

**APPROVED**

Town of Red Hook  
Zoning Board of Appeals Meeting Minutes  
September 12, 2012

**CALL TO ORDER**

The meeting was called to order at 7:00 P.M. by Chairman Nick Annas.

**ROLL CALL**

Members Present: Nick Annas, Paul Marienthal, John Douglas, Ken Anderson, Chris Carney, Jim Hegstetter, Tim Ross

Also Present: Victoria Polidoro, office of the Town Counsel, Trilby Sieverding, Jim Ross, Bob Fennell

**PRELIMINARY BUSINESS**

Minutes of August 8, 2012: Chairman Annas did not approve the minutes stating they are incomplete and will be revised and reissued. Trilby Sieverding also said there was something in the minutes attributed to her that she did not say. Attorney Polidoro had some comments and was asked by Chairman Annas to email them to us.

*Chairman Annas* made a motion that the minutes be revised as necessary. The motion was seconded by John Douglas and all were in favor.

Planning Board Minutes and Letters: There were no comments from the Board.

Building Inspector/ZEO Permits and Memos: The Permits and memos were reviewed by the Board.

**PUBLIC HEARING**

7:05 Appeal of 12-08, Mitchell Bodian application for an interpretation of Section 143-41 D(4)(a) of the Town Code regarding whether storage should be permitted on a farm. Mr. Bodian has been ordered to remedy the following violation of the Zoning Law by June 23, 2012: use of his property for the storage of party rental equipment and supplies and commercial dish washing. The applicant's property is at 210-214 Oriole Mills Road, Tax Grid # 6371-00-397857, in the RD3 zoning district.

*Chairman Annas* stated he was going to read through the twenty pertinent facts read from the CONFIDENTIAL ATTORNEY/CLIENT PRIVILEGED DOCUMENT 7.31.12 that were read in the previous Public Hearing.

*Chairman Annas* stated that this is all data that were compiled from the Public Hearing regarding the Jakob Cirell request. The applications are dependent from the same situation, the same data. So we're going to go through these points. What I'm asking is if anybody would like to refute any of these points. If not, they will stand as fact.

1. The property is located in a residential district, the RD3.
2. Almost all commercial and light industrial uses are prohibited in the RD3.
3. The Town amended the Zoning Law in 2011 to create the Agricultural Business District, otherwise known as the ABD.
4. The parcel of land was not included in the ABD.
5. Farm industry is permitted in the RD3 subject to the standards of 143 Section 41(D).
6. Farm industry is defined in Section 143(4) as "unlimited business use conducted by the farm operator which is clearly incidental and secondary to the use of farm premises for agricultural purposes and does not alter the character, therefore, with the objective of expanding the income of the farm throughout all seasons by the employ of equipment and skills customary in the agricultural enterprise in which use shall be fully consistent with the use limitations set forth in paragraph 143-41(D) of the zoning law.
7. The list of permitted farm industries includes marine, recreation vehicle, historic automobile and related seasonal storage.
8. Such storage generally involves two trips per year per vehicle; one to bring the stored vehicle to the site for winter storage and the second to remove the vehicle from the site in the spring.
9. Storage for a party rental business involves a more intense use of the surrounding roadways and the site.
10. According to information provided to Zoning Enforcement Officer, Fennell, there are approximately two trucks per day entering and leaving the site.
11. The nature of a commercial party rental business involves deliveries to and from the site throughout the year.
12. Crops have not been grown on the property for several decades.

Mitchell Bodian challenged #12 and the Board and Mr. Bodian went back and forth on this issue.

13. Christopher Lindner, a neighbor, asserts that crops have not been grown on the property since 1935, which is not contradicted by anything in the record.

Mitchell Bodian disputed this.

*Mitchell Bodian* – I have no knowledge what happened prior to the last six (6) years. The last six (6) years I have not grown any crops. That’s an affirmative statement that I can make. What happened prior to that, I don’t know.

14. The property was used to board horses for two (2) years. During that time, there was an average of seven (7) horses boarded.

