

**Town of Warren
Development Review Board
Findings of Fact and Notice of Decision
Appeal of Zoning Violation
#2022-10-VOL Elwell**

The Warren Zoning Administrator issued a notice of violation to Shane and Kelley Elwell regarding property listed in the Warren Grand list parcel id # 417184-000 that lies between Buck/Fern and Rabbit Roads, sent by certified return receipt mail dated October 11, 2022, received and signed by the homeowner October 17, 2022. A hand delivered copy of the letter was served by the Warren Town Constable on October 12, 2022. In the notice of violation, the Zoning Administrator alleged that the Elwells had committed two violations of the Warren Land Use & Development Regulations (the "Regulations"):

Article 2, Table 2.6 Alpine Village Residential District prohibits Commercial Uses. The business activity does not meet the standards of a Home Based Business [Article 4, Sec. 4.8] nor that of an Industry [Article 4, Sec. 49]. and,

Article 3 General Regulations, Sec.3.4, Erosion Control & Development on Steep Slopes, disallows the addition or removal of earth without a permit. Please also see the definition of "*Land Development*" in *Article 10 Definitions*. [Articles as found in the Warren Land Use and Development Regulations adopted by the Warren Select Board on March 25, 2008 and last amended November 11, 2012.]

The Elwells appealed the violation and a duly warned hearing was held on **Monday November 7, 2022** and attended by DRB members Chris Behn, Megan Moffroid, Peter Monte (Chair), Chris Noone and Jeff Schoellkopf. Others attending were Ruth Robbins (ZA), MRVTV and Carol Chamberlin (Recording Secretary). The public in attendance is as follows: Aurora Abad, George Abad, Titus Abad, Darcy Acker, Glenn Acker, Dana Adams, Carla Bell, Devon Bayley, Gene Bifano, Tyler Bryant, Kristin Brynga, Chris Butsch, Monica Cahilly, Rebecca Campbell, Eric Carlson, Rose Chaffee-Cohen, Miya Cline, Wrenn Compere, Jim Crafts, Pam Crafts, Patricia Cuenin, David DeFreest, Jonathan Draudt, Matt Dry, Erin Elwell, Ethan Elwell, Kelley Elwell, Shane Elwell, Chris Fish, Martha Gold, Randy Graves, Jeannie Guardino, Melanie Hall, Halsey, Wade Hastings, Lisa Johnson, JK VT, Sarah Kersock, Dick King, Shannon Konricka, Jenniflower Laker, Stephanie LaRock, Emily Leighty, Levi Leighty, Lisa Loomis, Hugh McGowan, Evonne Meranus, Jordan Meranus, Taylor Mikell, Dave Millard, Tom Murdough, Dylan Nichols, Erica Nichols, Suzie Pennington, Kit Perreault, Andrea Petrasch, Jake Petrasch, John Pitrowiski, Betsy Pitt, Jenn Pitt, Lisa Readie, Robert Readie, Douglas Ricketts, Bill Robinson, Charlotte Robinson, George Robinson, Joe Robinson, Rebecca Robinson, Virginia Roth, Amantha Rouleau, Jared Rouleau, Ron Ryan, B Sabin, Sarah, Jonathan Seitz, Gary Smith, Giles Smith, Harold Stevens, Totally NotJamo, Unknown, Harry Wagner, Stacey Weston, Kyla Westover, Avilda Whittle, Howard Whittle

The appeal was continued to a second hearing held on **Monday December 19, 2022**. DRB members in attendance were Chris Behn, Megan Moffroid, Peter Monte (Chair) and Jeff Schoellkopf. Others in attendance were Ruth Robbins (ZA), MRVTV and Carol Chamberlin (Recording Secretary). The public in attendance is as follows: George Abad, Glenn Acker, Kelly Aremburg, Carla Bell, Rebecca Campbell, Eric Carlson, Miya Cline, Patricia Cuenin, Jonathan Draudt, Joe Dubee, Erin Elwell, Kelley Elwell, Shane Elwell, Dylan Frazer, Martha Gold, Jeannie Guardino, Sarah Kersock, Dick King, Brian LaFond, Amanda Locker, Bruce Lofgren, Hugh McGowan, Evonne Meranus, Jordan Meranus, R Nelson, Erica Nichols, Pam/Jim, Alice Peal, Christopher Perreault, Darcy Perreault-Acker, Pitrowiski, Jenn Pitt, Nick Pizzale, Melissa Purdy, , Jamal Reid, Erik Reisner, Charlotte Robinson, George Robinson, Joe Robinson, Amantha Rouleau, Jared Rouleau, , Gary Smith, Marv Theurer, Harry Wagner, Katie Westhelle, Kyla Westover, Luke Youmell.

