

**DEVELOPMENTAL REVIEW BOARD  
MINUTES**

**October 25, 2010**

**MEMBERS PRESENT:**

Phil Carter, Chairman  
John Boehrer

Richard Harrison  
Julie Nicoll

Linda Petty  
Rose Goings, Zoning Administrator

**OTHERS PRESENT:**

Derk Beardmore  
George Feller  
Willow Feller  
Micky Gelineau  
Warren Holby  
Mrs. Holby

Randy Martelle  
Gerard McGuinness  
Ralph Michael  
Gary Neff  
Martin Nitka  
John Norton

Mary Jane O'Hara  
Daniel Pratt  
Richard Whitham  
Duncan Love, LPC-TV  
Lisha Klaiber, Recorder

1. **CALL TO ORDER**

- A. Meeting opened at 6:05 p.m. by Chairman Phil Carter. Phil Carter welcomed new member John Boehrer. All board members present.

2. **OPEN THE PUBLIC HEARING FOR SUZANNE WHALEN AND ANDREW METRICK**

- A. Phil Carter advised that this is an application to amend an existing Planned Residential Development Permit to add a mudroom, in the Mountain Recreation District. Property address is 224 Village IV, 46A Sachem.
- B. Rose Goings advised that this is application 128-98-PRD, Amendment #26. Posted in the Town Hall bulletin boards October 4, 2010, advertised THE VERMONT JOURNAL on October 6, 2010, and the abutting property owners were notified on October 6, 2010. She advised that Derk Beardmore is agent for the owners.
- C. Phil Carter administered the oath to all wishing to speak at this hearing. He added that this request has been seen many times.
- D. Derk Beardmore advised that the applicants wish to enclose an existing deck and make a mudroom.
- E. Phil Carter asked if the size, height and footprint of the building would remain the same.
- F. Derk Beardmore said yes.
- G. **MOTION by Linda Petty and seconded by John Boehrer to close this hearing.**  
**Motion passed unanimously.**

3. **OPEN THE PUBLIC HEARING FOR MATTHEW GRADER**

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- A. Phil Carter advised that this is an application for a two (2) lot subdivision in the Residential 120 district. Property address is Nelson Road.
  - B. Rose Goings advised that this is application SUB11-010. Posted in the Town Hall bulletin boards October 4, 2010, advertised THE VERMONT JOURNAL on October 6, 2010, and the abutting property owners were notified on October 6, 2010. She said that the state access permit was received today for the second driveway. She advised that Richard Whitham is the agent for the applicant.
  - C. Phil Carter administered the oath to all wishing to speak at this hearing.
  - D. Richard Whitham advised that the applicant wished to subdivide a 37+/- acres parcel into 2 new parcels. One parcel will be 18.01 acres and the other 18.77 acres. There is one existing driveway and the state has approved the second driveway. He has received the approved septic design from the state for the second lot. He explained that the new driveway will end at a culvert and the road would be to town or B71 specifications.
  - E. Phil Carter asked what B71 specifications are.
  - F. Richard Whitham said they are state specifications and the applicant would build the driveway to whichever specifications of the 2 that this board approves.
  - G. Phil Carter asked if the existing driveway has a culvert.
  - H. Richard Whitham said it is preexisting.
  - I. Rose Goings said this is the second time here for this parcel and that Richard Whitham has the Mylar with him tonight. If the board agrees, they can approve the preliminary and final plat Mylar tonight.
  - J. Phil Carter noted from the drawing that there is a 50-foot ROW for CVPS that cuts through the properties. He explained that would stay in place. He also noted that the well shields for both parcels are on the respective parcels.
  - K. Richard Whitham advised that the property buyers would choose the house sites.
  - L. Julie Nicoll noted from the drawing that there is also a VELCO easement on Parcel #2 that would stay in place.
  - M. Phil Carter asked about a drawing dated 9/30/10 that shows a 50-foot common ROW.
  - N. Richard Whitham advised that is gone. They did away with it.
  - O. **MOTION by Richard Harrison and seconded by Julie Nicoll to accept and sign the final Plat Mylar and to close this hearing. Motion passed unanimously.**