Mitchell Bodian disputed this. He couldn’t say exactly how many horses were boarded.

Mitchell Bodian asked how one started a farm.

*Tim Ross* – You can’t get the AGS exemption. You can’t apply for it until you’ve proven that you’re actually a viable business. So you have to actually farm it and prove that you’re an active farmer before you can apply for an agricultural exemption. That’s the reason there is a delay in there.

*Attorney Polidoro* – Under our code, a farm is a type of business, where as an agricultural operation can be anything that relates to agriculture any definition of agriculture.

Chairman Annas continued...

15. The horse boarding operation has ceased.

*Susan Lindner* – Excuse me. I live next door. I see the horses. I’m not going to argue with Mr. Bodian about his rent role but, the horses haven’t been there since April, 2012.

*Tim Ross* – Let’s just change #14 to: The property was used to board horses intermittently from 2005 to 2012. During that time varying numbers of horses were boarded.

*Ken Anderson* – You know another point that relates to the agricultural farm, is that you have to take into consideration there are soil maps that are on file in Dutchess County regarding your specific property like anyone else’s specific property. The soil maps really illustrate whether or not a crop can be grown and what type of crop would be successful on that particular land. Another factor is that you have to prove in the agricultural district that you have produced \$10,000 worth of products consecutively for at least the last two (2) years.

*Mitchell Bodian* – I would just respectfully disagree. The law specifically states for an agricultural exemption that if you lease land to a farmer who has at least \$10,000 of agricultural revenue, you still get the agricultural assessment exemption. That’s a fact. I have other property that benefits from that. So, no, the property doesn’t have \$10,000 of agricultural revenue.

*Chairman Annas* – Let’s go through a couple more steps.

16. 28.35 acres of the property is registered in the DEC Forestry Management Program and is committed until the year 2019.

17. The remaining 9.5 acres appear to have unsuitable soils for farming as they are very rocky. No tillable land is apparent.

18. There is no livestock on the property.

19. There are no visible crops of any kind on the property.

20. Several of the buildings on the property are in disrepair and do not appear to be used for agricultural purposes.

*Chairman Annas* – Therefore be it resolved that the Zoning Board of Appeals determines as follows:

1. Equipment storage for a party-rental business does not constitute a farm operation.
2. A farm industry is not permitted to be conducted on the site as there is no principal farm operation.
3. Even if there were a principal farm operation, equipment storage for a party-rental business is not a permitted farm industry use because the use alters the character of the property, and does not involve equipment and skills customary to an agricultural enterprise.
4. The June 1, 2012 interpretation of Robert D. Fennel is affirmed.
5. A copy of this decision shall be filed with the Town Clerk, the Zoning Enforcement Officer, the Building Inspector, and the Secretary of the Planning Board within five days of adoption of this resolution.

*Chairman Annas* – Are there any further comments before we close the hearing? If not, then these hearings are closed.

*Chairman Annas* – I make a motion to accept this resolution as written.

*Tim Ross* – I’ll second it with the comments modified to indicate what Mr. Bodian’s general records indicate a horse farm.

All were in favor.

*Chairman Annas* – So you are, at this moment, in violation of town code if you still have that dishwashing and party rental storage going on there.

**(SEE “DETERMINATION REGARDING APPEAL BY  
MITCHELL BODIAN” AT THE END OF THESE MINUTES)**

**PUBLIC HEARING**

7:32 Continuation of Public Hearing for Appeal 12-07, Jakob Cirell application for an interpretation of Section 143-41 (D)(4) of the Town Code which lists allowable farm industries and businesses on farms in the RD3 zone. Mr. Cirell wishes to establish a small brewery at 214 Oriole Mills Road, Tax Grid # 6371-00-397857 in the RD3 zoning district.

*Chairman Annas* – Our Public Hearing is still open. This is a continuation from the prior month. Do we have any comments? We’ll start with the applicant. First, is Jakob Cirell still interested in pursuing this?