Findings of Fact and Conclusions of Law:

DISCUSSION REGARDING DRIVEWAY CONSTRUCTION

Findings:

1. The appellants did grade soil, change land contours, import fill, and do other work to construct a driveway (called herein the "Driveway Construction"). A considerable amount of appellants' Driveway Construction, involving more than 1000 square feet in area, was done on slopes that exceeds 15 percent gradient.
2. The work appellants did to undertake the Driveway Construction is "development" as defined in Article 10 of the Regulations. As such "development", the Driveway Construction required a permit under Article 3, Sec. 3.1 (C); Article 9, Sec 9.1(A)(1); Article 9, Sec. 9.3(A).
3. The development activities also required a permit under Article 3, Sec. 3.4 Erosion Control & Development on Steep Slopes for the intrusion onto steep slopes that was made by the appellants' Driveway Construction. OK –include this
4. Appellants did not apply for nor receive the required permits for the Driveway Construction.

CONCLUSIONS REGARDING DRIVEWAY CONSTRUCTION:

The appellants violated the Regulations by performing the Driveway Construction without obtaining the required permits. Therefore, then Zoning Administrator's notice of violation for the appellants' Driveway Construction was well founded and properly issued.

NOTICE OF DECISION regarding notice of violation for the appellants' Driveway Construction:

Appellants' appeal of the notice of violation for the appellants' Driveway Construction is DISMISSED.

DISCUSSION REGARDING COMMERCIAL USE

Findings of Fact:

1. Appellants conduct the following commercial activities on their property: Storage and maintenance of large equipment and vehicles for excavating purposes, storage and maintenance large equipment and vehicles for logging and firewood processing, storing logs , splitting logs and storing and handling inventory of split firewood (called herein the "Commercial Uses").

2. The appellants' Commercial Uses were commenced soon after the appellants purchased the property in 2015 and have been carried on continuously since then.
3. The DRB concludes that the Commercial Uses are a violation of the Regulations:
 - a. The Commercial Uses are not a home occupation as defined in Article 4, Sec. 4.8 Home Based Business (Home Occupation, Cottage Industry) of the Regulations because the Commercial Uses are not confined to a minor portion of the interior space of a dwelling.
 - b. The Commercial Uses are an "Industry" as defined in Article 10 of the Regulations, and Industry is not a permitted or conditional use in the Alpine Village Residential Village District where the property is located. See also Article 4, Sec. 4.9 Industry.
 - c. The appellants' Commercial Uses of the property are not allowed in the Alpine Village Residential District where the appellants' property is located. Section Article 2, Table 2.6 of the Regulations.
 - d. The Commercial Uses are not allowable as preexisting non-conforming uses because the Commercial Uses were not commenced until after the relevant prohibitions of Article 2 were enacted.
4. Appellants claim that even if the Commercial Uses violate the requirements of the Regulations, the Town should be estopped from enforcing this violation against them by application of the rules of equitable estoppel as expressed by the Vermont Supreme Court in In re Langlois / Novicki Variance Denial, 2017 VT 76 (2017)
5. In its consideration of the applicability of equitable estoppel the DRB finds:
 - a. Before they purchased the subject property in 2015, the appellants met with the Zoning Administrator in office at that time and informed him of their pending decision whether to purchase the property, of their intention to conduct the Commercial Uses on the property if they bought it, and asked what zoning permits if any they would require to carry out these plans.
 - b. Appellants met with the same Zoning Administrator in 2017 to inform him of their plan to construct the only commercial structure now on the subject property, described their intended commercial uses of the structure and asked what zoning permits if any they would require to carry out these plans.

