

Town of Danby Planning Board  
Minutes of Regular Meeting  
September 19, 2019

**PRESENT:**

Ed Bergman  
Scott Davis  
Joel Gagnon  
Bruce Richards  
Jody Scriber  
Jim Rundle (Chair)

**ABSENT:**

Naomi Strichartz

**OTHER ATTENDEES:**

Town Planner	John Czamanske
Town Board Liaison	Leslie Connors
Town Supervisor	Ric Dietrich
Recording Secretary	Alyssa de Villiers
Public	Ted Crane, David Jordan, Jed Jordan, Sarah Schnabel

*The meeting was opened at 7:00pm.*

**(1) CALL TO ORDER / AGENDA REVIEW**

No changes were made to the agenda.

**(2) PRIVILEGE OF THE FLOOR**

Ted Crane suggested that the Planning Board consider moving forward on a general review of zoning and closing loopholes while they have the breathing space to do so.

**(3) APPROVAL OF MINUTES**

Gagnon noted that in the last paragraph on the third page of the draft minutes, the word “proscriptive” should be “prescriptive.”

**MOTION:** Approve August minutes

Moved by Gagnon, seconded by Bergman

**The motion passed.**

In favor: Bergman, Davis, Gagnon, Richards, Scriber, Rundle

#### **(4) TOWN BOARD LIAISON REPORT**

Leslie Connors shared the following information:

- There will be two public hearings during the October 7<sup>th</sup> meeting, one on a law to override the tax cap and the other on a conservation easement on 29 Durfee Hill Rd.
- Interviews for the position of Town Planner have happened. She expressed that the Town is fortunate to have had so many candidates; there are four finalists out of 18 initial applicants.

#### **(5) ROGUE CREEK CIDERY – SITE PLAN CONFERENCE**

David Jordan and his son Jed Jordan voluntarily came before the Planning Board to discuss their intent to build a tasting room called Rogue Creek Cidery as an extension of their farm on East Miller Rd. Site plan review is not currently required for farm craft beverage operations.

The Jordans began by passing out some supporting documents. Jed Jordan gave a brief presentation in which he explained the history of the site at 1582 Danby Rd. and their plans for it: It was purchased in 2018 with the goal of building their product brand and improving market access. They got a building permit for a tasting room, kitchen, and residence, but after a year the Town changed the approval to only be for a residence, leading to talks between the parties' attorneys. The Town then gave approval for a tasting room and residence but not a kitchen. They are not intending to have a restaurant but rather a tasting room with a sanitary kitchen to make honey, preserves, pickles, and other farm-sourced products. There is unanimous support for this in the immediate vicinity. They do not believe neighborhood character or safety will be affected. Restrictions they are facing are for a sanitary processing space (kitchen) and parking. NYS Department of Agriculture and Markets' (Ag and Markets) Agriculture and Markets Law (Ag & Markets Law) has a process for approval of sanitary kitchens and food service limitations. The Code Officer has said he would allow a tasting room but not a kitchen at the site. Mr. Jordan pointed out that the code (zoning) language has not been updated to reflect the stated will and intent of Danby to support farming activities in all zoning districts. He asked how the tasting room would be possible without parking or a kitchen, and how a tasting room could be classified as complementary agricultural use while bottling and pickling would not be complementary. The site is not currently in an agricultural district but they do have an application pending.

Davis asked about why they included menus in their information packet if they do not intend to be a restaurant. Jed Jordan explained that these were provided to show customary agricultural use as defined

by the State in terms of tasting rooms in the area; they only plan to offer food items that the Ag and Markets Law approves. First, however, they need the kitchen; he reemphasized that honey production needs a sanitary space. David Jordan added that the menus were to show that offering food was a “usual” practice; of 32 wineries/cideries, 50% offer food ranging from snacks to full restaurants, with most having bistro-level menus. He said they had submitted a preliminary menu to the Department of Health which focused on foods that pair well with apple cider, with the idea of promoting the sale of the farm-based product, cider. This menu conformed to food you can eat while standing or walking around. He said that while the revenue split for cideries might be 70% to 30% beverages to food, restaurants would be the reverse.

Davis also asked if this would be approved if the Jordans were in an agricultural district, and it was clarified that Code Officer Norman is considering the code as it is now. Planner Czamanske spoke to the uses allowed in the Low Density Residential zone, the Agricultural Districts Law, the Town’s “right to farm” law (Law No. 2 of 2009), and a letter from Code Officer Norman to the Jordans. The Town’s right to farm law allows the NYS agricultural districts definitions and uses to apply to zones where customary agricultural use is allowed, including Low Density Residential. Czamanske said that the Ag Districts Law has a use envelope, and he and others thought there would be more food service than what the law envisions. David Jordan emphasized there would not be. He would be happy to do a smaller kitchen, but the kitchen needed for a home commercial kitchen has its own regulations, which require a certain level of equipment.

