

**Ancram Zoning Board of Appeals
May 3, 2011 7:00PM
Meeting Minutes**

Board Members Present: Chair Leah Wilcox, Sheldon Waldorf, William Lutz (alternate), Alyson Kozlowski, Fred Schneeberger, Sue Bassin

Board Members Absent: none

Clerk: Samantha Langton

Others Present: Michele Haab, Paul Chaleff, Todd Erling, Ted Guterman, Jeff Baker, Cathy Franklin, Gary Delemeester, Jeff Daly, Bob Wilcox, Kit White, Andrea Barnet, Bonnie Hundt, Art Bassin

Chair Wilcox opened the meeting at 7:00pm.

TRAINING

The County Planning Board is offering a 4 hour training session, Introduction to Planning and Zoning and SEQOR, on June 22 at Columbia Green Community College.

Planning Federation Conference, Albany, Sun-Tues, Oct 9-11, each day is a full day of training.

MINUTES FROM PREVIOUS MEETING, 4/14/2011

Correction to page 4, bottom of the first paragraph: change “35,000 cases” to “35,000 gallons” or “15,000 cases.” Mr. Schneeberger motioned to approve the minutes as amended, Ms. Bassin seconded the motion and all approved.

OLD BUSINESS

Application #11-1

Jeffrey Baker

408 Pooles Hill Road

Tax map # 213-1-89 (21.7 acres) and adjoining parcel #213.-1-90 (59.4 acres) on which the driveway is located.

Special Use Permit for retail sale at a road stand.

The building inspector previously determined that retail sale of products grown on the premises was an agricultural use, but a permit was denied citing need for a special use permit. The application for this special use permit is for the “retail sale of agricultural product grown principally on the same lot,” in this case a tasting room and distillery retail outlet as permitted by a farm distillery license (farm store). The public hearing for this application was postponed from the previous meeting on April 14, 2011, in order to notify additional abutting property owners. Public notices were announced in the Register Star and Columbia Paper on 4/21. Mr. Baker brought receipts for certified letters sent to the abutting property owners. Since the previous meeting, Mr. Baker has submitted opinion letters and guidelines from the state department of Agriculture and Markets (“Ag and Markets” hereon).

Mr. Baker showed the ZBA survey maps and distributed a new information booklet entitled “Hillrock Farm, Ancram, NY, Direct Farm Marketing Special Use Permit Application.” Mr. Baker thanked the Board and reminded all in attendance of his request for a special use permit to allow Hillrock Farm to sell farm products produced on the premises. Mr. Baker continued to review background information: 1. The property is located in an agricultural district (Ag District #1), which is protected by Right to Farm laws, enforced by Ag and Markets. 2. Grain will be organically grown and distilled onsite. 3. Ag and Markets has determined that farm distilleries are protected as agricultural uses, as is the direct sale outlet associated with the production. 4. The town of Ancram has determined that the farm has a right and issued a permit for the operation. 5. Both the state and federal government carefully regulate spirit production and sales.

This farm will have a class D license, known as a farm distillery license, which allows limited production from local farm ingredients and allows retail sale on site. Customers cannot be given more than 0.75 oz of sample per day, which is equal to less than one shot of whiskey. The farm expects to produce 1 barrel of premium whiskey per day, meanwhile, larger distilleries produce ~12,000 barrels per day. This will not be a factory, rather, a boutique. There will be no meaningful pollutants. 3 to 5 people will be employed. This will generate revenue for the community and act as a model for other farming operations. The distillery will be located in the barn, in the center of the 90 acre property of rolling farm land, ~800 feet to the nearest adjacent residence and there is a hedgerow and forest that separate all adjacent properties. The site plan shows that parking requirements have been met. The barn was issued a certificate of occupancy by the town Building Inspector.

Mr. Baker proceeded to read a letter of endorsement for the distillery from Kenneth Flood, the Columbia County Planning and Economic Development commissioner, as well as two letters from Ag and Markets in support of on-farm marketing of whiskey for similar operations in Schoharie and Dutchess counties.

