

TOWN OF FRANCESTOWN
OFFICE OF SELECTMEN
27 MAIN STREET • P.O. BOX 5
FRANCESTOWN, NEW HAMPSHIRE 03043-0005

ZBA MINUTES

November 26, 2013

ZBA Members Present: Chairman Silas Little, Vice Chairman Charlie Pyle, Sue Jonas, and Tom Lowery

Staff Present: Town Administrator Michael Branley

Also present: Bob Lindgren, Lindsey from the Transcript, Abigail Arnold, Scott Carbee, Polly Freese, Pat Terry, Robert Murphy, Betty Behrsing, Mike Tartalis, Karen St. Cyr, Scott Goodrich, BJ Carbee, Fred Ward, and others unknown to the minute taker

CALL TO ORDER: Silas called the meeting to order at 7:38 p.m.

Silas stated Mike Jones was sent a reminder regarding the meeting however he is not currently here. Silas stated the applicant has a right to a five member board because three affirmative votes are required. Silas asked and Pat Terry stated he would like to move forward with the application.

Silas stated that on November 8th the Town Offices received a response from Vic Reno regarding Nancy Clanton's lighting report. He also stated that today we received a memo from the applicant and letters from Farms & Barns Real Estate LLC and The Bean Group regarding abutting property values. Silas read the memo from the applicant (attached). Silas stated he felt the next order of business is to ask if the applicant had anything to add and the Board agreed.

Pat Terry stated that he would like Vic Reno to comment on the Clanton report. Silas asked why the designer of the lights was not here and the applicant stated that the designer is located in Toronto Ontario and Vic Reno is a respected member of this field qualified to discuss the matter. There was a discussion regarding correspondence between the applicant and the designer of the lights. Vic Reno asked if the Board had received his written response to the Clanton memo and the Board agreed they had. There was a discussion between Silas and Vic about the Clanton memo and Vic's response. Vic stated that if they replaced Crotched Mountain's current lights with the fixtures identified by Clanton they would not be sufficient. Vic Reno dismissed some of the photometric data presented by Clanton. Silas asked if part of the issue is that we are using computer simulations as opposed to actual measurements. Robert asked Vic to comment on the impact to surrounding residents if visors were installed; Vic drew a diagram and stated that visors for these fixtures does limit the beam spread and distribution of the light. Since most of the fixtures are above where people are standing they would have little if any significance on viewing and would have no impact on the light reflected off the mountain. Charlie stated, wouldn't the limited area shielding meet the Francestown zoning requirement and it was answered yes, it would contribute to minimizing the output. A discussion ensued regarding the

ordinance being outdated and not applicable to a ski resort, to which a reminder was given that no ordinances can be changed by the Zoning Board and were an issue for Town Meeting. Sue asked how internal louvers would impact the light distribution and Vic stated they would have a significant impact. Vic discussed horizontal versus vertical light measurements. Sue asked about the lights being installed at Steamboat Springs and Vic stated he was not familiar with them. Silas asked what lighting fixtures could be installed to meet the representations made to the Planning Board in 2012. Scott Goodrich from Hancock asked what was being accomplished if the lights were altered to meet the zoning ordinance but not improve the situation, especially considering that the ordinance is outdated and does not apply to ski areas. Charlie stated that it is not true that the lighting ordinance does not apply to ski mountains because it does apply; while it may be correct that it is outdated and needs to be changed, we have to look at the way the ordinance exists now and determine whether a variance can be granted or not. Pat stated it would have been easier and less expensive to install visors rather than go through the variance process however it would provide less consistent visibility and may require additional lights. The Board discussed the criteria for a variance. Pat stated ultimately their goal is to be a good neighbor and not put more lights on the mountain than necessary. There was a discussion about the fixtures.

The Board agreed to open the meeting to input from the public.

Scott Carbee stated if the Board is going to require the Juno engineer from Toronto why is Nancy Clanton not here?

John Young stated he represents the owners of the units at Mountainside at Crotched Mountain. Mr. Young stated collectively they are one of the largest taxpayers in Bennington and are in favor of the variance.

Carol McKinney from Bennington supported what John Young said.

Gerri Bernstein on Farrington Road stated she abuts Crotched Mountain forest and she is opposed to the variance application.

