



Town of Panton Chartered 1761

3176 Jersey Street • Panton, VT 05491-9331

Ph: 802.475.2333 • Fax: 802.475.2785

PANTON PLANNING COMMISSION AND DEVELOPMENT REVIEW BOARD

Meeting Minutes Thursday, May 13, 2021

In attendance via Zoom: DRB/PC Chair David Raphael, DRB/PC Vice-Chair Mary Rudd, DRB/PC Member Kirsten De La Cruz, DRB/PC Member Brad Dewey, DRB/PC Member Bethanie Brady Farrell, DRB/PC Member Bob Hartenstein, DRB/PC Member Annie Hopper, Zoning Administrator David Martini, Clerk/Minute Taker Maggie McCormick, Dan Morris, Rob Z, Matt Mertens, Michael Morris, Dan via phone, Eliza Larocca, Erle LaBounty Carol and Wes John, Rob Zindman, Zindm, Rich's iPad, Paul Stanis, Howard Hall, Steve Weber, Kimberly Song.

Development Review Board Meeting Agenda:

1. David called the meeting to order at 7:01 p.m.
2. Approve minutes from April meeting.
 - a. Kirsten moved to approve the minutes of the April meeting as written. Bethanie seconded. All in favor; the motion passed.
3. David convened the Hearing for the request of Steve and Judy Weber of 1085 Lake Road for a Variance from size requirements for a pre-existing non-permitted Accessory Dwelling Unit (ADU) at 7:03 p.m.
 - a. Mary Rudd recused herself as an abutter.
 - b. David swore in Steve Weber.
 - c. David Martini provided application details:
 - i. This issue was brought to light as Mr. Weber wants to build an additional garage to free space beneath existing ADU building.
 - ii. Build date unknown, no permit on record.
 - iii. State septic permit received.
 - iv. This ADU is not the required 200 feet from the main house.
 - v. Unit is approximately 1444 sq ft which exceeds the square footage allowed for and ADU based on square footage of main house.
 - vi. A variance is required because the ADU is a non-conforming use.
 - vii. A hardship exists but was not created by applicant because applicant didn't build the unit and did not know the ADU was not constructed in compliance with zoning regulations.
 - d. Mr. Weber testified:
 - i. He purchased property in 2018 and believes the ADU was built around 1993, unaware that it was non-compliant. He's trying to make it right.
 - e. Bob asked if this matter had been heard previously.
 - i. Mr. Weber answered that at that time, the proposed garage was planned in a different location.

- f. David noted that a variance must meet certain requirements: there are unique or unusual circumstances; that there is pre-existing, compliant development; that denial of the variance creates unnecessary hardship, that the variance will not alter character of the neighborhood, and that the variance should provide only the minimum relief possible. All these conditions exist in this case.
 - g. No additional comments or questions were presented.
 - h. David stated that there is a complete file including the application, a wastewater permit for both buildings, site and floor plans, and the report of the Zoning Administrator (ZA).
 - i. Brad moved to grant a variance to Mr. and Mrs. Weber to bring an ADU into compliance and used in that manner. Bethanie seconded. All in favor; the motion passed.
4. David convened the Hearing for the Request of Eliza La Rocca and Erle LaBounty to operate a Home Occupation/Business to manufacture and operate a chocolate products facility in an Accessory Structure at 280 Adams Ferry Road at 7:13 p.m.
- a. David recused himself as an interested party and gave meeting proceedings to Mary at 7:14 p.m.
 - b. David Martini provided application details:
 - i. 12 acre property has ADU on stilts, with a tenant on second floor. Applicants want to enclose ground floor and build commercial kitchen there and convert the second floor for chocolate product production.
 - ii. No retail.
 - iii. Occasional tasting event of 30 or fewer people.
 - iv. The impact on Adams Ferry Rd traffic with additional UPS and other delivery-service type trucks
 - c. Mary swore in Elize LaRocca, Erle LaBounty, Michael Morris, and Stevie Morris
 - d. Mary acknowledged receipt of written communication from Stevie and Michael Morris about their concerns.
 - e. Mary reviewed requirements of a Home Occupation 3:
 - i. Small industry or service-type operation.
 - ii. No more than 5 non-resident employees permitted, character of neighborhood.
 - iii. Carried out within residence or accessory building.
 - iv. Examples include small manufacturing, auto repair, professional office or other use deemed appropriate by the DRB and doesn't alter the character of the neighborhood.
 - f. Mary reviewed each of the criteria with response from Eliza.
 - i. Five additional employees other than the residents of the home.
 - Eliza: 3 max employees other than themselves based on consideration of limitations; expect to add two part-time employees near-term.
 - 1. Annie Hopper asked for and received clarification that the 5 employee maximum does not include residents.
 - ii. Carried on in dwelling or accessory building.
 - Eliza: business will be conducted entirely in the accessory building.
 - iii. Enough parking as deemed by DRB in rear or side lot, at least 2 spots for residents.
 - Eliza: we don't have parking "spots" but space in the driveway near the barn and a circle. We currently park four cars on the property without using the driveway by the barn.
 - iv. DRB will set outside noise and light levels, sign limitations, or other conditions to ensure the character of the neighborhood doesn't change. Any signs must be in character with neighborhood as determined by the DRB.
 - Eliza: We only plan one sign directing delivery trucks that will only be visible once on the property. We might install a sign at the driveway, if needed, that specifies "deliveries only," and not encourage retail traffic.
 - v. ADU must be at least 200 feet from nearest neighboring residence.

