

**MORRISTOWN/MORRISVILLE
DEVELOPMENT REVIEW BOARD
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Minutes of October 14, 2004

Members Present: Gary Nolan, David Silverman, Carl Fortune, Paul Trudell, Theresa Breault, Jean Wickart

Members Absent: Carol Jennings

Recorder: Mark Leonard, Zoning Administrator

Guests: see attached list

Chairman Gary Nolan called the meeting to order at 7:34 PM. Theresa moved to approve the minutes of September 23, 2004. Jean seconded the motion and it passed unanimously.

WARNED HEARING: FRANK HUARD, CONDITIONAL USE, HOME BUSINESS, 399 GALLUP ROAD

Gary gave an overview of the application, which will be reviewed under sections 263, 460 and 632-635 of the zoning and subdivision bylaws. Theresa administered the sworn oath to Frank and Karen Huard (applicants) and Michael & Melinda Henry, Paul Griswold, Lisa Prive, Ken Kleinman, and Gert Lepine (interested parties).

Frank Huard described his home business operations. He keeps materials and equipment for his concrete contracting business on his property, about 300 feet from the nearest property lines out of view, moving these to and from job sites as required. He has one non-family member who works with him in this business. He usually heads out to the job site around 6-6:30 am and returns by 4:30 pm.

The other home business he conducts is firewood sales. He receives two truckloads of logs each year and cuts and splits the logs into cords for drying and delivery to his customers. He uses a chain saw and gas-powered log-splitter. He said he split 59 cords last year and expects to do something less than that this year. He does all the cutting, splitting, stacking, and deliveries himself. All work and materials associated with the firewood business is done outside in the same area where he keeps the materials for the concrete business. He does not run any equipment before 7 am during the week (Mon-Fri) or before 8 am on Saturdays and occasionally on Sundays.

Frank stated that he has two commercial-size pickups that he uses in both the concrete and firewood businesses. He has no concrete mixers or other heavy equipment. There is a single

access point to his property via a right of way across the adjacent Henry and Prive properties. He estimated that he makes no more than 3-4 round trips on any given day (usually fewer) for both operations.

Mike Henry submitted a copy of a letter he and several other property owners had sent to Mr Huard citing protective covenants that prohibit "commercial or industrial uses of any kind" on lots, including Mr Huard's, in the area. He expressed objections about noise from the log-splitter, chain saw, trucks and ATVs used in conjunction with these business activities and concerns about the additional traffic on the right of way and along Gallup Road generated by Mr Huard's activities.

Lisa Prive expressed traffic safety concerns, noting that children and other pedestrians frequently walk along what she described as a quiet, rural road. She noted that the portion of Gallup Road west of the Westerman property (which includes hers and the Huards) is a private road that her husband has plowed for the benefit of all the property owners in that area and she voiced concern about potential added road maintenance costs from the non-residential use.

Theresa asked Frank if it might be possible to move some of the operations into a shed or other similar structure to cut down on the noise. Frank said that was not feasible. She asked if he was aware of the protective covenants when he purchased the property; he said he was.

Paul Griswold, who lives at the corner of Gallup and Stagecoach Roads, said he was too far away from the Huards to hear or see any of the business activities, but that he was definitely aware of the additional traffic they generated. He said the trucks were large and louder than cars and other non-commercial vehicles you would normally see on the road. He noted that small children walk from the bus stop at Stagecoach Road up Gallup Road.

Ken Kleinman submitted a letter listing his concerns which echoed previous comments. The ZA also reported he had received a call from another adjacent property owner (Athena and Petros Georgiadis) expressing the same general objections to noise and traffic.

Gert Lepine, whose property adjoins the Huards, spoke in support of the Huards. She said that she had always made her land accessible to everyone, including users of the VAST trail (which cross the Huard property) which generates a fair amount of noise when in use. She supports the Huards' efforts to be productive, tax-paying citizens, noting that they work hard in a traditional rural Vermont activity to make a living. She expressed dismay that the neighbors were unwilling to accommodate the Huards' business activities.

Jean remarked that she was aware of some objections to VAST trail users due to the noise they generated.

David expressed the wish that the neighbors could work out an agreement that recognized the needs and rights of all concerned.

Paul moved that the board recess the hearing to conduct a site walk of the Huard property. David seconded the motion and it passed unanimously. The site walk was scheduled for October 23rd at 9:00 am.

