

DRAFT MINUTES

Town of Tyringham

Planning Board Meeting

7:00 PM November 6, 2019

Town Hall, Tyringham, MA 01264

In Attendance: Mark Curtin, Ellen Slater Gonnello, and Pete Salinetti

Public in attendance: Paul & Evelyn Margus, Carol Harding Fanta, Lynn Bertelli, Alan Wilcox, Bill Bean, Nick Felix, William Roche, Ellen & Bob Freeman, Catherine Clucas, Robin Almgren, Celie Kittridge, Mary Pappenheimer, Tonio Palmer, Ann & Peter Herbst, Jim & Karen Consolati, Jeremia Pollard (Town Counsel)

ANRs, Courtesy Notices, Mail:

It was noted that mail and emails received regarding the Felix special permit application by the board will be attached to the meeting notes.

New Business:

Mark Granger & Parson, approval on plan from 128 & 132 Jerusalem Road. Mark made a motion to approve the plans. Pete seconded. No opposition.

Old Business:

The Town Plan

- Mark explained that a Town Plan has been on the agenda for a long time and that it would address some of the concerns brought up regarding the Felix special permit application. A Town Plan would require residents and town boards to come together and map out goals and strategies for the town. Mark encouraged those in attendance tonight to get involved in discussions about a town plan.
- Carol requested that the slideshow presented at a Saturday meeting be added to the town website for all to see.
- The slideshow, titled "Creating a Master Plan for Your Community" by Ralph Willmer will be attached to today's notes.

Special Permit application by Nicholas Felix / Cobble Farm LLC for the purpose of hosting events at 8 Webster Road, Tyringham, MA.

- Mark read 4.2.3 regarding Special Permits to address a question that was brought up about whether or not the Planning Board is the correct board to decide on the application.
- Pete expressed the importance of making a decision cautiously and if passed, restrictions are set to make abutters and neighbors feel comfortable.
- Ellen expressed that there is a lot of information and she needs more time to review before making a decision.
- Jeremia, Town Council, pointed out that the board cannot vote on the special permit tonight because it needs a supermajority. There are only 3 people here tonight. He confirmed that the Planning Board is the correct group, by the law, for the permit application process to go through.
- Concerns raised & points made:

- Someone said that due to 7.3.3. The permit application should not be allowed (7.3.3 mentions “public convenience or welfare” and “not be detrimental to ...”)
- Ann presented a packet of documents to the board which included a document showing that there were taxes due to the town on Oct 1st and are unpaid at this time for the 8 Webster Road property.
- Jim clarified that there has not been an inspection by the Board of Health. This would happen after approval (if approved).
- Traffic & noise concerns were discussed again.
- Al suggested that the board write restrictions to prevent potential issues with traffic and noise.
- Lynn asked if a business that does not own the property could apply for a special permit for use there.
- It was also brought up that the LLC on the permit is not registered.
- Concerns were raised about the financial ability to make abutters whole if damage occurred due to events.
- A document from Nicholas Felix titled “Cobble Farm operation and restrictions guidelines” that was submitted to the board was read aloud by Mark.
- Jeremia explained/suggested:
 - Each board member can make a decision for their own reasons. He brought up Buckaneer development against the town of Lenox as an example to review.
 - Confirmed that there is a bylaw saying that a permit may be denied if there are outstanding taxes due to the town.
 - A business that does not own a property can apply for a permit. Sometimes a person can’t register as an LLC without a permit to operate as a business. Furthermore, it is often not in the business’ best interest to spend time and money registering as an LLC before permits & other needs are in place.
 - Since the permit application is for “Nicholas Felix / Cobble Farm LLC” that is the only entity that would hold the permit. Therefore, the only entity that could operate under the guidelines of a special permit is “Nicholas Felix / Cobble Farm LLC.” So, if the permit is approved and if Cobble Farm LLC does not exist when it is time to operate, Nicholas cannot do so.
 - A liability policy for events would address the concern about coverage for potential damage to neighboring properties and could be a restriction on the permit.
 - Concerns voices and written would be more effective as requests to the board for restrictions on the permit.
 - The board has 90 days from the public hearing (which was 10/16/19) to make a decision and could make a motion to reopen the public hearing.

