

**DEVELOPMENTAL REVIEW BOARD
MINUTES**

October 27, 2008

MEMBERS PRESENT:

Phil Carter, Chairman	Julie Nicoll	Rose Goings, Zoning Administrator
Troy Adams	Linda Petty	Barbara Davis, Zoning Admin. Asst.
Richard Harrison		

OTHERS PRESENT:

Peter Alberti	Tony Ciufu	Terry Thane
Matthew Birmingham	Joan Collar	Frank Wingate
Glenn Brown	Judy De Rosia	Duncan Love, LPC TV
Liz Calabrese	Victor DeRosia	Lisha Klaiber, Recorder
Tim Calabrese	Jerry Morton	
Angela Ciufu	Don Stryhas	

1. **CALL TO ORDER**

A. Meeting opened at 6:00 p.m. by Chairman Phil Carter. All board members.

2. **RE-OPEN THE PUBLIC HEARING FOR PETER DARTLEY**

- A. Phil Carter advised that this hearing is for an application to re-open the variance to erect a Wind Turbine Tower with height in excess of 35 feet in the Town Residential District. Property owner is Peter Dartley and applicant is E. Jerome Morton. Property address is 1181 Bixby Road in the Town Residential District.
- B. Rose Goings advised that this is application 314-09-VA, Amendment #1
- C. Phil Carter administered the oath to all wishing to speak at this hearing.
- D. Phil Carter advised that there were issues that were of concern to the board members that were addressed in the packet submitted by the applicant's agent, Jerry Morton.
- E. Troy Adams noted that some research says that the blades of the turbine may ice up and then launch chunks of ice.
- F. Jerry Morton said that research pertains to commercial towers that are over 400 feet high with 100-foot blades. The blades act in a similar manner as wings on a plane, using the lift and drag concept. If ice builds up on the blades, it would cause a drag and the turbine would lose speed and slow down. Ice can fall off the blades. Ice can also cause an imbalance and furling of the blades is then suggested. The turbine can operate with ½ inch of ice at winds of up to 90 mph.
- G. Troy Adams asked if the unit auto-furled in high winds.
- H. Jerry Morton said that at winds of about 34-36 mph, there is passive furling. The unit is designed to slow down or maintain speed. Unfurled, it will withstand winds of up to 90 mph.
- I. Troy Adams asked the color of the blades.

- J. Jerry Morton said the public service commission says gray. Gray blends into the background, but he is still working on that.
- K. Troy Adams asked what happens if two of the blades are in the sun and the 3rd is facing down and that one alone has an ice build up.
- L. Jerry Morton said the unit could spin even if unbalanced.
- M. Troy Adams asked about birds, bats and geese.
- N. Jerry Morton said that most birds in migration fly at heights over 120 feet. There is a study in the packets about wildlife. Most of the problems that occur are with utility scale turbines. You don't hear of many problems with the smaller units. Birds and bats also fly in to guy wires and power lines. There is not much study done on the smaller units and there are no known or reported cases of bat kills.
- O. Troy Adams confirmed that the unit would not have guy wires or lights.
- P. Jerry Morton confirmed that.
- Q. Phil Carter asked Jerry Morton to discuss tower failure. Where would it fall?
- R. Jerry Morton said that he is not a physicist, but the forces are greatest in the upper 1/3rd and if the unit fails, it would break at the upper third. It would bend over and rest on itself. He has never heard of this happening in small units.
- S. Phil Carter said that a big commercial tower failed in Searsburg, Vermont and it fell over onto itself and just hung there.
- T. Jerry Morton said that the base of this unit has 44 yards of concrete and he cannot imagine it pulling up and falling over.
- U. Richard Harrison advised that the Planning Commission is reviewing wind towers and will need more information. They will make a suggestion to the Select Board.
- V. Phil Carter clarified that there are two separate processes. This hearing is for a variance due to height restrictions. The DRB must uphold the Zoning Regulations. The Town Plan supports alternate energy sources such as solar and wind power, but the Zoning Regulations do not have an exemption for height for wind towers. The Planning Commission is working on correcting that difference. They will draft a document and submit it to the Select Board. The Select Board will hold hearings and decide whether or not to amend the Zoning Regulations and allow a height exemption for wind towers. However, this is a hearing for a request for a variance due to the height restrictions imposed by the Zoning Regulations and the DRB is charged with upholding the Zoning Regulations.
- W. Jerry Morton said that this is a Ludlow conflict between the Town Plan and the Zoning Regulations. He asked if the DRB has the authority to grant a variance for this. They would like to start work as soon as possible.
- X. Phil Carter said that there are 5 criteria that must be met in order for the DRB to grant a variance. The state regulations set those criteria and the DRB is bound by those regulations and the decision is based on the DRB interpretation of that regulations.
- Y. Rose Goings advised that Section 252.2 of the Ludlow Zoning Regulations is the section that provides for variances.
- Z. Linda Petty noted that the landscaping at the proposed site is beautiful. She asked about the base of the tower.
- AA. Jerry Morton said there would be a slight, 6" curb above the ground.
- BB. Troy Adams noted neighbor visibility factors are not a major issue. The sound factor still kind of a relative issue. Reference was made in the original submittal of comparison to rustling of leaves at a certain distance.
- CC. Jerry Morton said there are two things to consider: sound pressure (how loud the sound is) and what type of sound it is. The blades do make a noise that is more of a hum and that noise is most prevalent at the tower level. Wind speeds are generally lower in the summer and the turbine would spin less. The sound of a lawn mower would be louder.

