

**Town of Waitsfield**  
**DEVELOPMENT REVIEW BOARD**  
**Meeting Minutes**  
**Tuesday, October 28, 2008**

- 1. CALL TO ORDER:** Brian Shupe, Chair, called the meeting to order at 7:37pm at the Waitsfield Town Office.

**MEMBERS PRESENT:** Brian Shupe (Chair), Gib Geiger, Mike Kingsbury, Eleanor D'Aponte, and David Galfetti (Alternate).

**MEMBERS ABSENT:** Mark Sinclair

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

**APPLICANTS AND THEIR REPRESENTATIVES:** Robin Morris, Kate Stephenson, Jeff Schoellkopf, Bill Maclay, John McLeod, Daniel Johnson, Gunner McCain, and Dan Fuller

**INTERESTED PARTIES:** Kevin Dunn, John Welter, Ro Welter, and Doriann Prescott.

**OTHERS PRESENT:** Nancy Myrto, minutes taker.

- 2. Yestermorrow, Inc. – Status Discussion.** Mr. Shupe explained the purpose for Yestermorrow's appearance before the Board is to assist them in understanding their status under the current zoning and ask questions about any direction they may be heading. Mr. Shupe pointed out that there is no formal process for a preliminary application meeting. Since an informal meeting does not involve notifying abutting landowners and receiving their input, Mr. Shupe was inclined, with the Board's consent, to be cautious as to how far the Board can go in giving direction, but could help answer basic interpretive questions. He requested Mr. Schoellkopf give a brief description of Yestermorrow's origins and future plans.

Mr. Schoellkopf explained the school has been in existence since 1980. The Alpen Inn property was purchased in 1990. In 1996 and 1997 plans were developed to renovate the Alpen Inn and in 1998 and 1999 those plans were executed. The plans were carried out with the proper permits acquired from the Planning Commission, Act 250, public safety, and ANR. In 2002, some additional renovations were done to create some dorm rooms in the lower level. Yestermorrow has been generally successful and growing and did a strategic plan 3-4 years ago and adopted the plan 2-3 years ago that basically calls for

them to grow the school in small intervals. The next step is to add a shop addition to provide more shop courses and open up small studios based in the main building, and add a couple more cabins for students to use for seasonal accommodations. Original approved plans called for 10 cabins on the property, four of which have already been built.

Mr. Maclay explained the permitting, when the property was first purchased, was granted to retain the entire building. The school did not have the funds to execute this plan and the Yestermorrow Board voted in favor of doing the renovations in stages. Mr. Shupe noted permitting was granted by the Planning Commission to convert the inn to a school at that time.

Mr. Schoellkopf stated in conjunction with proceeding in development of the school zone, they have been exploring various regulatory areas. To date, a survey of the wetlands and a delineation showing the pond and a 50' buffer. The existing building is approximately 35' into the 50' buffer, but any proposed building would be outside of that. Mr. Schoellkopf further explained preliminary reviews with the Civil Engineer, of the capacity of the water and wastewater systems, indicate Yestermorrow can add another classroom within the existing fields. Additionally, they need to finish up the paperwork, and obtain ANR approval. They have also started looking at the Act 250 update information and the town zoning.

Mr. Schoellkopf noted one question Yestermorrow has is whether the school is a non-conforming structure or use. His initial understanding was that it is a non-conforming structure. After discussion with Ms. Trihy it was established that it is a non-conforming use, which does not have specified restrictions on maximum size of expansion. Another question was, based on their existing permits can Yestermorrow build other buildings as long as they are conforming with regard to existing regulations? Mr. Shupe stated that as a school, it is defined differently now and the school would be a non-conforming use. Mr. Shupe further explained that according to Section 3.8, a nonconforming use shall not be moved, enlarged, or increased by any means whatsoever except with the approval of the Development Review Board subject to conditional use review. Mr. Schoellkopf understands a conditional review hearing must be held with the DRB for any changes Yestermorrow may do as it is a non-conforming use.

