

**DEVELOPMENTAL REVIEW BOARD
MINUTES**

December 12, 2011

MEMBERS PRESENT:

Phil Carter	Richard Harrison	Linda Petty
John Boehrer	Julie Nicoll	

STAFF PRESENT:

Rose Goings

OTHERS PRESENT:

Andy Becker	Ralph Michael	Larry Slason
George Benson	Frank Ohlmstead	Lucinda West
Mary Benson	Gary Rapanotti	John Yannes
Trevor Benson	Ted Reeves	Ruthann Yannes
Ethan Gilmour	Joy Schuyler	Lisha Klaiber, Recorder
Thomas Kelly	Richard Schuyler	

1. **CALL TO ORDER**

- A. Meeting opened at 6:13 p.m. by Phil Carter. All members present. He advised that the board would like to open with Agenda Item #9 – Other Business. Minutes are in order of agenda.

2. **OPEN THE RECESSED PUBLIC HEARING FOR RICHARD AND BETTY ANN HARRISON**

- A. Phil Carter advised that this is an application to amend a Conditional Use Permit to add four (4) unit suites to the Village Inn. The property is located at 1 Gleascott Avenue in the Village Preservation District.
- B. Richard Harrison recused himself from this hearing as he is the property owner.
- C. Rose Goings advised that this is application 053-92-CU, Amendment #1. It was posted on the Town Hall Bulletin Boards on November 17, 2011, advertised in THE VERMONT JOURNAL on November 23, 2011 and abutting property owners were notified on November 21, 2011. She advised that all required town letters have been received.
- D. Phil Carter administered the oath to all wishing to speak at this hearing.
- E. Richard Harrison advised that he had originally purchased this property in 1992 and sold it to the Best Western in 1999. He is buying it back from the Best Western and doing a boundary line adjustment, adding the garage to his property on 95 Main Street. The road is owned by Richard Harrison and his wife. There are 4 parking spaces in front and 3 on the hill. The 4 units are 3 singles, Units 260, 263 and 264. Unit 201/262 is a large unit with lock off. The two 8 foot front garage doors will be changed to on 16 foot door. There will be a small, 24” x 36” sign under the handrail.
- F. Phil Carter asked if they would be adding to the outside of the building.
- G. Richard Harrison said no.
- H. Phil Carter asked about sprinklers and CO₂ monitoring.

- I. Richard Harrison said that when he purchased the property, he had it fully hardwired for fire and CO₂. There are 2 egress windows and sprinkler heads downstairs.
- J. Rose Goings advised that the Department of Public Safety report was received today.
- K. **MOTION by John Boehrer and seconded by Linda Petty to close this hearing. Motion passed unanimously.**

3. **OPEN THE PUBLIC HEARING FOR THOMAS AND MARY KELLY**

- A. Phil Carter advised that this is an application for Flood Hazard Review to build a utility room above the base flood elevation and a concrete bunker for an oil tank. The property is located at 76 Red Bridge Road in the Special Flood Hazard Area of the Lakes District.
- B. Rose Goings advised that this is application 352-12-FHR. It was posted on the Town Hall Bulletin Boards on November 17, 2011, advertised in THE VERMONT JOURNAL on November 23, 2011 and abutting property owners were notified on November 21, 2011.
- C. Phil Carter administered the oath to all wishing to speak at this hearing. He explained that this board is on the record and is a quasi-judicial board and testimonies are taken under oath.
- D. Tom Kelly advised that the flood waters from Lake Rescue came into their basement where all of the utilities were located. To meet the zoning regulations, these must be relocated above the flood water level. They would like to add a 10' by 8' room on the side of the building above flood elevation and move the utilities there. This will be on the 1st floor level. Also, the waters eroded the ground around the 1000 gallon underground oil tank. They would like to remove that tank and put in a concrete bunker where they will locate the new tank. The old tank was steel and rusted.
- E. Phil Carter asked if the existing tank had been protected.
- F. Tom Kelly said no, it had just been buried.
- G. Phil Carter said, to clarify, that they would be adding a 10' x 8' foot room, plus a bunker for the oil tank. He asked if the tank would be strapped.
- H. Tom Kelly said yes.
- I. Phil Carter asked the height of the addition.
- J. Tom Kelly said it would match the front corner of the existing home – 8' from the foundation and 8' from the 1st floor – totaling 16 feet.
- K. Linda Petty asked how far down they would dig.
- L. Tom Kelly said to the original foundation depth, about 3 ½ feet.
- M. Linda Petty asked if they would have outside access.
- N. Tom Kelly said no.
- O. Linda Petty asked if the tank would be covered.
- P. Tom Kelly said with boards and rubber.
- Q. Lucinda West asked if they had done a test for soil contamination around the oil tank.
- R. Tom Kelly said there had not been any signs of contamination, but had not tested.
- S. Phil Carter said that this board is not charged with soil testing that would be a state issue. He suggested that Mr. Kelly check with his oil company as they would probably know what is required.
- T. Lucinda West asked if Cota had told them about the condition of the tank.
- U. Tom Kelly said that the tank was under water when Cota came.
- V. Phil Carter asked if Lucinda West if she had smelled oil.
- W. Lucinda West said she is not sure.