Tim Smith from Antrim stated he is the operations manager at Crotched Mountain and the lights at Steamboat Springs are new and were not available when Crotched Mountain expanded. He has worked at several mountains in other parts of the country and has never spent as much time working on lighting. He does not feel Nancy Clanton can look at their studies over a few weeks and make a fair judgement. The engineering of the visors can be complex and also has to deal with wind and snow load and the effects of this on the mountain. The Juno lighting is round and therefore needs to have a round visor with sides.

Celeste Lunetta on Mountain Road in Franconia stated she supports the variance application because she feels it would be an undue burden on the mountain to make these changes. She stated she is a volunteer ski patroller at Crotched Mountain and the lighting is critical for safety. She lives two miles from the mountain and finds that the glare is worst during foggy weather.

BJ Carbee from Franconia stated she had looked at the lighting at Steamboat Springs and found it interesting that it is a little slope surrounded by peaks and feels it is not comparable to the situation at Crotched Mountain.

Abigail Arnold stated she sat on the Planning Board case for the Mountain in 2012 when they seemed to be in a rush. She felt the Planning Board process likely would have taken much longer if Pat had not promised that shields would be installed to mitigate the impact.

Fred Ward from Stoddard approximately 12 miles away stated that the lighting is a hardship on many people from the area.

Bill Rainer from Nelson stated there has not been much discussion regarding the portion of the Zoning Ordinance that deals with light shining on other properties or roadways. Bill quoted a letter from a resident in Hancock stating the bright lights shine into their residence even with darkening shades. He also pointed out that financial hardship is not a reason for a variance.

Paul McGrath from Frankestown stated he sees groups of people against the variance and those that are not bothered by the lights. He feels there is room for compromise.

Polly Freese stated that she is for the variance because even with the visors the Mountain will still be one of the highest points in the area. She thinks it is important to have the Mountain in Town.

Deb McGrath from Frankestown stated that in Hancock the Board of Selectmen decided that this issue was not a town-wide issue for them to collectively respond to.

Ted Leach from Hancock stated that even if the selectmen of a town did not respond does not mean it is not a regional issue and that it does not impact surrounding residents.

Silas asked the applicant if he wanted to respond to anything that was stated and Pat said that the lights at Steamboat Springs are new technology that was not available and would require double the lights currently installed. He presented a brochure as evidence and there was a discussion about what was being shown. Scott Goodrich asked how the Board would handle possible outcomes and Silas responded that he did not represent to the Planning Board that the Mountain would comply with the Zoning Ordinance, Mr. Terry did.

Fred Ward stated the number of lights is irrelevant, it is the total light output.

Tim Smith stated that the wattage throw from the Steamboat lights would require lights on both sides of the trail, as opposed to on one side as is currently the case.

Holly Wilson from Hancock stated she is in favor of the application and that she hopes the Board does not make a decision based on emotions related to how the Town has been treated by Peak Resorts.

MOTION: Motion made by Charlie, seconded by Tom, to close the public hearing. All in favor.

Silas stated he distributed to the Board documentation from the Office of Energy and Planning regarding the criteria for a variance. Silas stated the Board would deliberate and make its decision in public.

The first criterion is that granting the variance would or would not be contrary to the public interest. Tom stated he felt the variance application overall would not be contrary to the public

interest since it seems out of the people that have spoken, the majority are for the variance. Charlie stated he feels it is the public interest for the lights to have some sort of shields. Tom stated if that were the case they would be requiring the lights to meet the Zoning Ordinance. Sue stated it would probably not be contrary to the majority interest the Board has heard however there is also the interest of the regulations. She also stated a reason the ordinance was put into place was to keep the rural character of the area. Charlie said there are some people that say the up-light and glare doesn't bother them but others it does. Charlie also said it comes down to what the ordinance says, which is that lighting should be shielded and it is in the public interest to meet the ordinance.

The second criterion is that granting the variance would or would not meet the spirit of the ordinance. Charlie stated he felt this criterion had the same essential feel of the public interest.

The third criterion is that substantial justice is done. Tom stated he felt it was substantial justice to require the mountain to comply with the Zoning Ordinance. Silas stated if the Board grants the variance requiring that the lights are shielded it is the same result as denying the variance.

