

TOWN OF ESSEX ZONING BOARD OF ADJUSTMENT
DRAFT MEETING MINUTES
DECEMBER 2, 2021

Note: This meeting was held in-person and virtually on Microsoft Teams.

ZONING BOARD OF ADJUSTMENT (ZBA) MEMBERS PRESENT:

In-Person: Nick Martin, Chair; Michael Plageman, Vice Chair; Tom Yandow, Clerk and Hubert Norton.

OTHERS PRESENT:

In-Person: Sharon Kelley, Zoning Administrator; Tim Fagnant and June Campbell.

Virtual: Adam Peterson; Ellen Camp; Nathaniel Eisen; and Rob Fleming.

Chairman Martin called the hearing to order at 6:02 p.m; noted that the meeting was being held in-person and virtually; read the instructions of the meeting process; noted that Board Member Justin St. James was not able to attend the meeting; took roll-call of ZBA members present; read the Covid meeting process into the record; and provided the public oath.

AGENDA ITEM 1: CONDITIONAL USE: Arthur & Patricia Fagnant: Proposal to operate a home business pet cremation service located at 171 Brigham Hill Road in Agricultural-Residential (AR) Zone. Tax Map 17, Parcel 25-3.

Board Member Plageman MOVED and Board Member Yandow SECONDED a MOTION to open the Fact Finding/Public Hearing. The MOTION passed 4-0.

Board Member Yandow informed the Board that he knows Mr. Fagnant and believes he can be fair in reviewing the application. Chairman Martin asked what his relationship is with the applicant. Board Member Yandow stated that he knows him throughout the Town for the past 5-6 years. Chairman Martin asked if this was an acquaintance. Yandow said, "yes." Chairman Martin asked if any Board member had a problem with this matter. The Board had no objections.

Sharon Kelley, Zoning Administrator, stated that the proposed home business is a little different in that he is not having customers come to the premises. Kelley stated that the Regulations allow her to handle the application administratively, however as this is a new type of use in Essex, she believed it should come before the ZBA for review. Kelley stated that she did not have any concerns with the application, noting that all the staff departments have provided comments on the application. Kelley stated that prior to the hearing she asked the applicant if any chemicals would be used to clean the machinery as this would be an element the ZBA should note in the Findings. She stated that the applicant advised her that no chemicals will be used and advised that cleaning was low maintenance and was similar to cleaning a wood stove wherein you clean out the ashes. Kelley stated that if the use, as currently proposed, should increase with traffic coming to the site, the ZBA should decide on how they want to handle that situation.

Board Member Norton noted that a Finding states that the applicant's narrative states, "in part" and asked what was left out. Kelley stated that the applicant added some additional detail to the narrative and read the introduction. Kelley passed the written narratives to the ZBA members for review.

Board Member Plageman referred to Finding 14, #2 and noticed that the area was reduced from 800 square feet to 500 square feet. Plageman did not consider the garage as living space. Kelley read Regulation 4.9(C)(2), "Comprises an area within the existing dwelling or accessory building, or in a

52 combination of the two, that either exceeds 25% of the living area of the dwelling or exceeds a
53 maximum of 500 square feet except that in the CTR and R-B Districts, the home business may occupy
54 up to fifty percent of the living area or up to 1,000 square feet.” Plageman stated the applicant is getting
55 nicked on the accessory space. Kelley said, “yes.”

56
57 Board Member Norton stated that he didn’t see where the applicant explicitly said he wanted 800 square
58 feet and/or how the 800 sq. ft. is delineated. Norton noted the sketch doesn’t show where the 800 square
59 feet is located. Board Member Plageman stated that he did not get the sketch plan. Kelley noted that the
60 applicant revised the sketch plan due to the Fire Department’s comments. She passed around both plans
61 the applicant submitted.

62
63 Chairman asked the virtual attendees individually if they had any testimony. They reach replied no.

