

Town of Princeton
ZONING BOARD OF APPEALS
July 29, 2021

**Appeal of a Cease & Desist order submitted
by Allen and Melissa Hawthorne**

Minutes and Decision

The Princeton Zoning Board of Appeals held a public hearing at the Town Hall Annex, 4 Town Hall Drive, on Thursday, July 29, 2021, at 7:00 p.m. to hear the petition of Melissa A. and Allen C. Hawthorne of 251 East Princeton Road. The petitioners appealed a Cease & Desist Order, issued by Zoning Enforcement Officer Frederick Lonardo on April 28, 2021, regarding their firewood processing operation at 143 Ball Hill Road.

Board members present were Chairman Jesse Weeks, Esq., members William Lawton and Lawrence Greene, Jr. Alternate member Edith Morgan was also present. The chair opened the hearing at 7:02 PM, explained the procedure, and read the public hearing notice. Approximately 27 individuals--including several online with remote access--were in attendance.

The petitioners were represented by Attorney Michael A. Khoury. He contended that the operation was protected under the state and local "Right to Farm" statutes and cited Princeton's General Bylaws Ch. XVIII Farm Preservation Bylaw which was adopted in 2009 from Massachusetts General Laws Chapter 40A, Section 3, Paragraph 1; Chapter 90, Section 9, Chapter 111, Section 125A and Chapter 128 Section 1A. He pointed out that under Section 2 "... The words "farming" or "agriculture" or their derivatives shall include, but not be limited to the following: D) growing and harvesting of forest products upon forest land, and any other forestry or lumbering operations..." Atty. Khoury stressed that the Right To Farm provisions were enacted specifically to deflect attempts, brought especially because of housing development, to halt established farming and forestry operations.

Allen Hawthorne described his business, Princeton Tree, as a farming operation, which contracts with local landowners to clear woodlands--as part of forest management, development of homesites or for other construction. His business also harvests hayfields in and around the Town of Princeton and processes the haybales for sale. Products harvested from tree-clearing are cut into firewood with a log splitter or transported to local sawmills and unusable wood product is saved for eventual chipping. The firewood processing has been conducted for 17 years on land owned by Gregory and Marsha Dowdy at 143 Ball Hill Road. The land qualifies and files for Chapter 61A for tax relief under agricultural use.

In response to a noise complaint, early in 2021, from Daniel and Leslie Fanger, 192 Ball Hill Road, the zoning enforcement officer issued a letter stating that Princeton Tree was in zoning violation. The letter referred to Princeton Zoning Bylaw Sect. III, which lists uses allowed in the Residential-Agricultural zone. The letter cited III, !. (J) which (in part) allows portable wood-working mills subject to a special permit issued by the ZBA.

At 7:18 PM the Chairman closed the petitioners' portion of the hearing to allow questions and comment by members of the public.

Several abutters and neighbors attested to a time period of several weeks, early in the spring, when excessively loud, continuous noise occurred in the area—during business hours but sometime starting at 6 – 7 AM. The applicants explained that there had been temporary use of a large woodchipper on-site to process the stored, unusable wood that had accumulated over 15 years. The Hawthornes pointed out that the contractor operating the chipper had been starting up the machine too early in the morning. They agreed that the noise was excessive but pointed out that it was a rare event that only culminated after 15 years would not likely reoccur, as unusable wood didn't need to be stockpiled since the business added a logging truck. Atty. Khoury stated that the Right To Farm statute describes "reasonable accommodations" that can be applied to farm/forestry operations and noted that the applicants have done so for the 20 year history of their business. The operation was not a sawmill or "wood-working mill" as described in the local zoning bylaw.

There were questions from neighbors about sound levels in decibels, types and sizes of equipment used, sources of logs transported to the site, ownership of land relative to agricultural use, proximity to South Wachusett Brook and hours of operation. Several neighbors contended that the operation was not allowed under zoning. Mr. Fanger played an audio recording taken at his house on March 22 and Mrs. Fanger presented several visuals on a projection screen showing the parcel map and an example of oversized wood-processing equipment that might be used in much larger operations.

The applicants explained the state permitting process they must conform to for transporting harvested material, to avoid the spread of wood infestations or diseases. In addition, zoning board members pointed out that any issues around South Wachusett Brook were the responsibility of the Conservation Commission and not the zoning board. The Dowdy parcel includes about 40 acres lying between Ball Hill Road and the P&W Railroad track, and the work site, a former gravel pit along the track, is encircled by woods.

Sean Conway, 5 Hickory Drive, said that the weeks of excessive noise could also be attributed to forest cutting operations that occurred in three other nearby locations during the same time period. Several residents described having no issues with operations at 143 Ball Hill Road. The most notable complaints were voiced mainly by residents whose homes are at elevation relative to the job site. Several neighbors situated lower in the valley did not share the same complaints.

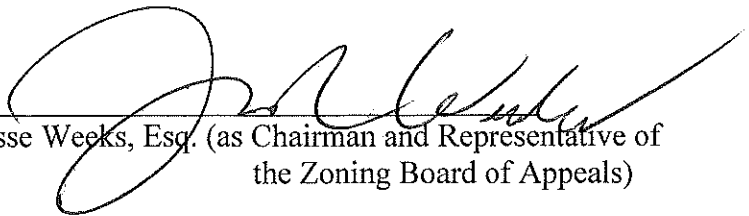
At 8:30 PM a motion was made and seconded, and all three members voted to close the public comment portion of the hearing to begin deliberations. After some discussion, the chair suggested the board might wish to gather more information such as a legal brief from the applicant's attorney. He moved to re-open the public input period but no one seconded the motion, so members continued with the understanding that sufficient evidence had been submitted.

At 8:38 PM the three board members in roll call voted unanimously not to support the Cease & Desist of the Zoning Enforcement Officer dated April 28, 2021. The specific motion made by Lar Green and seconded by Bill Lawton was to support the zoning officer's determination and each member voted "nay." In so doing, the Board concluded that the owners of Princeton Tree were allowed to conduct a firewood operation at 143 Ball Hill Road by right under the state's Right To Farm Bylaw and Princeton's Farm Preservation Bylaw.

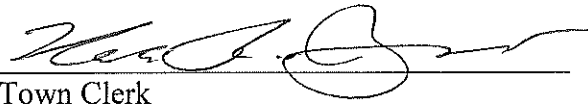
Appeals, if any, should be made pursuant to Section 17, of the Massachusetts Zoning Act, Chapter 40A and shall be filed within twenty (20) days after the date of the filing of this decision with the Town Clerk.

Princeton Zoning Board of Appeals

Dated: 8/12/21


Jesse Weeks, Esq. (as Chairman and Representative of
the Zoning Board of Appeals)

A copy of this decision was filed with the Office of the Town Clerk on August 12, 2021 (date)


Town Clerk

The Town Clerk hereby certifies that twenty (20) days have elapsed after the decision was filed with the Office of the Town Clerk and no appeal has been filed as provided by Section 17 of the Massachusetts Zoning Act, Chapter 40A.

Town Clerk

Date