

**Development Review Board Minutes
Town Offices, New Haven, Vermont
January 5, 2015**

Members &

Alternate Present: Kathy Barrett, Tim Bouton, Jim Gallott, Donald Johnston, Tom Fyles-Alternate

Members &

Alternates Absent: Donna Blaise, Steve Dupoise, Mike Sweeney, Victor Bolduc-Alternate

Staff: Dave Wetmore, Zoning Administrator

Guests: Mike Lee, Eben Punderson Esq., Josh Gallagher, Fred Cushman, Steve Delphia, Steven Volk

Tim Bouton, Chair, called the January 5, 2015 Development Review Board (DRB) meeting to order at 7:15 PM. Alternate Tom Fyles will be voting tonight.

The Chair explained to the attending public and Board members they are here tonight to listen to the testimony to make a decision on whether the Notice of Violation delivered to Mike Lee is correct or not correct. Not whether Mike Lee is allowed to doing something or not do something; but was the decision the Zoning Administrator (ZA) made a correct decision.

The attending public was sworn in.

Visitors Business – none

Public Hearing

a) *2013DRB-11-APZA-Mike Lee appeal of ZA NOV continued from 1/20/014, 3/17/2014, 5/5/2014, 6//2014, 7/1/014, 10/6/014 and 11/17/014.*

The Chair outlined the testimony procedure that will be followed this evening and indicated that the DRB has 45 days to deliver a decision.

Zoning Administrator Testimony:

A copy of the Notice of Zoning Violation was distributed

- An investigation of Mike Lee's property began in 2011
- Three (3) violations were identified
 - Violation #1 Article II, Section 240
 - Violation #2, Article 111, Section 312 – Zoning Permit
 - Violation #3, Article III, Section 350 – Site Plan Approval

*Items in violation under Violation #1:***1. Fill**

Violation of Article III, Section 312

Permit was issued in 1999

A permit is only good for two years

Mike Lee did not apply for or received an extension of the permit (at dispute was whether he even asked for an extension)

Violation of Article V, Section 52

Thousands and thousands of yards of fill have been brought onto the property

- Correspondence presented:
 - July 30, 2013 From Dave Wetmore to Michael Lee
 - August 19, 2013 From Mike Lee to Dave Wetmore
 - September 12, 2013 From Dave Wetmore to Mike Lee
- The near southern boundary slope of property exceeds the 1:2 ratio as per Section 560
- Site plan from Mr. Barnard, shows that the slopes are excessive on the back side of the property
- Fairly steep slope and a large amount of fill has been brought in.

Construction of an elevated equipment display area

- No permit was issued for the elevated equipment display area
- Google Earth map for 2003 is the only photo that shows display of equipment along Route 7
- Photos were presented showing that the elevated equipment display area is within the 100 foot setback

Changes in the parking area overall site

- 2006 site plan did show the changes in the parking out front, but did not show the overall site parking changes that have recently taken place.

Property used as a junkyard

- Google Earth Maps images dated: 7/19/2003; 7/15/2006; 7/5/2008; 7/5/2009; 9/1/2011; 5/19/2012 were distributed
- These maps appear to show 3, 4, 5, various piles scattered throughout the site
- Numerous cars and trucks on property

Storage/use of 20+ trailers on property

- As per Google Earth Maps – they show the increase of trailers on site
- Mike Lee purchased the property in 1995 and the 15 year statute of limitations has expired on some of the trailers
- Since 2003 the number of trailers has expanded
- No permit records to show use of trailers on site

Copies of the permit history of the property was distributed

Copy of October 9, 2013 Planning Commission (PC) minutes was presented

- During this meeting Dave Wetmore raised concerns with the business activities being conducted by Mike Lee. The PC indicated that the site plan needs to be amended due to the site changes made and since this is not completed Mike Lee is in violation of the Bylaws.

Items in violation under Violation #2:

As per the definition of Section 312

- ZA 's opinions that the work untaken on Mike Lee's property qualifies as land development

Items in violation under Violation #3:

As per Section 350

- Site plan approval is required especially as it concerns Sections 351 and 352
- It is the ZA's knowledge there are no dwellings on this site.

Comments on these violations are based on the By-laws as adopted as far back as 1990.

- Retail Store is an enclosed retail store and does not address exterior display
- 2006 the Board acknowledged that display of the storage sheds that were being sold were not classified as a Change of Use
- Mike Lee purchased the property in 1995
 - At that time a 200 foot setback was in force
 - Neighboring business was required to comply with this setback

Remedies to the violations:

- ZA asked that Mike Lee discontinue land development on this property
- Mike Lee has tried to remedy the violations with a new Site Plan

Mike Lee with Eben Punderson Esq. Testimony:

1. Elevated Display Area:

- Property purchased 1995
- Where the current display area is now, at time of purchase it was the remains of a house foundation
 - A picture was presented showing the property with the house
- House foundation was level to Route 7 was approximately 50 feet off of Route 7
- Over time filled in the foundation hole with dirt and bluestone
- The current elevation is similar to where it was at the time of property purchase
- Last addition/fill was done more than 6 yrs. ago
- In 2010 fill was placed about the edges of the foundation and seeded
 - A ditch was also created between the display area and the parking area
 - A picture was presented that showed the display area in 2010 with gravel that was put on prior to 2010
 - The gravel raised the elevation about 6 inches higher
- Fall of 1999 the display area was mostly dirt
- 1997 display of equipment began
- Lee indicated that the 2006 Google Earth picture showed equipment display
- Equipment display has been done for 15/16 years
- 2003 the Town agreed to the display of storage sheds
 - Lee didn't feel a change of use was need to retail sheds since he was currently displaying equipment
- A picture was presented - 1997 photo shows equipment on the grounds
- Equipment that has been out for display has been continually displayed year round

Josh Gallagher testimony— worked part time for Mike Lee up to 5 years ago. Josh transported equipment from the shop to the display area since 1999. The display area was elevated during this time

Steven Volk testimony - lawn mowers have been display for long time. Steven worked a couple of summers assembling equipment and parked equipment on the display area.

Steve Delphia testimony – as long as he remembers he has seen equipment out there. At least 10 yrs. if not more. He has never worked for Mike Lee.

Fred Cushman testimony – equipment out there since Mike Lee has owned the property. He knows that the display area is elevated because in the past the snow would drift over the area

- Picture presented taken May 1997 shows the berm (equipment area)
- Equipment has been displayed not just in the display area but continuously over the front lawn
- 2011 was the first notice by the Town that there was an issue
- Prior dealings with ZA's didn't result in any violations
- A prior ZA did mention that the light pedestals needed to be indicated on the site plan

2. Fill

- Fill has been continually brought in since 1995
- A permit was obtained
- 1997 a permit obtained for building construction and fill around the building
- Permit 17-99 obtained to continue the fill project
- 1 to 2 yrs. later Mike Lee spoke with Keith Hall. Hall indicated that a permit was not needed as it was an ongoing project
- 2011 Mike Lee was told that the permit expired and to stop bringing fill
 - Lee did not stop bringing in fill
- 2013 Notice of Violation was issued to stopped bringing in fill
- 2011-2013 the fill slopes are in compliance to the 1:2 ratio
- Equipment has never been buried

3. Junk Equipment

- It is equipment in various stages of repair
- Stored outside
- Doesn't sell used parts
- All equipment is fixed and sold
- Old trucks were hauled off
- The piles of "junk" is really wood pallets
- Trade in of equipment is done

4. Trailers

- Trailers were brought onto the property in 1995
- Trailers not pictured on Google Earth may have been stored at Pike's
- Can't remember the number of trailers brought on in 1995
- Thinks are 24 (?) trailers on site now
 - Of these same trailers didn't know how many have been on site more than 15 years
- 2000 had 15 to 18 trailers
 - Acquired more trailers as needed
- 2006 site plan review the PC discussed trailers
 - Lee was adamant about not removing trailers
- Lee feels there were over 18 trailers on site in 2006

The witnesses agreed that 15 or 20 trailers have been on site for a long time but no one had an accurate account of number

5. Parking Area

- 2010 dug out in front of the door, installed swale between the driveway and the display area

- Driveway was lowered by 2 feet
- Steve Delphia – didn't change the parking area just made it better to eliminate flooding of the building

Items in violation under Violation #2 and #3

- Eben Punderson indicated that the testimony applied to all the violations

Rebuttal was presented by Dave Wetmore, Zoning Administrator

Rebuttal was presented by Mike Lee and Eben Punderson, Esq.

The DRB requested a copy of the 1990 and the 2007 Zoning By-laws as it pertains to the Highway Commercial section

Gallott made the motion to close the hearing

Johnston seconded

Discussion – none

Vote: Yes – 5 (Barrett, Bouton, Fyles, Gallott, Johnston)

No – 0

Abstention – 0

Motion carried

This hearing is closed

DRB Business

1. Sketch plan reviews – none

2. Review Minutes – December 15, 2014

A correction was made changing the word slate to slatted

Barrett made the motion to accept the minutes as corrected

Gallott seconded

Discussion – none

Vote: Yes – 5 (Barrett, Bouton, Fyles, Gallott, Johnston)

No – 0

Abstention – 0

Motion carried

3. Review and Sign Decisions – none

4. Review for compliance and sign final plats – none

5. Correspondence

12/16/2014 – John Madden complaint of summons

6. New Business

Added to the agenda: date set and place to be determined for Deliberative Session

Monday, January 12, 2015 @ 7:00 PM was the date set

7. Old Business

Open Meeting Law handouts were distributed to the DRB

Barrett made the motion to adjourn

Fyles seconded

Discussion – none

Vote: Yes – 5 (Barrett, Bouton, Fyles, Gallott, Johnston)

No – 0

Abstention – 0

Motion carried

The meeting was adjourned at 9:20 PM

Respectfully Submitted By

Karen Gallott



Tim Bouton, Chair



Jim Gallott, Vice Chair



Donald Johnston, Secretary



Kathy Barrett



Tom Fyles

