

FINAL

Minutes Approved on: OCT 5

Zoning Board of Adjustment
Town of Ferrisburgh, VT

Minutes for meeting of September 7, 2022

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, Mike Delaney, Bob Beach **Members absent:** John Paul

Town official present: Steven True, Administrative Officer, Craig Heindel, Conservation Commission, Robyn King, Minute Taker

Participants present: Jean Richardson, Mr. J. P. Seeley, Mrs. MacKenzie Seeley, Mr. Devin Franklin, Elaine Cousineau, Robert Wagner

Approval of minutes from August 3rd Meeting. Norm Smith called the meeting to order at 7:03 pm and asked for a review of the minutes. There being no requested changes, Dave Mentzer moved to approve the minutes, which was seconded by Katie Quinn and the motion passed unanimously.

Application No. 22-102 (Joseph Seeley); Waiver; property ID #18/20/59; 516 Old Hollow Road; North Ferrisburgh Village District (NFVIL) district

Given that Mr. McElwain was not present for his application, Norm Smith noted that they would address this application first. Norm Smith opened the hearing at 7:06 pm. Mr. and Mrs. Seeley were present to speak to the application. Mr. Seeley explained they were planning on renovating the house to make their kitchen larger and to accommodate their family and remarked that they were planning on adding a bathroom, office space, and primary bedroom. Norm Smith noted that the addition encroaches on the setback which is why the application needs a waiver. Katie Quinn asked if this setback was from a brook and if there was state involvement. Craig Heindel, speaking as a neighbor, noted that this would be a one foot encroachment from the top bank of the brook and therefore likely does not need state involvement. Mrs. Seeley noted that the stream was intermittent, and Mr. Seeley explained that the addition would add six feet of height to the building. It was clarified through conversation that the addition would sit 24 feet from the property line instead of 25.

Craig Heindel speaking from his role on the Conservation Commission noted that one of the intents of side yard setbacks is to provide screening to neighbors, and there are shrubs and trees along the creek so there is no issue. Jean Richardson, an abutter in the rear of the property noted that she did not see any issues.

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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 7:12 pm.

Dave Mentzer read the conditions for a waiver and noted that this application met those criteria. *Dave Mentzer made a motion that the application was found to meet the criteria for a waiver, and was approved as proposed. Diane Nadon seconded the motion and the motion passed unanimously.*

Application No. 22-099 (Quinn McElwain); Change of use to 'Motor Vehicle, mobile home, trailer, farm implement, or industrial equipment service and sales; property ID #23/20/47.1; 2847 US-7; Ferrisburgh Town Center (FTC) district; conditional use

Craig Heindel noted that there was a potential wetland on the property to the south that had not been delineated and there was an email from the state from March of 2021 that encouraged Mr. McElwain to delineate this wetland. Steven True noted that while there was no construction on site and this was purely a change of use, he would imagine that the issue would need to be addressed and understands Mr. McElwain is desirous of complying with necessary requirements.

Application No. 22-083 (Elaine Cousineau); Construction of accessory use building; property ID#16/20/15; 23 Brunet Lane; Rural Agricultural (RA-5) district; permissible use

Craig Heindel noted that the Conservation Commission has no concerns with this appeal. Mr. Franklin, the appellant and Ms. Cousineau were present. Norm Smith introduced the application, noting that Mr. True granted a permit for this garage, and it's an accessory use allowed under the current zoning laws. Mr. Franklin explained that he and Ms. Cousineau are in a legal situation currently and paperwork has been submitted with the courts. Mr. Franklin pointed out that this was started ahead of Ms. Cousineau submitting her permit application and was requesting that the matter be postponed until the terms of the use of the right-of-way, which is under dispute, was settled. Norm Smith explained that the Zoning Board of Appeals does not have jurisdiction over the easement dispute, and that what Ms. Cousineau applied for is a permitted use.

Mr. Franklin noted that there's a driveway shown on the permit drawing and by displaying this, the application is inaccurate as the driveway does not exist. Mr. Franklin pointed out that the drawing does not show where the doors are going, and he was unsure if the access was from the driveway or roadway. Steven True explained the procedure leading up to the appeal and noted that the town was statutorily compliant. Steven True explained that in the appeal, the appellant does not show regulatory premise and does not show why the relief is proper under these circumstances.

