

Minutes Approved on: 12-7-2022

**Zoning Board of Adjustment**  
*Town of Ferrisburgh, VT*

Minutes for meeting of November 2, 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, John Paul **Members absent:**

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

**Participants present:** Quinn McElwain, Deborah Allen, Terry Allen, Ric Solomon, Andrea LaLumiere, Kevin Sullivan

**Approval of minutes from October 5 Meeting.** Norm Smith called the meeting to order at 7:04 pm and asked for a review of the minutes. There being no requested changes, Bob Beach moved to approve the meeting minutes, which was seconded by John Paul (?) 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.**

Quinn McElwain was present to speak to the application, and Norm Smith introduced the application noting that members of the Board had visited and there were concerns about parking too many pieces of equipment at the front of the property. Mr. McElwain pointed out that there are many types of dealerships that park cars at the front of the property, citing local established businesses along Route 7. Dave Mentzer noted his concerns were regarding the application not matching what was occurring on-site. Steven True explained that the current permit is for a contractor’s yard, which does not allow retail activity.

Mr. McElwain noted that there was a site visit that focused on the road, and it was noted that the site visit helped give context on the use of the site. Diane Nadon noted that the equipment was bigger and taller than an average vehicle, and Dave Mentzer noted that the Board was taking into consideration different factors which may have an impact on the community. Katie Quinn asked about the signage and about the current banner which is a temporary sign. It was clarified that the current banner is temporary, a sign has been permitted and the location of the sign is on the map submitted with the application.

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Craig Heindel from the Conservation Commission noted that during the site visit, the only environmental concern of note was the ditch that carries runoff on the southern boundary, and it would be his recommendation to enforce a buffer of 15-25 feet so that pavement does not directly abutt the ditch. It was clarified during conversation that the 25-foot buffer should be from the top of the bank, so the actual buffer may only be 10 feet. There was conversation around a potential wetland on the site or on a neighboring property, identified by the State of Vermont, and it was noted that this is a separate issue under different jurisdiction.

Bob Beach noted that he has no issue with the parking of equipment, but noted that under the building regulations, the highest allowable building is 35 feet and therefore it's likely that a crane should not extend to this height and be parked in the front. It was noted that this height restriction applies to mainly buildings, and other matters that the Board has jurisdiction over.

There being no one present to speak to the application from the public, there was discussion over the approval of the application. Dave Mentzer noted that the property had already been improved. Norm Smith noted that the approval ought to include the condition presented by the Conservation Commission. There was consensus from the Board that the new use was in addition to the previously approved use, therefore enabling more to be done on the site. It was agreed that the motion would include an approval for additional uses as a farm equipment sales and industrial service sales in addition to a no disturbance 25 foot buffer zone for the ditch along the southern border of the property. Dave Mentzer asked about the signage and Mr. McElwain confirmed that he would be putting in a permanent sign, and Steven True explained that he still had some time, in accordance with the zoning regulations.

***There being no further discussion, Bob Beach moved to close the hearing, which was seconded by Mike Delaney, and the public hearing closed at 7:26 pm. Bob Beach made a motion to approve the application as an additional use for farm equipment and industrial equipment sales and service with the condition that there be a 25 foot no disturbance buffer from the bank of the ditch along the southern border of the property, which was seconded by Dave Mentzer and the motion passed unanimously.***

**Application No. 22-113 (R Mann) Change of use; Craft cannabis mfg. Facility; property ID #05-01-28; 401 Long Point Road; Industrial (IND-2) district; conditional use**

Steven True noted that he did not see the applicant present and that he had contacted the applicant to get a status update with the applicant noting that he was developing plans. Norm Smith opened the matter and introduced the application. ***Norm Smith made a motion to continue the hearing at the next meeting, which was seconded by Katie Quinn and the motion passed unanimously.***

**Application No 22-123 (Mike Dingman) Accessory Dwelling Unit Barn; property ID #21/21/04; 686 Woods Road; Shoreland (SD-2) district; conditional use**

The applicant was not present for this matter and the application was introduced by Norm Smith. ***Dave Mentzer moved to continue the hearing at the next meeting, which was seconded by Diane Nadon.***

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**Application No. 22-124 (Deborah Allen) Home Based Business II, property ID #11/01/17.3; 235 Primrose Lane; Rural Agricultural (RA-5) district; conditional use**

Norm Smith introduced the application and Steven True noted that there was a survey and a picture of the area where the activities will be taking place. There was a discussion of the map features and a note that as there were plans to have a few employees, this was classified as a type 2 Home Based Business, but that it was a permitted use. It was clarified by Deborah Allen that there was a residence in the location and that they were applying for a Tier 1 cannabis growing operation so that they may grow up to 125 plants and their plans were to grow outdoors. Dave Mentzer asked if they were planning on using pods, and Mrs. Allen noted that they were not planning on this yet, and if they did they would grow plants indoors.

