

Board of Zoning Appeals

Meeting Minutes

September 2, 2020

Held in-person and over Zoom Meeting App due to Covid-19 Restrictions

Call to order and Roll Call

Oath of Office

Gregg Morelock administered the Oath of Office to Brianne Schneckenberger, who is taking the position vacated by Jon Horton.

Members Present: Brianne Schneckenberger, Dan Vail, Grant Adams, Steve Duhamel

Members Absent: Cory Karn

Others Present: Ryan Crum, Tonya Galbreath, Gregg Morelock, Jennifer Pack

Agenda Considerations

None

Approval of Minutes

After review, Mr. Adams motioned to approve the Minutes from the August 5, 2020 meeting. Mr. Vail seconded the motion. The motion carried 3/0 Ms. Schneckenberger abstained.

Old Business

BZA-20-006 – Yorkshire Landscaping’s request for a Special Exception

Mr. Rodney Richardson presenting for the petitioner, Yorkshire Landscaping. Mr. Richardson asked the board to approve a Special Exception to allow Yorkshire Landscaping to operate on approximately 8 acres near the corner of CR 600 W and CR 500 N. The land was previously owned by an equine stable. The two acres accessible off CR 500 N would not be used. The landscaping business would operate from the 6.2 acres accessible from CR 600 W. The business does not use chemicals or pesticides. It owns 7 company trucks that would be stored in or behind the large barn on the property. The employees arrive between 7:30 am and 8:00 am, park behind the small barn, load up the company trucks, and then leave for the worksites about 8:30 am.

A house is on the property along CR 600 W. Yorkshire Landscaping plans to fix up and rent out the house and install fencing along the back of the home lots to screen the view of the landscaping business.

The two barns would be painted gray and have gravel around them. Equipment and materials would be stored in the barns. 6.2 acres, house, large barn & small barn. Fix up home and rent it out

The petitioners have read the report sent by Staff and agree to all stipulations.

Mr. Adams asked how much mulch might be stored behind the large barn. Mr. Richardson replied that for short periods it would be about 15'-20', but that they only order enough mulch to complete jobs. There might be small amounts of left-over mulch from time to time.

Mr. Vail stated that the questions he had at last month's meeting were answered tonight.

Mr. Crum presented the Staff report. Staff believes that at this time, this is a good use of the land. In the future, the Town envisions this area as a commercial and industrial corridor, but that is many years in the future and would take a developer that would want to put together different parcels and owners. Currently, this business is in keeping with the what is already there. Staff supports a two-year special exception with the ability to ask for one-year extensions until there is interest in the development of the area.

There were no public comments.

Voice Vote for Special Exception

Request: Special Exception to allow a commercial contracting business

Conditions to granting this Special Exception:

- (1) The small barn shall be painted gray to match the large barn.
- (2) The existing ground sign will be removed, and a new ground sign shall not be installed.
- (3) There will be no additional curb-cuts provided for this Special Exception.
- (4) The maneuvering/gravel areas near the barns shall be limited as shown on Exhibit A. No other portions of the property shall be turned into gravel areas.
- (5) Landscape materials shall only be stored, fully behind, the large barn. Material storage shall be limited to no more than three (3) piles of rock, gravel, mulch type materials, measuring no taller than 8' in height, and temporary storage of landscape plantings.
- (6) Vehicles shall only be parked and/or stored inside the large barn, behind the large barn, or behind the small barn. Trailers shall only be parked and/or stored inside the large barn or

behind the large barn. Under no circumstance shall any storage of the following occur: (a) no vehicles or trailers for any business other than the business operating under this Special Exception, (b) no more than twelve (12) vehicles and six (6) trailers shall be stored on-site, outside of the large barn, at any time, and (c) furthermore no more than eight (8) of the permitted vehicles shall be parked behind the small barn at any time.

(7) Landscaping will be installed, and maintained, along the west façade of the house

(8) Any equipment or machinery kept on site must be parked or stored inside the large barn.

(9) The area denoted as grass on Exhibit A shall be turned into turf grass and maintained as turf grass.

(10) Fencing as shown on exhibit A shall be constructed.

Mr. Vail made a motion that if the special exception is approved, it be for two years and subject to the above listed conditions. Mr. Adams seconded. The motion passed 4/0.

