

TOWN OF LINCOLN
ZONING BOARD OF ADJUSTMENT

PERMITTEE: KYLE CLARK

LANDOWNER: KYLE AND KATIE CLARK

APPEAL OF MARILYN GANAHL RE: APPROVAL OF CLARK APPLICATION (No. 22-022) FOR A RESTRICTED LANDING AREA

FINDINGS OF FACT, CONCLUSIONS OF LAW AND DECISION

I. BACKGROUND

On March 17, 2022, the Applicant, Kyle Clark, submitted an Application for Zoning Permit (No. 22-022) for a “Restricted Landing Area” (RLA) on his property located at 432 Orchard Road North in Lincoln, Vermont (Parcel No. 17-07-01-63.100) (hereinafter “Permit No. 22-022” or the “Permit”). The Lincoln Zoning Administrator granted Permit No. 22-022 on March 22, 2022 as an accessory use for a “Restricted Landing Area for electric airplanes and occasional hybrids.” The Permit as issued stated 8 conditions as follows:

1. Pipestrel Alpha Electro planes and occasional others
2. Personal Use, not commercial use
3. Glider emergency landing and medivac if needed
4. Grassy/turf landing area same as existing lawn
5. Approach and departures free of obstructions
6. Calm wind/pref. app. and dep. from/to west
7. No flights 9pm-7am (emerg. & medivac excepted)
8. Overflight of equine areas avoided

On March 28, 2022, Marilyn Ganahl filed an Application for Hearing before the Zoning Board of Adjustment appealing the decision of the Zoning Administrator (hereinafter “App. No. 22-023”). The reason stated for the appeal was “inadequate process for a big impact permit for airstrip” and “big impact permit given without public input. No neighbor was notified, no public input, no EIR.”

On May 23, 2022, June 15, 2022, July 12, 2022 and August 8, 2022, the Lincoln Zoning Board of Adjustment (“ZBA”) convened properly warned hybrid public hearings at Burnham

Hall in Lincoln, Vermont or via Zoom conferencing and received testimony and evidence concerning the Permit appeal. A site visit was held on June 15, 2022. A quorum of eight (8) ZBA members have been present during the proceedings:¹ being Tommie Thompson (Chair), Serena Fox, Barry Olson, James Warnock, Patricia Waugh, Josiah Jackson, Nicole E. Lee and Stephen Halnon (alternate).²

Attendees at one or more of the above-referenced hearings and/or site visit include: Ann Moreau-Kensek, former Zoning Administrator, Attorneys Christian Chorba and Claudine Safar representing Marilyn Ganahl, Attorneys John Mazzuchi and Liam Murphy representing Kyle and Katie Clark, Attorney Benjamin Putnam, Town of Lincoln general counsel, along with the following interested parties pursuant to 24 V.S.A. § 4465(b): Mark and Stephanie Atkins, Louella Bryant, Bruce Catlin, Kyle and Katie Clark, Sarah Farr, Christine Fraioli, Marilyn Ganahl, Michelle Hall, Sarah Laird, Coco Moseley, Mike O'Connor, Louise Rickard, and Jacquelyn Tuxill.³

The following people were sworn in and offered testimony during the hearings: Ann Moreau-Kensek, Stephanie Atkins, Louella Bryant, Kyle Clark, Katie Clark, Erin Malone, Roger Rood, Jenn Buker, Louise Rickard, Jacquelyn Tuxill, Sarah Laird, Mike O'Connor, Marilyn Ganahl, Michelle Hall, Coco Moseley and Christine Fraioli.

II. THE RECORD

The following constitutes the record of documentary exhibits and tangible evidence that were submitted and, after due deliberations, have been admitted⁴ into the record during the

¹ All referenced members of the ZBA have been present at the hearings or have listened to recordings of those portions of hearings they have missed. *See* 24 V.S.A. § 1208(b). All referenced ZBA members reviewed the exhibits comprising the record in this appeal.

² ZBA member Harry Reynolds recused himself from participating in this appeal at the initial hearing held on May 23, 2022 and has not participated in the hearings or during deliberations.