64
65 Tim Fagnant, applicant, thanked the ZBA for their time, noting it was his first time going through this
66 process and asked that they bear with him as the process makes him anxious. Fagnant stated that he has
67 lived on the 41-acres parcel since 2006, and the house is situated back off the road. He noted that he
68 shares the driveway with Rob Fleming and the driveway travels behind Campbell’s house, through an
69 existing right-of-way. Fagnant noted that as you travel up the drive, you come upon his 38’x60’ garage
70 that was constructed in 2007. He noted that he houses his toys, equipment, tractor, and tools in the
71 garage, as well as a few trailers outside of the garage. Fagnant explained that he has been doing
72 research on what he thought to be a necessary business that the community could handle and be cost
73 effective. He discovered pet cremation fits this need. He stated that he is aware of two businesses, one
74 being in Northfield and the other in Fairfax, located at the A.W. Rich Funeral Home. He explained that
75 through conversations, he discovered there is a need as there is an abundance of people who love their
76 pets and believes this service is needed in Essex as well as the surrounding communities. Fagnant stated
77 that between the Regulations and concerns, he is aware that the location is a residential area and, he is
78 trying to maintain that feel, which is why there will be no signage and no public traffic for the proposed
79 service. He plans to advertise through pamphlets, door-to-door and online. He stated that they will go
80 the to customer, receive the animal and return the cremains to customer. Fagnant believes the business
81 will survive as he is aware of a larger firm that comes over from New Hampshire to provide this service
82 to Vermonters. Keeping this type of business in Vermont will be more efficient. Fagnant stated that he
83 did not realize he had to apply for a permit as he the business was just a piece of equipment. Fagnant
84 reported that the Zoning Administrator felt that the ZBA should review the applicant, and he was
85 agreeable. Fagnant stated that he also needs to obtain Environmental Protection Agency (EPA) permit,
86 and any/all state permits that may be required, however he wanted this town permitting to be the first
87 step.

88
89 Board Member Plageman asked the applicant if he was okay with the reduction of 800 square feet to 500
90 square feet. Fagnant stated that it was okay and described the area that he planned to utilize. He noted
91 that if falls well under the 800 square feet that he originally asked to utilize.

92
93 Board Member Plageman asked if the existing office is part of the new business because if he did, now
94 would be the time to ask the Board. Fagnant said no he did not plan to use the existing office for this
95 business. He stated that he can leave the whole space open if that was easier.

Board Member Norton asked if the applicant planned to sell containers or other items that would need storage space. Norton was concerned if the applicant retrieved 15 animals, where would they be stored. Norton was also concerned about animal pick-up on the weekend and storage until Monday.

Fagnant stated that he has done his homework. Facilities have freezer chest or walk-in cooler and he is not anticipating this as his plan is to keep with small family animal pets. He intends to run the machine Monday-Friday only, but that he may do pick ups on the weekend. Fagnant stated that if this business takes off, he will either buy or lease a commercial space, but for now he was providing the service to learn and grow. He stated that the machine will not arrive for 6 months after he places the order. He stated that he will adhere to the ZBA rules. He noted that he plans to have a minimum selection of containers and plans to use a small counter space for same.

Board Member Norton asked if there were any regulations on transport within the state. Fagnant stated that he reached out to the Agency of Natural Resources (ANR) to find out permitting requirements. He was told because there is no wastewater or runoff, all he will need is an ANR permit. He stated that the manufacturer fills out the application. He noted the machine burns clean, but he will revisit the concern and obtain any additional certifications if needed. He stated that he is not aware of any state permits, but that will be his next step after ZBA approval.

Board Member Norton asked about exotic and endangered animals. Fagnant stated that he will have a conversation with ANR as he does not have a list. He stated that he will have no issues in rejecting an animal.

Chairman Martin asked about the hours of operation and asked for confirmation that staff will not go outside these hours. Fagnant stated that he is in and out of his house at all hours of the day. The hours of 8:00 a.m. to 4:30 p.m. were the only times the machinery would be operating and animal pick-up could occur outside those hours.

June Campbell, 179 Brigham Hill Road, was concerned that there was not a condition that states no customers are permitted to come to the business. Campbell showed the ZBA a portion of a map that showed a portion of the driveway by her house.

Chairman Martin asked about chemicals. Fagnant stated that he asked multiple manufacturers this question. He described that the machine burns at 1800 degrees F when initial combustion happens; the machine has two tiers and, the second chamber burns off carbons and visible smoke so that nothing is left but bone. The cleaning process required sweeping and vacuum, noting that there is nothing to de-grease. Fagnant noted that the garage has no water or sewer service. He noted that the outside of the machine will be cleaned with Windex.

Board Member Norton asked about people who would like a favorite toy to go in with the animal. Fagnant said that he will say, "No" as this will create smell and smoke. He can put the favorite toy in the box that goes back to the customer.

