

TOWN OF LANDGROVE, VERMONT
ZONING BOARD OF ADJUSTMENT

APPLICANT: Blue Flame Gas Company, Inc.

LANDOWNER: Blue Flame Gas Company, Inc.

LOCATION: 3 Valley View Dr., Landgrove, VT

HEARING DATES: June 18, 2020 and July 30, 2020

FINDINGS OF FACT

1. On March 5, 2020, Blue Flame Gas Company, Inc. (“Applicant”) submitted a form zoning application for construction of a business office and a retail establishment for the sale of propane, and services incidental to propane sales, as well as installation of a 30,000-gallon bulk propane storage facility (“Project”) to be sited at 3 Valley View Drive (“Subject Property”). At the time the application was submitted, the Subject Property was owned by Kimberly Snyder Burke and D. Jay Snyder. The Subject Property contains ±6.8 acres and is located within the Commercial Zoning District.
2. The Zoning Administrator determined that the Project is allowed as a conditional use within the Commercial Zoning District, and that the application is subject to conditional use and site plan review under the Town of Landgrove Zoning Bylaws (“Bylaws”). By letter dated April 18, 2020, the Zoning Administrator requested that the Applicant submit a number of additional items for consideration as a part of conditional use review of the Project.
3. In addition to a zoning application, the Applicant submitted engineering site plans and a narrative letter addressing questions outlined in the Zoning Administrator’s request.
4. The narrative letter provided information about the services proposed, the number of trucks and employees to be based at the Subject Property, typical daily activity on-site, and estimates as to delivery frequency during different seasons. The narrative also contained conclusions about the impact on local traffic and noise, identified the need for a Stormwater permit, and referenced “improvements to the drive,” without additional information.
5. Attorney George McNaughton, on behalf of Michael Toole, submitted a Memorandum in Opposition to Conditional Use Application of Blue Flame Gas Company, Inc. et al., which submission is part of the zoning file.
6. On June 18, 2020, the Zoning Board of Adjustment (“ZBA”) held a hearing on the application, for purposes of site plan and conditional use review under the Bylaws (“Initial Hearing”).

7. At the Initial Hearing, Blue Flame representative Michael Eugair presented the Project to the ZBA on behalf of the Applicant. Mr. Eugair summarized the expected on-site activity on a typical day, delivery frequency, and the number of employees and vehicles expected at the site.
8. Brent Rakowski, a P.E. with Otter Creek Engineering in Middlebury, Vermont, presented a summary of information underlying various conclusions presented in the engineering plans submitted in support of the application.
9. Attorney Steven Cassarino, representing the Applicant, advanced legal arguments in support of the Project, relating to the role of the Bylaws and the Town Plan in considering a development application.
10. The following area residents also appeared at the Initial Hearing and objected to the application: John Tolbert, Greg Harrington, John Baner, Kevin Good, Michael Keene, Michael Toole, Sherri Toole, Paul Farrell, Tara Sable and Bob Sable.
11. The ZBA adjourned the hearing to reconvene on July 2, 2020. By letter dated June 24, 2020, the ZBA outlined five major areas in which the application was deficient, and requested that the Applicant submit a revised application to allow the ZBA to conduct site plan and conditional use review.
12. On July 2, 2020, the Applicant communicated to the ZBA its intent submit a revised application, and advised the ZBA that two weeks would be sufficient to complete the revisions. The ZBA requested that the Applicant submit the revised application no later than July 16, 2020, and adjourned the hearing to reconvene on July 30, 2020.
13. On July 16, 2020, the Applicant submitted the following additional materials in support of the application:

	Narrative – Supplement to Conditional Use Application
Ex. A	Satellite Overlay
Ex. B	Rendering 1
Ex. C	Rendering 2
Ex. D	Rendering 3
Ex. E	Rendering 4
Ex. F	Rendering 5
Ex. G	Rendering 6
Ex. H	Landscape Plan
Ex. I	Existing Site
Ex. J	Proposed Site Plan
Ex. K	Notes and Details
Ex. L	Additional Notes and Details
Ex. M	Zoning Plan
Ex. N	Underground Tank Detail
Ex. O	Underground Tank Stantion Photo 1
Ex. P	Underground Tank Stantion Photo 2

Ex. Q	Underground Tank Stanton Photo 3
Ex. R	Underground Top of Tank
Ex. S	Letter from Fire Chief
Ex. T	Bulk Storage in Southern Vermont
Ex. U	Source Protection Area Memorandum from Otter Creek Engineering
Ex. V	Dubois & King, Inc. Traffic Study
Ex. W	Hiltz Plan
Ex. X	Revised Fire Safety Analysis (July 13, 2020)
Misc.	Photographs of trucks