³ For a complete listing of persons known to have attended one or more of the hearings pursuant to sign-in sheets, please see the List of Attendees posted on the Town of Lincoln website.

⁴ Exhibits marked 9, 16 and 17 have not been admitted into evidence. The ZBA hereby determines that Exhibit 9 lacks the requisite relevance or materiality to be considered given that it involves a depiction of a sign located on

hearings on this application:

- Exhibit 1 Ganahl/Clark Appeal Public Record (Zoning Administrator's file).
- Exhibit 2 "Talking Paper" submitted by Michael O'Connor dated April 22, 2022.
- Exhibit 3 Legal Memo submitted by Monaghan Safar Ducham PLLC on behalf of Marilyn Ganahl re "Appeal of Clark Air Strip Permit" dated May 23, 2022 with copy of *Valois* Decision and Order.
- Exhibit 4 E-mail from Louella Bryant to the ZBA dated June 9, 2022.
- Exhibit 5 Sworn statement of Louise Rickard dated June 13, 2022.
- Exhibit 6 Legal Memo submitted by MSK Attorneys with attachments on behalf of Kyle and Katie Clark dated June 14, 2022.
- Exhibit 7 Application for Zoning Permit (No. 22-022) dated March 17, 2022 with attachments (Exh. A).
- Exhibit 8 Copy of Flight Tracking History – 5/23/2022 (Exh. B).
- Exhibit 9 Copy of Photo – Caution Low Flying Aircraft (Exh. G). **(Not admitted)**
- Exhibit 10 Video Depicting Flight of Aircraft
- Exhibit 11 Legal Memo submitted by Monaghan Safar Ducham PLLC on behalf of Marilyn Ganahl re "Follow-up Letter Regarding Appeal of Clark Air Strip Permit" dated June 16, 2022.
- Exhibit 12 E-mail from Louella Bryant to ZBA dated June 20, 2022
- Exhibit 13 Sworn statement of Michelle Hall dated July 6, 2022.
- Exhibit 14 Sworn statement of Sarah Farr dated July 12, 2022.
- Exhibit 15 Letter submitted from Bruce Catlin to Lincoln Selectboard dated April [sic] 4, 2022.
- Exhibit 16 E-mail from R. M. Burley to ZBA Chair and Clerk dated August 8, 2022. **(Not admitted)**
- Exhibit 17 E-mail from Gregor and Amy Masefield to Lincoln Town Clerk dated August 8, 2022. **(Not admitted)**

property not within Lincoln and is not materially relevant to the accessory use proposed in this application. *See* Lincoln ZBA Evidentiary Ruling re Admission of Testimony dated July 12, 2022. It was offered in connection with prior alleged acts of the Permittee and its probative value is substantially outweighed by the danger of unfair prejudice and undue delay given the collateral issues it would create in this zoning appeal. *See* V.R.E. 403 and 404. Exhibits 16 and 17 have not been admitted as they have been offered by persons who have not been provided with interested party status in this appeal and are largely statements of the Permittee's character or otherwise provide information not relevant to the land use issues on appeal.

- Exhibit C-1 Aerial Photo/Plans proposed landing area and approaches submitted by Clark.
- Exhibit C-2 Photographs of Pipistrel submitted by Clark.
- Exhibit C-3 Videos of Planes with noise measurements and flight path (<https://vimeo.com/737672255/5834a8d564>) submitted by Clark.
- Exhibit C-4 Aviat Husky Noise Level submitted by Clark.
- Exhibit C-5 Pipistrel Noise Level submitted by Clark.
- Exhibit C-6 Traffic Counts – Elder Hill Road submitted by Clark.
- Exhibit C-7 Distance to closest homes submitted by Clark.
- Exhibit C-8 Altitude Calculations submitted by Clark.
- Exhibit C-9 Property Values submitted by Clark.
- Exhibit C-10 List and Map of Landing Areas submitted by Clark.

