

TOWN OF LANDGROVE
Zoning Board of Adjustment

Re: Application of Blue Flame Gas Company, Inc.,
For Propane Storage, Distribution, and Retail Office
Conditional Use Approval and Zoning Permit

NEIGHBOR'S OPPOSITION
RESPONSE TO SUPPLEMENTAL FILING BY BLUE FLAME GAS COMPANY, INC.

Comes now Michael Toole herein, by his legal counsel George T. McNaughton, supplements his prior filings herein, which are incorporated by reference, and responds to the recent filings of Blue Flame Gas Company, Inc. (hereafter Blue Flame) and states as follows:

Section 148.1 – General Conditional Use Standards

- a. Capacity of Community Services: Blue Flame has submitted as evidence of the capacity of the Town to meet the needs of the community in the event of one or more propane tanks exploding at the site, two exhibits: A very short opinion letter of the Fire Chief for the Phoenix Fire Company which does not recite any evidence upon which his opinion is based other than an internal Fire Safety Analysis prepared by Blue Flame, and the internal Fire Safety Analysis itself. It continues to be unsubstantiated that the project will not be perceived as a substantial explosive hazard.
- b. Character of the area:
 - i. Blue Flame cites §243 of the Town and puts an emphasis on two parts thereof “moderately low densities” and “industrial”. It is not at all clear that a bulk propane storage tank of 30,000 gallons is appropriate to the neighborhood on Valley Road in Landgrove. Valley View Drive is an intensely rural residential road which is barely a few notches above being a farm lane. While Blue Flame attaches a list of locations of bulk propane tank facilities in Southern Vermont as proof that such facilities are located in rural areas with the statement that “nearly all of them are located in rural areas...” One would have to assume that Blue Flame basically considers all of Southern Vermont to be “rural,” as most on the list are located in or next to developed areas. In addition, the word “industrial” appears in that section indicating that the commercial development should serve the needs of local industry without any showing that there is in fact a need by industries located in Landgrove for a local propane distribution center.
 - ii. Blue Flame further cites §7.1 that “the overall objective is the Town Plan ‘is to maintain the town’s rural character and environmental quality **while providing opportunities for appropriate growth and economic development.**” [emphasis added by Blue Flame]. The key word, however, is whether this is “appropriate growth.” It is also important to note what was left out of the quote; the first part of the sentence reads: “provide for mixed commercial and



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residential uses and other compatible development.” Valley View Drive is basically an intensely wooded rural residential neighborhood. A regional propane distribution hub is incompatible with such land use.

- iii. Blue Flame also cites § 7.5 and argues that the plan notes Route 11 as “the only paved road in Landgrove” and “only area in town appropriate for substantial commercial development.” The argument here is that, since Route 11 is the only paved road and the area zoned commercial that the stretch along Route 11, it is fair game to be developed as a pretty much unfettered strip development. The problem with this argument besides the fact that it argues for strip development in contravention of the Town Plan, Regional Plan, and Statewide admonitions to the contrary, is the fact that Landgrove’s Town Plan does not support unfettered commercial development, but basically mixed development compatible with residential use.

c. Environmental Impact

- I. Blue Flame is proposing a project which is going to require extensive excavation, and a substantial increase in the amount of impervious surface and surface disturbance. The Exhibit U cited by Blue Flame does not state that Propane is not a contaminant, it merely states that State law does not consider a propane storage facility to be a prohibited use within an SPA, but clearly states that local regulations may differ.
- II. Blue Flame has not presented any study confirming there are no wetlands on the property or within 100’, and has presented no habitat study.

d. Traffic

- i. There is basically insufficient data to make a decision as to the degree of impact the project will have on the area. The exhibits submitted to the ZBA indicate there will be eight employees per shift¹ connected with the site five of whom will be delivering propane. It is not disclosed how many shifts there will be at the site, nor is it disclosed how many trips the delivery personnel will make to and from the site. If there is to be only one shift, which seems very unlikely, there would be an absolute minimum of 26 trips per day, as all of the employees would drive to work and drive from work (16), plus the delivery trucks filling in the morning and returning in the evening (10). If there are two shifts the number of trips per day would double to 52 trips per day, three shifts 78 trips per day. This assumes not a single customer stops at the office during the day, and does not include the large tanker trucks which will be delivering 3 times per week in the winter. In other words, there does not appear any situation in which 20 additional trips per day would be an accurate estimate of the amount of traffic generated.
- ii. According to the traffic study submitted there will be four automobiles, three light duty pick ups, and three propane delivery tank trucks. Exactly how that matches up with any of the estimated trip projections is unclear, but what is clear is there will most likely be twice or more traffic turning onto Valley View Drive or exiting it on Route 11.



