

Town of Hinesburg
Development Review Board Meeting Minutes
December 1, 2020
Approved December, 15, 2020

Members Present: Ted Bloomhardt, Dick Jordan, John Lyman, Sarah Murphy, Dennis Place, Jonathan Slason, Greg Waples, and Branden Martin (alternate).

Members Absent: Bryan Currier (alternate).

DRB Staff: Mitchel Cypes (Development Review Coordinator); Alex Weinhagen (Interim Zoning Administrator, & Planning & Zoning Director); Amy Coonradt (Recording Secretary).

Applicants:

- Cris Peck/Frost Properties, LLC - Cris Peck, CNE Property Services (applicant); Robert and Anne Frost, Frost Properties LLC (owners)
- Tim and William Mitchell – Jason Barnard, Barnard & Gervais (designer)
- Bradley Hayden/HLG Excavating – Bradley Hayden (appellant); Liam Murphy/Elizabeth Filosa, MSK Attorneys (legal counsel)

Public Present: Cyndi Labelle, Marie Gardner, Kathleen Stine, Darren Johnson, Holly Beth Cota, Steph Shover, David Harcourt, Jennifer Chiodo, Merrily Lovell, Michael Bissonette, Sam Fox. *Since this was a remote meeting, it is probable that there were others were in attendance, who did not speak nor make themselves known.*

Zoom participant counts (including one for VCAM): 31 at 8:15 PM.

Dennis P. called the meeting to order at approximately 7:31 PM.

1. Meeting Procedures:

Mitch C. explained the meeting was being held remotely via Zoom due to the COVID-19 state of emergency and the closure of the Town Office. He reviewed remote meeting protocols.

2. Agenda Changes: - The minutes for October 6th will not be reviewed.

3. November 17, 2020 Meeting Minutes: - Ted B. **moved to accept the minutes as amended.** John L. **seconded the motion. The motion passed** 5-0, with two abstentions (Dennis P. and Jonathan S.).

The minutes were amended as follows:

- P. 1 - Changed date in title from November 3 to November 17;
- P. 3 – Replaced “They place grading on lot 30” with “they placed grading on lot 30” and replaced “steep up” with “step up” in paragraph beginning “Nick S. continued with the following...”
- P. 4 – Replaced “about” with “above” in line 4 of first paragraph; replaced “hey” with “they” in line 4 of second paragraph;
- P. 5 – Replaced “interval” with “Intervale”;

- P. 7 – Struck paragraph beginning “Dennis P. asked if there were any comments from the public.”

4. Cris Peck/Frost Properties, LLC - Conditional Use and Site Plan review to modify an existing non-confirming use on a ±1.4-acre property located at 14312 VT Route 116 in the Agricultural Zoning District. The applicant is proposing to modify the existing use to recreate a general store, and add a dairy bar and farmers market with a food truck: - Cris Peck was introduced as the applicant and he provided an overview of the proposed modifications to the property. He wants to reopen the general store that was at this property previously, but with modifications such as a dairy bar and hosting the town’s farmer’s market, both of which will contribute to a more sustainable store and healthier community.

Mitch C. provided historical context for this property, saying that its square footage has been expanded through the 1980s and 1990s. The Development Review Board provided a number of approval requirements in the site’s most recent application approval from 2019, which are cited in the staff comments for the current application along with the applicant’s proposal to meet each condition. Cris P. said he has addressed those requirements.

Greg W. said the DRB should focus on whether the proposal is an expansion of a prior non-confirming use. From his perspective, it expands in some ways (addition of a dairy bar and proposed farmer’s market) and contracts in others (removal of gas station pumps). He said that this is an atypical expansion and contraction case, but that the proposed conversion is not an unwarranted expansion of the prior non-confirming use.

The DRB discussed further whether the current application is an expansion of a pre-existing non-confirming use. Dick J. said the previous use was as a retail store for the well and pump operation and asked if there was a six month gap in operation, which would mean a loss of pre-existing status. Mitch C. said there was no gap in operation and Robert Frost (the property owner) confirmed that it was previously maintained as a retail outlet with posted hours and stocked inventory. Jonathan S. asked if the application could be interpreted as a conditional use application because it proposes to expand on the prior use. Greg W. replied that State legislation does not allow for modification of non-confirming use or structure through conditional uses and that the goal of the legislation is to extinguish non-confirming uses over time by allowing for maintenance of uses but not expansion.

Jonathan S. pointed out that traffic volume is one of the key criteria when determining whether the proposed use would be an expansion or contraction. He said that the elimination of gas pumps would reduce traffic demand but that a retail store, farmer’s market, and dairy bar could also increase traffic demand. Greg W. pointed out that the farmer’s market would be a local and limited event. Ted B. asked how historic traffic volume could be constructed and used as a baseline indicator. The property owners expressed concern about the cost of a potential traffic study. Anne Frost suggested providing past sales receipts to show traffic volume. Greg W. suggested the property owners provide fuel delivery records as a proxy for traffic volume. Other DRB members agreed that this would be a good compromise, and that the provision of this information should be one of the approval conditions.