Based upon the testimony of the witnesses appearing during the hearings and the documents admitted into evidence, the ZBA hereby issues its written decision pursuant to 24 V.S.A. § 4464(b) and Lincoln Zoning Regulations (“LZR”) at Section 745:

III. FINDINGS OF FACT

The ZBA hereby finds the following Facts:

1. An Application for Zoning Permit (No. 22-022) (the “Permit”) was filed by Kyle Clark (“Clark”) for a “Restricted Landing Area” (“RLA”) on March 17, 2022 to be used and located on 130± acres of property with a physical address of 432 Orchard Road, Lincoln, Vermont (the “Property”).
2. The Property is owned by Kyle B. and Katie S. Clark.
3. The Appellant is Marilyn Ganahl (“Appellant” or “Ganahl”). The appeal was filed on March 28, 2022.
4. The Permit seeks permission to build and use a “restricted landing area” for “personal use only”.⁵

⁵ It is noted that the permit application as filed describes the proposed activity as a “Restricted Land Area”. The

5. Pursuant to the Town of Lincoln's Zoning Map (3/1/11), the Property is located primarily in the 5-acre "Outlying District" with a portion of the Property's northeast corner located in the 2-acre "Transition District". The proposed landing strip will be located entirely within the "Outlying District" portion of the Property.

6. Based on (1) the location of the Property, (2) the projected approach and departure zones to the landing area as identified by Clark in his application, and (3) the proximity of persons owning or occupying lands who have demonstrated a physical or environmental impact on their respective property interests, the following individuals are hereby recognized by the ZBA as interested parties to this appeal pursuant to 24 V.S.A. §4465(b)(3) (persons owning or occupying property in the "immediate neighborhood"):

- Mark and Stephanie Atkins (155 E. River Road)
- Louella Bryant (925 Quaker Street)
- Bruce Catlin (203 Isham Road)
- Katie Clark (432 Orchard Road)
- Kyle Clark (432 Orchard Road)
- Sarah Farr (830 Elder Hill Road)
- Christine Fraioli (379 Orchard Road)
- Marilyn Ganahl (830 Elder Hill Road)
- Michelle Hall (170 Quaker Street)
- Sarah Laird (925 Elder Hill Road)
- Coco Moseley (796 James Road)
- Mike O'Connor (830 Elder Hill Road)
- Louise Rickard (1713 Elder Hill Road)
- Jacquelyn Tuxill (1490 Elder Hill Road)

7. Pursuant to the LZR Section 332(6), permitted uses within the Outlying District include "Accessory uses". "Conditional uses" within the Outlying District include "Developed Recreational Use" and "Extraction of Soil, Sand and Gravel." See LZR at Sections 333(4) and 333(6).

Permit as issued by the Lincoln Zoning Administrator imposes conditions, one of which specifies that the use of the landing area will be "personal use, not commercial use". It is noted that the conditions as stated do not specify the person for whom the landing area is limited.

8. The area, dimension and setback requirements in the Outlying District include a minimum lot size of 5 acres, front yard setbacks of 30 feet, front and rear yard setbacks of 30 feet and stream/river setbacks of 25 feet, with a maximum building height of 35 feet. *See* LZR at Section 324.

9. As proposed by Clark, the project meets all area dimensional setback requirements for the Outlying District and the proposed use is not located within the Flood Hazard Area or Overlay Area.

10. The term “Accessory use or “Building” is defined under the LZR as:

A use or building customarily incidental and subordinate to the principal use or building and located on the same lot. For residential uses these include, but may not be limited to garages, garden and tool sheds, playhouses, and in-ground swimming pools or other structures that are incidental to the residential use of the premises and not operated as a commercial enterprise.

See LZR at Article VIII, Section 800.

11. The term “Developed Recreational Use” is not defined in the LZR, although it is referenced as a conditional use in the Outlying District, the Village District and the Transitional District. *See* LZR at Sections 313(5), 323(3) and 333(4).

12. As proposed, the RLA will consist of a leveled grass surface landing area of 1,500’ by 60’ located in the southern half of the Property in a generally west by northwest/east by southeast orientation with the approach/departure location at the westerly end of the landing strip. *See* Exhibit 7.

13. As submitted, the Application was submitted along with a graphic hand drawn depiction of the restricted landing area containing the following notes:

1. Personal Use Only
2. Turf/Grass Landing Area, same as existing lawn
3. App/Dep Free of Obstructions
4. No Training or Touch & Go Ops
5. Calm Wind/Preferred App/Dep From/To West
6. Flight Avoided 9pm – 7am
7. Overflight of Equine Areas Avoided

See Exhibit 7.