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¹ Actually, the recent application is inconsistent as to the number employees involved indicating 5 in the Section 371.2 discussion, and 8 elsewhere.

- iii. The testimony of the expert based on traffic studies is inconsistent with the testimony of the residents near the intersection as to the dangerousness of the intersection without the increased traffic. It also would appear inconsistent with the fact VTrans has agreed to install a flashing yellow light because of concerns that the school already has about the traffic on Route 11 near the site.
- e. See prior memorandum in opposition
- f. To the extent that having a bulk propane storage facility in Landgrove increases the use of propane for fuel, it will adversely affect the utilization of locally produced renewable energy. Propane other eco-Propane is not a renewable fuel, and whether it is traditional Propane or eco-Propane, it is not produced locally.

Section 148-2 – Specific Conditional Use Standards

§ 148.2 recites specific conditions which may be imposed by the ZBA in granting a permit and also recites the fact that the ZBA has extensive power to do so. Although Mr. Toole objects to the project as a whole, if the ZBA were to grant a permit, it should place conditions on the permit as follows:

- a. Both the parcel which was part of the original application and the additional parcel acquired by Blue Flame should be considered one parcel and governed by the terms of the permit.
- b. All areas not indicated to be cleared for the project should be designated as buffer zones to be planted to native shrubs or trees which will shield the parking lot and drive-way from view.
- c. There should be the following:
 - a. Noise limitation of 70 dba within the parcel boundary, and not to exceed 55 dba at the nearest location of frequent occupation by humans (residences, offices, playgrounds, etc.)
 - b. Smoking and open flames should be forbidden on the entire site.
 - c. The area should be regularly monitored to determine whether odor is escaping either from leaks or at the time of filling tanks.
 - d. The idling of vehicles on site should be prohibited at all times of the day and night, and large bulk deliveries should be prohibited from dusk until dawn and during peak hours of school children drop-off/pick-up (7AM-9AM and 3PM-5PM).
 - e. Plans showing the location and type of lighting should be required and lighting should be limited in accordance with 321 (e).
 - f. The ZBA should be provided with independent certifications on an annual basis that the property complies with all fire and safety permits.
 - g. The applicant should be required to provide for on-site absorption of all stormwater below a 500-year storm standard.
 - h. Contrary to the suggestion of Blue Flame, the odor of propane is not an agricultural odor. Agriculture in VT is defined narrowly, in connection with what is considered farming and definitely does not include the odor of a non-renewable, non-local gas from a regional propane distribution center. (See Agricultural Use definition in Article VII of the Town By-Laws.



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- i. The permit should specifically limit the number and type of vehicles allowed on site at any particular time in accordance with the representations made by Blue Flame, i.e., ten (10).
- j. The permit should specifically limit the number of vehicle trip to and from the site in one day and clearly indicate whether single trips or round trips are being referred to. In this case, Blue Flame has indicated 20 round trips per day.
- k. The number of large trucks delivering propane to the bulk storage tank should be limited to once per week during Spring, Summer and Fall and three times per week during winter. The deliveries should not be allowed when school children are normally being picked up or delivered to the nearby school (see above).
- l. The hours of operation of the facility should be limited to 8:00 am to 4:30 pm, and not operated on Saturday or Sunday.
- m. The permit should prohibit any outside storage including storage of propane tanks.
- n. No permit should be issued without a certification by a duly qualified consultant that there will be no adverse impact on any wetland by the project, and that the project will not consume prime agricultural soil, or soil of Statewide significance.

Article III: General Regulations

Toole takes exception to the assertion that the proposed project conforms to the General Standards, and comments as follows.

Section 320 – Performance Standards

Toole disagrees that the project meets all local, regional and State standards, and that the impact of an 30,000 gallon bulk fuel storage plant and area distribution hub would be “minimal” on neighboring properties.

Section 321 -- General Standards

- a. While the Landgrove regulation specifically cites 70 decibels at the property line, in Vermont the evolving standard is to consider this a default maximum and that regulators may require more stringent standards. The standard normally applied is 70 dBa at the property line and 55 dBa at the nearest place of habitation. It is customary to document such conformance with a noise study modeling. In this case, presumably there will be noise associated with the transport truck filling the tank, and the tank trucks filling their tanks. In addition nearly all commercial trucks as listed by Blue Flame will be equipped with a loud back up alarm. Back up alarms are notoriously loud and carry long distances.
- b. It does not appear that the project as currently designed emits smoke.
- c. Blue Flame cites no authority for its assertion that propane is not a noxious gas, and contradicts itself as to whether propane is emitted in the course of loading and unloading propane from trucks. It is common knowledge, as is noted by Blue Flame at its discussion of § 321 h, that the coupling and uncoupling of the lines emits odors (which means that they emit gas). It is also common knowledge that areas around bulk propane storage



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facilities develop an odor of propane. The standard in § 321 is whether it “endangers the health, **comfort**, safety or **welfare** of any person, or which have a tendency to cause **injury or damage to property**, business, or vegetation.” [Emphasis added.]

