

**TOWN OF CLAYTON
RESOLUTION #53 OF 2015
RESOLUTION OF THE TOWN BOARD FOR THE TOWN OF CLAYTON REGARDING
THE APPLICATION OF SAINT LAWRENCE SPIRITS, LLC FOR AN
AMENDMENT TO THE TOWN OF CLAYTON ZONING LAW AND MAP
TO LAND THE MD2 DISTRICT**

November 18, 2015

WHEREAS, on July 20, 2015, the Town Board for the Town of Clayton (the "Town Board") received an application (the "Application") from the Doreen A. Marks Irrevocable Realty Trust on behalf of Saint Lawrence Spirits, LLC (the "Applicant") requesting the landing and location of the Marine Development 2 ("MD2") District on approximately 7.6 acres of land located at 38289 NYS Route 12E (Tax Map No. 19.20-1-32.2) within the Town of Clayton ("Town") in the area west of the Village of Clayton and north of NYS Route 12E (the "Property") to allow the operation of a restaurant, bar, inn, and distillery (the "Project"), pursuant to the Article III Section A of the Town of Clayton Zoning Ordinance (the "Ordinance"); and

WHEREAS, the MD2 District is a floating district under the Ordinance, the landing of which requires an amendment to the Ordinance to be adopted by the Town Board pursuant to Article XVI of the Ordinance together with consideration by the Board of certain criteria listed in Article III; and

WHEREAS, the MD2 District is intended to be a multi use district for the development of water dependent, commercially related uses and the criteria listed in Article III of the Ordinance that must be considered by the Town Board in determining whether to land the MD2 District are:

- (a) The zone change must be for a minimum of five areas.
- (b) The proposed use within the MD2 shall not cause undue interference or nuisance that may be detrimental to adjacent uses.
- (c) The Town Board and the Planning Board shall use the Site Plan Objectives outlined in the Zoning Ordinance as criteria for reviewing the proposed location of an MD2 District.
- (d) The establishment of an MD2 District and location thereof shall be consistent with the Town of Clayton Comprehensive Plan; and

WHEREAS, on August 12, 2015, the Town Board reviewed the Application and referred the matter to the Town and Village of Clayton Joint Planning Board (the "Planning Board") for review and comment pursuant to Article XVI of the Ordinance; and

WHEREAS, on September 3, 2015, the Planning Board reviewed the Application and recommended approval of the Application to the Town Board; and

WHEREAS, on September 9, 2015, the Town Board adopted a motion receiving the recommendation of the Planning Board, considering a proposed amendment to Article III, sections A and B of the Ordinance to land the MD2 District on and at Town of Clayton tax parcel 19.20-1-32.1, and to amend the Zoning Map of the Town of Clayton to reflect the same, accepting Part 1 of the Full Environmental Assessment Form ("FEAF"), and referring the Application for review by the Jefferson County Planning Board (the "County Planning Board"). On the same day, the Town Board adopted a resolution to set a Special Meeting and schedule a Public Hearing on the proposed zoning amendment for October 14, 2015 at 7:00pm; and

WHEREAS, the notice of public hearing was duly published and posted as required by Town Law and the Ordinance; and

WHEREAS, on September 29, 2015, the County Planning Board adopted a motion that the Project does not pose any significant County-wide or inter-municipal issues and is of local concern only and forwarded the same to the Town Board; and

WHEREAS, on October 14, 2015, the Town Board received from the Applicant a preliminary site plan application and a preliminary special use permit application. On the same day, the Town Board also received an updated FEAF indicating that these preliminary applications were filed with the Town Board for informational purposes in connection with its SEQRA review of the Project; and

WHEREAS, on October 14, 2015, the Town Board held a properly noticed Special Meeting and Public Hearing regarding the Application at which 13 people spoke. A transcript of the public hearing is attached. The Town Board also received written comments from Bond, Schoeneck & King, PLLC on behalf of the applicant and Slye Law Offices, P.C. on behalf of the opponents, together with written comments from the public, all of which form and constitute the record of the Public Hearing; and