- X. Phil Carter said it would be hard to pin down as there had been many tanks compromised. He suggested they start with the oil company and find out what the regulations are regarding tanks.
- Y. Lucinda West asked who would remove the existing tank.
- Z. Tom Kelly said he would have it professionally removed.
- AA. John Boehrer asked about access.
- BB. Tom Kelly said it would be accessed only from the inside and part of the basement.
- CC. **MOTION by Julie Nicoll and seconded by to John Boehrer close this hearing. Motion passed unanimously.**

4. **OPEN THE PUBLIC HEARING FOR MATTHEW AND JULIE LAMB**

- A. Phil Carter advised that this is an application to amend a Conditional Use permit to change Wicked Good Pizza into office space and convert the barn into storage space. The property is located at 117 Main Street in the Village Residential Commercial District.
- B. Rose Goings advised that this is application 083-88-CU, Amendment #3. Posted on the Town Hall bulletin boards on November 17, 2011, advertised in THE VERMONT JOURNAL on November 23, 2011 and abutting property owners were notified on November 21, 2011. She advised that the applicants have requested a one month recess until the January meeting.
- C. **MOTION by Phil Carter and seconded by Julie Nicoll to recess this hearing until January 9, 2012. Motion passed unanimously.**

5. **OPEN THE PUBLIC HEARING FOR JOHN YANNES**

- A. Phil Carter advised that this is an application to consider subdividing existing Lot #5 into a 2-lot subdivision. Property is located on Sandra Drive in the Town Residential District
- B. Rose Goings advised that this is application SUB-03-004, Amendment #1. Posted on the town hall bulletin boards on November 17, 2011, advertised in THE VERMONT JOURNAL on November 23, 2011 and abutting property owners were notified on November 21, 2011. Phil Carter administered the oath to all wishing to speak at this hearing.
- C. Gary Rapanotti advised that the property is part of a 5-lot subdivision made in 2004. It had 4 small lots and 1 large lot. Lot #5 will be 4.07 acres and has the existing house. New lot #6 will be 22.83 acres and has not structures on it. They will apply to the state to revise lot #5 and waiver developmental rights on lot #6. They have a letter from a septic designer who wrote that he had tested lot #6 in 4 places and all locations would meet state standards. They would submit a design when a possible house location was determined. The application is ready to go to the state. Lot #4 (did he mean lot #5) has 250' frontage on the road and Lot #6 will have 200' frontage. There is an existing deeded ROW across Lot #6 to access lot #4. Lots 1, 2, 3 and 4 are owned by the same person.
- D. Julie Nicoll suggested that when they do come up with a septic design, please make sure that the well shell does not encumber any other person's property.
- E. Phil Carter advised that if there is an existing subdivision, the shield can be within that existing subdivision. It may encumber someone's own lot. It may not encumber someone else's lots. This board does not want to make a situation when a person is not permitted to develop their own property because of someone else's well shield.

