

THE COMMONWEALTH OF MASSACHUSETTS
TOWN OF WILLIAMSBURG

ZONING BOARD OF APPEALS

DECISION

In the matter of: the application of CRD Metalworks LLC. by its attorney, Bacon/Wilson, Thomas Reidy of counsel, for a Special Permit, as required by Section 3.2 of the Zoning Bylaw of the Town, to use the premises for industrial/manufacturing, sawmill use - specifically, fabrication and assembly (manufacture) of firewood processing equipment on premises located at 17 Hyde Hill Road.

Date of Application: December 24th 2014

Dates of Joint Hearings: April 28th, May 28th, June 30th, 2015

Date of Site Visit: May 20th, 2015

Date of Decision: July 13th 2015

Vote by members of the Board:

Osa Flory **Opposed**

Marcianna Caplis **Opposed**

Gerald Mann, **Opposed**

Findings:

A . General Findings

The applicant was granted a Special Permit for the construction of pallets in 1986 and a Special Permit for automotive repair in 2000. Neither permit has been used in the 7 years that the current business has been operating and the Zoning Enforcement Officer/Building Inspector, found that they were no longer in effect. The current operation differs substantially from the purpose of the prior permits. The applicant has been operating without a valid Special Permit since the inception of the current business approximately 7 years ago.

The application states that the fabrication and assembly of firewood processing equipment occurs within a 7000 square foot structure. However the joint site visit conducted by the members of the Zoning Board of Appeals (ZBA) and the Planning Board (PB) showed that the space required by manufacturing, assembly and storage included a large blacktopped area which contained several sheds containing parts and a number of completed and partially completed wood processing units. It was stated that the outdoor area was used for final assembly and painting of the processing equipment. The photographs and site plans submitted by the applicant shows that the total area in use greatly exceeds 10,000 square feet.

The applicant's personal residence, located on the site, is partially used as the business office.

However the 10,000 square foot maximum size is still exceeded when the area occupied by the residence is excluded from the calculation.

Satellite photographs from the Google website show the changes in the site over the past 7 years. A large area formerly covered with trees and vegetation is now blacktopped, and a number of sheds used for parts storage, as well as several used for rental to third parties have been placed on the blacktop. There is no permit permitting rental storage sheds on this site, although a permit was issued for a limited number of storage sheds on the adjoining site. The permitted number of sheds has been exceeded.

CRD Metalworks has grown from a one man, backyard operation to its present size, employing 15 workers. Its principal, Christopher Duval, stated that it continues to grow and has outgrown its present site and seeks to relocate part of his operation.

The joint hearings were well attended and comments both in favor and in opposition to the granting of the permit were offered by abutters and others in the community. A number of written communications, by email and postal delivery, were received by the ZBA. The written communications were all opposed to the granting of the permit.

The favorable comments applauded the success of the business and its employment of 15 workers. It was stated that the premises were clean and had little visual impact and would provide increased tax revenue to the town.

Comments of those opposed noted the increase of truck traffic on a rural road, as well as related noise and air pollution over the past 7 years. Harm to the adjacent wetlands and stream was emphasized. The activities of employees during work breaks, specifically engaging in target shooting, created excessive noise. It was stated that the current operation does not belong in a rural zone, which is primarily residential and agricultural, but should be moved to an industrial area.

B. Applicable Law

Section 2.3 The Rural Zone

This zone recognizes the traditional low-density residential and agricultural character of areas outside the village centers, while protecting their environmentally sensitive resources.

Section 3.3 Industrial/manufacturing/sawmills

Special Permit and Site Plan Review by Planning Board required.

Section 4.0 No building or structure or parcel, tract or lot of land shall be used for any purposes harmful to public health, safety or comfort by reason of the emission of odor, fumes, dust, gas, chemicals, poisonous fluids, or substance, vibrations noise or other cause of danger.

