

**BRISTOL ZONING BOARD OF APPEALS
MINUTES
REGULAR MEETING OF TUESDAY, DECEMBER 6, 2022**

CALL TO ORDER:

By: Chairman Rafaniello

Time: 7:00 P.M.

Place: City Hall West
Meeting Room One –
Second Floor**ROLL CALL:**

Chairman Rafaniello called the meeting to order at 7:00 P.M.

MEMBERS	NAME	PRESENT	ABSENT
REGULAR MEMBERS:	Jerald Rafaniello (Chairman)	X	
	Vacant (Vice Chairman)	X	
	Richard Raymond	X	
	Alfred Radke, III	X	
	David Pecevich (Secretary)	X	
	Richard Balsam	X	
ALTERNATE MEMBERS:	Christopher Callahan (arrived online 7:12 P.M.)	X	
	Michael Gregory Erosenko	X	
	John LaFrienere (departed 8:35 P.M.)	X	
STAFF:	Edward Spyros, Zoning Enforcement Officer	X	
	Robert M. Flanagan, AICP, City Planner	X	
	Andrew Armstrong, Assistant City Planner	X	

Chairman Rafaniello called the meeting to order at 7:01 P.M.

PUBLIC HEARINGS:

1. Application #3789 – Appeal of the ZEO's decision regarding 163 King Street and Lot 29 Kingswood Drive; Assessor's Map 35, Lot 29 & 30; R-15 (Single-Family Residential) zone, Robert Desmarais, appellant – (postponed from November 1, 2022).

The Board acknowledged receipt of the following items in their electronic packets: an e-mail dated September 27, 2022, from Edward Spyros, Zoning Enforcement Officer (ZEO) to Attorney James Ziogas and forwarded to Robert Flanagan, City Planner, regarding 163 King St. and Lot 29 Kingswood Terrace: 75 Acres; a letter dated September 30, 2022, from Edward Spyros, Zoning Enforcement Officer (ZEO) to Attorney James Ziogas, regarding Desmarais farm proposal; a memorandum dated November 1, 2022, from Edward Spyros, ZEO to the Zoning Board of Appeals (ZBA), regarding 163 King Street (Bellefleur Family Farm); and a letter dated November 8, 2022, from Joan Nichols, Executive Director, CT Farm Bureau to Gerald Rafaniello, Chairman Zoning Board of Appeals, regarding Application #3789 – Bellefleur Family Farm and Robert Desmarais – 163 King Street.

Chairman Rafaniello designated regular Commissioners Raymond, Radke, Pecevich, Balsam and Rafaniello to vote on Application #3789.

Attorney James Ziogas, 104 Bellevue Ave., representing the appellant, explained the request concerns an appeal for a decision by the Zoning Enforcement Officer (ZEO) as described in the attachment. After reading the ZEO's view, the issue is the definition of a farm and what is allowed in a farm use. He explained the ZEO had concern when reviewing the language in the Zoning Regulations. The discrepancy was the permitted use of a farm and a specially the permitted use of a nursery in a residential zone. The distinction of the two uses created the confusion, which is the reason they are in attendance this evening. The question is what Regulation to apply for based on whether the farm was a nursery as a permitted use or a specially permitted use under the commercial nursery Regulations.

Attorney Ziogas reviewed the Zoning Board of Appeals (ZBA) authority under the Zoning Regulations to decide and hear Appeals. He stated that the courts in general have ruled that when the ZBA hears an Appeal they must apply what a court would use to interpret the Statutes found under CT Resources Recovery versus the Planning and Zoning Commission. He reviewed the history of various courts views of reenactments, interpretations, intentions, word meanings and reasonable results of the legislative body of the ordinance to give the Board a basis of the Appeal. He further stated that the courts state that any ambiguity of the Regulations must be resolved in favor of the property owner from the Planning and Zoning Commission from the Town of Lebanon Vs. (inaudible.)

Attorney Ziogas explained the appeal is because of Section V.A.a. and V.A.b. whereas the principal uses shall be permitted uses in all single-family residential zones by right, which he read into the record. The question was what a farm is and how to define a farm. He read into the record the Zoning Regulations, Section 2, Rules and Definitions. If there are 5 acres of land in a residential zone they can operate a farm as a matter of right.