14. Clark also provided an aerial photograph depicting three specific areas to be avoided along the flight path of arriving and departing aircraft, including an area marked “avoided residential area” to the south and west of the flight path, “avoided equine area” to the north and east of the proposed flight path and an unidentified area southerly of the proposed flight path. This document is entitled “Approach-Departure Normal Routing Proposed Clark Land Area”. *See Exhibit 7.*

15. The Property is comprised of two adjacent parcels totaling approximately 130 acres and it is used as the Clark’s primary residence. The primary use of the property is residential.

16. Marilyn Ganahl owns property at 830 Elder Hill Road, Lincoln, Vermont, which is located immediately adjacent to the Property to the north. Ms. Ganahl’s Application for a Hearing before the Zoning Board of Adjustment states that there was “inadequate process for big impact permit for air strip.”

17. The Lincoln Zoning Administrator (ZA) at the time of the Clark Application was Ann Moreau-Kensek.

18. Ms. Moreau-Kensek testified that she was initially contacted in January of 2022 by Clark about what might be needed to construct and use a landing area on the Property.

19. Clark is a pilot and serves on the State of Vermont Aviation Advisory Council and is involved in a business that is developing electric powered aircraft, including the Pipistrel Alpha Electro.

20. As part of the permitting process, the ZA made inquiries of the Town attorney and the Executive Secretary of the Vermont Transportation Board and determined that the use proposed by Clark could be considered an accessory use to the residence existing on the

Property.

21. The ZA provided the standard notifications as required for the issuance of a zoning permit seeking approval for a permitted use by posting the approved permit and requiring that Clark place a notification of the Permit at or near the Property.

22. Clark is a certified flight instructor.

23. The grass landing area will involve approximately 2-acres of grass.

24. It takes approximately 30 seconds for a takeoff and a landing to occur.

25. Clark testified that in connection with the proposed use of the landing strip that, if approved, electric aircraft will be primarily used but that he would like the whole family to be able to use the airstrip so a larger gas-powered plane would also use the landing strip occasionally for trips.

26. Clark estimates that there will be approximately 3 to 4 flights using the landing strip on a weekly basis but there is no permit restriction on the number of landings or take off's from the proposed RLA..

27. There are currently two pilots that live at the Clark residence.

28. Clark owns or has access to 26 aircraft, 5 of which are electric.

29. As of the date of the hearings in this matter, there are two landing strips within the Town of Lincoln, one being located southerly of the Property at so-called "Maule's Roost" and the other being a helipad located southerly of the Property on property owned by Martine Rothblatt.

30. Exhibit 10 was introduced at the hearing, which is a video depicting a plane being flown by Clark in the vicinity of the Ganahl property on or about May 23, 2022 which appeared to conduct multiple maneuvers and which can audibly be heard from the Ganahl property where the video was taken. The ZBA is unable to find or determine the exact, precise location of the flight path of the plane in relation to properties existing on the ground, but the ZBA is able to

find that the plane appeared to be in close proximity to the Ganahl property and could be heard from the Ganahl property.

31. The plane in the video was owned by BETA AIR LLC and the aircraft type was an EXTRA EA-300 (piston-single) (E300).

32. Interested party, Stephanie Atkins, resides at 155 E. River Road. Based on her testimony, the aircraft landing at the proposed landing strip would be at an elevation of 250 feet at the Clark property line and at 500 feet over the Atkins property.

33. Ms. Atkins stated that the level of flights to and from the proposed landing strip would affect their property value and be disruptive to their animals.

34. Of particular concern to Ms. Atkins is that aircraft, once airborne, are not within the control of the jurisdiction of the Town of Lincoln.

35. Jenn Buker, residing at 439 Zeno Road, testified based on her experience that aircraft from the proposed RLA in the vicinity of her property would be no louder or generate a noise level different from firetrucks that go by. .

