

## **Zoning Board of Adjustment** *Town of Ferrisburgh, Vt.*

APPROVED – Minutes for meeting of September 6, 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, Rod “Doc” Cole, Adam Ginsburg, Cary Lewis, Dave Pierson, Kurt Plank, Kevin Sullivan, Stephanie Warner.

**Town Officials Present:** Bonnie Barnes, Interim Zoning Administrator

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

**Approval of minutes from August 2, 2017:** Rayne Herzog made a motion to approve the minutes from August 2, 2017, as submitted, with the addition of information about two deliberative sessions, one at the August 2 meeting and one on August 9:

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.**

Bob Beach seconded. All voted in favor. **Motion approved.**

### **HEARING No. 1**

**Application 17-092.**                      Application by Hoehl Family Real Estate LLC for a Conditional Use Permit to restore a concrete pier on a 438-acre parcel at 1044 Grosse Point. The parcel is in the Shoreland District (SD-2) and the Conservation District (CON-25) and is identified in the Town of Ferrisburgh tax maps as parcel 04/01/45.

Charlene Stavenow opened the hearing at 7:05 p.m. Cary Lewis was present to speak for the application.

Lewis said the project, which he hopes will begin this fall, would restore a 100-year-old concrete pier that is in disrepair, and that Kevin Sullivan’s Panoramic Landscaping & Excavation would be doing the work. Lewis said the applicant had received an encroachment permit from the state and approval from the Army Corps of Engineers. The project would involve constructing concrete retaining walls around the existing 168-foot-long pier, while generally maintaining the existing footprint, and then pouring a new pier surface inside those walls. The retaining walls and the main surface would be tied together with rebar. The project is expected to involve pouring 300 yards of concrete. The

contractor will install a turbidity screen to avoid contamination of the lake during construction. The wall would be slightly wider at the bottom to protect from ice damage.

Board members asked whether electricity would be run to the end of the pier, and Lewis said it probably would be.

Dave Mentzer made a motion to close the public hearing at 7:15 p.m. John Paul seconded. All voted in favor. **Motion approved.**

Dave Mentzer made a motion to approve the application as presented. John Paul seconded. All voted in favor. **Motion approved.**

## **HEARING No. 2**

**Application 17-093.** Application by Peter Knights for a Conditional Use Permit to replace an existing patio with a new deck on a 1.9-acre parcel at 133 Trails End. The property is in the Shoreland District (SD-2) and is identified in the Town of Ferrisburgh tax maps as parcel 07/01/02.

Charlene Stavenow opened the hearing at 7:20 p.m. Peter Knights was present to speak for the application.

Knights said the house dates to 1895, and the existing patio, made of marble and slate, is in poor condition. He intends to replace the patio, on the same footprint, with concrete piers supporting pressure-treated framing and composite decking. He said he had a go-ahead from the state for the deck, and for removal of some trees that are overhanging the house and deck. Using the point system established by the Shoreland Protection Act, he will still have plenty of trees left on the property. Bob Beach said he knew the property, which abuts his family's Beach Properties, and could confirm both that there are plenty of trees on the lot, and that some need to come down.

Rayne Herzog made a motion to close the public hearing at 7:25 p.m. Dave Mentzer seconded. All voted in favor. **Motion approved.**

John Paul made a motion to approve the application as presented. Mike Delaney seconded. Mike Delaney, Rayne Herzog, Dave Mentzer, John Paul, Norm Smith and Charlene Stavenow voted in favor. Bob Beach abstained. **Motion approved.**

## **HEARING No. 3**

**Application 17-094.** Application by Robert and Alice Gredick for a Conditional Use Permit to renovate an existing house and attached decks, including a new entry and a loft, on a 1.2-acre parcel at 826 Woods Road. The property is in the Shoreland District (SD-2) and is identified in the Town of Ferrisburgh tax maps as parcel 24/20/01.

Charlene Stavenow opened the hearing at 7:30 p.m. Rod “Doc” Cole and Adam Ginsburg were present to speak for the application.

Doc Cole said the main part of the house would be taken down and a new foundation built, to replace the existing crawl space. A section he renovated a few years ago would remain, but would be roofed and sided to match the new construction. Because the renovated building will be on the same footprint as the existing structure, the project required registration under the Shoreland Protection Act, but not a permit. The registration also includes removal of a few trees and relocation of a footpath to the house. Ginsburg, the architect for the project, said the most significant change to the structure would be the addition of a second-story loft above one end of the building. At its tallest, the new structure will be 29 feet, within the town’s height limits. He said the applicant is leaning toward a standing-seam metal roof and synthetic shakes for the siding. The project would also involve rebuilding the existing deck within the same footprint.

