

TOWN OF BRADFORD
Planning Commission
DECISION
Application for Site Plan Review

In re: Richard and Kathleen Franklin
Permit Application No. 17-20

A. INTRODUCTION AND PROCEDURAL HISTORY

1. This proceeding involved review of an application for the Site Plan Review submitted by Richard and Kathleen Franklin under the Town of Bradford Zoning bylaws in a concurrent hearing with the Board of Adjustment for Conditional Use.
2. The application was received by Robert Wing, Zoning Administrator on 8/6/2017. A copy of the application is available at the Bradford Town Office.
3. On August 30, 2017 notice of a public hearing was published in the Journal Opinion.
4. On August 30, 2017, notice of a public hearing was posted at the following places:
 - a. The Bradford Town Office.
 - b. 3262 Goshen Road, property for which the application was made.
 - c. The public notice board at Community National Bank on Main Street.
 - d. The public notice board at the Bradford Post Office on Barton Street.
5. On August 30, 2017, a copy of the notice of a public hearing was mailed to the applicant. On August 30, 2017 a copy of the notice of public hearing was mailed to the owners of properties adjoining the property subject to the application (please refer to the attached abutter list).
6. The application was considered by the Planning Commission and the Board of Adjustment at a concurrent public hearing on September 19, 2017 at 7:00pm following a site visit at 6:30pm. The hearing was closed at 7:40 pm on September 19, 2017. The planning commission reviewed the application under the Town of Bradford Zoning Bylaws, as amended October 27, 2005 (Town of Bradford Zoning Bylaws).
7. Present at the hearing were the following members of the Bradford Planning Commission:
 - a. Marcey Carver, Chairman
 - b. Ted Unkles
 - c. Bryan Mitofsky
8. Also present at the hearing were the following members of the Board of Adjustment:
 - a. Bud Haas, Chairman
 - b. Shirley Beresford
 - c. Doug Miller
 - d. Christine Pratt

9. Also present at the hearing was Bob Wing, Zoning Administrator.
10. At the outset of the hearing, the Planning Commission afforded those persons wishing to achieve status as an interested person an opportunity under 24 V.S.A. Sec 4465(b) to demonstrate that the criteria set forth in the subsection are met. The following persons were sworn in:
 - a. Richard Franklin
 - b. Kathleen Franklin
 - c. Al Gallant
 - d. Ramona Gallant

A record of the name and address of persons wishing status as an interested person is attached hereto.

11. During the course of the hearing the following exhibits were submitted to the planning commission:

None beyond the original application

These exhibits are available at the Bradford Town Office.

B. TESTIMONY

The hearing was opened at 7:00pm. Carver swore in Richard and Kathleen Franklin (applicants) and Al and Ramona Gallant (interested persons).

Haas made an opening statement. He stated that according to the Bradford Bylaw, this application required that there be a concurrent hearing because it is categorized as a Rural Small Enterprise. He also stated that the Board of Adjustment wanted to establish through testimony to obtain evidence which would determine the facts and from the facts it would be determined whether to grant the permit.

Carver stated that in this instance it is a two-step process. First the Planning Commission would make a determination as to whether to approve the Site Plan and then if the Planning Commission approved the criteria for Site Plan, the Board of Adjustment would make a determination as to whether to approve for the conditional use.

Carver described the details of the hearing as indicated in the Introduction and Procedural History.

Carver asked the applicants to explain their project and clarify if they are, in fact, applying under the Rural Small Enterprise bylaw.

K Franklin confirmed that they were applying under the Rural Small Enterprise section and that they did in fact not reside at the property. K Franklin indicated that she would be the sole person working at the establishment.

K Franklin indicated that they want to build a commercial kitchen. They will need state (health department) approval to meet certain standards but according to K Franklin, the Vermont Health

Department would not consider an application unless the local municipality had already approved the proposed project. She indicated that they want to sell to stores and that she understood that this would require a commercial kitchen.

