

TOWN OF CHESTER
DEVELOPMENT REVIEW BOARD
MINUTES

November 25, 2019

BOARD MEMBERS PRESENT: Carla Westine, Gary Coger, Larry Semones, Robert Greenfield and Harry Goodell.

STAFF PRESENT: Cathy Hasbrouck, Recording Secretary, Michael Normyle, Zoning Administrator.

CITIZENS PRESENT: Joe and Connie Tourigny, Corey Korica.

Call to Order

Chair Carla Westine called the meeting to order at 6:00 PM upstairs at the Town Hall. She read the meeting's agenda and introduced the members of the Development Review Board and Staff. She invited all in attendance to join in the pledge of allegiance. She noted that there had been a site visit earlier that day at 571 Route 103 South.

Agenda Item 1, Review draft minutes from November 11, 2019

Harry Goodell moved to accept the draft minutes from November 11, 2019. Gary Coger seconded the motion. There was no discussion. A vote was taken and the minutes were accepted as written. Robert Greenfield abstained from voting as he had not been present at the meeting.

Agenda Item 2, Citizen Comments

There were no comments from citizens.

Agenda Item 3, Conditional Use application (#541). Reconsideration of prior Findings of Facts

Zoning Administrator Michael Normyle gave a short history of the project. He said the application for a reconsideration of the permit was complete on October 22, 2019. He posted a notice of the hearing on that date and sent the notice to the applicant. He sent the notice to the Vermont Journal, the paper of record, to be published on October 30, 2019. He sent a notice to abutters on November 5, 2019. He said he did not ask the Police, Fire or Water Departments for input on the application as the changes requested did not have much impact on those services.

Carla Westine considered the exhibits submitted in support of the project. The first was a Town of Chester application for a hearing before the Development Review Board. She read several items from the application aloud. The project number was 541, the appellant name was Joseph A. Tourigny III, the appellant address was 571 Route 103 South. The description of the project was "Reconsideration of prior findings of facts (January 2007): adequate lighting, options for hours of operation and year-round opening of all shops including food." The applicant Joseph A. Tourigny, III and Zoning Administrator Michael Normyle signed the application. Harry Goodell moved to accept the application as Exhibit A. Gary Coger seconded the motion. A vote was taken and the application was accepted as Exhibit A.

The second document was a Town of Chester Notice of Public Hearing Before the Development Review Board. Carla Westine read some items from the notice aloud. She noted the site visit was held at 3:30 and the hearing at 6:00 PM on Monday November 25th. The property owners were Joseph & Connie Tourigny, the Applicant was Joseph Tourigny, the location was 571 Route 103 South. The district was the Residential Commercial. The action requested was Reconsideration of prior Findings of Facts (January 2007); adequate lighting, options for hours of operation and year-round opening of all shops including food. Harry Goodell moved to accept the notice as Exhibit B. Gary Coger seconded the motion. A vote was taken and the notice was accepted as Exhibit B.

The third document submitted was a 3-page letter from Joe and Connie Tourigny describing the changes they would like to make to their permit. Connie Tourigny read the letter aloud. Harry Goodell moved to accept the letter as Exhibit C. Gary Coger seconded the motion. A vote was taken and the letter was accepted as Exhibit C.

The fourth document submitted was a seven-page Findings and Conclusions for conditional use application #436 dated January 9, 2006 with 2 maps attached. Carla Westine said this document was submitted for reference only at the current hearing. The document is already part of the public record and is stored in the Zoning files. Harry Goodell moved to accept the permit as Exhibit D. Gary Coger seconded the motion. A vote was taken and the permit was accepted as Exhibit D.

The fifth document presented was another historical document that is part of the public record, included for the convenience of the Board at this hearing. This was a 5-page amendment to Conditional Use permit #436, dated June 19, 2006. Harry Goodell moved to accept the amendment to the permit as Exhibit E. Gary Coger seconded the motion. A vote was taken and the amendment to the permit was accepted as Exhibit E.

