DRAFT MINUTES
APPROVED ON:
June 4, 2025

TOWN OF FERRISBURGH
ZONING BOARD OF ADJUSTMENT
DRAFT MINUTES
WEDNESDAY May 7, 2025
At Town Offices and on Zoom

Members Present: Norm Smith (Chair), Mike Delaney, Katie Quinn, Diane Nadon, Bob Beach
Members Absent: Dave Mentzer (Vice Chair)
Minute Taker: Robyn King
Town staff present: Katie Hill, Zoning Administrator
Applicants present: Bill Robin, Diane Robin, Jeremy Ouimette, Chris Melendy
Others present: None

1. Meeting was called to order at 7:02 pm by Norm Smith, and Quorum determined.

2. **Meeting Minutes – Review and approve draft minutes from the following meetings: March 5, 2025 (corrected draft minutes); April 2, 2025**
   In review of the corrected meeting minutes from March 5th, there were no further comments.

   MOTION was made by Katie Quinn to approve the corrected March 5, 2025 meeting minutes which was seconded by Diane Nadon.

   VOTE: All in favor.

   In review of the April 2nd meeting minutes, there were no comments or corrections.

   MOTION was made by Diane Nadon to approve the April 2nd meeting minutes as submitted, which was seconded by Katie Quinn.

   VOTE: All in favor.

3. **Adjustments to and adoption of the agenda**
   There were no adjustments to the agenda.

4. **Application Number 25-041: Add open shed/carport to existing house; Applicant(s): William Robin; 188 Sleepy Hollow Lane; Parcel ID number 14/02/48; Conservation District (CON-25); Conditional Use Review**
   Katie Hill introduced the matter to the Board and noted the materials that were included for the Board's review and invited applicant William Robin and Diane Robin to speak to the matter. Katie Hill noted that this was an after-the-fact permit for a single-family home on Otter Creek located at 188 Sleepy Hollow Lane. Katie Hill went on to indicate that the application was being considered by the Board as this parcel was located in the Conservation Zoning District and single-family residences are conditional uses in that district. Katie Hill also noted that the parcel was located in a Special Flood Hazard Zone as shown on the FIRM map but that the owners had applied to be removed from the flood hazard zone.

Katie Hill went on to note the following materials which were presented to the Board. Katie Hill noted that the first document was a site plan that was included in the previous application for the new house last spring. Katie Hill explained that the site plan from the previous application shows that the application was to replace the existing house, shown in shaded gray, with a new single-family residence, drawn in red. Katie Hill went on to note that the new house was roughly centered on top of the footprint for the old house, but there is a slightly different shape that extends beyond the original footprint, primarily on the side away from the river.

Katie Hill indicated that the permit application before the Board members currently is for the carport that was built on the north end of the new house, including the site plans submitted with the current application which show the as-built location of the carport on the north side of the existing house. Katie Hill noted that it can be seen from the plan that the carport is also on top of the old building footprint but has a different shape from the old footprint of the pre-existing trailer and extends beyond it. Katie Hill then went on to explain that the materials included photographs from the staff notes handout showing the carport at the time of her March visit.

Katie Hill showed the Tax Map for the parcel with the overlay of the FEMA Flood Map, taken from the staff notes for the parcel. Katie Hill noted the map shows that the Special Flood Hazard Zone extends across the parcel to the road, with the old house mapped in the flood plain. Katie Hill indicated that included in the prior permit application for the new house was a Letter of Map Adjustment (LOMA) that was obtained by Mr. Robin to remove the existing structure (original house) from the mapped flood hazard zone. Katie Hill noted that the LOMA specifically says that the "structure" is removed from the Special Flood Hazard Zone. Katie Hill went on to say that the ZBA approved the prior application for the new house with the following conditions: that the applicant adhere to low-risk site handbook guidelines for erosion control, installation of only full cut-off lighting, and that there be no developments or improvements within the area of the property still within the Special Flood Hazard Area as identified in the LOMA.

Katie Hill explained that there is a diagram in the staff notes that shows the relationship of the carport to the Base Flood Elevation. Katie Hill noted that the background of this diagram is a portion of the site plan from the wastewater permit, which was used because it is the most accurate site drawing. Katie Hill noted that she marked up the drawing to show the approximate location of the as-built carport based on field measurements that Mr. Robin and she took together. Katie Hill indicated that the carport can be seen on top of the old building footprint and it has a different shape and extends beyond the footprint. Katie Hill noted that she marked the EL 105' Contour in red as it is the base flood elevation for this stretch of Otter Creek and shows the carport is above this elevation. Katie Hill noted that she reviewed the setbacks for the as-built carport and the applicant helped with field measurements and she confirmed the setbacks to the side property line and center road are more than required. Katie Hill noted that the setback to the river is less than the required 80 feet in the CON-25 district but it appears to be no more non-conforming than the old house was.