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- F. Ethan Gilmour said that his father is an abutter and he has power of attorney to speak for his father. They oppose the subdivision of this property. He said that he had reviewed the town plan and found a number of reasons why this subdivision would not be in compliance with the town plan. He asked if the board would prefer to go through these tonight or should he submit it in writing to Rose Goings for later review.
- G. Phil Carter said that Ethan Gilmour could submit in writing and the board could close this hearing effective noon on Friday. He asked what the references were.
- H. Ethan Gilmour listed the following:
- i. Forest Resources – Section 3.2, bullets 1 and 2
 - ii. Agricultural Resources – Section 3.3, bullet 2
 - iii. Wildlife Resource Goals – Section 3.5, bullets 1, 2 and 7
 - iv. Chapter 4, Housing – Section 4.4 Seasonal Housing and Housing Affordability- Section 4.6
 - v. Chapter 9, Land Use – Section 9.3 Future Patterns, Section 9.4 Classifications, Section 9.6 Goals, bullet #1, Implementation Section 9.7, bullet #3
 - vi. Chapter 10 Relationships to Other towns – Section 10.2 and Section 10.3, bullets 1, 2 and 3
- I. Ethan Gilmour also referred to Chester and Andover Town plans, citing Chapter 9, section 9.3 of the Chester town plan regarding densities of abutting properties and those densities would be lower than this subdivision would be.
- J. Gary Rapanotti said that Ethan Gilmour did not give any reasons why they should not allow this subdivision
- K. Phil Carter said that all things relate to the town plan and there is no need to discuss it now. Rose Goings can get a copy of what Ethan Gilmour submits and can review it. He said that anyone who has concerns about a hearing may submit evidence. He added that this board does incorporate language from the Town plan into its decisions.
- L. Gary Rapanotti referred to a letter from Barbara Davis to Mr. Yannes stating that any evidence should be submitted no later than December 2, 2011.
- M. Phil Carter said the intent of that applies to the applicant. This board would like the applicants to be prepared for the hearing. The board does have the right to accept new evidence at the hearing.
- N. Gary Rapanotti said that he wants the ability to review and respond to Mr. Gilmour's notes.
- O. **MOTION by Julie Nicoll and seconded by John Boehrer to recess this hearing until January 9, 2012. Motion passed unanimously.**
- P. **Phil Carter polled the board and there was unanimous approval for this application.**
- Q. Phil Carter asked Ethan Gilmour to submit his notes to Rose Goings and she will get a copy to Gary Rapanotti.

6. **OPEN THE PUBLIC HEARING FOR RICHARD AND JOY SCHUYLER**

- A. Phil Carter advised that this is an application to appeal a Notice of Violation issued by the Zoning Administrator for construction without a permit. The property is located at 63 Benson Point in the Lakes District.
- B. Rose Goings recused herself.
- C. Julie Nicoll advised that this is application 353-12-AP. Posted on the town hall bulletin boards on November 17, 2011, advertised in THE VERMONT JOURNAL on November 23, 2011 and abutting property owners were notified on November 21, 2011.