Carver asked what the applicants' plans were for improving the exterior of the property. K Franklin indicated that they plan to improve the grading to establish a driveway and small parking area. She indicated that the pump house structure would be removed and the old dug well underneath the pump house would be filled in. Unkles suggested that assuming they were to fill in the existing dug well, the curb cut and driveway could be moved further east on the property. K Franklin acknowledged this suggest.

K Franklin stated that at this point they do not know where the septic system is and that as part of this project, they planned to have the septic located.

Carver asked how many parking spaces they planned to have. K Franklin indicated that they would probably have 4 though she did not know the dimensions. She said that she did not expect that there would be a lot of people coming to the property.

Carver asked K Franklin how many employees she was planning to have. K. Franklin responded that only she would be working at the business. K Franklin said that this is not expected to be a big scale operation. Initially she would just be selling at farmers markets but eventually she hoped to be selling at local stores.

Carver asked what the hours of operation would be. K Franklin responded that she would be there from 8-3. Carver attempted to get clarification as to what the hours would be for food processing and for retail sales. R Franklin commented that they would like the opportunity to occasionally put out a sandwich board sign on a Thursday that there would be bread for sale on Friday morning. R Franklin said he did not think it would be a regular time but "hit or miss".

Mitofsky commented that this was more on the marketing side. K Franklin said that if someone stopped by when her car was in the lot to ask if they had bread, she would sell them some bread. She stated that she did not want a full time store.

Haas asked about parking. K Franklin responded that if there would be any retail that the State had a parking requirement based on the square footage of the retail space. K Franklin said she wasn't sure as to the exact requirements for parking from the state.

Carver asked if they would be putting any lighting on the outside of the building. R Franklin stated that there would be an ordinary residential motion light that would come on if someone was approaching to unlock the door but that there would be no commercial lighting.

R Franklin indicated that they wanted to maintain the residential feel of the neighborhood. He stated there would not be any commercial doors or commercial signage. He stated that he would want people to drive by and not know that there was a commercial kitchen in the building, that it would rather look like a little house.

Unkles asked if they anticipated any kind of a sign. The Franklins commented that they anticipated having a small sign on the side of the house that would say something like "Kathy's Kitchen," something to identify it.

Haas commented that he thought signage was the responsibility of the Select Board.

Unkles asked for better clarification of what the Franklins meant by retail because retail has requirements for adequate parking, traffic, and lighting. K Franklin responded that they would conduct retail only on Thursday 3-6 and Saturday 8-noon. (Later she testified that retail would also be on Friday 3-6).

Mitofsky said that there should be clarification of what is meant by retail. Carver stated that she felt that the issue of retail fell largely to the Board of Adjustment. Unkles pointed out that retail does impact Site Plan as far as parking, traffic, and lighting. Carver read the section of the Bylaw that related to this matter. In part she read that the Board of Adjustment would take into account the amount of retail relative to offsite sales.(p 28 B 5)

Haas said that the applicants would need to give testimony to this issue around sales. Carver then asked how much in sales they were anticipating and, of that, how much would be retail. After discussion, the Franklins indicated that they anticipated retail sales at the site would be 15%, if that much.

Carver asked where they would store their refuse, if any of it would be external. K Franklin stated that there would be no external storage, that she would bring any refuse to her home each day.

Carver asked whether there would be delivery of goods or pickup of finished product at the site. K Franklin stated that she would be picking up all products and delivering all products herself. She anticipated if UPS type delivery occurred, it would most likely occur at her residence.

Carver asked if the Franklins had any plans for landscaping for screening or any other purposes. R Franklin said that they did not plan any landscaping changes.

Mitofsky asked about the current curb cut. R Franklin said that the current location of the curb cut has been there for a long time but he felt it was too close to the intersection and would plan to move it back a bit. Road foreman would determine where it would be placed.

