

Town of Waitsfield
DEVELOPMENT REVIEW BOARD
Meeting Minutes
Tuesday, September 8, 2009

- 1. CALL TO ORDER:** Brian Shupe, Chair, called the meeting to order at 7:05pm at the Waitsfield Town Office.

MEMBERS PRESENT: Brian Shupe (Chair), Gib Geiger (Vice-Chair), 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: Don Swain, Malcolm Appleton, Stephen Zonies, and Dick King.

INTERESTED PARTIES: None.

OTHERS PRESENT: None.

- 2. Condition Use Application #3274 and #3275.** Applicant proposes to amend PRD lot boundary, renovate and expand existing garage on Lot 2. The property is located at 7858 Main Street and is identified as parcel #99220.000 in the Agricultural-Residential District (§2.07), and the Flood Hazard Overlay District (§2.10).

Mr. Shupe noted that one condition of the subdivision approval in the Flood Hazard Overlay District is that the applicant is required to come back before the DRB to provide proof of compliance with flood proofing standards prior to obtaining a building permit. Mr. Swain noted that plans were provided to the ANR, but they have as yet not received the agency's response. He also provided the DRB with septic system design details that he says will not create flood plain issues.

Mr. Appleton explained that the lot line change they are requesting is for the purpose of preserving a line of trees. Their concern is that the westerly edge of the building envelope was originally set up directly on the line of the exterior wall of the existing garage, and that line is the division between Lot 1 and Lot 2. This puts the roof overhang, digging of the footings, and the trees along that edge onto Lot 1. He further noted that these items should be on Lot 2 as part of the building envelope. Mr. Appleton

stated that they are proposing to move the westerly edge of the building envelope eight feet toward the west to eliminate potential issues that could arise from the trees being owned by Lot 1 instead of Lot 2. Mr. Shupe confirmed with Mr. Appleton that the garage building location will be in the building footprint of the existing garage.

Mr. Kingsbury questioned the elevation of the garage. Mr. Swain explained that the flood elevation is 768', and it was agreed that the garage slab would be at 769.3' to place it above the flood hazard. He further noted that the slab for the new building would be at 770.8'. Mr. Shupe asked if Flood Management has approved the plans. Mr. Swain responded that the folks at ANR have had the plans in their possession for several weeks, but an approval has not yet been issued. Mr. Donaldson asked whether Lot 1 can be maintained at one acre without adjusting the boundary lines if approval is granted to take 8' x 30' from Lot 1. Mr. Swain noted that the lines designated on the final plat map will show Lot 1 with the same area as is currently shown.

Mr. Appleton noted that they submitted two foundation solutions to the ANR as at this time it is unknown where the roots of the trees lie. One solution is an Alaskan slab which has no deep frost wall, a dropped down insulating layer, and thickened edges. The other solution is to do a conventional frost wall. Mr. Appleton noted that he spoke with Ms. Pfeiffer and expressed an interest in receiving approval from ANR as soon as possible. Ms. Cook asked what the finished square footage of the garage and apartment will be. Mr. Appleton responded that the total square footage is 900 square feet. This square footage does not include the studio as that would be part of the future house. Mr. Shupe confirmed that the lot lines are changing, but not the building envelope.

Ms. Trihy noted that Mr. Jarecki would like to use the open land for providing area restaurants with organic, freshly grown food. Mr. Appleton noted that Mr. Jarecki would like to build an open shed for a tractor and selling the produce. Mr. Shupe advised that Mr. Appleton address the flood plain regulations when building the shed and gaining approval. He further noted that although agricultural buildings are regulated by the Agency of Agriculture, Ms. Trihy will need to be notified of the intent to build, and any structure will need to meet setback requirements.

Mr. Kingsbury moved to recess the hearing until September 22, 2009. Ms. Cook seconded the motion. There was no discussion. All members voted in favor.

- 3. Conditional Use Application #3273-CU by Stephen Zonies for amendment of site plan approved under #3221-CU.** Applicant proposes to change location of approved single story addition from north side to south side of building. The property is located at

138 Fiddler's Green and is identified as parcel #99177.000 in the Irasville Village District (§2.03).

Mr. Zonies noted that they were ready to begin excavation when he realized that there seemed to be an excessive amount of effort being made for such a tiny addition. He further stated that after looking at the building, it makes sense to place the addition on the opposite side. Mr. Shupe noted that when Mr. Zonies was last before the Board, he was asked not to exceed 50% of the current nonconforming single story portion of the building. Mr. Zonies noted that the plans call for a 20' x 20' addition to accommodate another chair, which is larger than what the DRB previously approved. He asked if the DRB could override the restriction not to exceed 50% of the current nonconforming single story portion of the building and gave two reasons for requesting such action. The first reason is because he did not have the capacity to accommodate a tourist with a dental emergency some time back, and received disapproving phone calls as a result. Mr. Zonies also noted that just recently on NPR it was noted that Vermont has a shortage of dentist offices, as well as a shortage of chairs within those offices.