Section 4.3 No structure or combination of structures on a building lot shall have an aggregated footprint in excess of 10,000 square feet. (Municipal uses exempted)

Section 5.5 Criteria

Where a Special Permit may be authorized by the Zoning Board of Appeals under this Bylaw, said Authority may grant, upon written application, such Special Permit if it finds among other findings:

- a. That the structure and use will be reasonably compatible with the character and scale of other uses permitted as of right in the same district.
- b. That the use will not constitute a nuisance by reason of an unacceptable level of air or water pollution, or excessive noise.

Section 5.10 Any substantial change, alteration, or expansion of a use allowed by Special Permit shall require a new Special Permit from the Zoning Board of Appeals.

Section 9.3 The maximum aggregate coverage of a building lot shall be ---- 25% in the rural zone. Coverage shall include the footprint and impervious surfaces.

C. The Planning Board Site Review

As required by the Zoning Bylaw the Planning Board conducted a Site Plan Review and presented their written report to the ZBA on June 2, 2015. The report is annexed and incorporated into this decision.

The PB concluded that the proposed plan does not meet the requirements set forth in the Zoning Bylaw. The report sets forth 45 incidents of failing to comply with the requirements for site review as well as specific violations of the Zoning Bylaw. Several points raised are in the jurisdiction of other Boards and Town Officers. The Conservation Commission is aware of the wetland problems cited, and is currently dealing with the issues. An Enforcement Order from the Conservation Commission dated June 25, 2015 annexed hereto, was served upon the applicant directing that a plan addressing restoration of the wetland buffer zone, including removing storage sheds, replacing trees and vegetation to stabilize erosion and preventing runoff be prepared.

Other issues cited concerning septic systems and sanitary facilities are properly under the jurisdiction of the Board of Health.

The PB notes that the total square footage of all buildings appears to exceed the maximum of 10,000 square feet allowed by the bylaw. The area covered by the impervious surface appears to exceed the 25% limit for the lot as allowed in the rural zone.

Specific Findings:

1. There is no current, valid, Special Permit in effect. The previously granted permits have been unused for more than two years and have lapsed. The current manufacturing use differs substantially from pallet construction and automotive repair and requires a new Special Permit.

2. The current operation, including the main structure used for manufacturing, the storage sheds, and outdoor paved area used for assembly and storage, greatly exceeds 10,000 square feet and is therefore prohibited by the Zoning Bylaw.
3. The structure and use is not compatible with the character and scale of other uses permitted as of right in the rural district. The use constitutes a nuisance by reason of an unacceptable level of noise, and potential water and wetland pollution. The environmental qualities and property values of the community have been negatively affected by the applicant.
4. The site plan submitted to the PB fails to set forth adequate methods of disposal of sewage, refuse or other waste generated, as required by the Zoning Bylaw.
5. The applicant has improperly paved the surface of the site to exceed the 25% permitted by the Zoning Bylaw.
6. The application conflicts with the general purpose of the Zoning bylaw which is to preserve the rural character and safeguard sensitive environmental areas for future generations.

Decision of the Board:

The application for a Special Permit is not compatible with the purposes and intent of the Zoning bylaw of the Town of Williamsburg and must be denied. The Board has voted unanimously to deny the Special Permit .

Appeals of this decision, if any, shall be made pursuant to Chapter 40A Section 17, of the Massachusetts General Laws and shall be filed within twenty days after the date of filing of the notice of this decision in the Office of the Town Clerk.

Respectfully submitted this ^{15th} day of July 2015.



Gerald Mann, Chair, on behalf of the Zoning Board of Appeals



Received and Recorded this ^{16th} day of July 2015 7/16/15

Town Clerk, Williamsburg, MA



Williamsburg Planning Board

141 Main Street, P.O. Box 447

Haydenville, Massachusetts 01039-0447

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Site Plan Review by Williamsburg Planning Board

Decision Date: June 30, 2015

Application: CRD Metalworks, LLC
17 Hyde Hill Road
Williamsburg, MA 01096

Filed: December 24, 2014

Amended: May 15, 2015

Additional Information was provided at the Joint Public Hearings on February 27, 2015, April 28, 2015, and May 26, 2015, from letters and emails from abutters and lawyers for both the applicant and abutters, and from a site visit to 17 Hyde Hill Road on May 20, 2015.

