

Zoning Board of Adjustment
Town of Ferrisburgh, VT

Minutes for meeting of January 6, 2021

Note: This meeting was conducted remotely. All participants joined the meeting through a Zoom online meeting.

Members present: Norm Smith (Chair), Bob Beach, Dave Mentzer, Diane Nadon, Katie Quinn, John Paul, Mike Delaney **Members absent:** None

Town official present: Clark Hinsdale, Selectboard Member, Bonnie Barnes, Zoning Administrator, Robyn King, Minute Taker

Participants present: None

Approval of minutes from December 2 Meeting. Norm Smith called the meeting to order at 7:13 pm and asked if the Board Members had any meeting minute corrections. Diane Nadon noted that Mr. Denecker's name had been spelled incorrectly and Bob Beach noted that Carl Cole's name needed to be corrected also. With those corrections, John Paul made a motion to approve the minutes which was seconded by Diane Nadon and the motion passed unanimously, with Dave Mentzer abstaining.

Application #20-137 (Cullen) to add garage, studio, and mudroom without sufficient setback; property ID #99/99/99.006; 16 Annex Road; Rural Agricultural (RA-5) District; waiver, continued from December 2 hearing.

Bonnie Barnes updated the Board members that Mr. Cullen assumed that the application was not moving forward as the Long Point Corporation had not made their decision and that he preferred continuing the application at the February hearing. ***John Paul moved to table the application, which was seconded by Bob Beach and the motion passed unanimously. Dave Mentzer made a motion to open the hearing, in order for the matter to be tabled, which was seconded by Mike Delaney and the motion passed unanimously.***

Other Business

Application #20-136 (McElwain) to remove existing house and construct 40'x72' shop; property ID #23/20/47; 2847 U.S. Route 7; Highway-Commercial (HC-2) District; conditional use.

Bonnie Barnes noted to the Board that the applicant, Quinn McElwain wanted to modify the permit application to include a 12 foot addition, in the form of an open-faced shed along the 72 foot side of the building. Bonnie Barnes indicated that she informed Mr. McElwain and Mr. Rood that they would need to be present at the meeting in order for this to move forward, unless she instructed them otherwise. Bonnie Barnes explained that there were a few options that the

Board had which included adding it to the permit already granted, having it re-opened for discussion with the Board, or to come back formally before the Board.

John Paul noted that this modification did increase the size of the building by 25-30%, and Diane Nadon noted that the drawing was not very specific. Bonnie Barnes agreed that the drawing was not very specific and that it did not include dimensions, but that the dimensions were in an email that she expected there to be more of a description with. Bob Beach asked what side of the building the additional would be on, and there was clarification that it was the entire length of the building that would be 860 square feet, with the overhead door facing north, which could be used to park vehicles.

Given the questions on the nature of the open-faced shed, Norm Smith noted that it was his inclination to have the matter considered at the February meeting of the Board and that the applicant could participate in-person if needed. Bonnie Barnes noted that there would be an additional permit application fee, and additional questions were raised by Board members over the use of the building, the discrepancies in the drawing, and how the new plans may impact the lighting plan. Bonnie Barnes confirmed that she would need to warn the meeting, given that the changes proposed are substantial.

Suggested Changes to Procedures for Conditional Use Permits

Norm Smith introduced the matter indicating that there were some suggestions made on how to change the procedure to issue permits and invited Selectboard Member Clark Hinsdale to speak. Selectboard Member Hinsdale explained that Mr. Cullen's application opened discussion of a historical informal policy whereby when there was an application in Long Point, the Board would wait for there to be a decision by the Long Point Corporation prior to the Board rendering a decision on the matter, given the nature of the Long Point Corporation being the landowner of a single 200-300 acre block of land. Selectboard Member Hinsdale noted that the lot lines in Long Point are an artificial creation of the Long Point Corporation and its leaseholders which is different than the lot lines between two separate landowners. Selectboard Member Hinsdale noted that the Long Point Corporation's review process, which is a written policy and available online, is rigorous and that the history is that if the Long Point Corporation has approved an application they write a letter which is reviewed by the Town of Ferrisburgh and that this process lends a higher level of scrutiny than typical applications given Long Point Corporation's process.

Selectboard Member Hinsdale noted there are a few options moving forward, including the current informal process, that the Long Point Corporation gives a formal indication that they have been notified of an application as the landowner, or that the review processes of the Long Point Corporation and the town are entirely separate. Selectboard Member Hinsdale clarified that the Long Point Corporation's process does include a letter from a site technician or engineer that the septic is in good repair with every application and that if the review processes were entirely separate, it may leave applicants in a position where they would need to resubmit new applications if the Long Point Corporation did not approve of the application. Selectboard Member Hinsdale concluded that it would be good to have a policy for these applications given

that there may be increased turnover moving forward, given the nature of the current state of things.

Norm Smith asked Selectboard Member Hinsdale if he was suggesting that the Board or the Town adopt a written policy that notes that the Zoning Board of Adjustment would not review a permit application until the Long Point Corporation approves it or if the Long Point Corporation would represent a defacto approval and Selectboard Member Hinsdale indicated he was suggesting the former statement. Dave Mentzer noted that typically the Board would require a landowner's permission before reviewing a permit. Norm Smith clarified that in this situation, the Long Point leaseholders have lot lines and that Long Point Corporation owns the underlying land but that if someone does not technically need Long Point Corporation approval for an action, then the Long Point Corporation would not need to be a co-applicant. There was clarification that Long Point Corporation as a non-profit that collects small dues, owns the land, the leaseholders own their buildings, and taxes are determined through an agreement on the monetary value of the leasehold interest.