WHEREAS, on October 14, 2015 and October 16, 2015, the Town Board sent letters to the Town Planning Board and the Clayton Joint Zoning Board of Appeals (the "Town Zoning Board"), respectively, requesting consent to serve as lead agency for the purpose of a coordinated review under the State Environmental Quality Review Act ("SEQRA") with respect to the Project. On October 19, 2015, both the Town Planning Board and Town Zoning Board consented to the Town Board serving as lead agency; and

WHEREAS, the Town Board has considered all of the comments that were received during the public hearing as well as the recommendations received from the Town Planning Board and County Planning Board; and

WHEREAS, on November 4, 2015, the Town Board reviewed Part 2 of the FEAF, including all potential environmental impacts of the Project and directed its attorney to prepare the required written elaboration; and

WHEREAS, on November 18, 2015, the Town Board satisfied the requirements of SEQRA with respect to the Project by adopting by resolution a negative declaration; and

WHEREAS, the Town Board has followed the procedural requirements of Article XVI of the Ordinance for the adoption of an amendment, has carefully considered Article III (A) of the Town of Clayton Zoning Ordinance (the "Zoning Ordinance") regarding the purpose of the MD2 zone and the factors to consider when landing the MD2 zone.

NOW THEREFORE IT IS HEREBY DETERMINED that the foregoing recitations are and shall be incorporated into the substantive provision of this resolution and the findings and determination of this Board and shall be considered a part thereof as if fully set forth hereafter.

CHECK ONE OF THE FOLLOWING:

_____ NOW THEREFORE IT IS HEREBY RESOLVED, that the Application does not satisfy the requirements set forth in Article III (A) of the Zoning Ordinance. Therefore, the Application is not approved.

IT IS HEREBY FURTHER RESOLVED, that the Town Board directs the Town Clerk to maintain a copy of this resolution in the Office of the Town Clerk in files that are readily accessible to the public and made available upon request, subject only to the limitations established by the Freedom of Information Law.

OR

 X NOW THEREFORE IT IS HEREBY RESOLVED, that the Application satisfies the requirements set forth in Article III(A) of the Zoning Ordinance and this Board has complied with the procedural requirements of Article XVI and Article III A of the Ordinance. Therefore, the Application is hereby approved. The findings and determinations of this Board supporting this approval are as follows:

(1) The Project is water dependent.

- In response to written public comments, the Town Board has considered the arguments that the Project is not water dependent and that the use of water from the Saint Lawrence River (the "River") is insufficient to qualify as "water dependent."
- However, the Property fronts on the St. Lawrence River and based upon information furnished by the Applicant the Town Board finds that proximity to the

River is a critical part of the Applicant's marketing plan and necessary for the Project's success. The Project relies on the River not only for drinking water but also for the production and marketing of retail goods. Moreover, the scenic view of the River is essential to attract wedding ceremonies and normal restaurant customers and enhances the attraction of the distillery and the overall Project to the public.

(2) The Project does not include an Agricultural Processing Plant.

- Written comments received by counsel for opponents of the Project have interpreted that portion of the Project that includes a distillery as constituting an Agricultural Processing Plant under the Ordinance which requires a 1,000 foot setback from any residential lot line. Opponent's counsel argues that landing the District for a project that includes an Agricultural Processing Plant requiring such a set back violates the Ordinance since the Project is located much closer to residential lot lines than 1,000 feet, and is therefore beyond the Town Board's authority.
- In response to these comments, the Town Board has considered whether the Project includes an Agricultural Processing Plant, and makes the following findings and determinations in regard thereto:

The term Distillery and Agricultural Processing Plant are not defined in the Ordinance. Pursuant to Article II Section A of the Ordinance, where words are not defined in the Ordinance they are to be construed in accordance with their common meaning and within the context in which they are used. Therefore, in considering this specific argument of opponents' counsel this Board must determine whether the common meaning of Agricultural Processing Plant includes that portion of the Project consisting of a distillery within the context of the Ordinance.

In the context of the Ordinance which requires Agricultural Processing Plants to be located at least 1,000 feet from any residential lot line (Article VII (A)) it appears clear that the intent of this provision is to apply to a large-scale commercial or industrial operation such as for the processing of animal products, such as a slaughter house or dairy processing facility, or a large scale processing of wheats or grains for distribution that have the potential to produce noxious odors, dust or noise and which attract large commercial vehicles, and require a large number of employees. Based upon the evidence presented none of those properties will be present at the proposed distillery.

