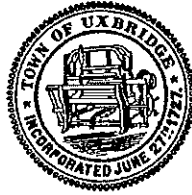


Mark Wickstrom, Chair
 Bruce Desilets, Member
 Kevin Harn, Member
 Chris Currie, Alternate Member
 Joseph Frisk, Alternate Member
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**TOWN OF UXBRIDGE
 ZONING BOARD OF APPEALS**

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MEETING MINUTES: WEDNESDAY, APRIL 19TH, 2017

Minutes of the Uxbridge Zoning Board of Appeals meeting on **Wednesday April 19, 2017** in the **Board of Selectmen Meeting Room, Uxbridge Town Hall, 21 South Main Street, Uxbridge, MA:**

Present: Mark Wickstrom, Bruce Desilets, Kevin Harn, Joe Frisk and Chris Currie

It being approximately 6:00 pm, the meeting being properly posted, duly called, and a quorum being present, the meeting was called to order by the Chair, who led the Pledge of Allegiance.

I. PUBLIC HEARINGS

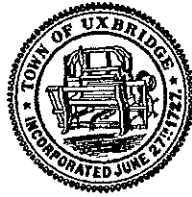
Continued public hearing; Mr. Wickstrom is recused

- FY17-10: 124 & 126 N. Main St., 128-130 N. Main St., 4 Hazel St., & 8-10 Hazel St., Special Permit and Determination/Special Permit Application.** The Applicant of record are **Cumberland Farms, Inc.** and the owners of record, **Richard & Edward Riley, Lori & Scott Brady, Blackstone Realty, LLC, & Blackstone Realty, LLC.** The applicant submitted a formal Application for Special Permits on 11/14/16 pursuant to Section 400-50 of the Town of Uxbridge Zoning Bylaw relative to the property located at 124-126 and 128-130 North Main Street and 4 and 8-10 Hazel Street for a Special Permit (i) to allow the operation of a gasoline filling station in the Business zoning district (in accordance with Appendix A, Table of use regulations) and (ii) to allow the alteration or change of a pre-existing, nonconforming structure (pole sign) in accordance § 400-12, by decreasing the nonconformity with § 400-14 (B), as such alteration and change is not substantially more detrimental to the neighborhood than the existing nonconforming structure. The properties are shown on the Town of Uxbridge Assessor's Map 304, Parcels 2966, 2967, 2964, & 2958. The titles to said land are recorded in the Worcester District Registry of Deeds Books 34960, 41846, 18685, & 20548 Pages 391, 394, 305, & 95; Properties are located in a Business zone.

Discussion: Tom Reidy, Esq., Bacon/Wilson, on behalf of the applicant Cumberland Farms, Inc. and its application, described the proposal to operate a 4,786 square foot retail convenience with six automobile fueling stations with twelve fueling positons. He noted Cumberland Farms intends to operate from a single location in Uxbridge and if approved will take the current Douglas St. location offline. Atty. Reidy also stated that the Special Permit Application (for a major non-residential use) before the Planning Board was unanimously approved on 4/12/17 with conditions that limit operating hours and place restrictions on audible advertisement's and music.

Luke DiStefano, the Site Engineer with Bohler Engineering, provided the details of the proposed project to raze existing buildings and rebuild on the properties. They are proposing to locate the convenience store in the center of the property; there will be 19 parking spaces, and 6 fueling stations under a canopy between the building and N. Main Street. Mr. DiStefano detailed the proposed storm water management and drainage system and landscape design. He emphasized the complimentary benefits from project including improvements to the existing storm water management system, landscaping, lighting and a significant reduction in the number of curb cuts. Mr. DiStefano also described the proposal to replace and relocate a sign and the related benefits. Mr. Desilets asked about the status of an existing telephone pole on the corner and Mr. DiStefano stated it is being moved but not as part of this project but by a state improvement program.

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Maureen Chielbek, the Traffic Engineer with McMahon Associates, reviewed the details and results of a complete and subsequent traffic studies performed at the site. Their conclusion was that the project would not adversely affect the existing surrounding street system.

