

**TOWN OF PITTSFORD, VT ZONING BOARD OF ADJUSTMENT (ZBA)
FINDINGS OF FACT, CONCLUSIONS OF LAW, DECISION & ORDERS**

Conditional Use Application # 17-38

**OWNER: Frank Von Turkovich
Postal Address: 1 National Life Dr. M230, Montpelier VT 05604
Ph. (802) 229-3431 Email: fvonturkovich@fvtlaw.com**

**Subject Property: 40 Plains Rd., Pittsford 05763
Parcel I.D. # 0734 Tax Map 20-306-0040**

**APPLICANT: Pittsford BTS Retail LLC, c/o Matt Casey (agent)
Applicant's Address: 14600 Detroit Ave. Suite 1500
Lakewood OH 44107
Ph. (216) 226-2159 Email: MCasey@zarembagroup.com**

INTRODUCTION

The Zoning Administrator (ZA) received a complete Application on 11/8/2017. Per Zoning rules, the ZA determined the Application requested the development of a retail sales facility, which is a Conditional Use per Pittsford Zoning Regulations (effective 10/27/2016), and was then referred to the ZBA. Public Notice of a Hearing by the ZBA was posted in five locations (including road Poster), and published in the Rutland Herald on November 9, 2107. The Applicant and Agent was notified of a scheduled Public Hearing by Certified Mail on 11/8/2017. Abutting ownerships were notified by USPS (w/ Certificate of Mailing) on November 8, 2017.

Jurisdiction is taken under Articles III (Table of Uses), IV (Lot Size, Setback, Yards, Ht. Limitations), V (Conditional Uses, Uses Subject to Conditions), VII (Parking & Loading); IX (Signs), X (Site Plan Approval), XI (General Regulations), XVII (Public Hearings).

The initial Public Hearing was held on November 27, 2017 at the Lothrop Gym (Town Hall), and a quorum of the ZBA was in attendance. The Property Owner, the Applicant and its Agents (attorney, and consulting engineer), Pittsford's Zoning Administrator and Recording Secretary were also present and sworn in. Other Interested Parties were registered, sworn in, and presented testimony. By unanimous vote of the ZBA, this Public Hearing was recessed until 7:00 pm January 22, 2018, at the Lothrop Gym.

All the following continued Hearings and a Site Visit were Noticed in at least four public information locations.

On January 22, 2018, the Hearing convened with a quorum of the ZBA present. At the Applicant's request, the ZBA members present voted unanimously to recess the Hearing until 7:00 pm March 12, 2018 at Lothrop Gym.

On March 12, 2018, the Hearing convened with a quorum of ZBA Members in attendance. Additional testimony was introduced by the Applicant and participating Interested Parties. By unanimous vote of the ZBA members present, this Public Hearing was recessed until 7:00 pm March 26, 2018, at the Lothrop Gym.

A Public Site Visit was given Notice on five public sites for 5:30 pm on March 26, 2018. The Applicant and its consulting engineer, a quorum of ZBA members, and members of the Public met on the subject property and were oriented to the project's details. No testimony was taken, and the Site Visit adjourned.

Following the Site Visit on March 26, 2018, the Hearing convened with a quorum of ZBA Members in attendance. Additional testimony was submitted. The ZBA requested that Pittsford BTS Retail LLC compile a final version of their Application, that included all its revisions. By unanimous vote of the ZBA members present, this Public Hearing was recessed until 7:00 pm May 14, 2018, at the Lothrop Gym.

On May 14, 2018, the Hearing convened with a quorum of ZBA Members in attendance. The final version of the Application was submitted to the ZBA. By unanimous vote of the ZBA members present, this Public Hearing was recessed until 7:00 pm June 4, 2018, at the Lothrop Gym.

On June 4, 2018, the Hearing convened with a quorum of ZBA Members in attendance. A number of Interested Parties submitted a compilation of past and new testimony. By unanimous vote of the ZBA members present, this Public Hearing was closed to further testimony.