It was clarified that the plants would be grown between their cabin and pole barn, and that the cabin primarily was used to house guests. Mrs. Allen noted that the property is 24 acres, and this would occupy roughly a quarter of an acre. Bob Beach asked about security measures, and Steven True noted that the Cannabis Control Board had a list of mandatory security measures by Tier. Mr. and Mrs. Allen explained that they would plan on having a fence, and whatever other measures were mandated by the Cannabis Control Board.

Katie Quinn asked about the employees and Mrs. Allen explained that they would be a grower who would make clones indoors in Vergennes and then plant directly into the field and also a gardener who is a friend and would be looking at the plants throughout the season. Katie Quinn asked what would happen to the product, and Mrs. Allen noted that she would be selling wholesale to retail shops. Mike Delaney asked if they would be selling the product independently and Mr. Allen noted that that would not be allowed and that their impetus for growing was to be able to grow something on their land that would be productive and profitable.

Dave Mentzer asked about the use of the cabin, and Mrs. Allen noted that it's a guest house that had been used as an Airbnb. Dave Mentzer asked if the cabin was involved in the application and Mrs. Allen noted it was not, and that there was no construction involved in the application, only a home occupation.

Craig Heindel noted that from the Conservation Commission's standpoint the main issues were water resources, wastewater and water supply but that he was unsure of jurisdiction given the agricultural nature of the application, which Steven True confirmed that this application was not agriculturally exempt. Mrs. Allen noted the employees could use the bathroom already existing in the cabin and it was confirmed that this would be sufficient. It was confirmed that the property was not near a wetland, and there were no environmental concerns from that standpoint.

Mrs. Allen noted that there would be no irrigation system and they would use the water existing on the site and a hose to water the plants. Craig Heindel noted that the use of their well for that purpose may not have been included in their wastewater permit, but that since it wasn't a great

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deal of water it likely was ok. Mrs. Allen noted that they had an artisan well that could pump 10 gallons per minute, and they were aware that they had a lot of available water on-site.

Norm Smith confirmed that there were no neighbors present to speak to the application, and there were no other questions from the Board. ***Dave Mentzer made a motion to close the public hearing, which was seconded by Diane Nadon and the public hearing closed at 7:42 pm. Bob Beach made a motion to approve the application as proposed which was seconded by Dave Mentzer and the motion passed unanimously.***

**Application No. 22-127 (Rick Solomon) Single Family Home; property ID #12/01/05; 964 Arnold Bay Road; Shoreland (SD-2) district; conditional use**

Mrs. Solomon was present to speak to the application and gave some background including that they had a permit to upgrade the septic system 1.5 years ago for a 2-bedroom house and they now need to tear down a seasonal cottage to make way for a new building. Mrs. Solomon noted that the pylons are leaning to the northwest which makes it unfeasible to use the cottage as a year-round structure. Mrs. Solomon noted some features of the site including a garage and a steep path that goes to the cottage and explained that the cottage is on a ledge on the lake roughly 40 feet below the garage. Mrs. Solomon noted the plans were to re-build on the pre-existing footprint but to extend the footprint roughly 8 feet so that they may install a funicular, or a small tram, which will help them access the cottage.

Dave Mentzer asked about the grad change, and Mrs. Solomon noted that it was 15-17 degrees and that the end of the path is very close to the ledge, and they are trying to minimize impact. Mr. Solomon confirmed that the funicular is to allow access to the cottage not the lake and that the concern is that while the path is functional for the warmer months, it may not be for the winter. Bob Beach asked about winter access and Mrs. Solomon noted that they would like to use the house year-round as a primary residence, which is why they would like to install the funicular so that they can travel to and from the cottage safely.

Mrs. Solomon noted that regarding the 35-foot height limit, there were different gradations with the footprint of the house, but that the builder proposes to raise the soil to make it level and it would be under 35 feet. Steven True noted that there's a technical definition to measure slope as it applies to building height, which was confirmed by Dave Mentzer.

Diane Nadon asked about the funicular, and it was confirmed that there are a number of these in the area. Steven True noted that this would be a cart on a metal frame and Mrs. Solomon noted that it is similar to a gondola. Mrs. Solomon noted that there would be minimal impact as the tracks are roughly 3 inches wide and the cabin is about 4 feet wide, and these will be positioned in a straight line. Mrs. Solomon noted that this would be above the ledge and not on the ledge. Bob Beach asked about supports on the rails, and Mrs. Solomon explained that per the design, there is a railing which the wheels cannot come off. Katie Quinn asked about how its motorized, and Mrs. Solomon noted that it is electrostatic, and they plan to have a generator.