BACKGROUND

Section 6.1 of the Zoning Bylaw for the Town of Williamsburg states: The purpose of Site Plan Review is to further the purposes of this Bylaw and to ensure that new development of large, non-residential and non-agricultural structures is designed in a manner that reasonably protects visual and environmental qualities and property values of the Town, and assures safe vehicular access, safe pedestrian movement, and adequate drainage of surface water.

Section 5.10 of the Zoning Bylaw for the Town of Williamsburg states: Any substantial change, alteration, or expansion of a use allowed by Special Permit shall require a new special permit from the Zoning Board of Appeals.

Section 6.0 of the Zoning Bylaw for the Town of Williamsburg states: No Special Permit or building permit shall be granted for any non-residential structure or structures which have a footprint exceeding 5,000 square feet, unless a Site Plan has been reviewed by the Planning Board.

Section 3.2 of the Zoning Bylaw for the Town of Williamsburg indicates that any industrial, manufacturing, or sawmill use in the Rural Zone requires a Site Plan Review.

The Planning Board can find no evidence of any currently valid Special Permit for the operation of any business at 17 Hyde Hill Road. The Planning Board can find no evidence of any permit for the operation of a saw mill at this site. A Special Permit was granted in 1986 to operate a woodworking shop for the manufacture of wooden pallets. In 2000, because of a substantial change to the use allowed by the Special Permit, as required by Section 5.10 of the Bylaws of the Town of Williamsburg, an application for a new Special Permit was filed for automotive repair and maintenance, and that Special Permit was granted in 2001. Currently the operations carried on at 17 Hyde Hill Road represent another substantial change to the use allowed under the Special Permit issued in 2001, as substantiated by the application for a new Special Permit which was filed in 2014. Though some firewood is prepared and sold on the site, such activities would not fall under the 1986 Special Permit, which was specifically granted for a woodworking shop for the manufacture of pallets.

The Planning Board concludes that a substantial change has occurred regarding the business activities at 17 Hyde Hill Road, that the current activities are industrial activities, that there is no currently valid special permit for any business activity on the site, and that a new special permit is required for the property.

SPECIFIC DEFICIENCIES IN THE SITE PLAN

Subsequent to the Application for a Site Plan Review submitted on December 24, 2014, the Joint Public Hearing of the Planning Board and Zoning Board of Appeals was continued twice to allow the applicant additional time to address shortcomings of the Site Plan. The Applicant was informed in writing that the Site Plan was inadequate. The legal representative for the Applicant was informed during the hearing on April 28, 2015 that the Site Plan did not adequately address a number of issues.

During its review of the Site Plan for 17 Hyde Hill Road, the Planning Board identified a total of 45 areas of deficiency in the plan as submitted. The Planning Board does not suggest that this list of deficiencies is all inclusive. The Bylaw clearly lists the criteria for review of a Site Plan. The following pages enumerate the individual deficiencies of the Site Plan for 17 Hyde Hill Road. Quotations of sections of the Bylaw are in italics and reference the specific section of the Bylaw. Deficiencies are listed and numbered sequentially.

6.51a: Building sites shall, to the extent feasible:

- 1. Minimize impact on wetlands, steep slopes, flood plains, hilltops*
- 2. Minimize obstruction of scenic views from publicly accessible locations*
- 3. Preserve unique natural or historical features*
- 4. Minimize tree, vegetation and soil removal and grade changes*
- 5. Maximize open space retention*
- 6. Screen objectionable features from neighboring properties and roadways*

- 1: The Site Plan provides no plan to minimize runoff into the wetlands.

2: The Site Plan indicates that development has encroached on the wetlands and extends into the buffer zone of 100 feet (Massachusetts Wetlands Protection Act) that is required adjacent to wetlands. The Site Plan provides no plan to mitigate this encroachment.