*Mitchell Bodian* – He is.

*Chairman Annas* – We have a similar format here in our determination. There are just 20 steps. Some of them are the same. They may sound a little redundant, but, let me go through them.

1. The property is located in a residential district, the RD3.
2. The Town amended the zoning law in 2011 to create the Agricultural Business District (ABD).
3. A brewery is specifically identified as a permitted use in the ABD.
4. A brewery is not identified as a permitted use in the RD3.
5. Farm industry is permitted in the RD3 subject to the standards in 143-41(D).
6. The list of permitted farm industries includes “processing of locally produced agricultural products”.
7. Farm industry is defined in Section 143-4 as “a limited business use conducted by the farm operator, which is clearly incidental and secondary to the use of the farm premises for agricultural purposes and does not alter the character thereof, with the objective of expanding the income of the farm throughout all seasons by the employ of equipment and skills customary to the agricultural enterprise and which use shall be fully consistent with the use limitations set for in § 143-41D of the Zoning Law.
8. In 1999 the Board determined that a winery is a permitted farm industry to the Greig Farm, a 500+ acre working farm, in Appeal No. 4-99.
9. The applicant has stated that he will grow several hops plants on the property.
10. Hops constitutes a small percentage of the ingredients in beer, approximately 5%.
11. Grains for the beer will be sourced from farms within Red Hook and other farms within a 160 mile radius.
12. Crops have not been grown on the property in the last six (6) years.

*Mitchell Bodian* – Again, we don’t know whether that’s true or not.

*Harvey Cohn* – I’ve lived across the property for 40+ years. Neither of the previous owners – they did not grow any crops. They did not have any crops growing on the property. It was

approximately 1965 when I moved up here.

*Attorney Polidoro* – So we are amending 12 to say crops have not been grown on the property for at least the last six (6) years.

*Susan Lindner* – I’ve walked the property for thirty (30) years and I’ve been on the property and, I know there are no crops that have ever been grown there except Mr. Salerno who grew some tomatoes for himself. That’s it. There are aerial photographs also that will show you that no crops have ever been grown there.

13. Christopher Lindner, a neighbor, asserts that crops have not been grown on the property since 1935, which is not contradicted by anything in the record.
14. The property was used to board horses intermittently from 2005 – 2012. During that time a varying number of horses were boarded.
15. The horse boarding operation has ceased.
16. 28.35 acres of the property is registered with the DEC Forestry Management Program and is committed until 2019.
17. The remaining 9.5 acres appear to have unsuitable soils for farming as they are very rocky. No tillable land is apparent.
18. There is no livestock on the property.
19. There are no visible crops of any kind on the property.
20. Several of the buildings on the property are in disrepair and do not appear to be used for agricultural purposes.

*Mitchell Bodian* – I would just modify that to say as of the date of the application, there was no livestock on the property. I don’t know if that’s a true statement as we sit here tonight.

*Chairman Annas* – Are there any other comments?

Be it resolved, the Zoning Board of Appeals determines as follows:

1. A stand alone brewery does not constitute a farm operation.
2. The property is not proposed to be used for a farm operation.

Mitchell Bodian disputed this.

*Tim Ross* – Let’s modify that to: At the time of the application, the property was not being used for a farm operation.

*Attorney Polidoro* – On number one (1), I think it should be modified to say; A stand alone brewery which does not grow its own grains/hops does not constitute a farm operation.

Mr. Bodian asked if that was accurate.

*Attorney Polidoro* – We do have a definition of a brewery in the code but, the question is

whether a brewery on its own can be a farming operation. Here we have a brewery that's not going to be growing its hops.

*Tim Ross* – It would have to be secondary to a farm operation to come under that interpretation of the code.

Mitchell Bodian asked if it could be secondary to a livestock operation.