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- c. On both occasions the Zoning Administrator informed the appellants that their planned commercial uses were allowed by zoning and they did not need additional zoning permits to carry out their plans.
- d. The Zoning Administrator intended in 2015 and 2017 that the appellants would act on his advice to purchase the property, make the improvements and carry on the commercial activities the appellants had described.
- e. The Appellants did not know independently that the zoning regulations required them to get a permit for any of the activities discussed with the Zoning Administrator in 2015 and 2017;
- f. The Appellants relied upon the Zoning Administrator's advice to their detriment by (a) purchasing the property and not exploring purchase of other locations to conduct their business activities, (b) making significant investment in improvements to the property to carry out the business activities the zoning administrator told them was allowed under the Regulations, and (c) organizing their business around the specific plans the Zoning Administrator had verbally approved
- g. It would take a great deal of time and expense for the appellants to abandon the Commercial Uses on the appellants' property and to relocate those uses to another place.
- h. The commercial activities appellants described to the Zoning Administrator in 2015 and 2017 are the same activities the appellants conduct today on the property and referred to herein as the Commercial Uses. Appellants have increased the scale of their commercial operations over time but the activities they conduct today are no different from the activities they described to the Zoning Administrator in 2015 and 2017.
- i. The persistence of appellants' commercial operation would inflict hardship on the Town because it would detract from the system of organized land use and equal enforcement policies that are promoted by the Regulations, and would impose hardships on adjoining property owners because of reduction of property values due to being located next to a commercial operation and its attendant adverse visual, noise and traffic impacts.
- j. In its evaluation of the relative equities between the appellants, on one hand, and the Town and nearby property owners, on the other hand, the Board has considered the following attributes of the appellants' operation (called herein "Critical Operational Features") to be critical to reducing the magnitude of the harms imposed on the Town and nearby property owners by the Appellants' commercial operations:

- i. The scale and scope of business operations of the Commercial Uses are limited by the number of workers, which is two, both of whom reside on the property.
- ii. Commercial activities are confined to the garage structure on the property and $\frac{1}{4}$ acre on the north side of Fern Road as outlined in the documentation provided.
- iii. Commercial storage within that $\frac{1}{4}$ acre commercial area is limited to stockpiles of logs, firewood, and earthen materials no greater than 15 feet in height.
- iv. Storage and maintenance of equipment, including but not limited to dump trucks, excavators, bull dozers, bucket loaders, and log skidders is limited to a maximum of ten pieces of such equipment as well as three trailers and miscellaneous small items of equipment being stored outside of the existing garage structure at any time.
- v. All vehicles employed in the Commercial Uses are operational and those intended for road use are registered
- vi. Commercial hours of operation in the yard area include daylight hours between 8 am and 6 pm during weekdays and 10 am to 4 pm on weekends.
- vii. The Commercial Uses are all operated in compliance with all Performance Standards outlined in Article 3 Section 3.11 of the Regulations as applicable.

CONCLUSIONS REGARDING COMMERCIAL USES

On balance, an inappropriate injustice would be imposed upon the appellants unless the Town is estopped from enforcing the Regulations to prevent the Appellants from continuing their Commercial Uses.

This equitable bar to the Town's enforcement should apply only to the extent that the Appellants do not change today's balance of equities by altering or enlarging the commercial operations on the property beyond the Critical Operational Features described above.

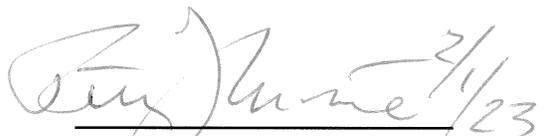
NOTICE OF DECISION regarding Notice of Violation for Commercial Uses:

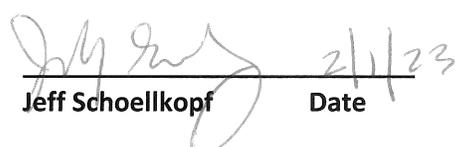
The Development Review Board estops the Town from enforcing the Notice of Violation issued because of Appellants' commercial use of their property, but only to the extent that this barrier applies to the types of uses and scale of uses carried on by appellants under today's commercial use of the property, and only for

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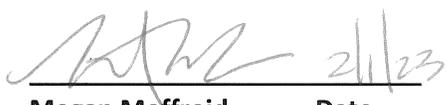
so long as that commercial use aligns with the "Critical Operational Features". The Town is expressly not barred from issuing or enforcing any future notice of violation if the Appellants or their successors in ownership shall expand, alter or enlarge the commercial operations beyond the Critical Operational Features.

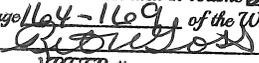
Development Review Board


Peter Monte, Chair Date 2/1/23


Jeff Schoellkopf Date 2/1/23


Chris Behn Date 02/02/2023


Megan Moffroid Date 2/1/23

TOWN OF WARREN VERMONT
Documents received for record on
2/3 2023 at 8:30 AM
M. Recorded in Volume 279
Page 4-169 of the Warren Land Records.
Attest:  Town Clerk
VPIR # _____