

Application # 1401

TOWN OF MILTON

Decision of the Board of Appeals, as constituted under Section VIII of Chapter 10 of the General Bylaws of the Town of Milton, upon the application of Robert C. Oldfield and Margaret T. Oldfield dated August 7, 1987

A public hearing was held on the eighth day of September, 1987 in the Town Hall, Milton, Massachusetts, pursuant to notice duly given according to law and to the Rules of the Board, upon the application of Robert C. Oldfield and Margaret T. Oldfield dated August 7, 1987 and filed under the provisions of General Bylaws, Chapter 10 (the so-called "Zoning Bylaw"), Section III. A. 7. (d), to amend a special permit issued to them on June 1, 1967 permitting erection of a lath house 48' x 72' and a greenhouse 100' x 30' on lot located at 270 Hillside Street, Milton (herein referred to as "the premises") all for the purpose of operating a nursery selling only produce raised on the premises. The application sought to amend the special permit so as to permit: (1) the use of an adjoining lot shown as Lot 1B on a plan filed with the Board as part of the application; (2) the construction and use of a 26 feet by 44 feet display room for the display of produce raised on the premises and incidental products; and (3) the use of a portion of Lot 1B for parking of not more than 5 trucks.

Members of the Board present at the hearing were Roderick M. Connally, Joseph Lane and Marion McEttrick.

Section III. A. 7. (d) of the Zoning Bylaw provides that the Board of Appeals may issue a permit for the use of land and property

in a residence district as a greenhouse or nursery selling only produce raised on the premises. In order to grant a permit under Section VIII C. the Board of Appeals must be satisfied that the desired relief may be granted without substantial detriment to the public good and without substantially derogating from the intent or purpose of the Zoning Bylaw. Such a permit was issued to the applicants by this Board on June 1, 1967 and was subject to appropriate conditions, limitations and safeguards stated in writing by the Board of Appeals and made a part of the permit.

Several persons living in the general neighborhood of the premises in question, appeared at the hearing and were recorded as in favor of granting the application. One person appeared at the hearing was recorded as opposed to the application. One neighbor wrote a letter to the Board registering opposition to the application.

Applicant's attorney, Richard E. Bachman, filed a "Brief in Support of the Application."

The applicants have operated a nursery business known as Thayer Nursery on Lot 1A of the premises selling only produce raised on the premises pursuant to the original special permit since about June 2, 1967. More recently and pursuant to the proviso in Section III A. & (d) of the Zoning Bylaw the applicants have also sold Christmas trees and related items. In 1976 the applicants acquired Lot 1B and began using that lot in conjunction with their nursery business under the belief that such use was permitted under the 1967 Special Permit. The applicants were not informed that the use of the new lot for nursery purposes was not allowed under either the Special Permit or the Zoning



Bylaw until 1986 when the Building Inspector brought the matter to their attention. Consequently, the applicants filed this application seeking inter alia, permission to use Lot 1B for nursery purposes as allowed by the original Special Permit.

During the approximately 20 years that the applicant has operated Thayer Nursery on the premises no complaints have ever been received by either the Building Inspector or the Zoning Board of Appeals that the applicants were operating the nursery in violation of any of the conditions, limitation and safeguards set forth in the Special Permit except for the problem involving the use of Lot 1B referred to above. Moreover, the members of the Board are familiar with the operation of Thayer Nursery and find that the premises have always been neat, clean and/or in conformity with and in appreciation of the rural residential character of the neighborhood. Since Lot 1B is a back lot with no frontage on either Hillside Street or Forest Avenue, the use of that lot for nursery purposes will have little or no impact on the residents of those streets. Also, the applicants have planted evergreens along the southeasterly side of Lot 1B to screen the nursery from the view of the residents living on Parkwood Drive and from whose backyards Lots 1A and 1B can be seen. Therefore, the Board finds that Lot 1B can be used for nursery purposes associated with Lot 1A without substantial detriment to the public good and without substantially derogating from the intent or purposes of the Zoning Bylaw.

Associated with the use of Lot 1B for nursery purposes is the applicants' request to park thereon 5 trucks to be used in conjunction with the business of Thayer Nursery. The Board finds that Lot 1B is



the least obtrusive and most screened area of the entire premises
(i.e. Lots 1A and 1B) where trucks may be parked. However, Mr. and Mrs. Driscoll, whose house lot abuts the southeasterly boundary of Lot 1B should not be exposed to having trucks parked unreasonably close to their property line. Accordingly, the application to park no more than 5 trucks used in conjunction with the applicants' nursery is granted but with the condition that no trucks be parked within 65 feet of the northeasterly lot line of Lot 1B all as shown as a line marked "Line of Logs" on the September 30, 1987 revision of the Plan filed with the application. The Board understands that Mr. Driscoll and Mr. Oldfield have conferred on this subject and the proposed line is agreeable to Mr. Driscoll.