4. **OPEN THE PUBLIC HEARING FOR GEORGE AND WILLOW FELLER**

- A. Phil Carter advised that this is an application to amend an existing Conditional Use permit to extend the retail space of Chapter XIV into the existing barn. The property is located at 126 Main Street in the Village Residential Commercial District. He added that the barn had previously been use as an antique shop.
- B. Rose Goings advised that this is application 214-02-CU, Amendment #1. Posted in the Town Hall bulletin boards October 4, 2010, advertised THE VERMONT JOURNAL on October 6, 2010, and the abutting property owners were notified on October 6, 2010.
- C. Phil Carter administered the oath to all wishing to speak at this hearing.
- D. George Feller advised that the barn had once been used as an antique store and they wish to extend their business out there. There will be no changes to the interior or the dimensions of the building.
- E. Phil Carter asked if the footprint would remain the same.

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- F. George Feller said yes.
  - G. Phil Carter noted that the drawings indicate 15 parking spaces. He asked if they also had access to park at Hammond Hall.
  - H. George Feller said yes.
  - I. Phil Carter asked about lights and signs.
  - J. George Feller said they were considering a sign that said something like Antiques at Chapter XIV. He said they would use existing lighting and lighting from adjacent buildings.
  - K. Phil Carter said that one business might only have one sign.
  - L. Rose Goings said that a sign may be 30 square feet and since this would all be one business, they would not be able to put up an additional sign.
  - M. Phil Carter asked if they had contacted Labor and Industry (L&I) or other entities.
  - N. George Feller said that they sent letters to everyone and have received responses from the Electric Department, Ambulance and Fire.
  - O. Rose Goings said that she had not heard from Scott Adnams from L&I.
  - P. Phil Carter asked Mr. Feller if he had called them.
  - Q. George Feller said not, but that he would call Scott Adnams.
  - R. Rose Goings said that Scott Adnams would come.
  - S. Julie Nicoll asked the hours of operation.
  - T. George Feller said 10:00 a.m. to 6:00 p.m., seven days per week.
  - U. **MOTION by Julie Nicoll and seconded by Richard Harrison to close this hearing. Motion passed unanimously.**

5. **OPEN THE PUBLIC HEARING FOR GERARD MCGUINNESS**

- A. Phil Carter advised that this is an application for a 3-lot subdivision in the Aquifer Protection District. Property is located at 1671 Route 100 South/Valley View Drive.
- B. Rose Goings advised that this is application SUB11-006. Posted in the Town Hall bulletin boards October 4, 2010, advertised THE VERMONT JOURNAL on October 6, 2010, and the abutting property owners were notified on October 6, 2010. She advised that letters are in from the fire chief and ambulance department.
- C. Phil Carter administered the oath to all wishing to speak at this hearing.
- D. Ralph Michael advised that this project may tie into the Andover property and uses the same road.
- E. Gay Neff said that this property is independent of that subdivision.
- F. Martin Nitka asked if the driveway goes through and said that there are issues that he wants to discuss tonight.
- G. Phil Carter indicated a road on the drawing and said that the road is in Ludlow.
- H. Gerard McGuinness said it is his driveway.
- I. Ralph Michael said this is a 3-lot subdivision of a parcel 30.86 acres fronting on Route 100. Lot #1 is 10.03 acres and has a house. There will be 2 new lots created on the south end of the property. There will be access to Summit Ridge. Gerard McGuinness owns Lot #1 of the Summit Ridge subdivision and that fronts on Valley View. Access will be through lot 1 and serves the house on that parcel. It will also serve a 50-foot private ROW.
- J. Phil Carter asked if the ROW on parcel #1 also serves lots 2 and 3.

