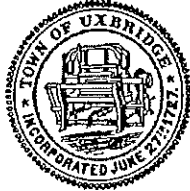


Rob Knapik, Member
John Gniadek, Member
Mark Kaferlein, Member
Thomas McNulty, Associate Member
Jim Blackburn, Associate Member



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Zoning Board of Appeals DECISION

ZBA Case #: FY22-01

Zone: Agricultural

Applicant: **Greg Fisher and Nicole Wineland-Thomson**

Property Address: **355 Hartford Avenue West**

Assessor's Reference Map: **17** Parcel: **0925**

Worcester Registry of Deeds Book: **42005** Page: **207**

SPECIAL PERMIT DENIED

Decision Date: September 1, 2021

VOTING MEMBERS: Rob Knapik, John Gniadek, Thomas McNulty

SUBMITTALS:

- Complete Zoning Board of Appeals Application and Fee
- Certified Abutters List
- Uxbridge Zoning Board of Appeals Decision, dated November 4, 1988
- Uxbridge Zoning Board of Appeals Decision, dated July 17, 2000
- Plan of Land, prepared by Andrews Survey and Engineering, dated July 26, 2000
- Memorandum from DEP dated July 29, 2021
- Zoning Opinion prepared by Larry Lench, Uxbridge Building Inspector, dated August 18, 2021
- Noise Study, prepared by Reuter Associates, dated August 24, 2021
- Architectural Renderings, prepared by Verdant, dated August 26, 2021
- Memorandum in response to the Zoning Opinion, prepared by Mark Wickstrom, Wickstrom/Morse, LLP dated August 30, 2021
- Proposed conditions for consideration, prepared by the Applicant, dated August 30, 2021
- Several letters of both support and opposition to the proposal

REQUEST:

Applicants Greg Fisher and Nicole Wineland-Thomson are seeking a **VARIANCE** of 225-feet to the frontage requirement and a **SPECIAL PERMIT** for the use of the property as a wedding and event venue.

PRESENTATION / FINDINGS OF FACT / DELIBERATIONS:

A public hearing on the Application was opened by the Board on August 2, 2021. The Board conducted a site visit on August 14, 2021. The Board continued the public hearing to September 1, 2021.

Rob Knapik, Member
John Gniadek, Member
Mark Kaferlein, Member
Thomas McNulty, Associate Member
Jim Blackburn, Associate Member



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The Property is situated on the north side of Hartford Avenue West, is shown as Uxbridge Assessor's Parcel ID 017.0-0925-0000.0, and comprises approximately 17.97 acres of land. According to the records of Worcester District Registry of Deeds (the "Registry"), the Property was acquired by Carl Wheeler by deed dated October 19, 2007 and recorded with the Registry in Deed Book 42005, Page 207. The Property includes "Parcel A" (comprising 15.77 acres of land) as shown on a plan of land recorded with the Registry in Plan Book 564, Plan 2, and (a separate) "Parcel A" (comprising 2.20 acres of land) as shown on a plan of land recorded with the Registry in Plan Book 759, Plan 9. Situated on the Property are two single-family dwellings, a barn formerly used for equestrian purposes, and related driveways and utilities. Also situated on the Property are pastures, fields, enclosures for horses, a "watering pond", a covered bridge, wetlands, and natural woodlands. Access to the Property is from Hartford Avenue West. According to the Zoning Map of the Town of Uxbridge, the Property is situated within the Agricultural Zoning District.

The Proposed Use

As presented by the Applicant, the Applicant intends to reside in one of the single-family dwellings situated on the Property, to raze the barn, and to construct a new structure described as an "indoor-outdoor function room" (also described as similar in kind to a traditional New England barn) for use as an event venue, with the apparent expectation that most such events will be weddings (the "Proposed Use"). The new structure will "include a main dining area, kitchen prep area, bride-and-groom dressing rooms and bathrooms."

