

**Approved
MINUTES
Zoning Board of Adjustment
June 9, 2021**

**THIS MEETING WAS CONDUCTED IN COMPLIANCE WITH
THE VERMONT OPEN MEETING LAW
WITH ELECTRONIC PARTICIPATION**

Present: Steve Lagasse, Chris Lowe, Tom Franklin, Scott Snyder, Dennis Brown Selectboard Liaison, and Jo-Ann Ells, Zoning Administrator

Absent: Alice Maleski

Public Hearing

Steve Lagasse read the “Remote Public Meeting Script for Opening a Meeting” related to Act 92.

Steve took a roll call, explained the interested party rule, and administered the oath.

1. Application #05-21 by Marcia Gauvin (owner/applicant) for approval of a setback waiver under section 260-52 of the Hartford Zoning Regulations for a shed, lot 42-0073-000, 24 Hazen Street, White River Junction, in a R-1M zoning district.

Marcia Gauvin was present.

Jo-Ann Ells gave an overview of the application as outlined in the draft Findings of Fact.

It was noted that the shed had recently been moved off the property line, but not to the proposed location.

Scott asked if there was a clear pathway around the shed in the proposed location. Marcia stated that she believed there was and noted that the parking can be expanded to the north into the garden if needed. Jo-Ann noted that the Fire Marshal had reviewed the proposed location.

Abutter Susan Jenks stated that she did not have any concerns with the application.

Steve moved to close the Public Hearing. Tom seconded and the Public Hearing was closed.

Tom moved to approve the application as proposed. Steve seconded and the motion passed unanimously.

2. Application #06-21 by Execusuite, LLC (owner/applicant) for Conditional Use Approval under section 260-16 of the Hartford Zoning Regulations for a self-storage facility, 136 South Main Street, lot 46-0030-000, White River Junction, in a Planned Development.

Tim Sidore and Jim Wasser were present.

Jo-Ann gave an overview of the application as outlined in the draft Findings of Fact noting one correction.

Tim noted that the storage units will benefit the new dwelling units at 132 South Main Street and the surrounding community.

Jim reviewed the proposed egress stairs.

Tom asked if the units would be available to the general public. Tim confirmed that they would, but noted they would be marketed to their tenants.

It was noted that access from the stairs on the north west side of the building would be through the garden to Gates Street.

Steve asked where the proposed parking spaces were located. Jim noted that they are to the south of the loading dock.

Steve asked about lighting. Jo-Ann explained that the property is a Planned Development (PD) and that a lighting plan was reviewed and approved as part of the approval of the PD.

There was no public comment.

Steve moved to close the Public Hearing. Tom seconded and the Public Hearing was closed.

Chris moved to approve the application with the noted correction. Steve seconded and the motion passed unanimously.

3. Application #04-21 by Brian Bowen, Dale Perzanowski and Meredith Liben (applicants) requesting that the Zoning Board of Adjustment determine if Earl Bushor has lost his Non-conforming Use status under section 260-54 of the Zoning Regulations for a Motor Vehicle Repair Facility at 1198 Maple Street, lot 32-0042-001, Hartford Village. (Continued from May 5, 2021)

Brian Bowen, Dale Perzanowski, Meredith Liben, Kristy Thompson, Earl Bushor, Peter Decato Janine Teeter and Christine Roy were present.

Steve noted that the question before the Board is if Earl Bushor lost his non-conforming use status to operate a motor vehicle repair facility. He added that any questions about other uses should be directly to the Zoning Administrator for enforcement.

Steve read Finding #7 as follows “The applicants have requested that the Zoning Board of Adjustment determine if Mr. Bushor lost his nonconforming use status under section 260-54 for failure to operate the Motor Vehicle Repair Facility between 2015 and March of 2020.”

Steve noted that the Board would like to hear evidence from both sides.

Brian Bowden explained that he moved into the abutting condominium complex in 2015. He stated that there was very little traffic to Mr. Bushor's property until the spring of 2020 when Action Trucking started to use the site 24/7. He explained that he spoke with Christine Roy from Action Trucking and was told that they transfer US Mail. He noted that when this was discussed with Jo-Ann the traffic decreased. He concluded by stating that he wanted clarification if the non-conforming use was lost due to inactivity over more than a 180-day period.

