

ZONING BOARD OF ADJUSTMENT  
December 4, 2012

**APPROVED:**

4/2/13\_\_jrl\_\_\_\_\_

**AGENDA:** 12VAR09 VARIANCE: HEIDI V. G. COGEAN, 567 West Shore Road, #203-083 – for retail sales in the Lake district.

**ATTENDING:** Alan DeStefano (Chairman), Lorraine Bohmiller, Larry Denton, Ashley Dolloff

**ABSENT:** Richard LaFlamme (Vice Chairman – ill)

**OTHER:** Michael Capone (Town Administrator)

The meeting opened at 6:10pm. with a quorum.

**MINUTES OF NOVEMBER 20, 2012:**

L. Denton made a motion, second by L. Bohmiller, to approve the minutes as read. The motion carried.

**12VAR09 VARIANCE: HEIDI V. G. COGEAN**

The secretary read the application, abutters notified, where the hearing was advertised and stated that there were no public phone calls or written correspondence received. There was an e-mail by the Fire Chief regarding the need of filling out a Land Use permit when ready to build or renovate the retail store/tasting room which the Chairman read.

A discussion was held regarding the section of the Zoning Ordinance that was listed in the application. Ms. Cogean stated that it was her intent to get a variance for retail sales in the Lake district. It was determined that the listing of Article V. Section 5.3 on Variances was not relevant but the criteria was correct for Article III Section 3.2F (uses in the Lake District) and, therefore, the Board would continue with the hearing.

Ms. A. Dolloff made a MOTION, second by L. Denton, to ACCEPT THE APPLICATION OF HEIDI V. G. COGEAN. The motion CARRIED.

Mr. DeStefano asked Ms. Cogean if she would like to continue without a full board and Ms. Cogean answered that she would.

**COGEAN VARIANCE continued:**

Ms. Cogean stated that she bought the 4 acre farm that is in the Lake district so as to raise fruit, vegetables and grapes. She is allowed to make 100 gallons of wine for herself per year. However, she would like to have a tasting room and sales of wine and needs a variance for retail. Federal is okay with it as long as the State gives her a license and the State wants approval from the Town before that is issued. A tasting room is encouraged by the State, she added. There will be no entertainment, opening of purchased bottles, or public drinking on the property other than what is allowed for tasting (a 1 ounce pour of each of 6 different wines per person).

Ms. Cogean went on to say that the auxiliary building for this is 30' x 40' with a flat roof. The tasting section will be 15' x 15' with limited hours. She is a one-person operation and has a full-time job elsewhere so must limit for now. Her initial plan is for Friday, 6:00 p.m. to 9:00 p.m. for at least 6 months. Other sales of the wine will be off the property in stores such as Shop 'n Save and Shackett's. Ms. Cogean has no inventory right now and it takes 1 to 1 ½ years to make red wine.

Ms. Cogean intends to hold tours of the farm and teach good agricultural methods. She uses little pesticides: using a spray twice a summer for Japanese beetles only. This is a wet spray and goes directly onto the plant. When asked about fertilizer, Ms. Cogean answered that a petiole analysis is done by UNH yearly and they report that none is needed.

Mr. Denton stated that it will be a small store with light traffic. He then asked about parking. Ms. Cogean stated that there is room for 8 vehicles. She added that this is not a bar; she is required to go to a class to learn to recognize underage patrons and to learn the size of ounces. She continued to say that Eric Griswald has a large operation and the most traffic he gets is 8 or 9 cars at a time. "Stonegate" is on ¾ of an acre and has 7 cars at most. Mr. Denton asked if she foresees an increase in operations. Ms. Cogean stated that she is limited due to the 8' ceiling (her license is controlled by the height of the tanks). She mentioned that Labelle Winery has a 4 ½ million dollar structure and vineyard. Her plans are to eventually retire and do this full-time. She plans on being closed in the winter. The closest winery to her is in Danbury.

Mr. DeStefano was concerned that the retail sales could expand and reminded the Board that we must be aware of down the road. Ms. Cogean explained that she does everything herself and might only hire one person to help when she does expand. Ms. Bohmiller stated that she visited the property and you can barely see the house from the road. It is up a rise and there are trees between it and the road. Ms. Cogean added that there is 250' from the auxiliary building to the front of the property and she is 750'-800' above sea level. There are huge pines that block the view. The boundaries are all very wooded.

