

DRB Meeting 6/18/2024
Draft Minutes

Public Comment and Administrative Items

Application #3770 by Green Mountain Conservancy, for Conditional Use and Site Plan Review for a trailhead parking lot and Sign, under Sections 620,665 and 724 of the Dummerston Zoning Bylaw, Parcel 298, Canoe Brook Road, Dummerston, Vermont, a Conservation District

Site visit attendees: Alan McBean, Cami Elliott, Chad Farnum, Peter Doubleday, Roger Jasaitis (ZA), Alex Wilson (Applicant), Matthew Hoffman

Application # 3768 by Maria Glabach, for Appeal of Zoning Administrator Decision dated May 6, 2024 under Section 716 of the Dummerston Zoning Bylaw, Parcel 810, 32 Nourse Hollow Road, Dummerston, VT a Rural Residential and Rural Commercial District.

Site visit attendees: Alan McBean, Cami Elliott, Chad Farnum, Peter Doubleday, Maria Glabach (Applicant), Lawrence Slason

Administrative Items

Minutes from 5/21/2024 accepted and approved.
Next Public Hearing will be on July 16, 6:00.

At 6:02 Alan McBean opened the public meeting with reading the warning and administering the oath for those giving testimony concerning the applications. All present affirmed.

Application #3770

Present for this review Alex Wilson, Matthew Hoffman

Alex Wilson explained the parking on Canoe Brook Road will be just outside the Riparian zone as they are using the old Homestead site. There is a flat area that will need some minor excavating. The work will be done by Brett Castine. They will use river run gravel to provide a base. They will cut back the access to improve the site lines. This has been approved by Lee Chamberlain. The fill will be used on the other pull out closer to the brook to stop vehicles from accessing the flat area. There has been camping in the past.. The turnaround area will be used as overflow parking but will be chained off. There will be a one sided sign 60"x16" ideally made of locust. The sign will be set back from the road on top or just below the stone wall. The sign

will be about 5' off the ground depending on the ground/visibility. The parking lot will be 35'x85' and there will be room for 8-9 to park nose in and to back up to pull out of the parking lot. There will be no additional signs for parking. The land will be posted to allow for hunting but requiring hunters to contact ups for permission so we can kind of regulate it. Kelly Price, the game warden, indicated that he preferred this way so that if there are problems he will be better able to deal with them. Because Canoe Brook Road bisects the land, signs do not have to be placed every 400' which pleased the neighbors. Alex showed a sample sign. There will be contact information so that people can get that information and apply online.

Chad asked about set hours.

Alex is hoping not to so that if someone wants to come out to look for owls they can do that. If there are problems, we would make changes.

Alan stated that in other situations there were hours because of headlights and neighbors but there are no neighbors close here.

Alan asked about winter use. Alex stated that the town does not maintain this section of the road in winter. Maybe that will change and the town will plow up to the parking area.

Lewis White questioned the warden being positive about posting the land. He stated he had a letter in which Kelly Price was not excited about posting the property.

Alex said he did not remember a letter, only a phone call.

Matthew stated that the members of the steering committee are open to talking about posting.

Lewis responded that he would like that.

6:22 review ends.

Application #3768

Present for review: See attachment #1

Exhibit List: See attached #2

Attorney Lawrence Slason from Salmon and Nostand, introduced himself and stated that he was representing Maria Glachbach. He proceeded to explain that "there is been a notice of violation by your own administrative officer and that it's our position that the notions are not meritorious and that there is no basis to proceed against this lady for the two commercial structures or that they are 'public nuisance' (referring to burn pit). That is why we are here. It's really those two items." Lawrence stated that they believe the two structures were constructed before May 6, 2009, therefore are grandfathered and the violation is unenforceable. He stated that the "Vermont Supreme Court has made it real clear that structures that were erected more than 15 years ago and uses that were in existence or substantially similar uses today are not enforceable so it is our position that the two structures are grandfathered." In reference to Section 660 Performance Standards, "the other point to speak briefly to and I get a little more lawyerly but that is what this lady pays me for. I want to do this respectfully because you folks were required to and work hard to have your zoning bylaws, but I represent several towns and run into this all the time. You repeat statute 24 that allows you to adopt performance standards but it makes it very clear the performance standards must have specific standards and must specifically describe the levels of operation that are either authorized or prohibited. I brought the memorandum. I'm not expecting you to read it but it walks through how the Supreme Court has numerous cases struck down for the kind of language that Dummerston has which is

