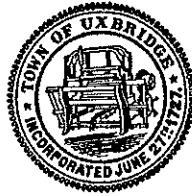


Rob Knapik, Chairman  
John Gniadek, Vice Chairman  
Mark Kaferlein, Clerk  
Thomas McNulty, Associate Member  
Jim Blackburn, Associate Member



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21 South Main Street, Room 205  
Uxbridge, MA 01569  
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## TOWN OF UXBRIDGE ZONING BOARD OF APPEALS

MEETING MINUTES: Wednesday, September 1, 2021

**Present:** Rob Knapik, John Gniadek, Thomas McNulty, Jim Blackburn and Administrator Melissa Shelley

### CALL TO ORDER:

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 Chairperson.

### PUBLIC HEARINGS

1. **FY22-01:** Applicants Greg Fisher and Nicole Wineland-Thomson are seeking a **VARIANCE** of 225-feet to the frontage requirement at **355 Hartford Avenue West** and a **SPECIAL PERMIT** for the use of the property at as a wedding and event venue. The property is located in the **Agricultural Zoning District**, shown on the Town of Uxbridge Assessor's **Map 17, Parcel 925** and described in a deed recorded at the Worcester Registry of Deeds in **Book 42005 on Page 207**.

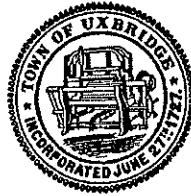
The Chairman provided a brief recap: (i) a public hearing on the Application was opened by the Board on August 2, 2021; (ii) the Board conducted a site visit on August 14, 2021 (iii) the Board continued the public hearing to September 1, 2021; (iv) new submittals included a Zoning Opinion letter dated 8/17/21 by Larry Lench, Uxbridge Building Inspector/ZEO, the Applicant's response to the Zoning Opinion letter and several letters in opposition and support of the application.

In his Zoning Opinion Mr. Lench opined that the closest proposed use in the Table of Use Regulations of the Zoning Bylaw is "Commercial Recreation, Indoor", which is not allowed in the Agricultural Zoning District. The Chairman explained that he contacted Town Counsel to determine procedurally the most appropriate way for the Board to proceed. He summarized Town Counsel's response which was that Mr. Lench's analysis was the closest match he could see although not a perfect fit. Town Counsel also said that Mr. Lench's letter doesn't prevent the applicant from arguing that the use is more appropriately considered to be agritourism or a restaurant and that it was up to the Zoning Board to make the determination.

Members agreed to their first step is to determine which of the allowed categories if any the Applicant's proposed use best fits (a restaurant – allowed; commercial recreation, indoor – not allowed, or agritourism – allowed by special permit).

Mark Wickstrom, Wickstrom Morse, LLP presented on behalf of the Applicant. Mr. Wickstrom argued that the Zoning Officer's opinion that this is a "Commercial Recreation, Indoor" is incorrect. He provided examples of businesses that would fall under that category such as theatres, bowling alley, skating rinks - "uses that are open daily, with unlimited hours, up to seven days a week, where the general public can access the business". He described the proposed use as "totally different" – a limited venue, open possibly three days a week, people using the venue would arrive at once for a single timed event to gather, eat and socialize. Additionally, he explained "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.). He claimed that the Applicant's proposed use almost perfectly fits with the restaurant definition in the Uxbridge Zoning Bylaw and requested that the Board find that the Proposed Use is "most like the allowed use of a 'restaurant'".

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### MEETING MINUTES: Wednesday, September 1, 2021

Larry Lench, Uxbridge Zoning Officer, said Mr. Wickstrom made some valid points but that final determination was now up to the Board. He offered The Hab as the closest example of a local business that would fall under the category of Commercial Recreation, Indoor.

Abutters were given the opportunity to provide their opinion and several spoke to why they did not think it fit the restaurant category (not open to the public, not open typical restaurant hours, not cooking food on site).

Members agreed the bylaw definitions are somewhat broad and were split on their opinions what bylaw definition best fit the proposal (two thought commercial recreation and two thought restaurant). They agreed the bylaw definitions are very broad and they had heard enough testimony to vote.

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: (i) “Commercial Recreation, Indoor”; or (ii) a “restaurant”; the Board determined that the Applicant, if they so choose, be permitted to move forward with the initial 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.

Mr. Wickstrom presented further evidence that the Proposed Use is “agritourism” emphasizing the draw to the venue is its agricultural setting and beauty for a destination wedding. Members reviewed portion of the bylaw and discussed whether their earlier motion was actually a determination that it was not “agritourism”. The agreed since the motion didn’t carry it was not technically a determination.

The Board reviewed the special permit criteria and provided the applicant and abutters one more opportunity to speak to those issues. The Applicant highlighted the economic benefits to the town and the Abutters expressed concerns for neighborhood character, noise and safety.

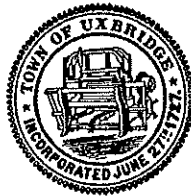
Upon the conclusion of all evidence, Mr. McNulty made a **MOTION** to close the Public Hearing for FY22-01 355 Hartford Avenue West. **MOTION SECONDED** by Mr. Gniadek passed unanimously by **VOTE** of 3-0-0.

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

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John Gniadek, Vice Chairman  
Mark Kaferlein, Clerk  
Thomas McNulty, Associate Member  
Jim Blackburn, Associate Member



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**TOWN OF UXBRIDGE  
ZONING BOARD OF APPEALS**

**MEETING MINUTES: Wednesday, September 1, 2021**

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.

**ADMINISTRATIVE:**

- Meeting Minutes Review 8/4/21  
**Motion:** Mr. McNulty made a motion to approve the August 4, 2021 ZBA meeting minutes as written. Mr. Blackburn seconded, and the motion passed unanimously by vote of 4-0-0.


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

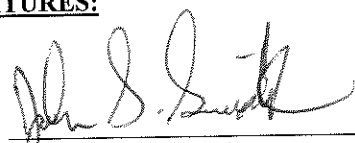
**ADJOURNMENT: Next Regularly Scheduled ZBA Meeting, Wednesday, September 1, 2021**

**Motion:** Mr. McNulty made a motion to adjourn the 8/4/21 meeting of the Zoning Board of Appeals. Mr. Gniadek seconded, and the motion passed unanimously by vote of 4-0-0.

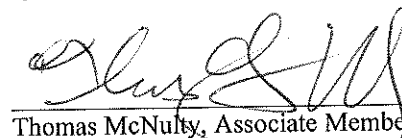
Respectfully Submitted,  
Melissa Shelley

**SIGNATURES:**


  
\_\_\_\_\_  
Rob Knapik, Member

  
\_\_\_\_\_  
John Gniadek, Member

\_\_\_\_\_  
Mark Kaferlein, Member

  
\_\_\_\_\_  
Thomas McNulty, Associate Member

  
\_\_\_\_\_  
Jim Blackburn, Associate Member

  
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Date