Adam Peterson, 165 Brigham Hill Road stated that his property was situated next to the applicant and is downwind to the garage. He requested that the ZBA makes sure that no animals are left outside as he is concerned with odor. Peterson would prefer that the ZBA grant him additional space for a larger

freezer. Peterson questioned potential noise or visible smoke when the unit was in use. Peterson wished the applicant the best with his venture.

Fagnant stated that if the machine is run correctly there will be no smell, nor visible smoke. He noted the machine has a built-in safety measure to shut down in this circumstance. Fagnant stated that the machine is electronically operated and self-senses O2 and gas to help burn as close to 98% efficient. Fagnant stated that the unit has a low-profile stack and does not stick out of the roof line. He noted that the garage is not visible in the summer to anybody, however Ms. Campbell can see a portion of the front. Fagnant concluded that if a freezer is needed, it will be placed indoors.

Board Member Norton MOVED and Board Member Plageman SECONDED a MOTION to close the Fact Finding/Public Hearing. The MOTION passed 4-0.

Board Member Plageman MOVED and Board Member Norton SECONDED a MOTION to approve the operation of a pet crematory located at 171 Brigham Hill Road, subject to the following Findings and Conditions:

FINDINGS:

- 1) The landowners are Arthur T. & Patricia Fagnant. The property is located at 171 Brigham Hill Road, in the Town of Essex, Chittenden County, State of Vermont (Tax Map 2:017-025-003.) The parcel lies within the Agricultural-Residential (AR) Zoning District and is a conforming lot.
- 2) This is a 41.31-acre lot with 200' of frontage on Brigham Hill Road. The required acreage for the AR zone is 3-acres. The existing driveway is shared as referenced in Volume 688, Pages 657-688 in the Town of Essex Land Records. The parcel is served by private septic and private water. The Town of Essex GIS map shows the parcel contains wetlands located away from the house and barn.
- 3) The application is being reviewed under the *Town of Essex Outside the Village of Essex Junction Official Zoning Regulations, Article IV, Section 4.9 Home Business and Article V, Section 5.7 Conditional Use.*
- 4) The proposal is for a Home Business to operate a pet cremation service by utilizing 800 square feet within the existing 2,280 square foot garage currently being utilized for the storage of equipment, toys, and automobiles.

The applicant's narrative reads in part,

Proposed use and current plan:

I have been researching the need for pet cremation services in the area and find a real need for such service. Currently a large portion of these services go out of state and take a longer time and are more costly. We are requesting approval to take 800sq.ft of existing space to install a pet crematorium housed within our building.

US Cremation Equipment Model: Sierra300

This unit is fully automated and has a fully sealed chamber allowing for a complete, odorless and smokeless operation. It comes with a low-profile stack so not to take away from the surroundings. (You will not see this regardless because of location), My shop is not visible from the road during the summer and only slightly during the winter.

It is my intention to operate this equipment during normal business hours 8am to 430pm Mon thru Fri once up and running as needed.

This machine will be run by myself and one other person of which we both will be trained and certified.

It is my intention to go to client/veterinarian direct and receive their pet for said service so as not to add traffic or congestion to the area. We will not be onsite advertising nor receiving pets from clients on site. In short, the client will contact us and we will go receive their pet, bring it to our shop, perform the cremation and return remains to the client.

We will receive training and certification directly from the manufacturer on the equipment (Sierra 300) as well as applying for and receiving any and all certification required from the State of Vermont and the EPA in order to operate in a clean, safe and healthy manner.

Due to the Fire Chief's comments on this application, the applicant submitted supplemental written details as follows:

1) We have an existing 2280 sq. ft. detached garage with 12ft ceilings and an open floor plan.

2) This building has 3 entrances to it, 1 man door on NE corner, 1 10x10 OHD on N end of building, and 1 8x8 OHD on ES corner of building

3) We are seeking to place a gas fired kiln in the back right corner "SW" of the space and using about 128sq.ft for machine.

4) The US Cremation Sierra 300 unit is UL listed and certified to EPA standards and is smokeless and odorless.

5) We will be placing 2-1000gal LP tanks on south end of building on a pad and placing regulator on SW corner of building before entering the building.

6) If a supplemental air intake is needed for the machine, then it will be placed on the WS corner of the building.