The sixth document presented was another historical document that is part of the public record, included for the convenience of the Board at this hearing. This was a Statement of Questions submitted to the Environmental Court dated June 29, 2019. Harry Goodell moved to accept the amendment to the statement of questions as Exhibit F. Gary Coger seconded the motion. A vote was taken and the statement of questions was accepted as Exhibit F.

The seventh document presented was the final historical document that is part of the public record, included for the convenience of the Board at this hearing. This was a 7-page Finding of Fact, Conclusions of Law and Order from the State of Vermont Environmental Court, dated January 24, 2007. Harry Goodell moved to accept the Findings and Conclusions from the Environmental Court as Exhibit G. Gary Coger seconded the motion. A vote was taken and document was accepted as Exhibit G.

The eighth document presented was a tax map from the town of Chester of the project, with the two parcels owned by Joseph Tourigny outlined in blue. The total acreage of the two parcels was 1.6 acres. Harry Goodell moved to accept the map as Exhibit H. Gary Coger seconded the motion. A vote was taken and the map was accepted as Exhibit H.

The ninth document presented was a site plan titled Mountain Man Marketplace. The map was prepared by Connie Tourigny. It showed the location of buildings currently on the lot, sewer lines, property lines, and the setbacks. It also listed the square footage of buildings, including the

porches. Harry Goodell moved to accept the site plan as Exhibit I. Gary Coger seconded the motion. A vote was taken and the site plan was accepted as Exhibit I.

Carla Westine noted that a gazebo and a van seen at the site visit were not drawn on the map. Carla Westine said she asked Joe and Connie Tourigny at the site visit to measure those two structures and bring the measurements to the hearing.

Carla Westine pointed out that the word structure can have different meanings in different contexts. The word “structure” has a different meaning to the listers than it does in the zoning bylaws. She also said that, within zoning, the word structure has a different meaning within a flood plain and outside a flood plain. She said that at the hearing the word “structure” will be discussed in the context of zoning.

She read the definition of the word “structure” in article 8 of the Chester Unified Development Bylaws: “An assembly of materials for occupancy or use including, but not limited to, a building, mobile home or trailer, sign, accessory buildings (including hoop houses). and any other structure with a roof. For floodplain management purposes, a structure is any walled and roofed building, including a gas or liquid storage tank, that is principally above ground, as well as a manufactured home. *Structure*, for flood insurance purposes, means:

- (a) A building with two or more outside rigid walls and a fully secured roof, that is affixed to a permanent site;
- (b) A manufactured home (“a manufactured home,” also known as a mobile home, is a structure: built on a permanent chassis, transported to its site in one or more sections, and affixed to a permanent foundation); or
- (c) A travel trailer without wheels, built on a chassis and affixed to a permanent foundation, that is regulated under the community’s floodplain management and building ordinances or laws. “

Carla Westine said the buildings seen at the site visit were outside of the floodplain and, for zoning purposes, all of them would be considered structures, including the structure referred to as a gazebo. She said there was some confusion as to whether the gazebo was a structure and needed to be measured. Given that the gazebo is not in the flood plain, it qualifies as a structure under the zoning regulations and needs to be measured. Carla Westine said the total square footage of buildings on the lot, even when the square footage of the gazebo is included, is still well under the lot coverage limit in the bylaw dimensional standards. Carla Westine noted that this fact was correctly asserted in the letter from Connie Tourigny to the Development Review Board (Exhibit C).

Carla Westine turned to Section 2.4 of the Chester Unified Development Bylaws, Residential-Commercial district. Carla Westine looked at Exhibit I, the site plan, and noted that two structures, the gazebo and the food truck were not drawn in. She examined the dimensional standards for the Residential Commercial district. The minimum lot size is 20,000 square feet. The parcel is 1.6 acres and meets the minimum lot size requirement. The minimum lot frontage, 120 feet is also met.

