

**Town of Waitsfield**  
**DEVELOPMENT REVIEW BOARD**  
**Meeting Minutes**  
**Tuesday, May 12, 2009**

1. **CALL TO ORDER:** Brian Shupe, Chair, called the meeting to order at 7:00pm at the Waitsfield Town Office.  
**MEMBERS PRESENT:** Brian Shupe (Chair), Mike Kingsbury, Gib Geiger, John Donaldson, Eleanor D'Aponte, and Chris Cook.  
**MEMBERS ABSENT:** None.  
**STAFF PRESENT:** Vickie Trihy, Planning and Zoning Administrator  
**APPLICANTS AND THEIR REPRESENTATIVES:** Eugene Jarecki, Don Swain, Dan Redondo, Fred Messer, Carla Straight, and Mark Grosby.  
**INTERESTED PARTIES: For Straight application:** Martin DeHeer, Lois DeHeer, Kristina Bisbee, Beth Phillips, Sarah Hughes, Dorothy Peck, and Peter Hans.  
**OTHERS PRESENT:** Rob Evans from DEC River Management; Nancy Myrto, Minutes Taker.
2. **Reconvene hearing for #3214-CU, #3215-VAR, and 09-SUB-01, applications from Eugene Jarecki to add 700 s.f. apartment to garage in Special Flood Hazard Area, and to build a single-family residence attached to that garage on an adjacent separately deeded lot also owned by the applicant.** The application proposes to build a sleeping hut. The garage is located within the flood plain, and both of the proposed new buildings would be in or partially in the floodplain. The property is located at 7858 Main Street, and the parcel is identified as 99220.000 in the Agricultural-Residential District (§2.07).

Mr. Shupe noted the application has changed from original submission. The property line has been relocated negating the concern of splitting the building horizontally and vertically. Previous discussions included concern about the property boundary; difficulty in identifying the flood hazard area, and the fact that the flood hazard maps show the field as half in, half out, and sometimes completely in the flood hazard area depending on the bench marks used. The items of greatest concern were how to apply our flood hazard overlay district standards, especially those that related to minimizing risk and hazard for emergency responders. The DRB believes the best way to accomplish this is to move the building further away from the river and away from the erosion hazard as opposed to the inundation hazard of being in the flood hazard area. Mr. Shupe noted that at the last meeting the applicant had said he would work on alternative suggestions for the DRB's consideration. Mr. Swain agreed with Mr. Shupe noting that at last meeting they were charged with doing an alternative site analysis and also coming back, if they so chose, with a velocity analysis.

Mr. Jarecki noted that when choosing the site for the new building, he purposely kept it out of the field to preserve open space as the Town prefers. Mr. Shupe agreed, but noted there are also very rigorous flood hazard area standards for protecting both property owners and emergency

response crews from the threats of flooding. Some of the standards in the flood hazard area are not discretionary, but are handed down by the federal government as a requirement to allow property owners in the floodplain to obtain flood hazard insurance. Mr. Jarecki noted that his first thought was to build the new structure in the shadow of the existing building. Mr. Shupe noted that if there is a suitable building site on the property, Mr. Jarecki is then faced with compliance of the flood hazard regulation which is establishing the base flood level and designing the house to meet the technical federal standards that must be administered.

Mr. Swain noted that a location along the driveway was considered, but there are overhead power lines in one section with a 50 foot easement. Anything tucked in tight to the driveway would not work in this section. Mr. Swain noted that every Green Mountain overhead power line has an easement under which you cannot build.

Mr. Swain also noted that when checking the soil in another area the DRB had suggested as a possible house site, enough chromatic discoloration was present to confirm there are hydrated soils, indicating wetland.

Mr. Redondo noted that the state provided him with the 1970's FEMA water surface elevation data. He put the information into the new Army Corps model and calibrated it to determine velocity. He noted the findings show that the velocity lessens as you get further from the river. Mr. Redondo cautioned that federal minimum standards give people a false sense of security as to where it is safe to build. The published flood elevation established by FEMA is the regulatory flood elevation, but not necessarily where the next flood hits. The bottom line is that when you are building in an established floodplain there is an inherent risk. Ms. Trihy asked how flood erosion and velocity affect the safety of rescue workers. Mr. Shupe said that the flood erosion hazard area isn't necessarily the area the river might jump into in a single flood event, but is the area that is defined as eight widths of the river where the river is allowed to meander over time. Mr. Shupe also noted that where there is an existing house, everything will be done to protect that house and keep the river from migrating past it. Mr. Evans stated that if this were a proposal for a new investment on a completely undeveloped parcel, rip-rapping would exacerbate erosion hazards. Mr. Jarecki noted that the state likes structures built in the shadow of another to act as a buffer.

