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Minutes Approved on: 9-1-2021

Zoning Board of Adjustment
Town of Ferrisburgh, VT

Minutes for meeting of August 4, 2021

Note: This meeting was conducted remotely and in-person at the Town Hall. Some participants joined the meeting through a Zoom online meeting.

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

Town official present: Bonnie Barnes, Zoning Administrator, Robyn King, Minute Taker

Participants present: Ziggy Comeau, Patricia Connelly, Mildred Reardon, Jeff Tweedy, Wendy Tweedy, Ed Schinik, Karin Schinik, Robert Ashkinaze, Julianne Ashkinaze, Sarah Beers, Chris Jennings, Angela Jennings, Patrick McDevitt, Grace Brady, Mary Martin, Sarah Ashkinaze

Approval of minutes from July 7. Norm Smith called the meeting to order at 7:01 pm and asked if Board Members had the opportunity to review the minutes. John Paul noted that there was a misspelling of his name on page 2, paragraph four and there was another typo in the third paragraph of page five. Jeff Tweedy noted that as the last meeting was coming to an end, there was a member of the Comeau party who asked if he had to remove the camper and the platform to which there was an affirmative answer and this was not recorded in the minutes. Mr. Tweedy noted that he wrote to Bonnie Barnes to ensure this communication made it in the minutes and it was absent. Norm Smith pointed out that neither he nor the Board recalled this occurring at the meeting, and Katie Quinn explained that it was her recollection that the question pertained to whether or not there could be continued work on the platform. Mr. Tweedy noted he consulted with Craig Heindel who noted he had heard the question being asked, with a confirmation by the Board regarding the removal. Dave Mentzer pointed out there was a recording of the meeting. **Norm Smith moved to approve the minutes as amended which was seconded by Dave Mentzer and the motion passed unanimously.**

In re Kevin J. Sullivan and Sarah Stradtner; property ID # 13/01/59.1; 2078 Jersey Street, Rural Agricultural (RA-5) district; appeal of Notice of Violation.

Norm Smith noted that this was an appeal of a decision made by the Zoning Board of Adjustment and opened the hearing at 7:04 pm. **Dave Mentzer made a motion to continue the hearing, which was seconded by Mike Delaney and the motion passed unanimously.**

Application No. 20-093 (Comeau) for deck; property ID # 19/20/06; 267 Summer Point; Shoreland (SD-2) and Rural Agricultural (RA-5) districts; conditional use; continued from November 4, 2020 hearing

Ziggy Comeau explained that she made an application for the construction of one platform. Norm Smith asked if there were comments from the public. Mr. Tweedy noted he is a resident

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of Summer Point Lane and explained that he was interested in the minutes for the current meeting reflecting his statement regarding the addition he requested via writing to Bonnie Barnes to the July 7 minutes about the Board determining that Ms. Comeau would need to remove the platform and the camper. Mr. Tweedy went on to note that he considered this an inadequate application as it does not describe what the applicant intends to do, and there is no compliance with Town or State Law, and there had been no order to restore the property to the condition it was in prior to any action being taken by Ms. Comeau.

Chris Jennings of 65 Summer Point Lane asked about the additional documentation the Board had requested. Norm Smith noted that they had asked for a complete plan with the location of the platform, and confirmed that they had received this information. Bonnie Barnes made copies of the plan for the audience members. Patricia Connelly asked about the additional information requested from the applicant pertaining to the State, and specifically the environmental board. Norm Smith explained that State approvals could be a condition of the permit approval, if the Board decided that way. Mildred Reardon noted that the minutes had indicated more than a conditional approval and Dave Mentzer pointed out that the Board had asked for clarification on shoreland issues.

Wendy Tweedy asked for clarification on where the applicant was in the process. Norm Smith explained that the Board was reviewing the application before them, and they have heard views of the neighbors. Norm Smith noted that at some point, they would close the hearing and go into Deliberative Session and make a decision which could include denial or approval subject to conditions. Norm Smith explained they would not be announcing a decision this evening as they would be meeting in Deliberative Session and they would be issuing a written decision.

Ms. Tweedy asked about State review of the application, and Norm Smith explained that the Board did not have jurisdiction over State issues, and an approval of this application could be conditioned upon an opinion from the shoreland regulators or the floodplain regulators. Norm Smith explained that the Board's ability is to review the platform being on the site, and that after a hearing a decision could be made and if the decision is to remove the platform, and the platform is not removed, the next step would be enforcement by the Zoning Administrator.

Mr. Tweedy asked if there was a practice of issuing a decision for comment and also asked about a comment made by Craig Heindel about evaluating the application under the zoning law that had existed last year. Mr. Tweedy cited a Supreme Court Case (Smith V. Winhall), which Norm Smith noted he was aware of and that the Board would take this into account.

Ms. Comeau noted that when she purchased the property, the first thing she had done was to have the State of Vermont on the property and they had noted that there was no issue with the pre-existing campers. Ms. Comeau noted that they had requested a design for a mound system for septic but that this was for a permanent structure and she was not interested in moving forward with a permanent structure. Ms. Comeau noted that she is not aware of documentation noting these initial findings of the State regarding the pre-existing campers.