When a quorum of the ZBA is referenced above, that includes members of the ZBA who were not physically present at the hearing, but who later listened to the testimony and reviewed the evidence.

Deliberative sessions were held on June 11, 2018, June 25, 2018 and July 9, 2018.

A complete List of attendees, during the entire Hearing process, which also identifies who participated by presenting testimony, is in Addendum I, attached.

FINDINGS of FACT

1. The Subject property is a 2.78 acre parcel on the southeast corner of the intersection of U.S. Rt. 7 and Plains Road (T.H. 9). A portion of the property includes a former pond site and now has associated wetlands. The Property is not in a FEMA Special Flood Hazard Area. Access is available by an existing curb cut and driveway (used in common with the adjacent owner) from the northbound lane of Rt. 7; which serviced a discontinued & demolished retail sales structure. This access will not be utilized by the Project. There is also a curb cut at 40 Plains Road (approximately 160 ft. east of US Rt. 7) that services an existing Single Family Residence (SFR). This access would be discontinued and a new commercial access installed approximately 240 ft. east of Rt. 7.
2. The parcel is within the Village Zoning District and has municipal sewer, water, utilities, and a hydrant on site.
3. Through the review process, the Applicants have submitted several revisions to the initial application. The final version of the Application, dated and received by the ZA on April 25, 2018 is to be considered the final Project Design. This Project Design details the removal of the existing SFR, construction of a 9100 sq. ft. (gross area) cape-style one-level structure (Store) for retail sales, along with a paved parking lot with a receiving area, exterior lighting, landscaping, security & privacy fencing, and signage. It also details proposed alterations to the access roads, sidewalks, and a (proposed) Rt. 7 pedestrian crossing. The Application and testimony also addressed VT storm water and wetland regulated issues for the property.
4. The Applicant has testified the facility would be occupied by Dollar General (DG), selling this company's typical selection of goods. Maximum retail Store (open) hours requested would be 8:00 am to 10:00 pm, seven day per week. The Store would be staffed by eight to twelve regular employees, more during peak seasons.
5. The Applicant testified that truck deliveries would be by one Dollar General tractor-trailer per week. Other (non-DG) service and delivery trucks would make an (undetermined) number of deliveries per day. The Applicant acknowledged that DG management will not have control on the delivery schedule of these independent suppliers, or on the type of vehicle (van, box, or tractor-trailer) used.
6. Resident testimony argues that the Applicant has underestimated the frequency and size of the of trucks that the Store will require, and that the parking lot design is inadequate to accommodate customer & delivery issues.
7. The final Project Design does not utilize the Rt. 7 access, and request the only access to the retail facility be from Plains Road. Plains Road is a bituminous-paved, 24000 lb. rated, Town maintained road, with a 49.5 foot wide Right of Way. Measurements taken at the 3/26/2018 Site Review showed that the total width of the (paved) travel lanes at the proposed project entry location is twenty (20+/-) feet. Plains Road does not currently intersect with Rt. 7 at a right angle. Access from Plains Rd. onto Rt. 7 is controlled by a Stop sign. The posted speed limit of both roads is 35 mph. Testimony has been submitted stating that the existing roads require some portion of a tractor-trailer to have to cross over a road's center line when turning in or out of the Store parking lot, and turning off of and onto Rt. 7. The was also testimony in opposition to the resulting traffic impact on Plains Road and connecting secondary roads that may serve as a "short cut" for traffic to the Store; and the congestion ("stacking") resulting from vehicles waiting to turn onto Rt. 7, or off Rt. 7 onto Plains Road.
8. The Applicant has proposed a purchase of land from a north abutting owner to provide for construction of a wider intersection. This would allow redesign and installation of the intersection of Plains Road and Rt. 7, widening this site and adding a turning lane, resulting in an improved angle (approaching 90 degree) of approach.
9. The Applicant has also engaged an Expert, who provided a Traffic impact Report dated November 9, 2017, updated April 13, 2018 and prepared by Trudell Consulting Engineers. The Reports estimated the traffic volume generated by the Project, based on the Institute of Transportation Engineers Trip Generation Manual, 9th Edition. The Use listed in said Manual that most closely resembles the proposed Project is Land Use #815; a free standing Discount Store.
10. The calculated additional traffic generated by the Project through the year 2030 will increase the average delay by just over one (1) second and less than one vehicle is added to the vehicle queue on Plains Road.
11. Taking into account the new adjusted turning movements, delay and the level of service at the intersection of US Rt. 7 and Plains Road (taking into account the intersection redesign, travel lane realignment, and northbound turn lane) the intersection will remain at a "C" rating, under Table 3, Level of Service Descriptions.
12. The research indicates that, with the intersection reconfiguration and additional turn lane, the capacity of the intersection will be increased by 17%.
13. The research indicates that the average daily traffic volume on US Rt. 7 has decreased.

