

Zoning Board of Adjustment

Town of Ferrisburgh, Vt.

APPROVED – Minutes for meeting of July 5, 2017

Members present: Charlene Stavenow (chair), Mike Delaney, Rayne Herzog, Dave Mentzer, John Paul, Norm Smith. **Absent:** Bob Beach.

Town official present: Ken Wheeling, zoning administrator.

Visitors: Carol Allen, Aubrey Choquette, Carl Cole, Kim Daniels, Chris Devos, John Devos, Andrea Dotolo, Eddie Duncan, Anthony Duprey, Andre Emmell, Mark Franceschetti, Mary Gordon, Craig Heindel, Bill Houston, Connie Houston, Jane Melrose, Liam Murphy, Lonie Parker, John Pitrowiski, Leigh Phillips, Dave Pierson, Ken Villeneuve, Florence Vincent, Raymond Vincent, Stephanie Warner, Stephen Warner, Nora Wright.

Charlene Stavenow, chair, opened the meeting at 7 p.m.

Approval of minutes from June 6, 2017: Rayne Herzog made a motion to approve the minutes from June 6, 2017, as submitted. Dave Mentzer seconded. All voted in favor.

Motion approved.

HEARING No. 1

Application 17-018.

Application by Lonie Parker for a Conditional Use Permit to operate a food trailer in the parking lot in front of Aubuchon Hardware, at the northwest corner of the intersection of Route 7 and Monkton Road, with the permission of the landowner, FIC LLC, d/b/a Pomerleau Real Estate. The property is located on Route 7 and Monkton Road in the Highway Commercial District (HC-2) and is identified in the Town of Ferrisburgh tax maps as parcel 15/02/26.

Charlene Stavenow opened the hearing at 7:05 p.m. Lonie Parker was present to speak for the application. He wants to operate a food trailer in the parking lot of Aubuchon Hardware. He had previously operated the food trailer at this location, and said a member of the selectboard told him he would not need a permit. Zoning board members suggested Parker should have consulted the zoning administrator. When notified by the zoning administrator that a permit was required, he applied to the zoning board. In response to questions from board members, Parker said he has all of his equipment on one trailer, which he expects to leave on-site, and also will be bringing in tables and chairs. There is power on a pole in the parking lot. He expects to operate from 11 a.m. to 9 p.m., Wednesday through Sunday, from May 1 to October 15. He is currently operating at a site in Vergennes, and said he was not sure yet when or whether he would move back to the Aubuchon lot.

John Paul made a motion to close the public hearing at 7:10 p.m. Dave Mentzer seconded. All voted in favor. **Motion approved.**

Rayne Herzog made a motion to approve the application as submitted, with the condition that the trailer operate from 11 a.m. to 9 p.m., Wednesday through Sunday, from May 1 to October 15, 2017. Dave Mentzer seconded. All voted in favor. **Motion approved.** Board members noted the approval was for a temporary permit, and the applicant would have to re-apply each year.

HEARING No. 2

Application 16-129. Application by Christopher Gignoux on behalf of John Thompson and Susan Grimes for a Waiver to allow for a second story to be added over an existing footprint of a building at 204 Annex Road on Long Point. The parcel is in the Shoreland District (SD-2) and is identified in the Town of Ferrisburgh tax maps as parcel 99/99/99.105.

Charlene Stavenow re-opened the hearing at 7:15 p.m.; the hearing had been recessed at the meeting on June 7, 2017. Some information about the application was not available, and there was no confirmation that Long Point had approved the project. Board members said the applicant may also have to apply for a state shoreland permit. Charlene Stavenow recessed the hearing until the next meeting on August 2, 2017.

HEARING No. 3

Application 17-046. Application by Mark Franceschetti for a Conditional Use Permit to construct a self-storage facility on a 2.1-acre parcel at 80 Old Hollow Road. The parcel is in the Village District (VIL-2) and is identified in the Town of Ferrisburgh tax maps as parcel 05/01/11.3.

Charlene Stavenow opened the hearing at 7:25 p.m. Mark Franceschetti and Carl Cole were present to speak for the application. Charlene Stavenow said some board members had conducted a site visit before the meeting, and others had visited earlier, so that everyone present had seen the parcel involved. She asked Franceschetti and Cole to bring the board up to date on any changes with the project plan since the previous meeting. Cole said it had been determined that a state stormwater permit would be required, and that they would move forward to obtain one. He also said the Vermont Agency of Transportation had agreed to allow use of the existing curb cut off Route 7 to access the storage facility. He described plans for lighting, the access road, and fencing and planting, as well as the decision to allow 24-hour access to the storage facility through a gate via use of a keycard or PIN provided to the users.

A brief discussion followed on the need for more information about how all four lots at this location, owned by the applicant, were being developed. Norm Smith said the main issue is that a storage facility is not a permitted or conditional use in the Village District, and doesn't fit the character of the district. Carl Cole said that if the board was only going to approve uses specifically described in the zoning bylaws, how did it explain all the permits issued over the years for unspecified uses. Norm Smith said he didn't need to explain those

decisions, saying the board's job now is to apply the town's zoning regulations to this project. A brief discussion followed, touching on the various uses planned for the four lots. At that point, Carl Cole said he wanted to request a recess until the next meeting, believing that the board needed more information to make a decision. Mark Franceschetti agreed. Charlene Stavenow said the hearing would be recessed until the board's meeting on August 2, 2017.

HEARING No. 4

Application 16-149. Application by JSCL LLC c/o Sue DeVos for an 8,000-square-foot commercial building to serve a trucking business with one fulltime and six part-time employees and an outdoor truck wash area. The 9-acre lot is located on the north side of Tupper's Crossing in the Industrial District (IND-2) and is identified in the Town of Ferrisburgh tax maps as parcel 10/01/58.2.