14. The revised application reflected that the Project now proposed the 30,000-gallon bulk storage tank to be located underground rather than aboveground. Another significant change was that Applicant had closed on the purchase of the Subject Property, thereby becoming the landowner.
15. On July 29, 2020 Attorney McNaughton, on behalf of Michael Toole, submitted an Opposition Response to the Amended Blue Flame Conditional use Application, which submission is part of the zoning file.
16. At the July 30, 2020 continued hearing, the Board heard testimony from various area residents, and the Applicant's representatives, Mr. Eugair, Mr. Rakowski, and Attorney Cassarino.
17. Valley View Drive is a private residential dead-end dirt road off of Route 11 with four driveways north of the Project site. The Subject Property is situated at the base of Valley View Drive, at its intersection with Route 11. The building on the Subject Property was previously used as a real estate office.
18. Flood Brook School is situated adjacent to the neighborhood, less than a ¼ mile from the Route 11/Valley View Drive intersection. The school serves students in grades preschool through eighth grade. School-age children from surrounding residential areas travel by foot and bicycle over Valley View Drive to Flood Brook School.
19. The completed Project as contemplated would involve four field employees operating two delivery trucks and two service pickup trucks. Mr. Eugair testified that the Applicant anticipated one trip out and back per day per truck for residential delivery and related services. Deliveries of bulk fuel to the storage tank were estimated to be one large truck per week in the summer months and three or more large trucks per week in the winter months. Employees working from the business office would enter and exit in personal vehicles.
20. Truck traffic serving the Project may approach Valley View drive either westbound or eastbound on Route 11.
21. The Applicant estimates typical trip generation for the proposed use to be approximately 20 vehicle trips per day.

CONCLUSIONS OF LAW

22. All Land Development in Landgrove requires a zoning permit. As relevant here, this includes “construction, reconstruction . . . or enlargement of a structure” and “[a]ny change in the use or extension in the use of land or structures.” Bylaws § 125. The Project constitutes development as defined by § 125 of the Bylaws and, as such, a municipal zoning permit is required for the Project pursuant to § 132 of the Bylaws.
23. In the initial application, the Applicant sought approval of a “business office,” “retail establishment” and a 30,000-gallon bulk fuel storage facility. Section 231.2 requires that all “multi-use buildings shall be reviewed under the provisions of conditional use approval regardless of the type of use proposed.” The Applicant conceded at the Initial Hearing that the proposed use is subject to both site plan and conditional use approval.
24. The “business office” and “retail establishment” aspects of the Project are both Permitted Uses in the Commercial District under the Bylaws. Bylaws § 243.1(l), (q).
25. Bulk fuel storage is not a Permitted Use in the Commercial District. As defined in the Bylaws, bulk fuel storage is “essentially a warehousing operation. “Industrial Use,” as defined by the Bylaws, includes “[a]n activity primarily concerned with warehousing of goods,” and is a Conditionally Permitted Use in the Commercial District. The ZBA concludes that the proposed bulk fuel storage aspect of the Project is an industrial use subject to conditional use review under the Bylaws.
26. The ZBA retains jurisdiction over site plan review for conditional use review without further review by the Planning Commission. Bylaws § 153.
27. Under the Bylaws, the Board must determine whether a proposed conditional use “conforms to the general and specific standards within these Bylaws,” and must make findings thereon. The Board may attach conditions as provided by 24 V.S.A. § 44649(b)(2). Bylaws § 148.

General Conditional Use Standards

28. As relevant to this application, a proposed conditional use shall not affect “[t]he character of the area affected, as defined by the purpose or purposes of the zoning district within which the project is located and the policies and standards of the Town Plan” or “[t]raffic on roads and highways in the vicinity.” Bylaws § 148.1.
29. “The purpose of the Commercial District is to provide for mixed commercial and residential uses and other compatible uses at moderately low densities which will conveniently serve the retail, service, business, industrial, and residential needs of the community without creating . . . land use conflicts, or other undesirable impacts.” Bylaws, § 243.
30. The Applicant does not contemplate a new access off of Route 11, and thus Valley View Drive would necessarily bear all of the resulting increases in traffic.