*Tim Ross* – The definition is: The limited business use connected by the farm which is clearly incidental, secondary to the use of the farm premises for agricultural purposes and, it has to be secondary, clearly secondary, and does not alter the character thereof, with the objectives of expanding the income of the farm, throughout all seasons, by the employ of equipment and skills customary to the agricultural enterprise. So, if you have the people that are working on the farm, are also running the brewery, which a lot of different ones have stills and breweries up in Columbia County and you see them but, I don't think it has to be that you grow all the grain right there, so you're using just your own products and, I haven't researched it this time but, in '99 it had to be locally produced and Agra markets defined locally as within New York State, at that time. With the Allison Winery, I recall that we just wanted them to move and they did try to put in grapes.

There was discussion between the Board and Mr. Bodian.

*Susan Lindner* – The brewery is only permitted in the ABD district, Agricultural Business District. This farm, this property, this, whatever it is, is not in the agricultural business district.

*Tim Ross* – If this property were in the ABD, they would need nothing. They would just go for a building permit. They're asking for an interpretation based on that section of the code which is within their rights; a farm industry.

*Susan Lindner* – In order for the brewery to be established on the farm, you have to be a farm first. Then you can apply, if you're in the agricultural business district, to have a brewery. But in order to have the brewery, your farm has to be able to produce 51% of the product used in the brewery.

3. Even if a brewery is considered a farm industry use, this Board finds that there is no principal farm operation on the property, and that therefore farm industry, as an accessory use to a farm operation, is not permitted.
4. The May 15, 2012 interpretation of Robert D. Fennell is affirmed.
5. A copy of this decision shall be filed with the Town clerk, the Zoning Enforcement Officer, the Building Inspector, and the Secretary of the Planning Board within ten days of adoption of this resolution.

*Attorney Polidoro* – What this resolution doesn't do is it doesn't answer the question of whether or not a brewery is a farm industry. We don't get to that question because the resolution finds it's not a farm.

*Tim Ross* – I vote that we adopt this with the changes that were similar to the last one.

*Jim Hegstetter* – I second that.

*Chairman Annas* – Any discussion by the Board?

All were in favor.

*Chairman Annas* – No brewery at this time under these circumstances.

**(SEE “DETERMINATION REGARDING APPEAL BY  
JAKOB CIRELL” AT THE END OF THESE MINUTES)**

**PUBLIC HEARING**

7:55 Appeal 12-09, application of Peter Sweeney a variance from the District Schedule of Area and bulk Regulations and Section 143-18a(2) to: Reduce the side yard setback for an accessory building from 20 feet to 10 feet and to increase the building coverage from 7% to 14%. The applicant wishes to make alterations to an existing residence and construct a garage at 95 Country Club Road, Tax Grid # 6372-19-586106 in the RD3 zoning district.

*Chairman Annas* – The Public Hearing is now open. Please come forward and state your name.

My name is Philip Labeau and, I am the owner of the property.

*Chairman Annas* – One of the things we asked Peter Sweeney to do because he wasn't sure or clear on exactly the setbacks he wanted and, it's crucial that we know exactly what they are as you will be help to that as a minimum. Generally you'll probably want to go a hair under that to make sure that you are within bounds. Do you want to present those maps to the board?

*Chairman Annas* – Side yard setback you want to reduce to 10 ft.? The application has 19 ft. 4 ½ in. What we are going to have to do is amend this application and have you sign it today.

*Bob Fennell* – Physical buildings on this size lot are subject to this provision that allows for a small setback but, that's only for the principal building. This is an accessory building that must meet the 20 ft. setback.

Multiple discussions took place over the pictures on the map.

*Chairman Annas* – What we are doing is: there are two (2) issues, not three (3) and they affect the garage only and Philip Labeau is asking for a reduction in side yard setback from 20 ft. to 10 ft.

*Tim Ross* – I move that we grant a variance allowing the 10 ft. side yard setback of proposed garage and total coverage to increase on the parcel to a total of 14% for the following reasons:

1. It would be a benefit to the applicant.
2. It won't be a detriment to the neighborhood or the health or welfare of the public.
3. It's consistent with several other parcels in the same neighborhood which have had the exact same situation.
4. It's not self-created. It's an existing lot of record that zoning came in after the parcel was created.

