



**Town of Wallingford, VT Development Review Board (DRB)
Findings of Fact, Conclusions of Law, Decision & Order(s)**

Application #18-01: Request to construct a structure in the Agricultural Rural Residential Zoning District for commercial use.

Applicant/Owner: Justin Filskov (dba F.A.S. Trucking & Landscaping) Postal Address: PO Box 207
Wallingford VT 05742

Subject Property Location: 151 Maranville Rd. East Wallingford VT 05742

Town Parcel: 0290151

INTRODUCTION

The Zoning Administrator (ZA) received a complete Application on 7/6/2018, which was reviewed per Article V of Wallingford Zoning Regulations (effective Sept. 2015). The ZA determined that the application involved a conditional use which required DRB review and was denied. An Appeal of the ZA decision was received on 7/13/2018, and the application then referred to the DRB. The Applicant was notified of the Public Hearing by Certified Mail, with the road Notice Poster enclosed, on 7/14/2018. Abutting property owners were notified on 7/14/2018 (documented by Certificate of Mailing) that a Public Hearing was scheduled for 7:00 pm, 7/30/2018, at Town Offices, 75 School St. Wallingford Village. Public Notice was also published in the Rutland Herald, and posted in three other public locations on 7/14/2018.

Accordingly, a Public Hearing was convened by the DRB on 7/30/18, with a quorum of DRB Members, and an Alternate Member in attendance. The Zoning Administrator and the Applicant was present. Other interested parties were in attendance (refer to roster) and presented oral testimony; or had submitted written testimony.

During this Hearing, an Interested Party asked when the Notice Poster was set in view of the Public Road. The Applicant admitted that he had not received the Certified Mail with the Poster until 7/24/2018. As the required road Notice period of 15 days was not satisfied, the DRB voted to recess the Hearing until 7:00 pm, August 28, 2018, at Town Office, so that the statutory warnings could be satisfied. Notice of the continued Public Hearing was warned in three Public locations and by an updated road poster on 8/10/2018 and published in the Rutland Herald on 8/11/2018.

On 8/28/2018, the DRB reconvened the Hearing. The Applicant submitted amended application information, and additional oral and written testimony was received. The DRB requested the Applicant provide additional clarification on the project's landscape plan and voted to close the Public Hearing on 8/28/18. The Board voted to go into Deliberative Session; and held closed sessions on 9/4, 9/11, and 9/25/2018.

Jurisdiction was taken by Articles III (Specific District Regulations) and IV (Review of Conditional Use) of the Zoning regulations. The DRB scheduled and warned a Special Meeting for 7:00 pm, October 9, 2018 at Town Offices, to address the application and finalize their decision.

FINDINGS of FACT

1. The subject property consists of 13.5+/- acres on the southeast corner of VT Rt. 140 and Maranville Road and includes the Applicant's primary residence. The property is within the Town's Agricultural Rural Residential (AgRR) Zoning District. The existing Single-Family residence is serviced with an onsite septic system and private well.
2. The initial Application requested a simple parceling of 2.7+/- acres, and construction of a 42' X 60' one story Morton Building (metal sided) structure. Access would be off of Maranville Road, and the gravel driveway would include outside parking on the south side of the structure and a free standing non-illuminated sign. The amended Application removed the subdivision and sign requests.

The Applicant operates a trucking, property maintenance, and landscape company; currently employing an average of five non-family individuals. The company owns approximately six trucks, several trailers and several pieces of excavation related equipment. The proposed structure would be heated and have its own permitted water supply and septic system. Its sole purpose would be to house and service the motorized equipment, as well as provide business Office facilities. Other equipment, such as trailers and sanders, would be stored outside.