Charlene Stavenow reopened the hearing at 7:45 p.m.; the hearing had been recessed at the meeting of June 7, 2016.

John Devos and consultants from Trudel Engineering were present to speak for the application. Charlene Stavenow asked all those who wanted to speak to be as concise as possible and to concentrate on new issues rather than those that had already been discussed in previous hearings on this application.

Eddie Duncan, a noise engineer with RSG who works on acoustic issues for Trudel, described his efforts to measure the impact of the project on sound levels on the parcel in question and at neighboring properties. He talked about his methodology, including noise measurements taken on the parcel and at other nearby locations. The town's zoning bylaws call for a limit of 70 decibels at any border of the property. He said it was his conclusion that the project would only exceed that 70-decibel level at the southern end of the property, on Tupper's Crossing, when multiple trucks were operating, which would be only for a short time on any given day. He said the project would meet the noise requirements at all times at the east, north or west property lines.

Andrea Dotolo from Trudel described some changes in the landscaping plans, including raising the height of the berm on the east side and planting more coniferous trees on the east and west sides. She said the higher berm and more trees would shield the trucks from the view looking west from Route 7, though the top of the building would still be visible, until the trees grew taller. She said that Ferrisburgh's highway foreman, John Bull, had signed off on the position of the driveway entrance; she also said he believed the new location for the trucking business would mean less use of town highways than was the case for the Greenbush Road location, and that he had never heard complaints from town residents.

She also noted that the applicant had decided not to grant a request from the town's Conservation Commission that the project meet new Vermont stormwater regulations that

went into effect this summer. She said the project had a valid stormwater permit issued this year, and that reapplying would be a significant expense for the applicant.

Aubrey Choquette, who lives at the corner of Tupper's Crossing and Route 7, presented a packet of information to the board, taking issue with the sound engineer's report, and pointing out that even the applicant's own expert was conceded the operation would not meet the town's 70-decibel limit at the southern boundary. He also described what he called the hazards that would be involved in having a number of tankers parked at the site, even if they were empty. He pointed to international and U.S. fire codes that consider the trucks to be hazards, requiring a much larger setback than that called for in the project plans.

David Pierson, who with Jane Melrose lives at the corner of Tupper's Crossing and Botsford Road, west of the Devos parcel, said the proposal constituted heavy industry, not the light industry called for in the zoning bylaws. He said that operations late at night and early in the morning seemed to be integral features of the operation. He said it was hard to imagine that the noise made by the trucks would not be heard at his property, which seemed to be what the sound engineer was predicting. He said it seemed that the landscaping plans had been improved. But he also said he felt that the trucking operation would be doing damage to the town's roads that residents would have to pay for. He suggested that they could not move their 1790's farmhouse, and that property values would likely suffer. And he pointed out the problems associated with trucks turning onto and off Route 7 via Tupper's Crossing.

Stephen Warner, who lives directly across the street from the project site, said he would not be bothered by the noise, and that more noise probably comes from Route 7. He said he felt John Devos had bent over backward to work with the town on the project, and had suggested he would help with planting trees in front of the Warner home to shield from lights and noise, an offer Warner said he would talk over with his daughter.

Liam Murphy, an attorney representing David Pierson and Jane Melrose, said the board should focus on whether this use was permitted, something he felt was not as clear-cut as others made it sound, since the project might not qualify as light industry. He also wondered if stricter setback requirements would be called for because of the fuel tankers parked on the lot. He suggested the zoning bylaws called for far more parking spaces than those included in the existing plan. He also said he hoped the board would consider the change to the character of the area represented by the trucking operation. He said it seemed like the project, if approved, should have restrictions on the hours of operation, similar to but perhaps stricter than those imposed when the town approved the COCO gas station on Route 7, since this project is in what has been a residential neighborhood. He asked the board to impose enforceable conditions governing noise, lighting and hours of operation, with remedies to ensure all conditions are met.

Anthony Duprey, an attorney representing the applicant, said he felt Murphy had glossed over the sections of the zoning bylaws that specifically permit a freight terminal and truck service and repair facility in the Industrial District. He pointed out that the tanker trucks would be empty when they left the site and when they returned. He said the Devos's neighbors on Greenbush Road had never complained about the operation there, and

supported the family. And he said he felt the applicants had bent over backward to allay the concerns of their neighbors and the town.

Stephanie Warner, Steve's daughter, who lives on the second floor of the Warner house across the street from the project site, said she also felt the sound engineer's report had minimized the fact that the noise levels at her property line would exceed the 70-decibel limit called for in the town's zoning bylaws. She wondered whether the applicants thought it was okay to wake her up at any time of night just so they could run their business. She also said she was concerned about the hazards of having fuel tankers stored 150 feet from her home, even empty ones. She wondered about odors, and about whether it would be safe to have an open fire—burning brush or even having a barbecue—on her property, given the fumes from the fuel. She hoped the board, if it did approve the project, would impose conditions that would protect her quality of life.

Charlene Stavenow thanked all for their comments, and said she believed it was time for the board to make a site visit to the property. She said board members would want to see the location of the main building, and exactly where the driveway would be. She said the board would recess the hearing, and schedule an hour-and-a-half visit, starting at 5:30 p.m., before re-opening the hearing at the August 2, 2017, meeting, which will start at 7 p.m. The board asked to have one of the fuel tankers available at the location during the site visit, and invited all those concerned to attend. Board members also suggested having John Bull, highway foreman, attend.

A brief discussion ensued about the possibility of restricting the hours of operation, and moving the driveway, which is now expected to be directly across the street from the Warner home.

The meeting was adjourned at 9:20 p.m.

— Respectfully submitted,

Tim Etchells