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**TOWN OF WENHAM  
ZONING BOARD OF APPEALS  
RECORD AND DECISION AFTER REMAND  
35 Arbor Street, Wenham Massachusetts  
Petitioner: Alison Standley**

The Zoning Board of Appeals of the Town of Wenham, Massachusetts (the “Zoning Board”) opened a duly noticed remand public hearing in accordance with G.L. c. 40A, §11, the Remand Order issued in Standley v. Feeherry, Land Court Case No. 19 Misc. 000137-RBF (the “Land Court Action”) and the Town of Wenham Zoning By-law (“By-law”) on July 25, 2019 at 7:30 p.m. at the Wenham Town Hall, 138 Main Street, Wenham, MA. The remand public hearing concerned a special permit (the “Special Permit”) granted on February 20, 2019 to Alison Standley (“Standley”) pursuant to Section 5.2.7.5 of the By-law, which Special Permit allowed Standley to expand a barn located on the real property located at 35 Arbor Street (Map 13, Lot 006) (the “Property”). Standley constructed the barn expansion but then appealed the Special Permit in the Land Court Action contending that, pursuant to the agricultural protections found in G.L. c. 40A, §3, she did not require the Special Permit and could not be bound by the conditions set forth therein.

The following members of the Zoning Board were present at all sessions of the remand public hearing: Anthony M. Feeherry, Evan Campbell and Dana Begin.

A notice of the remand public hearing was mailed, posted and advertised as follows, a true copy of which is on file in the office of the Zoning Board:

1. Published in The Hamilton Wenham Chronicle, a newspaper of general circulation in the Town of Wenham on Thursday July 11, 2019 and Thursday July 18, 2019;
2. Posted at the Town Clerk’s office on July 2, 2019; and
3. Mailed July 2, 2019 to the petitioner, abutters, owners of the land directly opposite the property in question on any public or private street or way, abutters to abutter within 300 feet of the subject property.

The remand public hearing was continued to September 26, 2019 and November 18, 2019, whereupon it was closed. The Zoning Board continued its deliberations to December 2, 2019 when it reviewed and voted its Record and Decision after Remand.

**RELEVANT FINDINGS AND BYLAW PROVISIONS**

The Property is located in the Residential District and consists of approximately 5.5 acres of land. Pursuant to By-law Section 5.2.7.5 “Barns may be authorized by Special Permit from the Board of Appeals in the Residential District.”

The Zoning Board originally held a public hearing on Standley’s application for a special permit on February 7, 2019 and, based on the information provided by Standley, voted to grant the Special Permit subject to certain conditions. For example, the Zoning Board relied upon

Standley's representation that she intended to keep her five horses on the Property and that stalls in the barn would not be rented for a fee or any other financial arrangement, the Zoning Board conditioned the Special Permit on there being no more than 5 horses on the Property and prohibited commercial or business activity from the expanded barn. The Zoning Board also relied upon the representation that the only commercial activity at the Property was an HVAC business operated as a matter of right. This representation was consistent with evidence presented at prior hearings relating to this matter, including a representation that a dog walking business was not conducted at the property.

Standley appealed the Special Permit in the Land Court Action arguing that the primary purpose of the Property is commercial agriculture and thus her use of the Property is protected by G.L. c. 40A, §3 and, the Town cannot require a special permit for or condition the use of the barn. Standley did not assert protections under c. 40A, §3 when she originally applied for the Special Permit. On June 4, 2019, the Land Court issued the Remand Order making it possible for Standley to present that position to the Zoning Board. The Zoning Board notes that the Verified Complaint filed with the Land Court included representations about commercial activities which are inconsistent with the representations made to the Zoning Board in February 2019.

During the remand public hearing, Standley presented the following facts:

Standley owns the Property and has already constructed the expanded the barn. Standley keeps 24 chickens, five horses and two mini horses on the Property. The expanded barn houses the horses. All of the horses are owned by Standley or her daughter. At least as to Standley's daughter, those horses are kept for pleasure. Standley's daughter pays Standley a monthly fee to rent three stalls in the expanded barn. Standley also leases out the use of one of her horses to a third party for a monthly fee of \$150. Standley indicated that she may, in the future, seek to sell a goat from the Property. Standley also indicated that she may rent stalls in the future.

Notwithstanding her representations to the Zoning Board in February of 2019, Standley stated that, since at least 2013, she occasionally boarded horses owned by others at the Property. In 2018 Standley reported total revenues of approximately \$5,000 and losses of approximately \$7,000, for a net loss of approximately \$2,000 from her agricultural pursuits on the Property generally.