Responding to questions from board members, Cole said the project does not increase the number of bedrooms, so that the existing septic system, installed in the late ’90s, will be sufficient. He said he had notified abutting property owners, who had no objections. Bob Beach, whose family’s Beach Properties is also an neighbor, said he did not object to the project, adding that while the resulting structure would be somewhat taller, it was in keeping with the character of the neighborhood. He also noted the house is surrounded by tall trees.

Rayne Herzog made a motion to close the public hearing at 7:40 p.m. Dave Mentzer seconded. All voted in favor. **Motion approved.**

Mike Delaney made a motion to approve the application as presented, subject to presentation by the applicant of a list of roofing and siding materials and a lighting plan that calls for any lighting on the lake side of the property to be downcast. Rayne Herzog seconded. Mike Delaney, Rayne Herzog, Dave Mentzer, John Paul, Norm Smith and Charlene Stavenow voted in favor. Bob Beach abstained. **Motion approved.**

At 7:45 p.m., Charlene Stavenow, chair, began a reading of the following “Findings of Fact,” regarding Application 17-046.

**Findings of Fact**  
**Application 17-046, Mark Franceschetti**

Mark Franceschetti filed an application for a Conditional Use Permit to construct a self-storage facility on 2.1 acres on 80 Old Hollow Road. This parcel is in the Village District (VIL-2) and is identified in the Town of Ferrisburgh tax maps as parcel 05/01/11.3, also known as Lot 1. The owner of this lot is Mark Franceschetti as an individual. The hearing was recessed due to inaccuracies in the map.

The hearing was re-opened on July 5, 2017. Mark Franceschetti presented a new location for the application, proposing to build the self-storage facility on tax map parcel 05/01/32, identified as Lot 4, containing 2.12 acres. The owner of this parcel is AJKM LLC, which also

owns Lot 3, with 2.01 acres. Old Hollow LLC owns the 2.1-acre lot at the corner of Route 7 and Old Hollow Road, 14 Old Hollow Road, identified as parcel 18/20/71 and also known as Lot 2.

There are five units in the house located on Lot 2, as well as a barn with one apartment and the office for the landscaping business owned by Franceschetti.

At the time the permit was granted for 14 Old Hollow Road for the five-unit building, the barn apartment and the landscaping business, the dimensional standard required one acre for each dwelling unit or primary use. To satisfy the dimensional requirement, Lot 3 with 2.01 acres and Lot 4 with 2.12 acres were used to comply with the uses at 14 Old Hollow Road. The lots are owned by AKJM LLC and not by Mark Franceschetti or Old Hollow LLC.

The hearing was recessed on July 5, 2017, and re-opened on August 2, 2017. Robert Rushford, an attorney representing Franceschetti, gave testimony regarding uses in the Village District. He said he believed a self-storage facility could fall within allowed uses. Discussion continued about the permitted uses on the lots. There is a total of 8.33 acres with three different owners. The hearing was closed at 7:35 p.m.

Upon reviewing the various permit files, it has been determined that Franceschetti cannot be granted a permit for Application 17-046 since he is not the legal owner of the property for which he seeks a permit.

This information was not available to the zoning board at the time of the revised application because the zoning administrator was on a leave of absence.

Conclusion of law: The application 17-046 is denied.

Norm Smith made a motion to adopt the findings of fact as read by the chair. John Paul seconded. Bob Beach, Mike Delaney, Rayne Herzog, John Paul, Norm Smith and Charlene Stavenow voted in favor. Dave Mentzer abstained. **Motion approved.**

Norm Smith made a motion to adopt the conclusions as submitted. Mike Delaney seconded. Bob Beach, Mike Delaney, Rayne Herzog, John Paul, Norm Smith and Charlene Stavenow voted in favor. Dave Mentzer abstained. **Motion approved.**

Carl Cole asked whether there had been any determination on whether a self-storage operation was an allowed use in the Village District. Board members said that once the ownership issue came up, there was no need to consider that issue further.

At 7:50 p.m., Charlene Stavenow, chair, began a reading of the following "Summary of Proceedings," regarding Application 16-149.

### **Summary of Proceedings, Application 16-149**

JSCL LLC, c/o Sue DeVos

Zoning District: Industrial

The parcel size is 9 acres, in Deed Book 37, page 309, and identified on the Ferrisburgh Tax Maps as parcel 10/01/58.2, in the Industrial District (IND-2).