3. The 13-year-old company is presently parking its equipment on other family property at the top of Maranville Road. The Owner has testified that the steep hill that has to be traveled from its current staging location is often dangerous for the trailered equipment. The proposed location is at the bottom of the slope, and within 100 feet from state highway, greatly reducing this safety risk.
4. The Applicant testified that the Application does not include a retail sale operation. Employees will typically arrive and be dispatched to their daily assignments, return at the end of their shift, and leave the premises. The hours of operation anticipated will typically be dawn to dusk, Monday through Saturday, except in winter or other storm emergencies, when personnel and equipment may need to respond to weather events at all times of any day or night.
5. The Applicant testified that the proposed construction site has been reviewed by VT's Agency of Natural Resources and is out of wetlands. VTRANS has reviewed the access location on the Town Road, and has accepted its location, and a town road access permit is to be approved. As the subject property is over 10 acres in area, the Applicant will also need to obtain a VT Land Use (Act 250) Permit as one of the state permits that the project requires.
6. Several abutting property Owners have testified that the proposed structure will be out of character for its location, and a commercial operation would negatively impact their property's value. Other area residents stated their belief that the Agricultural Rural Residential Zoning District should not allow commercial uses, and that the project's aesthetics conflicted with the Town Plan for the VT Rt. 140 scenic corridor. There were individual concerns expressed that the location may disturb an unmarked (unknown) gravesite, impact the headwaters of the Roaring Brook; or conflict with the corner's use as a school bus stop.
7. There was a notable volume of testimony given, by both those in opposition and in support of the project, generally stating that the Applicant (personally) and his business history enjoys a favorable reputation in the community.
8. There was a number of Town residents that submitted (verbal or written) support of the Application, stating that local business was important to maintaining the economic vitality to the community, and that similar structures and businesses already exist in the AgRR Zoning District.

CONCLUSIONS of LAW

- I. The DRB concludes that the Application may be considered as a Conditional Use under Article III (Zoning Districts) of the Zoning Regulations which state that, in the AgRR Zoning District, "*Other Uses not listed here may be permitted if the finding by the DRB shows that such use is clearly of the same general character as permitted in the area, and which will not be detrimental to the other uses within the district or to adjoining land uses, or the natural and human environment, and so long as such use is not prohibited under Article IV of these Regulations.*" The DRB finds that there are, and have been, other similar pre-zoning and post zoning & permitted businesses of the same general character in the area and throughout the Town. As the Applicant's business has been operating out of a nearby East Wallingford location for a number of years without any known complaint or controversy, the DRB finds the proposed Use has not been proven detrimental to other uses, per the Specific Zoning District Regulation. The Application does not include (specifically identified) prohibited Use under Article IV. The proposed structure, with 65' road setbacks, will conform to Town Zoning requirements.

Per Article IV, under **Conditional Use Approval**, The DRB is required to consider four standards requiring decisions that the Application or Project will not adversely affect:

- a) **The capacity of existing or planned community facilities:**
The DRB finds that both the Use and the proposed Structure does not result any change to the Town's sewer, water, police, fire, school, or road maintenance considerations. The school bus concern expressed in testimony is not likely within the jurisdiction of the DRB but may be addressed by voluntary relocation to another corner of the intersection, and review of the actual timing of the potential conflict with the school and business maximum traffic times.
- b) **The character of the area affected:**
- 1) The DRB considers that the abutters primary opposition is based on concerns that their property values will be negatively affected. While the DRB understands this concern, it has not received any (*impartial*) evidence to support these claims. Regardless, the Regulations clearly address only issues "*detrimental to the other Uses within the district or to adjoining land Uses, or the natural and human environment*". This criteria does not identify valuation as a criteria; and so, the DRB may not consider valuation issues in its review.
 - 2) Other Interested Parties have stated, in their opposition to the Application, that the proposed Structure is not in keeping with the aesthetics of the area pursuant to the Town Plan (adopted 2018) Wallingford Zoning Regulations do not include architectural standard criteria for Conditional Use review, so the structure's design is subjective and any DRB imposed requirements may not be enforceable, unless agreed upon by the Applicant upon acceptance of a Town Permit.
 - 3) However, the DRB did review the Application under 24 VSA Ch.117 Sec. 4413 (3) (A) as well as the Town Plan (adopted 6/2018). In review, the DRB considered the "Quechee Lakes Test Criteria" as follows:
 - 1) **Did the Application present any clear adverse impact to the Town?** The testimony of neighboring owners does not necessarily reflect the entire Town. The applicants are also owners and residents, trying to utilize their property in order to support their local business. Especially since the testimony given was in general support of the Applicant as a local business, and the opposing concerns seemed to focus on the structure and its specific location versus the Use, the DRB found this application's Use did not have a clear adverse Town impact and was acceptable.
 - 2) **Did the Application violate any clear Community Standard.** The DRB did not find any clear Community Standard to apply, or that was in clear conflict with local zoning or the Town Plan.
 - 3) **Did the Project offend the sensibilities of the average community standard?** The (existing) business relocation is concentrated on approximately two acres of Applicant's 13-acre primary residential ownership. The Applicant has submitted an enhanced landscaping plan which is designed to buffer the structure's appearance from adjacent ownerships. The proposed structure is smaller than the existing unscreened (non-ag but pre-zoning) barn across the road from the project site. There have been several other comparable commercial structures and uses permitted within the AgRR Zoning District. The DRB finds the proposed structure's gray color scheme an acceptable neutral character. In a review of the numerous verbal and written testimony statements presented in Hearings, there was a minor majority in favor of the application. While not considered a deciding criteria by the DRB, this does indicate that the Application does not offend the average community standard.
 - 4) **Mitigating Screening / landscaping:** An amended Landscaping Plan proposed by the Applicant to buffer visual impact to Neighbors was reviewed and accepted by the DRB.
 - 5) **Traffic:** There is no additional traffic volume proposed by the Application and was already addressed in the DRB review.
- c) **Traffic on roads & highways in the vicinity:** There is no evidence that the Application will significantly add to traffic congestion. The proposed business and driveway location are intended

- c) **Traffic on roads & highways in the vicinity:** There is no evidence that the Application will significantly add to traffic congestion. The proposed business and driveway location are intended to improve safety to the Applicant's operations by reducing the need to negotiate the steep hillside road under adverse conditions.
- d) **Other By-Laws in Effect:** The DRB may approve a Use or Activity in a Zoning District upon demonstration it can or will comply with all standards outlined in the Town regulation, or the Town & Regional Plan. The Wallingford Town Plan was approved in June 2018, and in part, may be applicable to this Application as follows:
- 1) **Economic Development:** The Plan encourages an increase in business development, (especially in Village locations). The DRB finds the Application by an established Family owned and operated business, requesting a reasonable increase in its business development in the East Wallingford area, an important objective in the Town Plan.
 - 2) **Land Use:** While the Town Plans promotes low density development, the Application impacts less than two acres of a rural area and ownership by an existing business, is considered a low density use to the area, thereby conforming to the Town Plan.
 - 3) **Natural Resources:** The proposed construction site is reported to be a former barn yard. The Applicant has had the site inspected for potential wetland impact and testified that the construction site posed no environmental concerns to date. Subject to approval to all other VT or Federal permits that the project may require, the DRB finds the Conditional Use Application in compliance to local regulation, subject to Conditions of Approval.
 - 4) **Special Regions:** The VT Rt. 140 Scenic Corridor clearly identifies the entire VT Rt. 140 "scenic corridor" as being between the Main Village and E. Wallingford Village: but Not as a VT or federal scenic road. Nor does the Town Plan identify this specific crossroads as having any special historic or scenic significance. As there are no VT or Town regulations or known deed covenants of record to prohibit the proposed project, the DRB does not find a conflict with any by-laws in effect.

