

TOWN OF ESSEX ZONING BOARD OF ADJUSTMENT
MINUTES
AUGUST 3, 2023

Note: This meeting was held in-person and virtually on Zoom.

ZONING BOARD OF ADJUSTMENT (ZBA) MEMBERS PRESENT IN HOUSE:

In Person: Nick Martin, Chair; Michael Plageman, Vice-Chair; Trefor Johnson, Clerk, Hubert Norton and Tom Yandow.

VIRTUAL: Neil & Geraldine Villeneuve; Scott LaPlant; Jessica Stone and Deborah Keel.

OTHERS PRESENT:

Sharon Kelley, Zoning Administrator; Kyle Blake (applicant); and Jon & Maxine Zimmerman (abutters).

Chairman Martin called the hearing to order at 6:05 p.m; provided the oath to those testifying in the room; to those who were attending via Zoom, including late arrivers; and polled the ZBA for attendance. All were present.

AGENDA ITEM 1: PUBLIC COMMENTS: None.

AGENDA ITEM 2: CONDITIONAL USE-Glen Goldman & Nina Curtis are proposing a home Business to allow for agrotourism business to hold small to medium-sized special events located at 21 Saxon Hill Road in the Agricultural-Residential (AR) Zone. Tax Map 8, Parcel 4, Lot 8.

Vice-Chair Plageman MOVED and Board Member Yandow SECONDED a Motion to Open the Public Hearing. The MOTION passed 5-0.

Sharon Kelley advised the ZBA about the process to amend an Agenda once it has been warned. Kelley advised that a warned agenda can be amended up to 48 hours before a meeting, after that it can only be amended by vote of the relevant board in an open meeting. Kelley requested that the ZBA amend the Agenda to add 'Outdoor Recreation' in addition to the 'Home Business' for the application for 21 Saxon Hill Road as weddings were also being proposed. Kelley stated that the narrative stated that there will be outdoor activities associated with the request for the Home Business for the proposed agrotourism business such as, walking trails, cut flower crops, animals to possibly include chickens, bees, mini-donkeys, sheep, and cows. However, 'weddings' are another element not associated with the Home Business. Kelley reported that both uses, 'Home Business' and 'Outdoor' Recreation' directs the ZBA to approve the requirements for a Conditional Use.

After discussions, Kelley noted that it appeared that the ZBA was not comfortable with her request to add 'Outdoor Recreation' therefore withdrew her request to amend the Agenda to add 'weddings' as the Staff Report captures the outdoor elements for the Home Business. Kelley noted that it is likely the application will be continued as she noted Finding 13 indicates that the Fire Chief did not provide complete comments on this application.

Kelley made the following comments concerning the application.

- 50 • The landowners were unable to be in attendance and their Engineer was representing
51 them on their behalf.
- 52 • She informed the ZBA that when discussions started for a home business, the house was
53 not yet torn down and the landowners are still very much in their development stages
54 with the property, and they knew that they would like to do something where the public
55 could enjoy on the premises.
- 56 • Other requirements needed prior to the issuance of a building permit are:
 - 57 - As noted in Condition 4, the landowner will need to submit a water allocation
58 request for the barn and purchase same should this application be approved.
 - 59 - The landowner will need to submit a water application to complete and install
60 the water connection to the property.
 - 61 - Condition 6 requires the house to be built prior to the start of the home
62 business.
- 63 • The narrative reads that they will build the Accessory Dwelling Unit (ADU first)
64 however, the landowners understand the first house to be built, no matter the size, will be
65 considered the primary house. In the future, should they decide to build a second
66 dwelling, and continue to request an ADU, the classification of the Single-Family House
67 (SFH) and Accessory Dwelling may change, they will be required to pay all associated
68 fees associated with an accessory dwelling. A WW Permit will also be required to be
69 submitted with the zoning permit application and, it will need to reflect a SFH and/or a
70 SFH and ADU.
- 71 • Finding 12, Line 149, change to read, “The Police Chief did not provide comments on
72 this application, however, was provided with a copy of the conditions.”
- 73 • Finding 13, comments from the Fire Chief, state “This is not sufficient to provide full
74 detailed comments.” Kelley reported that she has not yet received any additional
75 comments, however she added Conditions 8, 9, and 10, which are typical conditions
76 requested from Fire & PD. Kelley repeated that this may trigger a continuance with the
77 ZBA.
- 78 • Kelley suggested that the Fire Chief’s concerns on access for a fire truck should be able
79 to be worked out administratively as currently only proposed locations are shown for a
80 new house and accessory apt. Staff could meet with the applicant and the engineer to
81 come to an agreeable solution. This could be made a condition of approval.
- 82 • Kelley pointed out that currently she issues a Zoning/Use Permit for any resident who
83 requests a special event, like a wedding, graduation, and the like. The applicant is
84 required to secure a Use Permit and post it (a colored 11x17 poster) on the premises so
85 that it is visible to the road. This allows neighbors an opportunity to appeal the permit.
86 Kelley also informs Police, Fire, Public Works and Recreation when she issues these
87 types of permit events. Kelley suggested that the applicant could request an approval
88 from the ZBA in the future for such events.