Eight abutters spoke in opposition of the project and the primary concerns raised were the impact to the character of the neighborhood and the increased traffic affecting safety.

During deliberations with the operation of the convenience store aside, the board considered the criteria outlined in Section 400-50 (B) of the Uxbridge Zoning Bylaws: Social, economic or community needs; traffic flow and safety, including parking, and loading; Adequacy of utilities and other public services; Neighborhood character and social structures; Impacts on natural environment and; Potential fiscal impact including impact on town services, tax base and employment.

Mr. Frisk indicated, while he appreciates the detail that went into the various traffic studies, he is concerned with the ability to maneuver within and around the site while the business is operational and the impact would cause either congestion or difficulty for traffic flow. He stated there will absolutely be a traffic impact to the area and it is difficult to benchmark existing conditions with residential property use today to what the impact will be with a fully functional gas station on the property. Although there is a sophisticated drainage plan for the immediate area, concerns were raised about maintaining and managing the movement of oil and gas from the automobiles and preventing contaminants from getting into the natural environment particularly because the site is abutted to a residential area. All agreed the neighborhood character and social structures would be impacted due to the proximity of residential homes with a fully functioning 12 fuel pump gas station. The board discussed the proposed benefits to be gained such as the potential drainage improvements on the property; improved technology available to detect any fuel tank issues. Unclear with the potential economic improvements for the town with the closing of an existing business to open the same business in a new location.

MOTION / VOTE:

Mr. Frisk made a **MOTION** to close Public Hearing FY17-10 124 & 126 N. Main St., 128-130 N. Main St., 4 Hazel St., & 8-10 Hazel St.; **MOTION SECONDED** by Mr. Currie; the **MOTION** carried unanimously VOTE (3-0-0).

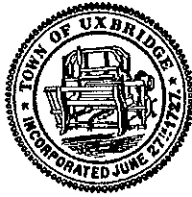
Mr. Currie made a **MOTION** to approve the project FY17-10 124 & 126 N. Main St., 128-130 N. Main St., 4 Hazel St., & 8-10 Hazel St. **MOTION SECONDED** by Mr. Frisk; the **MOTION DENIED**. VOTE (2-1-0).

*** The Agenda was taken out of order to hear 4. FY17-17 16 Hazel Street ****

Continued public hearing; Mr. Currie is recused; FY17-16 and FY17-21 were consolidated for all purposes

- FY17-16: 175 South Street, Richardson-North Corporation/Elias Richardson III**, Owner/Applicant represented by Henry J. Lane. Applicant is **APPEALING** from a decision of the building inspector/zoning enforcing officer dated January 10, 2017, determining that the principal use of the property at 175 South Street is a commercial soils operation. The applicant also appeals from the determination that the trailer on the premises is an unpermitted construction trailer. Property is shown on the Town of Uxbridge Assessor's Map 55 Parcels 2255, and described in a deed recorded at the Worcester Registry of Deeds Book 14191 Page 319. The property is located in an Agricultural Zone.

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FY17-21: 175 South Street, Richardson-North Corporation/Elias Richardson III, Owner/Applicant represented by Henry J. Lane. Applicant is **APPEALING** a cease and desist order issued by the building inspector/zoning enforcement officer dated February 1, and amended on February 6, 2017. The order is based on a prior determination that the principal use of the property at 175 South Street is a commercial soils operation.

Discussion:

Attorney Henry Lane represented the applicant during the hearing. Atty. Lane submitted a memorandum with exhibits to the Board to support the applicant's appeal that soil importation/reclamation activities "are incidental to the primary use of the premises for agricultural purposes" and that the soil importation activities are necessary to "reclaim and enhance" agricultural use of the property.

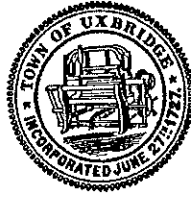
Atty. Lane reiterated that all the uses are agricultural in nature and are therefore permitted by the zoning bylaw and the broad exemptions for agricultural use that are provided by the general laws. He stated the following reasons for the soil importation (i) the property was extensively mined for gravel and the soil importation was necessary to restore agricultural activities; (ii) raising the level of the land will reduce shading and improve thermal quality of the land; and (iii) the 9 acres lost to earth removal slopes will be restored to tillable use.