Marek made a motion to continue this meeting on Wednesday, November 20, 2019 at 7pm. Ellen seconded. No opposition.

Adjourning: 8:16 PM

Our next meeting will be Wednesday, November 20, 2019

Respectfully submitted, Ellen Slater Gonnello

Submit to tyrcc@bcn.net

CITIZENS' LETTER TO THE TYRINGHAM PLANNING BOARD

Re: Petition of Nicholas A. Felix / Cobble Farm LLC

Owner: Veronica O. Deyoso

Property: 8 Webster Road, Tyringham

Zoning District: Agricultural-Residential

We, the undersigned residents of Tyringham, have the following objections to Nicholas Felix's Special Permit Petition to turn the property at 8 Webster Road into a commercial event space and hotel facility:

1. The Tyringham Zoning By-Laws Do Not Allow Commercial Event or Hotel Uses by Special Permit.

It is a principle of land use law that uses not specifically listed as permissible by right or by Special Permit in a zoning by-law are not allowed. To this end, Section 4 of the Tyringham Zoning By-Laws state:

Except as provided by law or in this Bylaw, no building or structure shall be erected, and no building, structure or land or part thereof shall be used for any purpose or in any manner other than one or more of the uses hereinafter set forth as permitted by right or as permissible by special permit and so authorized.

The Petition fails to cite the Tyringham Zoning By-Law that allows commercial event or hotel uses in the Rural-Agricultural District either by right or by Special Permit. This is because it cannot; the By-Laws do not allow this uses. If the proposed uses were allowed by Special Permit, they would be listed in Section 4.2 of the Bylaws. They are not. Moreover, the proposed event space and hotel are also not sufficiently similar to the recreational facilities and business/consumer establishments actually listed as allowed by Special Permit. They are neither a "[g]olf Course, ski tow, riding stable or other recreational facility of similar character" as listed in Section 4.2.2, nor a "[r]etail business or consumer service establishment, including but not limited to food store, barber, or beauty shop, antique shop, eating establishment, bank or other office use" as listed in 4.2.3. For these reasons, they are not allowed, and the Planning Board has no authority to grant a Special Permit authorizing them.

If the Petitioner wishes to use the property of Veronica O. Deyoso for an event space or hotel, he would instead have to submit a Petition for use Variances from the Tyringham Zoning Board of Appeals. The circumstances of such Petition would not meet the stringent legal standards for granting use Variances under Section 7.2.2 of the By-Laws, but, in any case, such Petition would require a complete re-application, re-publishing, and re-noticing of the hearing, since Special Permit hearings cannot simply be amended into Variance hearings, much less transferred to another Board.

2. Even If the Planning Board Had Authority to Grant the Special Permit Requested, Petitioner Does Not Meet the Requirements of the Zoning By-Laws.

As referenced in Section 7.3.3 of the Tyringham Zoning By-Laws, Special Permits may only be granted by the Planning Board if the uses proposed meet five specific standards. The Petitioner's proposed event space and hotel facility meet none of these standards:

- a) **The proposed event space and hotel facility are not in compliance with all provisions and requirements of this Bylaw and are not in harmony with its general intent and purpose.**

Section 1.1 of the Tyringham Zoning By-Laws states that the purpose of the By-Laws is "to promote the health, safety, convenience and welfare of the inhabitants of the Town." Petitioner's proposed uses would accomplish none of these aims. The proposed event space is undefined, without benefit of a site plan including lighting and parking information. The appropriateness of the house for the proposed hotel use cannot be determined, because no sketches of its layout have been presented to the Board.

- b) **The proposed event space and hotel facility are not essential or desirable to the public convenience or welfare at the proposed location.**

Neither an outdoor event space nor a hotel facility is essential or desirable to the Town of Tyringham, especially in the quiet, rural neighborhood where Petitioner proposes to create them.

- c) **The proposed event space and hotel facility will be detrimental to adjacent uses and to the established or future character of the neighborhood.**

The additional noise and traffic that can be expected from addition of a large, commercial event space and hotel to the property at 8 Webster Road will be detrimental to adjacent residential uses and to the character of this quiet, rural neighborhood.