89
90 Bryan Currier, P.E., O’Leary-Burke Civil Associates, made the following comments:

- 91
92 • He noted that he is representing Glen Goldman & Nina Curtis, and their intention is to
93 secure a home business, which includes outdoor recreation as an element of the
94 agrotourism home business.

- He called out that the application narrative indicates that the landowners are in the early planning stages with the property. The lot is approximately 13-acres and is the remaining lands from the Deer Crossing Development. Currently, there is an existing barn on the premises; and the 1800's house was unsalvageable and demolished earlier this year.
- He described the barn as having a 3,500 sq. ft. "beautiful silo" which takes up "significant space." The lower story which was used for livestock in the past will be used for storage. The upstairs is also "very beautiful" and felt the Agrotourism uses will play on each other.
- The plan was mostly for smaller events, up to 40 people, with an occasional limit of 100 for a wedding or similar gathering. He repeated that there is not firm business plan yet and the purpose of this meeting was to talk about the intensity of the use.
- He described that the previous owner operated a tree farm and vegetable stand. They plan to use the same parking, located in the front yard as you enter into the lot. The intention is to use the parking in the same way, keeping it as a grassed parking area. He noted that there is existing landscape in front of the parking area. He noted that there will be an overflow grassed parking area behind the barn and, his expectation is that the Fire Chief will ask to extend the driveway to the barn.
- Another reason they are before the ZBA without a firm business plan is they are trying to obtain a State Water & Wastewater permit in order to construct the new SFH, ADU and occupancy of the barn, noting that they need to be confident that the existing water is able to also serve the barn.
- He noted that a traffic study was a sizable expense and at this time they are requesting the ZBA approve the application within specific and limited hours being 9:00 a.m. to 4:00 p.m., noting that peak hours are between 7:00 AM - 9:00 AM and 4:00 PM - 6:00 PM., as they won't be contributing to the peak hours, and not contributing to traffic on Saxon Hill Road or Route 15. He stated that doing a traffic study without am or pm hours would be an exercise of conditions.

Board Member Johnson asked the engineer if they would be doing an ITE trip generation. Currier replied that they "can absolutely submit ITE traffic volumes, that's not a problem, but that is not what a traffic study is solely, it is a component of it." He continued, "A traffic study will basically look at a level of service, from, we likely would not do from Saxon hill Road due to the limited traffic, but basically would look at the level of service of Saxon Hill Road and Route 15 in the a.m. and p.m peak hours. What we would show you for ITE trip generation would be what we are contributing to the background traffic that already exists on Route 15." Board Member Johnson suggested they would then need to do a capacity study of the Stop Sign area. Currier replied, "That's correct, it would be an unsignalized level of service analysis."