Mr. Baker stressed that they intend to stay within the Ag and Market guidelines including §305-a, which defines what is considered reasonable for issues including building layout and dimensions and signage.

Chair Wilcox asked Mr. Baker to discuss supplementary conditions: 1. Zoning regulations require at least 5 parking spaces and one handicapped space (state requirement). A plot plan shows that this regulation is met. 2. Ingress and egress will be through the existing driveway, which is located on parcel #213.-1-90 and has been in use for 10 years. 3. Lighting will not be clearly seen by neighbors because a forest screens the view for the nearest neighbor and the lighting will be provided by small lanterns attached to the building with 60W light bulbs with no glare. 4. The law states that there should not be more than 3 signs exceeding 50sqft. An existing sign for the farm is 4-5sqft and an additional sign will be added in the same size and style. 5. All setbacks are met for the previously approved barn.

Mr. Lutz asked Mr. Baker about the height of the grain storage facility. Mr. Baker answered that grain will be stored in small storage bins within a 24 x 36' structure that is under construction next to the barn. Small silos might be erected in the future. All of the grain will be grown on the premises with no grain being delivered into the farm. 30 acres will be used to grow the grain, the yield for whiskey is approximately 6-8 bushels of grain per barrel of whiskey. This information is interesting, but does not apply to the application for a farm store.

Public Hearing

Chair Wilcox opened the public hearing and reminded the public that this was exclusively on the topic of the farm store and not the distillery.

Ms. Haab mentioned that it might not be unreasonable to require a site plan and that noise may be an issue that can be mitigated by regulating the noise or limiting hours of operation.

Mr. Delemeester asked if there were any rules restricting the operating hours of a farm stand. He also asked about the percentage of business from drive by and what the anticipated hours of operation would be.

Mr. Baker added that the same section of regulations for a small farm market state that regulations on hours of operation might become unreasonably restrictive.

Ms. Haab asked the Board what they would like to see if they lived next [to Mr. Baker's establishment].

Mr. Baker asked if it were a milk operation, would he be restricted on the number of cows he owned. In reference to Mr. Delemeester's question, Mr. Baker said that other stills are open 2-3 days per week, but he will not know what his specific hours will be until the distillery is under way. He added that he is very sensitive to the neighborhood and does not want to overwhelm the town and that there is no basis to think that there will be an excessive amount of increased traffic. He also added that he does not think it is appropriate for the town to set limitations on his distillery or other farm operations.

Mr. Delemeester asked Mr. Baker if he expects all of his sales to come from individual buyers. Mr. Baker answered that most of the product will be distributed regionally or nationally, but it is critical to allow visitors to see the operation in order to establish a welcome feeling with customers.

Mr. Delemeester asked Mr. Baker if the market would be operating 7 days per week.

Mr. Baker said that he was more inclined to have occasional open houses and scheduled visits by appointment. He does not envision busloads of visitors.

Chair Wilcox asked Mr. Baker if state law required that [an employee] be on the premises at all times.

Mr. Baker said that an employee must conduct tours, tastings, and sales, and that there are strict requirements about supervision.

Mr. Chaleff expressed his concern that that once a permit is given, Mr. Baker would be able to operate at any hours and asked if Mr. Baker planned to be open at night or on Sundays. Mr. Chaleff has not decided whether he is in support of the distillery, but he would like more information. He is concerned about when the distillery is operating at maximum production how it would affect the neighbors. In addition, Mr. Chaleff was concerned about possible odors created by the grain mash, especially for neighbors located down wind.

Mr. Baker answered that the odors are minimal and will smell like a bakery. Mr. Chaleff explained that he was familiar with other farm operations and is used to cow farming, but that a distillery is new for him.

Chair Wilcox reminded all that the distillery is a separate, approved use that is not relevant to this application.

Mr. Baker said that he does not know if the market will be open at night. All of the guidelines set by Ag and Markets will be met and it would be inappropriate for the town to set more restrictive guidelines. There will be not be additional light or glare created than already exists.

Chair Wilcox asked if drinks could be sold.

Mr. Baker said that drinks cannot be sold, only sealed bottles may be sold.

