

**MINUTES**

**APPROVED ON: April 5, 2023**

**TOWN OF FERRISBURGH  
ZONING BOARD OF ADJUSTMENT  
MINUTES**

**WEDNESDAY March 1, 2023**

At Town Offices and on Zoom

**Members Present:** Norm Smith (Chair); Dave Mentzer (Vice Chair); Diane Nadon, Katie Quinn; Mike Delaney; John Paul; Bob Beach

**Members Absent:** None

**Minute Taker:** Robyn King

**Town staff present:** Steven True, ZA.

**Applicants present:** Carl Cole, Don Brownell, Lathrop, Ray Donovan, Jeff Giknis

**Others present:** Katie Hill, Karen Pettersen, Bonnie Barnes (Planning Commission)

1. Meeting was called to order at 7:01 pm by Norm Smith, and Quorum determined.

The minutes of January 4<sup>th</sup> were reviewed, and it was noted by Katie Quinn that under Other Business, it stated "Route 17" and it ought to be "Route 7". With that modification, John Paul moved to approve the minutes with the adjustment noted, with Mike Delaney seconding the motion.

2. All in Favor.

3. **Application No. 23-011 (J. Brownell) Contractors Yard; property ID#: 15-01-64; Lot 1, Tupper Crossing; Industrial (IND-2) district; conditional use.**

STAFF REPORT: Norm Smith introduced the application, and noted that Carl Cole and Don Brownell were present to speak to the application.

Carl Cole noted that he was here to present the proposal and explained that the proposal included the use of the site for a construction and excavation business, with headquarters on the lot, which is Lot 1 in the drawings. Carl Cole explained that this is a 8.8 acre lot with a 60 foot right of way and that this application is not subject to Act 250, as demonstrated by a letter in the application materials. Carl Cole noted that there are wetlands on the fringes of the property, there would be a stormwater permit if there's approval, and that Roger Parker would be working on the wastewater design. Carl Cole continued in saying that there was approval from the Fire District to connect to water, but there still needed to be approval from the Vergennes-Panton Water District, and that there would be a fire hydrant on-site in addition to the one already present. There was clarification that there would be a phased build-out over a few years, and conditioned buildings would be constructed in accordance with energy standards.

Dave Mentzer asked if the other lots would be developed, and Carl Cole noted that he was unsure. Dave Mentzer asked about hours of operation, and it was noted that they would be from 6 am to 6 pm. Norm Smith asked about the kind of machinery on-site and Don Brownell noted that there would be trucks, dump trucks, tractor trailers, smaller excavators, skidders,

steerers, and loaders with most of these being sited in the proposed pole barn. Norm Smith noted that currently the shop is shown to be in the right-of-way and Carl Cole explained that this was an error. Mr. Brownell noted that they would be doing some storage on site and manufacturing of metal stock for structural projects as well as welding. It was clarified by the applicant that they would not be servicing equipment on-site and that they currently have 8 employees but would like to expand to 25 employees within 5 years. Bob Beach asked if they are an excavation or building contractor and it was noted that they work on projects where there are gaps with construction issues. It was clarified that there will be a barn on site that will store materials and it is proposed that there be stalls to separate storage of gravel and soils.

Steven Warner, a neighbor, wanted to know more about the plans and noted a concern over the buildings and screening. Carl Cole explained that the lot was heavily treed in the area of concern and there would be plantings of potentially white cedar to dampen noise. John Degraff, a neighbor, explained that he was concerned about the noise and the visual impacts given that noise seems to travel uphill to his house. Mr. Brownell explained that pine and cedar screening in the north and east should help mitigate some of the noise and visual impacts, but there might be some visibility of the buildings if looking down from an elevated area. Aubrey Choquette, a neighbor, noted that they were interested in the lighting plan and it was explained by Carl Cole that there would only be downlit and motion sensor lighting to help with visibility when moving vehicles and there would be no pole lights. Mr. Brownell noted a desire to make neighbors happy and be as quiet as they can be. John Degraff asked if they would have nighttime operations and Mr. Brownell explained they might be present on Sundays but likely not in the early morning hours and only for a short period of time. Steven True pointed out that there was a letter of support from a neighbor in the file who wasn't present at the meeting.