Dennis P. asked if a permit was needed to have a farmer’s market and food truck night, and whether that would occur in the parking lot or in the grassy area off to the side. Mitchel C. replied that Hinesburg allows properties to have one-time events without a permit but that recurring events require a conditional use application. He noted that farmer’s markets are a permissible use in the Agricultural

Zoning District. Cris P. added that the farmer's market would be set up in the parking lot and that there would be picnic tables in a grassy side area for the event. There would not be permanent outdoor seating. Greg W. said that a farmer's market and music venue event that is limited to one night per week for four months out of the year isn't an expansion of non-conforming use.

Dick J. noted that the application mentioned the potential for the property to reopen its gas pumps or reuse the gas tanks in the future, which would require DRB approval. He asked whether the tanks were eligible for reuse to store gas and whether they currently conform to all regulation. Greg W. replied that the tanks were drained in accordance with all local, state, and federal regulations and that they could be used in future if the property were to become a fuel dispensing facility again (but would have to apply with the DRB and continue to meet all regulatory requirements).

Ted B. asked if the proposed dairy bar is similar to what was at the property prior to this. Anne Frost said that there was previously a dairy bar window that sold ice cream and deli offerings. Cris P. added that the dairy window was moved to the front of the building underneath the awning as part of the last conditional use approval. Dennis P. noted that the removal of the bottle redemption facility is another use that is being reduced. Jonathan S. said that he is comfortable with the mix of retail uses being proposed as part of this application.

Dennis P. opened the discussion to the public. Marie G. and Lynn G., neighboring property owners, voiced their support for the proposal, saying that it is reasonable and fits in well with the neighborhood. Holly C., a neighboring property owner, expressed support. She asked if restroom facilities would be available during the evenings when music events were occurring. Cris P. replied that Port-a-lets would be available on those evenings. Sam F., a neighboring property owner, supported the proposal and said that it would be a great addition to the community.

Jonathan S. asked if VTrans had concerns about traffic event flow or speed as a result of the proposed farmer's market. Cris P. replied that it is a concern of theirs, and requested that the asphalt in front of the property be removed so that cars could not park directly on Route 116. Dick J. also expressed concern about parking for the farmer's market. He said that as a condition of approval the applicant should be required to return to the DRB with proposed solutions, should parking become an issue. He said that had this been a conditional use approval, the DRB would be interested in seeing a proposed parking plan for the farmer's market.

Mitchel C. asked about the size of the farmer's market and when it would occur. Cris P. replied that it would be a relatively small and contained farmer's market and that he could put together a summary proposal to submit to the DRB. The Board and applicant decided that the dates for the farmer's market would be May 1 to November 1.

Greg W. moved to close the public hearing and direct staff to draft an approval for the conditional use and site plan application with appropriate conditions for the Board to review. John L. seconded the motion. The motion passed 7-0.

5. Tim and William Mitchell - Sketch Plan review of a proposed 2-lot subdivision of an 8.1-acre property located at 83 Tyler Bridge Road in the Agricultural Zoning District, adjacent to the Hinesburg-Starksboro town boundary. The applicants own adjacent property in Starksboro. They are proposing to create a small lot, which has been the front yard of the separate property in Starksboro. No new residences are proposed: Jason Barnard was introduced as the designer of the proposed subdivision and

a representative of the applicants. He provided an overview of the proposal. There are two parcels of land with three houses on them. One of the parcels has two houses on it and is located in both Starksboro and Hinesburg, at the intersection of Route 116 and Tyler Bridge Road. The applicant is proposing to divide that parcel to ensure conformity with both Starksboro and Hinesburg regulation such that each lot would have a house in it. The applicant had originally thought to use the town line as the boundary between the two proposed plots, but the boundary line runs through a garage for one of the houses. The applicant will use Tyler Bridge Road as the boundary to create a subdivision line between residential structures. The newly-created third parcel would have ± 1.1 acres in Hinesburg and ± 6.48 acres in Starksboro and would comply with setbacks and road frontage regulations for both towns. Starksboro's Development Review Board has already approved the sketch plan for the portion of the proposed parcel that would be in Starksboro.

Greg W. asked how wide the lot separation would be, and Jason B. answered that it would be 500 feet wide at the intersecting boundary and that the total road frontage conforms with the lot width.

Greg W. asked if there are any challenges or inconsistencies with this proposal from a regulatory perspective that the Board should be considering. Mitchel C. said that this type of lot creation is typically done for agricultural lots, and that the minimum size for a subdivision is 12 acres. He said that this proposed subdivision would be a non-development lot with land in both Hinesburg and Starksboro, that it meets all zoning requirements for minimum lot depth size, and would meet setback requirements for the structures on all parcels. Ted B. said that as long as this would not create a standalone 0.9 acre lot, he is comfortable with the proposed subdivision.

The Board discussed whether town lines could create subdivision boundaries. Jason B. pointed out that state regulation does not allow town lines to be de facto subdivision boundaries. Liam M. from MSK Attorneys noted that town boundaries do not create subdivisions for municipal or state purposes.

