

TOWN OF CONCORD PLANNING BOARD  
Town Hall

October 1, 2024  
7:00 p.m.

ITEM # 1:

The meeting was called to order by Acting Planning Board Chairman Julie Zybert, at 7:00 p.m.

ITEM #2:     Roll Call

Present:  
Julie Zybert, Acting Chairman  
Bruce Luno  
James Jozwiak  
Ray Hilliker  
Michael Cochran  
David Dains

Also Present:  
Darlene Schweikert  
Clyde Drake, Town Council Liaison  
Thomas Roberts, CEO  
Tom & Michele Burke

Not Present:  
Joseph Edbauer, Chairman

ITEM #3:     Citizen Participation

There was no one for Citizen Participation.

ITEM #4:     Approval of Minutes

a) September 3, 2024 – J. Jozwiak made the motion, seconded by M. Cochran, to approve the Minutes as presented. All in favor. Carried.

ITEM #5:     Burke-Special Use Permit Application

The Burkes had submitted their Special Use Permit application and copies had been provided to the members in advance of the meeting. Acting Chairman Zybert asked the Burkes if they had a presentation for the members beyond the documentation already provided. Mrs. Burke noted that they would not be changing their status from a “farm winery.” The State Liquor Authority calls it a “micro-tavern.” The members had researched the SLA website to gather more information but their website is not very helpful. Mrs. Burke agreed and said that that is why they are using a company (SLA Solutions) to assist them in the process. She used them through the whole process from the beginning and had contacted them because she would like to carry domestic beer. With her current winery license, she can only carry NYS products which is fine; they knew that. They would like to start, for example, on Sunday afternoons for the Bills’ game and with the beers that she currently has, they are high in alcohol content and wanted to have options like Miller Lite or Labatt Light that they could offer so people

could have a couple beers and not leave hammered. In order to do that, the SLA requires that she apply for a tavern's license. There are different variations of that type of license: a full tavern's license to carry all domestic beers, all domestic spirits, and all domestic wines. She is not interested in that; she just wanted to carry domestic beer. The SLA called this a micro-tavern license which would restrict her to only selling domestic wine and domestic beer.

Acting Chairman Zybert had searched the SLA website and found two licenses for the Burkes in these records. The Town knew about the farm winery license but there is a distillery license. Acting Chairman Zybert asked Mrs. Burke to explain that license since there was no other information online. Mrs. Burke noted that it is a micro-distillery license which allows her to take, for example, vodka and a flavoring to it and call it whatever she wants to call it. She can take a grain alcohol that has already been distilled from the Finger Lakes Distillery and then she adds honey and spices to it, lets it sit for 30 days and then she bottles it. She does not have a still and is not cooking anything; it allows her to blend already processed alcohol.

D. Dains asked if they did ciders? They do and they are exclusively NYS products; 50% of their products have to be sourced in NYS in order to be classified as a NYS product. Acting Chairman Zybert asked the Burkes if they had any interest in expanding to Mondays or Thursdays; they are currently closed on Mondays and would close before any football game on Thursday night. Mrs. Burke noted that they tried to be open on Mondays but there is just no business. They tried it for six months; and they did not have much business. Tuesdays she has class nights, twice a month; or there are on Wednesdays. They just want to be Thursday, Friday, Saturday and Sunday to 8 p.m. She noted that some customers have asked them to stay open until 9 p.m. but they are not interested in that. They like the 8 p.m. time because it gives people a chance to finish what they are drinking and they can go on to some other place. They are usually closed by 9 p.m.

Acting Chairman Zybert commented that they have a big outdoor seating area. Do they do outdoor live music or are they inside? They are inside; Mrs. Burke said that there is space outside and they did have a couple of soloists and they were outside but they played early 2-4 p.m. There is nothing nighttime; even the Saturday afternoon bands start at 4 p.m. and end at 7 p.m. There is nothing late night.

M. Cochran noted that when the Burkes started this project there had been mention of adding some additional parking on the one end of their property. This is a concern for him. There were issues with parking on the road and the neighbors. Mrs. Burke advised that they did add additional parking up on the top so they can park an additional 10 cars there. Mr. Burke noted that at one time they had 94 cars on the property, off the road; up by the fence company and the whole front lawn is gravel. The Burkes have signage up about not parking on the road and they have marked out the parking lot with lines to try to assist in parking issues. Mr. Burke said that if he is in the parking lot, he can put about 34 to 38 cars in the parking lot and 6 on the lower driveway and about 30-40 by the fence company shop as long as people are paying attention. M.