3: The Site Plan provides no plan to prevent any pollution of the wetlands by runoff of petroleum or other waste products.

4: The Site Plan presents no plan to screen objectionable features from neighboring properties and roadways.

6.51b: In the absence of town services, the development shall be served with adequate water supply and waste disposal systems provided by the applicant. For structures to be served by an on-site waste disposal system, the applicant shall submit a septic system design prepared by a Certified Engineer and approved by the Board of Health.

5: The Site Plan provides no information regarding the adequacy of the water supply.

6: The Site Plan provides no plan or system design for the septic system attached to the house on the property, and no report by a Certified Engineer is provided on the septic system to ensure adequacy of design or operation.

7: The Site Plan provides no plan or system design for the septic system attached to the shop or main work area on the property, and no report by a Certified Engineer is provided on the septic system to ensure adequacy of design or operation, or that it is of an adequate size to service the needs of the staff of the business. This omission is of particular concern considering the number of people working at the site and the proximity of the septic system to the wetlands.

6.51c: The plan shall maximize the convenience and safety of vehicular and pedestrian movement within the site and in relation to adjacent ways. The plan shall describe estimated average daily and peak-hour vehicular traffic to be generated by the site, traffic flow patterns for vehicles and pedestrians showing adequate access to and from the site, and adequate circulation within the site.

8: The Site Plan provides no plan to address safety of vehicular and pedestrian movement within the site and in relation to adjacent ways.

9: The Site Plan provides no information on estimated average daily and peak-hour vehicular traffic to be generated by the site, though some verbal estimates were provided at the site visit.

10: The Site Plan provides no information on traffic flow patterns for vehicles and pedestrians.

11: The Site Plan describes no measures to be taken to ensure safe speeds and operation of vehicles on Hyde Hill Road when deliveries are made or when finished machinery is removed from the site.

12: The Site Plan provides no information on access to and from the site except for the location of the driveways.

13: The Site Plan provides no information on traffic circulation within the site.

6.51d: The Site Plan shall show adequate measures to prevent pollution of surface or groundwater, to minimize erosion and sedimentation, to prevent changes in groundwater levels, and to prevent increased run-off and potential for flooding. Drainage shall be designed so that run-off shall not be increased and that neighboring properties will not be adversely affected. A system of groundwater recharge shall be provided that does not degrade groundwater quality. Recharge shall be by storm water infiltration basins or a similar system covered with natural vegetation. Dry wells shall be used only where other methods are not feasible. All basins and wells shall be preceded by oil, grease and sediment traps to facilitate removal of contamination. Any and all recharge areas shall be permanently maintained in full working order by the owner.

14: The Site Plan provides no plans or measures to prevent pollution of surface or groundwater.

15: The Site Plan provides no plan to minimize erosion and sedimentation.

16: The Site Plan describes no measures to prevent changes in groundwater levels.

17: The Site Plan provides no information on measures to prevent increased runoff and potential for flooding. This is a particular concern due to the large area of impervious pavement and structures on the property.

18: The Site Plan provides no storm water runoff management plan to ensure that runoff is not increased due to the large amount of impervious pavement and structures on the property.

19: The Site Plan provides no plan to prevent runoff from adversely affecting neighboring properties.

20: The Site Plan provides no plan for a system of groundwater recharge.

21: The Site Plan describes no plan for a system of oil, grease and sediment traps to prevent contamination of surface and groundwater from runoff. This is a particular concern due to the large area of impervious pavement and structures on the property and the proximity to the wetlands.

22: The Site Plan provides no maintenance plan for any recharge structures.

6.51e: Electric, telephone, cable TV, and other such utilities are required to be underground unless proven to be physically and environmentally unfeasible.

23: Though the site visit confirmed that the utilities are underground, the Site Plan does not provide any information on the utilities or their location.

6.51f: Exposed storage areas, machinery, service areas, truck loading areas, utility buildings and other unsightly structures or uses shall be set back or visually screened to protect the neighbors from objectionable site characteristics.

