



TOWN OF SOMERS
ZONING BOARD OF APPEALS
REGULAR MEETING DECEMBER 13, 2022
HELD IN TOWN HALL'S AUDITORIUM

MINUTES-AMENDED 1/17/2023

Call to order 7:00 p.m.

ROLL CALL

Present: Chairman Dean Hills, members Doug Stebbins and Dan Thayer, and alternates BJ Ferro, Susan Peck, and Ralph Williams

Absent: Members Andy Rockett and Joseph Marinaccio.

Chairman Dean Hills designated alternates Susan Peck and Ralph Williams to sit on the evening's applications and directed Ralph Williams to keep the minutes of the meeting in the absence of the board's secretary, Andy Rockett.

NEW BUSINESS

The board voted unanimously to accept three applications for which public hearings will be held at its January meeting:

ZBA 22-009 — Ken Prior, 364 Mountain Road, Somers — Appeal of Zoning Enforcement Officer's decision/enforce cease and desist order regarding lighting and regulations regarding campgrounds, storage container, and screening of loading areas.

ZBA 22-010 — Somers Mountain Properties LLC, 359 Mountain Road, Somers — Appeal of cease and desist order issued by Zoning Enforcement Officer dated Oct. 31, 2022 regarding parking and lighting.

ZBA 22-011 — Ken Prior, 364 Mountain Road, Somers — Appeal of Zoning Enforcement Officer's decision that a special event held on Nov. 17, 2022 was allowed under special use permit from 2000.

PUBLIC HEARINGS

ZBA 22-006 — Ken Prior, 364 Mountain Road, Somers — Appeal of Zoning Enforcement Officer's decision regarding sale/service of food by Somers Mountain Properties LLC, Worthington Winery, 359 Mountain Road.

Attorneys appearing on this appeal were George C. Schober representing Ken Prior; Dorian Famiglietti representing Somers Mountain Properties LLC and its owner, Mark

Murdoch; and Carl Landolina, the Somers town attorney, representing Zoning Enforcement Officer Jennifer Roy.

Ms. Roy introduced two exhibits: Exhibit A, a copy of the special use permit issued by the Zoning Commission on Feb. 14, 2022 to Mark and Karen Murdoch d/b/a Worthington Vineyards LLC; and Exhibit B, the minutes of the Zoning Commission's meeting on June 6, 2022 at which the commission's consensus was that the food served at the winery did not constitute the operations of a restaurant.

Attorney Schober presented an exhibit, marked Exhibit C, which was a binder containing photos of the winery property and various regulations, memoranda, minutes, and transcripts both explicitly and purportedly relevant to the winery's operations. Ken Prior testified that the photos were taken from the winery's Facebook page or by himself from his own property or by an overhead drone. Attorney Schober contended that the service of food on a variety of occasions at the winery were tantamount to the operation of a restaurant in violation of the Murdochs' special use permit.

Attorney Schober also called for the subpoenaed testimony of the town's sanitarian, Andrea Vitrano. She testified that she had inspected the food service operation at the winery and issued a Class 3 food service permit, which allows for the heating, cooling, and serving of food that has been prepared and cooked elsewhere. She introduced two pages of the Connecticut Public Health Code:

- Exhibit D: Section 19-13-B42, with relevant provisions applying to sanitation at a food service establishment.
- Exhibit E: Section 19-13-B49, which defines what a catering food service.

She said those regulations are applicable to the food operations at the winery. She also noted that the food has been provided by an Enfield caterer, Norman Mayette. Attorney Schober asked her for a copy of the Murdochs' application for the food service permit, which Ms. Vitrano said she did not have in her file. Asked by Attorney Famiglietti, Ms. Vitrano said she had no health code concerns with the food service operations at the winery.

Attorney Schober contended that selling catered food at the winery still constitutes a restaurant operation under the Somers zoning regulations.

Asked by Attorney Landolina, Attorney Schober confirmed that Mr. Prior already has two lawsuits pending at Vernon Superior Court regarding the winery: one challenging the Zoning Commission's adopted regulations allowing farm wineries, and one challenging the commission's issuance of the special use permit for the Murdochs' winery operation.