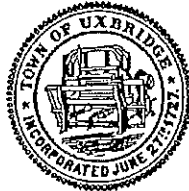
Allowed Use(s)

According to the Application, and the Table of Use Regulations of the Uxbridge Zoning Bylaw (the "Bylaw"), "Restaurant" is a use allowed by right in the Agricultural Zoning District. In the Application, the Applicant noted that "food will be served at the new venue", but the Applicant did not intend to apply for a "full serve" restaurant license. Rather, "the intention is to have parties choose their own outside catering service". According to the Application, "the primary feature of the proposed use is most like a restaurant", and the proposed building will "provide kitchen facilities for the outside caterers to use and the primary function of the improvements are for inside and outside sit-down dining for receptions".

According to the Application, and the Table of Use Regulations of the Bylaw, "[u]se of land or structures for religious purposes" is a use allowed by right in the Agricultural Zoning District.

In the Application, the Applicant thus concluded that the Proposed Use is a "hybrid of two allowed uses as a matter-of-right [a restaurant, and land used for religious purposes], and one use where a . . . special permit may be required" [a non-exempt agricultural use]."

Rob Knapik, Member
John Gniadek, Member
Mark Kaferlein, Member
Thomas McNulty, Associate Member
Jim Blackburn, Associate Member



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Zoning Board of Appeals DECISION

ZBA Case #: FY22-01

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"Wedding Venue" is not an enumerated use appearing in the Table of Use Regulations of the Bylaw. According to the Application, and the Table of Use Regulations of the Uxbridge Zoning Bylaw, "Non-Exempt Agricultural Use" is a use allowed in the Agricultural Zoning District upon issuance of a special permit from the Board. The Applicant requested the Board decide that the "proposed wedding venue is allowed as [a] 'non-exempt agricultural use' due to its nature as agritourism", and on that basis the Applicant requested that the Board issue a special permit allowing the Proposed Use as a Non-Exempt Agricultural Use. The Applicant presented evidence that: the Proposed Use is "agritourism" (and thus a "Non-Exempt Agricultural Use"); and that the Proposed Use otherwise satisfies the criteria for the grant of a special permit.

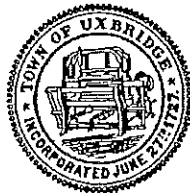
In his Zoning Opinion dated August 18, 2021, Larry Lench, Uxbridge Building Inspector and Zoning Enforcement Officer, opined that the enumerated use appearing in the Table of Use Regulations of the Bylaw that is closest to that of the Proposed Use as described by the Applicant, is "Commercial Recreation, Indoor", and that such use is not allowed in the Agricultural Zoning District.

In response to the Zoning Opinion of the Building Inspector, the Applicant provided evidence "Commercial Recreation, Indoor" more accurately describes "uses that are open daily, with unlimited hours, up to seven days a week, where the general public can access the business". Because the Applicant intended that "food will be prepared at the venue and consumed on the premises", and because the venue would include equipment and facilities customarily found in a restaurant (e.g. refrigerators, food preparation stations, a range for cooking, a hand washing sink, etc.), the Applicant requested that the Board find that the Proposed Use is "most like the allowed use of a 'restaurant'".

MOTIONS / VOTES:

Having before it the Zoning Opinion of the Building Inspector that the Proposed Use is most similar to "Commercial Recreation, Indoor", and the Applicant's request that the Board find that the Proposed Use is "most like . . . restaurant" (an allowed use), the Board was faced with the need to determine, based on all of the evidence before, whether the Proposed Use was most like: a.) "agritourism" (and thus a "Non-Exempt Agricultural Use") as set forth (initially) in the Application; or b.) "Commercial Recreation, Indoor" (as opined by the Uxbridge Building Inspector, and thus a use that is not allowed in the Agricultural Zoning District); or c.) a "restaurant" (as presented by Applicant, and thus a use allowed "as-of-right" in the Agricultural Zoning District). The Board determined that any such finding must be made only upon the concurring vote of all three of the voting members of the Board.