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- K. Ralph Michael said it was Summit Ridge lot #1 and that lot will now be subdivided and create another 50-foot ROW off Valley View to lots 2 and 3.
- L. Phil Carter said that would mean that they would have to amend the permit for the first lot. He read from the permit for Valley View and noted that all changes to that permit must be approved by the DRB. He also wanted to know how that would affect the erosion control plan for the original permit.
- M. Ralph Michael advised that the road is already constructed.
- N. Phil Carter said that this would be an amendment to the original subdivision and if amended, they would have to show how the amendment would affect the storm water plan for Valley View Drive. He noted that Valley View Drive has washed out once already.
- O. Gerard McGuinness said the ROW would only serve lots 2 and 3.
- P. Julie Nicoll asked them to explain the second road shown on the drawings – they look like they just end.
- Q. Gary Neff said there is a cul-de-sac on the lower one and the other road goes to Andover.
- R. Phil Carter said that our issue is that this changes a permitted subdivision and the only access to lots 2 and 3 is from the 50-foot ROW off Valley View.
- S. Gary Neff said they would need to amend their permit.
- T. Phil Carter asked how the storm water plan will tie-in. The road will have runoff that will go down Valley View.
- U. Ralph Michael said that he has not done the storm water plan yet.
- V. Phil Carter asked if they would have to provide a new or amended plan for the state?
- W. Ralph Michael said it would have to be new.
- X. Rose Goings asked if this would trigger Act 250?
- Y. Ralph Michael said no, because the lots were divided between Ludlow and Andover and neither met the respective town limits.
- Z. Marty Nitka advised that he represents Capp Investments and indicated that land that they own on a drawing. He also identified land owned by Mr. McGuinness and also a lot owned by Mr. McGuinness' wife. Mr. McGuinness bought 30 acres in 2005. In 2006, Summit sold Capp Investments 17.72 acres and reserved a 50-foot ROW for the benefit of other lands owned by Mr. Neff. In 2007 Mr. Neff sold Mr. McGuinness' wife 10.56 acres that was lot #1. Mrs. McGuinness has the right to use the 50-foot ROW to access her property. Now they propose to use that ROW to access unrelated lands. It is our opinion that they do not have that right. These lands are not related to the other lands owned by McGuinness.
- AA. Gary Neff said that he is an owner of Summit Ridge and other lands and believes that he has the right to assign use of the roadway to expand the neighborhood within the boundaries of Ludlow and this should not be restricted.
- BB. Marty Nitka said that there is no Neff in the chain of ownership of this land.
- CC. Phil Carter asked when the relationship between Neff and McGuinness began?
- DD. Gary Neff said 2005.
- EE. Phil Carter said that was not a recorded partnership.
- FF. Gary Neff said that Mr. McGuinness wants to expand and I wish to assign him the right to do so. He said that he did not know of this issue and did not have the time to consult counsel. He will come back to this board with counsel.
- GG. Marty Nitka said that the rights are reserved for the lands of Neff, not any undisclosed partnerships. His client, Capp Investments, relies on the status recorded in the land records.

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- HH. Richard Harrison said this is a legal matter and suggested recessing this hearing until the parties can get together and come up with an arrangement.
- II. Marty Nitka said that he only became involved with this last Thursday and told Ralph Michael that there were issues.
- JJ. Phil Carter said that there are items to be resolved and there needs to be an amendment to Mr. Neff's permit.
- KK. Phil Carter asked if the parties would like to schedule the two issues on the agenda for the next meeting.
- LL. Rose Goings said that she is concerned about scheduling the 2 on the same night in case the board needs to make a decision on the amendment.
- MM. Phil Carter said the board could hear them both and if the amendment is okay, they can close the hearings or recess them if they are not okay. They can also condition the permits.
- NN. Marty Nitka said that Mrs. McGuinness should be a co-applicant as she is the owner of the land.
- OO. Phil Carter said that he would like to have all interested parties present.
- PP. **MOTION by Richard Harrison and seconded by John Boehrer to recess this hearing until the December 13<sup>th</sup> meeting. Motion passed unanimously.**