In Conclusion: The DRB finds the Application, with certain Conditions to address and provide for conformance to the Town Plan and character of the Neighborhood, will comply to the Town of Wallingford Regulations

DECISION and ORDERS

Based on the final Application documentation, Testimony of Record, and Review of the applicable regulations, the Wallingford Development Review Board hereby APPROVES APPLICATION #18-01 with **CONDITIONS**, as follows:

- 1) That the development of the project site comply the final Application approved by the DRB, with the adjustment of the minimum structure setback being sixty-five (65') feet from the highway legal right of way limits of both VT Rt. 140 and Maranville Road.
- 2) That the 42' X 60' X 23'(H)" Morton Building" style structure (per Allied Design & Architectural Group, PC, Job # 133-077425; check date 3/20/18) with the window, door, and overhang locations as shown on the building's drawings submitted; driveway access and off- street parking locations shown on the approved Application and Site Plan are installed without modification. The structure's design, location, and two-tone gray color scheme submitted may not be changed without prior approval of the DRB.
- 3) That the only public road access to the structure approved in this permit is via Maranville Road in an approved location by the Town and VTRANS with installation criteria and designs attached.
- 4) All outside parking areas or storage of any equipment shall be restricted to the south side of the structure and sited to minimize visual impact to the state highway. Outside of registered and inspected company owned vehicles; or Permitted equipment and materials identified in this Application; the Applicant's property shall not be allowed to park, store, or otherwise hold any open storage of vehicles, equipment, or other materials for longer than thirty (30) days, unless also in

- 5) That the approved structure is approved ONLY for the use of an Owner operated Trucking, Landscaping, and Property Maintenance company; and that the building's use is limited to the storage and maintenance of Owner/Company owned equipment. Commercial use of the building or grounds by other tenants or assigns or other Uses, is not allowed without prior approval by the DRB, as a conditional Change of Use.
- 6) The structure and project site is to have a landscape plan to mitigate the visual impact to the area. The Applicant, its heirs and assigns, for the life of the approved structure (regardless of future Ownership), is to plant, nurture, and maintain or replace as necessary, the vegetative plantings detailed in the Approved Landscape Plan-1, dated October 9, 2018, and attached to this Permit.
- 7) That hours of Operation are approved to be dawn to dusk, from Monday through Saturday; with the exception that operations may be extended to any day or hours during winter for snow/ice removal, or during any severe storm related events or emergencies.
- 8) Idling of diesel fueled machinery shall comply with VT regulations; and comply with the Town Noise Ordinance (Title 6).
- 9) Exterior or Security Lighting is to be confined to the immediate perimeter of the structure, and at the minimum as required for the south parking lot area. All lighting is to be down-lit and not be permitted to leave the work area around the commercial structure or south parking area. For employee safety, exterior lighting may be (timer) programmed to go on one-half (1/2) hour prior to employee arrival and is to go out one-half (1/2) hour after the last shift is to depart the premises; Motion sensitive security lighting is exempt at entry locations of the commercial building.
- 10) That this Decision and Town Permit does not release the Applicant from obtaining, and maintaining compliance with, any and all other Town VT, or Federal approvals their project may require.
- 11) Any misrepresentation or false testimony presented regarding this application, unauthorized changes or expansions, or violations of Town, VT or Federal regulations may be considered grounds to revoke this Decision and Permit approval.
- 12) Any decision by this Development Review Board is subject to appeal by an Interested Party to VT's Superior Court (Environmental Division), within 30 days of the final decision, in accordance of Town Regulations and 24 VSA Ch. 117, Section 4471(a), with a copy submitted to the Town.

The majority vote of the Wallingford Development Review Board APPROVES this Application with the CONDITIONS specified, and orders the Zoning Administrator to issue Permit 18-01 with this Decision and its Conditions, attached to and part of the final permit; as follows:

William Brooks III: Approve

Erika Berner: Approve

David Ballou: Approve

Jason Stone: Approve

Lucy Thayer: Approve

Jillian Burkett: Absent

Signed by the Chairman, on behalf of the DRB: William H Brooks III on Oct. 11, 2018

Received by the Zoning Administrator: AM Brasier on Oct. 12, 2018