Mr. Shupe asked how close the garage is to the house. Mr. Jarecki responded that the house is 12-15 feet from the bank and there is span of 18-20 feet between the house and garage.

Mr. Kingsbury asked if the sleeping hut is still part of the proposal. Mr. Jarecki noted that it would be a memorial of sorts for a deceased relative and would prefer to include it in the plans, but would consent to dropping it if need be. Mr. Shupe noted that the sleeping hut plans violated the 50' setback from the river. Mr. Evans noted that the sleeping hut would need to be treated

like a residential structure and follow the same standards. Mr. Jarecki agreed to take the sleeping hut off the plans at this time.

Mr. Shupe noted that the issue of location needs to be resolved before continuing. Mr. Shupe asked Mr. Jarecki to come back with details of compliance with FEMA standards in the revised location. Mr. Shupe stated that the new location should be as close to the driveway, as much in the shadow of the garage, as possible. Mr. Jarecki asked for some latitude with regard to the building size, as he has not yet located the barn he would use so the dimensions are not definite. Mr. Shupe noted that final plans would be needed before final approval, and some variation could be allowed for prior to the final plans.

Mr. Kingsbury moved to recess the hearing until June 9. Mr. Geiger seconded. There was no discussion. All members voted in favor.

- 3. Reconvene hearing for #3225-CU, application for home business at 317 Meadow Road (Messer residence) by Carla Straight.** Applicant proposes to operate a dog boarding kennel in an existing barn. Parcel is identified as #03022.000 in the Agricultural-Residential District (§2.07).

Mr. Shupe noted that at the last meeting concern was expressed about the notice to abutting landowners, whether abutters to the entire parcel which is actually two parcels be notified, or just those along the 2-1/2 acre parcel west of the road. The decision was made to notify all abutting landowners, and conduct a site visit prior to this meeting. The site visit raised a few questions, and a question also arose regarding clarification on ownership of the property which has since been resolved. The other issue is that a home business can only be an accessory to a single family dwelling, and the property currently has three residential units.

Ms. Straight noted that the business would be a boarding kennel with up to 14 dogs, and that maximum would only be during the times when pickup and drop-off occur. The average occupancy would be 4-8 dogs. The dogs are outside under Ms. Straight's care and supervision. Ms. Straight noted that she currently runs a kennel in East Calais Village with close neighbors and has not received any complaints. Mr. Shupe noted that between the main house and the barn, there is a connecting barn where the indoor part of the kennel would be established. An outdoor fenced area is also proposed. Ms. Straight noted that the fence would be a six foot high chain link fence. She has also obtained information online for slats, either wood or vinyl, to weave in the chain link to provide less visibility and noise.

Mr. Deheer asked if the situation in Calais, with regard to motor vehicles, animal, and pedestrian traffic, is similar. Ms. Straight responded that it is similar and that in addition to vehicular traffic, pedestrians, horses, and chickens also pass by. She also confirmed that she is with the dogs 24/7 inside and out which keeps them from barking uncontrollably.

Ms. Bisbee noted that she feels the kennel would not mix with the historic feel in this area of Waitsfield. Mr. Messer noted that tonight's meeting is to determine if a business is permissible in this area. The question of whether dogs will be on the property is irrelevant as they have a right to have dogs on their property as do their neighbors. Ms. Straight also noted that this is not a typical kennel, and her method of operation ensures a quieter atmosphere than most. The dogs go out frequently negating the need to bark to be let out, and they play together outside which wears them out and keeps them quiet and rested while inside.

Mr. Donaldson asked if weather has an impact on their outdoor activities. Ms. Straight said that it does to some degree.

Ms. DeHeer asked if it is permissible to have a business on North Road. Mr. Shupe noted that this still needs to be decided. Regulations allow a home business, which is a business operated by the resident of a single family home, subject to conditional use approval and a number of specific standards that apply to home businesses.