Dave Mentzer asked if there was a buffer for the Class 2 wetlands, and Carl Cole explained that he was unsure of the requirement around this but Dave pointed out that there was a 50-foot buffer on the south side in the plans. Steven True asked if the state would be demarcating the wetlands, which the applicant noted that they planned to do. There was agreement among the Board members that a site visit would be helpful to better understand the nature of the site. Mike Delaney asked about wastewater, and Carl Cole explained that a wastewater technician had ideas for this and pointed out features on the map. Dave Mentzer asked about noise criteria and recommended consulting an acoustician. Carl Cole explained the noise level would be similar to agricultural uses, and Dave Mentzer explained that an acoustician would be able to draft a letter that points out the expected noise level which would give more confidence. It was noted that operations may include loading material, moving equipment, and processing firewood. It was agreed that Board members would visit the site on the 5<sup>th</sup> of April at 6 pm and others could visit at their leisure.

**MOTION** was made by Norm Smith with John Paul seconding to Continue the public hearing.

**VOTE:** All in favor. Public hearing closed at 7:29 pm.

4. **Application No. 23-012 (R. Donovan) Short Term Rental; property ID#: 18/20/53;718 Old Hollow Road; North Ferrisburgh Village (NVFVD) district; conditional use.**

STAFF REPORT: Steven True explained that this application was provided along with a cover letter regarding intentions for the application.

**DISCUSSION:** Ray Donovan explained that their family lives in the bottom apartment at 718 Old Hollow Road and have been for three years and that upon purchase of the property there was a letter provided explaining that the previous use of the property for a 20 year period was a multi-unit building with 2 potential rentals. Ms. Donovan noted that since acquiring the property they have rented out the 2-bedroom unit in the upstairs and that while most rentals are long term, some have been short term with some being between three and nine months. It was noted by Steven True that the definition for short term rentals does not have a specific duration of time. Ms. Donovan explained that they had not realized that they needed a permit for short term rentals and were present to speak to that use. Ms. Donovan explained that there had been an uptick in the amount of traveling nurses that were attracted to the rental, and that there were a few renters that stayed less than three months.

Norm Smith asked if it was currently rented, and Ms. Donovan noted that it was not. Steven True explained that the property had been listed on Airbnb, with Ms. Donovan explaining that they had listed it as a long-term rental on Airbnb as well as Craigslist and that while they would like to have more longer term renters, they have not been getting as many applicants as of recent and would like the option for short term for instances where people want to stay for holidays or events. Bob Beach asked about the space, and Ms. Donovan noted that it's a two-bedroom unit that is used for the rental and the downstairs which is occupied by their family is a studio. Mike Delaney asked if the former owner used the property as a rental, and Ms. Donovan noted that the previous owner lived in the upstairs unit and rented the downstairs for a period of 20 years. Dave Mentzer asked if there was adequate parking, which the applicant answered affirmatively, and Steven True explained Town regulations on parking.

Norm Smith asked about the letter submitted by Jean Richardson regarding the application and the septic system and there was discussion about the location of the building. It was noted by Steven True that if the property were treated as a short term rental, it would be considered a public building and it was also noted that while the property is being shown as in the floodplain, the applicants were able to obtain financing for their home and there was no concern about it being located in a floodplain. There was discussion about the capacity of the septic system, with Mr. Donovan noting that the septic system was rated based on the number of bedrooms, and Ms. Donovan explaining that they were not planning on the rentals being for a lot of people given that the building is not sound proof. There was discussion on the sizing of the septic system in relation to the application with it being noted by Dave Mentzer that while there is always concern about septic failure, there is compliance with the regulations as there is no explicit increase of use with the current application given past use.

Mr. Donovan noted that they are in ownership of the mill building and that there is interest in using that building but that is a longer time horizon and there's challenges. Mr. Donovan explained that part of the assessment included with the septic system is whether or not they could use it for other uses, but that is exploratory. Ms. Donovan noted that they would like to use the building and site for something in the future that benefits the community, but they are trying to do what they can now such as rentals to raise funds to support that.