36. Clark testified that the RLA as proposed, would not involve the use or placement of any lights or flights at less than 500 feet over a neighbors' property and that he had personally landed near horses before and that they were not bothered by the arrival and departure of aircraft.

37. Jackie Tuxill, residing at 1490 Elder Hill Road, is concerned that her property value will be impacted given the intrusive nature of departure and arrival of aircraft from the proposed RLA.

38. Michael O'Connor, residing at 830 Elder Hill Road, was concerned about the process utilized for the issuance of the Permit and lack of a personal inspection prior to issuance of the Permit and was concerned about who in Lincoln would be called upon to respond if a plane crashed or the conditions as imposed were required to be enforced.

39. Appellant Ganahl, residing at 830 Elder Hill Road, stated her concerns of and

relating to her southerly 500 feet of property line which abuts the Property. As a neighbor to the proposed use, she has dogs and horses, including rescue horses, and has spent years restoring her land to its natural state, including a monarch sanctuary which she feels will be impacted by the proposed use.

40. Ms. Ganahl stated concerns regarding a decrease in property value, as well as the potential for being targeted by low-flying aircraft.

41. Coco Moseley, residing at 796 James Road, testified that she resides approximately 1.5 miles from the Property and within the area of the anticipated arrival and departure flight path depicted in the Clark Application.

42. Ms. Moseley is concerned about the disruption of repeated arrivals and departures on the Property and its impact on the graceful and peaceful way of life which are emphasized in the planning goals as referenced in the 2018 Lincoln Town Plan.

43. Michael O'Connor, residing at 830 Elder Hill Road, testified that he enjoys the quiet, serene ambiance of the Town of Lincoln that epitomizes country living, which is not consistent with the daily arrival and departure of aircraft from the RLA as approved.

44. Mr. O'Connor points to that section of the 2018 Lincoln Town Plan which provides that the purpose of the plan is to maintain the best elements of rural, diverse and close-knit community of Lincoln's past while providing for the needs and desires of the Town's residents in the future.

45. Neighbor Louella Bryant, residing at 925 Quaker Street, provided a statement indicating her belief that the RLA proposed by Clark provides for plenty of space for takeoff and landing without impacting neighbors, the neighbor's horses or the bobolinks nesting in the field.

46. Louella Bryant also believes that the denial of a permit to allow Clark the use of his property for a personal landing strip would deprive Clark of his constitutional rights to use his property.

47. Louise Rickard filed a statement indicating that, if permitted, it will significantly impact the generally peaceful, quiet environment that those of us on Elder Hill Road and all of Lincoln value.

48. Witness Michelle Hall has provided a written statement indicating that her property located at 172 Quaker Street will be “under the approach and landing zone of the proposed airstrip”. She has provided a statement indicating that they have been experiencing various low altitude aircraft that may have included drones within the vicinity of her property, as well as a helicopter.

49. Sarah Farr whose family owns land at the corner of Elder Hill Road and Robinson Road has provided a written statement of her opposition to the Permit stating that low-flying aircraft over the town center of Lincoln will ruin the rural quality of life and privacy of its residents based on her experience of observing an overflight of an aircraft on May 23rd, which left her feeling horrified and shaken.

50. Bruce Catlin, residing at 203 Isham Road, has provided written testimony to the effect that while he can understand the community concerns, the limitations due to length of runway, weather, winds and terrain will make anything more than occasional use of the landing area unrealistic. It is also his belief that the occasional airplane landing or taking off will provide and constitute less noise than a neighbor working on their woodpile with a chainsaw, a farmer running a hay bailer or a mechanic revving an engine.

51. Testimony has been provided to the ZBA in connection with the decibel noise levels of various aircraft expected to utilize the RLA proposed by Clark. The gas powered Aviat Husky noise level – at a distance of 2,500 feet- is estimated at less than 57dB(A).

52. Estimated noise levels associated with a Pipistrel Electric aircraft as cited in the FAA Pilot Operating Handbook measured at 1,000 foot distance flyover are measured at 60.1dB(A) with a maximum noise level of 70.8dB(A). The sound level at 2,500 feet is estimated

at less than 51dB(A).

53. The distance in feet between the point of arrival and departure at the western end of the proposed RLA is estimated to be 2,518.3 feet.

