



**TOWN OF
BROOKLINE, NEW HAMPSHIRE**

PLANNING DEPARTMENT

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MEETING DATE: February 17, 2022 Compliance Hearing: Sept 15, 2022	APPLICANT: Robert Waite	APPLICATION TYPE: Site Plan – Home Business “Averill House Vineyard.”
APPLICATION NO: NRSP # 2016-D:j-50	APPLICANT’S REP: Robert Waite	REVIEWED BY: Valérie Rearick, Town Planner Michele Decoteau, Town Planner
EXECUTIVE SUMMARY: In 2016, the applicant was granted a site plan to operate a farming / vinery home business at the property located at 21 Averill Road, which is located in the Residential / Agricultural District. Update: February 17, 2022: Compliance Hearing.		

BACKGROUND

Location: 21 Averill Road
Lot Size: 2.7 acres
Zoning: Residential / Agricultural
Land Use: Residential / Agricultural
Wetlands: No (part of the property in the wetland buffer)
Aquifer: n/a

SUMMARY

Review any changes and confirm compliance with letter provided to Robert Waite in February with the following conditions:

- Remind the content of Section 1700.00, Home Business Ordinance
- Request that any modification on the property related to the home business be submitted to the Planning Board for review and approval
- Clarify that any activity on the property not related to agriculture and/or agritourism is prohibited unless discussed with the Board (other activities may be allowed after a complete site plan review).

Case History

2016: The applicant was granted a special permit to operate a Home Business “Averill House Vineyard” and grow vines, fruit trees and small gardens. An existing cellar will be for production, with an aging room and bonded storage area. The farm retail area is in the existing barn with an area for storage, retail sales and sampling.

2018: The Board approved outdoor wine tasting, in addition to the indoor wine tasting. The applicant also demonstrated that there was plenty of parking (able to fit 30 vehicles, cars and delivery trucks).

2020: The applicant applied for a Variance with the Zoning Board of Adjustment to build 24x28 production barn to house fermentation tanks and bottled wine. The ZBA found that “a Variance was not necessary because the space intended to be used by the home business, namely the wine tasting and other public-facing portions of the business, in contrast to the cultivation and production of wine, which are permitted agricultural activities, will not exceed 1500 sf nor 25% of the gross floor area of the structures, especially when the proposed building is completed.”

2020: The Planning Board was provided with an updated diagram of the property showing improvements to the property since approved in 2006. All permits were properly obtained, including State, Building Inspector, and assembly permit from the fire department. The applicant has also used Agritourism to attract visitors to the winery. Agritourism is widely used and falls under many categories including education, recreation, hospitality and entertainment associated with the agricultural activity on a property.

New Documents:

Name	Prepared/Submitted by	Date & Notes	New?
Email from Abutters: Tracey and Ed Perry		August 31, 2022	Y
Email from Abutter: Amy Tate		September 8, 2022	Y

Concerns raised in February

Emails from residents raised concerns about expansion of the business and tree removal. Other concerns cited: traffic, increased incidents of drunk driving, noise and light disturbances until late night hours every weekend, decreased property value, well water concerns, crime and safety concerns of the neighborhood.

Site Visits

Friday January 28, 2022. (Building Inspector and Town Planner, Valerie Rearick)

Notes from Valerie Rearick

- Tree cutting and excavation: It appears that the owner has cut a few large pine trees, not 30 as previously stated. Mr. Waite shows some pictures of the trees that were cut. The goal is to provide more sun to the vines already planted, and yes, to provide additional and practical parking space in addition to the one in front of the house and barn. Excavation is not what was expected and is mainly to remove the tree stump and smooth the area. There was no excavator on the site, only a small backhaul. The wetland area is on the opposite side of the property from where the trees were cut, and stumps removed. Some dead and rotten smaller pine trees were cut close to the wetland. They were also located very close to the house and were a hazard. These cut dead trees were still on the property during the site visit.
- Noise / Traffic / Lights: Mr. Waite explained that he had hosted a few comedy-shows during the summer months with, in mind, the promotion the vineyard using agritourism. Lights are around the barn and in some vines and there is a long distance between the area and abutting properties. We discussed noise and timing. Mr. Waite indicated that in the future he would move any outdoor event to the other side of the house (no direct abutters there). Some events lasted until 8:30 pm or so but he would make sure that all activities would end no later than 8:00 pm.

- Parking: the reason is to provide additional parking space on the property for visitors, further away from the house.
- Buffer: There are plenty of trees between the vineyard and abutting properties. During the summer months, it seems that the buffer should look denser with renewed vegetations (leaves, etc.). Note: no buffer is required on Mr. Waite property as it is an original single lot.
- Future weddings (as posted on Facebook by the logger): Mr. Waite was clearly told that the home business could not include weddings or advertise the property as a wedding venue.
- Meeting with the Planning Board on February 17, 2022. Staff informed Mr. Waite that he would need to attend the meeting to address any additional concerns the Board may have. Abutters will be notified of the meeting by regular mail (as this is not a site plan update, but a compliance hearing).