Katie Hill went on to note that the only written comments for the application that were submitted in advance of the hearing were in an April 27 email from Craig Heindel, chair of the Ferrisburgh Conservation Commission. Katie Hill noted that the letter indicated preferences for

erosion control, although she assumed that Craig Heindel did not realize the carport had already been built, and that lights should be directed downwards relative to the river. Katie Hill indicated that the primary issue for the Board to consider is whether or not to exclude the carport from the Special Flood Hazard Area as was done previously with the new house, given the LOMA and other factors related to location, setback, and neighbors.

Norm Smith asked if there were any questions, the applicant had none and there were no participants with any questions. Mike Delaney asked if all lights were downward facing, which Mr. Robin confirmed.

MOTION was made by Diane Nadon to close the public hearing, which was seconded by Bob Beach.

VOTE: All in favor. Public hearing closed at 7:13 pm

MOTION was made by Mike Delaney to approve the carport as built, as the current flood considerations were met, which was seconded by Bob Beach.

VOTE: All in favor. Motion passes.

5. **PUBLIC HEARING: Application Number 25-042: Enlarge existing residential parking lot; Applicant: Chris Melendy; 1971 US Route 7; Parcel ID number 15/01/04; Industrial District (IND-2); Conditional Use Review & Waiver.**
Katie Hill introduced applicant Chris Melendy, whose wife is the property owner, and current tenant Jeremy Ouimette to speak to the application. Katie Hill noted that this was an application for the duplex apartment building located at 1971 US Route 7, on the southwest corner where Tupper's Crossing meets Route 7. Katie Hill noted that the applicant would like to expand the residential parking lot on the north side of the duplex. Katie Hill explained that the application is before the Board as parking lots are conditional uses in the Industrial District where the project is located. Katie Hill noted that the existing parking lot is located within the required setback from Tupper's Crossing so a waiver is needed to enlarge the existing non-conforming parking lot within the setbacks. Katie Hill explained that the location of the existing parking lot is in the only obvious location for further parking. Katie Hill indicated the board packet send to the board for review included the signed application, the tax map of the parcel, the site plan showing the proposed expansion, a written narrative for the waiver, correspondence with John Bull about coordination for the driveway work, comments from the Conservation Commission, two recorded survey plats relevant to the lot, the approved wastewater permit, and staff notes for the file.

Katie Hill indicated that the applicant, Chris Melendy, provided written authorization for the tenant Jeremy Ouimette to speak on his behalf at the meeting and provided a copy of the authorization email to the Board. Katie Hill noted that parcel 15/01/04 is currently shown on the tax map as a 2-acre parcel with roughly 1 acre north of the existing Charlebois warehouse on Route 7, another acre on the south side of the warehouse parcel, and a 12 foot wide strip of connecting land behind the warehouse, but that late in the application process it was discovered that 2 additional acres were added to the parcel in April 2023 as a result of a boundary line adjustment with neighbor Roger Parker. Katie Hill indicated that this additional 75-foot wide strip and the 4 acres has been confirmed, but not yet picked up on by the tax map, and the

waiver narrative was written without realizing this. Katie Hill pointed to a signed mylar for the Charlebois subdivision which created the 2.0 acre lot currently shown in the tax map and the signed mylar for the boundary line adjustment adding two more acres, and also confirmed that there is a recorded deed for this boundary line adjustment. Bob Beach noted that he had a recollection of these actions with Jeremy Ouimette indicating that they were triggered by Roger Parker's passing.

Katie Hill showed the color imagery of the north end of the parcel that was included in the application, noting the duplex located at the north end of the parcel, with the storage garage to the south of the duplex. Mike Delaney asked if there was an existing curb cut on Tupper's Crossing which was confirmed. Katie Hill noted that the site plan from the application shows the solid lines of the existing parking area and the proposed expansion in dashed lines. Katie Hill went on to explain that there is also a failed culvert that is to be replaced as part of the same project; it's located in the town right-of-way, and John Bull confirmed that the Town will replace the culvert.