FILE COPY

WARNED HEARING: RCC ATLANTIC, CONDITIONAL USE: ADDITIONAL ANTENNAS ON EXISTING TELECOMMUNICATIONS TOWER, WHITE BIRCH ROAD

Gary stated that this was a continuation of a hearing that was recessed on September 23, 2004. As Gary was absent from that hearing, David would chair this continuation. Theresa administered the sworn oath to Will Dodge, David Rydelek, Ben Chang, and Vijay Madhav (representing the applicant) and Glen Waller, Gary Carlson, interested parties.

David noted that the hearing had been recessed pending receipt of additional information and for the board members to have an opportunity to view other similar antennas in nearby towns. Several members said they had viewed the antennas on the tower at the Stowe Police Department. David said he had driven up to Cote Hill and observed the current antenna configuration from several vantage points. He remarked that the new antennas could be painted grey to blend with the tower and existing antennas.

The ZA corrected his comments from the earlier hearing regarding a court decision on the original tower permit application. He said that the Morristown Board of Adjustment (the DRB's predecessor) had approved that application and several interested parties had appealed that approval to Superior Court. The court upheld the Board's approval, with conditions that the tower and building not be painted in a way that enhances their visibility, that there be no light of any type on the tower, that the tower and building be surrounded by a protective fence, and that the tower be built as low to the ground as possible to achieve the desired results. The ZA stated his opinion that the current application complied with those conditions.

Will Dodge of Downs, Rachlin, Martin (DRM) PLLC presented additional digital photo simulations of the tower with the current whip antennas and with the proposed six panel antennas as viewed from several vantage points. He noted the tower owner had previously offered space on the tower for use by public safety agencies and said that the Morristown Fire Department had expressed some interest in that possibility.

David Rydelek of RCC Atlantic noted that the proposed replacement power generator will be quieter than the existing generator and would only operate when commercial power to the site was lost.

Gary Carlson asked about the size and operating specifications of the panels. These are included in the application. He expressed concern about the prospect of more antennas on the tower. He asked if any other sites were considered for these antennas. Will Dodge responded that they had not considered other sites as this site was necessary to serve their current coverage area and the new antennas are not intended to expand or change their service area.

Paul asked what the applicant would do if some future technology made their antennas obsolete. Will Dodge responded that the need for these antennas or others would likely remain indefinitely, but that any obsolete equipment would be removed as required by the zoning bylaws.

Glen Waller echoed Gary Carlson's concerns about proliferating antennas and perhaps additional towers at the site. Ben Chang of RCC Atlantic explained that other cellular phone service providers, public service agencies, and radio transmitters on different frequencies could be potential users. He added that structural limits would restrict those options on this tower,

noting that the proposed replacement antennas would put the tower's load capacity at 98%.

Don Avery, who had not been sworn in, also expressed concerns that more antennas would inevitably be mounted on the tower and recalled that during the hearings on the tower permit, neighbors had been assured that no additional towers or antennas would go up on the site. He questioned the applicant's standing to represent the tower property owner in this matter. Will Dodge replied that the property owner had signed the conditional use permit application.

Theresa moved to approve the application as presented with the condition that the applicant paint the antennas and support arms grey to match the tower and other existing antennas so as to minimize any increase in the visibility of the tower. Jean seconded the motion and it passed unanimously.

OTHER BUSINESS:

The ZA advised that the applicant for a lot line adjustment and variance at 80 George Street had requested a postponement of the hearing. The Board agreed to reschedule and re-warn the hearing upon receipt of all necessary information.

Chairman Nolan reviewed and signed the final survey plat of the Keith Thompson 2-lot subdivision on Elmore Mountain Road.

The Board reviewed the testimony from the September 9, 2004 Conditional Use permit review of the Perras home business on Earl Grey Road. A site walk of the property attended by four board members and the ZA was held on September 23, 2004. Adjoining property owners Linda and John Kristan provided written comments dated September 21, 2004 to supplement their comments at the public hearing. The Board concluded that while the business has expanded since its inception, it still falls within the permit conditions of approval and the requirements of Section 460 for a home business. Addressing the question of the number of trucks involved in the business, the Board concluded that the bylaws only regulate the volume of traffic from a home business, not a specific number of vehicles. It found that the average number of trips per day from this business is not greater than what would normally be expected in this neighborhood. Regarding the Kristans' concern over the number of non-family member employees allowed, the Board felt that the eight non-family member employees are not 'on-site' employees as they conduct their duties (driving trucks) off site, other than when departing or returning. Any future allegations of permit violations should be addressed to the ZA for enforcement action as deemed necessary.

On a motion by Carl, seconded by Jean, the meeting was adjourned at 9:00 PM.

Respectfully submitted,
Mark Leonard, Recorder

Minutes approved on: 10/28/04 TB/PS