general but does not have for example with respect to noise . There is no specific standard so what the court repeats is when you have an ordinance there are no standards it can be applied in an arbitrary manner...with respect i say there are no enforceable standards.”

Lawrence also stated that “site visit is not evidence , it’s only the place in perspective of the visit. The photograph will show you the nature of the structures we are talking about. These are the commercial structures that the town has now spent a year going back and forth , trying to get fines for and the block structure that stores sand and there’s the burn area approved by the State of Quality and Climate Control Division.”

“I think I have done most of my job and provided you with legal guidance. Maria prepared a position statement that at one point she wanted to read and I just suggested she hand it to you and it will be another one of your exhibits.”

Lawrence then introduced Fire Chief Lanny Howard and stated that Lenny had worked for Steve G and asked “that you tell these good folks what you remember about the back shed and when you were involved in the construction.”

Lenny stated that worked construction in 2004 and on days off he helped Steve. He helped Steve put up the blocks, and he actually went down and picked up the blocks. The shed housed salt then, now sand.

Lawrence showed Lenny a photo. Leenny shared it was the same shed but it had a tarp over it. Alan McBean asked when the roof was added.

Lawrence stated it doesn’t matter about the roof as it is a three sided structure.

Brian Burrows was then asked about the tractor shed..Brian stated that he was working in the spring of 2009 and the tractor shed was already built. Lawrence showed Brian a photo and asked if it had changed and Brian said,”nope, same as now” Lawrence asked Brian “what were you doing for these folks?” “Sugaring”

Lawrence went on to discuss the burn pit. Repeating that it has been approved by the state and that Maria tries to honor the performance standards that she burns on days that smoke is more likely to dissipate. He asked Maria if she was honoring the permit and she responded yes to burning pallets and untreated wood only and fires are always attended all the time. The burn pit is used about every six weeks.

Lawrence asked if it was true that Mr. Jasaitis (ZA) contacted the air quality division to come down to inspect a burn? Maria said yes. David Shapard came down , they staged a fire to show compliance .

Alan stated that the DRB has copies of the report

Lawrence asked if anyone else wanted to come forward

Mark Lane stated that he worked for Steve and removed pallets from the Book Press. He said they burned quite often and the state would come down to check. He stated that if she has had a state permit this long then she must be doing it right.

Several calls out from audience yeah, yeah

Deb Forreth stated if the permit was expanded, she is doing it right.

More calls out of yeah

Alan stated that this is an unusual situation because we have two sides, usually it is just the applicant. He wanted Roger to have a chance to speak and then would open it up to the public. He acknowledged that there are many people here supporting Maria but we are not here to

assassinate her character. We all think she is a wonderful person so it would be helpful to keep discussions in terms of the violations so we are not here until midnight extolling her virtues. Roger stated that he would start at the beginning. He has been the ZA for six years. As defined by his job he went through all of the conditional Use permits which took 5 years." I have a good sense of all the businesses in town .When I happened to drive by Maria's site I noticed that there was commercial activity going on and so it provoked me to look at the permit history and there were no commercial permits on the site and so it raised some questions. My job is to follow an investigation to be sure there are no violations so that is when I began corresponding with Maria." He stated that he works with the town's Zoning Bylaws. He reads them literally and applies them fairly. In his initial correspondence with Maria, she stated that it was all agricultural, but only sugaring is considered agricultural. "Corresponding went back and forth and I wasn't happy with a lot of the responses, in that originally everything was stated as agricultural. The state has definitions for what is agriculture and everything else is considered commercial use by our bylaws.I contacted the state to see if there was any permitting because typically this type of use might require Act 250. They said there was no ACT 250 permit but there was a burn permit so that is when I learned there was a burn pit. I stopped by there about a year ago sometime in June and I was on the road and it was 9:00 in the morning and the smell of smoke was overwhelming and I could see the pit and it seemed to be in violation of her permit. It was smoldering from the day before. I provided aerial evidence of the site from 2011 to 2015 and it appears to me the structures were not there. I was not provided with testimonials of the buildings so need to go on the evidence I have" Roger also stated that in August he received letters complaining about the site. He also stated for the business to be grandfathered in, it had to start before zoning .

