

Nov 28th, 2023

## Ridgway Application

We could support this new location if it were accompanied by the originally requested hours of operation. This would allow for a trial period where we could determine how disruptive this could become to our residential community. The longer hours of operation as well as the creation of an events location represent not the continuation of farming activities (entertainment venues are not cited as a generally accepted agricultural practice (Connecticut General Statutes, Section 19a-341) but this in fact would be the commercialization of our otherwise residential neighborhood. Creating an events location as well as the "tasting" bar with extended hours of operation would appear to be allowing entertainment venues to be created contrary to the purpose of the zoning regulations (Regulation 1.1.a).

Additionally, this application is asking for special status for a home business disallowed to all other citizens (Reg 10.6.i Prohibited Home Businesses) which appears to be an unequal application of the law, and don't all of us deserve to be treated equally. Regulation Article 5 General Standards 5.7 regarding Conflicting Rules should be applied here which would disallow this project from happening.

Finally, towards the end of the last Public hearing (at minute 1:56:50), the chairman referencing the potential unknown problems of marijuana regulations said;

"The Commission feels that until all these problems have been dealt with and we have more information about what is actually happening in other small towns, we don't want to commit Cornwall to something that might turn out to be a problem."

As we already do have reports of problems occurring in these types of venues elsewhere in our area, would it not be responsible to review and discuss these problems? See the attached material to start:

Ian & Diane Ingersoll

136 Town Street

West Cornwall, CT 06796

# Incompatibility Leads To Problems

Incompatible uses and in this case, an incompatible use in the extreme – an alcoholic beverage-serving business in a residential area – creates public health, safety and quality of life problems: excessive noise, traffic, odors from fermentation, drunk driving and drunken behavior, etc.

*“We live across the street. We have people throwing up in our driveway in front of our GRANDKIDS. They [the distilleries] need to be in a commercial area.”*  
– Katherine Osborne<sup>(1)</sup>, lives directly across street from Kent Falls Brewery

(1) All quotes in this presentation attributed to Katherine Osborne are based on an interview that Chad Cooper conducted with Ms. Osborne on 9/6/23

## Incompatibility Leads To Problems

These direct impacts to quality of life and public safety lead to other damaging outcomes:

- They result in endless complaints, lawsuits, injunctions
- They sow division between neighbors and between neighbors and the town itself
- They harm relationships and create lasting divisiveness
- They divert, consume and strain financial and organizational resources in towns whose capacity is stretched

*"We were friends [with the owners of Kent Falls Brewery] all the way through. We worked for them. We supported it. We were ok with them making beer here. But once they started serving alcohol everything changed."*

– Katherine Osborne, Kent, CT

## **Relevant Cornwall Zoning Regulations:**

Cornwall's Zoning regulations and Plan of Conservation & Development contain several provisions that are meant to safeguard the Town and protect Cornwall residents against these kinds of impacts.

### **8.4.f Public Nuisances**

The proposal has adequately addressed potential public nuisances and will not diminish health, safety, and welfare within the Town of Cornwall.

**AND**

### **8.10.d Quality of Life**

...the kind, size, location and height of structures, and the nature and extent of site work, and the nature and intensity of the use, shall not hinder or discourage the use of neighboring properties or diminish the value thereof.

# Absence of Local Law Enforcement

## Relevant Zoning Regulations:

### 8.4.f Public Nuisances

Consistent among the New England cideries we surveyed is the presence of a local police department. Law enforcement appears to be a key partner in responding to complaints and other public nuisance / disturbances related to alcohol-serving businesses.

Police also appear to be the principal public authority responsible for monitoring and enforcement in order:

- To ensure that cideries are operating within the appropriate legal frameworks;
- To enforce drinking laws (e.g., by conducting retail compliance checks);
- To reduce sale of alcohol to minors, etc.

It is virtually unprecedented to have a rural farm-based business – an alcoholic beverage-serving business in a residential area – AND to have NO local police department.

# Rockland Cider Works, Gilboa, NY

Relevant Zoning Regulations:

8.4.f Public Nuisances

8.10.d Quality of Life

"It [Rockland Cider Works] seemed like a win for the business and the community except it became a noise and traffic nuisance to neighbors who began complaining about raising up and parking on the road, the din of activity, occasional lewd behavior, the presence of food trucks and a change of use that they say was altering the rural character of the neighborhood."