Moreover, the undersigned are concerned that owner Veronica O. Deyoso lacks the financial ability to maintain the property properly and to provide compensation for damage to persons or property resulting from the event or hotel use. No evidence of insurance or bonding has been provided to the Planning Board. There is a Berkshire Bank mortgage on the property in the amount of \$1,050,000.00, and on October 9, 2019, a Federal Tax Lien in the amount of \$74,349.60 was recorded against the property at the Registry of Deeds for Deyoso's failure to pay income taxes.

Also, the Petitioner's purported business, Cobble Farm, LLC, is not registered with the Commonwealth of Massachusetts as a Limited Liability Corporation, and thus does not exist.

- d) The proposed event space and hotel facility will create undue traffic congestion and unduly impair pedestrian safety.**

The additional traffic drawn to the area by the proposed commercial event space and hotel will doubtless create undue traffic congestion and impair pedestrian safety along the small, unlit, rural road where it is proposed. The Petitioner has not presented any traffic study to establish the safety of the proposed uses at the site.

- e) The proposed event space and hotel facility are not served by public water or sewer systems, which will subject neighbors to hazards affecting public health, safety and the general welfare.**

Petitioner has not shown that there is sufficient water available at the site, or adequate septic facilities for the hotel use.

Please turn page for signatures

For the above reasons, the undersigned residents of Tyringham oppose the Petition of Nicholas Felix to turn the property at 8 Webster Road into a commercial event space and hotel, and request that the Planning Board vote against the requested Special Permit.

Signed,

Betty Jean Bean 63 Main Rd.	John Hanson 221 Main Rd.	William Pappenheimer 11 George Canon Rd.
Bill Bean 63 Main Rd.	Julia T. Hartman 1 Webster Rd.	Richard Ryan 12 George Canon Rd.
Lynn Bertelli 123 Main Rd.	Steven C. Hartman 1 Webster Rd.	Jim Sharkey 12 George Cannon Rd.
Frank Cespedes 59 George Cannon Rd.	Ann Herbst 93 Main Rd.	Nadia Watts 1 Webster Rd.
Catherine Clucas 107 Main Rd.	Peter Herbst 93 Main Rd.	Al Wilcox 123 Main Rd.
Bill Cosel 40 McCarthy Rd.	Celia Kittredge 107 Main Rd.	Liz Williams 475 Fernside Rd.
Bonnie Costello 59 George Cannon Rd.	Donald P. Lombardi 21 Webster Rd.	Mark Williams 475 Fernside Rd.
George Elvin 23 Cooper's Creek Rd.	Evelyn Margus 49 Webster Rd.	
Ginger Elvin 23 Cooper's Creek Rd.	Paul Margus 49 Webster Rd.	
Carol Hardy-Fanta 17 Webster Rd.	Adrienne Meisner 40 McCarthy Rd.	
Chris Fanta 17 Webster Rd.	Elisa Miller-Out 1 Webster Rd.	
Helene Fuchs 21 Webster Rd.	Dr. Tess Moore 1 Webster Rd.	
Ann Gallo 42 Main Rd.	Barbara Palmer 59 Main Rd.	
Joe Gallo 42 Main Rd.	Tonio Palmer 59 Main Rd.	
Elizabeth Hanson 221 Main Rd.	Mary Pappenheimer 11 George Canon Rd.	

November 1, 2019

Tyringham Planning Committee

Town Hall

Tyringham MA, 01264

Via email to Mark Curtin, Chair of Tyringham Planning Committee at

36magic36@gmail.com

Dear Planning Committee:

We are writing in response to the application by Cobble View LLC to obtain a special permit allowing them to convert the property at 8 Webster Road into a commercial event space and lodging.

When we moved to 12 George Canon Road nearly 14 years ago, we did so to enjoy the town's unspoiled rural character. While we are accustomed to hearing noise from events at Santarella and the Fire Department Pavilion, and in the past from Sunset Farm when events took place there, 8 Webster Road is closer to our home and would therefore be even more impactful to our quiet enjoyment of our property and potentially the value of our property.