Ms. Phillips voiced concern that new dogs would alert neighborhood dogs to their presence and incite excessive barking. Mr. Shupe asked if the dogs walking the recreation path have affected the neighborhood dogs. Ms. Hughes replied that the recreation path is very busy with dogs, many of which are not leashed, that could be drawn to the kennel just by smell, and the fence would not be of much help. Mr. Geiger noted that when walking his dog, he keeps the dog as quiet as possible when he starts to bark at the sight or smell of another dog. Mr. Johnson asked Ms. Trihy if she contacted Calais with regard to Ms. Straight's current kennel. Ms. Trihy said that she spoke with the Calais Town Administrator who said no complaints have been registered.

Ms. Peck voiced a question about the zoning regulations. She stated that a kennel is a defined term and it is listed as a conditional use in the Limited Business District, but a kennel is not listed as a conditional use in the Agricultural-Residential District. Mr. Shupe responded that the use Ms. Straight applied for, and must be approved as, is a home business. A home business is defined as a business conducted by a resident of a single family dwelling, and not more than four non-resident employees, which is carried on within the principal building and/or accessory structure, and otherwise meets the requirements of these regulations which includes specific standards. It is not required that the business be a type that is listed as an allowed use in the district.

Mr. DeHeer asked how the odor at the kennel in Calais is handled. Ms. Straight noted that she immediately cleans up after the dogs when outside with them, disposes of waste in the waste can, and has trash picked up on a regular basis.

Ms. Phillips asked how flea control is enforced. Ms. Straight noted that she recommends clients use flea preventative on their dogs, and administers a treatment herself should an owner neglect to do so. Ms. Phillips asked if vaccinations are required. Ms. Straight noted that bordatella, distemper, and rabies immunizations are required. Mr. Shupe asked if dogs are checked for Town license. Ms. Straight responded that she usually has a good idea of which are and aren't licensed. She also has a section on her application form to address this issue. Ms. Phillips asked what type of exercise is provided for the dogs. Ms. Straight replied that ball throwing is a big activity and is done in a 16 x 30 enclosed area. Ms. Phillips noted that the kennel she brings her dog to in Williston is much bigger than what is being proposed. Mr. Kingsbury said it is important to note that Ms. Straight has been running a kennel in Calais for over 10 years without complaints using this same size play area. Mr. Kingsbury noted that the bigger issue is noise and Mr. Shupe earlier stated that the ordinance says that noise must not be detectable at the property line. He further noted that if there is an issue with noise, Ms. Trihy will be informed. Mr. DeHeer asked what the remedy would be at that point.

Mr. Hans noted that Ms. Straight and Mr. Messer's interpretation of noise as compared to their neighbors may be different. Mr. Shupe noted that he is concerned that while Ms. Straight may run it without any problems, the permit is actually being issued to the property as long as it is run by an occupant of the dwelling. He asked if there is any recourse should a new owner take over. Mr. Shupe noted that a decision must be enforceable. Ms. Trihy noted that if complaints were made, she would have to make a decision as to whether or not they are in violation of the by-laws. Mr. Shupe added that should they be in violation, the owners would be notified and would be requested to remedy the situation, or legal action would be taken against them.

Ms. Phillips asked Ms. Straight what she does if called away on an out-of-town emergency. Ms. Straight responded that she has several people on call who will run the kennel in the same manner should such a situation arise. She also noted that she is seldom away, but will close the kennel if taking a week or longer vacation.

Mr. Shupe noted that as far as use goes, consideration must be given as to whether or not it is a single family dwelling. He confirmed with Mr. Messer that there are two apartments in addition to Mr. Messer's dwelling and asked from where they are accessed. Mr. Messer replied that the main apartment entrance is on the same side as the run, and the studio entrance is on the porch.

Mr. Messer thanked those who attended the meeting for their input. He also noted that additional income from the kennel would allow him to maintain the farm for better aesthetic value in this area. Ms. D'Aponte asked, if in deliberations it was decided that wood slats are needed in the chain link fence, would this work. Ms. Straight noted that it would come down to cost, and that white vinyl may be considered to match the house trim. Mr. Shupe requested Ms. Straight send Ms. Trihy the website information with regard to the slats.

Mr. Kingsbury moved to close the hearing at 8:50 p.m. Ms. Cook seconded. There was no further discussion. All members were in favor.