- d. Blue Flame cites no certification that the coming and going of large trucks does not cause vibrations in excess of 0.002 of one inch.
- e. A detailed Lighting Plan should be made part of the conditions of any permit issued.
- f. The fact that “propane storage is heavily regulated” in and of itself is evidence of its explosive nature. This is of specific concern here because, although “when such [regulations] are followed” propane storage may be safe, when a propane bulk storage facility explodes, that explosion is well known to be catastrophic in nature and it will be located next door to a school.
- g. The development of the site will involve substantial soil disturbance and a large increase in the impervious surface area of the site, along with extensive excavation. The exact impact this will have with regards to stormwater drainage coupled with the extensive operation of vehicles on the site is unknown.
- h. Based on the personal observation of several of the neighbors who attended the earlier hearing, it is clear that such facilities do emit an offensive odor. Odors emitted from a propane bulk storage tank utilization can in nowise be considered an agricultural² odor under any definition in Vermont.
- i. It is unknown what Blue Flame intends to use as fill.

Section 330 -- Landscaping Requirements

This site will dominate the entrance to a residential area and adversely impact the market value of all of the homes beyond it on Valley View Drive. In addition, it will contribute to the appearance of Route 11 in this sector as a strip development.

Section 332 –Applicability

The site plans currently submitted fail to clearly indicate the number of trees to be removed, and proposed plantings are inadequate to fully screen the site. It is also noted that § 424 (a) and (b) apply to this project.

Section—322.2 Screened Service Area Requirements

“Service Area” is not defined in the By – Laws, however, in this instance it would include parking areas where trucks associated with the business are stored during non-use, as well as the access equipment to the buried tank, and any smaller stored propane tanks. In essence this would require the entire parking lot area to be screened with a dense hedge.

Section 364 – Signs that Require a Permit:

Blue Flame has not provided any details other than the location of the sign. Signage is an important matter with regards to determining whether a project meets conditional use criteria.

² See for example 32 V.S.A. § 3752.



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Section 371.2 -- Parking for Non-residential Uses

Blue Flame project is a mixed space project. Assuming that Blue Flame is correct in its calculation of the required number of parking spaces, namely 12, then §424 (b) is triggered and requires that there be the planting of one tree per eight spaces to be located within the parking lot and that it be at least 2" in diameter at chest height. In the case of this particular project, there would be according to Blue Flame 12 parking spaces required for the mixed use, however, these spaces would be in addition to the spaces required to store the 6 trucks associated with the business (See Exhibit V) which would bring the total number of spaces to 18. **This would require there to be two such trees within the parking lot each surrounded by a 40 square feet permeable area.** The current landscaping plan (see Blue Flame Exhibit H) does not comply with 371.2 as far as the number of parking spaces, nor as to the required trees within the parking area required by §424 (b).

Article IV: Special Provisions

Section 424 – Landscaping Requirements

Maintenance of the entire wooded area abutting the residential use should be a permit condition if the permit is issued. This section also require the planting of two trees within the parking lot each surrounded by 40 square feet of permeable land.

Section 425 – Screening of Storage Areas

It is unclear from the representation in the Amending Letter, and the Landscape Plan (Exhibit H) what Blue Flame considers to be the "service area," however since the proposal includes the parking of delivery trucks when not in use and possibly the storage of small propane tanks. This section mandates a dense evergreen hedge of five (5) feet or more in height as a screen.

Town and Regional Plan Considerations and Conclusion

This project does not address or further any of the five Policies and Recommendations of the Economic Development chapter of the Town Plan as noted on page 8 of the Town Plan in ¶3.3, nor does it a constitute an economic activity that should be encouraged under ¶2.5. While industrial uses are allowed if granted a conditional use permit under 243,1 as "warehousing" is included in the definition of "Industrial use" under Article VII of the Town Plan and the Vermont Courts have ruled that a bulk fuel storage tank is a warehouse, that does not mean that a Conditional Use Permit for the bulk propane tank and distribution center should be granted at this site. What is being proposed here is actually an industrial distribution center involving significant transportation elements of a product which is not grown or made locally. Regional planning for Landgrove indicates that the industrial developments should be aimed at development utilizing local raw materials. (See Regional Plan, ¶7.4, page 70). One of the major points for Conditional Uses is that it allows the ZBA to carefully consider whether that particular use is appropriate for the selected site.

In conclusion, the ZBA is also directed to the memorandum filed June 17, 2020, and is requested to deny the amended permit application filed herein.



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Respectfully submitted at Springfield, this 29th day of July, 2020


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