

**DEVELOPMENTAL REVIEW BOARD
MINUTES**

July 11, 2011

MEMBERS PRESENT:

Julie Nicoll, Vice Chairman John Boehrer Richard Harrison
Rose Goings, Zoning Administrator

MEMBERS ABSENT:

Phil Carter Linda Petty

OTHERS PRESENT:

Brian Cluff Liz Spaulding Duncan Love – LPC TV
Sharon Cluff Richard Spaulding Lisha Klaiber, Recorder
Melvin Fink Brian Wright
Martin Marcoux Sherry Wright

1. **CALL TO ORDER**

- A. Meeting opened at 6:02 p.m. by Vice Chairman Julie Nicoll. Phil Carter and Linda Petty absent.

2. **RE-OPEN THE RECESSED PUBLIC HEARING FOR PAUL AND LINDA HAYNES**

- A. Julie Nicoll advised that this is an application for a variance for the side line setback for a garage that was built without a zoning permit approval. The property has recently been surveyed which determined the side line on the property. The property is located in the Town Residential Commercial District.
- B. Rose Goings advised that the applicants have decided to withdraw the request for a variance.
- C. **MOTION by Richard Harrison and seconded by John Boehrer to close this hearing.**
Motion passed unanimously.

3. **RE-OPEN THE RECESSED PUBLIC HEARING FOR VINCENT AND LUCINDA WEST**

- A. Julie Nicoll advised that this is an application for Special Flood Hazard Review of an application to consider building a structure in the Special Flood Hazard Area in the Lakes District. Property is located at 62 Red Bridge Road.
- B. Rose Goings advised that the applicants had wanted to build on this property, but it is in the floodway and they decided not to pursue this application and have withdrawn it.
- C. **MOTION by John Boehrer and seconded by Richard Harrison to close this hearing.**
Motion passed unanimously.

NOTE: The following two hearings pertain to the same property and it was decided that they be addressed together.

4. **OPEN THE PUBLIC HEARING FOR BRIAN AND SHARON CLUFF**

5. **OPEN THE PUBLIC HEARING FOR BRIAN AND SHERRY WRIGHT**

- A. Julie Nicoll advised that these two hearings are appeals of Notices of Violation issued by the Zoning Administrator for the conversion of a duplex into condominiums. The property is located at 569 East Lake Road in the Lakes District. They are application numbers 344-11-AP and 345-11-AP. Posted in the Town Hall bulletin boards June 13, 2011, advertised THE VERMONT JOURNAL on June 22, 2011, and the abutting property owners were notified on June 13, 2011. Attorney Melvin Fink is present to represent both applicants.
- B. Rose Goings stepped down from the board.
- C. Julie Nicoll administered the oath to all wishing to speak at this hearing.
- D. Rose Goings advised that she was told about the conversion in December and issued the Notices of Violations in January covering both properties. This was a duplex that was converted into condominiums. She researched and found out that this was a preexisting duplex since 1985. At that time the property was zoned Residential 40,000 and 2 family houses were a permitted use. This was under the Zoning Regulations of 1972 and 1979. The Zoning Regulations were revised in 1990 and included the new Lakes District and 40,000 per dwelling unit density. Condominiums are not permitted or conditional uses in the Lakes District. The property is 1.02 acres and the Cluffs have owned the property since 1983. In 2010, they sold a part of the property to the Wrights and formed a Condominium Owners' Association. Each applicant appealed the Notice of Violation.
- E. Melvin Fink agreed that Rose Goings had presented a fair assessment of the property. In 1985, Mr. Cluff, along with his friend Mr. Wright constructed the dwelling and it has been used as a 2-family dwelling since that time. It was a permitted use at that time under the zoning regulations. The Planning Commission at that time allowed modifications of the zoning regulations for other uses such as Planned Unit Developments (PUDs.) This structure has been a 2-family dwelling with no changes, deletions or additions and the same owners. There are no planned changes. Each unit has a separate entrance. It was built as and has been used as a 2-family dwelling for over 25 years. The form of ownership has changed. He requests that the board carefully consider the purpose and design of the zoning regulations. We recognize and follow state statutes for providing orderly growth and protecting the health and safety of the people. What has changed with this property does not affect the purpose of the regulations. He said that the applicants could undo this change of ownership. The property could be deeded back to the Cluffs then the Cluffs could deed the property to the Wrights and themselves and include covenants for ownership in the deeds. This would be complicated and unwieldy. He asked that the board not request this and consider form over substance. Nothing has changed that will affect the town. The only thing that has changed is how the property is called. It is a condominium instead of a multi-family house. It has had the same usage for over 25 years. He requests that the board review this and decide that the applicants have not violated the regulations.
- F. Marty Marcoux said that the Cluffs and Wrights have been good neighbors, but that his only concern is what happens in the future.
- G. Melvin Fink said that nothing has changed. If they deed the property back to the Cluffs and then deed it to both couples, it would still be the same ownership. The net effect would be