In the fall, winter and spring, it would spin more and peoples' windows would more likely not be open. The sound of a furnace in the house would be louder. The distance to the nearest neighbor is close to 1,000 feet. The reference to grape leaves was that at 200 feet or more, the rustling of grape leaves would be louder. At distances of 100 to 200 feet or more, the sound is greatly diminished. A 22 mph wind in the trees is about 50 dB. The turbine is less than 5 dB above the ambient wind sound.

- DD. Judy De Rosia said that she and her husband are long time residents on North Hill. All of the reading that she has done indicate that there is noise generated by the turbine. We will not tolerate our quiet being disturbed. She submitted a drawing of her property in relation to the Dartley property. It is about 1,600 feet away.
- EE. Rose Goings advised that the properties do abut.
- FF. Jerry Morton said that the noise generated by lawnmowers is about 80-90 dB.
- GG. Judy DeRosia said she does not want to hear a turbine.
- HH. Phil Carter said that the board might either close the hearing or recess it until the Zoning Regulation issue is addressed and if the Select Board approves it.
- II. Jerry Morton said they would probably ask to recess it. He asked why this project was being held up because of a conflict between the Zoning Regulations and the Town Plan. That is a Ludlow issue.
- JJ. Phil Carter said that the DRB must go by the Zoning Regulations and that this hearing is a request for a variance. The DRB is locked into the 5 criteria set by the State regulations.
- KK. Richard Harrison said that he does not want to set a precedent now for this decision. He needs guidelines from the Planning Commission.
- LL. Rose Goings said that at this time the guidelines are based on Section 252.2 and the 5 criteria. They could recess this hearing until the Planning Commission and Select Board either amend or do not amend the regulations.
- MM. Jerry Morton said that he did not realize that the reason the board asked for copies of the electric bill was to determine hardship.
- NN. Phil Carter said that is part of the whole package. The other option is to recess this hearing and have the applicant respond – in detail – to the 5 criteria.
- OO. Jerry Morton said he thinks that might be the best route. Rose Goings has been helpful and went over the 5 criteria. He thought he had responded to them, but will re-address them.
- PP. Phil Carter said that variances are tough and by the nature of them, should not exist. When any town adopts zoning regulations, they are setting them as the rules. A variance is an exception to those rules.
- QQ. Jerry Morton said that the Ludlow Town Plan is in favor of wind energy.
- RR. Phil Carter said that the DRB is still bound by the Zoning Regulations.
- SS. Rose Goings suggested that Phil Carter explain the Town Plan and Zoning Regulations.
- TT. Phil Carter said that the Town Plan is like a textbook, telling where the town was, where it is, where it is going and the concept of the town. The Zoning Regulations are the meat and make the town plan happen. The Zoning Regulations are the laws.
- UU. Richard Harrison said that if the DRB denies the request, the applicant would have to start all over again.
- VV. **MOTION by Julie Nicoll and seconded by Linda Petty to recess this hearing to the meeting scheduled for November 24, 2008.**
- WW. Rose Goings said that she is concerned because the Planning Commission public hearing is not scheduled until December, so the current Zoning Regulations will still be in effect.
- XX. Phil Carter said that the applicant would have a month to address the 5 criteria.
- YY. Rose Goings wondered if it would be better to wait and see if this goes through (the amendment to regulations to allow wind turbines a height restriction exemption.)