Greg W. said the Board should require the applicant to obtain a legal opinion as to the permissibility of the proposed subdivision in order to review it and possibly obtain a concurring or dissenting opinion from the Town's legal counsel.

Ted B. moved to close public hearing and directed staff to draft an approval for the proposed subdivision. Dennis P. seconded the motion. The motion passed 7-0.

6. Bradley Hayden/HLG Excavating - Appeal of the Zoning Administrator's Notice of Violation regarding the expansion of a home occupation (contractor's yard) on a +3.0-acre property located at 1290 North Road in the Rural Residential 2 Zoning District: *This is a continuation from October 20 and October 6 meetings.* Ted B. recused himself from this discussion. Branden M. stood in as a voting member for this discussion.

Alex W. provided an update from consultation with town counsel. The town reached out to the attorney who assisted the Zoning Administrator with issuing the Notice of Violation to Mr. Hayden and sought an opinion from David Rugh at Stitzel, Page & Fletcher. Mr. Rugh reviewed the materials and correspondence from Roger Kohn (attorney for the plaintiff) and Liam Murphy (attorney for the appellee) and concurred with Mr. Murphy's argument about the non-applicability of Sections 5.1 and 5.3 of the Hinesburg Zoning Regulations to the pre-existing non-conforming uses on Mr. Hayden's property. Alex. W said he interpreted Mr. Rugh's letter to say that the Notice of Violation as written, with its citation of Section 5.3 of the Regulations, would not hold up in court. He said that more specific

references to Section 5.10 and 5.12 could fare better in legal proceedings. He added that the DRB is not bound by Mr. Rugh's opinion, and noted that Roger Kohn disagreed with Mr. Rugh's assessment.

Greg W. said that he does not entirely agree with the town attorney's position but that he will not dispute it, and that the appeal should be granted and the Notice of Violation overturned. He added that current zoning violations should be revisited and addressed. Dennis P. agreed with these statements. Dick J. also agreed. Alex W. noted that there are provisions in Section 5.10 of the Regulations that constrain pre-existing non-conforming uses if they are expanded or enlarged or if there is external evidence in change of use, but that the current Notice of Violation does not pertain to those provisions. Jonathan S. said that there has been a lot of frustration for all parties and difficulty with noise and other issues for neighbors and stated that he believes there's been a violation of Section 5.10, but also stated that he is supportive of repealing the current Notice of Violation. John L., Sarah M., and Branden M. agreed.

Dennis P. opened the discussion to the public. Jennifer C. said she understands the Board's reluctance to rule against a legal opinion retained by the town but that the town should be concerned that this property has had multiple zoning violations filed against it that have not been pursued, which could set a precedent for other non-conforming uses.

Vanessa and Darren J. said that there have been violations on the property both to a non-conforming pre-existing use and as a grandfathered yard, and that she hopes there can be an amicable resolution.

David H. said that the appellant has since moved some of the processing equipment to the other side of his property, which addresses some of the concerns raised by neighbors, but expressed concern that this could again become an issue because no action is being taken by the Board.

Jonathan S. asked if there has been discussion on amending a new Notice of Violation. Alex W. replied that there is an opportunity for a conversation between Bradley H. and the neighbors to come to a clear and amicable solution, that he would be happy to facilitate this, and that an agreement would be preferable to working through the zoning violation process again. He said the town is sensitive to the neighbors' concern about inaction on the town's part.

Greg W. made motion to close public hearing, direct staff to write a decision upholding the appeal by Bradley Hayden of the Zoning Administrator's Notice of Violation dated August 18, 2020. Dennis P. seconded the motion. The motion passed 6-0 with 1 abstention (Sarah M.).

John L. requested that it be noted that the decision is based on evidence from town counsel. Mitchel C. said that information would be included in the conclusions of the decision.

Alex W. noted that the appellant should be refunded the \$215 fee he paid to dispute the Notice of Violation in front of the DRB.

7. Other Business:

Johansen/Goodrich – Subdivision Revision decision deliberation. *Hearing closed 11/17/20.*

Branden M. and Bryan C. stood in as voting members for this decision in place of Dennis P. and Greg W. Bryan C. provided written feedback of his approval of the decision prior to the meeting. Greg W. left the meeting at 9:35 PM.

The Board reviewed the draft notice of decision for the Johansen/Goodrich subdivision revision application. Ted B. said he supported the decision as drafted. Jonathan S. asked that it be clarified that condition #4 of the decision pertains to new maintenance agreements for access to the lots, and Mitchel C. agreed. Branden M. asked that the spelling of his name be corrected in the draft decision.

Ted B. made a motion to approve the draft decision for the Johansen/Goodrich subdivision revision application. Dick J. seconded the motion. The motion passed 6-0 with 1 abstention (Sarah M.).

8. News/Announcements/Correspondence:

None.

Dennis P. **moved to adjourn the meeting at 9:41 PM.**

Respectfully submitted,
Amy Coonradt, Recording Secretary