



# TOWN OF AMENIA

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## **ZONING BOARD OF APPEALS MEETING MONDAY, August 15, 2022 6:00 P.M. - IN - PERSON**

### **REGULAR MEETING:**

**MILLBROOK DISTILLERY- APPEAL FOR PERMIT DENIAL  
78 SINPATCH ROAD WASSAIC, NY**

**OTHER MATTERS: MINUTES 7-18-22**



# TOWN OF AMENIA

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## ZBA MEETING MONDAY, August 15, 2022 IN-PERSON at TOWN HALL

**PRESENT:** John T. Metcalfe  
Tracy Salladay  
David Menegat  
James Wright

**ABSENT:** Paula Pelosi – Recused herself for Millbrook Distillery because of conflict of interest.

**OTHERS PRESENT:** John Dyson – property owner  
James Staudt – from McCullough, Goldberger & Staudt  
Joel LeVangia, Shane Fraser, and Cole Peck

Motion was made by J. Wright and seconded by and carried to call the meeting to order. ZBA Chairman, Terry Metcalfe opened the meeting at 6:10pm with the Pledge of Allegiance. The agenda item was Millbrook Distillery – Appeal to the Determination of The Building Inspector, Tom Basile. Chairman Metcalfe asked the Applicant to begin with his presentation to the Board. James Staudt, representing John Dyson, from McCullough, Goldberger & Staudt, began by reading his Appeal Statement in support of the Millbrook Distillery Application. (this statement was later submitted to the secretary of the Planning Board). The document outlines their Appeal to request that A Site Plan Approval is not needed to build the proposed 6,500 SQ.FT. Barn for storing whiskey barrels at the Ten Mile Distillery at 78 Sinpatch Rd. Wassaic, NY. Several points were mentioned in his statement. They were as follows:

- Zoning – Property for barn is located in the RA district and also a designated New York Agriculture and Markets Law “Agricultural” District
- Millbrook holds a Farm “Distillery” License from The State of New York
- Town Assessor classifies property as “Agricultural” (Copy of Tax Bill Submitted for proof)

- Conservation Easement – Bulk of property is covered by this – from just before the orchard to way out beyond the farming fields.
- 2018 Millbrook Distillery was given a Building Permit for the Addition and restoration to the existing Barn and a Certificate of Compliance was issued
- New Permit application is proposed to house whiskey barrels of distilled whiskey to age as well as to store farm equipment used in hay making
- Town of Amenia Code says the definition of agriculture includes the processing of agricultural commodities.
- Determination from Building Inspector – Denial is because the barn does not qualify for “Agricultural Use” or “Farm Operation”
- Code 121.65A say Agricultural Structures with a footprint of 10,000 SF or less are exempt from Site Plan Approval.
- Cited New York Case Law and ambiguity resulting in favor of the landowner
- Permit issued under one Building Inspector and denial for barn under a new one is under the Kennedy Case as noted.

Mr. Dyson then read and discussed his entire background; both in his life and in the distillery business and at 78 Sinpatch Rd in Wassaic since 2017. Then he makes several more points:

- Town of Amenia Zoning does not define an “AG” Barn. He says it will be used as an “Accessory Use” Section 121-73
- Farm Operation – He says they are, with 60 acres being hayed
- NYS Ag & Markets Law states that one crop that makes a “Farm Operation” is that of Hay
- False Statement – from the Building Inspector
- Reversal of the Building Inspector’s denial

Discussion between the ZBA members and the Town’s ZBA Counsel began and Mr. Staudt and Mr. Dyson were trying to speak at the same time. ZBA Counsel Rob Stout, had to stop Staudt and Dyson as they were already given the chance to speak.

Tracy asked about the percentage of property that hay is harvested on to the distilling as a consideration toward an “Agricultural” property or a “Farm Operation” and part of the Zoning Code.

