

ZONING BOARD OF ADJUSTMENT

In Re: Conditional Use Review of 1046 Ethan Allen Highway

ZBA-15-06

OPINION

I. Introduction and Issues Presented

On August 18, 2015, Timothy Hunt, on behalf of Edgewater Center, LLC, submitted an application for Conditional Use Review for a proposed event facility. The property is located at 1046 Ethan Allen Highway. Public notice of the application was achieved by distributing the notice of hearing via The Citizen on September 24, 2015; posting the notice of hearing at the Town Hall, the Brick Store, Spear Street Store, the town website; and mailing a notice of the hearing to adjoining property owners. Notices were mailed to Evan Metropoulos, (00100-0890); Nordic Holstein, LLC (00100-1297) and; the Town of Charlotte, Jennifer Cole (00004-1492).

The application was considered by the Zoning Board of Adjustment at public hearings held on October 14, 2015, November 18, 2015, and December 16, 2015. The Zoning Board reviewed the application under the Charlotte Town Plan, 2013 and the Charlotte Land Use Regulations, 2010. Present at one or more the public hearings were the following members of the Zoning Board: Frank Tenney, Chair; Andrew Swayze, Vice Chair; Jonathan Fisher; Matthew Zucker; and Stuart Bennett.

II. Site Visit

A site visit was conducted at the property on October 14, 2015. Present at the site visit were Zoning Board members Frank Tenney, Mathew Zucker, Stuart Bennett, and Jonathan Fisher; Sam Ruggiano and Gregor Masefield, Ruggiano Architects; Tim Hunt and Martha Hunt, owners; and several other interested parties. During the site visit, the Ruggiano Architects presented a plan for an adaptive reuse of an existing historic barn as an event venue, and provided a tour of the physical orientation of the exterior property.

III. Hearing Attendance

Over the course of three public hearings, the following people attended and participated in the proceedings: Martha Hunt, Tim Hunt, Gregor Masefield, Sam Ruggiano, Evan

Metropoulous, Alexander LaRosa, Murphy, Sullivan & Kronk, attorney for Evan Metropoulous, Annie Kelton, Thomas Cosinuke, Alex Lorimer, Larry Hamilton, Jennifer Cole, Susan Smith, Lynne Jaunich, Douglas Webster, Fritz Tegatz, Jessie Bradley, Christina Moulton, Constantane Poulas, Jeff Hill, Dorothy Hill, Remo Pizzagalli, Janet Smith, Georgia Poulas, Mark Smith, RSG; Karl Washburn, RSG; Jeannine McCrumb, Charlotte Zoning Administrator; and Kevin Brown, Langrock, Sperry and Wool, attorney for Edgewater Center, LLC.

Evidence

During the course of the hearing, sworn testimony was taken from the people listed above and the following exhibits were entered into the record:

Exhibit A – Comments submitted by Dorothy Hill, dated October 14, 2015

Exhibit B- Letter from VT Agency of Food & Markets, June 26, 2015

Exhibit C- VLT 2015 Varney Barn Approval Letter, dated October 14, 2015

Exhibit D – PTV letter to Hunt, response to revised plan, dated May 26, 2015

Exhibit E- Memo the ZBA from Town Administrator, dated October 13, 2015

Exhibit F- Staff Report with attachments, dated October 14, 2015

Exhibit G- Written comments from Doug Webster, dated October 19, 2015

Exhibit H- Letter from MSK, dated November 12, 2015

Exhibit I- Letter of support from Father Cray, dated November 12, 2015

Exhibit J- VLT response to ZBA questions, dated November 17, 2015

Exhibit K- Traffic analysis submitted by RSG, dated November 18, 2015

Exhibit L- Applicant's response to ZBA questions, dated November 18, 2015

Exhibit M- Letter of support from Clark Hinsdale, received October 15, 2015

Exhibit N- Noise Assessment Addendum 1 and Addendum 2, dated November 16, 2015

Exhibit O- Charlotte Park and Wildlife Committee comments, dated December 15, 2014