Ms. Bassin asked about the percentage of sales that will go to wholesalers. Mr. Baker answered that since this is not a high traffic tourist center, most of the sales will be through distributors. The direct sales and visits are mainly for public relations and marketing.

Ms. Hundt added that the town's new comprehensive plan encourages all types of agriculture including new agricultural development projects. She asked about the determination of operation hours for the market and who will regulate those hours.

Mr. Baker answered that the only way farmers will survive in this economy is through direct retail. A standard will be set and if an operation is in excess, the town will set what is reasonable.

Quoting Ag and Market guidelines, Ms. Haab pointed out that some mitigation may be recommended for noise reduction. Mr. Erling said that a visit to one of the other local distilleries in the area would illustrate the scope of these concerns. Mr. Daly expressed concern about the number and size of trucks that may travel to the property and the light they might add, especially since the barn is already lit and can be bright. Mrs. Baker explained that personal lighting is no brighter than what would be added for the business. Mr. Baker explained that the only lighting added would be residential in scope and would not be left on all night.

Mr. Baker reiterated the objective and maximum capacity of the distillery, which would result in the production of 1 pallet of cases of bottles every two weeks, which would most likely be shipped by a Fedex-sized truck, not a large semi as was the concern of some neighbors. The facility cannot be much larger than that and there is no intention to expand beyond this capacity. Mr. Baker hopes that the distillery will be an asset to the community and that it will bring local and distant visitors. The legal maximum is 15,000 cases per year, but this distillery will produce 6,500 cases per year. Ms. Haab added that if the property changes hands, new owners would have the right to produce 15,000 cases per year. Ms. Wilcox explained that regardless of whatever restrictions are given through the ZBA, the farm distillery license permits 15,000 cases per year. Ag and Markets considers this a permitted use.

Mr. Erling added that even a very successful distillery would make fewer than 8,000 cases per year. He discussed the example of a winery in Chatham that typically has 4-5 visiting cars on a Saturday afternoon and about 100 vehicle trips per year. Ms. Wilcox added the example of Wiltsie Bridge Road with a seasonal strawberry picking operation

(Thompson Finch) and a farm store (Herondale Farm), both of which draw substantial numbers of cars and customers with little noticeable impact on the small country road. Mr. Gutterman added that the right to farm law recognizes that farms give off noise and odors. Regulating farms may be setting a dangerous precedent that could limit the amount of production and sales.

Mr. Erling pointed out that farming is dynamic and farmers need to evolve with the market trends, "We have 25% less [dairy farms] from 10 years ago, a fraction from 30 or 40 years ago."

Three opinion letters dated 2002, 2009, and 2011 from Ag and Markets (included in the file) in support of distilleries with farm stores were submitted to the ZBA. Mr. Erling pointed out that these letters outlined these farm stands as viable agricultural use.

Mr. Chaleff explained that he and other neighbors just wanted to understand the situation. Ms. Wilcox read from letters submitted to the ZBA from neighbors with reference to the farm market.

Responses to Letter from Mr. Chaleff:

1. All of the [grain] used in the distillery will be produced at the farm.
2. Question about the distillery, not answered since the distillery is approved and the application is for a farm store.
3. Odors, already covered.
4. A special use permit remains with the land and subsequent owners, except after a lapse, may use it.
5. Violations to the permit can be reported to the building inspector or the state with reference to the state farm distillery license.
6. The distillery is permitted to give three ½ oz tastings to each person and can only sell sealed bottles.
7. More abutting property owners were notified of the public hearing since the receipt of this letter.

Responses to the letter from Mr. Scott Newman:

Strict state regulations prevent the sale of alcohol to minors, Mr. Baker assured the Board that this law would be followed so as not to jeopardize the distillery license.

Responses to the letters from Ms. Kim Tripp and Mr. Gregory Long and Matthew Bernstein:

1. Ms. Bassin acknowledged that these agricultural operations and direct marketing vary from one another (distillery and vineyard), this question recognizes only vineyard traffic and not the farmstand traffic.
2. Chair Wilcox answered that the distillery license only permits direct sales on the farm premises, not within the hamlet. Mr. Erling added that the distiller's license does not allow for Mr. Baker to own a retail outlet.