Rob Stout mentions the Ag & Markets Law as protecting Farm Operations from requiring a Site Plan Approval and reads several of their definitions for “Agricultural” use and farm commodities, listing Barley and Hops as agricultural commodities. The Town Of Amenia does not define “agricultural commodities” in their Zoning Code definitions. It was written in 2007 before distilleries were common. To what extent is the proposed ”Barn” being used for the hay operation vs. the distillery operation? Chairman Metcalfe stops the back & forth discussion again and states that the reason for the meeting is to determine if the Building Inspector was correct or incorrect in his determination for denial. Town of Amenia Code does not list whiskey as an agricultural commodity. Does the ZBA? Jim asked about the definition being a non-industrial manufacturing process. Mr. Staudt says it is not a manufacturing process, but an artisanal process that is considered agricultural. Rob Stout asked that the distiller speak to the process so the Board could understand it. Mr. Fraser described the process from start to finish. He started by saying that the barley is grown on the property in Tivoli, NY. (not Wassauc). And then brought to the Wassauc property for fermentation, etc. The result is 10 barrels per week. Therefore, considered a non-industrial manufacturing business. Dave asked the processing time frame from beginning to end. Mr. Fraser says that the malting and distilling takes 2 weeks and then another 3year minimum in the barrels. Rob confirmed with the applicant that the use of the proposed barn will be for storing the aging whiskey as well as for farm equipment used in the haying process of the 60 acres at 78 Sinpatch Rd. Joel says that the 60 acres is not enough to grow all of the barley that is needed to make the whiskey, so they have to use (rent) other lands to raise the barley as well, such as the land in Tivoli. Mr. Dyson says they just signed a lease to grow and produce 100-150 acres of barley at a farm offsite in Tivoli. In the future, they plan on using the 60 acres that are being used for hay as for growing the barley. Mr. Staudt makes it clear that the Zoning Board should be very careful in their determination and not to bring in the AG & Markets Law. It is the Town Zoning Law that makes the determination for the Zoning and regulations. Tracy asks about the previous Building Permit issued from The Building Department in 2019. The Permit was for “Addition to and Renovations to Existing Barn”. A certificate of Compliance was just issued the end of July 2022. Rob Stout asked when the Distillation commenced. Joel answered January 2020. Mr. Dyson explained that the renovation process took a while as well as the addition. Rob Stout states that the Application needs come before a Public Hearing

and needs to know if the ZBA would like to set the date for that hearing. Rob describes the Public Hearing process to Mr. Dyson. Mr. Dyson states that they are under time constraints because the steel for the building has been delivered and wants to get the building up before the snow flies. The ZBA was already nice enough to see them regarding the application being it was submitted after the deadline and that timing is something that the board is very sensitive to. Rob explained that a determination could come potentially that evening after the Public Hearing and a resolution would then be drafted for a subsequent meeting. Noted is that the Project will be a TYPE II action which will require no SEQRA Review or Environmental Review. Rob will be in contact with the ZBA members leading up to the September 19<sup>th</sup> meeting providing legal counsel on the matter and that providing all materials that are needed have been provided, a resolution could be drafted for that meeting as well. Mr. Dyson spoke and said that he can't imagine anyone from the public not in favor of this application as there have been many events and so many people from the Town have visited and say how wonderful it is. Mr. Dyson says they make Vodka and Gin and that they have daily taste testing from noon – 5pm Monday – Friday. They are working on getting their signage now for the venue and working with AG & Markets and of course the sign regulations from the Town of Amenia as well. Chairman Metcalfe warns them to be careful of the signage that is put in because of the Town Regulations. A motion was made by D. Menegat, seconded by J. Wright and carried to schedule the Public Hearing for Monday, September 19<sup>th</sup> at 6pm. Chairman Metcalfe will not be here and may have to attend via electronic communications. The applicant and others left the meeting room at 7:12pm.

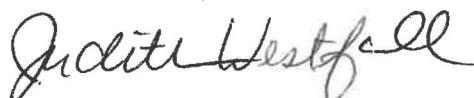
The ZBA asked Rob Stout if they go move into executive Session to discuss the legal particulars and how to continue this process. A motion was made by J.Wright, seconded by D. Menegat and carried to move into Executive Session at 7:15pm.

A motion was made by J.Wright, seconded by D. Menegat and carried, after discussion, to reconvene the regular meeting at 7:25pm.

Under **Other Matters**; A motion was made by J.Wright, seconded by T. Salladay and carried to approve the ZBA Minutes from the July 18, 2022 meeting as written. Also, a recusal from Paula Pelosi was noted as discussed earlier today with Chairman Metcalfe and emailed notification as she has a conflict of interest in this application. No further communication about this project will be forwarded to her. The next meeting of the ZBA will be on Monday, September 19, 2022 at 6pm.

A motion was made by J.Wright, seconded by T. Salladay to adjourn the meeting at 7:30pm.

Respectfully submitted

A handwritten signature in cursive script that reads "Judith Westfall". The signature is written in black ink and is positioned above the printed name.

Judith Westfall  
ZBA Secretary