

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

Application #19-17: Request for a Change of Use for an existing structure and grounds in the Agricultural Rural Residential Zoning District for commercial use

Applicant: Justin Filskov (dba F.A.S. Trucking & Landscaping)
Postal Addresses: PO Box 207 or 155 Fieldstone Way, East Wallingford, VT 05742

Property Owners: Janice & Jeffrey Patch
Postal Address: PO Box 509, Wallingford, VT 05773

Subject Property Location: 1281 US Rt. 7 S, Wallingford, VT 05773

Town Parcel: 7011253

INTRODUCTION

The Zoning Administrator (ZA) received a complete Application on 6/28/2019, which was reviewed per Article V of Wallingford Zoning Regulations (effective Sept. 2015). The ZA determined that the application involved a conditional use and was referred to the DRB on 7/14/2019. The Owners were notified of the Public Hearing from the ZA by Hand Delivery, with the road Notice Poster, on 7/15/2019. The Applicant and abutting property owners were notified on 7/16/2019 (documented by Certificate of Mailing) that a Public Hearing was scheduled for 7:00 pm, 7/31/2019, 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 7/16/2019.

Accordingly, a Public Hearing was convened by the DRB on 7/31/19, with a quorum of DRB Members, and two Alternate Member in attendance. The Zoning Administrator, Property Owners and the Applicant were present. Other interested parties in attendance and presenting oral testimony, or having submitted written testimony, include the following: Shane Filskov, Tori Filskov, Keith Robertson, Kevin Burke, Emma Burke, Christine & Amy Davenport, Walter Kelly, Stacy Harshman, Robert & Theresa Ahlers, and William Muntean.

Jurisdiction was taken by Articles III (Specific District Regulations) and IV (Review of Conditional Use) of the Zoning regulations. Following receipt of testimony, the DRB voted to close the Public Hearing, and to go into Deliberative Session. Exiting from Deliberative Session, the Board has determined the following:

FINDINGS of FACT

1. The subject property consists of 2.1+/- acres on the east side of US Rt. 7. The property is within the Town's Agricultural Rural Residential (AgRR) Zoning District. The existing 35 foot by 90 foot structure is serviced with an onsite septic system and private well. A portion of the acreage is in a (mapped) FEMA Special Flood Hazard Zone (SFHA); but this

- does not impact the structure and septic area. The existing driveway access is also a legal access for an adjacent residential owner.
2. The structure and grounds have a history of agricultural and commercial uses. A 2007 Settlement to a VT Superior Court dispute (*Petrossi-Patch Notice of Violation, Rescission; Docket 132-6-06 Vtec*) was submitted into testimony. The current zoning permit approves use as a one-bedroom dwelling unit for the property owners.
 3. The Applicant operates a trucking, property maintenance, and landscape company; currently employing approximately five non-family individuals. The company currently owns four trucks, several trailers and several pieces of excavation related equipment. The existing structure has a heating system, and would house the motorized equipment, as well as provide business Office facilities. Other equipment, such as trailers and sanders, would be stored outside.
 4. The Applicant testified that a retail sales operation is not included in the Application. Employees will usually arrive and be dispatched to their daily assignments, return at the end of their shift, and leave the premises. The hours of operation for landscape activities will typically be 7:00 am to 5:00 pm, Monday thru Friday, and occasional on Saturday. Winter snow plowing and sanding operations will be dependent on weather and storm events and could include working through the night and on weekends. Seasonally, up to 30 cu. yds. of winter sand & road salt would be stored on the property.
 5. Several abutting property Owners testified their concerns that the commercial operation could negatively impact their property's value, area aesthetics, potentially introduce a traffic risk entering/exiting on the Highway, and pose a contamination risk to area water wells and wetlands from the sand / salt mix stored onsite.

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 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.
- II. 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 in any change to the Town's sewer, water, police, fire, school, or road maintenance considerations.
- b. **The character of the area affected:** The DRB considered the neighbor's concerns that their property values will be negatively affected. While the DRB understands this concern, it has not received any impartial and professional evidence to indicate a negative valuation would result. 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.*" The guidelines do not identify detrimental *valuation* as criteria for review and the DRB may not have authority to consider valuation issues in its review.

Interested Parties have stated that the proposed Use is not in keeping with the aesthetics of the area pursuant to the Town Plan (adopted 2018). The DRB notes that comparable existing businesses along this section of US Route 7 include a building Contractors Shop and yard, a Blacksmith/Foundry Shop, a Logging/Trucking base of operation, and several quarries and gravel pits. The subject property has existing fencing and vegetative screening that will buffer the Applicant's operations from most neighbors. Wallingford Zoning Regulations do not include architectural or landscape standards for Conditional Use review, so aesthetics are considered a subjective issue.