Attorney Ziogas explained the Regulations defined some of the terms that the courts determined. If the Regulations do not define a term, they had to use the Merriam-Webster Dictionary for common sense.

From the Merriam's and Webster's Dictionary, he reviewed various definitions of farm; activity; agriculture; forestry; truck farming; from the CT Gen. Statutes, Section 1-1, he reviewed various definitions of agriculture, farming, farm buildings, accessory buildings, nurseries; orchards; ranges; greenhouses; and other temporary structures.

From the Zoning Regulations, he reviewed the definition of nurseries, which was critical in his view. Therefore, within the definition of farming, a permitted use of right, a person may conduct the activities of agriculture, forestry, and raising farm animals. The farming activity would only be on the R-15 zoned areas. The intention was to run the farm as agricultural activity defined in the Regulations as allowed by right. He thought the ZEO agreed with their interpretation of the Regulations, but the concern was the specially permitted use. Attorney Ziogas' concern was under specially permitted use of "except as otherwise provided herein." Then the special permits would apply. This was previously defined and was provided herein, so the exception does not apply. This was provided herein so it was provided because it defined farm forest and nursery forest under permitted uses. Therefore, he believes the request was an allowed use. He reiterated the definition of nursery, which had commercial raising. It was difficult to have a farm and not have it be commercial.

Chairman Rafaniello noted the farm was characterized as a hobby for the appellant's wife and sounds like more than a hobby.

Attorney Ziogas noted that "characterized" was not in the Regulations, but if it was a hobby it was permitted. If they want to grow plants and either give them away or sell them, they were permitted.

Board inquiries: Attorney Ziogas explained the appellant would construct a greenhouse and a nursery, raise animals, grow plants, and have a farm stand. The doubtful language was whether this was a special permit (greenhouse) or permitted use (farm.) If it is a permitted use, a site plan is not required; if it is a specially permitted use, a site plan is required with requirements. It is about how the City defines what a farm is and what is permitted in a farm.

Attorney Ziogas summarized the various types of farms this may be for the property, which may have to morph to larger entities to work. This was not for a particular site, but the way they process products and should be permitted. His view was the language for the special permit except as "otherwise provided herein" applies to the appellant as a farm in a residential zone. Therefore, what the appellant wants to do is allowed.

Board inquiries: Attorney Ziogas disagreed there were two definitions on Pg. 4 for farm and nursery, but a nursery may be conducted under a farm. So, the appellant would not want to get a Special Permit. The small A-Zone portion of the property was vacant land and would not be part of the farm. The A-zone was changed in a prior proposal for various dwelling complexes.

The Board had concerns of this being a farmstand because it was a new building on vacant land with no oversight.

Edward Spyros, Zoning Enforcement Officer, 111 North Main St., read into the record his statement dated, Hearing Date November 1, 2022, ZBA Notice of Appeal to: Zoning Board of Appeals (ZBA) FROM: Edward Spyros CZEO E. Spyros, regarding 163 King Street (Bellefleur Family Farm), which was a summary of the actions for the property and Mr. Spyros' concerns.

Board inquiries: Mr. Spyros read into the record the Regulation 4.A.3.b., nurseries for special permit with a required special permit. He wanted the plans done correctly. He explained the farm may be on the property, but the nursery and the commercial greenhouse required a Special Permit.

Board inquiries: Attorney Ziogas explained the concern was the definition of "farm" in the Regulations because this cannot be an additional requirement. The farm is either permitted or a "specially permitted use." If it was required to be regulated, a Special Permit would not be required but it was permitted. A nursery included a greenhouse. If it required regulation, it would not be permitted by right. He was unsure of the pesticides to be used on the property. The residences and the farm co-exist.

Mr. Spyros explained if the appellant had a farm stand selling a few plants that was the definition of a "farm" which would be okay, but this was a large business and the neighbors had concerns. He wanted to make sure the plan was done correctly.

Attorney Ziogas agreed this was argumentative, but his view was the 5 acres for a farm was implicit the 5 acres would be farmed. The product being sold was mute. The letter from the CT Farm Bureau, Dept. of Agriculture was in favor of the application and the CT Gen. Statutes, Section 1-1. His view was the letter from the CT Farm Bureau stated the definition of "farm" allowed these activities. His view was this was "provided herein" included the previous section of farms and greenhouses that were permitted activities, which needed ancillary activities. He noted the appellant would only use 10 acres of the 75 acres for the farm.