*Jim Hegstetter* – I second that.

Chairman Annas asked if there were any comments. There were none.

All were in favor.

## **ADJOURNMENT**

Jim Hegstetter made a motion to adjourn the meeting. The motion was seconded by Chris Carney and all were in favor. The meeting was adjourned at 8:10 P.M.

Respectfully submitted,

Jackie Fenaroli  
Secretary

**Town of Red Hook  
Zoning Board of Appeals**

**Determination Regarding Appeal by Mitchell Bodian**

Appeal # 12-08            Application of Mitchell Bodian for Appeal of June 1, 2012 Determination  
   of ZEO Fennell and Interpretation of Section 143-41D of the Zoning Law  
Property Address:        210 -214 Oriole Mills Road, Red Hook, New York  
Property ID:                6371-00-397857; 38 acres  
Owner:                        T L C Acreage LLC

**WHEREAS**, application was made to this Board on June 23, 2012 appealing an interpretation issued June 1, 2012 by Robert D. Fennell, Zoning Enforcement Officer, regarding the use of the above-reference property for a operation of a party rental business, including storage of equipment; and

**WHEREAS**, the applicant has requested that the Board determine that the proposed part rental business is a permitted Farm Industry in accordance with Section 143-41D(4) of the Zoning Law; and

**WHEREAS**, the application is a Type II action under 6 NYCRR Part 617; and

**WHEREAS**, a public hearing was properly noticed and held on the said application at the Town Hall in Red Hook, Dutchess County, New York on September 12, 2012; and

**WHEREAS**, at said public hearings all those who desired to be heard were heard and their testimony recorded; and

**WHEREAS**, members of the ZBA have conducted site walks of the property and their observations have been entered into the record; and

**WHEREAS**, the following documentation was analyzed in reviewing the application and constitutes the record of this decision in addition to the public comments and testimony:

1. The Town of Red Hook Zoning Law
2. Application of Mitchell Bodian dated June 23, 2012
3. Determination of ZEO Fennell dated June 1, 2012
4. Public hearing testimony from the July 11, 2012 and August 8, 2012 public hearings on the application from Jakob Cirell as it pertains to the existing condition of the subject property.
5. Public hearing testimony from September 12, 2012 hearing.
6. ZBA member site walk observations.

**WHEREAS**, all testimony and documents have been carefully considered, in compliance with the Red Hook Town Code Section 143-135(A) and Section 143-136, and the following pertinent facts noted:

1. The property is located in a residential district, the RD3.
2. Almost all commercial and light industrial uses are prohibited in the RD3.
3. The Town amended the zoning law in 2011 to create the Agricultural Business District (ABD).
4. This parcel of land was not included in the ABD.
5. Farm Industry is permitted in the RD3 subject to the standards in 143-41(D).
6. Farm Industry is defined in Section 143-4 as “a limited business use conducted by the farm operator, which is clearly incidental and secondary to the use of the farm premises for agricultural purposes and does not alter the character thereof, with the objective of expanding the income of the farm throughout all seasons by the employ of equipment and skills customary to the agricultural enterprise and which use shall be fully consistent with the use limitations set for in § 143-41D of the Zoning Law.
7. The list of permitted farm industries includes “marine, recreation vehicle, historic automobile and related seasonal storage”.
8. Such storage generally involves two trips per year per vehicle, one to bring the stored vehicle to the site for winter storage, and the second to remove the vehicle from the site in the spring.
9. Storage for a party rental business involves a more intense use of the surrounding roadways and the site.
10. According to information provided to ZEO Fennell, there are approximately two trucks per day entering and leaving the site.
11. The nature of a commercial party rental business involves deliveries to and from the site throughout the year.
12. The applicant has not grown crops on the property for at least six years.
13. Christopher Lindner, a neighbor, asserts that crops have not been grown on the property since 1935, which is not contradicted by anything in the record.
14. The property was used to board horses intermittently from 2005 – 2012. During that time a varying number of horses were boarded.
15. The property has not been used for a horse boarding operation for at least six months.
16. 28.35 acres of the property is registered in the DEC Forestry Management Program and is committed until 2019.
17. The remaining 9.5 acres appear to have unsuitable soils for farming as they are very rocky. No tillable land is apparent.
18. There is no livestock on the property.
19. There are no visible crops of any kind on the property.
20. Several of the buildings on the property are in disrepair and do not appear to be

used for agricultural purposes.