Rockland Cider Works, Gilboa, NY  
Rockland County Business Journal  
1/15/23



# The Riverhead Ciderhouse, Riverhead, NY

## Relevant Zoning Regulations:

### 8.4.f Public Nuisances

### 8.10.d Quality of Life

“Really it’s just a bar. It doesn’t fit there, it doesn’t fit the historic, agricultural heritage of Sound Avenue.”

- Riverhead resident, George Bartenuk  
News 12 Long Island, September 2017

“We want to pipe the music outside so that when the weather is nice, people will want to sit outside,” he [Bryan Lewis, an attorney for Riverhead Ciderhouse] said.

Dan Maurer of nearby Baywood Drive said he can hear the music from his house.

Planning Board chairman Stan Carey said the board is not responsible for enforcement.

- Riverhead News-Review, September 2017



# Kent Falls Brewing Company, Kent, CT

Relevant Zoning Regulations:

8.4.f Public Nuisances

8.10.d Quality of Life

“It’s been really difficult. We spent 45 years building our dream. We have 50 acres. The trucks make a ton of noise. The motorcycles. The buses. We hear everything. Originally, they were only going to be open Thursday, Friday and Saturdays. **Now they are open on Sundays, which was our only quiet day.**



Everyone here came here for a reason. You move out here for tranquility. Even the young people fought it. It sounded so wholesome and turned into a white elephant. The people **who love the brewery are only people who have been here 2- 3 years and come for weekends.”**

– Katherine Osborne, Kent, CT



## 8.4.f Public Nuisances

### 8.10.d Quality of Life

The Project plans do not adequately address many of the well-founded concerns about offering alcohol for consumption on-premises and selling it to-go in a residential neighborhood.

The Project Narrative offers no hard limitations whatsoever on the amount of alcohol that can be served on-site, or even for that matter, any hard and fast limitation on operating hours other than: "...at no point will the store be open 7 days a week."

What are the Town of Cornwall's plans to address the nuisances / disturbances, public safety and health risks that are common to establishments alcohol beverage-serving businesses?

How will the Town of Cornwall with a Zoning Enforcement Officer who works six hours a week (on select weekday mornings) and no local police department, adequately enforce and monitor compliance with a business that plans to be open primarily in the afternoons and on weekends?



## Cidery Attorney Says Business Has A Right To Operate At Its Location; Town Of Orangetown Disagrees

By Tina Traster

A Rockland County judge will have to decide the fate of a cidery in the Town of Orangetown because town officials and the business owners disagree on whether the operator has the right to serve hard cider to the public at its property.

Rockland Cider Works, which opened in August 2019 at Van Houten Farms at 68 Sickletown Road in Orangeburg, is wrangling to remain in business while it fights on three fronts: in a lawsuit it filed against the town, in a lawsuit filed against it by its neighbors, and in an administrative hearing to hold onto its state issued cidery license.

The cidery is the brainchild of Darin and Elisabeth Van Houten, who began to establish a hard cider distillery with bar service and music to supplement the family's nursery business, which has long been in decline, they say. The couple envisioned a cidery – the kind of attraction that has helped boost tourism in upstate communities – as a strategic update to a nursery and garden center that had been around for nearly 50 years but had been losing customers to big boxes that undercut independent and local businesses. According to the New York State Cider Association, New York has more than 125 hard cider producers.

The new attraction gained traction, becoming a desirable refuge six months later at the height of the pandemic because it gave people a space to gather safely outdoors with friends, kids, dogs, and to listen to live bands in the garden outfitted with socially distanced tables for pandemic safety protocols. It seemed like a win for the business and the community **except it became a noise and traffic nuisance to neighbors who began complaining about cars lining up and parking on the road, the din of activity, occasional lewd behavior, the presence of food trucks and a change of use that they say was altering the rural character of the neighborhood.**

In the typical way that neighborly disputes begin with attempts to reach compromise and ping-pong Facebook commentary, this one has escalated into a legal battle on two fronts that is costing taxpayers, neighbors, and the business time and money to determine who is in the right.

At issue is whether the cidery is properly zoned for the manufacturing and commercial operation it is running. The town says the site is not compliant for food and bar service while the attorneys representing Rockland Cider Works maintain the zoning laws are "ambiguous," and that the ambiguity should favor the cidery.

In a lawsuit filed in Rockland County Supreme Court in January, attorney Lino Sciarretta argues the cidery is allowed as “a commercial agricultural use” even though “cideries” are not specifically listed in the zoning code.

“If you look at the code, it’s pretty broad,” said Sciarretta. “The zoning allows for agricultural operations, but agricultural operation is ambiguous. The statute allows for nurseries, greenhouses, vineyards, truck gardening. Such ambiguity must be resolved in favor of the property owner; not the municipality.”