**COGEAN VARIANCE continued:**

Mr. DeStefano asked if she intends on having signs and was told that she would eventually. He mentioned that the Planning Board is in charge of that. Ms. Bohmiller asked if she intends on selling fruits and vegetables and Ms. Cogean answered that she does not except for maybe rhubarb.

With no other questions, Mr. DeStefano asked Ms. Cogean to go through the criteria.

1. Public Interest – The plan is for a small retail operation with limited seasonal hours of operation. Agricultural use of this land is reasonable as it has a long history of agricultural use. Agritourism of the land is in the public interest in rural New Hampshire and is supported by the State. There is no nuisance noise or light glare generated. Visitors will be more than 250’ away from West Shore Rd. There is no visual hazard due to the tree buffer, no toxic discharge or odor from operations. There is no run off from the vineyard or crop field. The property will be maintained in the character of the neighborhood. She may sell wine & glass.
2. Spirit of the Ordinance – Granting would not alter the character of the Lake district. It would enhance the district. An agricultural based business with a value added product for sale on the premises supports agritourism and the character of the Lake district. It is important to the State of NH and is defined in RSA 21:34-a.VI. The term “agritourism” means attracting visitors to a working farm for the purpose of eating a meal, making overnight stays, enjoyment of the farm environment, education on the farm operations or active involvement in the activity of the farm which is ancillary to the farm operation.
3. Substantial Justice – Retail sales of the farm products would create a viable agricultural based business. It would allow the business to be established at the vineyard site. The sale of fermented fruit (wine) provides a revenue stream to the State and the income from the business will help ensure that the land stays in agricultural use.
4. No Diminution of Value to Surrounding Properties – The visual aesthetics of the property would not change. There will be no additional noise created. There is a significant buffer of trees and vegetation on all boundaries of the property. There will be no unsightly waste or storage containers for the public to view. No unpleasant odors will be generated. The buildings meet all setback requirements. There are many examples of property values increasing in the neighborhoods surrounding NH vineyards.

**COGEAN VARIANCE, Hardship continued:**

5. Unnecessary Hardship – Zoning restriction of the ability to make sales of the farm products at retail on the premise would negate the reason to operate an agricultural based business on the land. In the past, dairy products sold by Mr. & Mrs. Adams ensured the successful operation of their dairy farm there for many years. Similarly, the retail sales produced by the winery will support the future use of this property.

RSA 672 supports agricultural activities. The Lake district, as it exists, caters to the tourist industry. A vineyard and winery is an attraction for tourists and also supports the rural and agricultural nature of the Newfound Region. The location on scenic West Shore Rd., the slope of the land, the microclimate for the grapes due to the proximity to Newfound Lake, the sustainable farming practices of cultivating grapes without manure and irrigation, the shelter on the north side afforded by tall pine trees, the history of the land as part of the “Adamsville” dairy farm land, all make this property ideally suited for use as a vineyard farm that can exist in the watershed of Newfound Lake.

The property cannot function as a vineyard unless the produce is sold as the value added wine product. The retail sales of wine will support the continued cultivation of the land. The ability to show customers how the farm products are made into wine and allow customers to purchase the farm products on site is critical to the success of the business. It would be a significant unnecessary hardship on the business to deny retail sales of the farm products on the farm site. The destination objective for customers is to tour the farm and vineyard, learn about the wine making process and sustainable farming practices, sample the product and make a purchase at retail.

Mr. DeStefano then called for public input. There was none. Ms. Cogean stated that abutter Norman Roy told her that he was in favor but cannot attend as he is in R. I. Mr. Denton asked what she would do if she cannot sell wine. She answered that she only has wine grapes, not the kind to eat. She would only be allowed the 100 gallons per adult at the residence per year. She would like to supplement her retirement with a vineyard. The State requires a tasting room even if stores do the selling of the wine. Mr. DeStefano stated that there is only 365’ of frontage so the land can only be divided into 3 lots. Ms. Cogean mentioned that her grape varieties are from Minnesota. Ms. Bohmiller asked if she can have any functions. Ms. Cogean answered that there is a possibility but only if she built on top of the existing building.