Board Member Norton asked if there was ever a traffic analysis done for Deer Crossing and asked if they had access to that report. Currier stated that the development was over 20 years old and would not be valid today. Board Member Norton suggested the trip ends would be the same as there are the same number of houses, same number of lots. Currier said, "the traffic study would look at what we are contributing above what is there already, so what Deer Crossing is contributing today would be considered background traffic. Board Member Norton said, "Right, so I was just wondering when that study was looked at, what was determined to be the level of service with that study." Currier stated that they have not looked at that study but can tell them that the Allen Martin/Route 15 has been a Level E,

for some time now, and that you can understand the difference in traffic generated from Allen Martin Drive and Saxon Hill Road.” A brief discussion ensued about a level of service. Board Member Norton thought it was a function as to how long the wait is before you can get a gap, and a technique of how many seconds before you make it out. Currier described the Level of Service process, using Corporate Drive as an example.

Board Member Norton asked what was required for the WW permit, and if they had to get into the type of uses, or just the number of people, which was stated at 40. Currier said that 40 was the correct number, based on participants. It is his understanding that outdoor recreation or a home business can be based on a variety of things on a family-owned, small farm on 13-acres. He suggested it could contain a pumpkin patch, animals that can be petted; or a lunch and learn in the barn; an art studio and those sorts of passive things. Currier understands the ZBA is concerned with traffic and the number of people for these events and the character of the neighborhood. Currier reminded the ZBA that this house was in place before anything else was developed on Saxon Hill Road and they are finding a way to preserve it and keep it as an asset to the property rather than tear it down.

Vice-Chair Plageman asked if the applicants have a contractor for the construction of the house. Currier said, “they do not.” Currier noted that ZBA approvals are good for 2 years, and they could ask for a one year extension, however they do plan to construct within that time frame and they are fine with the condition of approval that a construction permit cannot be pulled for the use until the house is secured.

Vice-Chair Plageman asked the Zoning Administrator if the house needs to be completed prior to the events starting. Kelley answered yes, as well as an occupancy inspection.

Chairman Martin asked for confirmation that they could use up to 50% of floor area if a proposed art gallery or office is located upstairs. Kelley read the section of 4.9(C) of the Zoning Regulation as follows:

Comprises an area within the existing dwelling or accessory building, or in a combination of the two, that either exceeds twenty five percent (25%) of the living area of the dwelling or exceeds a maximum of 500 square feet except that in the CTR and R-B Districts the home business may occupy up to fifty percent (50%) of the living area or up to 1,000 square feet.

Chairman Martin noted that the traffic study seems to be the only issue. Currier stated that he can work with the Fire Chief on access to the barn; and there are no construction plans for the house yet.

Board Member Yandow asked if there will be an elevator and how will it be handicapped accessible. Currier said there will not be an elevator and it will not be handicapped accessible. Chairman Martin asked if the barn was on the historic register. Currier suggested it may be on a registry but was not sure if it was on the State Historic Registry. Kelley noted that the State Department of Fire & Safety regulates building codes for this use and they would be the ones to regulate whether an elevator was needed on the premises. Commissioner Norton asked how the barn came to be dated in the year 1900. Currier replied that he believed that information came from the landowners.

Chairman Martin asked for Public Comments:

Scott LaPlant, 1 Deer Crossing Lane, Essex, VT, stated his house abuts 21 Saxon Hill Road. His main question evolves around events. He noted that he heard testimony stating 40 persons and up to 100 persons could be in attendance. LaPlant noted that they have the Whitcomb Farm to the front of

the neighborhood, who can have noisy events, and now this proposal to the side of them. He is looking for more clarity on what events really means, especially what happens “noise-wise” with the events and how that ties in with permitting. Currier replied that there are different components with the home business. If weddings were outside, that would fall to the outdoor recreational component; in cases of inclement weather, it would be held inside. Currier stated the purpose of this conditional use review was not to hold limitless amounts of weddings. He further noted that noise from any event would fall to the Town Noise Ordinance. Kelley stated that the Noise Ordinance is fairly new and the police enforce this Ordinance. Kelley believes the ordinance falls within the same hours of the State, which is usually around 10:00 p.m.. Kelley stated that the landowner has a choice to come before the ZBA with a separate request for weddings. Kelley informed the Board that the regulations allow any home to have weddings or special events by obtaining a use permit. Kelley then notifies police, fire and public works of such events. Currier reminded the Board that their request is for primarily 40 people, with occasional special events. Currie said, “It would be fine to condition the approval to state a special event could occur no more than 1x/month, or 1 every 2 months, or whatever it may be.” Kelley stated that having special events incorporated into the approval save the landowner money as there is a fee for each time a permit is pulled for a special event. LaPlant was concerned that the landowner could pull a permit for a special event every week. Kelley stated that she monitors the number of times a request is made.