As active hikers, cyclists and walkers we know the roads of the town well and believe the intersection of Webster and Main Road is a particularly dangerous one due to visibility and traffic speed on Main Road.

Adding events at a third location (and potentially four if the new owners of Sunset Farm, who we now understand, regardless of stated purpose, have also inquired about a special permit to hold events) would be a meaningful increase in frequency of these nuisances and in a concentrated area of the town.

We do not believe that Tyringham has the resources to manage multiple simultaneous events at these various venues.

The permit application made mention of guests staying overnight as well. This combination of events and lodging would also seem to put undue strain on the water and septic systems of the older residential property. Since we all rely on private water and septic systems, contamination of and stress on ground water is a great concern for all residents of Tyringham.

Having read the materials available on line and attended the October planning meeting we were left with the following questions and comments:

- What authority does Mr. Felix/CobbleView LLC have to make this application? His claim to be a tenant at the property were at odds with his statements about residing in Pittsfield, and we question what basis such a tenancy would provide him to make this permit application in any case. The property owner was not present at the meeting and seems not be directly involved in the application process.
- Granting the special permit is a concrete action while Mr. Felix' "business plan" and uncertain answers to important questions seem anything but concrete. Richard (the un-

dersigned) worked for organizations that host large events in similar venues (including The Trustees of Reservations) and doing so well is a serious business. Mr. Felix' ambiguous answers to questions at the meeting left the impression that he hasn't fully thought things through.

- At the meeting Mr. Felix professed to be a good neighbor with respect for the community's concerns, but he didn't reach out to neighbors for input in advance of submitting the application.
- Finally, we see the repeated comparisons made with Santarella at the recent Planning Committee meeting as misleading:
 - That property is being actively marketed as residential/commercial and has operated as such for years. The family that owns it lives on site and from our perspective are proactive hands-on managers.
 - Mr. Felix, who appears to be the sole person behind the applicant for the permit at 8 Webster, stated that he lives in Pittsfield and works in North Adams. This arrangement wouldn't allow for proactive or hands-on management.

In summary, we believe that granting the special permit would have a substantial and prejudicial impact on the character of the town, our quiet enjoyment of our home and our property values.

We strongly oppose the application.

Best regards,

Richard Ryan and James Sharkey
12 George Cannon Road
PO Box 414
Tyringham, MA 01264
Email: rcrjs@mac.com

***Mary & William Pappenheimer
11 George Canon Rd.
Tyringham, MA 01264***

November 5, 2019

TO: The Tyringham Planning Board and all others involved in Tyringham Town Government.

We feel that the Special Permit, as requested by Nick Felix, which is above and beyond the zoning laws of Tyringham, will adversely affect so many of his neighbors. It will result in frequent high levels of noise and traffic. I strongly feel that this permit should not be approved.

Approximately a month ago, for example, a event with live music was held at the Firemen's Pavilion and we had to close all of our doors to achieve a modest level of quiet. The sound carries very easily over the valley in our area. While we do not mind the occasional event, more and multiple events with the Felix Proposal would be very disturbing.

We understand that his financial needs are involved, but this should not be put upon his neighbors or the town of Tyringham to solve. We have all seen, heard and been affected by previous home owners who have needed to finance their land by such endeavors and the adverse) results. So, in my opinion, we do not need to relive these results again.

I live directly behind Santaralla and I can personally attest to the appropriate amount of outside noise, the police assisted parking and the infrequency of events for a limited amount of people. But this is not what Nick Felix wants.

So, NO, I/we do not think the proposed Special Permit on use of this land and home is financially, logistically or legally feasible, given the problems that have already been brought up by other long standing neighbors in Tyringham. As part of the fourth generation of this town, I hope that our opinion will be respected and you will consider the adverse ramifications of any decision granting this permit.

Sincerely,

Mary and William Pappenheimer

Frequency and usage of special permit

Regarding frequency and usage of the special permit, it would be difficult to quantify how many events will actually take place. Please keep in mind this is a for profit business. Part of the objective is to be able to maintain and retain the property, these expenses in and of themselves total approximately seventy-five to eighty thousand dollars annually. In addition to the fixed operating cost of the property not withstanding improvements or necessary repairs, and then adding the overhead cost of operating business with room for financial growth. A restriction of fewer than ten events would be financially preclusive resulting in hardship.