24: Though verbal representations were made during the site visit regarding certain outdoor activities being set back, the Site Plan provides no information on how storage areas, machinery, service areas, truck loading areas, utility buildings and other unsightly structures will be set back or visually screened.

6.51g: Outdoor lighting shall be designed to prevent glare or light, which reflects, strays or scatters beyond the subject structure or structures.

25: The Site Plan provides photographs of some of the outdoor lighting, but does not provide any details on the design of the lighting.

26: The Site Plan provides no plan to prevent glare or light, which reflects, strays or scatters beyond the structures, though the photographs provided and the site visit suggest that some light is directed outward from some of the lighting fixtures and away from the structures.

27: The Site Plan provides no details of any plan to prevent glare or light from decorative or artistic lighting on the outside of the structures from straying or scattering beyond the structures.

6.51h: Noise generated by machinery or equipment shall not extend beyond the property line.

28: The Site Plan provides no plan to contain manufacturing noise within the shop or main building, for example by keeping all doors closed during working operations.

29: The Site Plan provides no plan to eliminate outside manufacturing activities or the noise associated with such outdoor activities.

30: The Site Plan provides no plan to minimize noise of truck and heavy equipment activity during deliveries or transfer of finished equipment, or to set appropriate times for such activities.

31: The Site Plan provides no proposal to eliminate the playing of music either inside or outside of the shop or main building, which sound extends beyond the property line.

32: Though verbal assurances were provided during the site visit, the Site Plan provides no proposal to control the noise from recreational activities by employees and/or staff on the property.

33: Though verbal assurances were provided during the site visit, the Site Plan provides no proposal to eliminate the discharge of so-called gas cannons, or other "bird scare" devices on the property.

6.51i: The Site Plan shall comply with all other provisions of this bylaw.

34: The Site Plan does not show the full extent of the wetlands and water bodies on the property.

35: The Site Plan does not show drainage swales or areas subject to flooding on the property.

36: Though the height of buildings was observed during the site visit, and photographs show the buildings, the Site Plan does not provide the elevations (height) of the buildings and structures on the property.

37: The Site Plan does not show existing and proposed parking areas for employee and staff vehicles and/or completed machinery.

38: The Site Plan does not show loading areas.

39: The Site Plan does not show walkways or access and egress points.

40: The Site Plan does not include location, dimensions and characteristics of signs, though they were observed during the site visit. Photographs provided do not provide measurements.

41: The Site Plan shows the edge of the wetlands, but it does not show the extent of the wetlands or proposed or existing open space on the property.

42: The Site Plan shows that access to the shop or main work area at 17 Hyde Hill Road is not through the frontage for 17 Hyde Hill Road, as required by the bylaws.

43: Review of the Site Plan indicates that the impervious cover, which includes the buildings and impervious pavement, appears to exceed the 25 percent limit for the lot, as allowed in the rural zone under Section 9.3 of the Bylaws.

44: The Site Plan suggests that the total square footage of all buildings on the site appears to exceed the maximum of 10,000 square feet allowed under Section 4.3 of the Bylaws.

45: The Site Plan shows two separate driveways for access to the house on 17 Hyde Hill Road and the house on 21 Hyde Hill Road. This violates an earlier special permit for a shared driveway.

In summary, the proposed plan does not meet the requirements set forth in Section 6.5 of the Zoning Bylaw for the Town of Williamsburg.

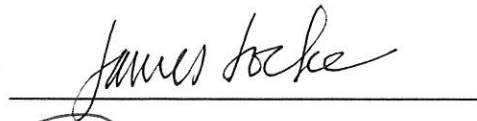
FINDINGS OF THE PLANNING BOARD

According to Section 6.61c of the Zoning Bylaw for the Town of Williamsburg the Planning Board finds that the proposed project does not constitute a suitable development in that it does not meet the criteria set forth in section 6.5.

