

ORDINANCE NUMBER 2021- 16

**GRANTING SPECIAL USE PERMITS FOR THE SALE OF AGRICULTURAL PRODUCTS,
POTTERY, ART, AND HOME DÉCOR NOT PRODUCED ON THE PREMISES AT 14975
BRISBIN ROAD AND IDENTIFIED BY PARCEL IDENTIFICATION NUMBER 08-13-400-013
IN LISBON TOWNSHIP**

WHEREAS, Section 13:08 of the Kendall County Zoning Ordinance permits the Kendall County Board to issue special use permits and place conditions on special use permits and provides the procedure through which special use permits are granted; and

WHEREAS, Section 7:01.D.47 of the Kendall County Zoning Ordinance permits the sale of agricultural products not grown on the premises as a special use in the A-1 Agricultural Zoning District; and

WHEREAS, Section 7:01.D.48 of the Kendall County Zoning Ordinance permits the sale of pottery, art, and home décor as a special use with certain conditions in the A-1 Agricultural Zoning District; and

WHEREAS, the property which is the subject of this Ordinance has been, at all relevant times, and remains currently located within the A-1 Agricultural Zoning District and consists of approximately 3.86 +/- acres located at 14975 Brisbin Road (PIN: 08-13-400-013), in Lisbon Township. The legal description for the subject property is set forth in Exhibit A attached hereto and incorporated by reference, and this property shall hereinafter be referred to as “the subject property”; and

WHEREAS, the subject property is owned by Wanda and Thomas Hogan and shall hereinafter be referred to as “Petitioner”; and

WHEREAS, on or about May 13, 2021, Petitioner filed a petition for special use permits for the sale of agricultural products, pottery, art, and home décor not produced at the subject property in order to operate a market; and

WHEREAS, following due and proper notice by publication in the Kendall County Record on May 27, 2021, the Kendall County Zoning Board of Appeals held a public hearing on June 28, 2021, at 7:00 p.m., in the County Board Room of the Kendall County Office Building at 111 W. Fox Street in Yorkville at which the Petitioner’s representative presented evidence, testimony, and exhibits in support of the requested special use permits and zero members of the public asked questions or testified in favor or in opposition to the request; and

WHEREAS, based on the evidence, testimony, and exhibits, the Kendall County Zoning Board of Appeals has made their findings of fact and recommended approval of the special use permits as set forth in the Findings of Fact and Recommendation of the Kendall County Zoning Board of Appeals, dated June 28, 2021, a true and correct copy of which is attached hereto as Exhibit B; and

WHEREAS, the Kendall County Planning, Building and Zoning Committee of the Kendall County Board has reviewed the testimony presented at the aforementioned public hearing and has considered the Findings of Fact and Recommendation of the Kendall County Zoning Board of Appeals, and has forwarded to the Kendall County Board a neutral recommendation of the requested special use permits; and

WHEREAS, the Kendall County Board has considered the recommendation of the Planning, Building and Zoning Committee and the Findings of Fact and Recommendation of the Kendall County Zoning Board of Appeals, and has determined that said petition is in conformance with the provisions and intent of the Kendall

WHEREAS, these special use permits shall be treated as a covenant running with the land and is binding on the successors, heirs, and assigns as to the same special use conducted on the property; and

NOW, THEREFORE, BE IT ORDAINED, BY THE COUNTY BOARD OF KENDALL COUNTY, ILLINOIS, as follows:

1. The Findings of Fact and Recommendation of the Kendall County Zoning Board of Appeals attached hereto as Exhibit B is hereby accepted and the Findings of Fact set forth therein are hereby adopted as the Findings of Fact and Conclusions of this Kendall County Board.
2. The Kendall County Board hereby grants approval of Petitioner's petition for special use permits for the sale of agricultural products, pottery, art, and home décor not produced on the premises subject to the following conditions:
 - A. The site shall be developed substantially in accordance with the site plan attached hereto as Exhibit C. Any new structures related to the uses allowed by this special use permit shall require a major amendment to the special use permit and any new structures must reflect the current architecture of the existing structures. Limited demolition of farmhouse and outbuildings is allowed. The parking spaces identified as spaces 14-47 on the site plan attached hereto as Exhibit C shall be installed by April 2022.
 - B. The owner(s) or operator(s) of the business allowed by this special use permit must ensure the four foot (4') fence is erected around the ponds as shown on the site plan attached hereto as Exhibit C prior to the opening of the business allowed by this special use permit when the business is open to the public.
 - C. The subject parcel must remain at least (3) acres in size.
 - D. The uses allowed by this special use permit must occur in a manner that will preserve the existing farmhouse, barns, related structures, and the pastoral setting.
 - E. Retail and wholesale sales may occur outside existing buildings.
 - F. The uses allowed by this special use permit cannot generate noise, vibrations, glare, fumes, odors, or electrical interference beyond which normally occurs on A-1 zoned property.
 - G. A maximum twenty (20) vendors and one (1) additional food vendor may be on the subject property.
 - H. The uses allowed by this special use permit may operate a maximum of two (2) weekends per month. For the purposes of this ordinance, a weekend shall be considered Saturdays and Sundays. The uses may be open for sale between the hours of 8:00 a.m. and 5:00 p.m. The property owner may reduce these hours of operation. Vendors may setup no earlier than two (2) hours prior to opening and must be offsite within two (2) hours of closing. The uses allowed by this special use permit may be operational between the months of April and October.
 - I. Only the owners of the property and their family members shall be employees of the business allowed by this special use permit.
 - J. The owners of the business allowed by this special use permit may install one (1) sign along Brisbin Road. The sign shall be a maximum of four feet by six feet (4'X6') in size. The sign