Carla Westine noted that when the conditional use permit was issued by the town in 2006, and was redone by the State of Vermont in 2007, the zoning bylaws were different than those in effect today. Carla Westine read the maximum lot coverage of 35% and the maximum building height of 35 feet from the dimensional standards.

Connie Tourigny verified that the current placement of the buildings is well within the current dimensional standards. Carla Westine said that was true. The current front setback is 25 feet, the side and rear setback is 15 feet. There are no residences abutting this property so the 30-foot setback between incompatible uses does not apply. Joe Tourigny said those revised setbacks give them more space to work with.

Michael Normyle said the rear of the front lot is in the special flood hazard area, therefore any buildings in that area would trigger the special flood hazard regulations. Carla Westine said if the Tourignys were to build in the flood hazard area they would need to comply with the Flood Damage Prevention district standards. She said a building in the flood hazard area is required to have blow-out windows to allow flood waters to move through the building and not destroy it. Mechanicals must be placed above the anticipated level of the flood water. She urged the Tourignys to check with the town of Chester and the state of Vermont before planning to build anything in the flood hazard area. Joe Tourigny said he believed he could challenge the flood area determination, as some of his neighbors had, after not being flooded during recent storms.

Carla Westine then turned to the narrative (Exhibit C), which listed the changes requested by the Tourignys, and looked at the corresponding section in the permit issued by the State of Vermont (Exhibit G). Carla Westine read Order #4 from Exhibit G. "All structures on the Property shall be located as delineated on the Revised Plan as to both size and location and no deviations or additions to any structure shall be made without first obtaining an approved amendment to this permit. However, structures may be replaced or renovated within the specific locations delineated on the Revised Plan and within the footprint of said structures without an amendment to this permit." She then read the request from the Tourignys in Exhibit C, "We ask for the right to move structures within the legal setbacks. This is primarily due to being able to obtain better street exposure for an individual structure(s) if a need arises. Another example is the possibility of a structure serving a more beneficial purpose elsewhere within the setbacks."

Carla Westine recapped the request, saying the Environmental Court permit states the buildings must not be moved and the applicant's request is to be able to move the buildings within the setback. She said the Development Review Board could agree to allow the buildings to be moved under the current bylaws. She said that the current permit in force was issued by the state Environmental Court and she believed the Chester Development Review Board could not change an Environmental Court order. The Tourignys would need to ask the state to amend the permit that is in force.

Michael Normyle said he thought that if the Development Review Board approved the application, the Town of Chester could send the DRB decision along with a letter of explanation to the Environmental Court and ask the court to consider altering the permit they issued in 2007. Connie Tourigny said she understood that the state issued conditions which the town had to agree with.

Carla Westine said that by appealing the Zoning Board of Adjustment conditions on permit #436 to the Environmental Court in 2006, they were appealing the town's conditions. The Environmental Court reviewed the decision and changed the conditions imposed on the project by the Town of Chester. The Environmental Court is the next higher level of authority in the State of Vermont above the Town of Chester. Their decision overrode the town's decision and issued the permit. Carla Westine hoped that the Environmental Court would agree to change the

conditions. She suggested that the lawyer who handled the appeal to the Environmental Court in 2006 could help them request the changes.

Carla Westine asked the other members of the Development Review Board if they had any objections to moving the buildings within the setbacks. No member did. Robert Greenfield asked if moving the buildings would reduce the number of parking spaces available in the front of the buildings. Joe Tourigny said there was space for 100 cars on the property and a change to the front lot wouldn't matter. Carla Westine said there were parking requirements to be met based on how many square feet of retail space was used. She concluded that the Development Review Board would allow the buildings to be moved, but the Environmental Court would have to modify their permit the town had issued.

Michael Normyle said his predecessor, Julie Hance allowed a minor change to the permit. He himself had allowed small changes to the permit as well. Carla Westine agreed that the Town of Chester can agree to changes, but the permit was issued by the Environmental Court and they would have to change the permit.