Exhibit P- Applicant's response to Parking Easement, dated November 11, 2015

Exhibit Q- Letter from MSK regarding 11/17 ZBA meeting, dated December 9, 2015

Exhibit R- L& D Traffic Analysis Review, dated December 4, 2015

Exhibit S- Planner's Notes, dated December 15, 2015

Exhibit T- Letter from Shelburne Police, dated December 15, 2015

Exhibit U- Edgewater Center Summary, dated December 15, 2015

Exhibit V- Memo from RSG, dated November 18, 2015

IV. Findings of Fact

1. The property is owned by Edgewater Center, LLC and is located in the Route 7 Scenic Overlay District.
2. The property is 11.47 acres in size, and features a single-family residence, and a large barn, which are both listed on Vermont Historic Registry.
3. The Applicants are proposing to use the second story of the barn structure as an event space. The project is being reviewed as a Conditional use under Section 4.3 Adaptive Reuse of Historic Structure.
4. The ground floor of the barn will remain open for an agriculture use, as mandated by an easement held by the Vermont Land Trust. The ground floor of the barn cannot be accessed from the event area proposed on the first floor.
5. A 15ft x 58ft deck is proposed along the west side of the existing barn structure. The Applicant's plan also includes the reconstruction of the gambrel on the west side of the barn, a handicap ramp for entering the facility on the east side of the barn, a proposed storm-water retention pond on the north side of the property, a business sign, and the replacement/addition of doors and windows.
6. The proposed alterations to the barn were reviewed and approved by the Preservation Trust of Vermont.
7. In a letter dated November 18, 2015, the Applicants propose to hold events on 45 Fridays, 45 Saturdays, 45 Sundays, and 30 weekday events, for a total of 165 events per year. The Applicants offer that events will end by 10:00 p.m.
8. The proposed facility will have a maximum capacity of 150 people.
9. The proposed facility has approximately 64 on-site parking spaces, which includes 30 in the grass over flow area. Several existing trees will have to be removed to accommodate the proposed parking areas. Off-site parking with a shuttling service is proposed for events requiring additional parking.

10. The property is subject to several easements, including a Vermont Land Trust Easement, a Historical Preservation Trust Easement, and a parking/access easement to benefit the Town of Charlotte Park that abuts the Edgewater property.
11. The Applicants propose a partnership with Claussen's greenhouses for an agricultural operation on the property. The Applicants propose to grow vegetables, flowers, and herbs that will be used during events.
12. The Applicants provided a noise assessment produced by RSG. According to the sound study, if the interior sound level does not exceed 105 dBA, the project will conform to the 70 dBA decibel maximum allowed at the property lines, whether the doors on the west side of the barn are opened or closed.
13. As part of the application, the Applicant proposes to discontinue the current access to the property and construct a new access, which will be moved further to the north of the property, and be slightly wider. The Vermont Agency of Transportation issued a Letter of Intent preliminary approving the proposed modified access from Route 7.
14. The Applicant provided a traffic study produced by RSG.
15. The Town's Engineering Consultants, Lamoureux and Dickinson, reviewed the RSG traffic analysis and provided recommendations for safety road signs and additional lighting at the driveway entrance.
16. Several individuals who live in the vicinity of the proposed event space expressed concerns regarding traffic, noise, and preserving the character of the Scenic Overlay District.

V. Conclusions of Law

This application must comply with Tables 2.5 and Table 2.9 and Sections 3.11, 3.12, 3.13, 4.3, and 5.4. The provisions of these tables and sections not specifically addressed below are either inapplicable to this application or were unnecessary for the Zoning Board to reach its decision.

Table 2.9 Scenic Overlay District

Expansion of existing structures may be approved by the Board of Adjustment subject to conditional use review under Section 5.4, and findings that the proposed construction or expansion will have no undue adverse effect on scenic resources of the area and, to the greatest extent possible, the following standards are met:

(1) Structures are sited so that they do not protrude over the ridgeline

The Applicants propose to add a new 870 square foot deck on the west side of the barn, a sprinkler system, handicap accessible ramp, a precast concrete water storage tanks on the east side of the barn, a A/C handling unit and propane tank on the north end of the barn, and a business sign. The Applicants also propose to reconstruct a gambrel that has been removed from the west side of the barn. A space for a temporary tent/ canopy was designated on the west side of the barn between the gambrel and proposed deck. The Applicant has agreed to remove the temporary tent space from the proposed plan.

