

WAITSFIELD DEVELOPMENT REVIEW BOARD
MEETING MINUTES
Tuesday, April 24, 2007

I. CALL TO ORDER: Brian Shupe, Chair, called the meeting to order at 7:05 p.m. at the Waitsfield Town Office.

MEMBERS PRESENT: Brian Shupe (Chair), Eleanor D'Aponte, Jamey Fidel, Gib Geiger, Jr., Michael Kingsbury, Mark Sinclair, Hallie Tamez.
A quorum was present.

MEMBERS ABSENT: None.

STAFF PRESENT: David Jescavage, Planning & Zoning Administrator.

OTHERS PRESENT: Harold Flint, Dave Lawrence, Nancy Trask, Mark Grosby, Suzanne Grosby, Bill Maclay, Mark Peal.

II. NEW BUSINESS (Public Hearing)

A. CASE# 3105-CU: P. Aaron Flint: Application for conditional use approval in accordance with the terms of Section 3.08, A, 3 and Section 5.3 of the Zoning Bylaws for the expansion of a nonconforming residential structure by adding a 8' x 12.5' outdoor deck to the rear of the residence. The property is identified as Parcel #99048.000 of Tax Map 19 at 3962 Main Street in the Agricultural-Residential District.

Mr. Flint described his proposed project as a deck to be built outside his residence, off of a room much like a den or office, with a slider door opening to the deck. The deck would be one or two steps off the ground.

The main issue for the Board was that the structure is nonconforming because of proximity to a stream. The proposed development is not within the Village District. The character of the stream was discussed. The banks are vegetated, the grade leading to it is almost perfectly flat, and the stream is natural, not man-made. In the summer, the flow is reduced to a trickle. The phone company side of the stream is well-maintained, with stone lining and tree shading. No change to the vegetation is planned. It will remain lawn to the top of the banks. While it's evident that the lawn had been mowed in the past, Mr. Flint has never mowed it.

Mr. Flint described the construction of the deck as pressure-treated underframing and cedar on top. The height of the deck is very low, it's situated behind the Garden Center, and between the house and Route 100 are several large maple trees, so the deck is not visible from Route 100 in either direction. The construction of the deck will be low impact, with no disturbance other than placing the footings. Asked about the location of the septic system, Mr. Flint said that it is on the garage side of the house, the opposite side of the house from the deck.

The house is within 15 feet of the stream, and the deck will be within 26 feet. The project does not encroach any closer to the stream. The size of the deck is well below 50% of the existing structure.

Mike K. moved to close the hearing at 7:24 p.m. Gib G. seconded. There was no discussion. All members voted in favor.

III. OLD BUSINESS (Public Hearing)

D. Continuation of CASE# 3103-CU: Allen Lumber Co. (Nancy Trask, Agent): Application for conditional use approval in accordance with the terms of Section 5.3 of the Zoning Bylaws for the expansion of an existing commercial complex to include approximately 3,000 square feet of retail space, office space, and storage space. The property is identified as Parcel# 23005.000 at 154 Carroll Road in the Irasville Village District.

Ms. Trask and Mr. Lawrence were in attendance, with revised plans. The case had been recessed until Board members had done informal site visits. The main issues were landscaping and building design.

Landscaping:

There are existing shrubs that don't show on the plan, and there is a significant line of trees along Carroll Road. New landscaping near the wetlands was installed with the new building several years ago. Mixed species were planted, but had to be located further down the hill. The Wood & Wood building now provides more screening than the trees. The rear parking area appears heavily used and looks raw. Ms. Trask explained that most of it is under the power company right-of-way, and they are limited as to what can be done.

Building design:

The existing outside-facing walls look intentionally plain, appropriate for that type of building. The visual interest is in the inner courtyard. Snow sliding off the metal roof on the existing warehouse would wipe out any plantings along the wall. The proposal calls for asphalt shingles on the new expansion, and snow shouldn't be a problem. The addition has no apparent negative impact on Carroll Road. The windows add a bit more visual interest. The roofline is about 16 inches higher. The fire stair breaks up the visuals. The outside footprint isn't changing, just a small amount inside the courtyard.