Carla Westine read condition 5 from the Environmental Court, "The total square footage of all structures, including decks and porches, measured at the exterior wall or deck, shall not, under any circumstances, exceed 2,125 square feet without an amendment to this permit." She then read the request from Exhibit C, "We are seeking to obtain our maximum square footage allowed per the RC district dimensional standards. This will provide, now, for flexibility in possible future building. Findings of fact and survey confirm 11 structures totaling 2,125 square feet (including porches). Page 3 will show some changes over the years, which were permitted, and reinforce our request and need for flexibility moving forward."

After some discussion, Carla Westine added up the square footage of the current inventory of structures on the parcel. The total came to 2399.5 square feet, which was rounded to 2,400 square feet for discussion purposes. Under the current dimensional standards, 35% coverage of the lot, (0.35 times 68,800) or 24,080 square feet is the maximum coverage allowed on the parcel. The current coverage level of 2,400 square feet is well within the dimensional standard for the district.

Carla Westine read condition 16 from the Environmental Court ruling. "The Mountain Man Craft Village and all businesses on the Property shall not operate prior to two hours after sunrise and shall end one-half hour after sunset." She then read the applicant's request for a change from Exhibit C, "As seasons change, daylight hours change. Traffic flow changes accordingly within these seasons. We seek more flexibility within our business open hours. We ask for 7:00 AM – 10:00 PM daily."

Carla Westine asked the Board how it felt about those hours where a business is surrounded by other commercial uses. Harry Goodell said he didn't have a problem with the change. Carla Westine speculated that the American Legion is probably open until 10:00 PM. She recalled that Jack's Diner across the road from the project had obtained a permit two years ago and planned on being open until 10:00 PM. No one on the Board had an objection to the requested hours.

Carla Westine read condition 17 from the Environmental Court ruling, "The Craft Village shall only be open from April through December and shall not operate during the months of January, February or March, except for the shed marked Building No. 1, which the Applicants may operate year around. No food may be served from the Property during the months of January,

February or March.” She then read the applicant’s request for a change from Exhibit C, “Marketplace to be open year-round for any structure and vendor.” No one could account for the former restrictions on when the business could be open.

Larry Semones said he didn’t see any reason to restrict the months the business could be open. Harry Goodell said he had no problem with the businesses being open year-round.

Carla Westine read condition 18 from the Environmental Court ruling, “ No external lighting of any kind shall be used or installed except for a single 60-watt or less, incandescent porch type light located near the exterior doors on buildings 1 and 10 which shall be used for no more than one hour after sunset and holiday lights from Thanksgiving through New Year’s Day.” She read the applicant’s request for a change from Exhibit C, “Provision for adequate external lighting for each structure and vendor up to one hour after closing on any business day. We are also seeking the optional use of exterior motion detection lighting for security measures for after hours.”

Carla Westine said the Chester Unified Development bylaw regulations about lighting have changed since the permit was issued in 2007. The new regulations prohibit light sources that shine into oncoming traffic. The source of the light should not be visible to anyone. The goal is only to light what is necessary to light. Lights should be shielded and downward facing.

Carla Westine asked the Board members if there was any reason to limit the lighting as indicated in the Environmental Court order. Harry Goodell said he saw no problem with additional lighting as long as it was the shielded, downward facing type. Robert Greenfield said he thought the business would need lights if they are going to be open all year round and after sunset.

Carla Westine said it appears that the requested changes meet the current bylaws. She said the amended permit the Board will issue will have conditions, one of which will be that lighting is shielded and downward facing. Another condition will be that there will be no off-site parking. No one may park on the edge of Route 103.

Harry Goodell asked whether the motion-activated lights will be on every building. Joe Tourigny said he used the lights for security and currently has such a light on the front and back doors of the jewelry store. Harry Goodell said the Board needed to know whether it was authorizing lights for every building or only some. Connie Tourigny said they wanted the option for such lights to be available to every tenant.

Gary Coger asked if the back lot will be lit for parking. Connie Tourigny said they have never had to use the back lot for overflow parking.