The town disagrees: Town Planner Jane Slavin denied Rockland Cider Works a building permit, saying it is not permitted as an “as-of-right” use. She further said “retail sales or restaurant use is not a ‘use or accessory use’ by right. A use variance is required.”

And because the town has deemed the cidery to be noncompliant, the New York State Liquor Authority is now considering revoking the cidery’s license – though Sciarretta has obtained a Temporary Restraining Order against the town from taking any further action until a judge renders an opinion on the case.

In the meantime, Darin Van Houten says without a liquor license, the cidery will be put out of business. He says Rockland Cider Works continues to operate and represents nearly 10 percent of the family business’s total revenue but the uncertainty hanging over their head is creating great stress.

“We don’t know what to plan for,” said Van Houten. “We need to move the business forward but with all these question marks, we don’t know what direction it will go in or how to move forward.”

Rockland Cider Works produces roughly 5,000 gallons of hard cider a year using apples grown on Dr. Davies Farm in Congers. Nearly 95 percent of production is used for single servings at the cidery though the operation also cans its products. The cidery has a few wholesale accounts including 76 House in Tappan and a sprinkling of New York City bars and restaurants.

In July 2021, the cidery opened a second location in Gilboa, New York, on the family farm where Elisabeth Van Houten grew up.

Darin's roots trace back to the early 1600s. His grandfather started the farm in 1946. It became a farm market, garden center, and nursery in the 1970s. The company bought a large production farm in Pennsylvania where Van Houten grew up. He and his wife moved to Pearl River in 2018 to take the reins at the farm here. Van Houten Farms is owned by a trust that includes Darin, Elizabeth, and his uncle James. James' son, Chris Van Houten, who is Darin's cousin, ran the operation for nearly 40 years but was ousted when his younger cousin came from Pennsylvania to endeavor to revive it.

Chris and his wife Sharon, who live on the farm property, are among the group of neighbors who've filed suit against the cidery. Chris and Sharon are also in the appeals court over rights to their homestead on the farm property stemming from litigation between themselves and James Van Houten.

Some fourteen neighbors (or seven couples) last month filed a lawsuit in Rockland County Supreme Court against Rockland Cider Works, the company's landlord the Van Houten Farm Market Benefit Trust, the Town of Orangetown, and the New York State Liquor Authority hoping to shut down the farm cidery.

The plaintiffs in that case allege the cidery is violating the town's zoning and building codes, creating a nuisance, and degrading neighboring property values. The suit seeks a temporary and permanent injunction against its continued operation. The suit claims that residents have requested relief from the town since March of 2021. They maintain the town has failed to enforce its own codes.

"It's unfortunate it got to this point," said Susan McWhinney, one of the plaintiffs. "We just want to have the neighborhood left intact. This has been divisive. It hurts all of us. It drives us apart."

McWhinney said she and her partner Jerry Goggin, who live in an old stone house adjacent to the property, are bothered by industrial noise coming from the cider production, increased traffic around their driveway, and lighting.

In response to neighbors' complaints and the pending litigation, Van Houten has suspended live bands and has cleared space aside the garden center to accommodate 120 cars but the fate of the cidery rests with the court, unless

the cidery goes back to the town Planning and Zoning Boards with a new application.

Van Houten says he would not have filed a suit in the first place if the town had held a timely hearing on his request for a "text amendment" allowing the cidery to operate in the R-40 zone, and later a revised request limited to a provision for a "special permit" allowing cidery operations in that zone.

In the town's response to the lawsuit, the town asked the court to dismiss the case, saying the cidery should have appealed to the Zoning Board of Appeals and that the case doesn't belong in court.

Town Supervisor Teresa Kenny did not respond to an email requesting comment for this story.

The town's response on the lawsuit is due Sept. 2; meanwhile the presiding Judge Robert Berliner is due to leave the bench at the end of September.



