

This 8th day of July A.D. 20 20
at 11 o'clock 0 minutes A.M. and
recorded in vol. 243 on page 432-438

**CHARLOTTE ZONING BOARD OF ADJUSTMENT
CONDITIONAL USE REVIEW
FINDINGS OF FACT AND DECISION**

Charlotte Ferry Properties, LLC

In Re: ZBA-20-22-CU Conditional Use Review application for Charlotte Ferry Properties, LLC (owner) & The Bullrock Corporation (applicant) in proposing the development of a 7,074 sq. ft. building along Ferry Road. A portion of the property to the south of the proposed building would be used as a contractors' yard. The property is located at 735 Ferry Road in the Town of Charlotte, VT (00061-0735).

I. Introduction and Procedural History

On May 11th, 2020, the Bullrock Corporation formally submitted an application for Conditional Use Review to undertake the development of a 7,074 sq. ft. building along Ferry Road; located on a 6.01 acre property at 735 Ferry Road within the Commercial/Light Industrial zoning district. Given the outbreak of COVID-19 and following guidance from the State of Vermont, Zoning Board of Adjustment hearings were postponed and re-warned for later dates.

The application proposes to construct a warehouse close to the northern property boundary along Ferry Road. The site plan map submitted with the application indicates the proposed building footprint to adjoin the right-of-way boundary of Ferry Road. The change of use of the property to a Contractor's Yard (See Section 4.6) triggers a Conditional Use Review with the Zoning Board of Adjustment (ZBA) and a Site Plan Review with the Planning Commission (PC).

The applicants changed their Site Plan and Building Elevations after formally submitting their plans to the Zoning Administrator. The PC Chair and the ZBA Chair agreed to hear the proposal in a joint public hearing scheduled for May 27th, 2020.

Public notification for the joint public hearing was carried out via electronic posting of the notice on the Town website; Front Porch Forum; publication in "The Citizen" newspaper on May 7th 2020; posting hardcopies of the notice at the Town Office, the Post Office, and Spear's Corner Store on May 7th 2020; and by direct correspondence to adjoining property owners on that same date.

A site visit was conducted at the property by the ZBA prior to the joint public virtual hearing on May 27, 2020 at 6:30 PM. Present at the site visit were the following members of the ZBA & PC; Frank Tenney (Chair, ZBA), Jonathan Fisher, and Lane Morrison; Peter Joslin, (Chair, PC), Charlie Pughe, Gerald Bouchard, Marty Illick, and Bill Stuono.

The aforementioned change in the application precipitated re-warning the public hearing. The joint public virtual hearing took place on May 27th, 2020 at 7:30 PM via ZOOM. Present at the hearing were the following members of the ZBA & PC; Frank Tenney (Chair), Jonathan Fisher, Matt Zucker, and Stuart Bennett; and Planning Commissioner; Chair Peter Joslin, Vice Chair Charlie Pughe, Gerald Bouchard, Marty Illick, and Bill Stuono. Abutting Properties owners Christina Booher, Kristin Lundy, Jack Pilla; ZBA Staff Daniel Morgan and Daryl Arminius; and the applicants, Doug Moses and Greg Beldock. Nate Carr of Churchill Landscapes, the proposed leaseholder, also participated in the hearing.

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II. Exhibits

The following exhibits were marked and considered:

1. A detailed application, including –
 - A. Application
 - B. Site Plan Map
 - C. Site Plan Specifications
 - D. Salt Shed Concept
 - E. Fuel Tank Concept
 - F. Building Elevations: Eastern Side Updated: 15 April 2020
 - G. Building Elevations: Northern side Updated: 15 April 2020
 - H. Building Elevations: Southern side Updated: 15 April 2020
 - I. Building Elevations: Western Side Updated: 15 April 2020
 - J. Easement Map #1
 - K. Easement Map #2
 - L. PC-19-193-SK Sketch Plan Review Letter (3 Jan 2020)
 - M. Staff Report
 - N. Letter of Concern from neighboring landowner rec'd: 27 May 2020