54. The distance from the point of arrival and departure at the western end of the proposed RLA is estimated to be 2,006.6 feet from property owned by Atkins.

55. Based on Exhibit C-10 there are a total of 46 Vermont “private airstrips” located throughout Vermont.

56. Two landing areas are known to be located in the Town of Lincoln. One is located on property owned by Martine Rothblatt for helicopters, and the other is located on property of Rood at Maule’s Roost. The Maule’s Roost airstrip is for aircraft. *See* Exhibit 11.

57. Based on a list of RLA’s at Exhibit 11, maintained by the Vermont Department of Transportation, RLA there are a total of 76 RLA’s throughout Vermont including Addison (2), Charlotte (2), Cornwall (2), Lincoln (2), Panton (2), Shoreham (2) and Weybridge (1).

58. The RLA is intended for use by family and for personal purposes but the permit as issued by the ZA is not limited to specified persons.

59. It is estimated that the possible days of use of the RLA due to weather, family obligations and other matters is 74 days per year but there is no limitation on annual or daily use of the RLA in the permit as issued by the RLA.

60. The Pipestrel aircraft needs 300 to 400 feet for takeoff, with 1,500 feet designed for safety precaution purposes.

61. Takeoff and landing on the RLA will require clear weather conditions.

62. There is no direct evidence as to how many of the existing RLA’s in Vermont are currently considered accessory to private residences.

IV. CONCLUSIONS OF LAW

Based upon the above stated Findings of Fact, the Lincoln ZBA hereby concludes as follows:

A. Clark proposes to construct a 1,500' by 60' foot RLA on the Clark's 130 +/- acre Property with a street address of 432 Orchard Road North. The current primary use of the Property is as a single-family residence for the Clark family. The proposed development is proposed for development and use entirely within the Outlying District and meets all dimensional requirements, including land, area, setback and lot coverage.

B. The Property is not located within the Flood Hazard Overlay Area or River Overlay Areas as defined by LZR 400 and 420.

C. Within the Outlying District, permitted uses pursuant to LZR 332(6) include "accessory uses".

D. "Accessory use or Building" is defined in LZR Article VIII, Section 800 as follows:

A use or building customarily incidental and subordinate to the principle use or building and located on the same lot. For residential uses these include, but may not be limited to garages, garden and tool sheds, playhouses, and in-ground swimming pools or other structures that are incidental to the residential use of the premises and not operated as a commercial enterprise.⁶

E. The ZBA concludes that the current permit appeal is limited in scope to the central issue addressed by both Clark and Petitioner Ganahl during the hearing process and as submitted in their written memoranda: that being the issue of whether the ZA's issuance of a use

⁶ LZR Section 333(4) provides that within the Outlying District, "developed recreational use" and "extraction of soil, sand and gravel" constitute conditional uses requiring conditional use review and approval. The Permit, as submitted and issued by the Z A, was not considered pursuant to either of these two use categories and no conditional use referral was made by the Z A or considered by the ZBA. . There has been no evidence adduced during the hearing process itself that directly addresses use of the RLA for "developed recreational purposes" whatever that might be given the lack of any definition for that use in the LZR.. Similarly, there was little testimony about the extent of earth movement necessary to accomplish a serviceable RLA on the site although there is no indication from the evidence provided that "extraction" is contemplated by Clark.

. Regardless, the Application was not submitted for conditional use approval but was, instead, submitted as an accessory use to the existing single-family dwelling located on the Property. This decision will, accordingly, restrict its analysis to whether there was enough information provided to consider the proposed RLA an accessory use.

permit for a proposed RLA as a accessory to a primary use residence is in conformance with the LZA based on the application as submitted. “Therefore, the sole question before this Board is whether airplane landing strips are customarily incidental to single-family homes.” See Memoranda dated August 15, 2022 submitted by Monaghan Safar and Ducham on behalf of Appellant Ganahl and Memo submitted to ZBA dated August 15, 2022 by Lynch & Foley, P.C. analyzing phrases customarily incidental as framed by LZR at pages 5-8.