Carla Westine concluded that the requests seem to fit the current bylaws. The one remaining issue was in the Residential-Commercial district Special Criteria. Carla Westine read the following section of the bylaws aloud:

The following Special Criteria shall be considered by the Development Review Board when considering an application for a conditional use permit in the (VC) Village Center, (SV) Stone Village, (R-C) Residential-Commercial, Districts:

- a.** All new construction, exterior alteration, fencing, lighting, reconstruction or renovation of existing buildings shall include features typical of those which define New England Architectural Character represented by the existing historical structures in the “Center of Chester”.

- b. Native historical building materials are to be used which are found in construction representative of “New England Architectural Character” and /or those building products and materials which are indistinguishable to the eye from such materials in appearance.
- c. That all such construction shall take whatever precautions necessary to incorporate, protect and preserve existing historic sites.
- d. **To maintain the scale, support the density and preserve the “New England Architectural Character”** of Center of Chester, 4 of the following 18 features shall be incorporated in the design of any such Application for construction in the Village Center District; 6 of the following 18 features shall be incorporated in the design of any such Application for construction in the Stone Village Districts. and 4 of the following 18 features shall be incorporated in the design of any such Application for construction in the Residential Commercial District (Chester Depot/South Main Street Section only).”

Carla Westine noted that until now, the small buildings on the property looked like any small building on a New England farm or old homestead. They fit with this objective. She said the proposed food truck is glaringly different from what is there now. She wondered what could be done to help the food truck blend in with the rest of the buildings. Joe Tourigny said he didn't thing it looked that outlandish. Carla Westine said it was clean and neat, but it was clearly a food truck, and it didn't really fit into this part of the bylaws. Corey Korica, who owns the food truck said he wasn't sure he could afford to change the wrap on the truck. Carla Westine said she wasn't requiring the wrap to be changed. Corey Korica said he could look into putting a small rock-type wall around the bottom of the truck which would match other rock walls on the property.

Larry Semones asked if the designation of temporary structure would get around the bylaw requirement. Carla Westine said the bylaw did not allow such an exception. Michael Normyle suggested a roof over the structure could help tone it down. Corey Korica asked if the color was the issue. Michael Normyle said the sign bylaw required muted colors on a large portion of the sign. Carla Westine said that if the van had been completely white or dark green it would be more acceptable. She said Connie and Joe had done such a good job on the other buildings this food truck stands out. Cathy Hasbrouck suggested lots of garland. Joe Tourigny said they could put up Christmas trees around it. Harry Goodell asked if the food truck was a trailer and if the trailer was a structure. Corey Korica said he could put T-111 around parts of the trailer to hide large portions of the trailer's wrap. Carla Westine urged the applicants to get creative and thought the T-111 was a good idea. Harry Goodell said a piece of T-111 could be painted to resemble a stone wall. The Board agreed that the suggestions to partially cover and heavily decorate the trailer were positive and creative. Michael Normyle suggested that a second review be done in the spring if the food truck is successful and wants to continue to operate.

Carla Westine said if the hearing is closed tonight the Board has 45 days to issue the permit, though it rarely takes so long. She noted that no abutters had made any inquiries about the hearing or attended the site visit or the hearing, therefore there would be no 30-day waiting period after the permit was issued. She said she thought the applicant should take the town permit to the Environmental Court and ask them to change their permit based on what the town has approved.

Connie Tourigny asked if anyone in the town office could help them direct their inquiries at the Environmental Court. Carla Westine said she didn't think so. The best they could do would be to give them the address of the court. The Tourignys pressed Carla Westine to tell them when they could open the food truck business and under what conditions. Carla Westine said the permit issued by the Environmental Court was the permit in force and she would not speak for the Environmental Court in any matter.

Harry Goodell moved to close the hearing. Gary Coger seconded the motion. A vote was taken and the hearing was closed.

Agenda Item 4, Deliberative session to review previous matters

The Development Review Board went into deliberative session to review previous matters. The meeting was adjourned at the end of it.