Atty. Lane reviewed the following information contained in his submittal to support the proposition that the property has historically and continues to be used as a farm: agricultural production figures for 2014, 2015 and 2016; BOH Stable Permits; Farm Plate Registration; Animal Health Inspections; Tax Returns; Business Certificates; etc. He went on review the information he provided related technical aspects of the soil and farming, and the Soil Management Plan of the Administrative Consent Order (ACO). There was lengthy discussion about the basis for the ACO and purpose of the soil management plan with the Board. The timeframe was further discussed and Atty. Lane stated gravel removal began 2000 and the Soil Management Plan was developed in 2014 when the opportunity became available to reclaim the property in an economically viable way. There were questions and discussion about the quantity of soil required to reclaim the 9 acres and restore the original contours.

To illustrate the size and scope of the project, Mr. Wickstrom introduced a portion of letter from Uxbridge Board of Health directed to the Central Regional Director with DEP. The information he reviewed was quarterly status reports citing 171,674 tons of soil was received between 8/5/2016 and 1/31/17 (approx. 5,365 truckloads assuming 32 tons per load). Atty. Lane emphasized this is a one-time event and once the reclamation is complete the soil importation activities will no longer be required or continue. Additionally, materials supplied to the Department of Environmental Protection indicate the intention is to import 2.5 million tons of fill to the Property. There was discussion regarding Green Acre's role in the project and Atty. Lane did concede that, like gravel removal, the importation of fill is a separate industry which results in a financial benefit for the applicant (and the soil importation company).

A few abutters opposed to the soil importation activities on the property spoke at the meeting. They disputed the testimony regarding viability of the farm, the scope of the project, the land contours and raised concerns about the quality of the soil and the impacts to the aquifer. Mr. Bagdasarian spoke in favor of the property owner and his rights and shared his view regarding the ZEO's authority and justification for the enforcement orders per the Zoning Bylaws and Table of Use Regulations.

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Mr. Wickstrom referenced the trial *Martinson vs. Board of Appeals of Uxbridge*, 50 Mass.App.Ct. 1107 (2000), to which Mr. Richardson testified that, upon the removal of the gravel, the agricultural value of the property would be enhanced. Atty. Lane stated this was addressed in his memo but stated they didn't anticipate the negative impacts the earth removal would have on the farming.

MOTION:

Mr. Desilets made a **MOTION** to close the public hearings for applications FY17-16 and FY17-21 175 South Street. **MOTION SECONDED** by Mr. Harn and carried unanimously by **VOTE** (3-0-0).

Deliberations:

Board members and Council framed the issues, reviewed their standard and determined in this case they would have to find that the soil importation is customary in an agricultural enterprise and given the scale that is lesser than the primary use of the property. They also discussed what should be taken into consideration as they make a decision, such as the financial aspect, whether it is farmable with or without the importation; are they digging holes just to fill them again, etc.

Members agreed they heard testimony that would support that the operation might be related but not incidental and not subordinate to the agricultural claim. They agreed the amount of soil and time frame (20 years) of the project seems excessive to restore and regrade. The imported soil will not only completely fill the areas where gravel was removed but will exceed original grades. Furthermore, they discussed, if steep grades might have caused poor farming conditions, the grades could have been altered earlier and less fill could have been brought in.

The Board reviewed the Zoning Enforcement Letters dated 1/10/17 and 2/6/17 and discussed the technicalities of writing the decision and summarized their findings and discussions.

MOTION:

Mr. Wickstrom made a **MOTION** on FY 17-16 and FY17-21 that for reasons stated in deliberations that the Zoning Enforcement Officer letters of 1/10/17 and 2/6/17 be upheld and the cease and desist remain in effect as stated in those letters. **MOTION SECONDED** by Mr. Desilets and carried unanimously by **VOTE** (3-0-0).