Ms. D'Aponte asked if the bylaws gave the DRB any wiggle room in this instance, and Ms. Trihy confirmed they did not. The board asked Mr. Zonies if it were possible to build the addition with at least a partial two story section that would bring it into compliance with the Irasville district standard.

Ms. Trihy noted that the original proposal asked for an addition of 320 square feet, the DRB approved an addition of 300 square feet, and Mr. Zonies is now requesting a 400 square foot addition. Ms. Trihy also noted that Mr. Zonies' site plan and application did not contain the same numbers. Mr. Shupe said that it may behoove Mr. Zonies to speak with an architect to produce a better plan for this addition.

Mr. Kingsbury moved to recess the hearing until September 22, 2009. Mr. Geiger seconded the motion. There was no discussion. All members voted in favor.

4. **Appeal of notice of violation.** Limestone Vermont LLC is appealing a notice of violation issued July 28, 2009 for a newly constructed residence at 127 Eurich Farm Road. The notice of violation states that the cupola and the roof peak exceed the maximum building height standard of thirty-five feet for the Agricultural-Residential District, as provided in Section 2.07(D) of the Waitsfield Zoning Bylaws. The appeal requests a stay of enforcement on the basis of Section 3.6, A.3 of the Waitsfield Zoning Bylaws. The property is identified as parcel #04036.507.

Ms. Trihy noted that Nate Goldman, the builder for this new SFR, contacted her the last week in May to request a CO as the owners were moving in that weekend. Mr. Goldman

asked Ms. Trihy to come to the building site with the CO application and he would get the owners' signatures after Ms. Trihy inspected the completed work. Ms. Trihy noted that she went to the site and noticed that the cupola appeared to be higher than 35 feet above grade. Mr. Goldman consulted his plans and judged the height of the Cupola to be 49 feet and the height of the roof to be 37 feet. Mr. Goldman asked Ms. Trihy to check and see if the Planning Commission approved a different height for this project. Ms. Trihy did not find this to be the case when reviewing the permit files. Ms. Trihy noted that Mr. King contacted her to say he would review his files and records as he felt there was some evidence that gave them permission to build higher than 35 feet. Ms. Trihy noted that she was then presented with schematic drawings of the project which showed the average height of the buildings to be 35 feet. Ms. Trihy's advised Mr. King that the height limitation cited in the bylaws did not refer to average height for all buildings, but rather stated that the maximum height of any part of a building cannot exceed 35 feet above the average grade. Ms. Trihy then spoke with the Town Attorney and issued a notice of violation.

Mr. King noted that the Bylaws define a structure as any assembly of materials for occupancy or use, so clearly the cupola is in fact a structure. He further noted that this property is 23 acres and has multiple buildings. Mr. King's recommendation when filing for the building permit was to file for the whole project. The project includes two buildings and a connector. The first building to be constructed was the barn which was deconstructed at another site and reconstructed on this property. The cupola was created to provide light and ventilation. A building permit was issued, after which David Jescavage noted there was an issue on the building envelope. Mr. King noted that he applied for an amendment that describes the buildings with a vault of 49.6 feet in height. Mr. King understood that this height had been approved when, in fact, it had not. Mr. King noted that there is an exception in 306.A3 of the Zoning Ordinance that provides an exception for appurtenances to a residential use. He noted that if the DRB considered this an appurtenance for residential use, there is no violation. Ms. Trihy noted that she had checked that exemption at the time and did not think that a cupola was in the same category as the other appurtenances cited in that exemption such as flagpoles and wind vanes. Mr. King continued to say that if the cupola is not considered an appurtenance for residential use, then there are two other ways of enabling the DRB to approve it. The first is under 306B of the Zoning Ordinance, a conditional use apparatus which appears to only include utilities and generating facilities. The second is 306C which talks about PRDs. Mr. King believes the cupola fits within the definitions and requirements of 306C.

Mr. Shupe requested a site visit for the purpose of taking measurements. Mr. Kingsbury moved to recess the hearing until September 22, 2009, and conduct a site visit on

Tuesday, September 15, at 8:00am. Ms. Cook seconded the motion. There was no discussion. All members were in favor.

5. APPROVAL OF MINUTES: Mr. Donaldson moved to approve the minutes of August 25, 2009 with corrections. Mr. Kingsbury seconded. There was no discussion. All members voted in favor.

6. OTHER BUSINESS: The Board discussed how to respond to the informal presentation by the Hildebrands on August 25th. There was unanimous agreement that there should be no change to the original decision not to allow subdivision of the lot.

7. DELIBERATIVE SESSION

8. ADJOURNMENT.

Respectfully submitted,
Nancy Myrto