The third amendment of the Special Permit sought by the application is permission to add a display room having dimensions of 26 feet by 44 feet to the southeasterly side of the greenhouse and office as shown on the Plan. This Display Room will be used to show both produce raised on the premises and products to be sold which are incidental to the sale of produce raised on the premises. The second floor consisting of about 1/2 the floor area of the first floor will contain an office for conduct of the nursery. The proposed height of the new display room will be 23 1/2 feet⁽¹⁾. Since the display room

(1)At the September 8, 1987 hearing a maximum height of 16 feet appeared to have been agreed. The applicant, his attorney and Mr. Frank Bagge, the applicant's architect appeared at the meeting of the Board on October 6, 1987 and explained that the 16 feet maximum height restriction was based on a misunderstanding. After listening to the tape of the September 8, 1987 hearing the Board agreed that the maximum allowable height should have been 23 1/2 feet.



will occupy an area on Lot 1A presently used to display such produce and products under a lath house, the Board finds that the erection and use of a Display Room with room for a single office on the second floor may be granted without substantial detriment to the public good and without substantially derogating from the intent or purpose of the Zoning Bylaw.

The applicants also requested that Paragraph 10 of the conditions, limitations and safeguards of the Special Permit be amended to include their children as persons to whom the Special Permit runs and that the sale of firewood and garden tools be deemed incidental to the conduct of the nursery business. The Board finds that Paragraph 10 of the original Special Permit was intended to prevent the transfer of the permit to third persons who were not held in such high esteem as that which the neighbors held the applicants and that there was no intention to deprive members of the applicants' immediate family of the benefits of the Special Permit. In addition, the Board finds that the sale of firewood and garden tools is incidental to a nursery business and grants the request to sell those items on the premises.

Finally, the Board reaffirms that those conditions, limitations and safeguards set out in Paragraphs 1 through 11 of the Special Permit dated June 1, 1967 which are not inconsistent with the grant of this application shall remain in full force and effect.

Therefore, the Board, by unanimous vote of the members sitting on this case, hereby determines that the Special Permit issued to the applicants on June 1, 1967 be amended as set forth in the attached "Amendments to Special Permit issued to Robert C. Oldfield and Margaret T. Oldfield, 270 Hillside Street, Milton, Massachusetts 02186 dated June 1, 1967."

TOWN OF MILTON

Amendments to Special Permit Dated June 1, 1967

To: Robert C. Oldfield
Margaret T. Oldfield
270 Hillside Street
Milton, Massachusetts 02186

Upon your application dated August 7, 1987 for amendments to the Special Permit issued to you on June 1, 1967 pursuant to Section III A. 7. (d) of Chapter 10 of the General Building Laws (Zoning Bylaw) and as shown on a plan dated May 4, 1987 and a revision dated September 30, 1987 and a Plan entitled "Section Through Display Room" dated September 30, 1987, all of which are filed with the Board and open to public inspection.

The Board hereby amends the aforesaid Special Permit to permit the following:

1. Lot 1B as shown on the Plans referred to above may be used in conjunction with the greenhouse and nursery business, which the applicants are conducting on Lot 1A.

2. The applicants may park no more than 5 trucks used in conjunction with the nursery business on Lot 1B; provided, however, that no trucks may be parked within 65 feet of the northeasterly lot line of Lot 1B as shown by a line marked "Line of Logs" on the Plan revision dated September 30, 1987. No trucks may be parked on Lot 1A. No trucks not used in conjunction with the applicants' nursery business may be parked anywhere on Lots 1A or 1B. Accordingly, the



last sentence of Paragraph 1 of the conditions, limitations and safeguards contained in the original special permit is amended to read as follows:

"Any truck based on the premises shall be parked in the area designated in this Amendment when not in use."

Nothing contained in this Paragraph 2 is intended to limit the right of the applicants and members of their immediate family to park vehicles owned by them and used only for personal use anywhere on the premises.

3. The applicants may erect a Display Room and office having dimensions of 26 feet by 44 feet as shown on the artist's rendering of "Proposed Display Room" dated May 4, 1987 a copy of which was presented to the Board at the hearing and an architects "Section Through Display Room" Plan dated September 30, 1987 and at the location on Lot 1A as shown on the plans. The proposed Display Room shall be used for the display and sale of produce raised on the premises and for the display and sale of items incidental to the sale of such produce. The Display Room shall not exceed 23 1/2 feet in height.

4. Paragraph 10 of the conditions, limitations and safeguards is amended to read:

"This permit runs to the applicants and their children personally (including any assistants) only, and shall not be assigned or transferred to any other person."

5. The sale of garden tools and firewood as incidental to the operation of the nursery business is permitted.

Except as specifically stated in Paragraphs 1 through 5 above,



Permit dated June 1, 1967 and not amended herein are specifically restated and incorporated herein by reference. The rights granted herein shall apply only during the time that the Special Permit dated June 1, 1967 is in force and effect.

Issued by the Board of Appeals this 29th day of October, 1987.

FILED
OCT 29 1987
WITH
TOWN CLERK

Board of Appeals

~~Robert L. Miller~~
Robert L. Miller
720-111-1222