Mike K. moved to adjourn the hearing at 7:30 p.m. Gib G. seconded. There was no discussion. All members voted in favor.

IV. OLD BUSINESS (Discussion Phase)

A. Continuation of CASE# BLA-2007-04-02: Mark & Suzanne Grosby: Application for a boundary line adjustment between a 6.5 acre and a 3.5 acre parcel both identified as Parcel#42003.000. These two parcels were created by a state subdivision approval prior to the existence of the Waitsfield Subdivision Regulations. The applicants propose to adjust the lot line so that each lot will consist of 5 acres. The property is located at the conjunction of Palmer and Sugarhouse Lanes.

Mr. and Ms. Grosby were in attendance. At the last meeting, there was a discussion about whether the previous subdivision approval had given the applicants vested rights. David J. contacted the Town Attorney, who replied by email. Brian S. said that the Town Attorney's opinion is that the property should be considered a single 10-acre lot under the Town's subdivision regulations.

The Board discussed whether the full text of the Town Attorney's opinion should be shared openly. The consensus was that the Board had asked for a consultation, and that the entire opinion shouldn't be shared. The needed information should be distilled from that, extracting the facts and citing relevant law. There was concern with setting precedent that could affect other cases that might come before the Board.

Mr. Grosby disagreed with the Town Attorney's opinion. He said it makes it impossible for a property owner to plan after meeting all the requirements in place at the time, only to find that none of it is of any value now.

Mark S. said that the Board should discuss the opinion in a confidential deliberative session, determine that it has the facts right and is interpreting the law right, make a decision, and prepare a draft that the applicants could respond to.

Some facts were confirmed. The 1984 state subdivision approval was filed with the Town, but not the plan. The plan was recorded with the state.

Jamey F. said that the Town Attorney's opinion cites a Supreme Court case, *In re McCormick Management*, in which the court held that a landowner acquires no vested rights prior to the enactment of a zoning ordinance other than those expressly granted by the relevant statute. He said the Town Attorney looked at relevant statutes, including the 1990 subdivision regulations, and says that those do not appear to contain specific standards for approval of previously filed plats. Jamey F. said that the issue brought up is that previously filed plats would be reviewed under the existing standards under the 1990 regulations.

Mr. Grosby said he would need a specific decision to respond to, more than an excerpt from a court decision. He maintained that the plat was properly filed with the State as then required.

Board members concluded that they should quickly take the basics of the Town Attorney's letter, prepare the Board's position, and provide it to the applicants so they can respond at the next meeting.

David J. pointed out that, during the discussion phase, should the Board decide that a boundary line adjustment is proper, the applicants may apply for a waiver from the hearing requirement. Brian S. added that the discussion phase is less formal, is not a decision, and it's not appealable. It gives an indication of how the Board is inclined. The Board can complete the discussion phase and give the applicants a chance to evaluate their options.

Mike K. moved, at 7:56 p.m., to recess the discussion phase until the next meeting on May 8. Eleanor D. seconded. There was no discussion. All members voted in favor.

V. APPROVAL OF MINUTES

The following corrections to the minutes of meeting on April 10, 2007 were noted:

Section II. DRB organizational process. The third sentence should read, "Brian proposed that the draft of the procedural rules *of the Zoning Board of Adjustment* be adopted . . ."

On page 2, third paragraph from the bottom, the last line should read, "total traffic on Route 100 is minimal."

On page 3, Section C, the fifth paragraph should read, "In response to Eleanor's question, Mr. Thompson said that the *basement* is not currently used for anything."

On page 4, fourth full paragraph, the last sentence should read, "Ms. Trask said that the new roof is *higher* and the windows are new."

On page 4, sixth paragraph, the second line should begin, "said that *larger windows* might afford an energy saving possibility."

Mark S. moved to approve the minutes of the April 10 meeting at 8:26 p.m. Jamey F. seconded. There was no discussion. All members voted in favor.

VI. ADJOURNMENT

Eleanor D. moved to adjourn at 8:26 p.m. Jamey seconded. There was no discussion. All members voted in favor.

Respectfully submitted,

Mark Peal