Rob Knapik, Member
John Gniadek, Member
Mark Kaferlein, Member
Thomas McNulty, Associate Member
Jim Blackburn, Associate Member



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Mr. McNulty made a **MOTION** that the Zoning Board of Appeals make a determination that the use is most like Commercial Recreation, Indoor as defined in the Uxbridge Zoning Bylaw. **MOTION SECONDED** by Mr. Gniadek failed by **VOTE** of 2-1-0 (Gniadek – aye, McNulty – aye, Knapik – nay)

Mr. Knapik made a **MOTION** that the Zoning Board of Appeals make a determination that the use is most like Restaurant as defined in the Uxbridge Zoning Bylaw. **MOTION NOT SECONDED**

Mr. Knapik made a **MOTION** that the Zoning Board of Appeals make a determination that the use is most like Agritourism. **MOTION NOT SECONDED**

Because the Board was unable to find that the Proposed Use was most like either: a.) “Commercial Recreation, Indoor”; or b.) a “restaurant”; the Board determined that the Applicant, if they so chose, be permitted to advance the argument, as presented initially in the Application, that the Board should grant a special permit allowing the Proposed Use as a “Non-Exempt Agricultural Use” (“agritourism”) upon finding that the Application satisfies the criteria for the grant of a special permit set forth in the bylaw. The Applicant presented further evidence that the Proposed Use is “agritourism” and that it satisfies the criteria for the grant of a special permit set forth in the bylaw.

Upon the conclusion of all evidence, Mr. McNulty made a **MOTION** to close the Public Hearing for FY22-01 355 Hartford Avenue West. **MOTION SECONDED** by Mr. Gniadek passed unanimously by **VOTE** of 3-0-0.

Mr. McNulty made a **MOTION** that the Zoning Board of Appeals **DENY** the Special Permit application FY22-01 for 355 Hartford Avenue West. **MOTION SECONDED** by Mr. Gniadek failed by **VOTE** of 2-1-0 (Gniadek – aye, McNulty – aye, Knapik – nay)

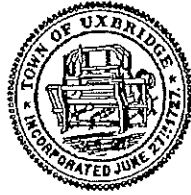
Mr. Knapik made a **MOTION** that the Zoning Board of Appeals **GRANT** the Special Permit as requested in FY22-01 for 355 Hartford Avenue West. **MOTION NOT SECONDED**

Having failed to reach the necessary three concurring votes for the grant of a special permit, the Application for the Special Permit as requested in FY22-01 for 355 Hartford Avenue West Board is **DENIED**.

The Applicant requested leave of the Board to withdraw the Application for Variance without prejudice.

Mr. Knapik made a **MOTION** to **GRANT** the request to **WITHDRAW** the request for a Variance without prejudice as requested in FY22-01 for 355 Hartford Avenue West. **MOTION SECONDED** by Mr. McNulty passed unanimously by **VOTE** of 3-0-0.

Rob Knapik, Member
John Gniadek, Member
Mark Kaferlein, Member
Thomas McNulty, Associate Member
Jim Blackburn, Associate Member



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Zoning Board of Appeals DECISION

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SIGNATURE PAGE

Rob Knapik, Chairman

John Gniadek, Vice Chairman

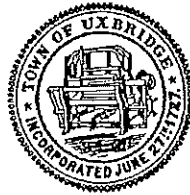
Thomas McNulty, Associate Member

Mark Kaferlein, Clerk

Jim Blackburn, Associate Member

September 15, 2021
Date

Rob Knapik, Member
John Gniadek, Member
Mark Kaferlein, Member
Thomas McNulty, Associate Member
Jim Blackburn, Associate Member



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Zoning Board of Appeals DECISION

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Appeals, if any, from this decision shall be made pursuant to M.G.L. Chapter 40 A, Section 17 and filed within 20 days after the date of the filing in the Office of the Town Clerk.

I hereby certify that twenty (20) days has elapsed from the file date and no appeal has been filed in this office.

A true copy: ATTEST

Town Clerk, Kelly Dumas or
Assistant Town Clerk

Date

Town Seal

****THE APPLICANT IS REMINDED OF THEIR RESPONSIBILITY TO RECORD THIS
DECISION AT THE REGISTRY OF DEEDS PER THE CERTIFICATE OF GRANTING.
NO PERMITS SHALL ISSUE UNTIL THE PERMIT IS RECORDED. ****