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Craig Heindel noted that the funicular is a great idea from the Conservation Commission's standpoint as it eliminates some potential challenges with construction. Craig Heindel asked about construction plans, and Mrs. Solomon noted she wasn't sure they could use the funicular and they would be using a local construction company that had been working in the area with great frequency. Craig Heindel asked about vehicular access and Mrs. Solomon noted their parking arrangements. Craig Heindel noted the importance of rigorous erosion control given the steep slopes and proximity to the lake. Steven True noted that there is a separate permit for monitoring build activity, and this could be handled separately. It was confirmed that erosion control is within the zoning regulations. Mike Delaney asked about Shoreland Protection, and it was confirmed that they had received all the documentation and would be issuing more information shortly. There was discussion around erosion control, with the exact parts of the zoning code cited so that the applicant could follow the regulations. Craig Heindel noted that as there were no wetlands on the site or streams, the biggest issue was erosion control and made mention of limiting tree disturbance. Mrs. Solomon noted that some trees may need to come down for the construction of the funicular, but it would be minor,

Dave Mentzer asked for clarification on the existing and new building, and Mrs. Solomon noted they would be tearing down the old structure due to unstable footing and would be using the exact footprint with an extension of 8 feet toward the south, not on the lakeside, so there could be a covered porch where the funicular could land. Craig Heindel asked if they would be encroaching on the setback, and Mrs. Solomon noted that where the current structure was encroaching on the setback, they would not be expanding this. Craig Heindel noted that there's a lot of trees on the north border that would protect neighbors and serves as a wildlife border and would request these not be cut. Mrs. Solomon noted that there would be 1 tree that would need to be removed, but mostly they would trim if needed. Craig Heindel noted that they could ask that the tree coverage be maintained and establish a no cut zone, in addition to down shaded lights on the exterior.

Dave Mentzer asked about the garage and the new barn and Mrs. Solomon noted that this is where the funicular would be placed so that they could enter it and there would also be space for their tractor and lawnmower. Norm Smith noted that the new structure would not have encroachment on the 25-foot setback and would only be one floor.

Dave Mentzer asked about the condition of the existing cottage and Mrs. Solomon noted that it leans to the northwest and that while some of it may be salvageable, ultimately, they will be demolishing it. It was noted there's no permit needed for demolishing a building. Dave Mentzer noted that this is a non-conforming lot with a structure that is structurally damaged and that while the applicant can't increase the degree of non-conformity, it appears that this application does not do so and the new structure will conform as much as possible. It was asked if a new septic system would be needed, and it was confirmed that it would and that a wastewater permit would be needed from the state.

There being no further discussion, ***Dave Mentzer made a motion that the application be approved subject to the applicant receiving a Shoreland Permit, that the applicant follow***

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***sections 5.9 and 5.12 of the zoning code regarding erosion control, that there be minimal removal of trees from the northern boundary, that any exterior lighting fixtures be full cutoff, and that the approval is subject to the provision of section 10.9 of the zoning code regarding non-conforming lots. The motion was seconded by John Paul and passed unanimously.***

### ***Other Business***

#### **Application 22-127 (Deb Healey) Raze & Rebuild Accessory Dwelling Unit; permissible with Site Review; Administrative Site Review**

Steven True noted that Ms. Healey had applied for a building permit to take down the garage and rebuild the accessory dwelling. Steven True explained this is in the Conservation District but this type of construction is permissible subject to site plan review, under section 10.7 of the zoning code and quoted the code that noted that a Zoning Administrator cannot issue a zoning permit without the Board's approval of a site plan review, which he had conducted. Steven True noted that he had visited the site and had evaluated the 11 criteria surrounding the site plan review.

It was explained by Andrea LaLumiere, present to speak to the application, that the current building had poor construction so she planned to rebuild the structure so that she could live there. After discussion by the Board on similar applications, it was decided that there would need to be a formal hearing and consideration by the Board on the matter. Bob Beach noted that similar applications had required a LOMA, and Andrea LaLumiere noted that she already had a LOMA. There was no formal motion, but consensus that the matter should be considered at the next meeting, and it will be warned. A neighbor who appeared, Mr. Sullivan, was informed of this action.

### **Adjournment**

***There being no further matters for discussion, Diane Nadon made a motion to adjourn the meeting, which was seconded by Dave Mentzer and the meeting was adjourned at 8:21 pm.***