6. **OPEN THE PUBLIC HEARING FOR WARREN BARRETT HOLBY, JR.**

- A. Phil Carter advised that this is an application for a variance for a wind power generator in the Aquifer Protection District.
- B. Rose Goings said that the zoning regulations were amended to remove height restrictions on wind generators and said that this hearing would be heard as a conditional use permit. She advised that this is application 330-11-VA. Posted in the Town Hall bulletin boards October 4, 2010, advertised THE VERMONT JOURNAL on October 6, 2010, and the abutting property owners were notified on October 6, 2010.
- C. Phil Carter administered the oath to all wishing to speak at this hearing.
- D. Warren Holby advised that his house is off the grid and they wish to install a 1 KW wind generator to provide supplemental electricity. They do not get enough sun from November through January to power their solar panels and they want to add power.
- E. Phil Carter asked the height off the tower.
- F. Warren Holby said between 47 and 75 feet.
- G. Phil Carter clarified that the tower needs to clear the trees. He added that the drawings indicate that it is galvanized steel and will fade into the trees. He asked about visibility from the roads.
- H. Mr. Holby said that he tied a balloon to a 100' tether and could not see it from Routes 100, 103 and 155. It is 4.2miles from the Priory and could not be seen from there.
- I. Phil Carter noted from the drawings that it is 200 feet from the nearest structure and if it fell, it would not hit any structure. He indicated on the drawings that it is a very remote spot and for the record, noise would not be an issue.
- J. Richard Harrison asked about deer or other animals.
- K. Mr. Holby said that he has not seen deer tracks for quite a while. There are some moose in the area. Noise would not be a great issue.
- L. Phil Carter asked how big the blades are?
- M. Warren Holby said about 3 ½ feet.

- N. Phil Carter asked if there would be lights on the tower.
- O. Warren Holby said no.
- P. **MOTION by Julie Nicoll and seconded by Linda Petty to close this hearing. Motion passed unanimously.**

7. **OPEN THE PUBLIC HEARING FOR HERITAGE FAMILY FEDERAL UNION**

- A. Phil Carter advised that this is an application for a conditional use permit to convert the former Post office building into Heritage Family Federal Union. The project includes the former Jiffi Mart parcel, which will include razing the building to become a parking lot for the Credit Union, and a drive-up ATM. The project is located at 199/200 Main Street in the Village Residential/Commercial District.
- B. Rose Goings advised that this is application 331-11-CU. Posted in the Town Hall bulletin boards October 4, 2010, advertised THE RUTLAND HERALD on October 10, 2010, and the abutting property owners were notified on October 6, 2010. Letters have been received from ambulance, fire, police, sewer/water, and electric departments.
- C. Phil Carter administered the oath to all wishing to speak at this hearing.
- D. Daniel Platt referred to drawings and said that Ralph Michael would do the survey and drainage. He showed where cars would enter and go to the drive up teller in the back. He said they would remove part of the building to accommodate the drive around. He explained that there would be 12 parking spaces; there would be 3-5 employees. There would be less than 1,000 square feet of public space and the rest would be offices. The requirement for this is 10 spaces. He showed elevation drawings to show how the building would appear. He said they would remove the awning and make the signature Heritage entry (also shown on drawings.)
- E. Linda Petty asked the width.
- F. Daniel Platt said the roof would be 7' wide over the sidewalk. He said that the current awning projects out 5'10" and the new entryway would be 3'8".
- G. Phil Carter asked if they would remove the current slab?
- H. Daniel Platt said yes and replace it. They would keep the existing flagpole if in good shape, if not they would remove and replace it.
- I. Phil Carter asked about the traffic flow for the ATM.
- J. Daniel Platt indicated it on the drawing. He said there would be one way in and 2 ways out. He showed the location of the ATM on the drawing. He said the back wall would be 15 feet high.
- K. Phil Carter said that at the site visit, they discussed water runoff from the existing building.
- L. Ralph Michael indicated where the runoff from Andover Street onto this property is. He discussed elevating the driveway behind the post office building and upgrading it to get to Andover Street level. He said that 1/2 of the minimart lot catches water from the roof. It will collect in a catch basin that runs to the existing catch basin on Main Street. Some of the runoff will go to another new catch basin to catch the runoff from the post office building. There is a 6" pipe in the catch basin in the middle of the post office lot. The catch basin at the SE corner of the post office building runs to an existing catch basin that will be elevated.
- M. Phil Carter asked where the 6" pipe goes.