(2) Structures are sited in wooded areas or on field edges

Parking is proposed in the south-east corner of the parcel. The main parking is proposed to be screened with dwarf apple trees. The “grass overflow parking” proposed to be sited on the east side of the barn, along Route 7, does not include any new proposed screening. Screening will be reviewed by the Planning Commission under Section 5.5.

(3) Structures are sited in such a way that agricultural resources are not fragmented

All structures are situated on the south side of the parcel in the Vermont Land Trust’s designated “homestead complex,” with the exception of the storm-water retention pond and mound system. The new mound system will be located just below the ridge on the west side of the property and a new storm water retention pond is proposed to be sited on the north end of the barn. Approximately five acres in the north-west corner of the 11.5 acres parcel will remain open for agricultural use.

(4) New structures are sited in proximity to existing structures

The new deck, handicap ramps, and other proposed structures are situated in close proximity to the existing barn, with the exception of the proposed business sign, which is proposed to be located just outside of the 100ft U.S Route 7 right-of-way.

(5) Existing vegetation is retained and supplemented with new plantings compatible with existing vegetation to screen structures and minimize impacts on views from Route 7.

Existing trees located in the south-east corner of the property will have to be removed for the proposed parking area. The Applicant's landscaping plan indicates that new trees will be planted around the parking area to screen it from Route 7. There appears to be no proposed screening for the "grass overflow parking", which is proposed along Route 7 on the east side of the property.

(6) New driveways, roads, and parking areas are sited away from open fields, following existing contours to minimize the visual impact of cut and fill, and screened from Route 7, and sited in such a way that the agricultural resources are not fragmented or otherwise impacted.

A new curb cut and 24ft wide access is proposed north of the existing access. The new driveway will be used to access the parking area and loading/unloading areas located on the north side of the barn. The new driveway serves the existing structures and will not fragment agricultural resources.

Section 3.11 Parking, Loading, Service Area Requirements

The Applicants propose 64 parking spaces on-site. As depicted on sheet C-3, there are grass overflow parking spaces proposed to be located in the Town's 100ft setback of the Route 7 right-of-way and within the 50ft setback of the southerly property line. According to Chapter X, parking areas are not considered "structures" and are not subject to setback requirements. The Applicant proposes additional parking off-site with a shuttle service. It is unclear exactly where off-site parking will be located, though the Applicant's testified that they will utilize parking spaces at the Vermont Teddy Bear facility located south on Route 7 in Shelburne.

Section 3.12 Performance Standards

The following performance standards must be met and maintained for uses in all districts, except for agriculture and forestry, as measured at the property line. In determining compliance, the burden of proof shall fall on the applicant. The Town or a complainant shall be required to provide reasonable proof if challenging compliance after a permit has been issued. The Planning Commission or Board of Adjustment may require periodic reporting as a permit condition to confirm ongoing compliance. No use, under normal conditions, shall cause or result in:

(1) Noise

There are two components to the standards regarding noise: the proposed use shall not generate noise that exceeds 70 decibels at the property lines *or* a sound level that represents a significant increase in noise levels in the vicinity of the use. The Applicant has supplied a Noise Assessment Report submitted by Karl Washburn, Certified Senior Consultant for RSG, Inc. The report details both the local regulations and ACT 250 requirements. Addendum 2 of the report finds that in the most extreme noise generating conditions (indoor music level of 105 dBA, 50 loud talking people outside, and west doors of the facility open) the event facility is estimated to produce the highest sound level of 43 decibels at the 210 Snow Drift property lines, which falls below the 70 decibel maximum. The existing soundscape of the area is dominated by traffic on Route 7. The neighboring properties with the potential greatest noise impacts are the residences located at 210 Snow Drift Lane and 890 Ethan Allen Highway.

(2) Clearly apparent vibration

The Applicant does not expect any clearly apparent vibrations that would impact neighboring properties in regard to this project.

(3) Smoke, dust, noxious gases, or other forms of air pollution

The Applicant does not anticipate that the event facility will produce any smoke, dust, noxious gases, or other forms of air pollution.

(4) Releases of heat, cold, moisture, mist, fog or condensation

The Applicant does not anticipate any releases of heat, cold, moisture, mist, fog or condensation as part of this project.

(5) Electromagnetic disturbances or electronic transmissions or signals

The Applicant does not anticipate an electromagnetic disturbances or electronic transmissions or signals.