14. Taking into account the new adjusted turning movements, delay and the level of service at the intersection of US Rt. 7 and Plains Road (taking into account the intersection redesign, travel lane realignment, and northbound turn lane) the intersection will remain at a "C" rating, under Table 3, Level of Service Descriptions.
15. These traffic study results estimated that AM peak Project volume generated is minimal. The traffic impact at this intersection was analyzed for a weekday design hour scenario which occurs during the afternoon peak, generally between 3:30 and 4:30 p.m. That the analysis contained in the Traffic Impact Report does not take into the proposed improvements of the intersection realignment and right (northbound) turn lane on Plains Road.
16. The Project will generate approximately ten (10) AM peak, and forty-six (46) PM peak hour vehicle trips, based on the ITE Trip Generation Manual, 9th Edition.
17. The sight distance of the proposed access on Plains Road is approximately 600 feet to the east, and clear approximately 240 feet to the RT. 7 intersection to the west. The sight distances from Plains Road looking north on Rt. 7 are 765+/- feet, and 875+/- feet looking south. The minimum recommended intersection sight distances for 35 m.p.h. is 390 feet for a left turn, and 335 feet for a right turn. Taking into account the new adjusted turning movements, delay and the level of service at the intersection of US Rt. 7 and Plains Road (taking into account the intersection redesign, travel lane realignment, and northbound turn lane) the intersection will remain at a "C" rating, under Table 3, Level of Service Descriptions.
18. Residents opposed to the Project have submitted their own research, observations, and calculations regarding the traffic issue for the Project, including comparisons with two Dollar General Stores in the Rutland City area.
19. Resident testimony has opposed the Store design and size, and expressed concerns regarding the viability of the size & type Store in Pittsford.
20. The abutting Owner at 4182 Rt. 7, through her attorney, has submitted an "Opposition to Issuance of Zoning Permit" in this matter, citing issues with the existing access easement of record over the subject property. The Owner has testified to his willingness to arrange to transfer ownership of the land under this ROW easement to the abutter. This may be accomplished with a Boundary Line Adjustment, providing the minimum set back to the Store is maintained.
21. The Police Chief has reviewed the application, and has relayed (though the ZA) a preference for store hours to be reduced to 9:00 pm.; coordinating with Police Department shifts. The Fire Chief has reviewed the application, and finds no specific concerns, except for an issue department access behind the security fencing on the south side of the structure. The Town has agreed to provide winter maintenance the proposed sidewalks.