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- N. Ralph Michael said no one is sure. He will have a company come in and camera the line to find out where it goes and what type of condition it is in. If it goes to the river, it will carry the water. A 100-year storm will not flood into the building.
- O. Richard Harrison asked about snow removal.
- P. Ralph Michael said they will remove it with a loader.
- Q. Richard Harrison asked if they would try to get the employees to use the municipal parking lot across the street.
- R. Daniel Platt said there are plenty of spaces in the lot and on the street.
- S. Randy Martelle said that they actually would prefer to have the employees park in the municipal lot.
- T. John Norton said that when Jiffi Mart wanted to put in a drive through window, it was voted down. Why is this okay?
- U. Rose Goings said that the Zoning Regulations that have been in effect since 1990 allow for financial institutions, only, to have drive through windows.
- V. John Norton said that was discrimination.
- W. Phil Carter said that this board does not write the zoning regulations, they just interpret them. Mr. Norton would need to go to the Planning Commission to have them revised.
- X. Mary Jane O'Hara said that there is an unwritten rule in town that shop or business owners do not park all day on the street.
- Y. Randy Martelle said that Heritage encourages employees to park in municipal lots.
- Z. Mary Jane O'Hara said that the elevation drops 3 ½ feet, how will they fill it in.
- AA. Ralph Michael described the height of the loading dock and elevations and said that the drop to the top of the curb against the building is 3/10 lower than the floor level.
- BB. Mary Jane O'Hara asked if it would be sloped.
- CC. Ralph Michael said yes and said toward the grass area. He said at the curb there is a 6" drop.
- DD. Mary Jane O'Hara said that she does not want water to flood her property.
- EE. Daniel Platt said all of the water would run into the drainage systems that are being designed.
- FF. Ralph Michael showed where the water will be collected into catch basins that will run into pipes.
- GG. Mary Jane O'Hara asked about building up the top side of the back.
- HH. Ralph Michael said the runoff will go into the parking lot.
- II. Phil Carter asked about gas tank removal.
- JJ. Randy Martelle said that Champlain Oil is responsible for that, along with the removal of the pumps and building. There will be an environmental engineer on site to take soil samples and sniffers will also be on site. There have been no indications on the state register for prior contamination. If there is any, it will be remediated at once. Based on what was done in the last 20 years, there should not be a problem.
- KK. Phil Carter asked about the green spaces.
- LL. Daniel Platt said there are adding grass and maybe some plants.
- MM. Rose Goings asked about the back wall where the ATM is and the height of 15 feet.
- NN. Daniel Platt said they do not want to increase an eyesore if it is bad back there. They will have a brick wall with iron fence on it and maybe some vines. It would still be transparent. They would leave space for the abutting property owner to maintain their property.
- OO. Rose Goings said that the town limits fence heights to 6 ½ feet. She asked for the dimensions of the structure over the ATM.

