

**Zoning Board of Appeals
Meeting Minutes**

Minutes of July 9, 2014

Members present: David Orth, Chairman; Jim Buckley, Clerk; David Kirwan, Vaughn Hathaway

Alternate members present: Paul Schold, Jim Reinke

Meeting called to order at 7:00PM

Approval of Minutes

11/12/2013 (305 River Street, Patricia Dykas)

MOTION: Mr. Hathaway moved to accept the minutes of November 12, 2013 for 305 River Street with corrections as noted

SECONDED: Mr. Schold – Discussion: None

VOTE: All in Favor

12/10/2013 (10 So. Main Street, Cumberland Farms)

MOTION: Mr. Reinke moved to accept the minutes of December 10, 2013 for 10 South Main Street with corrections as noted

SECONDED: Mr. Schold – Discussion: None

VOTE: All in Favor

12/10/2013 (1530 Main Street, Cumberland Farms)

MOTION: Mr. Kirwan moved to approve the minutes of December 10, 2013 for 1530 Main Street with corrections as noted

SECONDED: Mr. Reinke – Discussion: None

VOTE: All in Favor

12/10.2013 (1621 Main Street, Leicester LLC, David Dunham)

MOTION: Mr. Schold moved to approve the minutes of December 10, 2013 for 1621 Main Street with corrections as noted.

SECONDED: Mr. Kirwan – Discussion: None

VOTE: All in Favor

5/19/2014 (503 Stafford Street, Staffordshire Apts. Matthew Schold)

MOTION: Mr. Kirwan moved to approve the minutes of May 19, 2014 for 503 Stafford Street with corrections as noted.

SECONDED: Mr. Buckley – Discussion: None

VOTE: All in Favor

6/4/2014 (1 Rural Drive, Michelle Albrizio)

MOTION: Mr. Hathaway moved to approve the minutes of June 4, 2014 for 1 Rural Drive with corrections as noted.

SECONDED: Mr. Kirwan – Discussion: None

VOTE: All in Favor

6/4/2014 (22 Pleasant Street, Variance, Margaret Rondeau)

MOTION: Mr. Hathaway moved to approve the minutes of June 4, 2014 for 22 Pleasant Street; Variance with corrections as noted.

SECONDED: Mr. Kirwan – Discussion – None

VOTE: All in Favor

6/4/2014 (22 Pleasant Street; Special Permit, Margaret Rondeau)

MOTION: Mr. Hathaway moved to approve the minutes of June 4, 2014 for 22 Pleasant Street; Special Permit with corrections as noted.

SECONDED: Mr. Kirwan – Discussion: None

VOTE: All in Favor

6/4/2014, (800 Main Street, Charles Entwistle)

MOTION: Mr. Hathaway moved to approve the minutes of June 4, 2014 for 800 Main Street

SECONDED: Mr. Kirwan – Discussion: None

VOTE: All in Favor

Public Hearing

Continued Hearing on the petition of Michelle Albrizio of 1 Rural Drive, Leicester, Ma. for a Special Permit to house and raise three (3) miniature horses on property.

Meeting called to order at 7:30PM

Instructions were given on hearing procedures.

Voting at tonight's hearing: Jim Buckley, Jim Reinke, Vaughn Hathaway, David Orth and David Kirwan

Correspondence received: A letter from the Building Inspector to the Applicant addressing her request for a written statement regarding her neighbors concerns on water runoff, dated June 30, 2014 and a letter from David & Cheryl Wilson in opposition dated June 23, 2014.

Mr. Orth read the correspondence into the record.

Submitted into evidence: a detailed Plot Plan

Mr. Orth said the meeting was continued because the Board was looking for a more detailed plot plan showing where the barn and paddock area was to be located on the property.

He noted the plan showed the barn being put on the left side of the house. He asked if the property was being graded.

Ms. Albrizio said there was no need to. Where they want to put the barn is the most level area on the lot.

Mr. Orth asked where the neighbor with the pool was located.

Ms. Albrizio pointed out where Mr. Brian Rivers' property was located and where his pool was located, which sits on the left side of her property.

She also pointed out where the fence around pool was located, which was placed right up to the pool's platform.

Ms. Albrizio explained that any runoff from her property would go in the opposite direction away from her abutters, based on the contour of her lot and where she wanted to put the barn was the most level area.

She spoke with the Building Inspector asking for his advice and was told, by placing the barn on the most level area of the lot, would avoid redirecting any water runoff.