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Norm Smith noted that the current regulations were that there can only be two campers on-site and that the application was regarding the construction of a platform. Norm Smith explained that there was no grandfathering for the platform as it pertains to issues of Shoreland Protection or the Floodplain Zoning and they could flush out some of these issues during Deliberative Session. Ms. Comeau pointed out there was a platform when she obtained the property and asked if she would need to go through a similar process again. Norm Smith explained there was no written evidence of what had existed and that the current application was for a platform in a new location. Mr. Tweedy explained that all who lived on the road had testified that there was no evidence of campers on the property before Ms. Comeau obtained the property. Norm Smith explained this was not relevant, given the nature of the application.

Mildred Reardon asked that in the consideration by the Board, if there is conditional use allowed that it be clearly stated in the decision that State regulations should be met in regards to Shoreland Protection and wetlands law. Mildred Reardon continued to note that the approval, if granted, should point to the approval of one camper and platform on site.

Ms. Tweedy asked about the site visit and Norm Smith clarified that it occurred before the meeting. Ms. Tweedy pointed out the standing water on the site, and that the backhoe had been removed, and noted the electric panel on-site and the fact that the camper was hooked up with an extension cord that extended a distance, which Norm Smith noted that it was observed by Board Members.

Grace Brady asked about the items concerning the septic system, and Norm Smith clarified that as it was not a permanent structure, there was no septic on-site and there was an understanding that the waste generated needed to be disposed of. Ms. Brady asked if this was being monitored and it was noted it was monitored by the applicant. Ms. Brady asked about the status of the camper needing to be removed from the property and Norm Smith noted that this issue was raised by Mr. Tweedy but there was not a recollection of this being granted by the Board but the Board did advocate that there was to be no further work on the platform.

Ms. Brady asked about stone being brought in and asked who had jurisdiction. Norm Smith noted that after looking at the zoning regulations and checking with the Zoning Administrator, there was no identification of a permit needed for this or for tree cutting, or putting in fill. Ms. Brady asked if this was predicated on the distance to the lake, and Norm Smith clarified that anything within 250 feet of the lake is a Shoreland Protection issue that the Board does not have jurisdiction over. Ms. Brady asked about State review given her experiences taking down trees in the past, and Norm Smith noted they would be asking the applicant to do so. After a question from Ms. Brady, Bonnie Barnes noted that she had checked in with the Shoreland Protection staff last year who were responsible for investigating violations. Bonnie Barnes explained that the investigator relayed that he did not believe that the clearing that took place was within the jurisdiction of the Shoreland Protection Act and that there was a specific assessment of the wedge shaped parcel where the camper was located.

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Ms. Comeau noted it was Green Mountain Power who took down the trees. Mr. Tweedy noted that there was a map distributed that showed that the northern part of the parcel was in the Shoreland District and the other part was in a different Zoning District and noted that the platform and camper were in the Shoreland District and explained that there was significant flooding. Mr. Tweedy noted that he understood there was a State law about the number of days in which there is standing water and the consideration of wetlands. Bonnie Barnes noted that this property and the platform developed on it had been sent to the State Wetlands Specialist who had no concerns from a wetlands point of view about the proposed platform structure. Bonnie Barnes noted that this did not answer the question about the floodplain, but that the State determined they did not have concern or jurisdiction as it was not a defined wetland. Mr. Tweedy noted he was curious how the State conducted their review, and it was noted that he could reach out to the State to get more information, with Bonnie Barnes explaining she would provide contact information if reminded. Ms. Comeau reiterated that it was Green Mountain Power who had done the clearing.

Bob Beach asked about camper regulations throughout the State of Vermont and it was noted by Bonnie Barnes that the State would regulate any parcel with over three campers as it may require a septic system. Bonnie Barnes noted that the Town of Ferrisburgh regulations noted that any parcel with more than 2 campers would be considered a campground and would need to follow State regulations.

Mary Martin asked about the necessity of an executive session and Norm Smith explained that it would be a Deliberative Session and would not be a public hearing and it was his understanding that the Board had the authority to do so on zoning matters. Ms. Martin noted that there was a lot of information on the property on file with the Town Clerk. Robert Ashkinaze asked if there would be another Board meeting. Norm Smith explained that within 45 days, the Board would be reviewing the determination and there would be distribution of the determination to all who had attended the meetings. Bob Beach asked if Green Mountain Power had cleared all the stumps. Ms. Comeau noted they cleared everything.

There being no further questions, Dave Mentzer made a motion to close the public hearing, which was seconded by Diane Nadon and the motion passed unanimously. The public hearing closed at 7:32 pm.

Deliberative Session

There being no further business, ***Dave Mentzer made a motion to enter into Deliberative Session, which was seconded by John Paul and the motion passed unanimously. The Deliberative Session began at 7:34 pm.***