Tuesday, July 26, 2022. (Town Planner – Michele Decoteau)

Met with Robert (Bob) Waite and toured the tasting barn where tastings and events are held. The upstairs is not part of the tasting/event space. Currently there are two outside spaces used for tastings and events: the vineyards have tables interspersed and there is a large area behind the tasting barn with a tent, tables and chairs, and heaters.

We also toured the wine cellar and new production barn with a small office space. These spaces were clearly used for the production, bottling, and labeling of wine.

We reviewed the parking location and numbers. The area in front of the house (on the southern end of the lot) was cleared is used for parking and the new area on the northern side of the lot (where trees were recently removed). And additional parking area is available in front of the grape vines. Mr. Waite reported that the neighbor across the street offered additional parking. There is one parking space immediately in front of the house behind. He reported that six spaces were needed for residents and two spaces for additional staff who were not family or residents. He said that for some very popular special events, he needs more than two non-residential staff members. There were 30 spaces remaining.

Visitors must reserve a time to visit the vineyard. This limits the number of visitors at any one time. We didn't discuss the number of visitors per day.

Special events were reviewed. The events were moved closer to the barn and amplification was adjusted to be facing the barn. The outside events he schedules are comedians (once a month on Saturday), acoustic musicians during the day, and blues bands on Sunday afternoons. Events in the barn include bottle your own wine, small group wine tasting, and private parties/events. He said all events are over by 7pm, most are over by 6pm.

He does host weddings on site. Wedding ceremonies currently are held in the vineyard and he is planning on landscaping the area on the southern side of the lot as a wedding ceremony location. Weddings are reserved times, and the time is not available for other visitors. He said that the wedding ceremony guests may enjoy a glass of wine to celebrate, receptions are held elsewhere.

STAFF RECOMMENDATIONS

August 2022

Review and clarify:

I702.05 – Number of staff outside of resident family members who can work at any one time in a Home Business

I702.07 – Hours of operation.

I702.08 – Sufficient parking – is there sufficient parking? Could temporary or seasonal barriers be added to the parking area on the southern side of the lot to direct all visitors to use the driveway for egress & ingress? This would preserve safe sight lines.

I705.05 – Traffic generated is more than 24 business trips per day as they have 30 parking spaces that are filled at least once per day on the weekend. Clarify “average”

Other observations:

1. At what point does a Home Business outgrow the home business designation? This is a very successful and growing business that needs to seek a commercial location for some of the more heavily commercial or visitor intense events.
2. Clarify “wedding venue” and if weddings can or cannot be part of a home business.
3. If they add to the home business, what would be next? Clarify uses such as catering, weddings, and a bed and breakfast would be allowed in addition to what is currently permitted.

Comments from other departments

Police Department: Only complaint was a noise complaint from 8/1/2020. No reports of impaired driving on that section of Averill Road since 2017.

Building Department: No sign permits issued on J-050.

September 2022

New information:

Abutter letters and comments: New abutter letters raise issues regarding traffic, safety and noise. Concerns raised about public safety, objectionable circumstances (noise, ZO Section I702.04), and exceeding the time frame for activities apparent to the public (ZO Section I702.07).

DOT Tourist Signs: After speaking with Sherry King at DOT, she said that under “agriculture and food”, a business with this type of sign permit is required to be open 5 hours per day 5 days per week. A farm is not required to apply for a tourism sign.

NH Agriculture Commissioner: After speaking with Shawn Jasper, he explained agritourism as accessory use to agriculture. For an event to be considered agritourism, it should be a way to get visitors to the farm (used in a generic sense), sample the farm atmosphere (sample goods, purchase items grown or produced, enjoy the atmosphere, etc.) and be invited to return. Agritourism supports agriculture.

It is unclear that without a Site Plan approval the Planning Board could regulate some parts of an agricultural use that includes agritourism. Ordinances regarding noise and public safety will always apply.

Staff Recommendations:

1. **Site Plan approval.** The Planning Board can require compliance with the approved site plans and the conditions noted on them. Time and days of operation are noted on the 2016 Site Plan. In addition, the requirement that the business sign be permitted has not been fulfilled. As noted in 2018, any changes to the Site Plan need to come to the Planning Board. The Board could request an amended Site Plan to include the current hours/days of operation, the current parking (noting where staff and residents park), noting the maximum number of patrons per day, and limiting the noise that is discernible at the lot line. In addition, the Board may wish to request information on how the agritourism use is accessory to the agricultural use or request a plan with a timeline, on when events above a certain size will be moved off-site.

2. **No Use can compromise public safety.** If the Board chooses to, you may limit the number of patrons per day per the reservation system Averill House Vineyard employs as a way of limiting the traffic impact on Averill Road.
3. **No Use can create a public nuisance** and in the absence of guidance from performance standards or a town noise ordinance, the Planning Board must rely on the General Requirements of a Home Business under Section 1702.04. The “objectionable circumstances” can include noise and excessive traffic beyond what is generated by a residential Use.