

Zoning Board of Adjustment

May 23, 2023

Draft Meeting Minutes

1. Introductions

Board members present at the meeting were Todd Hindinger, Joseph Bublat, and Grace Knight. Ryan Gumbart, land use administrator, was also in attendance.

The audience members were Carl Wyman, Matthew Lewis, Paul Tillman, Scott Rogers, and Mike Todd.

Prior to the meeting, there was a site visit at 20 Harvest Park Road at 6:00 PM. Matthew Lewis, Ryan Gumbart, Joseph Bublat, and Todd Hindinger were present.

2. Call to order

Todd Hindinger called the meeting to order at 6:39 PM.

3. Agenda Review

There were no changes.

4. Comments from Citizens regarding items not on the agenda

Mike Todd questioned a posted permit outside on the board in regards to being incorrect. He stated that the posted permit regarding an appeal should have the date on it. Ryan Gumbart stated the information going to the interested parties has the date on it in their letter and their packet. In the future, he will put the date on the posted ones too.

5. Approval of Meeting Minutes – April 11, 2023

Todd Hindinger made a motion to approve the minutes of April 11, 2023 as amended. Joseph Bublat seconded it. Grace Knight abstained. The motion passed.

6. Public Hearing: Application 23.04.26 ZBA.2 by Matthew Lewis for a Site plan Review and Conditional Use Review for the construction of a Contractor's Storage Yard at 20 Harvest Park Road

Todd Hindinger opened the hearing at 6:53 PM by reading the Public Hearing Notice. Carl Wyman and Matthew Lewis affirmed and have interested person status. There was no Board conflict or exparte communication.

Ryan Gumbart stated that Matthew Lewis would like a contractor storage yard. There has been no other communication with the abutters. Eventually, there will be two buildings. The primary structure will be 30 feet by 60 feet. The principal use will be a contractor's storage unit.

Exhibit #1 is the Public Hearing Notice. Exhibit #2 is the Certification of Posting and Distribution. Exhibit #3 is the Newspaper Tear Sheet. Exhibit #4 is the Application and Fees (5 pages). Exhibit #5 is the Site Plan dated March 22, 2023. Exhibit #6 is the Accessory Maps (6 pages). Exhibit #7 is a letter from Carl Wyman, an abutter, dated April 17, 2023. Exhibit #8 is the DEC Project Review Sheet (3 pages). Exhibit #9 is the DEC Water/Wastewater Permit dated April 12, 2019 (3 pages). Exhibit #10 is the Rapanotti Septic Design dated September 16, 2019 (5 pages). Exhibit #11 is the subdivision decision dated July 3, 2019 (3 pages). Exhibit #12 is the Highway Access Permit Application. Exhibit #13 is the Water Capacity Allocation Letter. Exhibit #14 is the NRB Act 250 Abandonment Order (2 pages). Exhibit #15 is the letter from Brandon Gulnick in regards to the water line installation project. Exhibit #16 is the Community Sign Off Form.

Matthew Lewis stated that in the future, maybe in 2024, there would be a maintenance building 60 feet by 80 feet for equipment. The storage building would have three sides for cold storage. It would be open on the south end. It would be used for storing equipment, lumber, concrete, forms, etc. The water and power would be underground off the existing right of way. He is not sure when he will need the water though. It could be shut off for now. Todd Hindinger stated that with the permit, you would need to be finished building within five years. If not, you would need to see the Zoning Administrator in regards to an amendment. Carl Wyman stated that the material has been ordered for the water line installation. It will run on Harvest Park Road and will have curb stops to each lot. Paul Tillman stated that the water system is not a Town water system. It is its own entity.

Todd Hindinger stated that on the site plan there are two buildings. The rear and south side setbacks are 25 feet and the front has a setback of 40 feet. Matthew Lewis stated that he will make sure that the corners are marked. He stated that Carl Wyman has applied for a shared sign for him. There will be one employee. They leave in the morning and come back throughout the day and end in the afternoon/evening. They could make several trips a day. There will be earth moving equipment and trucks there with a little leftover material from jobs. The gravel area is for the truck and trailer to turn around. There will be no sales of stone or gravel to the public. He does not have any intention of lighting. There will be a light at the personnel door though. The septic plan is for fifteen employees.

Todd Hinderger stated that the leach field has been approved by the State. He recommended to stake out that area on the State plan. He wanted to know if the wastewater permit would be amended because it is different now. Your site plan is different from your wastewater permit. Matthew Lewis stated that it does need to be changed. Todd Hinderger reviewed landscaping with Matthew Lewis. Matthew Lewis stated that on the back they would be planting 20 feet off center (approximately 20 trees) with 3 - 4 ft firs and other deciduous trees. Todd Hinderger read what Carl Wyman had mentioned in regards to landscaping. Carl Wyman likes crab apple trees, does not want double lot landscaping, and wants to keep the view of Mt. Ascutney. Matthew Lewis stated that they would be low lying trees and he will take Carl Wyman's comments into consideration. Todd Hinderger stated that there seems to be no screening of the parking on the side lot. You can propose landscaping tonight to the Board, or give it to Ryan Gumbart. Todd Hinderger mentioned that the site plan says the water flows off to the side of the stream. There needs to be a 25 foot buffer from the high water mark of the stream. The buffer needs to be preserved. Matthew Lewis stated that the water would be channeled on the western edge. It would be clean before it would be released into the stream. Most of the water will go straight down. It is shown on the site plan (the western edge drainage flow path).