Board Member Yandow stated that the proposed hours are 9:00 a.m. to 4:00 p.m., Monday-Sunday. Currier replied event traffic would be from 9-4, and he did not believe the likelihood of a wedding being done by 6:00 p.m. would be limited and likely end much later in the evening. Currier stated that a traffic study is not required when special event use permits are submitted.

Scott LaPlant wanted to make sure he was clear on the special event permits, and asked for confirmation that someone can’t pull a permit for a Friday and Saturday every week because it would be excessive. Kelley stated that she would be comfortable issuing a permit 3x/year or seasonal before she considered it a business. Kelly noted that she has not yet been put in a position where people have requested several permits for events.

Board Member Yandow noted that the ZBA could add a condition to capture a limit on the number of special events permits for the home business approval.

Neil Villeneuve, 27 Saxon Hill Road, also abuts the subject property and has the same concerns about noise. He stated that wedding events scare him. He likes the idea of pulling a permit for each event over 40 people. Villeneuve stated that the second story of the barn, as he knows it, has a walk-in door at ground level. Currier stated that when he visited the property, he went up a staircase and he can now see the entrance from the contours. Neil stated that there are 2 large doors to allow a tractor to go into the barn on the second level. Villeneuve stated that the map that was submitted is not correct as it does not show the details to a recent boundary adjustment wherein he now owns the 2-acre lot. Currier noted that the Tax Maps have not yet been updated, however the Staff Report captures the 2.1-acre swap.

Geraldine Villeneuve, 27 Saxon Hill Road, stated her concerns have been voiced by others. She stated that the weekday hours have been addressed, however weekend hours have not been addressed and this is usually when weddings occur. She also noted that people schedule 1-2 years out for a wedding and she does not know if that is the case here. Currier stated that the weekday hours were discussed to clarify the need for a traffic study which includes am and pm peak traffic hours.

Neil Villeneuve asked for clarification on the weekend hours. Currier stated that weekend hours have not been discussed as of yet. Kelley stated that the times are usually submitted with a special event permit, however Public Works would not be asking for a traffic study for a special event. Neil asked for clarity on the noise on weekend. Kelley stated that they would follow the hours listed in the Noise Ordinance. Kelley stated that she would be comfortable issuing 3 special events a year.

Deborah Keel, 11 Deer Crossing Lane, stated that she is delighted that the barn is being restored and applauds their efforts to restore the structure. Keel stated that some of the things proposed are not worrisome, but she has a number of concerns about noise level as there is a party barn below them located on Route 15 which has fireworks, parties and it seems like the proposal before the Board is much like that business. She believes the noise will change the feel of the neighborhood. Keel stated that it is very difficult to pull onto Route 15 from Saxon Hill as it is hard to get a break in traffic and not just during the rush hours of mornings and evenings. Keel noted that events being held in other places also makes it hard and adds to traffic. Keel stated that events happening at this lot will “definitely impact all the residents that live in this development and the folks who live on Saxon Hill.” Keel stated that they are located at the very end of the water line in Essex and there is very little water pressure, and sometime air is in the water line. She was told by people they hired it could be because she is at the end of the water line. Her concern was another large property being open to the public and using the water which will impact their residential use. Another concern she has is the size of the parties with luncheons and events with up to 100 people. Keel felt this would bring in parking issues, even though they stated they would have another area to park cars. Keel said, in part, “they are also talking a lot about events, up to 100 people, and that is going to bring in a lot of parking issues. I know they said they could build another parking space behind their barn in addition to what they already have there. To me, that flags their intent is to just have larger events then what they are possibly talking about in their description to us. Another concern is if people would be parking on the road along their entrance onto Deer Crossing.” Keel was also worried about opening-up this area to the public and bringing in a lot of strangers, with people wandering onto other properties. She asked what would happen if the someone were injured on someone else’s property and who would be liable. Keel stated that she knows it is posted, but people don’t always pay attention. Keel was worried that if they got their foot in the door with something very small it could grow bigger and change the nature of their property. Keel stated that she has lived there for 25 years and has already seen a tremendous amount of change. She is also worried about traffic, noting that their only way out of the neighborhood is onto Route 15.