- ZZ. Jerry Morton said that if he meets the 5 criteria, he could get a variance.
- AAA. Troy Adams suggested they list the options.
- BBB. Phil Carter said the options are;
 - i. Close the hearing now and render a decision within 45 days
 - ii. Recess the hearing for one month and allow the applicant to readdress the 5 criteria
 - iii. Recess the hearing and wait for a new document from the Planning Commission.
- CCC. Jerry Morton said that he would prefer to try to address the 5 criteria in one month. If he can't meet those criteria, then he would request indefinite recess pending resolution between the discrepancy between the Town Plan and the Zoning Regulations.
- DDD. **Motion passed unanimously.**

3. **OPEN THE PUBLIC HEARING FOR FLETCHER FARM FOUNDATION**

- A. Phil Carter advised that this hearing is for an application to amend a Conditional Use Permit to use the dining hall/office area, from part time seasonal to fulltime year round use. Property owner is Fletcher Farm Foundation. Property address is 609 Route 103 South.
- B. Rose Goings advised that this is application 084-95-CU, Amendment # 3. Posted in the Town Hall bulletin boards October 8, 2008, advertised in THE VERMONT JOURNAL on October 8, 2008, and the abutting property owners were notified on October 7, 2008. She advised that due to recent changes at Fletcher Farm, it was discovered that the Dining Hall was listed as Seasonal and nobody realized it.
- C. Phil Carter administered the oath to all wishing to speak at this hearing.
- D. Liz Calabrese advised that the dining hall was used in the summers and in 1994, was listed as seasonal. The building was built for year-round use. OMS (Okemo Mountain School) applied for three additional months for winter use. Now, the foundation just wants to round out and have it permitted for year-round use.
- E. Rose Goings said that all paperwork is in place.
- F. Liz Calabrese said they are amending their Act 250 and wastewater permits with the state.
- G. **MOTION by Richard Harrison and seconded by Troy Adams to close this hearing. Motion passed unanimously.**

4. **OPEN THE PUBLIC HEARING FOR PATRICIA CARTON**

- A. Phil Carter advised that this hearing is for an application to amend a Planned Residential Development permit to enclose an existing porch to make a mudroom. Property owner is Patricia Carton. Property address is 101 Village IV, Unit 41C at Okemo Trailside in the Mountain Recreation District.
- B. Rose Goings advised that this is application 128-98-PRD, Amendment # 20. Posted in the Town Hall bulletin boards October 8, 2008, advertised in THE VERMONT JOURNAL on October 8, 2008, and the abutting property owners were notified on October 7, 2008. She advised that this application is exactly the same as previous mudroom enclosures on Trailside that the board has heard. They are coming in one at a time.
- C. Phil Carter administered the oath to all wishing to speak at this hearing.
- D. Phil Carter asked if there would be any changes to the outside of the building.
- E. Peter Alberti said no.

- F. Phil Carter said that this board is very familiar with these projects. He asked if the board members had any questions. There were none.
- G. **MOTION by Julie Nicoll and seconded by Linda Petty to close this hearing. Motion passed unanimously.**
- H. Phil Carter advised that the board would get the decision out soon.