**NOW, THEREFORE, BE IT RESOLVED**, that the Zoning Board of Appeals determines as follows:

1. Equipment storage for a party-rental business does not constitute a farm operation.
2. A farm industry is not permitted to be conducted on the site as there is no principal farm operation.
3. Even if there were a principal farm operation, equipment storage for a party-rental business is not a permitted farm industry use because the use alters the character of the property, and does not involve equipment and skills customary to an agricultural enterprise.
4. The June 1, 2012 interpretation of Robert D. Fennel is affirmed.
5. A copy of this decision shall be filed with the Town Clerk, the Zoning Enforcement Officer, the Building Inspector, and the Secretary of the Planning Board within five days of adoption of this resolution.

Dated: September 12, 2012

Moved By: Nick Annas

Seconded By: Tim Ross

Nick Annas: Aye  
Kenneth Anderson: Aye  
Christopher Carney: Aye  
John Douglas: Aye  
Jim Hegstetter: Aye  
Paul Marienthal: Aye  
Tim Ross: Aye

Approved by the Zoning Board of Appeals this 12th day of September, 2012

Jackie Fenaroli, Clerk of the Board

**Town of Red Hook  
Zoning Board of Appeals**

**Determination Regarding Appeal by Jakob Cirell**

Appeal # 12-07            Application of Jakob Cirell for Appeal of May 15, 2012 Determination of ZEO Fennell and Interpretation of Section 143-41D of the Zoning Law  
Property Address:       210 -214 Oriole Mills Road, Red Hook, New York  
Property ID:             6371-00-397857; 38 acres  
Owner:                    T L C Acreage LLC

**WHEREAS**, application was made to this Board on May 18, 2012 appealing an interpretation issued May 15, 2012 by Robert D. Fennell, Zoning Enforcement Officer, regarding the use of the above-reference property for a brewery; and

**WHEREAS**, the applicant has requested that the Board determine that the proposed brewery is a permitted Farm Industry in accordance with Section 143-41D(4) of the Zoning Law; and

**WHEREAS**, the application is a Type II action under 6 NYCRR Part 617; and

**WHEREAS**, a public hearing was properly noticed and held on the said application at the Town Hall in Red Hook, Dutchess County, New York on July 11, 2012; and

**WHEREAS**, the public hearing was continued to August 8, 2012 and September 12, 2012 for the purposes of receiving additional evidence; and

**WHEREAS**, at said public hearings all those who desired to be heard were heard and their testimony recorded; and

**WHEREAS**, members of the ZBA conducted site walks of the property and their observations have been entered into the record; and

**WHEREAS**, the following documentation was analyzed in reviewing the application and constitutes the record of this decision in addition to the public comments and testimony:

1. The Town of Red Hook Zoning Law
2. Application of Jakob Cirell dated May 18, 2012
3. Determination of ZEO Fennell dated May 15, 2012
4. Public hearing testimony from July 11, 2012, August 8, 2012 and September 12, 2012 hearings.
5. ZBA member site walk observations.