identical. He added that the word condominium evokes larger and higher buildings with multiple units. This is not the case with this property.

- H. Marty Marcoux said that he is still concerned about the future. What if one family sells or both.
- I. Brian Cluff said that they have no intention of changing anything. They just wanted to define the ownership more clearly.
- J. Brian Wright said that both families intend to stay and have their children use it in the same manner as they have in the future.
- K. Rose Goings said that when the Cluffs built the structure, the density was 40,000 square feet per use. The density regulations changed in 1990. Condominiums are listed as a dwelling unit each.
- L. Melvin Fink said this is form over substance. It is a 2-family home that has been used as a 2-family home for over 25 years. This provides a better definition of the ownership.
- M. Richard Harrison said that a condo is a condo and a piece of that property can be sold. Condominiums are not allowed in the Lakes district.
- N. Melvin Fink said that it has the same effect as if the Cluffs conveyed the entire property to both families. The duplex would be separable and owned by 4 people. It has the same effect but is just cleaner to label.
- O. John Boehrer said that he understands their position but this board interprets the zoning regulations drafted by the Planning Commission. That is why we are here. If the applicants want to change the regulations, they would have to go to the Planning Commission.
- P. Julie Nicoll administered the oath to Liz Spaulding.
- Q. Liz Spaulding asked if this would set a precedent for future condominiums in the Lakes District.
- R. John Boehrer said that is a good question and that is what the question is here.
- S. Richard Harrison said that this board must weigh all of the questions.
- T. **MOTION by Richard Harrison and seconded by John Boehrer to close this hearing. Motion passed unanimously.**
- U. Rose Goings advised that this board has 45 days to issue a decision.

6. **OPEN THE PUBLIC HEARING FOR MARGARET EDGAR, TRUSTEE**

- A. Julie Nicoll advised that this is an Appeal to a Notice of Violation issued by the Zoning Administrator because the owner has not complied with the Environmental Court order issued on March 4, 2009. Property is located at 51 Northshore Drive in the Lakes District. Application number is 343-11-AP.
- B. Rose Goings explained that she had issued a violation years ago for a building that was built too close to the water. The applicant appealed DRB decision to the Environmental Court which upheld the DRB's decision. She was told to remove the part of the building that was in violation. She has not complied with the decision of the Environmental Court. Rose Goings had to issue a re-violation notice for the non-compliance. She received a letter from the applicant's attorney requesting this hearing be recessed until August as he is out of town.
- C. **MOTION by John Boehrer and seconded by Richard Harrison to recess this hearing until August 8, 2011. Motion passed unanimously.**

7. **ADJOURN**

- A. **MOTION by John Boehrer and seconded by Richard Harrison to adjourn this meeting.**
Motion passed unanimously.
- B. Meeting adjourned at 6:26 p.m.

Respectfully submitted,

Lisha Klaiber

Phil Carter, Chairman

Julie Nicoll

John Boehrer

Linda Petty

Richard Harrison