

**Town of Waitsfield**  
**DEVELOPMENT REVIEW BOARD**  
**Meeting Minutes**  
**Tuesday, August 25, 2009**

- 1. CALL TO ORDER:** Brian Shupe, Chair, called the meeting to order at 7:10pm at the Waitsfield Town Office.

**MEMBERS PRESENT:** Brian Shupe (Chair), Gib Geiger (Vice-Chair) (arrived at 8:20), John Donaldson, Mike Kingsbury, Eleanor D'Aponte, and Chris Cook.

**MEMBERS ABSENT:** None.

**STAFF PRESENT:** Vickie Trihy, Planning and Zoning Administrator

**APPLICANTS AND THEIR REPRESENTATIVES:** Audrey Huffman, Mike Marino, Luke Iannuzzi, Mike Anastos, Nancy Coombs, Jim Hildebrand, and Kirsten Seibert.

**INTERESTED PARTIES:** Diane Martin-Tryhane, Allison Sands, Stephen Sands, and Roy Hadden.

**OTHERS PRESENT:** Lisa Loomis (Valley Reporter), Tony Italiano (MRVTV).

- 2. Reconvene #3263-CU, application by Spring Hill School for expansion of nonconforming structure and approval of master plan for accessory structures.** Applicant proposes to expand a stage/playhouse that encroaches on the setback, and seeks approval for phased replacement/addition of various accessory structures. The property is located at 63 Spring Hill Road and is identified as parcel #03084.000 in the Agricultural-Residential District (§2.07).

Mr. Shupe reported that a site visit was done on August 4th. During the site visit, among other measurements, the playground equipment was measured at 15 feet from the property boundary, and the tree house structure was located entirely in the setback area.

Mr. Shupe noted that another point mentioned at the previous meeting is the accurate property line with the Sands property. Mr. Sands noted that it was his initial understanding that a simple lot line adjustment was all that was needed. He was later informed that more documentation was necessary before a final accurate recording could be made. Mr. Sands said that the work being done to accurately record his property line

does not alter any of the accessory structures located on the Spring Hill School property. Ms. Seibert stated that the revised plan shows the H structure being taken off. She further noted that on the final drawing they would redraw the property line to be consistent with the Sands' view of where the property line is.

Mr. Shupe noted that the tree stumps in Section D would not be considered an accessory structure.

Mr. Shupe asked for clarification on Section E with regard to the expansion of the playhouse. Mr. Shupe noted that the structure is within the setback, and would be subject to the nonconforming structure provision that allows an expansion that does not result in more than 50% increase in the area encroaching within the setback, and the structure can't come closer to the boundary.

Mr. Shupe stated that Section G, the climbing structure, would adhere to the same setback requirements as in Section E. He also noted that it would need to be determined if the pea gravel were part of this structure and, if so, it could shed a different light on other landscape features. Ms. Seibert noted that the pea gravel would be considered part of the structure as it is necessary for safety reasons. Mr. Shupe asked what is depicted in Section G2. Ms. Seibert replied that it is an umbrella over a raised deck with a sandbox underneath. Mr. Donaldson confirmed that this is a new structure located in the setback area. Ms. Huffman asked if the umbrella were over the sandbox without the deck, and able to be removed, would it then not be considered a structure. Ms. Trihy agreed that this would be the case.

Ms. Seibert noted that with the playhouse structure, it would be determined what 50% increase is, and then decide whether to expand or make landscape improvements to the area. Ms. Huffman noted that part of the plans were to connect the playhouse structure to the stage area.

Ms. Cook confirmed with Mr. Sands that he is in agreement with the proposed changes to the Spring Hill School Property. Ms. Tryhane explained to the Board that although she received formal notification from the Town of the proposed changes, neither she, her husband, nor her father received notification directly from the school. This was a disappointment as she and her family have tried to work cooperatively before with the Spring Hill School. The family, residing in Connecticut, has had to retain legal counsel, at a cost of approximately \$1000, to ensure that the changes are trustworthy. The family enjoys their homes as vacation spots to relax. They are happy with how the Town of Waitsfield handles growth, and are mainly concerned about any waivers that may jeopardize this process. Ms. Tryhane also pointed out that Spring Hill School has not

always adhered to their commitments to the Town with regard to previous changes to accessory structures, nor to the parking arrangements between themselves and her family. There was never a retaining wall placed by the second parking area, as was her understanding, and the fence her family placed along the property line has been partially damaged by the Spring Hill School. Mr. Shupe noted that the current renovation plans do not ask for any changes in the parking, but previous permits will be researched to be sure any conditions related to parking are being complied with. Ms. Huffman noted that parents are informed in a letter at the beginning of each year as to the parking arrangements with the neighbors.