III. Standard of Review

The application requires review under the following sections of the Land Use Regulations for the Town of Charlotte (Approved March 1, 2016), hereafter referred to as the Regulations:

1. Chapter II, Section 2.3, Table 2.4 - Application of District Standards; Commercial/Light Industrial District (C/LI)
2. Chapter III, Section 3.8 (B) – Nonconforming Uses of Land & Structures
3. Chapter III, Section 3.9 (B) – Outdoor Lighting; General Standards
4. Chapter III, Section 3.12 (A) – Performance Standards
5. Chapter IV, Section 4.6 (A) – Contractor’s Yard
6. Chapter V, Section 5.4 (C) – Conditional Use Review; General Standards
7. Chapter V, Section 5.5 – Site Plan Review

IV. Findings

Based on the application, testimony, exhibits and other evidence, the Zoning Board of Adjustment makes the following findings:

1. The application proposes to construct an agriculturally-themed building close to the northern property boundary along Ferry Road. The site plan map submitted with the application indicates the proposed building footprint to adjoin the right-of-way boundary of Ferry Road, within the setback.
2. The C/LI district has a *Maximum Lot Coverage* of 40%. The existing impervious coverage with the solar array is estimably about 25%; perhaps less considering the existing space between the arrays. According to the submitted site plan map, the impervious surface comprising the proposed building coverage, the parking area of the contractor’s yard and the acreage of the solar arrays total about 40% of impervious surface.

3. The contractor's yard will host parking for trucks, trailers, and other equipment; and an area for a compost/mulch pit, bunker, gravel stockyard, and pallets for stone storage. The dumping or outdoor storage of trash, garbage, radioactive waste, hazardous or corrosive chemicals, automobile junk or any refuse is prohibited except in solid or hazardous waste management facilities approved in accordance with the Charlotte Land Use Regulations (see **Section 4.15**) and state law. However, individual property owners are permitted to dispose of organic solid waste generated by the household as part of the normal operation of their property and in a manner not injurious or obnoxious to the neighborhood or the natural environment.

4. **Site Layout and Design:**

The building plans propose seven commercial warehouse bays (facing southward away from Ferry Road) and an office space hosting an estimated seven employees. The office space and five of the bays are planned to be leased to a landscaper, where the remaining two bays (about 1,500 sq. ft.) would be utilized for storage by the Bullrock Corporation. Detailed easement maps have been submitted with the application.

- A. **Access:** The site will use the existing curb-cut off of Ferry Road. According to the Sketch Plan Review, the site plan application is supposed to address the following issues (but does not include any documentation) to accommodate the anticipated traffic associated with the proposed use of the property, especially during higher volume periods when the Ferry is in operation:

- 1) Site access for automobiles, trucks, buses, emergency vehicles, pedestrians, and bicycles.
- 2) Traffic circulation to and from Ferry Road.

B. **Parking, Loading, and Service Areas:**

- I. Impervious surfaces intended for vehicles should be made of non-white crushed stone.
 - a. The parking plan is addressed in the Site Plan Review decision by the Planning Commission within application # PC-20-22-SP.
- II. The categories listed within **Table 3.1** (of the Regulations) for Minimum Off-Street Parking Requirements that address potential demand for the proposed facility should fulfill the following:
 - a. "Warehouse", which has a minimum requirement of at least **1 per 1,000 sq. ft. of gross floor area, and 1 per employee.**
 - b. "Office/Professional", which has a minimum requirement of at least **1 per 300 sq. ft. of gross floor area.**
- IV. All designated parking spaces have a minimum width of nine (9) feet, a minimum length of 18 feet, and unobstructed access and maneuvering room.
- V. The site plan includes the proposed number of parking spaces, required ADA parking-related infrastructure, and a bicycle rack that is installed in proximity to the main building, and the area of impervious surface (e.g. the proposed parking area, and the buildings).