Cochran advised that he has been there when they were busy and the parking still concerns him since the road is not conducive for parking on the road; and there were issues with neighbors. Acting Chairman Zybert noted that she has seen the "Do Not Park on Road" signs as she has driven by, but suspects/assumes there is always someone who doesn't obey. Mrs. Burke noted that it had happened recently and when the neighbor called the sheriff and the sheriff came, the customer moved their vehicle to the upper lot. The customer said when they got there, there was no place to park; she does not know; they were busy. They are conscious of the parking and try to keep everybody off the road. They have been trying for years, even before this project, to buy the property across the street and they cannot reach the owner. They are trying to solve the problem. They feel that this would alleviate a lot of headaches. M. Cochran asked the Burkes what they thought the anticipate the growth will be doing this on Bills' game nights? Mrs. Burke advised that they are not getting any business from the Bills' games. They are just not that venue; they are not a bar. They are not coming there to hang out and yell/holler at the TV. They tried it; they tried to stay open a couple of times and even advertised with no one really showing up. Acting Chairman Zybert questioned that with the potential of a micro-tavern license, how does that change the kinds of food that you have to offer? Mrs. Burke answered that she would have to offer a sandwich and a soup of some kind. This is something they can handle. The SLA asked if they would sell two sandwiches and Mrs. Burke did not think that that was a big deal; they could certainly do that. They have the space and the equipment to do that. Acting Chairman Zybert asked if they would then be doing these in-house? Mrs. Burke noted that the permit they have from the Erie County Health Department allows them to do that; they are restricted because they do not have the Ansul system so there are certain things that they are restricted to serving. J. Jozwiak noted that he was also concerned about the parking situation; he also noted that the Burkes have been trying to resolve this as much as they can. Mrs. Burke advised that they would not be putting it out there to the public that they have a tavern's license now, come and drink. M. Cochran noted that their clientele is pretty close. Mrs. Burke noted that their clientele has adapted to the drinks and the beers that they have, it's just that they do have a couple of customers who would rather have a Miller Lite than a Lakeview. It would just be nice to be able to offer them that choice. Mr. Burke noted that they do not want to carry 20 domestics; they would be happy to carry two. Mr. Burke noted that some of their customers have commented that their husbands won't come because they don't have domestic beer; only Genesee and some people don't like that one. Acting Chairman Zybert asked if the micro-tavern license caps the number of beers that they can have and Mrs. Burke said no. They just want to cap it themselves. They don't have the room. She would like one, or maybe two, just to offer that choice. J. Jozwiak believes that that is what Steelbound does. D. Dains thought that they would be selling Southern Tier beer, something New York. Mrs. Burke said that they do; they carry Southern Tier's products. They have the ability to carry that but would like the ability to carry domestic that is not made in New York. Genny Light is made in Rochester. J. Jozwiak said he sees their point. If you are out for a couple of hours, it's a Bud Light so he can drive. Mrs. Burke noted that the other beers are 4.9%, 6.9%, 7.9% in alcohol content and so if you want to stay for a couple hours, which a lot of people do, they would like options. J. Jozwiak noted that he is good with this amendment to the Special Use Permit and would make a motion to send it to the Town