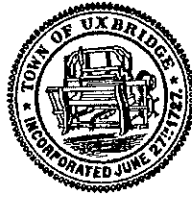
Continued public hearing; Mr. Currie is recused

- FY17-19: 775 Millville Road, Immanuel Corporation/Lawrence P. McCarthy owner applicant.**
Applicant is **APPEALING** the decisions of Uxbridge's Building Inspector/Zoning Enforcement contained in his letters dated January 9, 2017 and February 1, 2017. Property is shown on the Town of Uxbridge Assessor's Map 46 Parcels 2079, and described in a deed recorded at the Worcester Registry of Deeds Book 21529 Page 249. The property is located in a Residential C Zone.

Discussion:

Attorney Lawrence McCarthy, on behalf of Immanuel Corp. attended and reviewed his two main arguments: (i) that the soil importation is a principal use that is allowed upon receipt of a permit under the new amendment to Section 181 of the General Bylaws; or (ii) that the soil importation should be construed as accessory to the historical gravel removal operation on the Property. In between the

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hearings, the applicant submitted additional information that explained its argument that the soil importation was a permitted principal use.

Atty. McCarthy referenced Jaworski and Goodwin cases and concluded that Section 181 of the General bylaws preclude the Uxbridge Zoning Bylaw which could be read to prohibit soil importation. There was some discussion around this and other similar cases. Town Council provided further information about the Jaworski Case and other related cases and provided some recommendations to Board members for consideration.

Atty. McCarthy indicated they are not currently importing soil and have not applied for a permit yet because the town has not yet developed application materials. He also stated that the reclamation project ran into constraints when they learned that part of the property is in a flood plain. They are working through these issues with FEMA and Andrews Engineering is also actively involved. Summary of shipment reports generated by Coneco supplied to the Board, show the applicant has imported over 600,000 tons of fill to the Property since 2014. There was also a brief discussion about the 2014 ZBA Special Permit Application for Gravel Removal for the property. Atty. McCarthy added Immanuel is part of a family of companies in the asphalt business and the property was purchased primarily for their own use.

The Board reviewed the Zoning Enforcement Letters dated 1/9/17 and 2/1/17 which was subsequently amended on 2/6/17. They also reviewed Atty. McCarthy's arguments. No abutters were present to comment on the application.

MOTION/VOTE:

Mr. Desilets made a **MOTION** to close the public hearing FY17-19 775 Millville Road. **MOTION SECONDED** by Mr. Harn and carried unanimously by **VOTE** (3-0-0).

Findings:

Through discussions, board found that this was a property in Residential C Zone with a long history of being a gravel pit for removal purposes. The ZEO has found the primary use has changed to soil importation as opposed to removal and that is not in the table of uses and therefore a violation of zoning. The Board found that the recent soil importation activities are not customary to earth removal operations activities because of the sheer volume of soil reclamation activities at present on the Property.

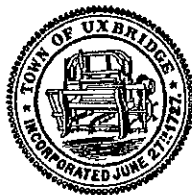
The Board also found that, under the Uxbridge Zoning Bylaws, any principal use not specifically listed is expressly prohibited. Soil importation is not a listed principal use and as a result, it may only be permitted if it were an accessory to an allowed use.

The Town Council recommended incorporating the conclusions they discussed on the Jaworski case in terms of distinguishing it from one and the zoning is exported into the general bylaws which they don't comply with because they don't have a soil importation permit.

MOTION/VOTE:

Mr. Wickstrom made a **MOTION** that for the reasons stated for application FY17-19 775 Millville Road, the Board find that we uphold the Zoning Enforcement Officer's letter of 1/29/2017 and the cease and

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desist letters of 2/1/2017 as amended on 2/6/2017. **MOTION SECONDED** by Bruce Desilets and carried unanimously by **VOTE** (3-0-0).

Continued Public Hearing

4. **FY17-17: 16 Hazel Street, Timothy Bonci, Owner/Applicant.** The applicant is **APPEALING** the Zoning Enforcement Officer's determination in letters dated January 10, 2017 and February 14, 2017 that the addition of a shed and alpacas on the property are in violation of the Uxbridge General and Zoning Bylaws.