5. **OPEN THE PUBLIC HEARING FOR ROBERT AND LINDA MANN**

- A. Phil Carter advised that this hearing is an application for a Conditional Use Permit to renovate a seasonal 2-bedroom camp in the Lakes District. The camp is on a property with an existing single family home. The renovations will include a new foundation, new windows, updated wiring, replace failing wooden piers, etc.
- B. Rose Goings advised that this is application 316-09-CU. Posted in the Town Hall bulletin boards October 8, 2008, advertised in THE VERMONT JOURNAL on October 8, 2008, and the abutting property owners were notified on October 7, 2008. Several letters are in. She advised that it is a 2-family parcel and considered a single-family unit. The camp will have a new septic and foundation.
- C. Phil Carter administered the oath to all wishing to speak at this hearing.
- D. Angela Ciufu explained that the existing cottage is old and requires maintenance. They will put in a new foundation, wiring and windows. It will remain a 2-bedroom cottage. The heating will be updated. There will be no changes to the exterior footprint of the building.
- E. Phil Carter said they are making the cottage year-round.
- F. Tony Ciufu said it makes sense to do it.
- G. Richard Harrison asked if parcel 2 was pre-existing.
- H. Angela Ciufu said they are two separate parcels.
- I. Matt Birmingham said they were Plumley Parcels A and B. Both are now owned by the Manns. The parcels were deeded to the Manns on one deed with 2 property descriptions.
- J. Phil Carter asked about the existing septic.
- K. Tony Ciufu said that they hired an engineer who suggested they change out the tank. He said the cottage would have its own septic, but the water would be shared with the single family home.
- L. Linda Petty asked if they would be increasing the size of the building.
- M. Angela Ciufu said the only changes would be to the interior.
- N. Rose Goings said they would also be changing the steps down to the lake and it would make it better for emergency access. They would also be clearing some trees, but only very little.
- O. Phil Carter asked about the foundation.
- P. Tony Ciufu said they would open a walk out wall, put in steel beams and pour the foundation. They would stabilize the house where it is. Everything else would be the same. They also need to stabilize the end of the porch. The foundation will be about 7'10" high.
- Q. Phil Carter asked what they would use the basement for.
- R. Tony Ciufu said storage, a furnace and the electrical panel.
- S. **MOTION by Linda Petty and seconded by Julie Nicoll to close this hearing.**
- T. Phil Carter administered the oath to Liz Calabrese.
- U. Liz Calabrese said that it is nice to see a camp being saved. It is a lovely camp.
- V. **Motion passed unanimously.**

NOTE: Phil Carter asked the board to amend the agenda to discuss one of the items that were to be discussed under "OTHER BUSINESS" at this time. Minutes are in agenda order

6. **OPEN THE PUBLIC HEARING FOR GLENN BROWN**

- A. Phil Carter recused himself from this hearing, as he was not present for the original hearing.
- B. Julie Nicoll advised the board that the appellant has filed a motion to rehear the variance in reference to building a two-car garage and mudroom in the Lakes District. The property is located at 91 Ellison's Lake Road in the Lakes District. The original hearing was heard at the meeting on July 14, 2008. She advised that this is hearing 313-08-VA, Amendment #1. Posted in the Town Hall bulletin boards October 8, 2008, advertised in THE VERMONT JOURNAL on October 8, 2008, and the abutting property owners were notified on October 7, 2008.
- C. Julie Nicoll administered the oath to all wishing to speak at this hearing.
- D. Glenn Brown thanked the board for the first hearing and advised that the variance was granted with stipulations. He needed to find a way to meet those stipulations and had to tweak the plans to do so. He has kept in touch with Rose Goings throughout the process. Tim and Liz Calabrese redrew the plans and found a way to use less of the setback areas and to do the best job possible. They will use screening and reduce the height of the garage to 20 feet to make it fit into the criteria. They are here tonight to ask the board if they may use the redrawn plans.
- E. Tim Calabrese said that they changed re-align the garage and breezeway to run parallel to the setback line to the lake. They are asking for a dormer for the 2nd floor of the garage for storage. They are asking for a dormer on the lakeside as per drawing A-3.
- F. Liz Calabrese said they are working on the build-able side of the property. They have not changed the non-build-able side.
- G. Tim Calabrese said they would plant hemlocks on the Ellison Lake Road side. Also, the breezeway is now only one story.
- H. Liz Calabrese said they reworked the front entry and eliminated the dangerous steps. There will now only be one entrance at mid-level.
- I. Tim Calabrese said the existing porch would be removed.
- J. Glenn Brown said that would be about 66 square feet.
- K. Tim Calabrese advised that this would become the applicants' primary Vermont residence.
- L. Glenn Brown said that he spelled out in a letter that they are moving from a home with 2,800 square feet plus a barn/garage to a home with 1,500 square feet and no garage. They are both musicians and have 3 pianos and an organ. They are looking at a new lifestyle. The original drawing showed a Recreation Room over the garage. That was a mistake. The area over the garage will be used for storage. They cannot stay where they are currently living.
- M. Liz Calabrese said noted that the drawing shows a chunk of build-able square footage. Some of the house is still not in the build-able square footage, but they have tried to keep it as compact as possible.
- N. Richard Harrison said the drawings are a lot better than what they had previously submitted. He understands their health conditions.
- O. Glenn Brown said it was worth the time.
- P. Frank Wingate said that he supports the proposal. It fits into the character of the Lakes District. Glenn Brown has been a good steward of the land and lake and has served for many years as treasurer of the Lakes Association.