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- PP. Daniel Platt said they may prefer to raze the entire building and just put the wall with the fence.
- QQ. Phil Carter said that it sounds like they want to create a better backdrop.
- RR. Randy Martelle agreed that they do want to create a better backdrop and said there is also a security component to the iron fence, people can't hide back there in there. He said that they will comply with the 6 ½' height limit.
- SS. Rose Goings said that the building is non-compliant now and this will decrease the degree of non-compliance. She said that she is concerned about the height of the structure over the ATM. She said that it would not be attached to a primary structure. She added that a lot line adjustment would also be needed.
- TT. Daniel Platt said the structure would be about 8' x 10' and less than the existing Jiffi Mart building. He said they would be reducing the non-compliance by 90%.
- UU. Phil Carter asked if they would be combining the two lots into one.
- VV. Daniel Platt said yes. He added that it is important to add the Jiffi Mart parcel for parking to make this project work.
- WW. Rose Goings asked if the ATM would be drive up or walk up.
- XX. Daniel Platt said both.
- YY. Mary Jane O'Hara asked about the space between the property lines at the back.
- ZZ. Daniel Platt said 1'11".
- AAA. Phil Carter asked the hours of operation.
- BBB. Randy Martelle said Monday and Tuesday from 8:30 a.m. to 5:00 p.m., Wednesday from 9:00 a.m. to 5:00 p.m. and Thursday and Friday from 8:30 a.m. to 6:00 p.m.
- CCC. Phil Carter asked the height of the new walkway.
- DDD. Daniel Platt said the same as the existing roof and it would comply with setbacks. Overall height would be about 13 feet.
- EEE. Phil Carter asked about exterior lighting.
- FFF. Daniel Platt said fixtures on either side of both front and back doors and some indirect soffit lights.
- GGG. Phil Carter said the lights could not interfere with traffic.
- HHH. Daniel Platt said this would be shown on working drawings.
- III. Mary Jane O'Hara asked if they would put curbs in the front where the green belt is shown?
- JJJ. Phil Carter said that would be a trustees' issue.
- KKK. Linda Petty asked if traffic exiting would only be able to go right.
- LLL. Ralph Michael said the exit would be wide enough to go both ways.
- MMM. Richard Harrison said this project would be a great improvement to the area.
- NNN. Julie Nicoll asked about the drive through.
- OOO. Randy Martelle said it would have street view for safety purposes.
- PPP. Mary Jane O'Hara asked if they had done a survey of the property.
- QQQ. Ralph Michael said it is not completed.
- RRR. Mary Jane O'Hara said there is a discrepancy between the Jiffi Mart lot lines and the pin.
- SSS. Ralph Michael said the Jiffi Mart property goes to the sidewalk.
- TTT. Julie Nicoll asked the color of the building.
- UUU. Randy Martelle said brick and black shutters.
- VVV. Daniel Platt said they would put in a new roof, new windows and paint.
- WWW. Rose Goings asked the timeline for construction.
- XXX. Daniel Platt said they would have to have the Jiffi Mart out by December 1<sup>st</sup> or they would have to wait until spring.

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- YYY. Rose Goings asked if they have closed on both properties.  
ZZZ. Randy Martelle said they have closed on the post office and are waiting in the Jiffi Mart property to find out the outcome of this hearing.  
AAAA. Phil Carter asked how far they are with state permits.  
BBBB. Daniel Platt said the working drawings will be completed after they get the outcome from this hearing.  
CCCC. **MOTION by Julie Nicoll and seconded by Richard Harrison to close this hearing. Motion passed unanimously.**

8. **OTHER BUSINESS**

- A. There was none.

9. **REVIEW AND APPROVE MINUTES**

- A. The board reviewed the minutes of the September 13, 2010 meetings.  
B. Phil Carter noted that on page 2,#4 d and f, and also on page 8,item A, the minutes say that Phil Carter said. It should read confirmed or verified.  
C. **MOTION by Julie Nicoll and seconded by John Boehrer to approve the minutes of September 13, 2010 as corrected. Motion passed unanimously.**

10. **DELIBERATIVE SESSION**

- A. **MOTION by Phil Carter and seconded by Julie Nicoll to enter into Deliberative Session. Motion passed unanimously**  
B. Board entered into Deliberative Session at 8:05 p.m.

Respectfully submitted,

Lisha Klaiber

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Phil Carter, Chairman

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Julie Nicoll

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John Boehrer

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Linda Petty

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Richard Harrison