Elaine Cousineau noted that the building of the garage is unrelated to the dispute over the easement, and Steven True explained support of that argument. Norm Smith asked if the garage was oriented in a certain way that would make use of the easement, which the court

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may not say is her point of access. Ms. Cousineau noted that there is another way to access the garage and that the easement is deeded. Ms. Cousineau noted that there is access off of Bisby Road. There was conversation over the detail of the drawing, pointing to the fence shown, setbacks, and access points. Ms. Cousineau noted that the driveway was used twice a year to mow the hay. Mike Delaney asked if the driveway was deleted from the map if this would resolve the issue. Norm Smith reiterated that there was farmer access to the driveway which was the easement under dispute, and that this easement was not going to be used to access the garage and that the use of the feature labeled driveway had been established for years.

An unidentified neighbor noted he lived on the other side of the street and that he was aware that the driveway had been there for years. Steven True noted that for this kind of application, there usually would not be a review of access. Dave Mentzer asked if there was any intent to develop the driveway to Brunet Lane, and it was confirmed that there was no intent to develop. Steven True noted that Mr. Franklin's deed and Ms. Cousineau's deed explicitly define a right-of-way for ingress and egress over Brunet Lane. Dave Mentzer asked about the intent of the application and asked about doors facing Bisby Lane and the extension of a driveway to Bisby Lane. Ms. Cousineau noted that she would be using this for storage, there was no intent on extending the driveway. Dave confirmed that the driveway was labeled for orientation.

Mr. Franklin noted that he does not disagree with what Ms. Cousineau has stated and that the drawing of the driveway was an issue. Mr. Franklin noted that the right-of-way is a legal matter pertaining to contributions to maintaining the right-of-way and explained some of the circumstances leading up to this appearance in front of the Board. Mr. Franklin reiterated that the request was to postpone the granting of this permit until the legal matters were settled. Norm Smith noted that this is essentially a storage shed and there would be no access off of Brunet Lane and that the litigation between the appellant and Ms. Cousineau was not a matter that the Board had jurisdiction over. Norm Smith noted that the Board would be in discussion about this matter in Deliberative Session.

A neighbor, Robert Wagner wanted to know if previous owners had contributed to the upkeep of the right-of-way and Norm Smith noted that this is not a matter that the Board can comment on or contribute to discussion on. Norm Smith reiterated the procedures related to this appeal.

There being no further comments, Mike Delaney moved to close the hearing which was seconded by Diane Nadon and the motion passed unanimously. The public hearing closed at 7:28 pm.

Application No. 22-099 (Quinn McElwain); Change of use to 'Motor Vehicle, mobile home, trailer, farm implement, or industrial equipment service and sales; property ID #23/20/47.1; 2847 US-7; Ferrisburgh Town Center (FTC) district; conditional use

Given that the applicant, Mr. McElwain was not present, Norm Smith moved to open the hearing at 7:30 pm. Norm Smith noted that the applicant was currently using the property in a way that was not permitted and he was in favor of sending a notice of violation if the applicant does not

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appear at the next meeting on this matter. It was recommended that additional outreach be conducted to Mr. McElwain before any formal action is taken. Dave Mentzer pointed out inconsistencies with the application in relation to the size of the parcels and Steven True noted he would look into this.

Dave Mentzer moved to continue the hearing at the next scheduled meeting of the Zoning Board of Appeals, which was seconded by Diane Nadon and the motion passed unanimously.

Other Business

Review of conditions placed on Application No. 22-070 (Matt Managhan GB LLC) Change of use; Cannabis Retail; property ID#18/20/81; 6560 Route 7; Highway Mixed Use (HMU) district; conditional

Steven True noted that at the meeting on August 3rd, in approval of the permit for this business, one of the conditions was to limit the occupants of the store to 10 and there was issue raised with this. Steven True continued to note that after speaking with Norm Smith, there was direction to connect with the Vermont Cannabis Board and there was a response that indicated that the Board did not have statutory authority to regulate occupants via zoning. Steven True explained there were other remedies including fire and building codes, but the Board did not have the ability to limit occupants on its own. Steven True recommended amending the language to delete the occupancy requirement.

Dave Mentzer noted that it was backed into based on parking. Dave Mentzer noted that there were 20 parking spaces and both Bob Beach and Katie recollected the applicant noting how many people could fit in the retail space. After discussion, ***Dave Mentzer made a motion to remove the occupancy limitation to the approval given on August 3rd, 2022, which was seconded by Katie Quinn and the motion passed unanimously.***

Adjournment

There being no further matters for discussion, Katie Quinn made a motion to adjourn the meeting and start Deliberative Session, which was seconded by Diane Nadon and the motion passed unanimously. The meeting was adjourned at 7:37 pm.