This Board is mindful that although the term Distillery is not defined, in the Ordinance, Farm Winery is defined and since that definition includes the processing of Agricultural Products for the production and distribution of wine, the argument of opponents' counsel would mean that any Farm Winery in the Town would be considered an Agricultural Processing Plant with the same 1000 foot

set back requirement. This Board is aware that Farm Wineries are currently operating within the Town of Clayton without the imposition of the 1,000 foot set back imposed for Agricultural Processing Plants, and the properties that would require the imposition of said set back are not present at those operations. In addition, this Board is aware of the current operation of another distillery within the Town of Clayton, also operating without the imposition of the 1,000 foot set back required for an Agricultural Processing Plant. Again, none of the properties that would make such a set back appropriate are present with the existing distillery operation, which this Board considers of precedential value in its review and determination.

A small Commercial Enterprise is defined in the Ordinance as “a business intended to sell and trade retail goods, products or services to residents of the immediate community. Such enterprises include grocery store, boat storage operations, small implement dealers, small manufacturing operations, restaurants, beauty parlors and barber shops and similar businesses but shall not include industrial or machine and welding shops.” Small Manufacturing Operation is defined as “a business intended to manufacture items for sale or trade. The operation shall occupy a building area of no more than 2000 square feet nor employ more than two employees.” The proposed distillery is a small scale operation that involves the refining of plant products to produce alcoholic beverages for sale to the public. Based upon Applicant’s submissions, it will be housed in a small facility within no more than two employees.

Upon careful consideration, the Town Board has determined that that portion of the Project that includes a distillery is not an Agricultural Processing Plant under the Ordinance. This determination is based on the fact that the Project involves only the small-scale refining of plants for the manufacture of alcoholic beverages. The Project also does not include any of the characteristics which the 1,000 foot setback was created to protect against, such as noxious odors, noise, smells or increased traffic from heavy commercial vehicles. The Town Board further considered the fact that the Project meets the definition of a Small Commercial Enterprise and Small Manufacturing Operation and is better classified as such.

- (3) The Property is larger than five acres.
 - The survey submitted by the Applicant establishes that the area of the parcel in question is +/-7.6 acres.
- (4) The Project will not cause undue interference or nuisance to adjacent uses.
 - The Project will not interfere with neighboring property owners. The Project will not change the character of the neighborhood, which in addition to residential parcels already includes motels, campgrounds, marinas, agricultural operations and a quarry. It is therefore clear that the neighborhood is already a mixed-use

neighborhood. There will be no noticeable impact on traffic on NYS Route 12E as is evidenced by the Applicant's traffic study. Considering the distance to the Property's neighbors, there is no indication that noise will be of the magnitude that would unduly interfere with the community and no evidence was presented thereof. Furthermore, wedding receptions will not occur on the Property and operations will close at 11:00pm. The Project will not impact the Property's aesthetic beauty because all structures, including the Fairview Manor house, will remain unchanged from the exterior.

- In response to written public comments, the Town Board has considered the argument that the Project will constitute a private nuisance. Upon careful examination of this issue, the Town Board does not find that the Project will create a private nuisance for several reasons, including: (1) the Property was historically used for commercial purposes as a restaurant without issue, (2) there are numerous small-commercial enterprises currently operating in the immediate vicinity, and (3) the community will benefit from this small-scale commercial development through additional jobs, increased tax revenue, additional tourism revenue, preservation of a historic building, and educational opportunities.
 - In response to written public comments, the Town Board has considered the argument that the Project will negatively impact property values in the Project's vicinity. No evidence has been presented to the Board that property values in the surrounding neighborhood will decrease as a result of the Project. The Town Board has considered the public comments of an adjoining property owner regarding his inability to sell parcels that he owns near the Property. The anecdotal information included statements that prospective purchasers walked away because of the perception of what might occur on the property. It is noted by this Board that the Applicant's initial advertisements about its plans for the subject property included expanded activities that might have negatively impacted neighboring properties. However, the Applicant's current proposal has greatly reduced the potential adverse impacts of its proposed operations by reducing the scope of the proposal and removing from the Project certain objectionable activities. Upon careful examination of this issue, the Town Board finds that there is no substantial evidence that the Project will negatively impact property values in the area. To the contrary, the Project will likely maintain property values by ensuring proper upkeep of the Property, providing the community with a neighborhood restaurant, and encouraging tourism for nearby businesses.
- (5) The location of the Project is consistent with the Site Plan Objectives as outlined in the Zoning Ordinance
- In its analysis, the Planning Board considered all of the factors for site plan approval provided in Section XVI of the Ordinance resulting in a recommendation for approval.