shall not be illuminated. The sign may be placed along Brisbin Road on days when the uses allowed by the special use permit are open. The sign may be placed along Brisbin Road the day before the business allowed by this special use permit is open.

- K. All trash and garbage generated by uses allowed by this special use permit shall be stored in the garbage areas designated on the site plan attached hereto as Exhibit C. The owner(s) or operator(s) of the business allowed by this special use permit shall ensure that garbage and trash shall be removed from the property at least one (1) time per week or as necessary to maintain the property clear of garbage and trash.
 - L. No music shall be generated by the uses allowed this special use permit.
 - M. The owner(s) or operator(s) of the uses allowed by this special use permit shall live at the subject property as their primary place of residence.
 - N. The operator(s) of the uses allowed by this special use permit acknowledge and agree to follow Kendall County's Right to Farm Clause.
 - O. The operator(s) of the uses allowed by this special use permit shall follow all applicable Federal, State, and Local laws related to the operation of this type of use.
 - P. On the days when the uses allowed by this special use permit are open to the public, two (2) fully functioning fire extinguishers and two (2) basic first aid kits shall be available, one (1) set of these items shall be located at the entrance to the market and the other set shall be located in the middle of the market.
 - Q. Failure to comply with one or more of the above conditions or restrictions could result in the amendment or revocation of the special use permit.
 - R. This special use permit and the ordinance granting this special use permit shall be considered revoked on October 31, 2031, or when Thomas or Wanda Hogan no longer own the subject property, whichever occurs first. If Thomas or Wanda Hogan wish to continue the use allowed by this special use permit after October 31, 2031, or if a subsequent owner of the subject property wishes to operate the use allowed by this special use permit, a new special use permit shall be required. This condition shall not be eligible for a minor amendment.
 - S. If one or more of the above conditions is declared invalid by a court of competent jurisdiction, the remaining conditions shall remain valid.
3. These special use permits shall be treated as a covenant running with the land and is binding on the successors, heirs, and assigns as to the same special use conducted on the property.
 4. The Zoning Administrator and other appropriate County Officials are hereby authorized and directed to amend the Official Zoning Map of Kendall County to reflect these special use permits.

IN WITNESS OF, this ordinance has been enacted by a majority vote of the Kendall County Board and is effective this 20th day of July, 2021.

State of Illinois
County of Kendall

Zoning Petition
#21-19

Attest:



Kendall County Clerk
Debbie Gillette



Kendall County Board Chairman
Scott R. Gryder



Exhibit A

Legal Description

The South 250 feet, measured at right angles, to the South line of the Southeast $\frac{1}{4}$ of Section 13, Township 35 North, Range 7 East of the Third Principal Meridian, except the West 250 feet thereof, in the Township of Lisbon, Kendall County, Illinois

Exhibit B

The Kendall County Zoning Board of Appeals approved the following Findings of Fact and Recommendation at their meeting on June 28, 2021, by a vote of six (6) in favor and zero (0) in opposition. Member Whitfield was absent.

FINDINGS OF FACT

§ 13:08.J of the Zoning Ordinance outlines findings that the Zoning Board of Appeals must make in order to recommend in favor of the applicant on special use permit applications. They are listed below in *italics*. Staff has provided findings in **bold** below based on the recommendation:

That the establishment, maintenance, or operation of the special use will not be detrimental to or endanger the public health, safety, morals, comfort, or general welfare. True. The Petitioner has submitted a site plan indicating that measures will be taken to ensure that the use will not have a negative impact on public health, safety, morals, comfort, or general welfare. Conditions may be placed in the special use permit to address hours of operation and signage. The Petitioner agreed to follow all applicable public health and public safety related laws.

