

Town of Merton  
Joint Public Hearing with the Town of Merton Plan Commission & Waukesha County  
To Consider the After the Face Conditional Use Request of Steve & Jackie Payne  
To Operate a Gift Shop/Farm Stand in an Existing Accessory Building and to use a Kitchen in an  
Existing Barn to Prepare Maple Syrup and Other Products for Sale as well as to use the  
Barn for Limited Special Events  
August 16, 2023

Present: Chairman Klink, Commissioners Griffin, Jensen, Morris, Siepmann, Queoff & Good, Attorney Van Kleunen, Planner Haroldson, Ben Greenberg of Waukesha County Parks & Land Use, and Deputy Clerk Claas  
Also Present: Jackie & Steve Payne, Donna Hann, Rich & Cindy Eastman, Joe Barke, Jill & Andy Gehl, Brian Randall, and Mariah & Joe Chwala

This Public Hearing was Called to Order by Chairman Klink at 5:30 p.m.

Greenberg read the public hearing notice.

Jackie Payne stated they made the octagon barn to put the farm produce in and their eggs and the refinished cast iron pans. She doesn't consider it a gift shop. They want to put their produce back in the octagon barn and the eggs.

Klink asked how many outbuildings they have on the property. Steve Payne said the garage, the barn, the octagon building and they put up a 10' x 10' shed on an existing slab where the previous owner torn down a 12' x 12' building, and a chicken coop. Jackie stated as far as the stove down in the basement, they use that for cooking their maple syrup, and processing tomatoes that they grow, and family dinners, but that's about it. Steve said they have a 100 tomato plants.

Good asked if the tomatoes they process are for sale. Jackie responded no, it's all marinara and bottling for them, and they sell just the tomatoes in the stand and the processed ones are for them. Good also questioned if they cook maple syrup, does it have to be inspected by the State or somebody before they sell. Jackie said they only make about 70 bottles. Steve said he talked to other people at the farmer's market and if it's just maple syrup and nothing is being added to it, a license is not needed.

Jensen said there is some concern about having events in their barn, but when she read all the materials they provided, it sounds like it will be all family gatherings. Jackie stated they had her daughter's wedding shower, her daughter-in-law's baby shower, and her niece's baby shower. Haroldson asked how many guests they have for those events. Jackie responded that it depends on how many family members are coming, but it's usually around 30 to 40.

Greenberg clarified that they have 8 to 10 parking spots on site roughly. Jackie stated they never park on the road. Steve said plus they have a large amount of area behind the barn. Greenberg asked if cars are always able to stay in the designated areas in case of a fire. Jackie said there is always room because they leave the driveway open. They park on the grass.

Klink stated with the amount of accessory buildings the Paynes have, he knows that some of them don't have a building permit and that's a concern. They may have to apply for a building permit for some of those. The Paynes were informed that the chicken coop is considered an outbuilding. Klink stated the chicken are supposed to be contained in a coop or an area, not free-range chickens, and they seem to be

more free range then fenced in. Klink said they are going on the highway and it's a safety concern and that's why they need to be contained or fenced in so they can't run around, and they need to do a better job of containing them. They were asked how many chickens they have. Steve answered about 55, and the only other animal they have is a dog.

Griffin asked if they had a permit for the kitchen and the bathroom in the basement. Jackie said the bathroom and the sink were all in the original plans and the only thing that wasn't in the plan was that stove. Jackie said in the kitchen area the sink was approved for washing produce. Greenberg stated in 2018 they obtained a Zoning Permit to do substantial remodeling of the barn. The Zoning Permit did approve a lower-level prep area, with a wash sink prep area, but strictly prohibited a full kitchen, more specifically an oven/range. He is not sure what building permits were or were not issued beyond the Zoning Permit. Haroldson stated there is a record in the building inspector's file that that barn needed State approval and asked Claas if that was correct. Claas responded for plumbing, yes. Steve asked if that was something the Building Inspector would take care of once they got their building permits. Haroldson said no, the Payne's should take care of it. Siepmann said the State permit would require approval from the State of their plumbing plans, so you would have a stamped set of plans for the plumbing that would say approved by DATCP. It would specifically be issued by the State. The Payne's said this was the first they've heard of it. Greenberg asked if there were concerns as to if these permits were never closed. He's assuming the Building Inspector would not have closed out those permits if the State approval was required. Claas said they would have to look at the permits again. Siepmann clarified that the range that's in there today was not included in the original permit in 2018 or any other permits. Greenberg stated that was right, this use request is to specifically authorize that use which was clearly prohibited when the permit for those improvements was issued.