Members of the Planning Board:

June 30, 2015

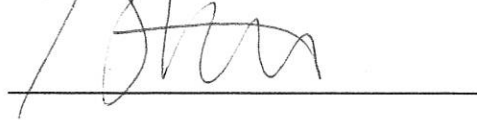
James Locke



Robert Barker



Stephen Smith



Charles Dudek



Stephen Snow

Recused

Williamsburg Conservation Commission
141 Main Street, P.O. Box 447
Haydenville, Massachusetts 01039-0447
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burgyconcomm@gmail.com

29 June 2015

Christopher Duval
CRD Metalworks, LLC
17 Hyde Hill Road
Williamsburg, Massachusetts 01096

Re: Wetlands Act violations

Dear Mr. Duval:

Open water, bordering vegetated wetlands, and buffers are protected under the Massachusetts Wetlands Protection Act. Any work in one of these protected areas, or that has an impact on one of these areas, must have a permit from the local Conservation Commission.

The Wetlands Protection Act prohibits any work that would destroy or impair any portion of a bordering vegetated wetland. A buffer zone is an area that extends out 100 feet from the edges of bordering vegetated wetlands and from the banks of bodies of water. Anyone proposing to do work in one of these areas has to appear before the Conservation Commission to ensure the work does not have an impact on the nearby wetland.

Even work beyond the buffer zone is not allowed to impact the wetland. In the case of work outside the buffer zone, the moment your work impacts a protected wetland, you are in violation of the Act and subject to an Enforcement Order.

Photographic evidence from satellite imagery between 2008 and 2013 shows clearly that unpermitted activities occurred in the upland, buffer, and wetland zones abutting 17 Hyde Hill Road. The site borders a freshwater marsh and small area of shallow open water. The site is disturbed right up to the wetland edge. This unpermitted work constitutes violation of the regulations under the Massachusetts Wetlands Protection Act.

See the attached Enforcement Order to redress these violations.

Sincerely,

Marcianna Caplis, chairman
Williamsburg Conservation Commission



Williamsburg Conservation Commission
141 Main Street, P.O. Box 447
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burgyconcomm@gmail.com

ENFORCEMENT ORDER

CDR Metalworks, LLC, owner Christopher Duval, is in violation of the Massachusetts Wetlands Protection Act and subject to the terms of this Enforcement Order dated June 25, 2015.

The Williamsburg Conservation Commission requires the following restoration work to mitigate the buffer and wetlands alterations done at 17 Hyde Hill Road:

- Prepare a plan with plot map and graphics indicating restoration areas, placement of trees, areas of revegetation, and areas of invasive plant species.
- Regarding trees removed from the bordering vegetated wetland: During its site visit of 9 June 2015, the commission found several (12+) stumps from trees >6 inches in diameter that had been cut down. Prepare a plan with plot map and graphics indicating placement of native tree species appropriate to the site of sufficient height (6 to 8 feet) to replace those removed.
- Regarding areas cleared of vegetation: Prepare a plan with plot map and graphics indicating areas of unpermitted removal of vegetation in the bordering vegetated wetlands and buffer zones. Eradicate invasive species (Japanese knotweed) present in the area illegally cleared of vegetation. Revegetate the degraded buffer zone and bordering vegetated wetlands with native shrubs, sedges, etc. This will be a multi-year process, involving three years of monitoring for both invasive plants removed and native species planted.
- Regarding eroded areas: Removal of vegetation between the impervious paved area and the wetlands has resulted in erosion in the buffer zone. Gullies and eroded areas are to be returned to their previous profile and seeded or planted to prevent runoff. All soil must be stabilized until vegetation grows.
- Regarding non-fixed storage facilities: Any storage units sited within 20 feet of the wetland edge must be moved to another part of the property not within or abutting the buffer zone.

The Conservation Commission will visit the site at least once annually to review progress.

CDR Metalworks, LLC, owner Christopher Duval, is ordered to bring a restoration plan addressing the work listed in this Enforcement Order to a meeting of the Williamsburg Conservation Commission no later than 13 August 2015.

Williamsburg Conservation Commission
Marciana Caplis, chairman

Marciana Caplis C. Todd Lynch Joseph Rogers Mary Dudek Andrew MacLachlan