The barn is not visible from the surrounding property. A site plan shows that the parking lot is 1000 feet from the road. Mr. Chaleff added that he can see the barn from his property, although his house is 800 feet from the barn. Ms. Haab asked if the sign was on Mr. Long's property. Ms. Bassin added that the barn is at a low point on the property and not very visible from the road.

Chair Wilcox added that all setbacks are met. The hours of operation are not limited on any farm stands. Gravel mines have limits on hours of operation because the zoning regulations require limits, there are no such limits to farm markets. Ag and Markets permit directional signage. There are no regulations on odors, emissions, and noise. The PB is responsible for site plan approval. The town has no regulations for a site plan review for this type of case. The PB recommended approval for this special use permit. The letters suggest that there was some misunderstanding by the neighbors about the scope of this operation. The distillery and farm store will be in an existing barn and the remaining land will be used for agriculture, the character of the neighborhood will not be changed.

Mr. Baker said that the county planning board thinks that the distillery meets our county's plan.

Mr. Delemeester asked if the town would benefit from tax generation. Mr. Bassin, the town supervisor, explained that although taxes are collected in Columbia County, they are distributed to the town based on population. An increase in sales tax generated in Ancram will lead to an increase in income for the town. Mr. Baker added that he plans to create 3 to 5 new jobs for local residents. These new employees will spend money in the town as well. Visitors will hopefully spend money at other businesses in town.

Chair Wilcox asked Mr. Baker about what he foresaw for hours of operation. Mr. Baker answered that the hours would most likely be during the daytime. The neighbors requested a condition be imposed that would restrict operational hours. However, the law does not allow the ZBA to impose conditions related to the operation of the intended business.

Chair Wilcox quoted from the New York Real Property Practice, New York Zoning Law and Practice, fourth edition (*P.E. Salkin, 2002, p. 30-05 to 30-11*), with reference to *Clinton v. Summers, 1988*, in which hours of operation were imposed upon a business. This decision was overturned citing "Absent specific authority in the ordinance, a board may not impose conditions which relate to the detailed conduct of the applicant's business rather than to zoning limitations on use of the land. Nor can conditions be attached where they do not serve a legislative zoning purpose."

4 Questions to Consider for a Special Use Permit:

1. That there shall not be any other detrimental effect by the establishment of such use on other uses within the district.

There will not be any detrimental effect on other uses within the district; residential and agricultural uses in the area will continue as before. The visual impacts will be of agricultural buildings and a small gravel parking area.

2. That such use will be in harmony with the orderly development of the district and the location, nature, and height of buildings, walls, fences, and parking areas will not

discourage the appropriate development and use of adjacent lands. The use is agricultural in an agricultural district.

This area is mostly residential with some agriculture. It will not impact either residential or agricultural uses.

3. That all structures, equipment, and materials shall be reasonably accessible for fire and police protection.

The barn has already received a C of O.

4. That the use meets the prescribed requirements for the district in which located, including minimum yard requirements, maximum height, required off-street parking and sign regulations.

The ZBA will make sure that these requirements are met.

Ms. Haab said that if there will be 3-5 employees and only 5 parking spots, how will there be room for public parking? In addition, the sign may need to be moved in order to be 10 feet from the property line. Mr. Baker explained that there will be separate employee parking and he is willing to move the sign. The parking area is gravel.

The public hearing was closed at 9:09pm.

The ZBA discussed the application. There is appropriate ingress, egress, and parking. The proposed lighting will probably not have a significant impact. Only one small sign will be added that is well within the standards. Based upon the evidence presented here, the members of the ZBA reached a consensus that the application be approved with special conditions. A meeting was scheduled for 6/21/2011 at 7:00pm to consider a resolution and vote on it.

A motion was made to adjourn the meeting by Mr. Waldorf, seconded by Ms. Kozlowski, approved by all board members, and adjourned at 9:15pm.