The Chairman's view was the letter from the CT Farm Bureau does not discuss the concern of the Appeal. He explained Mr. Spyros agreed with the definition of the "farm," but in addition the Regulations had a requirement for a Special Permit for greenhouses and nurseries. Also, the concern this evening was to determine if the ZEO's view is correct. In the Regulations it states a nursery was a type of farm, but in addition to the permitted use of a farm there are special conditions that apply to nurseries and greenhouses, which is why the Special Permit was needed.

Commissioner Raymond's concern was if this was a special permit use or not. Someone had to decide if this was a nursery or a farm. The nursery required a Special Permit with a greenhouse; a greenhouse required a Special Permit. The difference was if the appellant would be selling vegetables or plants/shrubs. A farm can have a nursery or a greenhouse that required a Special Permit. He was unsure of the answer, but the definition of nursery had to be reviewed and if the Special Permit applied.

Attorney Ziogas noted nursery was used in both sections and so it cannot be a permitted use and a specially permitted use. Therefore, the courts decided the ambiguity should be decided in favor of the applicant not the City of Bristol. This should be reviewed at the Zoning Regulations re-write. But currently farm was a permitted use and nursery was part of that farm and the product was mute. Regarding the Regulations, you can have a commercial greenhouse without having a farm.

The following persons spoke in favor of the appeal: Attorney Mark Ziogas, 88 Valley St.; Attorney Timothy Furey, 43 Bellevue Ave.

Attorney Ziogas explained the first thing he reviews in the Regulations was the permitted uses. If the use is on that list, he does not need to review the Special Permits. If farms say a nursery is permitted, there are no additional Regulations, because it states it's a permitted use. Attorney Furey agreed with the views of Attorney James Ziogas and Attorney Mark Ziogas with the State laws, statutory laws and case laws. Zoning itself was deemed an aberration to individual rights. It is limited to affect individual people's rights and their properties. When the language differs, the laws err to the property owner. Here it was clear with the farm, it was a permitted use. Maybe the Regulations unclear, but the case law was clear. He was a lawyer for a long time, so he agreed with Attorney Ziogas' analysis. Also, there were three lawyers telling the Board the same thing. He had no interest in the application but following the statutes and legal rights.

Commissioner Pecevich read into the record the definition of nursery from the Webster's Dictionary.

Attorney James Ziogas noted these comments were unsolicited. He reiterated if read together, a farm with a nursery and a greenhouse is a permitted use.

Chairman Rafaniello reiterated this would also require a Special Permit for a nursery or a greenhouse.

No one else spoke in favor of the application.
No one spoke against the application.

The hearing is closed.

By: Pecevich

Seconded: Raymond.

For: Balsam, Raymond, Radke, Pecevich and Rafaniello.

Against: None.

Abstain: None.

Commissioner Raymond's view was the Regulations definitions were ambiguous for nurseries, farm use and Special Permits. He was unsure of the correct call because of the two different definitions. Because it was ambiguous, he was unsure if they were supposed to give this to the property owners. But his view was they had to side with Mr. Spyros. Commissioner Balsam was not concerned about nursery versus greenhouse but had long term concerns.

Commissioner Radke agreed with the ambiguity and if it required a Special permit for the activities. But as the Land Use laws were written, it has to be stated if it was an allowed use and other uses cannot be assumed into it unless specifically stated. They are not questioning if it was allowed or not, but what the applicant had to do to set up the property and the controls for setbacks and Regulations for accessory structures. This would be under a special permit for the Zoning Commission. This was not just a farm stand but a commercial/wholesale, which requires more oversight in permitting.

Commissioner Pecevich partially agreed with the attorneys, but he had to agree with the Regulations if there was a nursery a special permit was required. He was unsure why there was a disagreement about the greenhouse because a special permit and site plan had to be developed because then they may possibly have their farm. He agreed with the ZEO's view.

Chairman Rafaniello agreed and that it was the size and scope of the project, building, acreage, and truck traffic in a residential zone. This needed more review by the Zoning Commission. If this is done by special permit that was the way to do this project. The appellant can take this to court, but he agreed with the ZEO's view, which a farm was allowed but the additional uses needed a special permit.