- The Town Board has also considered all the factors for Site Plan approval provided in the Ordinance.
- The Project is harmonious with the neighborhood, which includes numerous small commercial operations such as motels, campgrounds, marinas, agricultural operations and a quarry that enhance and promote the regional tourism industry. The Project will be consistent with such regional tourism. The Property will not negatively impact nearby residential property owners.
- There will be no noticeable impact on traffic on NYS Route 12E and the sight distances at the Property's entrance and exit are more than adequate to ensure safe turning to and from NYS Route 12E.
- The Property has adequate parking to accommodate the Project. The Project's internal traffic circulation plan is sufficient to ensure pedestrian safety. The plan includes the ability for pedestrians with physical limitations to be dropped off immediately in front of the Fairview Manor house.
- The Application does not propose any changes to the Property's landscaping. The existing landscaping includes a line of trees that will remain as a buffer between the Project and the neighboring properties. The waterfront will remain the same to maintain the aesthetic beauty of the area.
- The distilling system that will be used on the Property was designed by a reputable manufacturer and includes the applicable safety features such as a pressure release valve, vacuum breaker valve and flame arrester. A similar system has been used by the Clayton Distillery without issue.

(6) Approval of the Project is Consistent with the Town's Comprehensive Plan.

- The Comprehensive Plan sites as a goal the maintenance of a small town atmosphere. Two of the strategies articulated for achieving this goal are to "amend zoning to allow for small business in residential areas" and "continue to support agriculture and rural atmosphere." The Project serves the first strategy because it seeks a zoning amendment to allow a small-scale commercial use in a residential district. The Project serves the second strategy because it will support the nearby farm by creating a local market for local agricultural products.
- The Comprehensive Plan sites as a goal the promotion of tourism. One stated strategy to achieve that goal is to "promote new hotel[s]/motel[s] to offer more opportunities for overnight stays." The establishment of an inn at the Property will achieve this goal.
- The Comprehensive Plan seeks to promote smokeless industries. The Project is a small-scale, environmentally-friendly operation that produces no smoke.

- The Comprehensive Plan seeks to encourage educational opportunities. The Project is partnered with Jefferson County Community College and SUNY Environmental Science and Forestry to provided educational opportunities in the community, including tasting room management courses and agricultural science courses.

IT IS HEREBY FURTHER RESOLVED, that the Town Board directs the Town Clerk to maintain a copy of this resolution in the Office of the Town Clerk in files that are readily accessible to the public and made available upon request, subject only to the limitations established by the Freedom of Information Law.

The adoption of the foregoing Resolution was moved by Councilman Chris Matthews, seconded by Councilwoman Mary Zovistoski, and duly put to vote, which resulted as follows:

	Yea	Nay	Abstain	Absent
Supervisor Justin A. Taylor	[X]	[]	[]	[]
Councilman Chris Matthews	[X]	[]	[]	[]
Councilwoman Mary Zovistoski	[X]	[]	[]	[]
Councilman Lance Peterson	[X]	[]	[]	[]
Councilman Bob Cantwell, III	[X]	[]	[]	[]

The Resolution was thereupon duly adopted.

Dated: November 18, 2015

Certification: I, Kathleen E. LaClair, Town Clerk of the Town of Clayton, do hereby certify that the above resolution was adopted at a regular meeting of the Town Board of the Town of Clayton held on November 18, 2015 and it's on file and of record, and that said resolution has not been altered, amended or revoked and is in full force and effect.

(SEAL)

Kathleen E. LaClair, Town Clerk