Questions on the Ballot:

1. The proposed use is listed as a Special Exception Use by the Zoning Ordinance for the District this property is located in. *See Appendix A of the Zoning Ordinance.*

4/0

2. The special exception can be served with adequate utilities, access roads, drainage, and other necessary facilities.

4/0

3. The special exception shall not involve any element or cause any condition that may be dangerous, injurious, or noxious to any other property or persons, and shall comply with the development standards of this Ordinance.

4/0

4. The special exception shall be sorted, oriented, and landscaped to produce harmonious relationship of buildings and grounds to adjacent buildings and properties.

4/0

5. The special exception shall produce a total visual impressions and environment which is consistent with the environment of the neighborhood.

4/0

6. The special exception shall organize vehicular access and parking to minimize traffic congestion in the neighborhood.

4/0

7. The special exception shall preserve the purpose of the Zoning Ordinance.

4/0

Mr. Adams made a motion to approve the Special Exception. Mr. Vail seconded the motion. The motion passed 4/0.

BZA-20-007 – Daniel’s Vineyard’s request for a Special Exception to allow for legal, non-conforming accessory structures

Mr. Vail recused himself from the discussion because he owns property boarding Daniel’s Vineyard.

Chris Kothe presented on behalf of the petitioner and asked that Daniels’ Vineyard be allowed to construct 2 storage structures for farm equipment. The two barns are positioned to be far as far off Carroll Road as possible and, after discussions with neighboring property owners, have moved the barns to be 100 feet from the East property line. Neither building will be wired for electricity or have plumbing. They will both have gravel floors. The exterior color scheme will match the primary building. He stated that they will be standard farm equipment buildings with sliding doors and no windows.

Mr. Adams asked how closely the storage buildings will match the primary building. Mr. Kothe said that the storage building will look similar. They will have metal siding in the same color, but not the brick wrap the primary building has. He reminded the board that these buildings will not be seen by the public.

Mr. Crum presented the Staff Report, stating that the report shows the revised location of the second building, which was adjusted per the neighbors’ request.

Mr. Crum also presented the conditions for the Special Exception and suggested adding the text “Any existing tree shall not be removed” in Condition 1 and removing a reference to an exhibit.

Conditions to grant this Special Exception:

(1) Following construction of the accessory structures trailers, semi-trucks, tractors, bush hogs, construction equipment, farm machinery, materials, farm equipment, other commercial vehicles, and the like shall not be stored or allowed to remain on-site unless they are located inside of the proposed structures or in the winery building. For the purposes of this condition, commercial vehicles shall include any vehicle in excess of 16,000 pounds. The only exception to this condition is for vehicles that are “docked” at the winery building.

(2) A maneuvering area generally located near the south and east ends of the proposed structures, as shown on the attached Exhibit, shall be constructed of concrete, asphalt, or gravel and kept in good repair. This area shall not be increased in size without the approval of the Planning & Building Dept., and under no circumstance shall be closer than 20' to the east property line. The area between the east edge of this area and the property line shall be returned to a natural area featuring grass and evergreen tree plantings, planted every 20' O.C. Trees shall be a minimum of 6' tall at time of planting. Any existing trees shall not be removed.

(3) The proposed buildings shall not house equipment, vehicles, machinery, materials, or the like for any other business, operation, or use, other than in support of the on-site agricultural operation and the on-site winery operation. Furthermore, these structures shall not be converted to any other use. They must remain storage buildings.

(4) The siding and roof colors shall be complimentary to the primary structure and shall comply with the residential exterior material color restrictions of the Town Zoning Ordinance.

Mr. Adams made a motion that if the Special Exception be approved, that it be subject to the conditions as amended by Mr. Crum. Ms. Schneckenberger seconded the motion. The motion passed 3/0/1 with Mr. Vail abstaining.

Public Comments

Mr. Crum announced that Richard Henderson and the Vails had sent letters of support for the project.

John Price, a McCordsville resident, requested that the petition be denied or delayed. He said that Daniel's Vineyard has failed to comply with previous commitments made with the existing property. He said that Daniel's Vineyard had committed to building sidewalks and that the primary building was originally intended to be a storage facility and that it does not meet architectural standards. Mr. Price requested the Board at minimum delay approval for these two storage buildings until the previous commitments are met.