Attorney Famiglietti, representing the winery and the Murdochs, contended that Mr. Prior cannot ask the ZBA to rule on the applicability of zoning regulations that are under

appeal in court. She also questioned whether the ZBA has jurisdiction to consider a zoning enforcement officer's decision not to enforce a zoning regulation, contending that such a failure is properly the subject of a writ of mandamus, which a court would have to issue.

She also questioned whether the winery's food operation could be categorized as a restaurant, arguing that food is not "regularly served" there and that the food has been prepared off-site by a licensed caterer.

Public comment was offered in support of the winery's operations by Robert Garlick of 52 Juniper Hill Drive. Ms. Roy also noted for the record having received an email from Michelle Hoyt, address not provided, in support of the Murdochs.

Attorney Schober noted for the record the sections of the binder marked Exhibit C that he contends are relevant to this appeal.

The hearing was closed on a motion made by Dan Thayer and seconded by Doug Stebbins, which the board approved unanimously.

ZBA22-007 — Ken Prior, 364 Mountain Road, Somers — Appeal of Zoning Enforcement Officer's decision regarding tents, canopies, and/or awnings.

Attorneys appearing on this appeal were George C. Schober representing Ken Prior; Dorian Famiglietti representing Somers Mountain Properties LLC and its owner, Mark Murdoch; and Carl Landolina, the Somers town attorney, representing Zoning Enforcement Officer Jennifer Roy.

Ms. Roy said that while the Zoning Commission's approval of the Worthington Winery's special use permit was that no tents were permitted, she interpreted that provision as applying to "event tents" capable of holding numerous people.

Attorney Schober noted for the record the sections of the binder marked Exhibit C that he contends are relevant to this appeal.

Mr. Prior said that relevant photos in the binder referenced in the previous hearing as Exhibit C showed canopies or awnings affixed to the ends of a covered bridge on the Murdochs' property and several tents on the grounds. Attorney Schober also noted that the site plans provided to the Zoning Commission by the Murdochs' professional engineer showed no tents. He also contended that the awnings on the bridge hadn't been present under the property's previous ownership, adding that no building permits had been issued for any tents or canopies there.

Attorney Landolina noted for the record a dictionary definition describing a tent as "a collapsible shelter of fabric ... stretched and sustained by poles." He also remarked that while every building is a structure, not every structure is a building.

Ms. Roy told the board that the town's building inspector does not issue permits for tents.

Robert Garlick of 52 Juniper Hill Drive said that he had seen the tents in question, which he described as umbrellas. He also said that the covered bridge's canopies "have been there forever."

Attorney Famiglietti noted that the property also has a special permit issued to its previous owner, Dan Roulier, in 2000, for use as outdoor recreation. She said that the covered bridge, which predates the Murdochs' acquisition of the property, is not part of the winery operation. She described the red and blue tents shown in the drone photos provided by Mr. Prior as "sun canopies," arguing that their use was governed by the 2000 special use permit rather than the winery's permit from the Zoning Commission. She also cited Section 3.3 of the Somers zoning regulations, which allow "accessory uses, buildings, and structures customarily incidental to any use permitted herein."

Mark Murdoch, in response to a question from the board, said that the property's canopies and tents had predated his buying of the property.

Attorney Schober argued that the covered bridge is part of the winery operation, noting an online invitation posted by the winery inviting customers to view the bridge's holiday lighting display. Attorney Famiglietti countered that customers of the winery have always been welcome to wander the grounds covered by the 2000 permit.

A motion was made by Dan Thayer to continue this hearing until the board's January meeting, in part to allow Attorney Schober to introduce additional documents. The motion was seconded by Doug Stebbins and approved unanimously by the board.

OTHER BUSINESS

A motion was made by Dan Thayer to approve the minutes of the board's Nov. 15 meeting. The motion was seconded by Susan Peck and approved unanimously.

A motion to adjourn the meeting was made by Dan Thayer and seconded by Doug Stebbins. The motion was approved unanimously, and the meeting was adjourned at 9:12 p.m.

Respectfully submitted by Ralph Williams, serving as secretary in the absence of Andy Rockett.