The fourth criterion is that there is diminution of values on surrounding properties. Tom stated we have heard from the condo owners who say they support the application and the two letters from realtors. The Board also noted that they had received anecdotal evidence from property owners who felt their property values were negatively impacted.

The fifth criterion is that a denial creates an unnecessary hardship. Tom stated he felt it was a hardship. Charlie stated that the Mountain is a unique property considering it is the only ski mountain in town and asked if a denial would present a hardship based on the general public's relationship to the Mountain. The Board discussed the hardship component.

The Board agreed to vote on the criteria for the variance contingent on installing visors on the lights installed in 2012 and that any additional lights that are needed can be installed with shields without coming back to this Board.

The Board agreed that granting the variance with the condition of the visors is not contrary to the public interest because it doesn't alter the character of the neighborhood or threaten the welfare, health and general safety of the public and provides continued use of a previously approved recreation facility.

The public interest is served as the essential character and basic objectives of the ordinance are met.

MOTION: Tom moved to approve as written, seconded by Charlie. All in favor. Passes 4-0.

Silas said the Supreme Court has ruled that the public interest and spirit of the ordinance go hand in hand. Sue stated she thought it should mention that the ordinance is designed to protect the rural character of the town.

The spirit of the ordinance is met as the visors/shields support the rural character of the town and permit the recreational use for a ski area.

MOTION: Charlie moved to approve as written, seconded by Tom. All in favor. Passes 4-0.

Granting the variance does or does not do substantial justice. Tom said it does because it allows the use of the property as originally intended and approved by the Land Use Boards.

Substantial justice is accomplished as the use is permitted and the visors/shields minimize the public loss.

MOTION: Tom moved to approve as written, seconded by Charlie. All in favor. Passes 4-0.

For the following reasons the values of the surrounding properties would not be diminished. The Board agreed that based on testimony there was no evidence of a diminution of values of surrounding properties.

Abutting property values are not adversely affected as both opinion letters from realtors and the abutting condo associations support the application.

MOTION: Charlie moved to approve as written, seconded by Tom. All in favor. Passes 4-0.

The Board agreed there are special conditions on the property.

Unnecessary hardship exists as the ski area is distinguished from other properties in town, the use of visors/shields is reasonable and the existing lighting regulation does not reasonably address lighting of ski areas.

MOTION: Tom moved to approve as written, seconded by Charlie. All in favor. Passes 4-0.

The Board agreed that the conditions on the granting of the variance are that they will install visors on the lights installed in 2012 and any additional lights needing to be installed.

Silas stated the applicant may appeal for a re-hearing within 30 days with that period starting tomorrow.

Tom asked if there would be a timeframe place on when the shields needed to be installed by and Silas answered this Board issued the decision and that would be a separate enforcement issue.

ADJOURNMENT: Tom made a motion to adjourn the meeting, seconded by Charlie at 9:45p.m. All in favor.

Respectfully Submitted by Michael Branley

Rec'd
Nov 26, 2013

November 26, 2013

To: Francestown Zoning Board
From: Patrick Terry
Re: SNH Development Variance application
Summation of application
Included is this summary is verbiage of the original application reinforced
by additional information and testimony:

Introduction: Crotched Mountain Ski Area is seeking a variance from Article 3 section 15 to allow for present and future use of ski area lighting conforming to lighting practices and standards for ski areas in the US as set forth by the IES-NA.

Crotched Mountain slope lighting fixtures are a special case as ski area lighting is designed to meet IES-NA RP 6.24 for the purpose of skier safety concerns. All of the slope lighting installed at the ski area meets this standard. This includes the slope lighting fixtures LL-P-1 to the top of the summit, all lights of MM 1-4, FE 1-5 and SS 2 that are part of the expansion in 2012 and are in need of the variance as requested by the Francestown Planning and Selectmen boards.