Blair Borrmann, a resident with property bordering the Daniel's Vineyard property, asked if why the storage barns are so far away from the primary building and asked that they be moved closer. Mr. Borrmann stated that he is worried about lighting on the structures.

Mr. Kothe responded that there will be no exterior lighting on buildings. He said the locations were picked because it's already a gravel pad, there is a clear runway from storage buildings into ag fields, and this position won't disrupt middle tree line. The location is the easiest from a land development perspective.

Mr. Crum state that the requirements for Danial's Vineyard to meet architectural standards for the primary building is seven years and that time has not yet expired. He is also hesitant to tie the sidewalk, an unrelated item, to this request and asked Mr. Morelock for guidance.

Mr. Morelock said that because the Town has been working with Danial's Vineyard on the sidewalk issue and they are still within the timeframe for establishing a sidewalk, the requirement should not be added to the Conditions for this position.

Ms. Schneckenberger made a motion to add "The structures shall not have exterior lighting." Mr. Adams seconded the motion. The motion passed 3/0/1 with Mr. Vail abstaining.

Questions on the Ballot:

1. The proposed use is listed as a Special Exception Use by the Zoning Ordinance for the District this property is located in. *See Appendix A of the Zoning Ordinance.*

4/0

2. The special exception can be served with adequate utilities, access roads, drainage, and other necessary facilities.

4/0

3. The special exception shall not involve any element or cause any condition that may be dangerous, injurious, or noxious to any other property or persons, and shall comply with the development standards of this Ordinance.

4/0

4. The special exception shall be sorted, oriented, and landscaped to produce harmonious relationship of buildings and grounds to adjacent buildings and properties.

4/0

5. The special exception shall produce a total visual impressions and environment which is consistent with the environment of the neighborhood.

4/0

6. The special exception shall organize vehicular access and parking to minimize traffic congestion in the neighborhood.

4/0

7. The special exception shall preserve the purpose of the Zoning Ordinance.

4/0

Mr. Adamas made a motion to approve the Special Exception. Ms. Schneckenberger seconded the motion. The motion passed 3/0/1 with Mr. Vail abstaining.

Mr. Duhamel asked about the timeframe for the sidewalk. Mr. Crum said that the Town and Danial's Vineyard had partnered on a grant application through the State. The grant program was indefinitely suspended due to the Covid-19 pandemic. He said that the design for the sidewalk is complete and Staff is working with Daniel's Vineyard on a new timeline.

New Business

BZA-20-009 Midwest Maintenance's request for approval of a Special Exception and a Development Standards Variance for signage

Justin Schleicher appeared on behalf of the petitioner. The petitioner bought the gas station and convenience store on the Northeast corner of CR 600 W and W Broadway. The petitioner requests permission to alter the existing sign structure and put signage on the gas pump canopy. Mr. Schleicher stated that the plans to modify with existing sign structure will make it shorter than what it currently is and described the cabinets and illuminate plan. He then described the color scheme for the canopy and said that only the Shell logo on the canopy would be illuminated.

Mr. Crum presented the Staff report. He explained that the existing freestanding sign is a legal non-conforming structure and needs approval for any changes. Staff is has a few conditions for approval, but is in support of the plan.

Mr. Crum explained that current code does not allow signage on accessory structures such as the canopy. Staff know that it is something that gas stations need and when working with the petitioner used the sign package for the Meijer gas station as a template.

Conditions to Grant Special Exception

(1) The petitioner commits to installing landscaping, in accordance with the Town's current Sign Ordinance, around the ground sign.

(2) The EMB shall only feature fuel pricing in no more than two colors. The pricing shall not flash, twirl, spin, or make movements of any kind.

(3) The maximum daytime light level shall be 4000 NIT and maximum nighttime light level shall be 495 NIT.

(4) The petitioner commits to painting the fuel canopy posts a color (neutral hue/tone) complimentary to the primary structure.

Conditions to Grant Variance

(1) The petitioner commits to painting the fuel canopy posts a color (neutral hue/tone) complimentary to the primary structure.

(2) The fuel center canopy signage is contingent upon the neutral color fascia as shown.

Mr. Vail made a motion that if the Variance and Special Exceptions are granted, they meet the conditions presented. M. Schneckenberger seconded the motion. The motion passed 4/0

There was no comment from the public.