6. Guidelines for Review of Local Laws Affecting Farm Distilleries, Breweries and Wineries, published by NYS Department of Agriculture and Markets
7. Email from Nick Annas to Victoria Polidoro regarding observations of the proposed brewery, dated July 11, 2012
8. Letter from Judith R. Fox, Executive Director of Camp Rising Sun, dated July 11, 2012
9. Letter from John Holden Adams, Esq., dated July 11, 2012
10. Letter from Christopher and Susan Lindner, dated July 11, 2012
11. Letter from Judith R. Fox, dated July 6, 2012
12. Letter from Harvey Cohn, dated July 6, 2012
13. Letter from Commissioner Darrel J. Aubertine to Ariel Schlein, Dutch Spirits LLC, dated April 21, 2011
14. Letter from Scott and Denise Traver

**WHEREAS**, all testimony and documents have been carefully considered, in compliance with the Red Hook Town Code Section 143-135(A) and Section 143-136, and the following pertinent facts noted:

1. The property is located in a residential district, the RD3.
2. The Town amended the zoning law in 2011 to create the Agricultural Business District (ABD).
3. A brewery is specifically identified as a permitted use in the ABD.
4. A brewery is not identified as a permitted use in the RD3.
5. Farm industry is permitted in the RD3 subject to the standards in 143-41(D).
6. The list of permitted farm industries includes “processing of locally produced agricultural products”.
7. Farm industry is defined in Section 143-4 as “a limited business use conducted by the farm operator, which is clearly incidental and secondary to the use of the farm premises for agricultural purposes and does not alter the character thereof, with the objective of expanding the income of the farm throughout all seasons by the employ of equipment and skills customary to the agricultural enterprise and which use shall be fully consistent with the use limitations set for in § 143-41D of the Zoning Law.
8. In 1999 the Board determined that a winery is a permitted farm industry to the Greig Farm, a 500+ acre working farm, in Appeal No. 4-99.
9. The applicant has stated that he will grow several hops plants on the property.
10. Hops constitutes a small percentage of the ingredients in beer, approximately 5%.
11. Grains for the beer will be sourced from farms within Red Hook and other farms within a 160 mile radius.
12. The property owner has not grown crops on the property for at least six years.
13. Christopher Lindner, a neighbor, asserts that crops have not been grown on the property since 1935, which is not contradicted by anything in the record.
14. The property was used to board horses intermittently from 2005 – 2012. During

- that time a varying number of horses were boarded.
15. The property has not been used for a horse boarding operation for at least six months.
  16. 28.35 acres is registered in the DEC Forestry Management Program and is committed until 2019.
  17. The remaining 9.5 acres appear to have unsuitable soils for farming as they are very rocky. No tillable land is apparent.
  18. As of the date of the application there was no livestock on the property.
  19. There are no visible crops of any kind on the property.
  20. Several of the buildings on the property are in disrepair and do not appear to be used for agricultural purposes.

**NOW, THEREFORE, BE IT RESOLVED**, that the Zoning Board of Appeals determines as follows:

1. A stand alone brewery which does not grow its own grains does not constitute a farm operation.
2. At the time of the application the property was not proposed to be used for a farm operation.
3. Even if a brewery is considered a farm industry use, this Board finds that there is no principal farm operation on the property and that therefore farm industry, as an accessory use to a farm operation, is not permitted.
4. The May 15, 2012 interpretation of Robert D. Fennel is affirmed.
5. A copy of this decision shall be filed with the Town Clerk, the Zoning Enforcement Officer, the Building Inspector, and the Secretary of the Planning Board within five days of adoption of this resolution.

Dated: September 12, 2012

Moved By: Tim Ross

Seconded By: Jim Hegstetter

Nick Annas: Aye  
Kenneth Anderson: Aye  
Christopher Carney: Aye  
John Douglas: Aye  
Jim Hegstetter: Aye  
Paul Marienthal: Aye  
Tim Ross: Aye

Approved by the Zoning Board of Appeals this 12th day of September, 2012  
Jackie Fenaroli, Clerk of the Board

Relevant Sections of the Town Code:

§143-41D. The conduct of farm industries, as defined in § 143-4 of this chapter, shall be a permitted accessory use on a farm parcel in the LD, RD5, RD3, R1.5, R1 and I districts, and on a farm parcel or land in agricultural use in the AB District, provided that:

- (1) The scale of the farm industry shall be clearly subordinate to the farm operation and must be discontinued immediately upon cessation of the farm operation unless otherwise authorized as a permitted principal or accessory use, i.e., home occupation, within the zoning district, in which event all requirements applicable to the permitted principal or accessory use would have to be met.
- (2) The farm industry shall be conducted through the primary use of buildings, equipment and other facilities integral to the farm operation.
- (3) The farm industry shall be operated by the farm owner and involve as outside employees only those otherwise engaged in the agricultural operation to which the farm industry is subordinate.
- (4) Permitted farm industry uses.
  - (a) The farm industry may include one or more of the following on-site uses, provided that the general performance standards otherwise set forth in § 143-25 of this chapter for nonresidential and nonagricultural uses are met and the use is conducted, to the extent practicable, in an existing enclosed structure appurtenant to the farm operation:
    - [1] Welding.
    - [2] Agricultural machinery repair.
    - [3] Woodworking.
    - [4] Tack and harness repair, horseshoeing and blacksmith work.
    - [5] Dressing of game.
    - [6] Firewood preparation and sales.
    - [7] Processing of locally produced agricultural products.
    - [8] Marine, recreational vehicle, historic automobile and related seasonal storage.
  - (b) Subject to compliance with the aforesaid general performance standards, the farm industry may further include the business and equipment/material storage functions associated with the following uses, provided that such storage functions are wholly enclosed or effectively screened by intervening landform and vegetation from neighboring residential properties and public rights-of way:
    - [1] Commercial logging.
    - [2] Excavation.
    - [3] Landscaping.
    - [4] Grounds maintenance.
    - [5] Animal breeding/artificial insemination.
- (5) A separate certificate of occupancy shall be required for the farm industry activity with the farm industry use not deemed to be authorized by the issuance of a

certificate of occupancy for the farm, i.e., the agricultural and related principal residential use occurring on the premises. As a condition precedent to the issuance of such certificate, the property owner shall specifically acknowledge, in writing, the requirement that the accessory farm industry cease operation immediately if discontinuance of the farm use to which such farm industry is accessory should such occur.

Section 143-4, Definitions:

**AGRICULTURE**

- (1) For parcels located within the Agricultural Business Zoning District, and for all parcels in the Town that are within a New York State certified Agricultural District and constituting a farming operation as defined in § 305-a of the New York State Agriculture and Markets Law, “agriculture” shall mean any activity connected with the raising of crops, livestock products and far woodland, as defined in § 301 of the New York State Agriculture and Markets Law.
- (2) For all other parcels, “agriculture” shall mean activities connected with the raising of crops and, to the extent permitted in § 143-39 of this chapter, keeping, grazing and feeding of animals, and shall not include:
  - (a) The operation of a riding academy, livery or boarding stable; or
  - (b) A dog kennel or cattery.

**BREWERY**

A facility located on a farm where malt liquors are manufactured.

**DISTILLERY**

A facility located on a farm where fermented grain, fruit or vegetables are distilled into spirits or liqueurs.

**FARM**

Land and related machinery and buildings, including any farmhouse, used in commercial production of agriculture and related products, provided that the land meets one or more of the following criteria:

- (1) Enrollment within an agricultural district established pursuant to Article 25-AA, §§ 303 and 304, of the New York State Agriculture and Markets Law.
- (2) Individual landowner commitment to agricultural land use pursuant to § 306 of Article 25-AA of the New State Agriculture and Markets Law.
- (3) Not less than seven acres of land used as a single operation during the preceding two years for the production for sale of crops, livestock or livestock products of an average gross sales volume of \$10,000 or more, or lands less than seven acres producing an average gross sales volume of \$50,000 or more.

**FARM INDUSTRY**

A limited business use conducted by the farm operator, which is clearly incidental

and secondary to the use of the farm premises for agricultural purposes and does not alter the character thereof, with the objective of expanding the income of the farm throughout all seasons by the employ of equipment and skills customary to the agricultural enterprise and which use shall be fully consistent with the use limitations set for [sic] in §143-41D of this chapter.