Discussion: During the initial public hearing the applicant presented testimony and requested the Board reverse the decision of Building Inspector for the following reasons: (i) the shed is a 6' x 12' portable unit on bricks and is not a structure per Zoning bylaw 400-4 and Article X: definition, of a "structure" (ii) the three alpaca's are family pets and are not involved in any course of business or commercial activity, or raising or breeding, nor have they been since coming to the property and residing with the family and therefore do not constitute agricultural use as defined in MGL Chapter 61A Section 1. Abutters spoke in favor and in opposition to overturning the Building Inspector's decision.

The hearing was continued for more input from the ZEO about whether the issue was a building code or zoning issue.

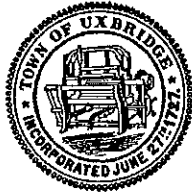
Mr. Lench, the ZEO, attended and stated that the shed violation was related not being permitted however, he had not measured it and if it is under a 180 sq. ft. a permit is not required. He further indicated that keeping of the Alpaca's was the primary issue. Mr. Bonci confirmed the shed is 6' x 12' (72 sq. ft.) well under the requirement for a permit.

The Board reviewed Uxbridge Zoning Bylaws Table of Use Regulations, Section C Agricultural Uses discussed options were the Board to find that this is an agricultural use in Residential A Zone. The Board members agreed the Board has the authority and discretion to issue a Special Permit to allow the use under the "non-exempt agricultural use" provision of the Table of Uses. The applicant specified he was not making that argument and does not believe a Special Permit is required, per his arguments, and it puts an added burden on his family to maintain this permit.

The applicant argued the alpaca's are pets and that they are kept in a reasonable fashion for the neighborhood in the way they have them penned and maintained them and complied with the Uxbridge Board of Health regulations.

During deliberations, Mr. Wickstrom stated his personal feeling is that there are residential pets that are of the typical residential landowner such as cats, dogs, birds, fish, and terrarium animals and that this is borderline because alpaca's are herd animals that are used to produce fiber and are usually thought of in an agricultural setting. Board members also expressed concerns for setting a precedence for keeping animals that are agricultural in nature to be as pets, especially in a Residential A Zone where lots size requirements are less than other zones. Mr. Wickstrom emphasized the landowners are doing a great job caring for the animals and any decision doesn't preclude them from applying for a special permit to keep the animals.

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MOTION/VOTES:

Mr. Currie made a **MOTION** to close public hearing FY17-17 16 Hazel Street.; **MOTION SECONDED** by Mr. Harn; **MOTION CARRIED** unanimously by VOTE (3-0-0).

Mr. Wickstrom made a **MOTION** that the Board makes a finding that the keeping of three alpaca's at 16 Hazel Street in Uxbridge, MA is not an agricultural in use so long as the current fencing remain in place and no more alpacas than 3 be kept at the site and that the land owner remove the refuse offsite in the manner that they have done up until now and that they otherwise complies with all Board of Health regulations and orders and any other applicable regulations of the town of Uxbridge; **MOTION SECONDED** by Mr. Currie; **MOTION FAILED** by VOTE (2-1-0). **The appeal is denied the Board upholds the building inspector's notice of violation, cease and desist.**

Mr. Wickstrom made a **MOTION** to deny the applicant's request to waive the application fees. **MOTION SECONDED** by Mr. Harn; **MOTION CARRIED** by VOTE 2-1-0.

II. **NEW BUSINESS**

III. **MINUTES/MAIL/INVOICES**

IV. **ANY OTHER BUSINESS, which may lawfully come before the Board.**

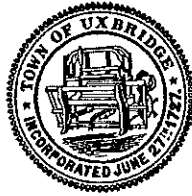
V. **ADJOURNMENT: NEXT ZBA MEETING, WEDNESDAY, MAY 3, 2017**

Mr. Desilets made a **MOTION** to adjourn the meeting. **Seconded** by Mr. Harn the motion passed by vote of 3-0-0.

Respectfully submitted,

Melissa Shelley
Land Use Administrative Assistant

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SIGNATURE PAGE

Mark Wickstrom, Chairman

Kevin Harn, Member

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Bruce Desilets, Member

Christopher Currie, Alternate Member

Joe Alves, Alternate Member

June 7, 2017

Date