F. The ZBA has been provided by the Applicant/Permittee and the Appellant/Interested Party with alternate views of how to interpret and analyze the terms ‘customarily incidental’ and ‘subordinate’ as stated in the LZR Section 800’s definition of ‘accessory use’. Appellant/ Interested Party urges a restrictive numeric analysis of the number of ‘similar inland landing strips’ within a narrow geographic area to define what is ‘customarily incidental’ and sites *Appeal of Paul Valois-Private Landing Strip*, (Docket No. 7-1-06 Vtec). See also, *Town of Salem v. Durrett*, 125 N.H. 29, 31-33, 480 A.2d 9, 10-11 (1984)(“[A] rare association of uses cannot qualify as customary.”). Appellant also sites to a case that interprets the term ‘incidental’ as involving an analysis of whether the impact of the proposed use on the property and neighbors will be of ‘minor consequence.’ See *Riskier v. Smith Twp. Zoning Hearing Bd.*, 886 A.2d 727, 732 (Pa. Commw. Ct. 2005). On the other hand, Applicant /Permittee urges a more fluid concept of what can be considered an ‘accessory use’ which evolves over time to accommodate the changing needs and modernized methods of commuting and travel by residential occupants.

G. The ZBA concludes that all of the analytical criteria urged by the parties have merit and warrant consideration in the interpretation of ‘customarily incidental’ and ‘subordinate’ as defined by LZR 800. What troubles the ZBA in its effort to apply the referenced criteria, however, is the lack of specific and reliable information put before the ZA initially and the ZBA on appeal from which to adequately determine that the use that is being

proposed will actually be of minor consequence to neighbors or is a numerically consistent use regionally or statewide among residential properties.

H. While the ZBA has considered, and appreciates, the information put forward at hearing concerning the decibel levels which the Pipistrel and Aviat Husky aircraft are expected to generate on arrival and departure from the proposed RLA, it is not able to conclude on the strength of what was offered that repeated use of the landing strip would be of only minor consequence audibly or visually to the interested parties. Similarly, on the basis of what was offered by both parties, the ZBA is not convinced, and cannot conclude, based on the information submitted that the evidence provides the ZBA with a true and accurate accounting of the number of “inland landing strips” operating as accessory to residential dwellings.

I. The ZBA recognizes the difficulties presented to the ZA in her consideration of a very fact specific and necessarily subjective assessment of what can be considered an accessory use. The ZBA further appreciates the efforts of all concerned to provide the information necessary for a decision. The ZBA concludes, however, that the information on the record, notwithstanding 4 separate hearings and a site visit, is, in its view, still not adequate to consider the proposed use as accessory. Without specifying and limiting the actual types of aircraft that will use the proposed RLA, the actual number of arrivals and departures and more detailed information on the impact as so limited, the ZBA is not convinced that the Applicant has met his burden of demonstrating that use of an RLA on his property in the first instance can be considered a permitted accessory use under LZR332(6).

J. The ZBA also notes that the application sought approval for a “Restricted Landing Area” which is defined in 5 VSA s202(24) as “an area of land or water, or both, that is used or is made available for the landing and take-off of aircraft, the use of which, except in case of emergency, shall be only as provided from time to time by the Board.” The ZBA concludes that any consideration of a landing strip as accessory to a residence would need to meet the

subcategory of “Personal landing area” as that term is defined by agency regulation in Aeronautics Rules and Regulations CVR 14-010-001-1.24 (“A restricted landing area maintained solely for the use of a specified person, and not to be used for aeronautical services which are offered for compensation.”)

IX. ORDER AND DECISION

Based on the above stated Findings and Conclusions, the Lincoln ZBA hereby reverses the decision of the Lincoln Zoning Administrator and Denies the Clark Permit Application No. 22-022.

Dated at Lincoln, Vermont this 22nd day of September, 2022.