Steve noted that the use of the lot to transfer mail is not before the Board, only the question is the non-conforming use as outlined in Finding #7.

Jo-Ann read the definition of Motor Vehicle Repair Facility as follows "Establishment for the repair of new and used motor vehicles, trailers, motor homes, and boats. Motor vehicle repair facilities may include body shops."

Brian asked if a car was different than a truck under the definition of motor vehicle. Jo-Ann noted that they are both motor vehicles.

Brian noted that he believes that currently the primary use of the lot is to dispatch vehicles and the secondary use is to repair the fleet of vehicles.

Kristy Thompson stated that she has pictures of vehicles being parked for days and up to a week on the site, she has seen vehicles at the post office and then on site, and noted that starting in 2018 for 1 ½ years she walked her dog in the vicinity and there was no activity.

Dale Perzanowski stated that the lot was not being used as a motor vehicle repair facility currently. He noted that some vehicles are only there for about 5 minutes, and there has been a period when the driveway was not plowed after every snowstorm.

Meredith Liben commented that she walked her dogs back there and there was no activity in 2018 when she moved in, just parked vehicles.

Brian noted that while Mr. Bushor notes he uses one bay to service his vehicles, the majority of the activity is related to Action trucking and the transfer of mail.

Kristy noted that a trailer has been parked on site for over a week and since there is no motor it cannot be there for motor vehicle repairs.

Chris asked if the Board could request business records.

Jo-Ann suggested tabling the question until the property owner presented his side.

Brian noted that for 3 of the 5 years he has lived next door there has been no motor vehicle repair.

Peter Decato reviewed some of the written evidence that had been submitted to the Board. He reviewed photographs of the interior of the building and suggested that the tools and materials

inside were indication of motor vehicle repair.

Peter stated that Earl will affirm that he has continuously used the building for motor vehicle repair. He noted that the trailer that is on site is there for repair as a hub is broken.

Peter asked Earl a line series of questions based on section 260-54 (7) of the Zoning Regulations and Earl stated that:

- Physical changes to the building have been limited to general maintenance including painting and fixing a broken window
- The building houses machinery, tools, parts, oil, drum, torches a wash bay and jacks. He added that dispatch is from the White River Post office.
- The use of the property has not changed. Motor vehicle repair has been done by himself and now in addition by Action Trucking.
- Rent is collected from Action Trucking.
- Expenses include taxes, insurance, and utilities.
- The use now is consistent with past use by Mowers News.
- The use has not merely been a token use.
- Action Trucking has 1-2 mechanics.

Peter introduced Christine Roy who is employed by Action Trucking. Christine stated that Action Trucking started doing repairs in the building in 2018 and continues to do so today. She noted that the number of repairs fluctuates, and reviewed some recent repairs that were done. She stated that use has never ceased for more than 180 days.

Chris noted that he would like to see some hard evidence to support the reported activity. Tom and Scott agreed.

Steve moved that the Board closed the hearing and enter deliberative session until 8:35 PM. Chris seconded and the motion passed.

The Board reconvened at 8:35PM.

Jo-Ann explained that the Board had decided the following:

- They would conduct a site visit on Wednesday, June 23rd at 4PM.
- The hearing would be continued to Wednesday, June 23rd at 6PM.
- The following information would be emailed to Jo-Ann by Friday June 18th by Mr. Bushor or his Attorney to support use of the building as a motor vehicle repair facility:
 - A copy of the lease with Action Trucking (monthly rent need not be disclosed)
 - Evidence of continued insurance
 - Any receipts for work done
 - Revenues and expenses
 - Spread sheet of repairs
 - Any other information deemed relevant by Mr. Bushor to support his case

Steve moved to continue the Hearing as outlined above. Scott seconded and the motion passed.

Administrative Matters

1. Minutes

Steve moved to approve the minutes of May 5, 2021. Tom seconded, and the motion passed unanimously.

2. Projects that received administrative approval

Jo-Ann reviewed two administrative permits:

- Northern Stage- Outside Theater
- King Arthur Baking- tents

3. Availability for the next Public Hearing (July 14th)

All Board members anticipated being available for the July hearing.

4. Public Comment

None

Adjournment

At 8:55 p.m. Steve moved to adjourn. Tom seconded, and the motion passed unanimously.

Respectively Submitted,

Alice Maleski, Clerk