Jessica Stone, 8 Deer Crossing Lane, stated that she has the same concerns as her neighbors. Stone stated she lives about 1500 feet from the subject property. Stone was concerned about the impact of traffic and what it would do to her neighborhood and Route 15. She struggles with Mr. Curriers statement wherein he states traffic patterns will not change on surrounding roads. She believes having 100 guests and supporting vendors would “absolutely shut down our neighborhood”. Another concern was noise as weddings/events brings noise with the bands and music and how that “plays out on weekends.” She was concerned with the statement that “the wedding venue would operate outside the peak traffic hours.” She does not believe that the peak hours apply to weekends, but absolutely believes a traffic study is needed as she stated people arriving for a wedding at 4pm and leaving at 8:00 p.m., it does impact traffic. She asked if it was the Goldman’s intent to not ask for a lot of weddings, then why are they proposing “all this extra parking”. Stone concluded by stating they lived in a special and unique neighborhood and, they value their peace. She believes the special event would impact the neighborhood, however supports the walking paths and small scale farming uses, trail, etc..

Chairman Martin asked the engineer to reply to the comments. Currier stated that a conditional use is required for events. The proposal is primarily for the '40-person events' and he could drop the 100-person events as they can apply for an event permit. Currier stated that a traffic study is required if a use falls within the a.m. and p.m. peak hours, and a weekend traffic study is not a viable study.

Board Member Johnson asked how Currier could out-of-hand say there is no such thing as a study for a weekend. Currier replied that the peak hours on a weekend are significantly less than a weekday. Board Member Johnson stated that Route 15 is busy on weekends and believes it is a legitimate concern. Currier replied that weekends may be similar, but studies are focused on peak times, and noted a study can be done on a weekend. Board Member Johnson asked if this was a McDonalds, would Currier's opinion change. Currier stated that McDonalds would be ecstatic if the study was not on a weekday. Board Member Johnson stated that they heard concerns from citizens on the queue on Saxon Hill Road. Currier replied that a traffic study is not going to take into account the occasional special event. Board Member Johnson questioned Currier if he felt there was a concern for the people who live in the area. Currier stated that there will be more cars but it will not be contributing to a.m. or p.m. peak hours.

Vice-Chair Plageman Moved and Board Member Norton Seconded a Motion to Continue the Public Hearing to the next meeting once all Department Staff comments are received. The Motion passed 5-0.

Currier asked if 'Outdoor Recreation' can be added to the next Agenda. Kelley stated that they would need to withdraw and reapply for both the outdoor use and the home business.

AGENDA ITEM 3: REVIEW OF OPERATING PROCEDURES

Sharon Kelley requested that the Board continue this item as additional changes need to be added to the document. **Vice-Chair Plageman Moved and Board Member Yandow Seconded a Motion to continue this item to the next available hearing once the changes are complete. The Motion passed 5-0.**

AGENDA ITEM 4: MINUTES: July 6, 2023

Board Member Norton Moved and Board Member Yandow Seconded a Motion to continue the 7/6/2023 minutes to the next meeting. The Motion passed 5-0.

AGENDA ITEM 5. OTHER BUSINESS: None.

The meeting adjourned at 7:54 p.m.

ZONING BOARD OF ADJUSTMENT

By: _____

Nick Martin, Chair