Ms. Cook moved to close the hearing at 8pm. Ms. D'Aponte seconded the motion. There was no discussion. All members voted in favor.

- 3. Appeal of Zoning Administrator decision finding no violation of permit.** Michael Marino is appealing a July 16<sup>th</sup> decision that did not find Valley Animal Hospital in violation of its permit. The decision was issued in response to a complaint by Mr. Marino of disturbing noise from the kennel the first two weekends in July.

Mr. Marino stated that he has been trying to get the zoning changed on this property due to the noise issue. The issue of noise from the dog kennel has been going on since Mr. Marino moved onto the property nine years ago. Mr. Marino stated that he does not believe Mr. Hadden is adhering to the permit applications for the veterinary business and kennel. Mr. Marino contacted Ms. Trihy in April or May to issue a complaint about the constant barking from the kennel. Ms. Trihy spoke with Mr. Hadden and the noise ceased for a number of weeks. Mr. Marino again complained in early July about the barking. He then received a letter from Ms. Trihy explaining that the barking is permissible as long as it is not during the night. Mr. Marino does not agree with Ms. Trihy's findings. Mr. Marino responded that during the permitting process it was noted that the dogs would not be continuously barking. He feels that not only is it affecting the use and enjoyment of his property, but it is now affecting his health as there are times he must return in the day to rest due to a medical condition. Mr. Shupe asked what times, and the duration of the barking is. Mr. Marino replied that since his letter the situation has improved, but he is concerned that it will reoccur again as it has in the past.

Ms. Trihy explained that she researched the conditions of Mr. Hadden's permit and found it to read that the dogs "would not be a nuisance." She noted that the determination she needed to make was how much noise is expected from a dog kennel, and at what point is it considered a nuisance. Ms. Trihy researched guidelines for this situation, and the only ones she found cited noise between 7:00pm and 7:00am. She further noted that this was not the time frame in which the noise Mr. Marino complained about was occurring. Ms.

Trihy further explained that the Town does not have anything in its regulations that addresses noise except for conditional use criteria which do not affect permits that were issued before these regulations went into effect. Mr. Hadden's permit was issued prior to these regulations.

Ms. Trihy further explained that in the absence of clear guidelines she had asked Mr. Marino to document the dates and times of the noise. Mr. Shupe asked if Ms. Trihy based her interpretation of the kennel's noise level as different from what another use would be allowed to generate. Ms. Trihy responded that she assumed that when you permit a dog kennel you expect a certain amount of noise. Ms. D'Aponte noted that the sporadic barking does not seem to be a violation as much as continuous barking might, but it is very hard to make a determination. Mr. Shupe asked Mr. Marino his proximity to the kennel, and the level of noise. Mr. Marino responded that his property is 800 to 1000 feet from the kennel, and he considers the level of noise annoying. Mr. Marino also noted that Mr. Hadden issued a letter stating the kennel would be surrounded by acoustic boards to muffle the sound. He added that Mr. Hadden left the kennel open until some years later when there were numerous complaints about the noise.

Mr. Hadden confirmed he had installed the acoustic boards. He explained that the kennel is an indoor/outdoor kennel with the outdoor section facing toward Route 100. The dogs are not let out before 8:00am and the indoor run and outdoor run are separated. Mr. Hadden noted that every couple of years a dog will break out from the indoor run into the outdoor run and at that point will start to bark because it can't find its way back. He also noted that this occurred in early July this year. Ms. D'Aponte asked if the dogs Mr. Marino heard barking at 7:30am were inside the kennel. Mr. Hadden noted that it may not have been a dog from the kennel Mr. Marino heard. Mr. Hadden explained that he received a call on August 8 regarding a dog barking. Mr. Hadden visited the kennel and discovered that it was a dog across the road at The Farms that was making the noise.