1. Mary noted that Darryl Hatch is closest neighbor in the next house to the east and is safely 200 feet away.
Eliza: We don't know the distance, but no neighboring homes are visible from the accessory building.
2. Kirsten asked for and received confirmation that the requirement is 200 feet to residence versus to property line.
- vi. No significant increase to traffic.
Eliza: We need to find out if our vendors will deliver to this address. Most deliveries by UPS or FedEx. Only box trucks delivers cream delivery. Handful of times/year larger than box truck Have plans to use other businesses in Vergennes for larger delivery.
- vii. All materials stored inside or screened for neighbors.
Eliza: Our biggest output is recyclables. We are happy to follow any conditions the DRB might set. Will use the former garage/solarium for recyclable material storage.
- viii. State regulations met
 - g. Mary noted that as an existing business, Farmhouse Chocolates has met this criterion.
- ix. Home occupation substantially change character of the neighborhood
 - h. Mary noted that a Home Occupation requires conditional use permit, which is why this hearing is being conducted.
 - i. Michael stated that:
 - He appreciated being heard as an abutter.
 - Wants to support success of home business occupation.
 - Wants to ensure it doesn't stray from neighborhood character
 - Asked about using the existing building versus expanding footprint of building.
 - Questioned adding a manufacturing business to a residential neighborhood and operating it out of a residence.
 - j. Bob asked if deliveries in trucks larger than a box truck be able to turn around or deliver out in the road.
Eliza: Unsure if larger trucks would be able to turn around and stated that delivery in the road would not be ideal. If turn-around not possible, they will take these deliveries at other local businesses.
 - k. Bob stated that there should be signage to avoid neighbors being inconvenienced by people looking for the business.
Kirsten agreed that an identifying sign would be desirable.
Eliza: they were thinking of a sign as undesirable and will be happy to put one up.
 - l. Bethanie reminded the board that Eliza and Erle's application expressed a desire to keep the business scale manageable.
Eliza: We won't make promises that they have no plans to grow at all. The word "manufacturer" has connotation of industrial operations, but our type of business is more commonly classified as "food processor" with a small commercial kitchen similar to a catering operation. We Don't intend to create anything industrial. We are looking to create efficiency by increased volume and sustainability by moving it their home.
 - m. Bob asked about their plans to close in downstairs and add an overhang.
Eliza: the closed in upstairs is 625 sq. ft. We will not change the footprint, but plan to enclose the "stilted" lower part of the building and the open deck on the second floor. We would like to install a concrete pad and overhang that would protrude 4' to 6' from the building on the back side of the building. These modifications meet the zoning setback requirements.

- n. Stevie Morris commented that she wants to understand the Town’s definition of Home Occupation and the DRB’s interpretation of the character of a business. Stated that Adams Ferry Road is very quiet and is concerned about turning a dwelling into commercial use. She worried that this would set a precedent and that the business’ success/growth could result in larger scale/more impact. She noted that there are no comparable business in Town. This is the opposite of usual growth progression from home operation to commercial operation since the business is moving from a commercial space to home space.
 - Kirsten stated that she understands commercial space to home space because it’s not financially viable to rent commercial space for a small business and that she doesn’t believe this use will increase traffic appreciably.
 - Annie stated that she agreed with Kirsten and that having a business at home is part of “rural character.”
 - Mary noted that the board’s recent approval of an Allen Road home business is very similar.
- o. Bob moved to go into deliberative session. Kirsten seconded. All in favor; non-board members were moved to Zoom waiting room and the DRB/PC entered deliberative session at 7:41 p.m.
- p. Annie moved to exit the deliberative session. Bob seconded. All in favor, the board returned to open session at approximately 7:55 p.m.

The applicants were asked the following additional questions:

- Q. Will business hours be established for deliveries?
A. Yes. 8 to 5 or 9 to 5.
- Q. Do you currently advertise retail sales in Bristol?
A. No retail sign, but business sign generates some walk-in business that represents less than 10% of their sales. They expected retail business to decrease in new location.
- Q. When will you be making chocolate?
A. Chocolate production will be “invisible” to the public due to indoor/quiet nature of production. The hours they are open for deliveries and doing production hours would not look any different in terms of lights or noise.
- Q. What decibel of noise output does production produce?
A. Decibel level not known, but fans and ventilation are no louder than a weed whacker and will only be run intermittently as needed.
Eliza clarified that any tasting events they might have are currently speculative and that events are not central to their business model, they would simply like the option in the future to host collaborative tastings with other local food producers.
- Q. How early is an early start for Farmhouse Chocolates?
A. 6 a.m.
- q. Mary requested a motion to Approve Farmhouse Chocolates Variance with the following conditions:
 - A sign identifying the business will be erected at the road in accordance with zoning regulations
 - The septic system is complaint for additional use.
 - Delivery hours are set at M- F from 8 to 5.
 - There will be no more than 4 events/year, each with no more than 30 attendees and courtesy notice is to be given to neighbors.
 - There will be no advertising for retail hours.
 - The restrictions on noise levels at the property line will be observed.
 - There are no production hours restrictions.