Todd Hinderger stated that the Board wants to make sure that sediment and debris does not go into the stream. The Board stated that on the subdivision plan, it states that each lot will get a StormWater permit. The Storm Water Management Section stated that this is a sandy site. Matthew Lewis showed the Board on the site plan where the drainage flow would be located.

Ryan Gumbart stated that there are no threatened or endangered species, or deer yards on this site. It also is prime agricultural soil, but the threshold is less. Carl Wyman stated that deForest Bearse, former zoning administrator, stated that this lot has long since been used for farming.

Ryan Gumbart mentioned that on the Conditional Use Review that the fire department did not sign off. He contacted the fire chief, but has had no response. Mike Todd stated that the fire department will do an assessment. Matthew Lewis stated that the fire safety from the State would be in touch with him and the fire department. With a certificate of occupancy, the sign off form is an opportunity for the fire department to express any concerns.

Todd Hinderger made a motion to close the hearing at 8:02 PM. Joseph Bublat seconded it. All were in favor of closing the hearing.

7. Public Hearing: Application 23.04.26.ZBA by Scott Rogers for a variance review at 6014 Route 5, Ascutney, VT

Todd Hinderger opened the hearing at 8:06 PM by reading the Notice of Public Hearing. Scott Rogers has interested person status and affirmed. Mike Todd and Joseph Bublat affirmed too. There was no Board conflict or exparte communication.

Ryan Gumbart that this is one lot with a store and a single family home. Scott Rogers would like to subdivide this property so that the house and the store are on separate lots. The sketch plan shows that the house lot would be a small lot and it is in a highway commercial zone. According to the Bylaws, it would need three acres. A variance would be needed for the back of the home. The market would conform. The house lot would be a non conforming lot. The proposed house lot would be approximately .4 acre. It has not been surveyed. It was built in the 1970's prior to Bylaws. Mike Todd stated that the goal from the Planning Commission was to not have two nonconforming lots.

Exhibit #1 is the Public Hearing Notice. Exhibit #2 is the Certification of Posting & Distribution. Exhibit #3 is the Newspaper Tear Sheet. Exhibit #4 is the Application for a Variance (6 pages). Exhibit #5 is the Application for Sketch Plan Review (6 pages). Exhibit #6 is the Sketch Plan Decision (16 pages). Exhibit #7 is the Planning Commission minutes circ 2003.

Scott Rogers stated that nothing is going to change. The renters would like to purchase the house. He has had people interested in the property, but the mortgage would be less if the house did not go as part of the sale. It is more of an interest for the Town too if someone was to purchase just the store itself. The septic/leach field was designed 10 - 12 years ago and it is big enough for both buildings. Ryan Gumbart read the Bylaw in regards to a variance. Todd Hindinger stated that it is 46 feet from corner to corner between buildings. The WasteWater Permit (2010) on the sketch plan shows two parcels. The engineer thought there was a line for two parcels. Ryan Gumbart stated that it was done on the sketch plan, but never put on a mylar or site plan. It was never signed off. Scott Rogers stated that the leach field is just for the house. The store leach field is behind the store. He showed the Board the locations for each. The septic for the house is on the store property.

Ryan Gumbart stated that the Planning Commission minutes from 2003 was to grant a waiver for a small lot. It would create a non conforming lot. Todd Hindinger stated that the setback does not meet the requirements, nor does the lot size. Mike Todd stated that this predated Zoning Bylaws. The house is an accessory to the business. Todd Hindinger stated that both are non conforming structures and existing small lots. Ryan Gumbart stated that if a variance was granted, the Zoning Board is looking at the setback of 21 feet vs. 25 feet vs. lot size. A non conforming lot size does exist. The Planning Commission did not discuss small lots. The variance is the only thing being discussed.

Todd Hindinger stated that waivers in subdivisions are granted by the Planning Commission. Ryan Gumbart stated that the dimensions of the structure and the use are conforming. The Board is not dealing with non conforming use or structure, but with conforming lots due to the small lot. The non conforming is two buildings are not on 3 acres. Grace Knight stated as long as the house stays with the business it is conforming. If it is separated, it is non conforming. Todd Hindinger reviewed the variance criteria. Ryan Gumbart stated that for #1 on the criteria, this is property is

unique and has physical circumstance. The buildings predate zoning and the distance does not conform. This hardship was not created by Scott Rogers.

Scott Rogers stated that in the past this property did not sell because the house came with the store. The store and house stayed empty for a long time because it had to be sold as a whole package. Joseph Bublat stated that zoning created this hardship. He wondered if there would still be a problem if the garage was not there. Grace Knight stated that the garage causes the setback issue. Todd Hinderger stated that if a variance is granted for a single family home in highway commercial, a conditional use permit would be needed due to the Bylaws. Ryan Gumbart stated that if a variance was granted, then the Planning Commission could do a final plat. The Zoning Board needs to determine whether the subdivision can't happen because of conditions out of the control of the applicant. The existing space would be the hardship and the size/shape of the lot. Ryan Gumbart stated that a variance is needed for the applicant to move forward. Scott Rogers stated that each has their own mailing address too.

Todd Hinderger made a motion to close the hearing at 9:22 PM. Joseph Bublat seconded it. All were unanimous to close the hearing.

8. Site Plan checklist

9. Update from LUA on changes to Bylaws by Planning Commission

Ryan Gumbart stated that the use tables were updated and sent to the Select Board.

10. Discussion of Items for Future Agendas

11. Adjournment

Joseph Bublat made a motion to adjourn at 9:27 PM. Grace Knight seconded it. All were in favor.

Respectfully submitted,

Diana Stillson