7) There is no water service to said building so wastewater and Storm water need not be a concern.

8) This equipment will be installed per industry standards along with any and all Local, State, and Federal permits required.

9) We will be going to our clients to pick-up pets so not to add additional traffic to both road and driveway.

10) We will not be advertising on our property so no signage will be requested.

5) The following documents were submitted for review:

- Tax Map 17, outlining his lot and where the location of the house and garage, as well as an ortho view of the premises;
- Hand-drawn floor plan of garage showing the area for the proposed use;
- Sample pictures of Random-Load Pet Cremation Systems;
- Information regarding Random-Load Pet Cremation Systems;

- Animal Cremation Chamber Specification Model Sierra 300/75-300; and
- An example of the State Air Pollution Control Permit Application Requirements.

6) Pursuant to state statute a 'Notice of Hearing' was provided to the applicant for posting on the property.

7) The abutting property owners were notified of this meeting by certified mail.

8) The applicants were mailed a copy of this Staff Report prior to the meeting.

9) Arthur (Tim) Fagnant spoke on behalf of this application. The following people provided comments:

June Campbell, 179 Brigham Hill Road, was concerned that there was not a condition that states no customers are permitted to come to the business.

Adam Peterson, 165 Brigham Hill Road stated that his property was situated next to the applicant and is downwind to the garage. He requested that the ZBA makes sure that no animals are left outside as he is concerned with odor. Peterson would prefer that the ZBA grant him additional space for a larger freezer. Peterson questioned potential noise or visible smoke when the unit was in use. Peterson wished the applicant the best with his venture.

10) In an email dated 11/22/2021, Public Works said, *The Town of Essex Public Works Department has no concerns or comments regarding this application.*

11) In an email dated 11/10/2021, the Recreation Director said, *EPR has no comments/concerns with this request.*

12) In an email dated 11/10/2021, the Police Chief said, *PD has no comments.*

13) In an email dated 11/18/2021, the Fire Chief said,

The Fire Department requests further detail on this project.

If this unit is gas fired, we will need a drawing on the location of the gas tank and associated regulators. Those will need to be properly marked and located away from the kiln so that they can be accessed and shut down in an emergency. If the gas tank is going to be buried, they will need to install some protection from snowplows as well as to mark the tank in winter months.

The Kiln will need an electrical disconnect located (by National Electrical Code) within a reasonable distance from the unit and clearly marked for emergencies.

Because they'll be installing a kiln for the cremation services, they'll need to get a permit from the State Fire Marshal.

Please confirm this information and provide a more detailed drawing so we can

determine if further comments are needed.

In a subsequent email dated 11/22/2021, the Fire Chief said,

Thanks for sending that information. My comments about the gas service from my previous email will apply then please. From reviewing the code, they should also reach out to the State FM about a permit. The code is not exactly clear but seems to lean towards they will need a State permit.

14) Pursuant to Section 4.9(C), no home business shall be approved that:

- (1) Changes the outside appearance of the dwelling in such a way as to be out of character with the neighborhood or is visible from the street or adjoining properties.

The ZBA finds that that the applicant's plan is to utilize an area within the existing garage. The addition of two gas tanks to be located outside the garage does not change the outside appearance of the property.]

- (2) Comprises an area within the existing dwelling or accessory building, or in a combination of the two, that either exceeds twenty five percent (25%) of the living area of the dwelling or exceeds a maximum of 500 square feet except that in the CTR and R-B Districts the home business may occupy up to fifty percent (50%) of the living area or up to 1,000 square feet.

The ZBA finds that the application proposes to utilize 800 sq. ft. and the applicant would be required to pull this back to utilize a maximum of 500 square feet.

- (3) Employs on the premises more than one full – time employee other than household members, or part-time employees who are not household members and whose combined time equals more than forty (40) hours per week.

The ZBA finds that the landowner will be the only full-time employee however, will employ one additional employee. The applicant agrees that the machine will not operate more than 40-hours per week.

- (4) Does not provide adequate off-street parking for all employees in parking areas designed to be consistent with the character of the neighborhood.

The ZBA finds that no customers will be entering onto the premises therefore, parking is not an issue.

- (5) Generates sewerage or water use which places an undue burden on the existing sewage disposal system or water source.

The ZBA finds that the proposed use will not require water or sewer services.