The application was submitted by JSCL LLC (Sue DeVos) to build an 8,000-square-foot commercial building to serve a trucking business on Tupper's Crossing Road. There would be one full-time and six part-time employees and an outdoor truck-wash area.

The hearing opened at 7:45 p.m. on August 29, 2016. Abby Dery, Trudell Consulting Engineers, and John and Sue DeVos spoke for the application. The project involved moving the trucking business from Greenbush Road to Tupper's Crossing. It was noted that Vergennes city water could be accessed at this location.

The site would include the 8,000-square-foot building and parking for nine trucks and employees' vehicles on the west side. The building would include downcast lighting fixtures on the exterior. The parking lot would have light poles and downcast fixtures. Trees would be planted on the east and west sides of the building. There would be an above-ground fuel tank for refueling trucks. A stormwater permit would be required. The truck washing would be limited to 30 trucks per week; run-off would go down a shallow slope on the north side of the building with a vegetated surface.

The interior of the building would be used for changing tires, oil changes and light repair work, as well as a storage area for tools and truck parts, an office area and bathroom facilities. Used oil would be burned in a waste-oil furnace that would provide heat for the building. Doors would be located on the south and west side of the building. Trucks would be empty when leaving and arriving at the facility. There would be landscaping on the east and west sides of the property as well as on Tupper's Crossing Road (see Landscaping Plan L1-01).

The hearing was recessed and re-opened on December 7, 2016. Public comment included concerns about traffic on Tupper's Crossing, the size of the building, limited screening from the neighbors, noise, lighting, the location of the driveway, and operating hours. The applicant requested that the hearing be recessed so that answers to questions could be prepared.

The meeting was recessed to February 1, 2017. The zoning board granted interested party status to Aubrey Choquette and Ken Villeneuve, neighboring property owners. The applicant asked to continue the recess through May 2017.

The hearing re-opened on June 7, 2016. Eddie Duncan, a noise engineer with RSG, described efforts to measure the impact of the project on sound levels at neighboring properties. The town zoning bylaws limit is 70 decibels at any border of the property. The conclusion of the study was that the 70-decibel limit was exceeded at the southern border of the property on Tupper's Crossing Road.

Landscaping changes were made based on public comments in the previous meeting. Andrea Dotolo described including a higher berm and more trees on the east side of the property. More trees, including conifers, were planned for the west side.

During the application process, new Vermont stormwater regulations went into effect. The Ferrisburgh Conservation Commission completed a site visit and asked the applicant to revise project plans to meet the 2017 regulations. Neighbors and Liam Murphy, who represents David Pierson and Jane Melrose, raised issues regarding operating hours, lighting and noise. The meeting was recessed until July 5, 2017.

The meeting was re-opened on July 5, 2017. Eddie Duncan, noise engineer, described methodology in determining noise levels. The conclusion was that the 70-decibel at the southern border would still be exceeded. Andrea Dotolo, from Trudel, described changes in landscaping, including more trees to shield the trucks from neighboring properties.

Choquette provided information to the board regarding the sound report that had been presented. There was a discussion about possible hazards of having a number of trucks parked at the site. Discussion regarding operating hours at night and early in the morning continued. Liam Murphy reported that more parking spaces should be required due to the size of the project and current zoning regulations. Anthony Duprey, attorney for the applicant, supported the application.

The meeting was recessed until August 2, 2017. A site visit was planned for 5:30 p.m. Board members, neighbors, Abby Dery from Trudel Consulting Engineers, and John and Sue Devos attended. John Bull, Ferrisburgh's highway foreman, was also present. Changes were announced in the site plan including the relocation of the access point/driveway to the eastern boundary of the property (see Site Plan C2-01).

The landscaping plan was amended to include more plantings. The nearest parking space would be 180 feet from the Warner home across Tupper's Crossing and 130 feet from the Warner property line. Screening would be integrated in the perimeter fence to minimize impact of truck lights.

After the site visit, discussion continued during the hearing, which was convened at 7:36 p.m. A motion was then made by Dave Mentzer to close the public hearing. Norm Smith seconded. All voted in favor.

## **Findings of Fact**

### **Section 4.5 Industrial District (IND-2)**

- A. The purpose, on page 23 of the Ferrisburgh zoning bylaws.
- B. Permitted uses.
- C. Conditional uses: Application 16-149 was considered under paragraph 9, Freight and Trucking Terminal.