Board. Before the motion could be advanced, CEO Roberts noted that the Board could put restrictions on the Special Use Permit that it would be only for domestic beers and the number of taps. Mrs. Burke said she would be happy with two, but maybe give them the limit of four domestic beers and strike off the alcohol like Bacardi's. Mrs. Burke said she can't do that kind of alcohol with this license. CEO Roberts said if she decided she wanted to do that step in the future; he doesn't want the Town to give her a blank slate. Mrs. Burke said she would not do that step. Mr. Burke said they do cans; not taps. The members changed to wording to four domestic beer choices. M. Cochran doesn't understand why there has to be a limitation on the number but Mr. Burke said they are happy with the four choices. M. Cochran noted that he'd like to see a temporary Special Use Permit in case there was a problem with parking, traffic, neighbors. This is not in the Code. CEO Roberts can monitor their operation under the Special Use Permit. Mrs. Burke does not see any increase in sales because they would be adding four choices of domestic beer. She is not going to advertise it; it will just be on their menu. R. Hilliker noted that he has a lot of different views on this. (1) he sees what they are doing makes sense but the Town would never allow a bar in that location from the get-go. It just doesn't meet the zoning or anything and we'd be letting it evolve that way (2) CEO Roberts' restrictions is a good way to hold it back a little but should the Town really be telling them how many beers they can have. It's a little bit of government overreach. (3) he really doesn't like the whole thing to be honest. He thinks that if they are a micro-brewery and that's what they are and that's what they should be and they are saying that it wouldn't increase their business, so don't do it. That is the way he sees it. They started out with this and if the Burkes came into us now and asked to be a bar, the board would say no, probably. Mrs. Burke said they are not trying to be a bar. R. Hilliker said one step further, he does not think the Town should be in the business of telling a bar how many beers they can have. R. Hilliker noted that it is a little odd to him when you start breaking it down. Mrs. Burke noted that if she had known when they applied for the liquor license that it would be an issue with the Town, she would have never applied for it. She was doing it because the Bills were starting to play and they thought they would get some people to come watch the games; they had fun with it last year when they first opened and people came in in December. They then discussed adding a domestic beer and when she realized that they would have to do this whole Special Use Permit process again, she tried to get the SLA application back and cancel and get a refund. She spent a lot of money on this so far and can't get her money back so now she is going forward; can't stop the process now. She can get the license and not use it if the Board doesn't approve it. M. Cochran questioned if there was any way that it could be temporary or if it could come back to the Town? The Town can put restrictions on their Special Use Permit but their SLA license is not in the Town's control. M. Cochran said he loves their place; so does R. Hilliker; but M. Cochran said he is just worried about the neighborhood. R. Hilliker noted that the Board has to look to the future too; if the Burkes were to sell and the new owners now have a raging bar. There are other implications to look at; it is not the right spot for a full-blown bar in his opinion. Mrs. Burke advised that they have a nice atmosphere there. They don't want to be a bar; they don't want to be open past 8 p.m./ 6 p.m. on Sundays. That's late enough.

J. Jozwiak said he would like to bring his motion back; limit to four selections so it can't become a full-blown bar. B. Luno advised that if the Burkes were to sell their place, their Special Use Permit does not transfer to a new owner. Their permit ends because it is a Special Use Permit for the Burkes to operate at that address. Should the Burkes decide to pull up stakes and sell the winery, the new owners would need to apply for their own Special Use Permit. Mrs. Burke said that the new owner would also need to apply for their own SLA license; nothing is transferable. M. Cochran wanted clarification that if this Special Use Permit is approved, the Burkes would be able to continue without coming back to the Town annually; that is correct unless the Town puts some restrictions in place. Acting Chairman Zybert said that the SLA license is a three-year license. She questioned if the SLA tracks if there are complaints or issues or if the process is going along smoothly? Mrs. Burke said that they do.

Chairman Zybert asked if there were any further discussion before she would ask for a second to the motion. M. Cochran noted that the three-year SLA license is a limit. R. Hilliker said that as long as the Special Use Permit isn't transferable, he thinks the Burkes' intentions are good; that relieves some of his worry. R. Hilliker noted that putting a limit on it is probably a good thing too although he really doesn't think the Town should be putting limits. CEO Roberts said that it is a little bit of control that the Town can have. D. Dains noted that his concern is that if something else pops up in the Town and someone starts something else, and because the Burke's application was approved, the Town set a precedent. Someone could start a distillery with NYS behind them. J. Jozwiak said that that is why these cases are handled one on one. M. Cochran said he would second the motion but just wanted to get his points out there on the record about traffic. Acting Chairman Zybert asked if J. Jozwiak wanted to amend his earlier motion or have it remain at four domestic beers. J. Jozwiak doesn't want to change it. J. Jozwiak repeated the motion, seconded by M. Cochran, to send the Special Use Permit application to the Town Board with the limit of four domestic beer selections. Voting as follows: Acting Chairman Zybert, B. Luno, J. Jozwiak, R. Hilliker, M. Cochran, voting aye. D. Dains voting nay. Carried. D. Dains noted that he just has some issues with the permit. The Town Board will be meeting on October 10<sup>th</sup> and will set a Public Hearing date which would probably be before their regular November meeting, November 14<sup>th</sup>. Town Clerk Schweikert will publish the Public Hearing Notice and send it to the neighbors within 500 feet. The Burkes will get notice of the Public Hearing and should plan to attend that hearing. The Burkes thanked the Board and left the meeting at 7:30 p.m.