(6) Glare, lumen, light or reflection

The Applicant has submitted a complete lighting plan (see sheet A002). The proposed sign also includes lighting and should be reviewed in conjunction with the lighting plan. The Planning Commission will review the lighting plan under section 5.5 (7). All light shall be down shielded to prevent glare onto neighboring properties.

(7) Liquid or solid waste or refuse

The Applicant is proposing a new mound system and well, which is to be used exclusively by the event barn. At this point in time, no wastewater permitted has been obtained for the event facility system. The Applicant has also submitted an engineer approved storm-water plan, which includes a storm-water retention pond. See sheet C-4 & C-5. Dumpster and recycling receptacles are proposed to be located on the north end of the facility.

(8) Undue fire, safety, explosive, radioactive emission or other hazard

The Applicant maintains that the event facility will meet or exceed all current code requirements as they are related to fire and safety. Charlotte Fire and Rescue has reviewed the project and provided comments in a letter dated June 1st, 2015, which is included as an attachment to the Conditional Use application. The capacity of the facility will be limited to 150 occupants. The facility will not house explosive or radioactive materials

Section 3.13 Sign Requirements

The Applicants are proposing a 10' in height, free-standing, 3'-6"x 5'-6" sign. The sign is proposed to be located 25ft from the edge of the right-of-way. The sign will be illuminated by downcast gooseneck lighting. The Applicant noted that the sign will not exceed 20 square feet per side. The proposed dimensions of the sign conform to the requirements of Section 3.13 (D) and Section 3.13 (E).

Section 4.3 Adaptive Reuse of a Historic Structure

Applicability

Structures eligible for adaptive reuse are limited to those which are no less than 50 years old and listed in, or eligible for listing in, the Vermont Historic Sites and Structures Survey for the Town of Charlotte. A proposed business may be owned by a person other than the property owner. The Varney House and barn are sited in the Historic Sites and Structure Survey (see survey number 0403-44). The house was constructed in 1892 and the barn was constructed in 1893. The site is considered historically significant and is regulated by an easement with the Preservation Trust of Vermont. In a letter dated May 25, 2015, the Vermont Preservation Trust submitted written approval of the Applicant's restoration of the house and barn.

Application requirements

In addition to submission of a site plan, under adaptive reuse, the Applicant must submit elevation drawing depicting the existing and proposed renovations for all walls that are proposed to have alterations, including new or altered windows or doors (see sheets A 201 & A301).

Written documentation of structure's historical significance

The property's historical significance is documented in the Historic Sites and Structures Survey, as well as in the Preservation Trust of Vermont Easement Agreement.

Density

Adaptive reuses are not subject to district density requirement except with residential uses as provided in Section 4.4 (F)(3).

Size

An adaptive reuse is not subject to maximum size (square footage) requirements that may be required for particular uses by the district standards.

Uses

While an event barn is not specifically listed, under Section 4.3 (F) (15), a use similar to those listed in this section is admissible. Other similar uses allowed under this section are: community center, restaurant or snack bar, retail store, cultural facility, and private club. This section also allows for a combination of the aforementioned uses.

Conditional Use Standards

A structure intended for adaptive reuse which is accessory to a principal structure shall be retained in common ownership with the principal structure; however, the proposed business may be separately owned by a person other than the property owner.

There shall be adequate water and wastewater capacities to accommodate the proposed reuse in accordance with Section 3.16. The Applicant has designed a proposed wastewater system and well to serve the event barn. At this time, the Applicant has not received a WW permit to execute the proposed design.

Section 5.4 Conditional Use Review

- (1) The capacity of existing or planned community facilities and services.**

The Applicant has provided a letter from the CSSU School District which confirms that the project will not generate any school aged children. There is no proposed increase in occupancy to the property.

(2) Character of the area affected.

The Zoning Board shall consider the design, scale, location and intensity of the proposed development in terms of the character of the area. When analyzing the character of the area, the Zoning Board should take into account the purpose of the Route 7 Overlook District:

The purpose of the Route 7 Scenic Overlay District is to protect scenic resources within a designated area along the Route 7 corridor which are identified in the Charlotte Town Plan as special features. The scenic resources of this section of the corridor are significant because of the high level of public and private investment in conservation in this area, the openness of both easterly and westerly views to mountains, lake and fields, the importance of Route 7 as a major transportation artery and the additional importance of agricultural and historic resources in this area

The Zoning Board finds that as proposed, an event facility with a 150 occupant capacity, which operates 165 days a year, would have an adverse impact on the character of the area. While the Applicant has provided evidence that the facility can meet the bright-line rules of the regulations i.e. sound standards, traffic, etc., the Applicant has failed to sufficiently show how the facility as proposed would fit within the protected scenic district that where it is located. (The property is boarded by the protected Charlotte park land).