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- D. Phil Carter administered the oath to all wishing to speak at this hearing.
- E. Phil Carter asked Rose Goings to provide a chronological preview of the occurrences leading to the Notice of Violation.
- F. Rose Goings said that it started in 2009. The prior owners, the Mikitas, wanted to construct a dormer on the 2nd floor. There would be no changes to the footprint. In a letter, Deborah Mikita said that they would also enclose the front porch and it would be an unheated vestibule. The permit stated that a Certificate of Occupancy would be required. It was never asked for and never granted. Exhibit B shows the dormer and Exhibit A shows 2 dormers and the addition. The addition part was not approved and not in the written documents. When the Schuylers purchased, they said they wanted to build what was on the drawings. I told them they could not build over the living room because it did not meet the lakeside setbacks. They did not have a proper survey. Rose Goings said that she visited the property and measured the lines. Rose Goings said she suggested to them what could be built and also suggested a variance or survey. She said she also told them that the addition was not allowed or permitted. Rose Goings received a call from a neighbor about the construction.
- G. Frank Ohlmstead said that what Rose Goings said was incomplete. He said that the application included more than the front page. It also included a 2 page summary and drawings. He said that the Schuylers never got anything that said part of the application (of what Mikitas wanted) was not approved. Also, they filed the original affidavit from Ms. Mikita that explained everything that she had requested. If we used what was attached to the affidavit, the entire 13 page document. Page 5 is a descriptive summary of the requested upgrades, including new 8' x 11' bedroom floor. Page 11 – the drawing on the middle bottom shows where the construction on the 2nd floor is, adding approximately 8' x 11'. Ms. Mikita mentioned it and the drawings mentioned it. On page 5 of 13, the other dormer is mentioned. She refers to 3 different dormers.
- H. Phil Carter read the bullets describing the construction. He said that the construction on the east side was not in violation.
- I. Frank Ohlmstead said that was correct. He read from page 6 about the 2nd floor dormer and said that is the dormer in question. He said that their position is that it was approved and is on the diagrams. He said the drawings show one piece at 11' x 8' (88 square feet) and the new bathroom at 6' x 12' (72 square feet) adding up to the 160 square feet noted on the application. The application was approved. The heights indicated on the drawings shows the new part at 21'3" and the existing at 21'. The application shows the NW corner dormer as part of the application and it was approved.
- J. Julie Nicoll noted that the application was in 2009 and asked when the construction was done.
- K. Frank Ohlmstead said October of this year.
- L. Richard Schuyler said they had applied for and were granted an extension last year.
- M. Rose Goings said that at that time, they knew that they could not build the extension.
- N. Phil Carter asked if they had discussed the setbacks and did they understand they would violate the setbacks when they began the construction.
- O. Frank Ohlmstead said they know she said she told them it would violate the setbacks, but the drawings were part of the sale and there was not notice then. They were between what Rose Goings said she told them and what Fred Glover said in his letter. There was no mention of violation and the house was sold according to the approved drawings. There was no way to know it was not approved. There was no notice of what was being denied; only verbal channels and that cannot be binding.
- P. Rose Goings said it was part of a conversation when she spoke to Mr. Schuyler about what could and could not be built. It does not matter what the Mikitas said. The Schuylers knew

after they purchased the house. She said that she dealt with the Mikitas in 2003. She said that she has documents with the parts in question marked off in highlighter. The highlighter did not copy, but it does show what was approved in 2003. They applied for 2 dormers. The items crossed off in yellow highlighter did not copy. The conversation was discussed at length of how they could add. She said she spoke to the father-in-law about how to get the additional square footage. This is 5 foot outside the setback limits.

- Q. Richard Schuyler said they purchased the house because of the drawings that came with it. They have 3 children and the house is only about 900 square feet. They need it slightly larger. They spoke to the real estate brokers and everyone agreed that it was OK to build. We went by what was on the pages. Outside conversations are okay, but you need to look at what was written. The Mikitas say there were no conversations and they were fully approved. How could you get to 160 square feet if it was not approved?
- R. Phil Carter asked if they know about the lakeside setbacks.
- S. Richard Schuyler said not fully.
- T. Phil Carter asked why they went through with construction without a clear understanding of the setbacks.
- U. Richard Schuyler said they went by the documents they had.
- V. Phil Carter asked why they did not submit their own application.
- W. Rose Goings said they did put in an application to extend the permit, but that was for the dormer only.
- X. Phil Carter noted that on 9/22/10, they submitted the application for the extension. He advised that in any town, it is the owner's responsibility, not the builders, prior owners or brokers, to know what the regulations say. Out regulations are very clear and you can get a measuring tape and measure out the distances. You have built an addition in violation of the setbacks. If you were not clear on the setbacks, you could have asked the zoning administrator. It was your responsibility to find out.
- Y. Richard Schuyler said that he purchased the property with plans that he thought could be transferred.
- Z. Phil Carter asked him if the plans had something ridiculous like building an 80 foot tower, would he have built that.
- AA. Richard Schuyler said that he read through the plans and descriptions.
- BB. Phil Carter said that you have to take responsibility to look into the regulations of the town.
- CC. Frank Ohlmstead said that is unfair. Mr. Schuyler had gotten opinions from attorneys and they all say that the permit said it was approved. Are you telling him not to go by that?
- DD. Julie Nicoll asked, when they found out they were not supposed to build, did they ever stop to question it. If the zoning administrator said not to build, that maybe they should not build. She knows the regulations. You could have stopped there.
- EE. Richard Schuyler said that he went back to the Mikitas and brokers. They all said it was okay and they had the permits. Everyone said it was approved. Fred Glover agreed, our attorney agreed and the brokers agreed. They all agreed that it was approved. We asked people who know. Now we are involved in a law suit.
- FF. Rose Goings said that her concern it her conversation with Sr. Schuyler and where it led. We know what was done. They were told not to build the addition and there built it. She is not involved in the suit. The Mikitas have been gone for several years. When Mr. Schuyler came into the office, I was fair and tried to work with them.
- GG. Mr. Schuyler said that his position is that while conversations are okay, he knew the policies and procedures and documents. They sought out professionals to answer their questions. They are only asking for a small amount of square footage.
- HH. Phil Carter asked Mr. Schuyler is anyone ever mentioned lake setbacks.