ITEM #6: Code Update

Acting Chairman Zybert advised that she would like to expedite the meeting tonight so that the members could be home to watch the Vice-Presidential Debate tonight which starts at 9 p.m.

CEO Roberts had a chance to review the model law for Section 72. CEO Roberts had noted previously that the Town follows the NYS Uniform Fire Prevention and Building Code already.

His comments were:

(1) add the definition of mobile food truck into the law, under Section 2 Definitions. Since the current Code does not address this, he thinks it should be added. This could become an issue with Kissing Bridge or even Farmer's Markets.

(2) Section 4. He recommends Alternative 2. This is what the Town already uses.

(3) Section 5. Since COVID, remote inspections are now allowed. That was not in our Code. Remote inspections have been authorized by the State since COVID and he would like to see that added in our Code. Section 5 (11)(c)

(4) Section 10. He would suggest that (vi) be included in our Code. High-Piled Combustible Storage. He noted that Buckley's recycling facility is in the Town. Does the Town have operational permits? The facility could be a fire hazard. Does the Town want to do anything with (v) tents? There was discussion as to whether the Town become involved in permits for these types of tents. The companies who put them up should have insurance; does the Town want to be liable if anything were to happen. What about bigger events at Kissing Bridge or the Zoar Moto event? Maybe tents larger than a certain size. CEO Roberts had just attended a training on tents and explained the staking requirements and the distance of tents from buildings. R. Hilliker thinks that the tent rental companies should know all these regulations and have insurance so the Town should not be involved in this. There is no way that the Town CEO would know if the tent is set up correctly; CEO Roberts noted that they could check the main criteria like distance, fire retardant, staking. J. Jozwiak thinks that the tent companies know all these regulations. If there were a terrible accident and the Town had approved the tent, the town would be held liable. Section (xiii) Mobile Food trucks. (3) energy storage systems? Council Member Drake noted that the town currently has a moratorium on BESS; but the Town did adopt a law previously; a copy of the law will be provided to the members. CEO Roberts concern was the power wall system for a Tesla. Not sure if people are getting these now because they are available. This should probably be included in the update. (4) and (5) concerns about Kissing Bridge in the future. (7) probably no reason to include parking garages. The members can review to see if the other categories for more discussion.

(5) Section 11. He would recommend including Remote Inspections. Every three years he needs to do these inspections. The language says at the discretion of the CEO for remote inspections.

(6) Section 13. He does not think the Town needs to include this in the updated Code. The Town does not have parking garages.

(7) Section 17. CEO Roberts would like Town Attorney Attea to review

this section for input.

ITEM #7:      Comments from Town Board Liaison Drake

Council Member Drake had nothing to bring to the Board tonight.

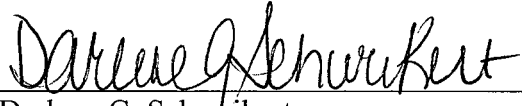
ITEM #8:      Business from the Members

1. The members had discussion about the Zoar Moto event that took place last weekend. It started last year with a “ride” and this year had a “race”. Did the most recent application say they would be having a “race?” R. Hilliker recalled that they did say that they would be racing. The first year was just a one-time Special Use Permit. The Special Use Permit was granted this year allowed them to proceed without coming back to the Town. J. Jozwiak said one person had to go to ECMC with an injury. D. Dains noted that the property owner is ok with the event; we will see what happens next year. If they do not follow the guidelines of the Special Use Permit, the Town can revoke their permit. Council Member Drake said that they advertised before they got the Town’s approval.

2. R. Hilliker asked if there was any progress on his replacement for the Board. M. Cochran did speak to the person and he appears to be interested in joining the Board. Another candidate has the interest but is not ready at this time to devote to this Board. The Board understands R. Hilliker’s situation and when he is ready, he can just submit his resignation and the Town Board will proceed.

ITEM #9:      Motion of Adjourn

M. Cochran made the motion, seconded by J. Jozwiak, to adjourn the meeting at approximately 8:06 p.m. All in favor. Carried. The next regular meeting will be Tuesday, November 5, 2024.

  
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Darlene G. Schweikert  
Planning Board Secretary