Supervisor Dietrich noted that only one side was being presented and that there is some depth to the issue. There are code rules as well as zoning rules.

Richards said he felt no one objected to the project, and that the dilemmas are the Code Officer’s objection to a kitchen and the potential parking issues in Low Density Residential. He expressed interest in working with the Jordans rather than being seen as an obstruction. Jed Jordan said the code does not specify what activities look like farming and what do not—why is a tasting room a farm activity, but a sanitary kitchen bumps them out of a farm activity? Gagnon said that this is the wrong venue to ask the Jordans’ question—the Planning Board’s role is layout and site planning, whereas their disagreement is with the Code Officer on an interpretation of a customary agricultural activity, for which the Board of Zoning Appeals (BZA) would be the right venue. Czamanske added that the Planning Board has nothing it can approve. Site plan review is not required and there is no action for the Board to take. When he wrote the memo for the Board, he had been thinking of food service not the issue with the sanitary kitchen. The BZA could take up the issue.

Davis asked about the use envelope of the County-designated State agricultural districts—what is the difference between being in an agricultural district or not given that Danby has its own right to farm law? Czamanske answered that the definitions and uses that are protected by the State in agricultural districts are viewed to be part of what are customary agricultural uses in the Town’s zones, even if they are not in an ag district. As the right to farm law has a broad definition of farming that does not include everything stated explicitly as in the State’s Agricultural Districts Law, it has been interpreted that the State’s specificity applies in the Town’s zones. However, protection from nuisance lawsuits and the preemption of local regulation does not come along with the right to farm law; the Town can regulate farming that is not in an

ag district. In the Jordans' case, Davis noted that it does not matter if they are in an ag district or not. Czamanske said that this is why a tasting room with finger foods was allowed by the Code Officer. Ted Crane added that Town laws and regulations can be more restrictive in areas that are not part of an ag district.

Bergman asked about a kitchen for finger food preparation, given that that is allowed. Scriber agreed that finger foods like honey straws and maple candy could not be processed without a kitchen. Czamanske said that the kitchen could not be used to go beyond what the Ag and Markets Law allows. He reiterated that if the Jordans felt the Zoning Officer was not interpreting something correctly, the Board of Zoning Appeals would have the authority to give a determination. Rundle said that if the right to farm law says you can do whatever Ag and Markets Law would allow to be done in an ag district, and one of those things is processing local food for sale, he does not see an issue. Gagnon said that Danby's right to farm law was written to protect farming in a rural community. This was before wineries and cideries were customary. Now Ag and Markets has expanded its definitions and has guidelines to limit what you can do. He felt Danby's law was to say "if Ag and Markets is okay with it, we are okay with it." He said that they could ask Ag and Markets what they think about kitchens. Czamanske reiterated that he did not previously appreciate the kitchen issue; he agrees with those who said that if you can have a kitchen to process things produced on a farm in an ag district, you should be able to do it elsewhere in the Town.

Richards said that the Code Officer acts to look out for the community, and sometimes laws may be difficult to interpret. He thought it telling that none of the neighbors have voiced objections. Rundle disagreed with the second point, saying that the neighbors might not know how a kitchen will impact them, and the Board must consider what the potential kitchen will look like in the future, particularly given that the property or business may be sold later. David Jordan said that in the long view, this is a branch operation and the purpose is brand awareness. It is a tiny place with a small capacity. If it gets too busy, they can build out the farm or another location.

The Board discussed whether to contribute an opinion. Rundle said he did not feel it would be a good precedent to pass a resolution. He noted that the Board had spent an hour without anyone saying the proposed kitchen could not be in the Low Density Residential zone, and he did not want to do anything more formal than that. It was agreed the minutes would provide a record of the discussion.

### **Parking**

Rundle noted that in the proposal there were tables and chairs and a lot of parking, which is one reason he thought they might be trying for a restaurant. David Jordan explained that they referred to the Zoning Ordinance to get ideas on parking and it suggests one parking space for every three seats for a restaurant; there are 30 seats so they tried to show 10 parking spots. Jed Jordan added that they represented the maximum possible spaces to try to address concerns of overflow parking; they wanted to show there would not be road hazards.