Carver asked if there would be any change to the footprint of the building. She stated that she understood from the site visit that the front porch was going to be removed and the back section was going to be removed as well. R Franklin indicated that the front porch would be replaced with a smaller porch and a deck would be placed at the back with stairs. Carver asked what the purpose of the deck would be. K Franklin said that it would allow for steps down to grade level.

Carver asked where the exhaust would come out of the structure. R Franklin indicated it would come out the left side of the structure (when facing from the road). Carver asked if it could come out the back of the structure. R Franklin believed it could come out the back of the building. Mitofsky asked if they knew how many cubic feet they would be generating. The Franklins did not know.

Carver asked if the Gallants had any questions or comments. A Gallant stated that they did not have any objections to the proposed plan. They were mainly here to learn about the Franklins' plans.

Haas asked to clarify some aspects. He stated that he understood the applicants did not live on the property, that according to the bylaw, Rural Small Enterprise requires more than 1 acre. And the Franklins stated that the lot size was the issue that they were concerned about. Haas' comment

was that was why they had Board of Adjustment. Haas continued to read the criteria for a Rural Small Enterprise. He read that no more than seven employees and no more than 3000 square feet were permitted. Haas also stated that retail trade is determined by Board of Adjustment including hours of operation. He also read that no outdoor storage was permitted unless it was screened and that Rural Small Enterprise required that architectural standards of the neighborhoods be made. He stated that there were further restrictions related to exterior lighting.

Franklins then stated that they would operate Monday – Friday 8am – 5pm and open to public Thursday and Friday 3pm – 6pm and Saturday morning 8am-noon.

Haas then stated that he believed that there would be no negative odors and traffic would not be adversely affected.

Unkles summarized the process once the hearing was closed. The Planning Commission would make its decision, then Board of Adjustment would make its decision if the Planning Commission approved the Site Plan Review component of the permit. Then, there would be 15 days after each decision to appeal.

[Note that there is actually 30 days to appeal to the Environmental Court.]

As there were no more questions or comments, Carver then closed the hearing at 7:40pm.

C. Applicable Law and Criteria

1. Applicable ordinances in effect at time of Application are the Town of Bradford Zoning Regulations, latest revision October 27, 2005
2. Town/City Plan: Town of Bradford Municipal Plan adopted 1/28/2016
3. 24 V.S.A. para. 4416 (a). (See appendix)

D. Finding of Facts

1. The Applicants submitted an Application for Site Plan Review and Conditional Use (17-200).
2. The Applicants are applying to convert single family residence on a nonconforming lot to commercial kitchen with limited retail under Zoning Regulations Section 5-10 Rural Small Enterprise.
3. The Subject property is a 0.4 acre parcel located at 3262 Goshen Road in the Town of Bradford (Parcel Id# 05-06-1720). The property is more fully described in a Deed recorded at Book 128 Page 450-453 in the Town of Bradford Land Records.
4. The property is located in the Residential District as described in the Town of Bradford Zoning Map on record at the Town of Bradford municipal office and section 3-8 of the Zoning bylaw.
5. Site Plan Review and Conditional Use approval is required for the project as a Rural Small Enterprise as that term is defined in section 5-10 of the Zoning Bylaw. The

application required review under the following sections of the Town of Bradford Zoning Bylaw for Site Plan Review:

- a. 5-10 Rural Small Enterprise
 - b. 5-1 Existing Small Lot
 - c. 5-5 Sewage Disposal
 - d. 5-6 Off Street Parking
 - e. 5-18 Exterior Lighting
 - f. 5-20 Buffer Strip
 - g. 6-6 Variance
 - h. 6-7 Nonconforming Use
 - i. 6-12 Site Plan Approval
6. Section 5-10 Rural Small Enterprise requires the following:
- a. The owner of the enterprise shall work on the property. Kathleen Franklin, one of the owners, testified that she will be working on the property.
 - b. The property shall be no less than 1 contiguous acre. The property is 0.4 acres, less than 1 contiguous acre and thus, does not meet this criteria. The property falls under Section 5-1 Existing Small Lot and Section 6-7 Nonconforming Use to be discussed below.
 - c. No more than seven employees shall be permitted exclusive of the owner. Kathleen Franklin testified that she would be the only person working on the property.
 - d. No structure shall be larger than 3000 square feet in size. The structure is approximately 637 square feet.
 - e. Retail trade may be permitted only upon a determination by the Board of Adjustment that the volume of retail trade is minor. This criteria is not under Site Plan Review except as it impacts traffic. Kathleen Franklin indicates that she anticipates retail trade at 15% or less of her revenue, and the Commission finds that this would constitute a minor portion of total sales.
 - f. There shall be no outdoor storage unless fully screened from public view. Franklins testified that there would be no outdoor storage.
 - g. All new construction shall be compatible with the architectural character of the immediate neighborhood. The Franklins testified that they plan to remove the front porch and the back section of the existing house and leave the remaining house intact. They plan to replace the front porch with a smaller porch and the rear section with a deck of same or lesser size than the footprint from which the back section occupied.
 - h. Any exterior lighting plans shall meet the minimum requirements of Section 5-18 Exterior Lighting. The Franklins testified that they plan to only have exterior light that is residential in appearance and will allow illumination to open the front door.
7. Section 5-1 Existing Small Lots provides for development of an existing lot even if not conforming to minimum lot size requirements if such lot is greater than 1/8 acre and at least 40 feet in depth. This parcel is 0.4 acres and more than 40 feet in depth; it therefore is sufficient size to fall under the Existing Small Lot bylaw.

8. Section 5-5 Sewage Disposal provides that applicants for a Zoning Permit shall first obtain a Sewer Permit. Currently no sewer permit exists for this property though Franklins testified that there is a septic system but the whereabouts are currently unknown.
9. Section 5-6 Off-Street parking Section (d) Commercial Uses provides for one parking space for every business and employee vehicle plus one space for every 200 square feet of floor area (except in CBD). Franklins testified that they planned to regrade for access and parking area.
10. Section 5-18 Exterior Lighting provides three criteria for exterior lighting of light level and distribution, glare and shielding. Any substantial change requires Site Plan Approval by the Planning Commission. Franklins testified that they planned only to put a residential style light at the entrance door.
11. Section 5-20 Buffer strips provides that any commercial use that abuts a residential property shall maintain a buffer strip of land of at least 10 feet in depth. The Franklins testified that they planned no landscaping changes.
12. Section 6-6 Variances falls under the authority of the Board of Adjustment and can be granted upon appeal by the appellant in accordance with 24 V.S.A. para 4469. The Planning Commission does not have the authority to grant variances. The Franklins indicated they were aware of the minimum 1 acre requirement for a Rural Small Enterprise which they felt might require a variance.
13. Section 6-7 Non-Conforming Uses and Structures (a) provides that a non-conforming use may be changed to another non-conforming use upon approval of the Board of Adjustment.
14. Section 6-12 Site Plan Approval provides that the Planning Commission must grant site plan approval prior to any action being considered by the Board of Adjustment or Zoning Administrator. The Planning Commission reviewed the application for vehicular and pedestrian safety, parking, glare, surface drainage, protection of renewable and natural resources and provision of municipal services. Planning Commission must also consider access management standards. In addition the Planning Commission must consider landscaping and screening.

E. Conclusion of Law

1. Reference applicable ordinance: Town of Bradford Zoning Regulations, adopted January 28, 2016.
2. Reference applicable sections: Town of Bradford Zoning Regulations: Sections: 5-1. 5-5. 5-65-18. 5-20,6-6, 6-7, 6-12.
3. Reference State Statute: 24 V.S.A para 4416(a) and 4469

F. Decision

Based upon these findings, the Commission concluded that the applicant addressed the requirements under the provisions pertaining to this application.