The variance is requested by SNH development on the above named fixtures to allow for operating the lighting as it was designed and installed without the use of visors. The installed fixtures were designed to be consistent with existing slope lighting design allowing skiers and snowboarders to have seamless transitions of lighting in between newly lit areas and existing lit areas. Affixing a visors will not meet town ordinance requirements due to the current aiming of the fixtures prepared by Vic Reno's report for the ZBA (1328 Crotched Mt report 09-24-13.docx). Visors or restrictions on the existing slope lighting have been deemed as a potential liability as presented from our General Liability carrier (Willis Variance Letter by Dylan West presented to the ZBA 9-12-13). Furthermore, any restriction of slope lighting design will require additional slope lighting fixtures to meet the standards of skier safety, with no net improvement in glare and reflected light.

Lighting slope lighting fixtures LLP-1 to the top of the summit MM 1-4, FE 1-5 and SS 2 are part of an expansion of terrain, whereas all other LLP fixtures were relocated due to the new lift tower location changes. These relocated fixtures illuminate the same terrain that has been in use for night skiing operations since 2003. The new and relocated lights

were designed to be consistent with the existing design of Slope lighting that was approved by the planning board in 2003. Hours of operation of the new slope lighting areas meet the approval set forth in 2003. Since 2003 Crotched Mountain has offered and marketed 100% night skiing terrain in order to remain competitive within our local market of ski areas providing night skiing. Any limitation of use on the new lighting would prevent access to new terrain, terrain previously accessible by the replaced Summit Lift and use of the new "Rocket Chairlift". As a matter of public interest the approval of the Ski Area lighting and operational hours was approved *after* the adoption of the 2001 lighting ordinance.

Below are the five criteria required by the board to render a decision. Included is the verbiage of the original application. These points are reinforced by additional information and testimony.

The variance will not be contrary to the public interest because:

Crotched Mountain ski area lighting provides recreational opportunities and seasonal employment to the region. Granting the variance is crucial to allow Crotched Mountain to remain a viable business.

Granting the lighting variance will not alter the character of the neighborhood as Crotched has been in operation as a ski area since 2003. As a matter of public interest the reopening the ski area with night skiing was approved after the adoption of the 2001 lighting ordinance. The new lighting has made no change to the operational days or hours. The new lighting has no additional impact on health, safety or welfare to the community.

The spirit of the ordinance is observed because:

The lighting design provides efficient and effective lighting for public safety of skiers, employees and non-skier guests. Crotched Mountain operates Ski Slope Lighting only during specific ski area operations - starting with snow making operations in mid-November through the end of March. Crotched Mountain has no impact on the region for the period of April through November. Since reopening in 2003, Crotched Mountain has operated with lighting practices and standards conforming to IESNA 6.24.

Under the IESNA standard, specific aiming of light fixtures to locations on slopes provide a minimum level of lighting for skier safety. It is these aiming requirements that limit and curtail wasteful light aspects of light pollution that is

of town ordinance concern. This can be shown through Vic Reno's report for the ZBA (1328 Crotched Mt report 09-24-13.docx). This report provides degree of variation to the ordinance each fixture has and the specific aiming of all of the fixtures. Light design consideration was taken into account to reduce lights on the hill and to aim lights toward mountain. This was done with fixtures on Upper Moonwalk trail that were aimed toward the mountain as opposed to aiming outwards to reduce impact on the community.

Article 3.15 imposes a standard that Crotched Mountain Ski Area cannot meet and satisfy the safety regulations that apply to ski areas. However, the balance Crotched Mountain Ski Area must strike between safety and the ordinance is served, as the design employed minimizes up-light, spill-light and glare while meeting the safety standards. Article 3.15.e(i). While Crotched Mountain Ski Area cannot eliminate light pollution, it has employed state of the art fixtures and design to make the effect as minimal as can be done consistent with the safety standards.

Substantial justice is done because:

Granting a variance from Article 3:15 allows for continued use of ski area lighting which is similar to other ski areas in the region. This is critical for the sustainability of Crotched Mountain's business model.

Two part test:

(1) Would gain to general public outweigh loss to individual?

The ski area has been in operation for 8 years prior to this expansion with no change in operation of the lights or operational hours. Allowing this variance will allow for the ski area to continue its present operations. Limiting operating hours, creating inconsistent lighting and reducing safe light levels all present a liability to skier safety. Not granting this variance will force the ski area to operate in conditions with an unsustainable business model.

(2) Is proposed development consistent with present use?