That the special use will not be substantially injurious to the use and enjoyment of other property in the immediate vicinity for the purposes already permitted, nor substantially diminish and impair property values within the neighborhood. The Zoning classification of property within the general area of the property in question shall be considered in determining consistency with this standard. The proposed use shall make adequate provisions for appropriate buffers, landscaping, fencing, lighting, building materials, open space and other improvements necessary to insure that the proposed use does not adversely impact adjacent uses and is compatible with the surrounding area and/or the County as a whole. True. Conditions are proposed that will regulate hours of operation and site layout. No new buildings or other significant alterations away from the appearance of the property as an agricultural related property are planned.

That adequate utilities, access roads and points of ingress and egress, drainage, and/or other necessary facilities have been or are being provided. Utilities are already available at the property. The site plan includes a parking plan. The property previously secured a stormwater management permit.

That the special use shall in all other respects conform to the applicable regulations of the district in which it is located, except as such regulations may in each instance be modified by the County Board pursuant to the recommendation of the Zoning Board of Appeals. This is true. No variances have been requested.

That the special use is consistent with the purpose and objectives of the Land Resource Management Plan and other adopted County or municipal plans and policies. True, the proposed use is consistent with an objective found on Page 3-5 of the Kendall County Land Resource Management Plan which calls for "a strong base of agricultural, commercial and industrial uses that provide a broad range of job opportunities, a healthy tax base, and improved quality of services to County residents."

RECOMMENDATION

Approval subject to the following conditions:

1. The site shall be developed substantially in accordance with the submitted site plan. Any new structures related to the uses allowed by this special use permit shall require a major amendment to the special use permit and any new structures must reflect the current architecture of the existing structures. Limited demolition of farmhouse and outbuildings is allowed. The parking spaces identified as spaces 14-47 on the submitted site plan shall be installed by April 2022.
2. The owner(s) or operator(s) of the business allowed by this special use permit must ensure the four foot (4') fence is erected around the ponds as shown on the submitted site plan prior to the opening of the business allowed by this special use permit when the business is open to the public.

3. The subject parcel must remain at least (3) acres in size.
4. The uses allowed by this special use permit must occur in a manner that will preserve the existing farmhouse, barns, related structures, and the pastoral setting.
5. Retail and wholesale sales may occur outside existing buildings.
6. The uses allowed by this special use permit cannot generate noise, vibrations, glare, fumes, odors, or electrical interference beyond which normally occurs on A-1 zoned property.
7. A maximum twenty (20) vendors and one (1) additional food vendor may be on the subject property.
8. The uses allowed by this special use permit may operate a maximum of two (2) weekends per month. For the purposes of this ordinance, a weekend shall be considered Saturdays and Sundays. The uses may be open for sale between the hours of 8:00 a.m. and 5:00 p.m. The property owner may reduce these hours of operation. Vendors may setup no earlier than two (2) hours prior to opening and must be offsite within two (2) hours of closing. The uses allowed by this special use permit may be operational between the months of April and October.
9. Only the owners of the property and their family members shall be employees of the business allowed by this special use permit.
10. The owners of the business allowed by this special use permit may install one (1) sign along Brisbin Road. The sign shall be a maximum of four feet by six feet (4'X6') in size. The sign shall not be illuminated. The sign may be placed along Brisbin Road on days when the uses allowed by the special use permit are open. The sign may be placed along Brisbin Road the day before the business allowed by this special use permit is open.
11. All trash and garbage generated by uses allowed by this special use permit shall be stored in the garbage areas designated on the site plan. The owner(s) or operator(s) of the business allowed by this special use permit shall ensure that garbage and trash shall be removed from the property at least one (1) time per week or as necessary to maintain the property clear of garbage and trash.
12. No music shall be generated by the uses allowed this special use permit.
13. The owner(s) or operator(s) of the uses allowed by this special use permit shall live at the subject property as their primary place of residence.
14. The operator(s) of the uses allowed by this special use permit acknowledge and agree to follow Kendall County's Right to Farm Clause.
15. The operator(s) of the uses allowed by this special use permit shall follow all applicable Federal, State, and Local laws related to the operation of this type of use.
16. On the days when the uses allowed by this special use permit are open to the public, two (2) fully functioning fire extinguishers and two (2) basic first aid kits shall be available, one (1) set of these items shall be located at the entrance to the market and the other set shall be located in the middle of the market.
17. Failure to comply with one or more of the above conditions or restrictions could result in the amendment or revocation of the special use permit.
18. This special use permit and the ordinance granting this special use permit shall be considered revoked on the tenth (10th) anniversary of the Kendall County Board's approval of this special use permit ordinance or when Thomas or Wanda Hogan no longer own the subject property, whichever occurs first. If Thomas or Wanda Hogan wish to continue the use allowed by this special use permit after the tenth (10th) anniversary of the Kendall County Board's approval of this special use permit ordinance or if a subsequent owner of the subject property wishes to operate the use allowed by this special use permit, a new special use permit shall be required. This condition shall not be

eligible for a minor amendment.

19. If one or more of the above conditions is declared invalid by a court of competent jurisdiction, the remaining conditions shall remain valid.