- Q. Tim Calabrese said that this Zoning Board helped drive us to make a better design.
- R. **MOTION by Richard Harrison and seconded by Linda Petty to close this hearing. Motion passed unanimously.**

7. **SUBDIVISION EXTENSION – MARTIN NITKA**

- A. Phil Carter advised that this is a request for an extension for an extension on a subdivision. Property is located on Nelson Road.
- B. Rose Goings said that she received a call from Steve Mungeon to request an extension until the November 24, 2008 meeting.
- C. **MOTION by Julie Nicoll and seconded by Linda Petty to extend the final plat hearing until November 24, 2008. Motion passed unanimously.**

8. **OTHER BUSINESS**

- A. Ledgewood Final Environmental Court Decision
 - i. Matt Birmingham advised that he had spoken with Doug Burns and Hans Huessy and they are asking the DRB to hold this file as pending. There are 2 meetings coming up and he does not know how they will go. They should know what is happening by January 1, 2009. He will send a letter to the board to confirm this.
 - ii. Phil Carter advised that no board action is required at this time. He added that the Environmental Court upheld this DRB's decision and that the applicant has now appealed the Environmental Court decision to the Supreme Court.
 - iii. Rose Goings said that our town counsel would have to represent us at that hearing.
 - iv. Phil Carter said that the Environmental Court would also need its own representation.
 - v. Rose Goings said that the case is no longer in the Supreme Court. The parties are trying to work something out together.
- B. Edgar and Curry Cases
 - i. Phil Carter asked the status of the cases.
 - ii. Rose Goings said no new information.

9. **REVIEW AND APPROVE MINUTES**

- A. Phil Carter advised that the minutes to be reviewed and approved are from June 9, 2008, July 14, 2008 and September 8, 2008.
- B. Troy Adams said that he prefers to receive hard copies.
- C. June 9, 2008
 - i. **MOTION by Julie Nicoll and seconded by Linda Petty to accept the minutes from June 9, 2008 as presented. Motion passed unanimously.**
- D. July 14, 2008
 - i. Troy Adams advised that on page 6, Item H, there are 2 spots where “are” should read “at.”
 - ii. **MOTION by Julie Nicoll and seconded by Richard Harrison to accept the minutes from July 14, 2008 as corrected. Motion passed unanimously.**
- E. September 8, 2008
 - i. Troy Adams advised that on page 4, Item KKK, “to see” should be added after difficult.
 - ii. **MOTION by Julie Nicoll and seconded by Linda Petty to accept the minutes from September 8, 2008 as corrected. Motion passed unanimously.**

10. **ADJOURN**

- A. **MOTION by Julie Nicoll and seconded by Linda Petty to close this hearing. Motion passed unanimously.**
- B. Meeting closed at 7:22 p.m.

Respectfully submitted,

Lisha Klaiber

Phil Carter, Chairman

Julie Nicoll

Troy Adams

Linda Petty

Richard Harrison