31. The Applicant's narrative, and the Traffic Study (Ex. V) submitted with the revised application assert that “[i]mprovements will be made to the existing driveway to provide for adequate site circulation and access to/from the site” but do not identify what type of improvements are contemplated in connection with the Project. The Site Plan indicates that the applicant will “coordinate with VTrans,” but does not indicate whether it has any assurances from VTrans as to cooperation with the Applicant's plans.
32. Improvements made to the Subject Property driveway will not impact site circulation and/or access to the site as it relates to the Valley View Drive/Route 11 Intersection outside of the Subject Property. Given that Valley View Drive is a private road, the application does not set forth information sufficient to establish that the Applicant has any authority to make improvements to the road outside of its property boundaries.
33. The Traffic Study references the 75-trip threshold employed by VTrans to determine whether a Traffic Impact Study is recommended for proposed development. However, the referenced VTrans threshold is to assess additional vehicle trips *to the state highway system*.
34. Bylaws § 148.1 directs the ZBA to consider the traffic impact not only upon the highways, but also upon the roads in the vicinity. The Traffic Study does not account for the fact that the increased traffic load impacts not only the state highway system, but also a private, dead-end dirt road with only a handful of residences. Though the Traffic Study acknowledges that Valley View Drive is a private road, the only substantive analysis concerns Route 11 and the impact of commercial vehicles on a public road. The only recommendation pertaining to Valley View Drive was to add a “trucks entering” sign north of the Project site.
35. Twenty additional vehicle trips per day including ingress and egress by large and small propane delivery trucks is a significant increase in the volume of traffic over Valley View Drive.
36. The Applicant has not proposed any measures it will take to remediate damage to Valley View Drive or the Valley View Drive/Route 11 intersection caused by the increase in heavy truck traffic.
37. There is no doubt that bulk fuel storage and residential propane delivery serves a residential community need in the Town of Landgrove. However, the proposed conditional use will significantly impact traffic on Valley View Drive, and by extension, the character of the specific area affected, resulting in undesirable impacts on the residents whose only access to their homes is via Valley View Drive. The ZBA concludes that the Project does not satisfy General Conditional Use Standards 148.1(b) or (d).

Specific Conditional Use Standards

38. The ZBA imposes no conditions pursuant to Bylaws § 148.2 insofar as this provision only applies “[i]n granting a conditional use permit.” Because the application fails to

satisfy the General Conditional Use Standards of § 148.1 and will therefore be denied, § 148.2 is inapplicable.

39. If the ZBA did consider the provisions of § 148.2, it would impose conditions to address, among other concerns, Performance Standards under Bylaws §§ 320, 321, or 322; Landscaping under Bylaws § 330; or Commercial District Development under Bylaws §§ 420–425. *See* Bylaws § 148.2(c), (f), and (i).
40. The application did not provide information sufficient to determine whether any noxious gases which would endanger the health, comfort, safety, or welfare of any person, would be detectable at the property line. Bylaws § 321(c). Had a conditional use permit been granted, the ZBA would impose a condition requiring the applicant to establish that no propane would be emitted during any of its on-site activities.
41. Additional safety measures are required with respect to Bylaws § 321(f) and § 322.1. The application did not provide information sufficient to determine whether the Project's underground propane storage tank conformed to the standards set by the Vermont Department of Labor and Industry Fire Prevention Division and/or the Department of Environmental Conservation Waste Management Division. The ZBA would impose conditions requiring a permit from the State of Vermont Department of Fire Safety, and that the Applicant should implement any and all recommendations made by that Department and set forth in the Revised Fire Safety Analysis prepared by Eric Leskinen dated July 13, 2020.
42. The site plan as proposed does not satisfy the purposes of § 330, which is to “reduce the potential for conflicts between different adjoining land uses; maintain and enhance scenic values; help to reduce noise and glare; and provide privacy and separation.” The ZBA would impose additional conditions related to screening and maintaining a wooded buffer to ensure that the site would conform to the purposes of § 330, landscaping consistent with § 424, and requiring screening sufficient to satisfy § 425.

Site Plan Review

43. Taking into consideration the criteria set forth in Bylaws § 153.2, the ZBA disapproves of the Applicant’s Site Plan. The Site Plan fails to demonstrate that it “[m]aximize[s] safety of vehicular circulation between the site and the road network.” As discussed *supra*, the traffic impact on Valley View Drive would be significant, and the Applicant has not provided information regarding what additional measures would be directed at safety and/or site circulation. Bylaws § 153.2(a), (b), (f).
44. The Bylaws require that “all areas designated, used or intended to be used as service areas for any structure or land use, other than one-family and two-family dwelling units, the Planning Commission or Zoning Board of Adjustment, as applicable, may require that the area be screened from view either a wall, a solid fence, or evergreens to a height of at least five (5) feet above grade level on all sides where the adjacent land is in a residential district or residential use.” Bylaws § 322.2. Storage areas also require screening. Bylaws § 425.

45. "Service Area" includes parking areas where trucks associated with the business would be parked when not in use and other equipment access or storage areas. Storage areas include the propane-tank storage area.
46. The ZBA concludes that the parking area depicted on the Site Plan is a "Parking Area," "Service Area" and/or "Storage Area," which should be screened from view from residences and other surrounding land uses. The Site Plan does not reflect landscaping that satisfies applicable screening requirements. Bylaws § 153.2(c), (f).

DECISION & ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, the ZBA hereby concludes that the Project does not satisfy the Bylaws as set forth herein, **DISAPPROVES** the Applicant's site plan and **DENIES** the Applicant's conditional use application.

AS DECIDED BY THE ZONING BOARD OF ADJUSTMENT

DATE: September 2, 2020

/s/ Harry Lux, Chair
/s/ Michael Morfit
/s/ Jerry Hassett
/s/ Mary Licata
/s/ Joshua Wengerd