Mr. Brian Rivers asked if the front area of the barn had to be placed 25-feet from the front plane of the house.

Ms. Albrizio noted checking out with the building inspector and the barn will be fine.

Mr. Orth explained that the barn has to be in line with the house, it can't be closer to the front lot line than the front plane of the house, but it can be on the side.

Mr. Hathaway noted that accessory structures can be 10-feet or further from the house.

Mr. Rivers said he's talking about from the back to the front of the house, from the front line of the house.

Mr. Hathaway explained that an accessory structure can't pass the front line of the house.

Mr. Orth agreed and because the structure was behind the front line of the house, its fine as far a zoning is concerned.

Ms. Albrizio said her barn will be 40.4-feet away from the property line abutting Mr. Rivers. Its 23.5-feet away from her home, 63.1-feet away from Mary Fish's property and 73.1-feet from the road and she only has to be within 10-feet all the way around and she's more than that.

Mr. Hathaway stated the Bylaw's wording was it could not be closer than 10-feet.

Ms. Albrizio understood that.

Mr. Orth reviewed the runoff concern. He noted the plot plan showing the lot's contour on the runoff would go away from Mr. River's property and also it had been established these were not full size horses, so the amount of urine would be no more than a couple of dogs.

Mr. David Albrizio said that from the last hearing there was something said about having 50-gallon containers for the waste. Ms. Albrizio agreed.

Mr. Rivers said miniature horses produce roughly 29-gallons of feces a day. He spoke with HazMat on this and the DOD and was told she would need combustible containers labeled they had combustible material stored inside.

Mr. Orth noted the recommended waste containers would be used.

Mr. Rivers said he was told by the HazMat group out of Boston that it had to be combustion proof chambers.

Mr. Orth asked where the containers would be stored. Ms. Albrizio said there wasn't a specific requirement noted in the Bylaws on the location of the storage containers.

Mr. Orth asked if the containers could be placed on level ground. Ms. Albrizio agreed.

Mr. Orth said having the containers on a level surface would avoid the possibility of tipping over. Ms. Albrizio agreed.

Mr. Orth asked how many containers she would have.

Mr. Rivers said there would be 10 containers a week and that would make at least 14 with three horses.

Ms. Albrizio said that depends on how many horses she would be allowed. She was not able to give an exact number of containers per week right now.

Mr. Rivers felt it would be a container per day.

Ms. Diane Messier disagreed and noted it would be less than 1 container per day and would probably be half a container per day.

Mr. Orth asked Ms. Messier what she felt the number of containers Ms. Albrizio would need per day for two miniature horses.

Ms. Messier said it depends on a lot of things, such as weather. When it's rainy, the horses stay in the barn, therefore there are more shavings to sweep up and in nice weather she could go up to two weeks before a pick up.

Mr. Orth said he didn't realize that the containers would also include the shavings.

Ms. Messier said yes it includes the shavings, but there could be as little as 9-gallons in two weeks.

Mr. Orth asked where the barrels would be stored.

Ms. Albrizio pointed to the area around the barn being all level.

Mr. Orth's concern was having 8 barrels and controlling any runoff if they leak. He would like to see them placed in a level area and felt it would probably require an area about 2 to 3-feet in diameter.

Ms. Albrizio said there was room next to the barn where it is level.

Mr. Rivers disagreed that area was level. Mr. Orth said the area would need to be perfectly level.

Ms. Albrizio agreed to build a level base to put the containers on.

Mr. Kirwan asked how heavy these barrels were once they were stored. Ms. Messier said about 50 pounds. Mr Kirwan asked if they could tip over in a heavy wind. Ms. Messier said no that has never happened. She explained that the waste was stored in Rubbermaid barrels that are put onto a two-wheeler and wheeled out, they don't tip over or leak.

Mr. Kirwan asked how many homes were on Rural Drive. Ms. Albrizio said there were 5 homes.

Mr. Kirwan said there were three miniature horses already on this street and this would be the second group. He asked if there was anything in the correspondence received mentioning about the existing miniature horses.

Mr. Rivers said every single one of the neighbors was against this.

Mr. Orth said the answer to Mr. Kirwan's question was no, no one had negatively mentioned the existing horses in the correspondence received.

There was one piece of correspondence which mentioned you wouldn't even know that the horses were there.

Mr. Orth did a site visit and couldn't tell there were three other horses on that street.