So long as the business is conducted without infringement or disturbance to other town residents I should be allowed to operate within the confines of the property freely and at my own discretion. I ask that the following factors in addition to the above mentioned factors are taken into account and considered.

- 1 Not all events will be large in scale or reach the limits of the permit capacity.
- 2 Many events may be in numbers no greater than 25 persons.
- 3 Cobble Farm is exploring other kind of events and or avenues to generate income (Air B&B style of week or weekend rental to no more than a couple or one family).
- 4 Short term seasonal rentals may be available to individuals.
- 5 Some of these options will not require a special permit.

The complexities can be as follows: Without question many abutting neighbors will be hypervigilant of any activity at the property. The planning board should consider the factors if the property is rented in the realm of Air B&B style by a family or group greater than 5. Those temporary guests by right are entitled to host their own gatherings music and all. None of which falls under the guidelines of the special permit, however will likely be reported to the town as a complaint by abutting neighbors.

I myself may have personal gatherings as this is still my home and by right I may host an event or have family gatherings without guidelines of a special permit. Along with that there will be increased traffic and again it postures for additional complaints by abutting hypervigilant and displeased neighbors.

I am painting a picture of how things could present given the public knowledge of me applying for a special permit as well as the overt opposition to the same. So respectfully speaking; where do you draw the line? Given the reasonable yet complex description of how things are perceived and reported, and how exactly accurate the facts are. Case and point- an untrue noise complaint was alleged at the public hearing on October 16th 2019. Therefore unless the planning board is available to inspect the property each and every day where does one separate fact from fiction and how do we all proceed in the day to day reality without me being unreasonably encumbered.

2.

So again I ask that the frequency consideration be based on true and documented disturbances rather than amount of "events" held that directly fall under the guidelines of the special permit. Please reference the attached monitoring and control plan for noise.

DATA

Until Cobble Farm is up and running after the first official season of operation, only then would it be feasible to factually conclude data. I can have a performance report and other documentation of usage to include the following:

- 1 Events --as defined and covered by the special permit
- 2 Air B&B Rentals
- 3 Private short term week/weekend rentals
- 4 My own and personal use of the property
- 5 Any other miscellaneous use that would be documented yet not; fall under the guidelines of the special permit.

At the completion of the season year I then will be able to provide data and also a future report based on bookings or reservations of the property for the following year.

At any time I will submit to the special planning board and furnish any data at their discretion prior to the annual renewal date as a means of transparency and providing new and updated information.

Business Sustainability

It is my hope that Cobble Farm becomes a successful business, however nothing is guaranteed. Most businesses take time to grow, and by my own conservative projections I don't expect bookings every weekend during our first season. My family and I are prepared and aware that the business may not be as successful as we wish despite our best efforts. However given the contrary if the growth is promising and it becomes financially feasible to continue resulting in success. I would invite a continued dialogue with the special planning board not limited to growing into other compliances at the discretion of the Board of Health and the Building Inspector.

Ending Remarks

Given all of the above factors I am asking that the permit be granted unrestricted regarding number of events with the exception of Sundays and Mondays pending a yearly review for the many reasons described above in detail.

Cobble Farm operation and restriction guidelines

Event capacity not greater than 99 persons

Days and hours of operation

Tuesday through Saturday events not to begin earlier than 11am and to end no later than 10pm

Closed on Sundays and Mondays for any events

Proposed calendar season first weekend in June and closing the third weekend of October

Noise control protocols and restrictions

No amplified music outdoors

Any amplified music is only to be utilized in the Manor House

Monitoring and control

A decibel meter is to be utilized at each event and the readings documented in a log book with the time and date of the reading. The decibel reading will be taken at a distance of 100 feet from the event site.

All decibel meter monitoring can be supervised by the Chief of Police or his designee without notice.

The decibel reading records will be kept for review of the planning board upon special permit renewal, or produced as documentation in the case of a formal noise complaint to the Police Department or used in any civil proceeding.

A parking plan was submitted where there is ample room for a minimum of fifty cars without the use of a police detail; subject to the discretion of the Chief of Police.