CONCLUSIONS OF LAW

Pursuant to the Pittsford Zoning Regulations (PZR), the ZBA finds and concludes the following:

1. The Project conforms to Article III, allowing Retail Sales as a Conditional Use in the Village Zoning District.
2. The Project conforms to Article IV of PZR, for area and road frontage, maximum lot coverage, setbacks, and maximum building height.
3. The Application for the Project conforms to Article V, Section 501(B). (Proposed signage (6) will be addressed by a separate application by Applicant).
4. That no bond is required under Article V, Section 502.
5. That the project conforms to Article V, Section 503(A) as it does not adversely affect the capacity of existing or planned community facilities, specifically:
 - 1) The Project does not exceed the capacity of the existing or planned municipal sewer or water services.
 - 2) The Project does not require significant additional fire or police services.
 - 3) The Project does not adversely impact the School system.

6. Pursuant to Article V, Section 503 (B), the Project does not have an undue adverse effect of the character of the neighborhood affected, specifically:
 - 1) That the Project is in keeping with the mix of existing businesses in this section of the Village District. The Town regulations do not include architectural standards. The Applicant has submitted a Project design that is considerate of a location which transitions commercial to residential use, and reflects a compromise between these different concerns, needs, and aesthetics.
 - 2) The Project is located on a past retail commercial site and conforms to the (2/7/2018) Town Plan's central concept stated in the Vision Statement, "*encouraging residential and commercial growth within the existing village centers*". It also conforms to the Actions recommended for Economic Development.
7. The Applicant has submitted expert analysis of the traffic issues to anticipate at the road's intersections, both at Rt. 7 with Plains Road, and at Plains Road and the Project entrance. Further, it has responded to resident's concerns presented early in the Hearing process by proposing major (engineered) improvements to these intersections, the parking area, sidewalks, etc. This final engineering design supports the requirement that the Project have adequate traffic access, circulation and parking and does not cause unreasonable congestion, or unsafe conditions with respect to pedestrian or vehicular traffic or other transportation facilities.
8. That the project does not adversely affect traffic on roads and highways in the vicinity. (Article V, Section 503(C)).
9. That the project has adequate traffic access, circulation and parking and does not cause unreasonable traffic congestion or unsafe conditions with respect to pedestrian or vehicular traffic or other transportation facilities. (Article V, Section 503(C)).
10. The project is in compliance with the Bylaws in effect pursuant to Article V. Section 503(D) specifically:
 - 1) Consistent with Article VII, the final Application complies with the PZR for applicable Parking and Loading requirements.
 - 2) Consistent with Article IX, all Signage is to be reviewed and approved by the Pittsford Planning Commission.
 - 3) Consistent with Article X, the Application has addressed the applicable Sections 1001 through 1003 and meets those requirements.
11. That the Application conforms with applicable sections of Article XI.
12. The Application process conforms to Article XVII (Public Hearings); the ZBA has determined the application process has conformed to Sections 1701 thru 1703 of the PZR.
13. Consistent with Article V, Section 503(E) the project does not have an undue effect on renewable energy resources.

In Conclusion, the ZBA determines that the Application conforms to and meets all of the requirements of the Town of Pittsford, Vermont Zoning Regulations.

DECISION & ORDER

Based on the Findings and Conclusions stated, a majority of the Pittsford Zoning Board of Adjustment voted to APPROVE Application #17-38 (the "Project") with the FOLLOWING CONDITIONS:

1. That the Project will conform to all the details and specifications included in the Final Application, dated 4/25/18 (with all its attachments), including two Letters to the Town from D. Cooper (attorney for the Applicant), dated 3/8/2018 and 3/21/ 2018 (letters only) accepted into in Testimony, except as modified below.
2. This Approval is Conditional on the Applicant securing all other Town, VT, and Federal permits that the Project may require and recording all necessary Town and State Permits for this Project.
3. The approved maximum Hours of Operation will be from 8:00 am to 10:00 pm. Any Increase to these maximum open hours of operation will require a Town permit. Any reduction of these (maximum) Open hours is a company management option, not requiring any permit modification.
 - a) This does not prohibit authorized store personal to occupy the premises during other hours, for the limited purposes of Office or Maintenance purposes; or emergency maintenance issues.
 - b) All Deliveries (including independent Suppliers) for Store or inventory related goods and services are restricted to Open Hours of Operation.
4. This Project is not approved for any exterior Signs, temporary or permanent in design or use, without a Town permit, and subject to, but not limited to, Article IX of the PZR.
5. Exterior Lighting fixtures are to be set and maintained by timers so to go ON not more than one-half (30 minutes) Hour prior to Store Opening; and go OFF not later than one-half (30 minutes) Hour after Store Closing; with the exception of security lighting around the structure. Exterior lighting is to be directed downward and not leave the Subject Property. The Landscaping plan is to be maintained for the entire existence of the commercial structure. All bullard posts shall be an earth tone color with a reflective strip on the parking lot side.
6. That all curbing in the Town right-of-way shall be granite.
7. That the exterior siding and veneer brick shall conform to the samples provided at the Hearing and admitted.
8. That the fire hydrant located to the north of Plains Road on the Querrey Property shall be relocated a minimum of ten (10) feet to the north of the edge of the pavement of the newly constructed intersection of Plains Road and U.S. Route 7.
9. That the newly constructed right hand turn lane on Plains Road shall be a minimum length as set forth in the above referenced Final Application (Paragraph 1).
10. That the Applicant will furnish and install a concrete sidewalk along the Plains Road property frontage and along the U.S. Route 7 property frontage.
11. That a marked crosswalk with pedestrian warning signs with LED flashing amber lights (similar to those located at St. Alphonsus Church in Pittsford, Vermont) will be installed and maintained (not by the Town) across U.S Route 7 to connect the new sidewalks extension with the existing Town of Pittsford sidewalk system.
12. That Plains Road will be widened from the Project driveway to U.S. Route 7 and realigned to be closer to a 90 degree angle with U.S. Route 7. Additionally, a short right-turn lane will be added to Plains Road to increase capacity at the intersection.

- 13. That an overlay of 1" of bituminous concrete as a new wearing course will be provided over the entire width of Plains Road between U.S. Route 7 the Project's northern property line.
- 14. That the Findings of Fact, Conclusions of Law, and Decision are based on the Application, Testimony, and other Representations made by the Applicant. Any errors of fact or misrepresentations may be cause for this Decision to be modified or rescinded and deemed void.
- 15. That this Town approval of the Application does not release the Applicant, its Agents, Subcontractors, or Assigns from obtaining and complying with any and all other Town, State or Federal regulations and Permits the Project will require. Failure to comply is grounds for revocation of the Approval, and possible zoning violations.

Whereas, the ZBA instructs the Zoning Administrator to issue Conditional Use Permit #17-38, with this Decision to be attached and a part of the Permit. The ZBA Members voting in favor of granting the Permit with conditions are the following:

Stanley Markowski
Jack Orvis

Richard Conway
Nicholas Michael

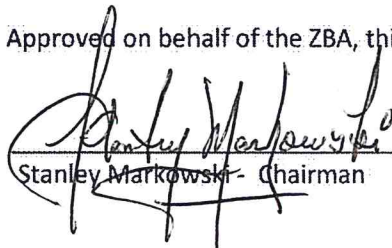
Dan Adams
Clarence Greeno

Opposed: None

Abstain: Ed Keith Jr.

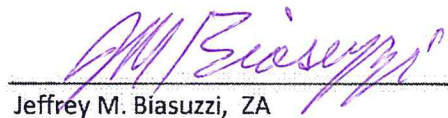
The decision of this Municipal Panel may be Appealed by an Interested Party, within 30 days of its issue; by filing said Appeal to VT's Environmental Court, in accordance with 24 VSA chapter 117 Section 4471 and Pittsford's Zoning Ordinance.

Approved on behalf of the ZBA, this 11th day of July, 2018 by



Stanley Markowski - Chairman

Received by the Zoning Administrator this 11th day of July, 2018



Jeffrey M. Biasuzzi, ZA