

Zoning Board of Adjustment

Town of Ferrisburgh, Vt.

APPROVED – Minutes for meeting of August 2, 2017

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

Visitors: Carol Allen, Aubrey Choquette, Carl Cole, Abby Dery, John Devos, Sue Devos, Eddie Duncan, Anthony Duprey, Andre Emmell, Mark Franceschetti, Peter Fried, Craig Heindel, Bill Houston, Connie Houston, Jane Melrose, Liam Murphy, Dave Pierson, Jeff Provost, Robert Rushford, Ken Villeneuve, Stephanie Warner.

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

Approval of minutes from July 5, 2017: Norm Smith made a motion to approve the minutes from July 5, 2017, as submitted. Rayne Herzog seconded. Mike Delaney, Rayne Herzog, Dave Mentzer, John Paul, Norm Smith and Charlene Stavenow voted in favor. Bob Beach abstained. **Motion approved.**

HEARING No. 1

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 reopened the hearing at 7:05 p.m. The hearing had been recessed at the July 5, 2017, meeting. Mark Franceschetti and Carl Cole were present to speak for the application, along with Robert Rushford, an attorney representing Mark Franceschetti.

Carl Cole said he believed that board concerns expressed at previous hearings came down to three questions: whether the use could be approved in the Village District; the percentage of the lot covered by structures; and the overall density of uses on the multiple parcels owned by Franceschetti.

To address the first issue, he introduced Rushford, who said he was a longtime friend of Franceschetti. Rushford said courts have long held that to best preserve a property owner's rights, zoning regulations must be read narrowly and any ambiguity must be resolved in favor of the property owner. He pointed out that storage trailers and service establishments are allowed uses in the Village District, and that a self-storage facility could fall within either of these uses. He also noted that the storage facility could fall under "the catch-all provision," envisioning "other commercial uses (deemed by the ZBA to be) in the same general character as those permitted and which will not be detrimental to the other uses within the district." Rushford said the town does not include self-storage as an allowed use in any of its zoning districts, but that an existing self-storage operation had been approved in the Highway Commercial District, just half a mile from the proposed site. As a

low-impact business, he said, the self-storage facility should be considered an allowed use in the district under the bylaws.

As to lot coverage, Cole said an earlier estimate that 38 percent of the lot would be covered by buildings was incorrect. That estimate also included parking and roadways, but when just the buildings were considered, the number was 12 percent, well within the number permitted by the zoning bylaws.

A discussion ensued about lot density, including the fact that the parcel under consideration is just one of four lots owned by Franceschetti at the same location. There were questions raised about how the permit application shifted density, meaning the number of uses permitted, from one lot to another, and whether that shift was apparent in a revised application. Norm Smith said procedurally it would make more sense to amend the application, so the board and the public could have a clear sense of the plans for all of the lots.

Bob Beach said Franceschetti owns a total of 8 acres at the site, and so does have the capacity to add the storage units to the other uses already approved. Charlene Stavenow and Norm Smith said they felt the board should close the hearing and take some time to look at all of the permutations, including the original and revised permit applications, and figure out how to proceed.

Norm Smith made a motion to close the public hearing at 7:35 p.m., subject to Carl Cole being allowed to provide a copy of what he believes is the application the board should be considering. Bob Beach seconded. All voted in favor. **Motion approved.** Carl Cole said he would provide the correct application to the board that evening. The board now has 45 days to make a decision on the permit.

HEARING No. 2

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 7:36 p.m.; the hearing had been recessed at the meeting of July 5, 2017.

John Devos and Abby Dery from Trudel Consulting Engineers were present to speak for the application, along with Anthony Duprey, an attorney representing Devos. Charlene Stavenow reported that a site visit had taken place that afternoon at 5:30, attended by all members of the board, the applicants, neighbors and other interested parties. She thanked John Devos for allowing the visit and having a tanker truck available on site.

Abby Dery talked about changes to the site plan, the most significant being relocation of the access point for the facility to the eastern boundary of the property, so that the driveway was not directly across from the Warner home, on the other side of Tupper's Crossing. This move was made so that truck headlights would not be pointed directly into the house across the street, and to address other traffic issues. The landscaping plan is amended somewhat to accommodate the new driveway location, but Dery said there would be no fewer trees planted. There was a brief discussion of how far the truck parking spaces and the actual roadway on the property are from the Warner's property line and home. The nearest parking space would be 180 feet from the house, and 130 feet from the property line, and the nearest part of the roadway used by the trucks would be 85 feet from the Warner property line. Dery pointed out that screening would be integrated into the chain-link perimeter fencing to minimize the impact of truck headlights, and trees would be planted on the site between the truck parking lot and Tupper's Crossing, directly across from the Warner home.

There was a brief discussion of the berm between the truck terminal and the adjoining property to the east, which would be 12 feet high. Dery said the berm could not really get much higher. The total number of parking spaces would be 20, nine for trucks and 11 for other vehicles.