At this time, Mr. DeStefano closed the hearing to public input.

**VARIANCE, COGEAN continued:**

Mr. DeStefano explained that the issue is that the agriculture part is okay but retail sales are not. Mr. Denton mentioned that we must be careful as we have already denied similar cases. This one would not have a lot of traffic and no significant amount of alcohol would be imbibed.

Mr. DeStefano mentioned that we denied a brewpub in the Lake District. Ms. Dolloff said that that case involved a restaurant. Mr. Denton added that it is not the same type of business. Ms. Dolloff felt that this meets all of the criteria. Ms. Bohmiller added that it is not a hangout. Ms. Dolloff stated that she does not see it to be an increase in traffic either. Mr. Denton was not sure as to how much the lot can be expanded. Ms. Bohmiller again stated that it is up on top of a hill and she does not see a problem with it.

The Board then went over the criteria. They felt that all were met until they got to #5, Hardship. Mr. Denton stated that she is trying to improve the lot, continue agricultural business, and needs to cover her costs. The hardship is not being able to sell her product. Ms. Bohmiller added that this is also an educational tool. Mr. DeStefano asked if the Board would feel differently if this was a 15 acre parcel in the Rural district that wanted sales. The Board felt that there is no difference. It was determined that a sign would be up to the Planning Board.

Ms. Bohmiller stated that this is just an expansion of growing the grapes. Mr. DeStefano said that he is having a time with reasonable use. Mr. Denton felt that reasonable use is of what she has been allowed to do thus far. The hardship is that she would not be able to use what she has already created. We could deny everyone from any additional use if they already have a house, if this is the case. If you can't improve your property, without detriment to your abutters, it is hardship. Ms. Dolloff added that she would not be able to use the product. Mr. Denton said that this is very different from a brewpub. Ms. Bohmiller agreed.

Mr. DeStefano stated that he is still having a hard time --- he feels that this is a hobby issue. Monetary issues cannot come into play. Mr. Denton stated that the hardship is to not allow her the use of her land as she wants. When asked, Ms. Cogean explained that the auxiliary building is a flat-roofed structure for which she got a permit. She had building permits for the barn back when the house was built.

**COGEAN VARIANCE continued:**

Mr. DeStefano questioned growing the grapes before coming in to see if it could be done. Mr. Denton stated that she could have purchased the farm and planned on asking for the variance later. Nothing says that you will never ask for a variance. Ms. Dolloff stated that this is a farm and farms sell their products. That is a hardship. The Board agreed.

Mr. DeStefano stated that we could approve with the condition that only retail sales of wine products be sold. Mr. Capone asked to speak and stated that they could limit not just to wine but to agricultural products.

Ms. A. Dolloff made a MOTION, second by L. Bohmiller, to APPROVE THE VARIANCE FOR HEIDI V. G. COGEAN WITH THE CONDITION TO LIMIT SALES TO AGRICULTURAL BYPRODUCTS. The motion CARRIED unanimously and the Notice of Decision was signed.

Ms. Cogean was reminded of the 30-day appeal time and also that she will need Site Plan with the Planning Board.

**COMMUNICATIONS:** There was a Town & City magazine that will be in the office for perusal.

**NEXT MEETING:** With no other business before the ZBA, the next meeting will be held on Feb. 5, 2013 as the scheduled January meeting is on New Year's day and therefore canceled.

Mr. Capone stated that this is the best ZBA session that he has ever witnessed.

**CLUSTER HOUSING:** The secretary mentioned that the Planning Board has just been encouraged to look more at cluster housing with more green spaces. Mr. DeStefano explained that cluster housing is where they concentrate several houses in a smaller area of a large lot and leave the remaining land in common while conserving green areas. It was noted that the Habitat project here in Bristol is a small cluster development.

With no other business before the Board, A. Dolloff made a motion, second by L. Bohmiller, to adjourn at 8:00 p.m.

Respectfully submitted,  
Jan Laferriere, recording secretary