(3) Traffic on roads and highways in the vicinity

The Applicant has supplied a letter of intent from the Vermont Agency of Transportation regarding the new proposed access. The Agency of Transportation has stated that the change in access is allowed under their regulations but is subject to Act 250/local approval. The Applicant suggests using a shuttle service when overflow parking is needed, which may reduce traffic to the site. The Applicant has not provided details regarding location of the overflow parking or the shuttle service.

(4) Bylaws in effect

The ZBA notes that the application requires a wastewater permit for the construction of the system for the event facility.

(5) The use of renewable energy resources

The ZBA received no information on the use of renewable resources

VI. Decision

Subject to the conditions set forth below, the Zoning Board of Adjustment APPROVES this application as documented in the building plans and site plans. The Zoning Board of Adjustment hereby references the follow architectural and construction plans prepared by Ruggiano Engineering, inc, revision date August 14, 2015: A001, A002, A101, A102, A201, A301, C-1, C-2, C-3, C-4, C-5, & C-6.

1. A Zoning Permit shall be required prior to any change in use or the addition of a use.
2. Event attendees shall be limited to 125 per event, not including staff.
3. Events shall be limited to the second floor and loft area of the barn, and shall not start before 9 a.m., and shall terminate by 11:00 p.m. No food or beverages may be served after 10:30 p.m.
4. The ground floor of the barn shall remain open for agricultural use only, as per the Vermont Land Trust Easement.
5. The temporary tent area proposed on the west side of the barn is NOT approved.
6. A maximum of 60 events will be allowed to be held on the property per calendar year. An additional 20 events will be allowed to be held, providing they are held under the sponsorship or sanction of a Vermont-based non-profit organization or community group
7. There shall be no more than eight events held in any one month.
8. No amplified sounds or music shall be produced outside of the event barn. Doors of the event barn shall be closed by 9:00 p.m. when amplified music is produced, except for ingress and egress of the building.
9. Traffic control shall be used before, during, and after an event. The placement of traffic control signs, as recommended by the Town's engineer, Brian Trembeck, shall be reviewed by the Planning Commission under site plan review.

10. Parking shall be limited to 34 on-site parking spaces, this shall include staff parking. The grass over-flow parking is NOT approved. Approval for the event barn is valid only as long as off-site parking is in place that allocates the number of parking spaces as required under Table 3.1. On-site and off-site parking space locations shall be reviewed by the Planning Commission during site plan review
11. Before a zoning permit is issued, the Applicants must execute an agreement with the Town of Charlotte regarding the easement for the access to and parking for the Town Park, which shall be incorporated on the approved site plan, and recorded in the Charlotte Land Records.
12. The permittee shall have a continuing obligation to forthwith provide information requested by the Zoning Administrator in order to determine compliance with the conditions imposed by the Zoning Board of Adjustment in this conditional use approval. Including, but not limited to, random sound tests that may be requested by the Zoning Administrator for verification of continued compliance. All costs, including reasonable attorney fees, of the Town of Charlotte, incurred determining and enforcing the compliance will be forwarded to, and paid within 30 days of receipt by the Applicant.
13. The proposed business sign, lighting, landscaping, parking area locations, and trash area screening shall be reviewed by the Planning Commission under site plan review.
14. The Applicant is required to obtain any and all other necessary State and Local permits including, but not limited to, site plan review.
15. Any violation of the above conditions will constitute a forfeiture of this approval.

Vote: 5 Ayes; 0 Absent.

Dated at Charlotte, Vermont, this 28th day of January, 2016.

Frank Tenney, Chairman

NOTICE: This decision may be appealed to the Vermont Environmental Court by an interested person who participated in the proceeding(s) before the Zoning Board of Adjustment. Such appeal must be taken within 30 days of the date of this decision, pursuant to 24 V.S.A. § 4471 and Rule 5(b) of the Vermont Rules for Environmental Court Proceedings.