Liam Murphy, an attorney representing neighbors Jane Melrose and David Pierson, said the number of parking spaces was far fewer than the requirement in the zoning bylaws for an 8,000- square-foot building. The bylaws call for one space per 200 square feet of commercial space, he said, so the lot would need 40 spaces. He said the board could not grant a waiver for the parking requirement because they could only grant waivers for dimensional requirements, so the change would require a variance and a warned hearing.

Anthony Duprey, attorney for Devos, said the applicant had arrived at the 11 parking spaces in the plan, not including parking for the trucks, because the project has about 2,200 square feet of office space. He said it made no sense to require 40 parking spaces, arguing that the applicant did not want to see any more impervious surface on the lot than absolutely necessary. He reminded that board that the lot in question is in the Industrial District, set aside for light industrial development, and said numerous changes had been made to the project plans to address neighbors' concerns. He said Devos's trucking operation had been a good neighbor at its current site on Greenbush Road.

Norm Smith said he understood neighbors' concerns about whether the project would fit in with the current character of the area, which is mostly open fields. Duprey said the applicant was trying to strike a balance, including landscaping that includes planting dozens of new trees, and designing the main structure to look like an agricultural building.

Eddie Duncan, a sound expert who worked on the plans with Trudel Consulting Engineers, agreed that the area is open fields, but said those open fields are in the designated Industrial District, next to a major transportation corridor, Route 7, with a quarry not far away.

Craig Heindel, chair of the town's Conservation Commission, said concerning the parking issue that the commission would prefer the smallest possible amount of impervious surface. He reiterated the commission's request that the project's stormwater plans meet the 2017 standards for phosphorous removal that took effect this summer, even though the project has a permit based on 2002 stormwater standards. He felt that the state would not require a complete re-do of the permit application to make some changes to the already approved stormwater management plans to meet the new standards.

Jeff Provost, who owns Dock Doctors on Route 7, said he thought requiring 40 parking spaces for the project made no sense, and that his business, with 65 employees, would require 300 parking spaces based on its square footage. He said he hoped logic would win the day.

Stephanie Warner, who lives directly across Tupper's Crossing from the project, said she did not want to torpedo any industry that might want to move in next door, but did not want nine tanker trucks operating 85 feet from her property, day and night. She said the site visit that afternoon had made it clear what a huge project this was, and that it would have an enormous impact on the quality of life of everyone in the neighborhood.

Aubrey Choquette and Ken Villeneuve, who live on Route 7 just to the east of the project site, provided a memo to the board on sound issues, saying that a revised noise study, promised by the applicants at the previous ZBA meeting, had not been provided, and questioning some of the data and methodology in previous reports. Eddie Duncan said he had provided a new report the previous day, addressing many of the issues raised by neighbors.

Choquette also presented a report he and other neighbors had prepared detailing operating hours for the Devos trucking operation on Greenbush Road, in hopes that it would help the zoning board develop restrictions on those hours if they were to approve the project for Tupper's Crossing.

[Note that all submissions by the applicants and others become part of the permanent file on the project and can be viewed at the town office during business hours.]

Duprey said the applicants were opposed to another hearing on the project. Liam Murphy said he understood that the board had spent many hours on this application, but felt another hearing was justified, primarily on noise issues, to give all involved a chance to study the most recent changes to the site plan and the new sound study.

Aubrey Choquette presented the board with a written summary of all their objections to the project.

John Devos said the town had been considering the project for months and did not believe more meetings made sense, since nothing would satisfy those who object to the project.

Stephanie Warner said the town should not allow this project to violate the town's zoning bylaws. She also submitted a letter to the board summarizing her objections.

Charlene Stavenow said the public should have confidence in the Zoning Board of Adjustment to review the information it had received and weigh the best interests of all community members in making its decision. She also pointed out decisions of the board can be appealed.

Dave Mentzer made a motion to close the public hearing at 8:35 p.m. Norm Smith seconded. All voted in favor. **Motion approved.**

Charlene Stavenow said the board would now have 45 days to make a decision on the project, and thanked everyone for their input. Norm Smith said board members would take seriously everything they'd heard over the past few months, that the decision would be a difficult one, that no decision would make everyone happy, but that they would do their best. Stavenow said the board would officially have until mid-September to reach a decision, but would hope to be ready to announce its decision at the next meeting on September 6, 2017.

Norm Smith made a motion to go into deliberative session at 8:40 p.m. Bob Beach seconded. All voted in favor. **Motion approved.**

Norm Smith made a motion to hold another deliberative session on August 9, 2017, at 7:30 p.m. Bob Beach seconded. All voted in favor. **Motion approved.**

The meeting was adjourned at 9:30 p.m.

— Respectfully submitted,

Tim Etchells