Questions on the Variance Ballot

1. General Welfare: The approval will not be injurious to the public health, safety, morals, and general welfare of the community.

4/0

2. Adjacent Property: The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner; and

4/0

3. Practical Difficulty: The strict application of the terms of this (Zoning) Ordinance will result in a practical difficulty in the use of the property. This situation shall not be self-imposed, nor be based on a perceived reduction of, or restriction on, economic gain.

4/0

Mr. Adams made a motion to approve the Variance request. Mr. Vail seconded the motion. The motion passed 4/0.

Questions on the Special Exception Ballot

1. The proposed use is listed as a Special Exception Use by the Zoning Ordinance for the District this property is located in. *See Appendix A of the Zoning Ordinance.*

4/0

2. The special exception can be served with adequate utilities, access roads, drainage, and other necessary facilities.

4/0

3. The special exception shall not involve any element or cause any condition that may be dangerous, injurious, or noxious to any other property or persons, and shall comply with the development standards of this Ordinance.

4/0

4. The special exception shall be sorted, oriented, and landscaped to produce harmonious relationship of buildings and grounds to adjacent buildings and properties.

4/0

5. The special exception shall produce a total visual impressions and environment which is consistent with the environment of the neighborhood.

4/0

6. The special exception shall organize vehicular access and parking to minimize traffic congestion in the neighborhood.

4/0

7. The special exception shall preserve the purpose of the Zoning Ordinance.

4/0

Ms. Schneckenberger made a motion to approve the Special Exception as presented. Mr. Adams seconded the motion. The motion passed 4/0.

BZA-20-010 – McCordsville Investments’ request to appeal an Administrative Decision

The petitioner, Gurinder Singh, appeared before the Board to appeal the Notice of Violation order received. He stated that he bought the parcel in question in 2014 as an investment to sell to developers. Mr. Singh claims that the cost of mowing is too expensive, especially now since he has lost income due to the Covid-19 pandemic. Mr. Singh states that he has a farmer that is interested in renting the land and farming it. Mr. Singh is requesting a waiver of the ordinance until he can get a special exception to allow agriculture on the parcel and sign an agreement with a farmer to farm the land.

Mr. Vail asked if Mr. Singh had had conversations with any farmers and if there was any interest. Mr. Singh answered yes to both questions.

Mr. Crum stated that the Town’s Unwholesome Environment Ordinance was adopted in 2012. Staff is charged with enforcing the ordinance as written. The Ordinance does not give Staff the authority to waive the high weeds and grass clause, which is why this is before the Board now.

Staff did not offer an opinion on the matter.

Mr. Duhamel asked why this issue has not come up before. Mr. Crum said that letters have been sent but were not received. Staff cannot take enforcement action unless the letters are received. Ms. Galbreath remarked that high weeds and grass have been remediated periodically throughout the six years Mr. Singh has owned the property.

Mr. Singh noted that it was too big of a property to just mow and he had asked in 2014 to allow for agricultural use. Mr. Duhamel asked why that wasn’t granted at that time. Mr. Crum replied that he and Mr. Singh disagree on this point – Mr. Crum believes the option of a Special Exception was explained to Mr. Singh, but Mr. Singh does not remember the discussion including that option. Mr. Singh also noted that a farmer had this discussion with the Town, not himself.

Mr. Singh expressed his displeasure about what he believes is the Town blocking his efforts to sell to developers.

Mr. Morelock stated that Mr. Singh is missing the difference between difference between cooperation and capitulation and that the focus of this discussion needs to be on the agenda items.

Mr. Duhamel asked what penalties were involved in enforcing the Ordinance. Mr. Morelock stated that the time for letter sending is past, that now the Town would begin enforcement action unless the Board approves the Appeal.

Mr. Duhamel asked what the cost is to mow the land. Mr. Morelock said that the Town doesn't have that information as Mr. Singh has not given any documentation, only quoted amounts between \$5,000 and \$20,000.

Mr. Vail stated that if the waiver were given, it would need to include language stating that the parts of the land not tillable still need to be made maintained and in compliance with the Ordinance.

Mr. Duhamel asked Mr. Singh if he was agreeable to that stipulation. Mr. Singh agreed, but asked for a waiver until Spring to find a farmer.