Standley resides in the two-family dwelling on the Property and her husband operates his HVAC business from the Property as a home occupation. A significant portion of the Property also appears to be wetlands.

The Zoning Board heard comment from members of the public who expressed concern about a number of items including impacts to wetlands on the Property and from the outside lights on the barn.

The Zoning Board also received legal opinions from the Standley's counsel and Town Counsel.

G.L. c. 40A, §3 provides, in relevant part, that “[n]o zoning ordinance or by-law shall . . . prohibit, unreasonably regulate, or require a special permit for the use of land for the primary purpose of commercial agriculture. . . nor prohibit, unreasonably regulate or require a special permit for the use, expansion, reconstruction or construction of structures thereon for the primary purpose of commercial agriculture. . .” (emphasis added). The aforesaid protections of c. 40A, §3 “may be limited to parcels of 5 acres or more. . .” The definition of “agriculture,” as provided in G.L. c. 128, §1A and incorporated into c. 40A, §3, includes “the raising of livestock including horses [and] the keeping of horses as a commercial enterprise. . .”

For the reasons and findings set forth above, by a vote of 3 in favor and none opposed, the Zoning Board determined the primary purpose of the Property is not commercial agriculture. Specifically, the primary purpose of the property is residential with an allowed home occupation. The commercial activity identified by Standley is de minimis and not the primary use of the land.

The Zoning Board, by a vote of 3 in favor and none opposed, hereby reaffirms its February 20, 2019 Special Permit subject to the following modified conditions:

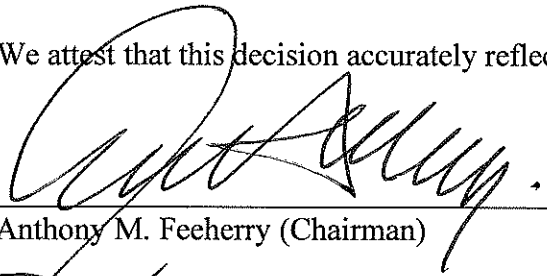
1. The lights on the front of the existing structure shall be directed to as to minimize light shining onto the neighboring properties and any new lighting will be directed to minimize light onto adjacent properties. Outside lighting shall generally be off by 10:00 p.m. except when necessary for emergencies or activities that are required during the evening hours. The building inspector shall confirm that reasonable efforts to adjust the lighting have been made by the Petitioner.
2. No commercial or business activity is to be conducted from the barn, including boarding, rough boarding or temporary boarding of horses/animals other than those owned by the residents or family members of residents of the Property. Nor shall there be any residential uses other than the existing two-family residence. De minimis commercial activity, including the sale of eggs and leasing out of the use of one horse owned by Standley shall not constitute commercial or business activity in violation of this condition nor for determining eligibility for immunities granted by MGL Chapter 40A Sec 3.
3. Pursuant to Section 4.1 Table of use Regulations Standley may keep up to seven (7) horses on the Property.

Except to the extent it is modified by, or inconsistent with this Record and Decision after Remand, the February 20, 2019 Special Permit for the Property shall remain in place and is incorporated herein by reference. Of note, conditions 4-7 of the February 20, 2019 Special Permit shall remain in full force and effect.

In addition the Board finds that based on the facts as presented and as found herein and having considered the factors set forth in Section 13.4.3 of the Zoning Bylaw that the adverse affects of the proposed use will not outweigh its beneficial impacts to the Town or the neighborhood, in view of the particular characteristics of the site, and of the proposal in relation to that site.

**VOTE:** (Yes) Anthony M. Feeherry, (Yes) Dana Begin, (Yes) Evan Campbell.

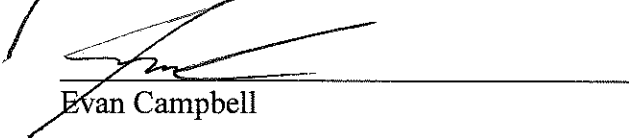
We attest that this decision accurately reflects the Zoning Board's decision.



Anthony M. Feecherry (Chairman)



Dana Begin



Evan Campbell

DATE: December 2, 2019

FILED WITH THE TOWNCLERK ON: Alanna M. Bucco Dec. 3, 2019

Notice to Petitioners and Interested Parties on: Dec 3, 2019

Any person aggrieved by this decision may appeal by bringing an action within twenty (20) days after the decision has been filed in the office of the Town Clerk in accordance with G.L. c. 40A §17.