Rundle noted the Town's restrictions related to setbacks, and that the plan does not meet those restrictions. In relation to parking, Jed Jordan read from "Local Laws and Agricultural Districts: How Do They Relate?," part of the James A. Coon Technical Series. "... it is possible that the law or ordinance, because of its vague construction, could be construed as unreasonably restricting farm structures or farming practices." He noted that setbacks may be reasonable under usual conditions but unreasonably restrict a farmer, and the reasonableness depends on the totality of circumstances. Planner Czamanske pointed out that that is for sites in an ag district, which this is not currently. Towns are also allowed to reasonably regulate farm operations, in or out of an ag district. Whether or not a setback is unreasonable would be case specific.

Jed Jordan also noted that parking requirements have not been uniformly enforced along Rt. 96B near the site, with examples of parking near the roadway and in buffers between properties. He said that the ice cream stand up the road, which the Planning Board approved, has its 10 parking spots within 50 feet of the road, and that parking abounds along the road and within the setbacks. Their parking would be safer and less intrusive than much of what is in existence. Czamanske said that if the Planning Board had a site plan that showed parking in a setback area, they would not have the authority to approve something that was in violation of the Zoning Ordinance. For relief, an applicant would have to go the Board of Zoning Appeals.

Supervisor Dietrich noted that the laws on the books are what they are. The Code Officer is bound by that. The point is consistency—there cannot be an exception, a ruling needs to cover everything in the Town. The first step is conversation, but if that does not work, the BZA is next.

Gagnon said this is a voluntary site plan review. The Planning Board is not requiring anything and nor can they because they do not have site plan review authority for this kind of activity. David Jordan said he would appreciate comments. It was clarified that the Jordans do not need to have 10 parking spots as they would if they were a restaurant. Planner Czamanske directed the group to "Parking Requirements For Other Uses" in Section 706 of the Zoning Ordinance. It says that 300 square feet of parking for each 100 square feet of enclosed floor area is needed. He noted that if the Jordans enclose the patio in the future, this would then become enclosed floor area and more parking would be needed. Discussion of the parking plan involved changing it to meet the requirements of the Zoning Ordinance. If the Jordans would like further parking that seems reasonable to them but is in violation of the zoning, they can go to the BZA. David Jordan noted that because there is less than half an acre in question he did not think they need a Stormwater Pollution Prevention Plan (SWPPP).

David Jordan expressed that he had confusion about the entire process. He felt the Town Ordinance was vague in a number of areas, making it difficult to proceed. Planner Czamanske noted that the Jordans would only go to the Board of Zoning Appeals in the case that they are denied something.

## **(6) PLANNER'S REPORT**

Town Planner Czamanske reported the following:

- He passed out a handout of the aquifer protection overlay zone. The Board had been mailed a copy of the updated Zoning Ordinance, but this had not been included. Other laws the Board should have include the stormwater law, the State Environmental Quality Review (SEQR) laws, and the aquifer protection law.
- The timeline on a new planner is that an offer will likely be made next week.
- The retail variety store that had been on the schedule for last month is looking at multiple sites in the area. They were not able to comply at the initially proposed site without a variance for parking; it is a very constrained site.
- C.T. Male Associates will be conducting a housing conditions survey, finishing by the end of February, made possible through a Department of Housing and Urban Development (HUD) Community Development Block Grant (CDBG).
- Czamanske reminded the Board to keep the Agricultural District Review process in mind.
- Regarding de facto subdivisions, Czamanske reminded the Board that the Town Attorney said that in Mr. Melchen's case there was a de facto subdivision. This led him to wonder what process the Town should have for declaring a de facto subdivision. He will explore this issue with Attorney Krogh. Ted Crane asked about the instance where an owner does not want their land to be subdivided, to which Czamanske said if a property is on the tax records as one lot and the metes and bounds description describes one property, then it is one property; it would take some action for a property to be split.

## **(7) ITEMS FOR NEXT MEETING**

The items that did not make it on to the agenda from last meeting were asked to be included (agricultural districts, interim changes to the zoning, and the structure on West King Rd. at Sandbank Rd.). The Board was not sure they needed to discuss the aforementioned structure, but how and if the Town regulates tiny houses, RV parking, and camper parking could be a future consideration. Bergman suggested discussing community aesthetic standards and a group consensus, but it was decided that this would be covered by interim changes to the zoning.

## **(8) ADJOURNMENT**

*The meeting was adjourned at 9:01pm.*

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Alyssa de Villiers – Recording Secretary