- (6) Generates traffic which places an undue burden (either in capacity or congestion) on existing public or private roads.

The ZBA finds that the proposed use will not generate public traffic.

- (7) Does not provide off-street parking spaces in number and location as reviewed and approved by the Board of Adjustment.

The ZBA finds that the proposed use will not require the need for parking.

- (8) Creates a hazard to person or property or results in electrical disturbance, objectionable noise, vibration, smoke, dust, odors, heat, excessive glare, or other nuisance.

The ZBA finds that the proposed cremation system Model Sierra-300 utilizes a self-contained system that is smokeless and odorless; will meet or exceed Nationally accepted incinerator construction standards as established per the Incinerator Institute of America publication guidelines; the primary chamber will not exceed 60% of total furnace volume; provides high temperature refractory construction with air-cooled walls to prevent excessive heat radiation; and provides exhaust gas temperature reduction.

- (9) Results in outside storage or display of materials.

The ZBA finds that two LP gas tanks will be placed upon a concrete pad, along with a gas regulator will be proposed outside the garage. No outdoor storage or display of materials is proposed with the application.

15) Pursuant to Section 5.7 (Conditional Use) of the Zoning Regulations, **the applicant** provided the following response:

- 1. No new demands for community services or facilities will be needed. Road maintenance, Police and Emergency services already being provided since purchase will remain the only town services used.*
- 2. Character of the area affected: The proposed request will not change the aesthetics, road frontage, or existing land use in any way. The building exists already.*
- 3. Effect on traffic on roads and highways in the vicinity: There is no projected change/impact on the traffic of Brigham Hill Rd by the current request for use expected since I will be going to receive client's pets and not having them come to the facility as stated above earlier.*
- 4. Bylaws and Ordinances: No violation of existing bylaws and ordinances noted.*
- 5. Conformance with Town Plan and Community Character: No changes in conformance or impact on community character is projected.*

16) Pursuant to Section 5.7 (Conditional Use) of the Zoning Regulations, the Zoning Board finds the following:

- a. There will be no adverse effect on the capacity of the existing or planned community facilities;
- b. There will be no adverse effect on the character of the area/neighborhood affected;
- c. There will be no adverse effect on traffic on roads and highways in the vicinity;
- d. The proposed use will be in compliance with the bylaws now in effect;
- e. The proposed use will not adversely affect utilization of renewable energy resources;
- f. The proposed use is in conformance with the Town Plan;
- g. The proposed use does not require site plan review; and
- h. The proposed use is in conformance with community character.

CONDITIONS:

1. This approval is granted for the operation of a pet crematory, using a total of 500 square feet within an existing garage; and for 1 full-time or 2 part-time employees.
2. The hours of operation shall be Monday – Friday, 8:00 a.m. to 4:30 p.m. for the furnace only, personnel time is not limited.
3. The applicant shall obtain a Use Permit and schedule a Certificate of Occupancy inspection prior to starting the business.
4. Prior to the issuance of a Certificate of Occupancy, the applicant shall secure and provide a copy of any/all state or federal permits that may result from this approval.
5. The gas tanks and associated regulators shall be properly marked and located away from the kiln so that they can be accessed and shut down in an emergency.
6. The Kiln shall provide an electrical disconnect (by National Electrical Code) located within a reasonable distance from the unit and clearly marked for emergencies.
7. There shall be no outside storage associated with this application.
8. Any changes to the conditions shall require an amendment to this approval.
9. The approval shall terminate upon relocation by the applicant and shall neither remain with the subsequent occupant of the dwelling nor transfer to a new location with the original applicant.
10. By acceptance of the conditions of this approval without appeal, the applicant confirms and agrees for himself and all assigns and successors in interest that the conditions of this

approval shall run with the land and the land uses herein permitted, and will be binding upon and enforceable against the applicant and all assigns and successors in interest.

The MOTION passed 4-0.

AGENDA ITEM 4: MINUTES: November 4, 2021:

Vice-Chair Yandow MOVED and Board Member Plageman SECONDED a MOTION to approve the 9/2/21 minutes as written. The MOTION passed 5-1.

OTHER BUSINESS:

Kelley reported that she is expected two applications for the next ZBA meeting.

The meeting adjourned at 6:43 p.m.

ZONING BOARD OF ADJUSTMENT

By:

Nick Martin, Chair