5. Landscaping and Screening:

- *This regulation is addressed in the Site Plan Review decision by the Planning Commission within application # PC-20-22-SP*

6. Stormwater Management and Erosion Control:

- *This regulation is addressed in the Site Plan Review decision by the Planning Commission within application # PC-20-22-SP*

7. Outdoor Lighting:

- *This regulation is addressed in the Site Plan Review decision by the Planning Commission within application # PC-20-22-SP*

8. Water Supply/ Sewage Disposal

- *This regulation is addressed in the Site Plan Review decision by the Planning Commission within application # PC-20-22-SP*

V. Conclusions of Law

1. Chapter II, Section 2.3, Table 2.3 – Commercial/Light Industrial District (C/LI)

(D) Conditional Use:

Contractor’s Yard (See Section 4.6) – requires ‘conditional use’ approval.

(E) Dimensional Standards: requires the following dimensional standards:

- a. *Minimum Setback/Front: 25 feet (from ROW) / Minimum Setback/Side 50 feet / Minimum Setback/Rear 50 feet:*

The proposed structure is shown to be 30 feet from the front (northern) ROW.

- b. *Maximum Height – 35’:*

From the proposed elevations, it appears the proposed building would stand at 26.6 feet high to top of the roof at the northern (roadside) view. The proposed structure complies with the (C/LI) district standard of 35’ maximum height.

- c. *Maximum Building Coverage: lesser of 25% or 10,000 sq. ft. / Maximum Lot Coverage: 40%:*

Impervious surface has not been maximized given the building and lot coverage for the 6-acre lot.

2. Chapter III, Section 3.9 – Outdoor Lighting

- *This regulation is addressed in the Site Plan Review decision by the Planning Commission within application # PC-20-22-SP*

3. Chapter III, Section 3.11 – Parking, Loading & Service Area Requirements:

- *This regulation is addressed in the Site Plan Review decision by the Planning Commission within application # PC-20-22-SP.* The Zoning Board of Adjustment further stipulates that the proposed parking on the eastern boundary shall be used only for employee or customer parking. All machinery and equipment shall be stored to the south on the warehouse structure on the proposed gravel.

4. Chapter IV, Section 4.6 (A) – Contractor’s Yard

- (1) The Board of Adjustment as a condition of approval, requires a larger setback and buffer areas, and/or landscaping or screening as deemed necessary to protect neighboring properties, public rights-of-way, and water quality. Given the measurements of Ferry Road to the Right of Way, and the Right of Way to the structure, the Zoning Board requires a total of 58 feet from the center line of Ferry Road to the drip edge of the warehouse [See *Condition 11*]
- (2) An associated accessory structure may include an office, garage, or other enclosed area for the storage of equipment and materials. The maintenance and repair of vehicles and equipment shall be conducted only within an enclosed building or designated yard areas. No yard area was designated by the applicant. [See *Condition 12*]
- (3) The operation of the contractor's yard shall meet all performance standards under **Section 3.12**. The Board of Adjustment may, as a condition of approval, limit the hours of operation as appropriate.
- (4) There shall be no on-site storage of hazardous waste or materials. Fuel storage shall be limited to that needed for space heating and the operation of equipment and vehicles associated with the business, and meet the requirements of **Section 3.10**.

5. **Chapter V, Section 5.4 (C) – Conditional Use Review; General Standards**; stipulates that a proposed conditional use shall not result in an undue adverse effect on any of the following:
- b) The capacity of existing or planned community facilities and services:
 - There are no known adverse impacts with planned facilities or services. All details covered in the landscaping plan, lighting, parking plans, & site map will be constructed and used as presented.
 - c) Character of the area affected:
 - The property has operated as a de facto contractor's yard, as the Town's records indicated, dating back to March 2018. This permitting works to bring the property into compliance with its use.
 - d) Traffic on roads and highways in the vicinity:
 - This regulation is addressed in the Site Plan Review decision by the Planning Commission within application # PC-20-22-SP
 - e) Bylaws in effect:
 - There are no known further non-conformance issues with other Town Bylaws.
 - f) The use of renewable energy resources:
 - The property has preexisting solar panels to the south.