Mr. Schoellkopf asked if Yestermorrow would have a 75' front setback, as the Commercial Lodging District specifies a 200' setback for hotels, lodges, and inns, and a 75' setback for all other uses. Ms. Trihy questioned this setback and referenced a letter from Mr. Shea, Planning Commission Chair, stating there is a 150' public right of way in that area. Mr. Schoellkopf said they obtained from VTRANS a survey for this segment

of Route 100 that shows a change from a four-rod road to a three-rod road at the far northern end of the property. Mr. Shupe noted he also reviewed Mr. Shea's letter and felt Mr. Shea was more concerned with the inconsistency of the right-of-way along Route 100 and that the Planning Commission is looking at a more consistent way of measuring setbacks. Mr. Morris confirmed the Planning Commission is looking to measure setbacks from the centerline and adding 25' to existing setbacks. Mr. Schoellkopf stated the existing building is approximately 230' to 240' from the road, but the piece they are contemplating building is at approximately 150'. Mr. Shupe agreed Yestermorrow would fall under the 75' setback criteria.

Mr. Schoellkopf asked if there was a timeline to build the additional cabins as far as permitting is concerned. Mr. Maclay believes the original site plan for all ten cabins was approved, but a new hearing must be set for each series of cabins when they are ready to be built.

Mr. Schoellkopf asked if the DRB could give Yestermorrow an approximate time line or process orientation for getting the shop building done if a full application and site plan is completed and submitted. Mr. Shupe and Mr. Geiger both expressed that a site visit with the building footprint staked out is generally required. Ms. D'Aponte also noted a hearing including interested parties would also need to be scheduled. Mr. Kingsbury stated the more complete the application, the less meetings would be necessary, but that generally 3-4 meetings are required.

Mr. Shupe asked Mr. Schoellkopf if Yestermorrow still plans to have residential housing on the property. Mr. Schoellkopf noted that this, as well as sales on the property, are in the 100-year plan.

Mr. Kingsbury moved to close the hearing at 8:10pm. Mr. Geiger seconded. There was no discussion. All members voted in favor.

**3. Hearing continued for #3193, application for variance, TD Bank NA/Dan Fuller.**

Variance requested to locate house, drilled well, and part of driveway inside stream setback. The property is located on Sugar Glen Drive and is identified as parcel #40035.000 in the Agricultural-Residential District (§2.07).

Mr. Shupe noted they would be reviewing the request with a new site plan, and additional information with regard to the building footprint. DRB members looked at the site earlier today with neighbors, the applicant, and agent, Mr. McCain, who pointed out the location of the driveway, well, and septic, in addition to flagging the garage and house sites. Mr. Shupe also noted the stream was running at the time of the site visit. Ms. D'Aponte

asked if the slope angle is known. Mr. McCain noted it is between 15% and 20%. Mr. Shupe pointed out the neighbors' areas of concern are the house location, visibility, and possible changes to drainage.

With regard to variance criterion #1, Unique Physical Features: Mr. McCain stated he and Mr. Fuller feel this is a small lot that cannot be built upon without a variance. This lot was created before the current regulations and there were no stream setbacks at that time. He further explained for all intents and purposes the entire lot lies in the stream buffer zone, meeting the criterion of shallowness of lot size and shape. The minimum distance from the proposed house foundation to the brook is approximately 55' to 60', and the limit of disturbance to the brook at the closest point at the high end of the lot is approximately 40', and increases as it goes further downhill with the exception of the drilled well location. The driveway is reconfigured and the actual footprint is longer and narrower to stay further away from the brook. The leach field is located in the only appropriate area where there is adequate soil.

Ms. Prescott's concern is that this house is above the 1500' limit and she asked what the setbacks would be if it were lower. Mr. Shupe explained the setback would be between 50' and 150' depending on the slope.