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. **Does the project violate a clear written community standard intended to preserve the aesthetics or scenic beauty of the area?** The DRB did not find any clear Community Standard to apply, or that was in clear conflict with local zoning or the Town Plan.
2. **Have the applicants failed to take generally available mitigating steps which a reasonable person would take to improve the harmony of the project with its surroundings?** The Board found that existing site conditions would sufficiently screen the daily operations from neighbors, with the possible exception of William Muntean's property to the north. The Board recommends these two parties negotiate a mutual agreement on any future screening/fencing as may be found appropriate once routine F.A.S. operations have been established.
3. **Does the project offend the sensibilities of the average person? Is it offensive or shocking because it is out of character with its surroundings or significantly diminishes the scenic qualities of the area?** The DRB did not find the Application offended the sensibilities of the average person or that it will be shocking or offensive, or out of character.

- c. **Traffic on roads & highways in the vicinity:** There is no evidence that the Application will significantly add to traffic congestion. Based on the Applicant's testimony, no significant additional traffic volume is proposed to the Highway. VTRANS has jurisdiction on this issue.
- d. **Other By-Laws in Effect:** The DRB may approve a Use or Activity in a Zoning District upon demonstration that the Use or Activity 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 Wallingford area, an important objective in the Town Plan.
 - 2) **Land Use:** While the Town Plan promotes low density development, the Application utilizes a vacant structure with a commercial history and impacts less than two acres of a rural area by a local existing business, is considered a low density use to the area, conforming to the Town Plan.
 - 3) **Natural Resources:** The Use of the Subject Property is still subject to approval by 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:** This section of US Rt. 7 may be in the Otter Creek Multiple Resource Area. The subject property does not include a historic structure, and no new structures are part of this application.
 - 5) **Town Floodplain and FEMA rules** apply to the parking and/or storage of equipment and aggregate materials outside and in the FEMA Special Flood Hazard Area (SFHA).

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 be in compliance 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 #19-17 with CONDITIONS**, as follows:

- 1. That the USE of the project site be in compliance with the final Application, as approved by the DRB. The existing structure is approved ONLY for the use of an Owner operated Trucking, Landscaping, and Property Maintenance company; and that the building and ground 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 for

other Uses, is not allowed without prior approval by the DRB, as a conditional Change of Use.

2. That the only public road access to the existing structure approved in this permit is by the existing driveway, and that VTRANS approves this location for the proposed use, with a copy of this approval provided to the Town.
3. That the usual hours of operation will be between 7:00 am and 5:00 pm, Monday through Friday; with occasional Saturdays permitted. This excepts winter operations and other times of environmental emergencies; in which operations may occur during weather related storms or events; at any time of day. Outside repairs or maintenance of equipment shall follow this schedule.
4. All equipment and vehicles to be parked outside shall be on the south side of the structure; and to the east of the existing screening and fencing. All outside parking areas or storage of any equipment not capable of being readily mobile, and/or not registered and licensed to travel public roads in a flood emergency/event (such as detached sanders and plows, excavation equipment) shall be stored outside the FEMA Special Flood Hazard Area (SFHA). The Applicant shall maintain a designated location outside the FEMA SFHA, in which it has permission to relocate vehicles and equipment out of danger in a Flood Emergency (per SFHA regulations).
5. The stock piling of road chloride / sand shall be located outside of the FEMA SFHA. Loose materials shall be prevented from migration through weather events like rain or snow fall or snow melt through a combination of measures. Road chloride / sand material shall be covered so that the drip line extends beyond any loose stockpiled material and shall include side obstructions to prevent the migration of road chloride / sand on or off the parcel. All landscaping chemicals, pesticides, and fertilizers are to be stored within the existing structure.
6. The existing fencing and vegetative screening shall be maintained perpetually; or until all commercial use of the property is discontinued. *Similar additional fencing or vegetative screening* that further buffers business operations is allowed without an additional Town permit. If damage occurs to the fence or hedgerow, it shall be repaired as soon as is possible and feasible.
7. 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 compliance with the Town Health & Welfare (Junk and Vehicle) Ordinance (Title 4, Ch.7, approved 8/21/2000) or any other applicable VT or Local regulations.

- 8. Idling of diesel fueled machinery shall comply with VT regulations; and Town Noise Ordinances (Title 6) shall be followed.
- 9. The washing and degreasing of equipment will not be performed with the use of any chemicals.
- 10. That any 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.
- 11. 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.
- 12. 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. Formal Appeals to the DRB for the Zoning Administrator's actions, or for any future violation complaints shall be in writing, on the approved Town Appeal form and with \$250.00 fee.
- 13. 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 #19-17 with this Decision and its Conditions, attached to and part of the final permit and is as follows:

William Brooks III: Approve	David Ballou: Approve	Lucy Thayer: Approve
Jason Stone: Approve	Beth Blaisdell: Approve	

Abstaining/Absent Members: J. Burkett, E. Berner

Signed by the Chairman, on behalf of the DRB: William H Brooks on Aug. 30, 2019

Received by the Zoning Administrator: AM Blaisdell on Aug. 30, 2019