Greenberg stated this started as a violation the County received via the Town at the beginning of 2023 about a building that was constructed as well as some concern through some scouting out on the Cackleberry Farm Facebook page about events being posted, at least one wedding event. They did a site visit and verified the octagonal building had been constructed with no Zoning Permit on file for that. They had two different site visits, both with the Building Inspector. They confirmed that the kitchen amenities had been installed without County approval, the site visits verified that the 10' x 10' shed that is just north of the barn remained and it was to be removed as a condition of one of the two Zoning Permits, and it verified the presence of two poly structures and Greenberg believes only one is remaining now in the farm field. The petitioners were unaware that the County and Town need permits for poly structures and considered them accessory buildings.

Greenberg mentioned that one thing County ordinance would require is that the Town Plan Commission approve more than two accessory buildings on a parcel of this size. Greenberg did the measurements including the poly structures and the overall footprint of those buildings would comply with the County's two percent limit and the Town's limit is less restrictive, and in terms of variances needed there is nothing that is not complying with size requirements or setback requirements.

Greenberg clarified with Jackie that in her application she had noted what you would be potentially selling in the farm stand. He's clear on the reconditioning the cast iron, the eggs, tomatoes, everything that is being produced and raised on site, but questioned future baked goods. Greenberg questioned Jackie if she was looking for authorization for that now because she might be doing that in the future or was she indicating that might be a future request. Jackie said since they are at the meeting, they might as well ask for it now, but that's just a thought for after she retires. Greenberg asked if they reached out to Environmental Health Division just to get a sense of any licensing. Jackie said no, because she doesn't

plan on retiring for two years and it would be extra income in their old age. Greenberg stated he would imagine they would need some sort of restaurant license.

Haroldson asked when they had the preliminary site evaluation done for the house, did they look into having the barn included with that, because the Building Inspector was concerned about the septic if you were to have 20, 30, or 40 people in the barn. Also, the Building Inspector was concerned if they have grease traps in their kitchen. Jackie said they don't really cook meals there a lot, maybe holidays. Haroldson asked when they have events, would they be cooking in the barn. Jackie stated they have events maybe three times a year, and sometimes they cook in the barn. Steve said they don't have much cooking in the barn other than their vegetable stuff and their family events. Steve said the chili cook off and Easter, none of that was cooked in the barn. Haroldson asked if they were permitted to have events in the barn, would they cook for them or would they have them bring the food in. Jackie said they usually have pot luck for their family, and they are not going to have events in there that are not family events. Steve said they have pancake breakfast once a year. Jackie said her son may cook some of the meal down in the barn for holiday dinners.

Klink asked when the septic system was put in, was that sized for events. Greenberg stated he doesn't believe it was evaluated for a commercial use. His understanding was that it was sized for residential use and so it was going to be based off the number of bedrooms. When it gets into commercial uses, they are looking at water usage and things get plumbed differently if its for a commercial use with respect to a shared septic system and how pipes may be running through the building to the system. The concern was that it might not have been installed correctly for commercial uses, but they were not looking at that at the time. The Building Inspector was looking at the connection from the septic tank and so that gets to the question of how the Building Inspector considers that use in terms of code requirements. Jackie said they're not using it for commercial use. Klink asked if the barn goes into the present household septic system. Jackie responded yes. Morris asked if that was a new system when they built the new house or is it the old system. Jackie responded that it's a brand new system.

The public hearing was opened for public comments and concerns.

Joe Chwala – N67W32880 County Road K – said he lives right next to them and he never has had any issues with anything that they've been doing at their farm with their farming or selling eggs or selling produce. They've been great neighbors. He wants to say they've been not a nuisance at all to him. He has seen their chickens around every once in a while, but he doesn't haven't a problem with it, but he does understand the comment of if they're on the road. He said he hasn't had any concerns with them.

Steve Payne said they only have family events and if they didn't have the barn, the family events would be in the house. It's totally noncommercial and they happen to have a large family. It's not commercial use at all.

The Chairman closed the meeting at 5:53 p.m.

Respectfully submitted,

Holly R Claas  
Deputy Clerk