Chairman Rafaniello explained the motion would be to approve the appeal. If they vote in favor of the appeal, they would support the appellant's appeal. If they vote against the appeal, they would support the ZEO's decision.

MOTION: Move to approve Application #3789 – Appeal of the ZEO's decision regarding 163 King Street and Lot 29 Kingswood Drive; Assessor's Map 35, Lot 29 & 30; R-15 (Single-Family Residential) zone, Robert Desmarais, appellant, in accordance with the plot plan and information submitted.

By: Pecevich

Seconded: Raymond.

For: None.

Against: Radke, Raymond, Balsam, Pecevich and Rafaniello.

Abstain: None.

The appeal is denied.

2. Application #3790 – Certificate of Approval for a general repairer's license at 735 Farmington Avenue; Map 53, Lot 12; BG (General Business) zone; 735 Farmington Avenue, LLC, applicant.

Chairman Rafaniello designated regular Commissioners Raymond, Radke, Pecevich, Balsam and Rafaniello to vote on Application #3790.

Attorney Mark Ziogas, 88 Valley St., representing the applicant, explained the request for a general repairer's license. The plans included demolishing two houses and constructing a quick oil change repair shop. The general repair license was to do vehicle emissions testing. The location was on the busy Rt. 6 that was a good location for the facility. There would be low traffic with about 10 to 12 vehicles per hour for oil changes. There was sufficient queuing on the site for vehicles to prevent vehicles from backing up onto Rt. 6. There are two existing curb cuts that would remain with one lane for ingress and one lane for egress. The landscaping would be increased significantly. The building would be similar to the building on Pine St. The Rt. 6 Corridor Study recommends improving the properties in disrepair. Also, to have businesses on Rt. 6 that would not compete with the businesses in the downtown area because this would be a new facility. The applicant had an additional facility in Manchester and is maintained well. This facility would not compete with businesses in the downtown area. He requested approval for the application, which also needed State approval.

Board inquiries: Attorney Ziogas explained there would be signage for the entrances and exits on the property. The Site Plan Review Committee also has comments for the application.

Chairman Rafaniello explained the properties have been in disrepair and this would improve the area. There were no concerns of traffic or distances from schools or churches.

No one else spoke in favor of the application.

No one spoke against the application.

The hearing is closed.

By: Pecevich

Seconded: Raymond.

For: Radke, Balsam, Raymond, Pecevich and Rafaniello.

Against: None.

Abstain: None.

Commissioner Pecevich commented this was a good layout and he agreed with the Chairman's comments. This was a busy street and people were not living in these houses which allows for commercial development and would be a nice addition for the area.

Commissioner Radke agreed with the plans submitted, which would improve the site. The businesses on this street were consistent with similar repair facilities. The request fit in with area and neighborhood. There was a concern of the egress onto Rt. 6, but that would be addressed with the site plan review. He was in favor of the application.

MOTION: Move to approve Application #3790 – Certificate of Approval for a general repairer's license at 735 Farmington Avenue; Map 53, Lot 12; BG (General Business) zone; 735 Farmington Avenue, LLC, applicant, in accordance with the plot plan and information submitted.

By: Pecevich

Seconded: Raymond.

For: Radke, Balsam, Raymond, Pecevich and Rafaniello.

Against: None.

Abstain: None.

The application is approved.

3. Application #3791 – Variance of 1) build-to-line (maximum 10' ft.); 2) building fenestration requirements (minimum of 65%) to allow for the construction of a mixed-use building (retail and dwelling units) at 37 Main Street; Map 30, Lot 61+61-1+63-3; BD-1 (Downtown Business) zone; 37 Main Street, LLC, applicant.

Chairman Rafaniello designated regular Commissioners Raymond, Radke, Pecevich, Balsam and Rafaniello to vote on Application #3791.

Attorney Timothy Furey, 43 Bellevue Ave., representing the applicant, explained the applicant was unable to attend the meeting. He explained there was a building with parking, but there was a kitchen fire that burned the original building to the ground. The Regulations allowed the applicant to reconstruct the building. There is a shared driveway. But, working with Staff and his team, the applicant developed a plan to construct a new more conforming 3,000 sq. ft. commercial building, dwelling units to the rear, two floors of dwelling units, on street parking, and on-site parking. The applicant applied for the two Variances versus the possibility of non-conformity to prevent legal concerns. They may construct the building in the same location, but Staff preferred the revised plans.