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- II. Mr. Schuyler said yes.
- JJ. Frank Ohlmstead said he knows that Rose Goings said it was in violation, but he knows the permit said approved. It was not denied. He had an approved permit. I advised them to build because the permit was about to expire.
- KK. Julie Nicoll asked Frank Ohlmstead if the zoning regulations ever came into context. Did it meet the setbacks? Did you think it violated the setback requirements?
- LL. Frank Ohlmstead said they know it was within the setbacks, but they also know they had a permit. It was a difficult position to put them in.
- MM. Phil Carter asked about the lawsuit.
- NN. Rose Goings said the town is not involved. Chris Callahan is aware of the suit.
- OO. Frank Ohlmstead said that he sent a letter to Chris Callahan to tell the zoning administrator that the permit was approved. The Schuylers had to sue the Mikitas. We have gotten nothing. It was done for one year and 160 square feet were approved and everything was described. There are times when you have to acknowledge that a small part of the permit was issued in error.
- PP. Phil Carter said that Frank Ohlmstead saw the violation and ran with it.
- QQ. Frank Ohlmstead said it was a tough decision for something that was legally permissible.
- RR. Rose Goings asked the square footage of the entryway. She added that the town does not charge for square footage for dormers.
- SS. Frank Ohlmstead said it was an enclosure of something already there. How could they not have done something that they were allowed to do? This was crucial to their decision to buy the property. You may not like it but you must apply the laws and rules to what they apply.
- TT. Phil Carter said that it does not matter what we like or dislike, we interpret the zoning regulations, statutes and laws. We will be down deep into this during our deliberations.
- UU. Frank Ohlmstead said he knows the drills. You could find out that the permit was issued in error and it not appealed, then it is a permit.
- VV. Phil Carter said that this board needs to know all of the details before making a decision.
- WW. Frank Ohlmstead said it was a measured decision in a tough situation and difficult to do. He asked the board to apply the statutes and rules as they should be applied.
- XX. George Benson said that this is the first that he has heard about all of this. He is an abutter and in favor of the addition. It is not an eyesore and does not stick out.
- YY. Joy Schuyler said they have 3 kids that need bedrooms.
- ZZ. MOTION by Linda Petty and seconded by John Boehrer to close this hearing. Motion passed unanimously.

7. **OTHER BUSINESS**

- A. Sign Decisions – Two decisions for Okemo were signed.
- B. Sign Timbercreek Mylars – Mylars were signed.

8. **REVIEW MINUTES**

- A. Phil Carter advised that the minutes to be reviewed are from October 24, 2011 and November 14, 2011.
- B. The board agreed to review them at the next meeting.

9. **ADJOURN**

- A. **MOTION by John Boehrer and seconded by Julie Nicoll to adjourn. Motion passed unanimously.**
- B. Meeting adjourned at 7:57 p.m.

Respectfully submitted,

Lisha Klaiber

Phil Carter, Chairman

Julie Nicoll

John Boehrer

Linda Petty

Richard Harrison