Use of the ski area (hours of operation, days open, etc.) have not changed from previous use with the addition of the new lights/expansion other than increasing the skiable terrain.

The value of surrounding properties are not diminished because:

Crotched Mountain Ski Area supplied the opinions of two experienced real estate brokers, Jennifer Hardwick of Farms and Barns RE, LLC and Mathew Cabana of Bean Group, who state that CMSA has positively affected property

values since it has reopened in 2003. Prior to reconstruction, the property was a hazard to the community. It is clearly in the community's economic interest for Crotched Mountain Ski Area to remain a viable business. Other testimony from condominium owners and the condominium association corroborate their opinions that the ski area has had a positive effect on property values. While there was negative testimony from neighbors in the area of the mountain, none of the speakers claimed to have had an appraisal or broker price opinion corroborating their testimony, to have obtained a property tax abatement, or to have had their property for sale with negative effect. While their subjective opinions may be heartfelt, they cannot be verified or measured and the positive testimony outweighs the subjective opinion of these opponents.

Literal enforcement of the provisions of the ordinance would result in unnecessary hardship because:

- 1) Restrictions imposed on Crotched Mountain Ski area lighting will be a hardship for operations of the ski area considering its unique settings as this ordinance was not designed with the intention of ski area lighting. (2009 Reno Engineering Report on Crotched Mountain Ski Area Lighting commissioned by the Frankestown Selectman).

The ski area is a special case with the facts of it being an "elevated area, varying slopes, size of area, night time use and reflective surface". The IESNA standard that the ski area has to operate within, puts the ski area in a special case situation. Furthermore, Skier safety is of critical liability importance as is the consistency in lighting and equipment. (Willis Variance Letter by Dylan West presented to the ZBA 9-12-13)

- 2) The requirements of article 3.15 i) are of issue only to Crotched Mountain Ski Area. To our knowledge, there are no viable ski areas in the USA with cutoff lighting that would meet the Frankestown ordinance for ski slope illumination. Crotched Mountain uses similar slope lighting as all our immediate competitors that operate with night skiing. Cutoff lighting would in fact subject both Crotched Mountain and the town of Frankestown to liability issues concerning skier safety since it could not meet common ski slope lighting standards and practices. Illumination of the ski slopes will be prevalent and there will be light spillage, emphasized by Crotched Mountain's dark, rural location. Frankestown lighting regulations are meant to address normal parking and roadway, area lighting and are not applicable to ski area lighting. - (2009 Reno Engineering Report on Crotched Mountain Ski Area Lighting commissioned by the Frankestown Selectman)

Under the IESNA standard, specific aiming of light fixtures to locations on slopes provide a minimum level of lighting for skier safety. It is these aiming requirements

that limit and curtail wasteful light aspects of light pollution that is of town ordinance concern. This can be shown through Vic Reno's report for the ZBA (1328 Crotched Mt report 09-24-13.docx). This report provides degree of variation to the ordinance each fixture has and the specific aiming of all of the fixtures. Light design consideration was taken into account to reduce lights on the hill and to aim lights toward mountain. This was done with fixtures on Upper Moonwalk trail that were aimed toward the mountain as opposed to aiming outwards to reduce impact on the community. The cutoff fixtures that were proposed as a theoretical alternative by the Clanton report are not a viable solution as this design is untested for ski area slope lighting and provide questionable slope lighting levels. (Review of Clanton Letter 11-06-13). These proposed fixtures were only used for a narrow area terrain park feature and are not recommended for general slope lighting by the manufacturer.

- 3) Crotched Mountain provides both day and night time recreational opportunities along with significant economic stimulus to the area. Peak Resorts restored a defunct ski area back into a viable enterprise that is invaluable to the town of Franconia. Mandating non-standard ski area lighting would negatively affect the sustainability of Crotched Mountain especially with its night time skiing activities.

Franconia and its surrounding communities approved the ski area for night skiing in 2003 *after* the adoption of the 2001 lighting ordinance which reinforces the fact that the ski area operations are in the public interest. Furthermore, ski area lighting is only used during operational hours, snow making operations and maintenance. During hours that are outside of ski area operations, slope lighting is circuited and will be shut off in all locations not in use for snowmaking and maintenance operations.