Mr. Hadden also pointed out that Mr. Marino had not contacted him in several years, and he has told Mr. Marino in the past that he can't hear the dogs and if Mr. Marino doesn't let him know when they are barking, there's nothing he can do about it. He also pointed out that his employees do not let dogs out before 8am, specifically in response to Mr. Marino's complaints.

Mr. Shupe asked if the dogs can go in and out all day. Mr. Hadden responded that they can only if the office is open, and some are walked first. Mr. Donaldson asked if there were neighbors closer than Mr. Marino, and if they registered any complaints. Mr. Hadden noted that there are closer neighbors who he informed should contact him should the noise be intolerable, but he has not received any complaints.

Mr. Hadden stated that he cannot hear the dogs barking when he is in his office. Ms. Trihy asked if a monitor could be set up enabling Mr. Hadden to hear the dogs barking from inside his office. Mr. Hadden noted that he could look into such a device.

Mr. Kingsbury moved to close the hearing at 8:38pm. Mr. Donaldson seconded the motion. There was no discussion. All members voted in favor.

4. **#3262-CU, application for change of use by Luke and Linda Iannuzzi.** Applicants request approval under Adaptive Reuse of Historic Barns to convert existing barn to artist's studio/gallery. The property is located at 1460 Main Street and is identified as parcel #99013.000 in the Agricultural-Residential District (§2.07).

Mr. Shupe noted that the application changed from an adaptive reuse to a home business. Mr. Iannuzzi explained that he is a potter as well as the owner of the Wilder Inn. Mr. Iannuzzi built the barn to create pottery and increase the Inn's business by offering classes in pottery. In addition, Mr. Iannuzzi sells some of his pottery in the Inn's gift shop.

Ms. Trihy explained the definition of a bed and breakfast is a family dwelling occupied by the owner or operator in which no more than eight rooms within the dwelling and/or an accessory structure located on the same lot are rented out to provide room accommodations for guests. Mr. Shupe noted that the supplemental application materials went through the ten home business criteria and conditional use criteria. Mr. Iannuzzi stated that the business would not cause parking or traffic issues.

Mr. Kingsbury moved to close the hearing at 8:40pm. Ms. Cook seconded the motion. There was no discussion. All members were in favor.

5. **Informal discussion of possible subdivision.** Jim Hildebrand requests feedback from the board concerning possible application for subdivision of parcel #01060.100, located at 2077 East Warren Road. This parcel is Lot #4 of Subdivision 91-05. Condition #2 of that subdivision approval stipulated there would be no further subdivision of this lot. That condition was appealed and ultimately upheld in a Supreme Court decision in 2006.

Mr. Shupe clarified that an application to overturn the condition was presented to the Planning Commission, it was denied, and the decisions to not overturn the condition was appealed, and the Planning Commission decision not to amend the condition was upheld by the Supreme Court in 2006.

Mr. Hildebrand gave a brief synopsis of previous actions taken to subdivide the parcel. Mr. Hildebrand explained the initial reason for the subdivision was to move closer to his mother, and to occupy a smaller residence due to the increasing tax situation. He further explained that his mother recently passed on so there is no need to move to be closer to her, but the need to move into a smaller residence due to the increasing tax situation is still there. Mr. Hildebrand noted that the new residence would be placed as far back on the property line as possible, leaving much of the meadow land. Mr. Hildebrand also noted that other properties have been subdivided leaving less meadowland. Ms. Hildebrand stated that this property has always been family owned and they would like to see it continue to be. Ms. Hildebrand also noted that there is a river acting as a natural divider on the property.

Mr. Shupe noted that the sixteen acre lot in question is a subdivision of the Neill Farm and was a source of contention with regard to the protection of open farm land. Mr. Shupe also noted that the Town's attorney has noted consistently that there needs to be a change in circumstance in order to get rid of old conditions.

**6. APPROVAL OF MINUTES:** Ms. D'Aponte moved to approve the minutes of June 28, 2009, and the Site Visit minutes of August 4, 2009 as presented. Mr. Donaldson seconded. There was no discussion. All members voted in favor.

**7. OTHER BUSINESS:**

**8. DELIBERATIVE SESSION**

**9. ADJOURNMENT.**

Respectfully submitted,  
Nancy Myrto