

TOWN OF SOMERS
ZONING BOARD OF APPEALS
SPECIAL MEETING
JANUARY 17, 2023
6:00 P.M.



HELD AT TOWN HALL LOWER CONFERENCE ROOM

MINUTES

(NOT OFFICIAL UNTIL APPROVED AT SUBSEQUENT MEETING)

Call to order 6 p.m.

ROLL CALL

Present: Chairman Dean Hills, member Dan Thayer, and alternates BJ Ferro, Susan Peck, and Ralph Williams.

Absent: Members Joseph Marinaccio, Andy Rockett, and Doug Stebbins.

Chairman Dean Hills designated alternates, BJ Ferro, 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

A motion was made by Dan Thayer, seconded by BJ Ferro, and approved unanimously to hear application ZBA22-012 out of order.

PUBLIC HEARING

ZBA22-012 Brandon Eastwood and Oliver and Georgianna Eastwood, 278 George Wood Road, Somers, seeking a variance from Section 214-7.7(4) of the 10-foot required setback for a driveway, to install a driveway three feet from the property line in the A-1 Residential Zone.

Jay Ussery of the J.R. Russo & Associates engineering firm, speaking on behalf of the applicants, explained that substantial wetlands on the property and the location of a fire hydrant along George Wood Road made it impractical to locate the driveway farther from the property line. The abutting property is owned by Oliver and Georgianna Eastwood, who offered no objection to the application. The hearing was closed.

A motion was made by Ralph Williams and seconded by Dan Thayer to approve the application. It was approved on a 5-0 vote.

OLD BUSINESS

A hearing on application ZBA22-006 having been concluded at the board's Dec. 13 meeting, the members agreed to proceed to a vote on that application:

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.

A motion was made by Ralph Williams and seconded by Dan Thayer to approve the appeal. After brief discussion, the members and alternates in attendance voted unanimously to reject the appeal and uphold the zoning enforcement officer's decision.

PUBLIC HEARINGS

The board then agreed to resume its hearing from the Dec. 13 on the following application:

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 and on all of the evening's subsequent applications 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.

Attorney Schober offered photos posted on the winery's Facebook page in support of his argument that illegal tents and canopies are present at the winery, along with transcripts of Zoning Commission deliberations on the winery's request for a special use permit mentioning that tents were not permitted.

Attorney Famiglietti countered that the commission's concerns were about event tents, rather than existing canopies at either end of the winery property's covered bridge or pop-up, temporary sun umbrellas.

Several town residents spoke in defense of the winery's operations, including George Roberts, 8 Autumn Lane; Robert Garlick, 52 Juniper Hill Drive; Brian Garvey, 49 Mountain Road; and Dan Scully, 63 Collins Road.

Attorney Schober insisted that any tents would require building permits, while Attorney Famiglietti said that site plans submitted in conjunction with the winery's special-use permit application had shown the locations for sun umbrellas. The hearing was closed.

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.

Attorney Schober ultimately withdrew all five points raised in this appeal, saying that the zoning enforcement officer has taken steps in the meantime to address his client's concerns. The town attorney meanwhile told the board that in his opinion, a zoning board of appeals is legally empowered only to consider appeals of a zoning

enforcement officer's actions and not that officer's failure to enforce the zoning regulations. The proper remedy for such a failure, he said, is a writ of mandamus issued by a judge in a court proceeding.

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.

Attorney Famiglietti explained that the parking issue involves a provision in the winery's special use permit that limits parking to 30 vehicles. She said that limit had been suggested by winery owner Mark Murdoch himself, based on a professional traffic analysis. She suggested that the Zoning Commission might have been amenable to a higher limit if the owner had sought one.

However, she also argued that since the property is also governed by a 2000 special-use permit for outdoor recreation, it was conceivable that some vehicles might belong to people hiking or enjoying the grounds rather than patronizing the winery's tasting room. She conceded that the issue is "muddy."

Attorney Schober presented in evidence an aerial photo taken by his client on Nov. 5, 2022, a Saturday, showing 61 vehicles parked in the winery's lot.

The problem with lighting, Attorney Famiglietti said, principally involves fixtures closest to Mountain Road, and she said that the winery has made repeated efforts to remove, relocate, or shield fixtures giving off more light to the surrounding area than the town's zoning regulations allow. The zoning enforcement officer said that she will be visiting the property in the coming weeks with a town-owned light meter to take measurements.

Several residents spoke again in defense of the winery's operations, including Messrs. Garlick and Roberts; Karen Garvey, 49 Mountain Road; Todd Alden, 91 Hickory Hill Drive; and Tom Clark, 29 Skyridge Drive.

Attorneys Schober and Famiglietti both requested that the hearing be continued. On a motion by BJ Ferro, seconded by Dan Thayer, the board agreed to continue the hearing until its March 14 meeting.

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.

The event at issue was a dinner and wine pairing that had been promoted on the winery's Facebook page. Ms. Roy said that she had contacted Mr. Murdoch, who told her that a caterer was bringing the food and that while the wine was produced by the winery, it would be served under the caterer's liquor license.

Attorney Famiglietti said she had sent Ms. Roy an email saying the event was permissible under the winery's 2022 special use permit and Ms. Roy had said it already was permissible under the 2000 permit governing outdoor recreation. Attorney Famiglietti also stressed that the winery's tasting room was closed during the Nov. 17 event.

Attorney Famiglietti asked the board to continue its hearing so that printouts of the email exchange could be submitted. On a motion made by Dan Thayer and seconded by BJ Ferro, the board agreed to continue the hearing to its March 14 meeting.

DISCUSSION AND ACTION

A motion was made by Ralph Williams and seconded by Dan Thayer to grant the appeal sought by Mr. Prior in application ZBA22-007, involving tents and canopies on the winery property. After brief discussion, the members and alternates in attendance voted unanimously to reject the appeal and uphold the zoning enforcement officer's decision.

OTHER BUSINESS

A motion was made by Dan Thayer and seconded by Susan Peck to accept the minutes of the board's Dec. 13 meeting. Ralph Williams, who prepared the minutes, submitted corrections for a misnumbered application and the misspelling of Mr. Murdoch's name. The board voted unanimously to accept the minutes as amended.

A motion to adjourn was made by Dan Thayer, seconded by Ralph Williams, and approved unanimously. The meeting adjourned at 8:25 p.m.

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