Ms. Albrizio presented a chart, which her daughter and friends made, showing a miniature horse's growth in comparison to large dogs and that there were some breeds of dogs bigger than these horses would get at their full-grown size.

Mr. Kirwan asked if these horses barked at night; Ms. Albrizio said no, horses don't bark. Mr. Kirwan asked if they were noisy or disruptive in any way. Ms. Albrizio said no, for example, they were at a farm, which housed over 100 miniature horses and it was very peaceful. Mr. Rivers noted that was a farm, not a residential neighborhood. Ms. Albrizio understood that and the area they were in was no larger than her yard and there were 25 other homes in the area.

Ms. Albrizio continued. She spoke with Senator Gobi's Office and was told that there were no State Laws within the State of Massachusetts or a Bylaw that governs size of land for a horse, full grown or miniature.

In reference to Waite's Pond, she called the EPA, DEP and the Mass Wildlife and Fishery and was told the pond was governed under the Board of Health and that there was no way of knowing if the horses waste would ever reach Waite's Pond. Each agency person she spoke with asked her the same group of questions; if there were people living around the pond; if these residents had dogs or cats; if there was any wildlife living around the pond, such as birds; did the residents treat their lawns or have gardens; did any of the residents own motor boats or snowmobiles; do people fish in the pond; was there trash floating in the pond; any dead trees which had fallen in the pond; and if the answer to all of those questions was yes that pond would never be able to be cleaned unless every single one of those issues were removed.

Ms. Elizabeth Jacques, 73 Waite Street, said people do fish in the pond, but they do not eat the fish because they're loaded with mercury. People do not swim in that pond because it is so polluted.

Mr. Kirwan asked for point of order, was the Board addressing the ability to keep two miniature horses on the property or was the Board addressing two miniature horses plus some miniature goats or was the Board addressing 4H Club activities and were any beyond the scope of this application.

Mr. Orth said the 4H Club activities were beyond the scope of this application. His understanding was the Board was hearing whether or not to allow the miniature horses.

Ms. Albrizio understood the goats could not be considered because it wasn't advertised in the paper.

Mr. Kirwan confirmed the Board was only considering two miniature horses.

Ms. Albrizio said yes, although she would like the option of getting a third down the road, but if the Board limited her to two, she didn't have a problem with that.

Mr. Rivers asked if there was consideration regarding degradation of property from what it is now, to what it will become. The horses trampling down grass will turn the area to mud and they will never see grass again. It will decrease the value and the view, especially being in the front yard, it will decrease the beauty of the neighborhood, because of the mud this will create there. That will never change, because they will have the horses. This will degrade the property and now the property values will go down.

He asked if Leicester had an escrow account to reimburse the people on their property values going down and they want to sell their house.

Mr. Orth said the value of a house is very subjective to many things.

Mr. Rivers said the surrounding neighborhood was one of them.

Ms. Albrizio said she offered on more than one occasion to have the horses in the rear of their yard out of view from the road. She was told they need to be in a level area.

In regards to the paddock area, if she rotated use within the paddock area, grass can grow back and there's not an issue with mud. Mr. Rivers disagreed.

Ms. Albrizio continued. Having a long paddock area, she can block off half and reseed that area until the grass is grown in and then she can switch to the other half; it would be in a constant rotation.

Mr. Rivers said even in a constant rotation, there will still be mud and defacing the neighborhood.

Mr. Kirwan explained he has been a realtor this area for 13 years and wouldn't consider a couple of miniature horses as a degradation of property or the neighborhood properties if he were doing a market analysis. On any street there are properties which are well kept with beautiful lawns and then there's the next door neighbor's property with trash and junk cars kept up on blocks, this property was not quite the same thing.

He felt this was more on what she was trying to do. In his own opinion, as a realtor; he did not see this negatively impacting the applicant's property or the neighbor's property.

Mr. Rivers asked for Mr. Kirwan's business card.

Mr. Kirwan explained that he wasn't trying to generate business, he was telling everyone, from experience with real estate, he has seen properties that would definitely hurt the neighbor's value and he didn't see this as doing that.

Mr. Rivers said Ms. Albrizio mentioned they would be monitoring the horses 95% of the time, he asked how they were going to do that.

Ms. Albrizio said her children are home schooled and are home all day.

Mr. Rivers said they are kids and not adults. It will be good for three months and done.

Mr. Orth said not necessarily.