## Neighbors oppose outdoor expansion at Riverhead Ciderhouse

Sep 25, 2017, 1:53pm *Updated on Sep 25, 2017*

By: News 12 Staff

Riverhead resident George Bartenuk wants the town to ensure that the Ciderhouse doesn't expand. **"Really it's just a bar," he says. "It doesn't fit there, it doesn't fit the historic, agricultural heritage of Sound Avenue."** Ciderhouse owner John King says he's not trying to bend any rules, but admits he did set up tables and chairs outdoors. **"You**

**still have people who smoke, people who want to come outside," he says.**

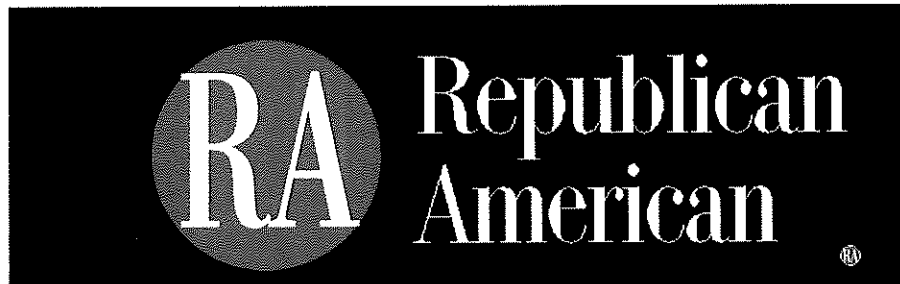
King says his facility -- which sits inside a huge, vacant warehouse that he refurbished -- is extremely popular and has created jobs and revenue for the town.

"It's mostly families," he says. "A lot of people thought we were going to be a discotheque. A lot of people thought we were going to be open late. One night a week, we're open until 9 p.m."

King also says that his business has improved the area. "I think it was the biggest eyesore on Sound Avenue. I think we did a good thing by making it nice," he says.

**Town officials say it's simply a matter of the Ciderhouse putting up things that were not part of the original site plan. An amended site plan has been submitted that needs town approval.**

A decision is expected within a few weeks.



## Kent Falls Brewing's food truck request opens door to possible zoning violations

BY LYNN MELLIS WORTHINGTON | REPUBLICAN-AMERICAN

March 19, 2023

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**cutline attribution name:Photos by Lynn Mellis Worthington Republican-AmericanKent Falls Brewing, which has the distinction of being the first farm brewery in the state, has been in operation for eight years. The owners have requested changes to their special zoning permit to allow larger pours of beer in the tasting room, the sale of beer in sealed containers, events and entertainment, and outdoor tasting at stand-up/stand up tables. Neighbors are lining up on both sides to support and complain about the business.**

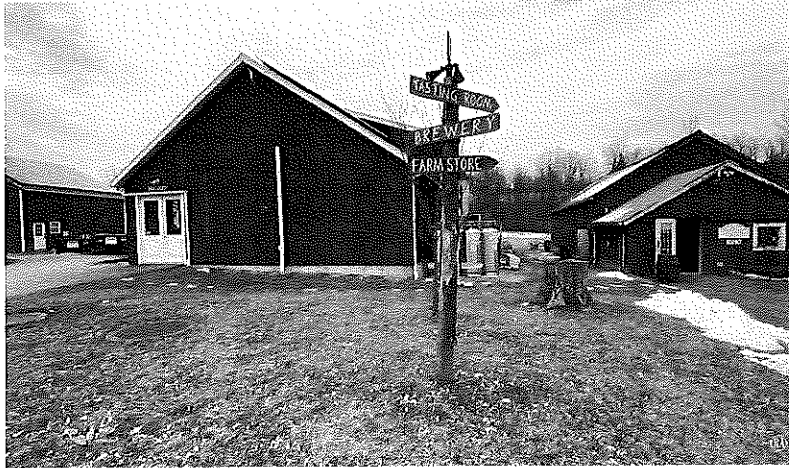
KENT – A conversation with the Board of Selectmen in recent months about possibly allowing food trucks at the town's farm brewery, Kent Falls Brewing, has caused a cascade of other events, including the issuance of zoning violations against the brewery.

The brewery was the first farm brewery in the state and worked with the Planning and Zoning Commission 10 years ago to create regulations that would allow it to be operated with a special permit in the rural district. The brewery has been operating for eight years.

Barry Labendz, one of the co-owners and a founder of the brewery, approached the selectmen about food trucks, noting how beneficial it would be to have food available to his customers. The selectmen had previously conducted a long-running discussion on whether food trucks should be allowed to operate and ultimately decided not to have an ordinance permitting them.