Based on evidence presented and testimony heard, the Planning Commission hereby **APPROVES** the application for a Commercial Kitchen and Limited Retail provided that Board of Adjustment approves through either Sections 5-1 (Existing Small Lots) or Section 6-6 (Variances) the current lot size of .4 acres for a Rural Small Enterprise as conditioned below. **Vote: 3-0.**

Conditions:

1. Section 5-10 Rural Small Enterprise:
 - a. Only the owner and one additional person may work in the business without requiring additional site plan review (Impact on parking, traffic and lighting).
 - b. Minimum lot size of 1 acre is not met. A condition of this approval is the applicant receiving approval from the Board of Adjustment for an exception or variance permitting such use on a smaller parcel.
 - c. The current building size is well under 3000 square feet in size. Any change in footprint from the existing building footprint will require additional permitting including site plan review.
 - d. Retail trade activity has been determined to be 15% or less of total sales. Board of Adjustment will determine if this amount of activity is permissible.
 - e. As a condition of this approval, no outdoor storage including refuse is permissible unless fully screened from public view.
 - f. As a condition of this approval, all new construction shall be compatible with the architectural character of the immediate neighborhood. In particular the roof of the main structure shall be a pitched roof with gable facing Goshen Road (as it is currently) and preferably a pitch of 6/12 or greater.
2. Section 5-5 Sewage Disposal: As a condition of this approval, any state required Potable Water and Waste Water permits for use as a Rural Small Enterprise as described in this permit must be obtained and on file with the town.
3. Section 5-6 Off Street Parking provides for parking spaces of 200 square feet for one employee/worker plus 1 space for each 200 square feet of floor area. As a condition of this approval, there must be 4 parking spaces plus sufficient turnaround so that vehicles enter and leave the property facing the road. No on-street parking is permitted. Parking must be located either to the left of the building or in the rear. No parking is permitted directly in front of the building. Town Driveway permit shall be obtained for the curb cut.
4. Section 5-1 Exterior Lighting provides for visibility combined with maintaining the character of the community. As a condition of this approval, all lighting must be compatible with the neighborhood, must minimize glare and not directly light beyond the boundaries of the property nor result in excessive lighting. All lighting must be shielded to direct light downward (and not to the night sky) and minimize traffic hazards. Any substantial

- change in exterior lighting shall require another Site Plan approval.
5. Section 5-20 Buffer Strip requires a ten foot in depth buffer between this property and the residential neighbors. As a condition of this approval, current plantings on the boundary lines between the properties to the right and behind the home and the portion along Goshen Road East on the left are to be maintained. No landscaping along Goshen Road (in front of the building) is required.
 6. As a condition of this approval, any fans or other protuberances on the exterior of the building shall be at the rear of the building.
 7. As a condition of approval, all signage must meet Town Ordinances as well as being compatible with the residential neighborhood which includes no illuminated signage and all signage must be attached to the building itself.
 8. As a condition of approval, all State and Local permitting and licensing for this endeavor shall be on file with the town.

Dated at _____, Vermont this ____ day of September, 2017

_____, Chair

NOTICE: This decision may be appealed to the Vermont Environmental Court by an interested person who participated in the proceeding(s) before the Planning Commission. Such appeal must be taken within 30 days of the date of this decision pursuant to 24 V.S.A. Para. 4471 and Rule 5 (b) of the Vermont Rules for Environmental court Proceedings.

Appendix

24 V.S.A. § 4416)

- **Site plan review**

(a) As prerequisite to the approval of any use other than one- and two-family dwellings, the approval of site plans by the appropriate municipal panel may be required, under procedures set forth in subchapter 10 of this chapter. In reviewing site plans, the appropriate municipal panel may impose, in accordance with the bylaws, appropriate conditions and safeguards with respect to: the adequacy of parking, traffic access, and circulation for pedestrians and vehicles; landscaping and screening; the protection of the utilization of renewable energy resources; exterior lighting; the size, location, and design of signs; and other matters specified in the bylaws. The bylaws shall specify the maps, data, and other information to be presented with applications for site plan approval and a review process pursuant to section 4464 of this title.