VI. **Decision and Conditions**

Based on the foregoing Findings of Fact and Conclusions of Law, Motion to approve Charlotte Ferry Properties, LLC & The Bullrock Corporation as presented on plans dated **15 April 2020** (ZBA-20-22-CU) was made, seconded, and approved subject to the following conditions:

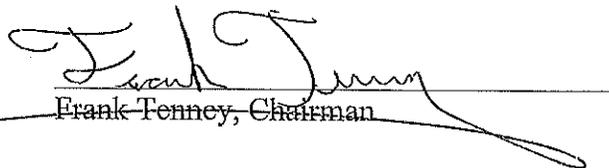
1. All debris, materials, and uncovered equipment stored upon property shall comply with the advisory and warning letters issued by the Zoning Administrator and be removed from the property.

2. There shall be no on-site storage of hazardous waste or materials. Fuel storage shall be limited to that needed for space heating and the operation of equipment and vehicles associated with the business, and shall meet the requirements of Section 3.10.
3. The dumping or outdoor storage of trash, garbage, radioactive waste, hazardous or corrosive chemicals, automobile junk or any refuse is prohibited except in solid or hazardous waste management facilities approved in accordance with these regulations (see Section 4.15) and state law.
4. The operation of the contractor's yard shall meet all performance standards under Section 3.12.
5. Hours of Operation shall be limited to 7 AM to 7 PM, except in the case of necessary winter road maintenance.
6. All proposed structures will be muted or dulled in color, to include proposed bunkers and the respective roof. The color shall minimize obstruction and reduce the visual impact on the character of the surrounding area.
7. The bunkers to the south of the parking spaces, referenced in condition 2, as shown on the Lamoureux & Dickinson site and utilities plan, sheet 1, will consist of side and back walls no higher than eight foot (8') tall concrete block bunkers (above natural grade) to be installed along the eastern perimeter of the property, along with an additional approximately 8' tall salt shed canopy on the northern most bunker. The bunkers shall be constructed as presented on the Site Plan Map. The combined length of the bunkers shall be no more than 90 feet with a depth of no more than 20 feet.
8. No material or equipment shall be stored anywhere on the property south of the final bunker.
9. The parking spaces on the east property line shall be limited in use to employee/passenger vehicles. Construction vehicles and equipment shall be located within or on the graveled area directly to the south of the proposed warehouse structure.
10. The warehouse structure shall be 26 feet 6 inches high as presented on plans dated 15 April 2020.

11. Given the distance from the center of Ferry Road to the edge of the right of way measures 33 feet, the proposed warehouse structure shall be setback 25 feet from the right of way, making a total of 58 feet from the center line of Ferry Road to the drip edge of the structure. [See **Section 4.6(A)(1)**]
12. The maintenance and repair of vehicles and equipment shall be conducted only within an enclosed building as no yard area was designated in the application. [See *Conclusions of Law (4)(2)*]

Vote: 5 Ayes. 0 Nays. 0 Absent.

Dated at Charlotte, Vermont this 8th day of July, 2020.


Frank Tenney, Chairman

Reconsideration: At the request of the applicant or interested parties, or on its own motion, the Board of Adjustment or Planning Commission may reopen a public hearing for reconsideration of findings, conclusions, or conditions of the decision. A request by the applicant or interested parties must be submitted to the Planning and Zoning Office within the 30-day appeal period in accordance with Section 9.6(B).

Appeals: Decisions of the Zoning Board of Adjustment and Planning Commission may be appealed to the Vermont Environmental Court by the applicant or an interested person who participated in the proceeding. Such appeals must be taken within 30 days of the date that the permit is issued, pursuant to 24 V.S.A. Section 4471 and Rule 5(b) of the Vermont Rules for Environmental Court Proceedings.

Additional Regulations and Permitting:

The owner and his/her representatives shall abide by the practices in the Vermont DEC Low Risk Site Handbook for Erosion Prevention and Sediment Control (2006) as necessary to ensure that sediment and sediment laden water does not leave the project parcel. Contact 802.540.1748 for a hard copy or you may visit: <http://dec.vermont.gov/watershed/stormwater>.

There may be additional State of Vermont and / or federal permits or approvals needed for the proposed development or use. The applicant may contact the Agency of Natural Resources Permit Specialist at 802.477.2241 for further information.