Land use administrator Tai Kern, who was hired within the last year, sent a notice of possible violation Jan. 31 to David Birnbaum, one of the business partners and the property owner. Her letter noted that tastings are to be limited to two-ounce pours of beer, a restaurant use is not permitted in the rural district, a farmers market is not permitted, farm stand sales are limited to agricultural products produced at the farm and retail sales of beer are limited to growlers. In addition, live entertainment is not a permitted accessory use, Kern stated.



cutline attribution

**name:Photos by Lynn Mellis Worthington Republican-AmericanKent Falls Brewing, which has the distinction of being the first farm brewery in the state, has been in operation for eight years. The owners have requested changes to their special zoning permit to allow larger pours of beer in the tasting room, the sale of beer in sealed containers, events and entertainment, and outdoor tasting at stand-up/stand up tables. Neighbors are lining up on both sides to support and complain about the business.**

Kern explained to the commission that she took action when the issue was raised and said she was asked to look into the brewery activities.

"I sent this notice of possible violation to get this kind of conversation going," she told the commission in February. "Barry and David both came forward very quickly to explain and talk about it and try to come into conformance with whatever was required or whatever was agreed to and maybe move forward with a better understanding."

**In response to the violation order, the brewery owners have applied for changes to the special permit that would allow standard pours of 8 ounces of beer in the tasting room, sale of beer in sealed containers, events and entertainment and outdoor tasting at stand-up tables. The operation has also applied to have its farm stand be reclassified as a farm store inside the tasting room building.**

A hearing began March 9, and there were 53 people attending the virtual meeting, with residents both in support and against the proposed changes. There were 36 letters sent to the commission regarding the brewery's application.

Labendz went through the history and noted how Kent Falls was a groundbreaker. There are now seven other farm breweries in the state and a total of 114 breweries. When the town wrote the original regulations, there was no other model in Connecticut to base the language on. He stressed how much they value the agricultural aspects of the business and how symbiotic the relationship is between the brewery and the farmers that provide grain to them and take away the spent grain.

**Neighbor Karen Iannucci complained about the smell from the compost and grains that are dumped near her property. Other neighbors, Bruce and Katherine Osborne, complained about police visits and drunk visitors leaving the brewery.**

A number of the brewery supporters, some of whom are close neighbors, disputed the negative claims made about the brewery patrons.

"The brewery is the greatest thing that has ever happened to Kent Hollow," said Craig Bibb, who has lived in Hollow for 28 years. "I've met more neighbors there and I see them regularly during pretty limited hours."

As the commission was listening to the comments, supporters of the brewery started changing their Zoom profile photo to feature the message "I support Kent Falls." Chairman Matthew Winter expressed some concern about what he called the "propaganda" on his computer screen.

"It is making me feel a little uncomfortable," Winter said.

The commission decided to continue the hearing to its April 13 meeting, in part because so many new letters had arrived that day that had not been read by all the commissioners.

# Kent Falls Brewing Co. halts expansion effort

BY LYNN MELLIS WORTHINGTON Republican-American  
June 23, 2023

KENT – Kent Falls Brewery has withdrawn its application with the Planning and Zoning Commission to expand its activities and offerings at its Camps Road location in Kent Hollow.

Brewery officials were notified Jan. 31 of possible violations to the zoning permit that was granted 10 years ago and has been modified several times. Land use administrator Tai Kern ordered tastings to be limited to 2-ounce pours of beer, a restaurant use is not permitted in the rural district, a farmers market is not permitted, farm stand sales are limited to agricultural products produced at the farm and retail sales of beer are limited to growlers. In addition, live entertainment is not a permitted accessory use.

In response, brewery partners David Birnbaum, Barry Labendz and John Suscovich submitted a modification to the special permit to allow standard pours of 8 ounces of beer in the tasting room, sales of beer in sealed containers, events, and entertainment and outdoor tastings at stand-up tables. The operation also applied to have its farm stand reclassified as a farm store inside the tasting room building.

The hearing began March 9 and continued April 13, closing that evening. In May, the PZC discussed eight waivers requested by Kent Falls Brewing that ranged from a traffic study to hours of operation because the "changes listed on the site plan have no impact on the gilding footprint or occupancy and should maintain a similar impact to existing uses," Labendz said.

The PZC ultimately approved the waiver requests.

The proposed application changes generated both support and concerns from residents. The PZC asked Kern in May to draft both a motion to approve and a motion to deny.

Labenz sent a letter June 2 withdrawing the application.

"After additional research into our prior approvals, we believe this application has generated confusion as to what the conditions of those prior approvals are," Labendz wrote. "Since the hearing has closed without clarity on some of the issues, to avoid any additional confusion we believe the best course of action is to withdraw the application at this time."

Labendz declined to further discuss the reasons Wednesday.

"Right now we are exploring what our options are," he said, "so I think it would be premature to talk about next steps."