Subject meets the dimensional standards with 9 acres.

### **Conditional Use General Standards**

- A. General Standards: The Zoning Board shall determine that the proposed use will not adversely affect:
  1. The capacity of existing or planned community facilities;
  2. The character of the area affected;

3. Traffic on the roads in the vicinity;
4. The Town Plan and bylaws in effect.

**Article VIII Performance Standards**

8.1 Noise: The sound pressure level should not exceed seventy (70) decibels at the property line at any time.

8.2 Glare, Lights and Reflection: No glare lights or reflection shall be permitted which are a nuisance to other property owners.

8.3 Fire, Explosive and Safety: No fire, explosive or safety hazard shall be permitted which significantly endangers other property owners or results in an increased burden on municipal facilities.

5.18 Landscaping: An extensive landscaping plan has been developed for Application 16-149. The plan is to be completed as presented. If alterations need to be made to reduce noise or glare, the plan can be amended.

6.1 Parking

F. Commercial Businesses and Unspecified Uses.

The board declined to apply this parking plan since it was judged unreasonable, based on the stated requirements of the applicant. The Conservation Commission suggested that impervious area should be as small as possible, and that additional parking beyond that proposed by the applicant should not be required.

The applicant has proposed 11 parking spaces to serve the 8,000-square-foot building within the paved area. One space will be handicap accessible. Nine truck parking spaces are planned in the fenced gravel area. Additional parking would be available if needed.

Lighting: The lighting plan submitted and later revised calls for downcast fixtures on the building and in the parking lot.

Fence: A security fence will be installed around the building.

Water/sewer: An on-site wastewater disposal system is proposed to serve the new building. The water supply will be a connection to the municipal system. A wastewater system permit and potable water supply permit must be obtained from the Agency of Natural Resources to serve the employees.

Stormwater runoff: The Conservation Commission has requested the project plans be updated to meet the 2017 regulations.

**Permit 16-149 is granted subject to the following conditions:**

1. No permit for extraction of subsoil, sand or gravel was located in town records associated with 16-149. There was disturbance of the soil where the original

driveway was located on Tupperts Crossing Road. This elevation must be returned to the 228-foot level and reseeded before the landscaping plan is implemented.

2. Hours of truck operation will be 5 a.m. to 10 p.m. daily.
3. Trucks are to be empty when entering and returning. The only fuel allowed would be for the engines. Fire and safety codes are to be in effect.
4. No noise level to exceed 70 decibels at any border.
5. The landscaping plan to be implemented per the last revision, L1-01, dated August 2, 2017. This plan is to be reviewed after completion.
6. The 2017 stormwater permit update requested by the Conservation Committee is to be completed.
7. The landscaped berm along the eastern edge of the property shall be extended such that the highest elevation, 234 feet, shall extend to the north to align with the northern edge of the paved area.

Site plans C2-01, C2-02, C2-03 and C6-01 as revised on July 31, 2017 and landscaping plan L1-01 dated August 2, 2017 are to be implemented for lighting, landscaping, and parking.

Norm Smith made a motion to adopt the findings of fact as read by the chair, John Paul seconded. All voted in favor. **Motion approved.**

Mike Delaney made a motion to approve the permit subject to the conditions read by the chair, along with the version of condition No. 7 and the list of site and landscaping plans read by Dave Mentzer. Norm Smith seconded. All voted in favor. **Motion approved.**

Stephanie Warner, neighboring property owner on Tupperts Crossing, asked what would happen if the noise levels at the property boundary did exceed the 70-decibel limit. Board members said testing would have to take place to ensure the condition is being met, and that the town's zoning administrator would be tasked with following up on this. They said the applicant cannot exceed the 70-decibel limit without being in violation of the permit, and that the same held for the limits on hours of operation.

Dave Mentzer noted that ZBA Chair Charlene Stavenow is leaving Ferrisburgh to move to Michigan, and Stavenow said it will be up to the board to reorganize at its October meeting.

Bob Beach said he thought it was appropriate for the board to offer thanks and appreciation to Charlene Stavenow for a job well done as longtime chair of the zoning board, and all of the board members agreed, giving Stavenow a round of applause, joined by the members of the public attending the meeting. Stavenow said she had loved working with the board over the past 30 years, saying that her fellow board members had kept her going, and that she would miss them. Board members said they would certainly miss her.

Rayne Herzog made a motion to adjourn the meeting at 8:23 p.m. Mike Delaney seconded. All voted in favor. **Motion approved.**

— Respectfully submitted,

Tim Etchells