Norm Smith noted that in the past, there usually is Long Point Corporation approval, but that if the Board does not have this, the cottage owner could obtain conditional approval such as with other state permits, understanding that there's a risk that the Long Point Corporation's review could result in a permutation that may need re-review by the Zoning Board of Adjustment. Bob Beach noted that there were three matters he recollected that the Board reviewed during his tenure that resulted in controversy, which included a matter where a building was built not to scope and one matter involving Selectboard Member Hinsdale's mother. Selectboard Member Hinsdale clarified that the situation involved his mother wanting to build a small cottage on a lot in which she had Long Point Corporation stock, but that the Long Point Corporation objected to the application and it was determined by the Town Attorney that the Long Point Corporation was the landowner and the application could not proceed without the signature of the landowner on the application and that in the end the proposal did not move forward.

Bonnie Barnes noted that this is where Long Point Corporation applications have been inconsistent with other applications, in so much that the application has a place for landowner signature and that this represents an acknowledgement and authority to proceed signed by the owner and this may be a good requirement for the Long Point Corporation as required by any other landowner in town. Bonnie clarified that applications where the applicant is not the landowner is sometimes the prospective new owner or developers. Bob Beach pointed out that he recognized the original process outlined by Clark whereby the Long Point Corporation should have much of the documentation for a matter prior to it being heard by the Zoning Board of Adjustment and that he recalled the third instance of controversy being a building built higher than originally agreed upon, but that he can only recall the three instances he mentioned.

Selectboard Member Hinsdale noted there was another instance where a friend had land where a company wanted to locate a sweater outlet but that the company had not gotten the landowner approval and the landowner and the landowner was caught off-guard when there was controversy around the application, which highlights the importance of the landowner

signature. Selectboard Member Hinsdale noted that this seemed appropriate for the Long Point Corporation and/or that the Long Point Corporation could write a letter with their point of view. Bonnie Barnes pointed out the the signature on the application does indicate that the applicant will get all applicable permits, which may need to be reviewed carefully by the landowner so that they are aware what they are attesting to. Dave Mentzer asked if by signing, if the landowner is committing to follow through on the rest of the permits, and Bonnie Barnes indicated that by signing, a landowner is relying on the applicant obtaining all of the necessary permits.

Norm Smith noted that the Long Point Corporation is a bit different in that as the owner, Long Point Corporation would be certifying that the application statements are accurate and that the Long Point Corporation would comply with state and Town regulations and he was unsure of whether or not the Long Point Corporation would want to take on that responsibility, especially given that there have only been three instances of note about compliance. Selectboard Member Hinsdale noted that he thought it may be helpful for there to be a review of Long Point Corporation's procedures given that they require engineer septic designs, dimensions, and written comments from neighbors. Norm Smith noted that in these instances and for any necessary permits, the Long Point Corporation is not taking on responsibility although they have an interest in things being done correctly. Norm Smith noted his appreciation for the thoroughness of the review process and he was unsure of the benefit of a policy that would duplicate requirements.

Mike Delaney noted he was grateful for Selectboard Member Hinsdale's presence and thought it might be good to have other Long Point Corporation Members present for a discussion. After a question from Norm Smith, Bonnie noted that Long Point Corporation's signature on every permit application would add to lead time and that she does notify Long Point Corporation when there is an application and it's rare that the Zoning Administrator has any permit authority over any Long Point Corporation application and that most are heard by the Zoning Board of Adjustment. Bonnie Barnes noted it may be good to have some documentation that Long Point Corporation is aware of the application by the leaseholder whether that be a letter or something else.

Norm Smith asked for a copy of the standard form lease, which Selectboard Member Hinsdale said could be provided. Selectboard Member Hinsdale noted his appearance was related to his role as liaison with Planning and Zoning and was prompted by the goal of clarity on procedural matters, and that any policy agreed upon should have involvement from the Long Point Corporation Board. Norm Smith noted it would be good to have an agenda item and representatives from the Long Point Corporation at the next meeting to discuss further and Bonnie Barnes offered to draft a letter as an invitation.

Bonnie Barnes noted that there were communications sent on other issues, primarily how state agencies should be notified about applications, whether or not they should swear in witnesses, and if a staff report can be compiled. Katie Quinn pointed out that the Fire Department, at the Planning Commission meeting noted they would like to be notified of certain applications and there was discussion on the process of notifying the state Fire Marshall and the merits of

making sure certain applications being reviewed by the Fire Department. After a question from Diane Nadon on sharing of information, it was clarified by Bonnie Barnes that it would fall on the Zoning Administrator to notify the appropriate entities and that for the Fire Department, it may be things that involve an increase in habitation or occupation which is likely best addressed through the zoning regulation revisions.

Selectboard Member Hinsdale pointed out that the state has a simple process of a permit notice calendar, which could be replicated by the Town. Through conversation, Bonnie clarified that every permit gets sent to the Board of listers and Selectboard Member Hinsdale suggested that the Fire Chief or Road Commissioner could be added to the email list for awareness.

Selectboard Member Hinsdale noted that they may want to consider a policy where applications are sent to state agencies so that applicants are aware that they are on notice so that they don't skip state permits. Bonnie Barnes clarified she does notify state agencies if applications appear to be within their jurisdiction, like shoreland applications or if an application has a wetland and it was noted that this process may be adequate.

Norm Smith noted that the suggestion to swear in witnesses might be a good idea, and he had seen it done in other jurisdictions. Diane Nadon noted that the minutes from the last meeting indicated an interest in ensuring that residents are not deterred in joining Zoom meetings and also to ensure applications are accurate. Diane Nadon noted she is opposed to swearing in people as if there's a desire for people to come and participate and share opinions, this may act as a deterrent.

There being no further business, Katie Quinn moved to adjourn the meeting, which was seconded by Diane Nadon and the meeting was adjourned at 8:16 pm.

Respectfully submitted by Robyn King.