The first Variance was the maximum build to line that was 10 ft. and requesting 15.5 ft. This would allow outdoor planters/sitting area to allow for a more appropriate building. The second Variance was the building fenestration for a Variance of 8% from 56.9% proposed and 65% required. The plan is to get closer to 65 % and they had to work on fenestration, structural integrity, and concerns of the support beams, hallways, and doorways. The site is limited by a stream that goes to the Pequabuck River. There was additional glazing added in various building areas. The applicant had meetings with Mr. Flanagan and the Public Works Dept.

Board inquiries: Attorney Furey noted the requirement was the percentage on the front of the building at 56.9% (519.33 sq. ft.) and the requirement was 65% (592.08 sq. ft.) The applicant is working with their architect to reduce this amount (not lower than 56.9%) The build to line was to encourage pedestrian traffic, but they would not have the street activities with the property limits.

No one else spoke in favor of the application.

No one spoke against the application.

The hearing is closed.

By: Pecevich

Seconded: Raymond.

For: Radke, Balsam, Raymond, Pecevich and Rafaniello.
Against: None.
Abstain: None.

Commissioner Radke commented the building may be reconstructed on the original footprint, but the applicant worked with Staff on a better plan. Regarding the build to line, he understood it was to provide amenities at 5.5 ft. The front parking and rear parking areas would promote pedestrian traffic. Regarding building fenestration, if the building was as originally constructed, the fenestration may have been done, but they were trying to construct dwelling units. The building integrity and floor plan was a challenge.

Commissioner Raymond noted if it burned down, this was an improved design. Commissioner Pecevich noted this plan would be good for increased pedestrian traffic. The fenestration was decreased by two 5 ft. X 7 ft. windows. He liked the new design and there were no setback concerns. He was in favor of the application. Chairman Rafaniello liked the improved parking areas for the ingress and egress.

MOTION: Move to approve Application #3791 – Variance of 1) build-to-line (maximum 10' ft.); 2) building fenestration requirements (minimum of 65%) to allow for the construction of a mixed-use building (retail and dwelling units) at 37 Main Street; Map 30, Lot 61+61-1+63-3; BD-1 (Downtown Business) zone; 37 Main Street, LLC, applicant, in accordance with the plot plan and information submitted.

By: Pecevich

Seconded: Raymond.

For: Radke, Balsam, Raymond, Pecevich and Rafaniello.
Against: None.
Abstain: None.

The application is approved.

ELECTION OF OFFICERS:

MOTION: Commissioner Rafaniello nominated Richard Raymond as Secretary of the Zoning Board of Appeals. Commissioner Pecevich seconded the motion.

By: Rafaniello

Seconded: Pecevich.

For: Radke, Balsam, Pecevich, Raymond and Rafaniello.
Against: None.
Abstain: None.

MOTION: Commissioner Raymond nominated David Pecevich as Vice Chairman of the Zoning Board of Appeals. Commissioner Balsam seconded the motion.

By: Raymond

Seconded: Balsam.

For: Radke, Balsam, Raymond, Pecevich and Rafaniello.
Against: None.
Abstain: None.

MOTION: Commissioner Pecevich nominated Jerald Rafaniello as Chairman. Commissioner Raymond seconded the motion.

By: Pecevich

Seconded: Raymond.

For: Balsam, Radke, Raymond, Pecevich and Rafaniello.
Against: None.
Abstain: None.

MISCELLANEOUS:

4. Approval of Minutes

Chairman Rafaniello designated regular Commissioners Raymond, Radke and Pecevich to vote on the November 1, 2022, regular minutes. He also designated alternate Commissioner Callahan to vote on the November 1, 2022, regular minutes.

MOTION: Move to approve the minutes of the November 1, 2022, regular meeting.

By: Rafaniello

Seconded: Raymond.

For: Raymond, Radke, Pecevich and Callahan.

Against: None.

Abstain: None.

ADJOURNMENT

MOTION: Move to adjourn at 8:45 P.M.

By: Rafaniello

Seconded: Balsam.

For: Balsam, Raymond, Radke, Pecevich and Rafaniello.

Against: None.

Abstain: None.

Respectfully submitted,

Nancy King
Recording Secretary

Jerald A. Rafaniello, Chairman

David Pecevich, Secretary