so then we have something to base a decision on whatever the decision is. Board wants the numbers from Chickadee: grown themselves; grown in mass; grown from other.

Applicant wants to know the year the bylaws changed- Chair responds 1985.

Applicant states an investigation should be looking at when the dba were filed. Clewell states the applicant should understand the Zoning Board is not an investigating body. The Board takes evidence. You do the investigation. You bring the Board the evidence. Attorney questions how to substantiate anything without tax returns-Clewell says how you going to carry your burden of proof with what you want to prove? Says the atty/app have the burden of proof. Not the Board.

Applicant says he has nothing against farmstands and would like to see a farmstand area on rte. 1. Says he'd like to see everyone happy but not where it is because it's not designated for zoning.

Clewell says he thinks everyone is missing the point and everyone has to understand. The general law says a farmstand is exempt from zoning. Board discussion between members proceeds on the bylaws, farmstands, parking, BOS resolution, and state laws.

Applicant requests to continue his hearing to March 16. Chair asks for a motion to continue. Clewell so moves to continue. Thurston seconds. All in favor.

III. Misc

Vote to accept Minutes of 2.16.21.

Clewell motions to accept. Thurston seconds. All in favor.

IV. Adjourn

Chairman Heidgerd asks for a motion to adjourn. Clewell so moves. Reilley seconds. All in favor. Meeting adjourns at 8:34 pm.

Attachments

Agenda

22.05 Application

2.16.21 Meeting Minutes

Respectfully submitted, Lisa Lozzi