- 4. Application #3231-CU by Mark Grosby for Robert Grosby**, to convert 382 sq. ft. of existing office space to studio apartment. Office is located in the Valley Professional Building at 6971 Main Street, Unit 3. Parcel is identified as #99204.003 in the Limited Business District (§2.05).

Mr. Shupe explained that the application is for an accessory dwelling which is defined as a dwelling as an accessory to a single family dwelling. There are no site plans as all changes are interior. The Industrial District does allow a caretaker's apartment, a dwelling that is accessory to a nonresidential use, but there is no allowance for such a use in the Limited Business District. The Limited Business District is very limited in that it does not allow mixed use.

Mr. Grosby noted that the definition of accessory dwelling in the definitions section of the bylaws and in Section IV differ, and the definition in Section IV better describes his request. He also noted that a caretaker's apartment was located in the veterinary building in the same business park as his request. Mr. Shupe noted that regardless of the outcome of this application, the Planning Commission needs to better define this use.

Mr. Shupe asked for the square footage of the existing office space. Mr. Grosby replied that it is 1850 square feet, with a proposed apartment of 382 square feet. Mr. Shupe noted that as an accessory it needs to be subordinate, incidental to the primary use which is an office space. Mr. Grosby said that he was able to get the condominium association to modify its by-laws to allow a residential use, with the condition that the person residing in the apartment must be employed by either the renter or owner of the building. Ms. D'Aponte asked if the condominium association is responsible for what is intended to be done on the interior and safety issues. Mr. Grosby noted that the building is a public building and must adhere to those safety rules. There is an emergency exit next to the bedroom that is being designed. Mr. Grosby noted that on the personal side, he and his wife are selling their house and intend to move into the proposed apartment in order to decrease their carbon footprint. Mr. Grosby noted that he could have just as easily filed an application to convert the entire building to a residence with a home business. The only difference between the two applications being that the former allowed seven employees, but the latter only four. Mr. Shupe responded that the regulations need to be interpreted.

Mr. Shupe noted that the struggle is with the regulations, and this should be a Planning Commission issue to fix the Limited Business District. He also stated the conditions need to be interpreted literally, and whatever discretion can be made will be considered. Mr. Donaldson asked about the building configuration. Mr. Grosby noted there are two stories with an office on either side on both floors. Mr. Shupe asked if all the offices are the same size. Mr. Grosby responded that two are at 25%, one at 35%, and one at 15%.

Mr. Shupe asked about the septic system. Mr. Grosby noted it is a mound system located in the center of the driveway and can accommodate current usage as well as the proposed accessory dwelling. Mr. Donaldson confirmed with Mr. Grosby that an ANR Act 250 permit will be required.

Mr. Kingsbury moved to close the hearing at 9:15 p.m. Ms. Cook seconded. There was no further discussion. All members were in favor.

5. **ORGANIZATIONAL MEETING** – Elect officers; consider changing starting time for meetings to 7:30 for the summer.

Mr. Shupe noted that he has been Chair for three years and would perhaps like to go four, but prefers to see the position rotate among members. DRB members expressed their appreciation for Mr. Shupe's understanding of the regulations, and tact with regard to the myriad of applications presented. Mr. Donaldson asked if there was additional time needed from the Chair aside from meetings. Mr. Shupe noted that Ms. Trihy would still need to consult with the Chair at times, and writing decisions does take some additional time.

Mr. Kingsbury moved to have the officers remain as currently seated. Ms. D'Aponte seconded. There was no further discussion. All members were in favor.

It was decided to keep the opening of the meetings at 7:00 p.m.

6. **APPROVAL OF MINUTES:** Mr. Donaldson moved to approve the minutes of April 28, 2009 as written. Mr. Geiger seconded. There was no discussion. All members voted in favor.
7. **OTHER BUSINESS:** Ms. Trihy noted that a decision was made to have Storm Water Plan Evaluation training at the next meeting, but a time to start was not determined. Mr. Shupe noted that the training should run 2-12 hours, after which deliberations could be done, and suggested leaving the meeting time to start at 7:00 p.m. Ms. Trihy noted that a larger meeting area would be needed as area towns are invited to the training. Mr. Shupe suggested the 1824 House. Ms. Trihy will check availability at the 1824 House as well as the Waitsfield Elementary School.
8. **ADJOURNMENT.** The meeting adjourned at 9:30 p.m. and the Board went into deliberative session.

Respectfully submitted,  
Nancy Myrto