Mr. Duhamel stated that the Board cannot speak to what happened before, they can only deal with what is before them.

Mr. Duhamel noted that the Special Exception request is on the agenda and tabled the waiver discussion until after the Special Exception request had been decided.

BZA-20-011 – McCordsville Investments' request for approval of a Special Exception to allow an agricultural land use.

Mr. Crum stated that Staff is in support of this special exception.

There was no public comment.

Voice Vote for Special Exception

Request: Special Exception to allow an agricultural use.

Conditions to granting this variance:

- (1) Structures associated with the agricultural land use shall not be permitted.
- (2) The petitioner commits to mowing the portions of the property not covered by crop in accordance with the Town's Unwholesome Environmental Conditions Ordinance.
- (3) The petitioner commits to bring the signage on-site into compliance with the Town's Sign Ordinance. This means the removal of one of the two temporary signs on the property.
- (4) Crops shall not be planted over any utility or drainage easements.

Mr. Vail made a motion stating if the Special Exception is approved it be subject to conditions stated. Ms. Schneckenberger seconded the motion. The motion passed 3/0. Mr. Adams lost his connection to the meeting and was not present.

Questions on the ballot:

1. The proposed use is listed as a Special Exception Use by the Zoning Ordinance for the District this property is located in. See Appendix A of the Zoning Ordinance.

3/0

2. The special exception can be served with adequate utilities, access roads, drainage, and other necessary facilities.

3/0

3. The special exception shall not involve any element or cause any condition that may be dangerous, injurious, or noxious to any other property or persons, and shall comply with the development standards of this Ordinance.

3/0

4. The special exception shall be sorted, oriented, and landscaped to produce harmonious relationship of buildings and grounds to adjacent buildings and properties.

3/0

5. The special exception shall produce a total visual impressions and environment which is consistent with the environment of the neighborhood.

3/0

6. The special exception shall organize vehicular access and parking to minimize traffic congestion in the neighborhood.

3/0

7. The special exception shall preserve the purpose of the Zoning Ordinance.

3/0

Mr. Vail made a motion to approve the Special Exception. Ms. Schneckenberger seconded the motion. The motion passed 3/0

BZA-20-010 Redirect

Mr. Duhamel reopened the discussion on Mr. Gurinder's Appeal.

Ms. Schneckenberger opened a discussion on the time frame the Board could expect a farmer to start clearing the land and if it could still be done this year. Mr. Vail stated that if it just clearing the land, then it can be done. He stated the average first frost is mid-October. Mr. Crum noted that there are bushes and brush 3"-6" tall in spots. Mr. Vail stated that if the land is going to be farmed, it needs to be cleared now to get it in shape for planting in the Spring. Mr. Duhamel opened a discussion about a timeframe as a condition of the waiver. Ms. Galbraith asked if there was a commitment from the farmer. Mr. Singh replied that he's only spoken to a farmer. Mr. Duhamel suggested a timeframe of 45 days to secure a commitment.

Mr. Singh asked for and received additional time to address the board. He expressed his displeasure, saying that the Board was not cooperating with him by giving a short timeframe to secure a commitment. He asked for a waiver until Spring.

Mr. Duhamel stated that the board is trying to compromise. The Board is giving Mr. Singh time to secure a farmer. The Board can deny the appeal or approve the appeal with conditions. The Board is trying to deal with something that should have been brought before the board six years ago.

Mr. Morelock pointed out that both Mr. Vail and Mr. Singh have agreed that certain parts of the parcel will not be able to be farmed. Those parts will still need to be mowed and kept in compliance with the Ordinance.

Ms. Schneckenberger noted that if Mr. Singh is able to find a farmer, it will lower his cost to mow the remaining untillable areas. She stated that 45 days is reasonable.

Ms. Schneckenberger made motion to waive the requirements of the Unwholesome Environment provision for 45 days. Mr. Vail seconded the motion. The motion passed 3/0.

Mr. Morelock addressed Mr. Singh, stating that he has 45 days to secure a farmer or otherwise bring the parcel into compliance. If action is not taken in those 45 days, enforcement action will proceed. Mr. Crum noted that Mr. Singh waived his hand as he walked out of the Council Chambers.

Announcements

None

Adjournment

There being no further business, the meeting was adjourned.