With regard to variance criterion #2, Physical Circumstances and Conditions: Mr. McCain again stated it is his and Mr. Fuller's opinion there is no reasonable use for this property other than a house and one cannot be built on this property without a variance. Mr. Shupe noted there may be other uses for the land other than a house which would constitute a reasonable use. Mr. McCain noted this is a one-acre lot and is not conducive to a forestry or agricultural operation. Ms. Prescott noted this area could be used as common land for the development.

With regard to variance criterion #3, Unnecessary Hardship Has Not Been Created by the Applicant: Mr. McCain stated the applicant has not created any of these situations.

With regard to variance criterion #4, Essential Character of the Neighborhood or district in which the property is located: Mr. McCain noted the planned house is consistent with other structures in the area, and creates no hindrance to anyone's rights or access to renewable energy resources. Mr. Shupe noted there were comments during the site visit that construction would alter water flow and storm water and asked if there are any safeguards in place to protect the owners located downstream. Mr. McCain noted there is an erosion control plan adequate to address the concerns. Mr. Shupe asked how much tree cutting would occur. Mr. McCain stated a minimum of 1/3 of the lot would remain wooded, and a silt fence would be put in place. Mr. Dunn noted the leach field is located

very near his property line and was concerned about its aesthetics. Mr. McCain explained it is a typical mound system and is not intrusive to the eye. Ms. Prescott voiced concern with regard to the septic system noting it is difficult to implement an adequate septic system in this area. Mr. Shupe asked Mr. McCain if he has obtained a permit from the state for the septic system. Mr. McCain answered that he was awaiting the outcome of this hearing before doing so, but the system is designed to meet all the state standards. Mr. Shupe asked what the final elevations would be. Mr. McCain did not have that piece of information, but estimated the highest part of the mound to be 3-1/2' above existing ground.

With regard to variance criterion #5, Minimum to Afford Relief=: Mr. McCain and Mr. Fuller feel the house is the minimum size reasonable, at 1600 square feet, that can be economically constructed on this property. Ms. D'Aponte voiced a concern about the garage and whether its size meets this criterion. Mr. McCain noted this is a very modest size garage, and will not deter aesthetically from the property.

Mr. Shupe noted, as background, that when the Forest Reserve District, which is defined as land above 1500', was updated and was made more stringent, it was drawn up to exclude Ski Valley Acres lots. Mr. Welter commented that at that elevation the setback from the stream has gone from 90' to 150' and the appellant is asking for a 40' setback which is a big stretch, and seems too much of a variance request. Mr. McCain asked Mr. Shupe to also keep in mind the slope is fairly flat as you move from the stream toward the house site.

Mr. Kingsbury moved to close the hearing at 9:00pm. Mr. Geiger seconded. There was no discussion. All members voted in favor.

4. **APPROVAL OF MINUTES:** Minutes of the October 14 meeting were approved with minor changes.
5. **OTHER BUSINESS:** Ms. Trihy explained that Ms. Olenick, with MRVAS, has been in touch since the last hearing and would like to withdraw the plan they have submitted and submit a new plan that is potentially more agreeable to neighbors Ms. Seibert and Mr. Lawton. DRB members decided to allow a new hearing to be set to review new plans.

Ms. Trihy noted she has the PRD application completed for the Turners and asked Mr. Shupe to peruse them with her before finalization.

Mr. Shupe mentioned he attended the Business Forum held the previous night by the Selectboard. He stated there was good discussion and he was asked to give a talk on the

application process. There was some discontent voiced with regard to the application process, as well as some disappointment with regard to town government and what is perceived as an arbitrary application process. Mr. Shupe did reiterate most of the discussion was positive and many businesses spoke about the need to protect the character of the town, and the need for sidewalks, water, and sewer.

Ms. Trihy confirmed attendance at the November 11 meeting to be Ms. D'Aponte, Mr. Kingsbury, Mr. Geiger, Mr. Shupe, and Mr. Sinclair. In addition, Ms. Trihy confirmed the DRB would not be meeting on Tuesday, November 25.

6. **ADJOURNMENT.** The meeting adjourned at 9:20pm and the Board went into deliberative session.

Respectfully submitted,  
Nancy Myrto