Ms. Albrizio said her kids are 14 and 11 and they both want these horses and it's been laid out on the table what their responsibilities will be in order to have these horses.

Mr. Kirwan said it could become mom's responsibility.

Ms. Albrizio agreed they are kids, but they are more than capable to care for these horses.

Mr. Reinke said when the children turn 18 and no longer maintaining the horses, what's the plan then.

Ms. Albrizio said the horses will still be maintained and remain on the property.

Mr. Reinke said who will take care of them. Mr. Orth noted that was at least 7 years down the road.

Mr. Kirwan asked the life span of a miniature.

Ms. Messier said an average life of a miniature is around 30-years and there are some who live into their 40s and there are some who live only into their 20s.

Mr. Kirwan confirmed the life expectancy not being the same as a large dog. Ms. Messier agreed.

Mr. Kirwan spoke for himself saying, it appears the applicant had done a lot of research and knows what she was getting into. Also, with the concern of neighbors, she did some extensive research on some of their legitimate concerns.

Mr. Hathaway felt the opposition on this was more than ordinary. He explained a decision would be based on what the Bylaw says can or can't be done and that the concerns of the abutters are also taken into consideration in placing conditions on a favorable decision.

He questioned if there was a way to address all the concerns, other than a flat out no.

Mr. Orth said the main concern was the pool issue.

Mr. Rivers said it was not just a pool issue; this will be right where he would have a BBQ.

Mr. Orth understood that, but felt the way the property was lined to where Ms. Albrizio was putting the barn; he couldn't see where this would adversely affect Mr. Rivers' property at all. Based on his visit of the site and his view of the neighbor's property with horses, the paddock area was dry and that was after a wet spell. He didn't see any runoff and didn't feel there would be an adverse effect on Mr. Rivers' property or his pool, because the pool was quite a distance from where the paddock area would be

Mr. Orth noted the reason for this continuance was because the Board didn't know where everything was going to be and to also address the neighbors' concerns. It seems that those concerns had been addressed, plus the Board of Health would be the authority addressing any other issues.

Mr. Orth felt this would not affect Waite's Pond any more than geese do, which are far more polluting.

Mr. Rivers said it sounds like everyone on that street didn't have a say in this.

Mr. Orth said that was not what he was saying. Mr. Rivers said that was the way it sounded.

Mr. Reinke agreed.

Mr. Hathaway wanted to clarify where the site was for the waste containers and being a level spot. He noted any level spot would eventually have some kind of runoff and wanted to know the location of the containers.

Ms. Albrizio said there was an area where it's all pea stone and had plenty of room to put the containers. They could also have a cement slab put in there or build something that would raise it up more.

Mr. Hathaway explained the reason for the level area was to keep the containers from being knocked over, but for some reason, if one did get knocked over, was there a way to contain the spillage.

Ms. Albrizio said that area was raised up and there are rocks all around it, so the containers would have to flip up over the rocks and down.

Mr. Orth asked if the containers could easily be wheeled from that area to the vehicle for pick up.

Ms. Albrizio said yes.

Hearing no further discussion, the following motion was made:

MOTION: Mr. Reinke moved to deny the petition of Michelle Albrizio of 1 Rural Drive, Leicester, Ma. for a Special Permit to house and raise miniature horses.

SECONDED: Mr. Hathaway – Discussion: None

VOTE: 2 – In Favor (Mr. Reinke; Mr. Hathaway) / 3 – Opposed (Mr. Kirwan, Mr. Orth, Mr. Buckley)

Motion failed.

MOTION: Mr. Kirwan moved to approve the petition of Michelle Albrizio of 1 Rural Drive, Leicester, Ma. for a Special Permit to house and raise no more than two (2) miniature horses on the property as marked on the plot plan. In addition that there will be an area as specified on the plan for the storage of the waste resulting from the two miniature horses.

SECONDED: Mr. Hathaway – Discussion: None

VOTE: 4 - In Favor (Mr. Orth, Mr. Kirwan, Mr. Buckley, Mr. Hathaway) / 1 – Opposed (Mr. Reinke)

Motion passed

Instructions were given on the appeal process and the filing of this decision with the Registry of Deeds.

MOTION: Mr. Kirwan moved to close the hearing

SECONDED: Mr. Reinke – Discussion: None

VOTE: All in Favor

Meeting adjourned at 8:10PM

Respectfully submitted:

Barbara Knox

Barbara Knox