Katie Hill indicated that nearly the entire parcel is taken up by the required setbacks. Katie Hill showed a drawing from the staff notes with the existing setbacks for the duplex building as measured from the VCGI website; at the bottom of the page is a summary of the required setbacks for the Industrial Zoning District from the zoning bylaws. Katie Hill went on to note that the required setback from the center of Route 7 is 100 feet, leaving only a little bit of developable land in front of the house. Katie Hill explained that the required setback from the center of Tupper Crossing to the north is 100 feet which lands in the middle of the building, leaves no developable land on the north side of the building, and cuts off access to the developable strip of land in front of the building. Katie Hill noted that the required back, or west, setback is 50 feet which leaves a developable strip of about 28 feet wide tight to the back of the building. Katie Hill said she had confirmed with John Bull that an access permit is not needed, that the highway department visited the site and is OK with the proposed project, and that the town will replace the culvert. The only other written comments came from Craig Heindel, Chair of the Conservation Commission; Norm Smith shared that the written comments indicated that there was no wildlife corridor or other concerns on the site.

Norm Smith asked if the parking lot was located in the right-of-way, with Katie Hill showing where the right-of-way was located. There was clarification of the location of Route 7, where the parking is sited, and that the addition was on the north side of the parcel and showing Tupper's Crossing in relation to the proposal. Norm Smith asked if the Board needed to approve setback waivers on the north side and along the east side, with Katie Hill confirming that was needed. Bob Beach noted that they may be able to approve the application with waivers, and Norm Smith noted that they could approve with waivers and parking space as the parking is associated with the duplex. There were no other members in the audience to ask questions or opine on the matter.

Katie Quinn asked about the need for more parking, with Jeremy Ouimette noting that his son will soon be driving and that it's already challenging to fit cars in the current driveway. Mike Delaney asked about the waiver conditions, with Norm Smith noting that it's a use allowed in the district and conforms with the town plan. Jeremy Ouimette indicated that the characterization as a parking lot is misleading as it's a residential accessory use. Katie Hill noted that residences are not permitted uses in the district, but that the duplex is an existing non-

conforming use that was approved in a previous permit. Norm Smith asked if there was a need for more waivers, with Katie Hill indicating that it was an application pertaining to setback waivers and a conditional use as parking lots are a conditional use in the district. Norm Smith indicated that it was more of a matter of the waiver for the setback as he would not consider this a parking lot use and that the waiver conditions include if it's a use allowed in the district and if it conforms with the Town Plan. Bob Beach and Norm Smith discussed that this is a dimensional waiver and not a use-based waiver and cited the conditions for a waiver including conforming with the character and the development being reasonable. Norm Smith noted that they could grant a waiver as it satisfies the conditions and it would related to the setback on the north and east side which would be the highway side and across from Tupper's Crossing.

MOTION made by Diane Nadon to close the public hearing, which was seconded by Katie Quinn.

VOTE: All in favor, public hearing closed at 7:30 pm

MOTION made by Mike Delaney to grant a waiver from the setback on the east side and the north side for the parking area as it satisfies the conditions of the zoning regulations, which was seconded by Katie Quinn.

VOTE: All in favor, motion passes.

MOTION made by Mike Delaney to approve the conditional use for expansion of the parking lot as presented on the hand-sketched plan as submitted by the applicant, which was seconded by Bob Beach.

VOTE: All in favor, motion passes.

6. **Discussion on permit review issues – Katie Hill**
    a. **Required 60' right-of-way width**
    Katie explained that she received a question about a waiver of the 60' right-of-way requirement, and was curious where the 60' requirement comes from and if there is a reason why a waiver could not be granted. Bob Beach noted from recollection that he doesn't recall where the 60-foot measurement originated. Katie Hill noted that she heard several people cite that it was from the Fire Chief, but when she spoke to the Fire Chief he indicated it came from the zoning by-laws. Bob Beach indicated it may have been a holdover from regional planning recommendations from the 1980s, and Norm noted that most applicants meet this requirement. Katie Hill indicated that state law only requires a 20' minimum for a right-of-way, and relaxing the 60' requirement could potentially making more land undevelopable, especially on small lots. Katie Hill was curious if waivers would be considered for reductions. Norm Smith recalled an application a few years back where a permit was granted with a 50 foot right-of-way, which was appealed, and on appeal the application was denied due to lack of 60 feet. Bob Beach recalled at least one example of a right-of-way for the Marcotte property which was 25 feet and that he is not aware that this has come up with the Planning Commission, which could be raised. Katie Hill indicated she would ask the Planning Commission for clarification of the reasons for the 60' requirement.