ZBA MEMBERS:



Steve Halnon (Sep 22, 2022 13:46 EDT)


Tommie Thompson, Chair



Serena Fox (Sep 22, 2022 12:05 EDT)

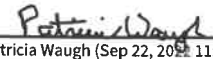
Serena Fox

Barry Olson




James Warnock (Sep 22, 2022 12:28 EDT)

James Warnock



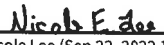
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Patricia Waugh



Josiah Jackson (Sep 22, 2022 12:32 EDT)

Josiah Jackson



Nicole Lee (Sep 22, 2022 12:03 EDT)

Nicole E. Lee



Steve Halnon (Sep 22, 2022 13:46 EDT)

Stephen Halnon

CONCURRING DECISION


In addition to the Findings, Conclusions and Decision as decided today by majority of the Lincoln Zoning Board of Adjustment, the undersigned additionally conclude, that the Clark Permit (No. 22-022) should be denied and the decision of the Zoning Administrator reversed based upon the failure of the Zoning Administrator to inspect the proposed development before the Permit was issued as required by LZR 702.3 which would have brought more clarity to the information needed or to be considered in determining whether the proposed RLA constitutes a permitted accessory use.

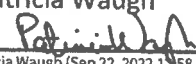
Dated September 22, 2022


Tommie Thompson


Tommie Thompson (Sep 22, 2022 13:57 EDT)

Serena Fox
Serena Fox (Sep 22, 2022 13:56 EDT)

James Warnock


Patricia Waugh

Patricia Waugh (Sep 22, 2022 12:58 CDT)

Josiah Jackson

Josiah Jackson (Sep 22, 2022 13:57 EDT)

Nicole Lee
Nicole E. Lee
Nicole Lee (Sep 22, 2022 13:55 EDT)

Stephen Halnon


PERMITTEE: KYLE CLARK

LANDOWNER: KYLE AND KATIE CLARK

APPEAL OF MARILYN GANAHL RE: APPROVAL OF CLARK APPLICATION (No. 22-022) FOR A RESTRICTED LANDING AREA

Minority Opinion

The Appeal presented before the ZBA was done so with specific grounds:

“Inadequate process for a big impact permit for airstrip; big impact permit, given without public input, no neighbor was notified, no public input, no EIR.”

It is the minority opinion that these are the grounds under which we, as a board, should find for or against the appeal.

Big impact permit for airstrip

The permit, as issued, specifies some grading of existing grass and removal of a few trees, well inside the borders of the Applicants 130 acre property. It also specifies that it will be returned to grass after grading. When finished the airstrip will appear basically the same as it is now. This does not appear to be a big impact permit.

Big impact permit, given without public input, no neighbor was notified, no public input, no EIR.

While our existing zoning regulations have no regulations for airstrips, under Accessory Use we have the following (emphasis is added):

ACCESSORY USE OR BUILDING: A use or building customarily incidental and subordinate to the principal use or building and located on the same lot. For residential uses these include, but may not be limited to garages, garden and tool sheds, playhouses, and inground swimming pools or other structures that are incidental to the residential use of the premises and not operated as a commercial enterprise.

There is nothing in our regulations that require permits for Accessory Use be put before the ZBA before as a condition of issuance. There are no requirements that the neighbors or public be directly notified. It also does not have any requirement for an environmental impact report. The only way that public input would occur would be if the permit required appearance before the ZBA.

Countering Majority Arguments

The majority opinion is based on the opinion that the permit was not issued under the correct permit type. While the minority agree that the permit could have been determined to be Conditional Use, the Zoning Administrator found that Accessory Use was appropriate, and the minority agrees. If the Zoning Regulations are amended in the future this choice could be removed.

The minority opinion is that perceived errors in the process of issuing the permit should not penalize the Applicant. Any process errors should be corrected for future permits.

Federal law prohibits states or municipalities from considering or regulating aircraft noise. Aircraft noise is the sole domain of the federal government.

Conditions that the Applicant put into the application limited hours and conditions during which the airstrip could be used:

- Pipestrel Alpha Electro planes and occasional others
- Personal Use, not commercial use
- Glider emergency landing and medivac if needed
- Grassy/turf landing area same as existing lawn
- Approach and departures free of obstructions
- Calm wind/pref. app. and dep. from/to west
- No flights 9pm-7am (emerg. & medivac excepted)
- Overflight of equine areas avoided

Based on the above this minority opinion finds for the Applicant.

 9/21/2022
Barry Olson