Lawrence said, "We're not here to talk about the commercial operation tonight though, we are talking about when the two structures were constructed and whether or not you have Performance Standards that you can point to that this lady violated. The photographs are not admissible...."

Chad asked for clarification about the grandfathered commercial use permit

Lawrence explained that because Maria's business was established 30 years ago she is not required to have Commercial Use Permit (grandfathered in forever) unless there is a substantial change in the use.

Shawn Stone asked if it changes use if there are two businesses instead of one

Lawrence; it is all about the land use, environmental impact not about ownership issues.

Shawn:I know there are now two businesses and the noise has increased, 7-8pm and weekends.

Chad : What are the activities?

Shawn Stone :large machines, beepers, banging tailgate and the smoke issues. I brought it up to Maria but..

Alan asked how the state deals with language of nuisance

Larence said that the state concept of nuisance is something that's of intense or frequent duration that makes it unreasonably interfering with your property. He gave examples of chicken farms up north that are agricultural so can operate. He again talked about the Performance Standards not being specific.

Melody asked to play a recording of noise from the commercial site at 8:30 am Sunday, Dec 3 - there were sounds of trucks, back up beepers.

Several comments from public about trucks, where recording was made

Lawrence "please, I want to help out the chair, please address comments through the chair.

Your comments are valid but you gotta do it the right way."

Alan : I think this demonstrates you can hear the back up alarms and trucks, how often?

Melody : daily. She then read a prepared statement (on Record) about issues of noise, toxicity of the burn pit and being intimidated by Maria.

Nancy Ellis: spoke of the changes in the sand pit from 1998 to now. When her brother owned the pit "I didn't have the balls to say smoke is getting in my house". She describes smoke getting into her trailer and log house.

Teddy Glabach: "I remember stacking and breaking apart pallets with my grandfather to sell at KOA. He didn't participate in the burning but was there when it was burning so it was all there prior to him".

Darly or Jeremy Graves: explained delivery of pallets and said he never hauled pallets after two and fire was burning by 9:00. He sits on the tractor and watches the burn.

Kristen Glabach: pointed out that Ruth and Merrill Barton have an outdoor wood boiler that "is always bellowing smoke" and that smoke goes in different directions.

There was discussion about what is permissible to burn in the pit.

Zeke Goodband: stated that he is a neighbor on the west side. The site used to be busy but has quieted down quite a lot. No issue with the smoke. The noise has never been an issue and he was sorry that it was an issue on the east side.

Theresa Chapman: Stated that she served on the selectboard with Maria. She wanted to know if Roger had submitted the complaint to the select board as it concerned a selectboard member. Roger stated that he does not report complaints to the selectboard. He also shared he was not aware of the burn permit until September which he found out through his investigation to see if there were permits on the property.

Deb Forrest shared a prepared statement about honesty and her opinion about the job Roger is doing.

Alan stated his positive, fair and professional interactions with Roger in his position as Chair of DRB

Several people spoke to the positive nature of Maria's character.

Another person shared that it is sad that a family and neighborhood are in this situation and hopes it can be resolved.

Lawrence finished the meeting by restating his position that the structures have been on the site more than 15 years and that there are no specific Performance Standards to use against the burn pit and it has a state permit. He stated the ZA did the investigative work for his job and that is where it must end.

Public Meeting concluded at 7:35pm.

Respectfully submitted,

Cami Elliott

6/21/2024