Bob moved to approve the variance for Farmhouse Chocolates with the conditions outlined. Brad seconded. All in favor; the variance was granted and the hearing ended at 8:33 p.m.

5. Review of the Zoning Administrators Report of a Zoning Violation on Staton Drive for any action, as appropriate, to be taken by the DRB regarding the conditions and/or situation cited by the Zoning Administrator.

- a. David noted that issues with 404 Staton Drive have been brought to the Board's attention before and there is disagreement among Staton Drive property owners about work done without a proper permit. The ZA issued notice of violation based on the finding that the work done constitutes change in land use. David noted that photos of the property, the ZA's notice of violation, Mr. Martinez's email reply to the notice of violation, affidavit from Mr. Martinez, and letter from Mr. Martinez's attorney have all be received and filed with the application.
- b. The ZA felt that the history of the property owner's previous actions should be recorded.
- c. David noted that the ZA might have a conflict of interest as a resident of Staton Drive. He also noted that this notice of violation involves a pre-existing drainage line over which the DRB has no jurisdiction and for which there is no permit on record. He stated that the DRB has no province unless the issue is the result of construction.
- d. The ZA reiterated that he felt it was important that the board know the history and David allowed him to proceed.
- e. ZA recounted that property owner had:
 - i. Added 4 bedrooms without appropriate wastewater permit.
 - ii. Added unpermitted entrance room attached to the basement and had not obtained a certificate of occupancy for the addition to the home. 4 BR with no septic
- f. David stated that the DRB was currently considering only the Notice of Violation (NoV) and that other/past activities were not applicable and the DRB would act on the NoV but no other matter involving 404 Staton Drive.
- g. ZA reported that contractors for Mr. Martinez dug up the drainage line on the John's property, blocked the line, and attached to the existing line without a permit. ZA acknowledged that the application for this work have been misplaced at Town Hall, yet Mr. Martinez did not inquire about the status of the permit and proceeded without one.

David opened the floor to public comment.

- h. Matt Mertens stated that he has found Mr. Martinez very up front and communicative about his plans and wanted to remediate the drainage issues via the least expensive option which was installing a pipe. The drainage work undertaken by Mr. Martinez is complete, but no drainage pipe for the neighborhood has been installed. He does not have flooding on his property but has seen flooding at the John property. Mr. Martinez did not need a permit. Feels that some Staton Drive residents want to make an issue of any project on Staton Drive.
- i. Wes John stated there are four homes are currently involved: theirs, and three others at higher elevation than theirs. He reported that the drainage pipe has been sealed off but the seal leaks. The pit that the pipe empties into has been filled in so the pipe isn't visible. The Johns have flooding on their property whenever there is significant rainfall. The pump for their septic system is within 100' of the pipe and was flooded and caused a septic backup.
- j. Carol John said she is discouraged that DRB is not helping.
 - i. David answered that the DRB is taking this issue very seriously and empathizes with the Johns but that the DRB cannot act outside of authority or legal exposure.

Kirsten moved to go into deliberative session. Annie seconded. All in favor; the board went into deliberative session at 8:58 p.m.

Brad moved to exit deliberative session. Bob seconded. All in favor; the board moved back to open session at 9:11 p.m.

- k. David announced that in deliberative session the DRB determined the NoV is not a citable violation, is dismissing the NoV and will not pursue the matter any further.
 - l. The ZA stated he would have another action against Mr. Martinez, who obtained a state permit to install curtain drains and completely work beyond the scope of that permit. curtain drains and David called for a motion to adjourn the meeting.
 - m. The ZA stated he feels the DRB has abrogated its duties in this matter.
 - n. Wes John requested a copy of the letter sent to the DRB by Mr. Martinez's attorney on May 13. David agreed to send him a copy via email.
 - o. David repeated the DRB decision that the NoV is not a citable violation, because the complaint centers on an existing line versus new construction.
 - p. Bob noted he has seen several new sheds constructed or under construction around Town and asked if they had been permitted.
 - i. ZA replied that he has not seen nor been informed of any non-permitted outbuilding and will act on any that are reported to him.
6. David cited the late hour, noted that the PC agenda contained no time-sensitive issues, and requested a motion to adjourn the meeting,
- a. Annie moved to adjourn the meeting. Bob seconded. All in favor; the meeting was Move to adjourned at 9:17 p.m.

Respectfully submitted,

Maggie McCormick
Clerk-Treasurer