Katie Hill, a neighbor, explained that she was supportive of the idea of flexibility in renting the units, but had concerns over short term rentals in the neighborhood given the make-up of the neighborhood and how folks can behave if they are in a short-term rental situation. Ms. Hill was also concerned about parking and if there would be spillover. Norm Smith noted that there can be limits to the number of people allowed to rent at any given time. Ms. Hill explained that there were concerns over if folks were going to use the house for parties, and reiterated issues around parking and potentially sewage leakage into the river. Ms. Hill asked about the conditional use for the property and how that transfers, and Steven True noted that the approval would be granted for the property so it could continue with new owners. Norm Smith explained that there could be conditions placed on an approval that are restrictions on use that would carry over.

Karen Pettersen, a neighbor, expressed support for the concept but wanted to know more about the septic and pointed out that state regulations had discussed the number of people but wondered if there was a legacy approval given a system might have been installed prior to 2007 when the regulations changed. Karen Pettersen noted that she would be supportive of the space being rented but would not want it being a large number of people and cars and would ask the Board to think carefully about impact.

Dave Mentzer noted that it seems like there is support of the concept and there is sensitivity around the use. Ms. Donovan noted that she hears the concerns and that the property was sold as a two-unit building and the ultimately long term renters could still use it in ways that isn't consistent with neighborhood values. Mr. Donovan noted he saw less wear and tear associated with short term rentals than long term rentals, depending on the make up of the renters. Katie Quinn noted that the Board has had experience with short term rentals in the past and there is a stigma associated with the type of people who engage with short term rentals and that this application is different given that it's owner-occupied. Ms. Donovan expressed a desire to provide housing to people locally and they are sensitive to the same issues as their neighbors in terms of the volume and their septic system. Dave Mentzer noted that the Board was still relatively new in regulating short term rentals, and there was no issue with the intent, but a desire to ensure that the decision would meet needs.

Bonnie Barnes noted that she had heard that this application was in the floodplain and there are specific regulations about floodplain applications and a procedure around them that the Board may need to consider. Steven True noted that he had deemed the application complete, but with the floodplain aspect, he realized it is not complete and cannot sign off on completeness until the floodplain regulations are met and resolved. Bonnie Barnes explained that the applicant would need to satisfy certain requirements, and it was noted to the applicant that Steven True would follow up to explain any additional needs for the application. Mr. Donovan explained what the deed and survey explained about the floodplain. It was noted that the property had a few surveys, and that the applicants may be able to obtain documentation regarding this property's status in relation to the floodplain, in accordance with what has happened with other properties in the neighborhood. Norm Smith noted that the next step would be information gathering regarding the status of the floodplain, and they could continue the conversation at the next meeting.

**MOTION** was made by Katie Quinn to continue the public hearing which was seconded by John Paul.

Bob Beach noted in closing that he had heard the commentary and thinks that short term rentals are often placed in a tough position but that the community had been experiencing short term rentals for at least 100 years. He expressed appreciation for applicants coming in to get formal approval for these types of uses, and noted that it's typically not these kinds of applications that cause issues. It was noted by the applicants that they list quiet hours and Dave Mentzer asked for the applicants to bring the listing to the next meeting. Mike Delaney asked if there should be a legal opinion to consider, which Steven True noted he would follow up on.

**VOTE:** All in Favor.

**5. Other Business: McElwain Application Process Discussion**

Bonnie Barnes noted she wished she could have attended the meeting on this matter, but was unable to because of a medical issue and couldn't get into the Zoom meeting. Norm Smith explained that they had made a decision as a Board not to go back to the original application. Bonnie Barnes noted that she wasn't sure of the merit of going back and changing anything but was concerned over the opportunity that an applicant might have to expand a use if there aren't restrictions placed on that use at time of approval. Bonnie Barnes noted that there was thought in terms of her role on the Planning Commission in how approvals might be more tightly worded in the future that could be specific to the application.

There was discussion on the subjectivity of the review and the sensitivity to not wanting to restrict the use in a way that would be inconsistent with the business practices. There was discussion around precedent versus the unique situations around each site. It was noted by Steven True that land use regulations could be reworded to have more consistency around some uses to leave it less ambiguous. There was agreement that it may make sense to have templated materials for decisions so that there was less reliance on the minutes and that most decisions would be fairly simple to write up. It was agreed by the Board that there could be two templates for long-form decisions and short-form decisions and that Steven True and Bonnie Barnes could work on this for future use.

**6. Meeting Adjourned at 8:53 pm:** on MOTION of Katie Quinn seconded by Norm Smith.

**7. Next Meeting:** April 5<sup>th</sup>s at 7:00 pm.