There was discussion around the differences between putting in a roadway for possible future two-way traffic versus a driveway to a single house, and that decisions around roadways have been turned over to the Town Highway Department. Norm Smith indicated that a subdivision is a bit different as utilities get put into the right-of-way and Bob Beach brought up the 20-foot standard around roadways. Katie Hill brought up the previously-approved Planned Unit Development in the Hollow neighborhood that created a small lot at the road with right-of-way to the back lot. The utilities were not installed in the right-of-way as planned and now the utilities are squeezing the house against the right-of-way.

Norm Smith noted there would be less concern if it was a driveway, and Katie Hill noted that if it's a roadway there could be justification to put 20 feet on either side if the intent was to protect the neighbors on each side. Norm Smith noted that the old roads were measured in rods which were measured by 50 feet and that this could be brought up within the zoning ordinance related to road access. Katie Hill asked if this is something that could be requested as a waiver, and Norm Smith noted that if it's development for a single-family house this seems more appropriate for a waiver but if it's access to a significant number of lots it may be less appropriate. Bob Beach noted that the biggest issue was with the Fire Department, and they are usually asked to weigh in. Katie Hill noted that cul de sacs and passing areas sometimes required by the Fire Department don't need to full 60-foot right-of-way; she confirmed the Fire Chief requires only a 14' clear width at the driveway.

b. **Timing of wastewater permit approval versus zoning permit approval**
Katie Hill noted that historically in Ferrisburgh, the state wastewater permit has been treated as separate from the town zoning permit, with zoning permits sometimes approved before the wastewater permit is approved. She expressed concern with this timing, because design changes needed to get the wastewater permit can have a significant impact on the rest of the project, and if the applicant can't get a wastewater permit then their lot may be undevelopable. Katie Hill noted that technically with a town-issued permit an applicant could begin building without full approval. There is some enforcement because the Zoning Administrator is not granting Certificates of Occupancy for new houses without a recorded wastewater permit and a passing final septic inspection. Bob Beach noted that the process has been that they would have a wastewater permit before they would come in for an approval, which Norm Smith clarified is not in the by-laws, but the Board can make a condition. Norm Smith noted that if the ZBA is approving an application for a conditional use for a structure or a building, the zoning permit won't be issued until a state wastewater permit has been obtained and the position of the Board has been that wastewater permitting is not within their jurisdiction. Katie Hill noted that while this may be the ZBA's intent, the actual wording of the conditions is often vague and open to interpretation.

Katie Hill asked what the condition should be, is it that the applicant cannot start building, or that the permit won't be issued until the septic condition is met? Norm Smith noted that the issuance of the permit is conditioned upon supplying the state wastewater permit, and this could be a standard condition for any approval of a new house or expansion of the house. Bob Beach noted that this is conceptually what the Board has done, with Katie Hill noting while that may be the intent, that is often not

how the condition is worded in the decision. Norm Smith noted that they could make it more explicit and name that a zoning permit will not be issued until a wastewater permit has been obtained, which Bob Beach agreed with. Katie Hill noted there is some language in Vermont statutes allowing the issuance of a zoning permit to be tied to an approved wastewater permit, but that language isn't included in our bylaws. Norm Smith explained this is the intent of the ZBA's process, and Katie Quinn noted that this helps to protect the applicant. Mike Delaney noted that often applicants want to start the work and want to get going, with Katie Hill noting that there may be cases where they can't develop the property if they don't get septic approval. There was discussion of septic shadowing and neighbor notification.

c. **Driveways in setbacks**
Katie Hill is planning to ask the Planning Commission for clarification about allowed development in setbacks, but is interested in the ZBA's experience, specifically with driveways. Driveways are excluded from the definition of "structure", but they are development and there isn't supposed to be development in the setbacks. But is there a problem with driveways in side setbacks, or running along the length of front setback? What about wells and septic systems? Norm Smith noted that if someone wanted to drill a well in a setback that would be ok so long as it was not too close to the road, and a driveway in a setback may follow the definitions. Bob Beach noted that any construction on site is development and noted well situations. Katie Hill explained that she is used to seeing wells within setbacks in the context of small lots like along Old Hollow Road, but are those supposed to be waivers? Katie Hill noted that septic systems are typically kept out-of-the setback. Norm Smith noted he did not see this as a problem, but was curious about how often driveways bordered setbacks. Norm Smith brought up parking vehicles in the setback as generally not allowed, with Katie Hill indicating it might be a good placement to have driveways at side setbacks to keep the lot open.

7. **Deliberative Session:** Norm Smith moved to adjourn the meeting, which was seconded by Diane Nadon and the meeting was adjourned at 7:55 pm.

8. **Next Meeting**: June 4th, 2025 at 7 pm.