

**DEVELOPMENT REVIEW BOARD
MINUTES**

September 9, 2013

MEMBERS PRESENT:

John Boehrer	Richard Harrison
Julie Nicoll	Linda Petty

MEMBERS ABSENT:

Phil Carter

STAFF PRESENT:

Rose Goings

OTHERS PRESENT:

Derk Beardmore	Susan McNeeley	Herb Wisch
John Donohue	Wendy Neal	Darren Williams
Frank Ellison	Amy O'Neil	Laura Williams
Willow Feller	Mike O'Neil	Austin Zipeto
Rogan Lechthaler	Jason Rasmussen	Bonnie Zipeto
Andrea Lehtonen	Leslie Stuart	Duncan Love, LPC TV
Irene Maston	Daryl Wisch	Lisha Klaiber, Recorder
Michael Maston		

1. **CALL TO ORDER**

A. Meeting opened at 6:04 p.m. by John Boehrer. All members present, except Phil Carter.

2. **OPEN THE PUBLIC HEARING FOR TODD AND KIMBERLY GUTHRIE**

- A. John Boehrer advised that this is an application for an amendment to a PRD to enclose an existing 12' x 14' porch into a mudroom. Property is located at 198 Village IV, Unit 43C Trailside in the Mountain Recreation District.
- B. Rose Goings advised that this is application 128-98-PRD, Amendment #37. Posted in the Town Hall bulletin boards August 19, 2013, advertised in THE VERMONT JOURNAL on August 21, 2013 and abutting property owners were notified on August 19, 2013.
- C. John Boehrer administered the oath to all wishing to speak at this hearing.
- D. Derk Beardmore advised that the applicants wish to enlarge the mudroom to be able to bring the family into the dwelling together. He said that this is the same as previous requests and there would probably be several more.
- E. Linda Petty asked about exterior lighting.
- F. Derk Beardmore said there would not be any changes.

- G. Linda Petty asked the size of the landing.
- H. Derk Beardmore said less than 3' by 12'.
- I. Julie Nicoll asked if there would be any other changes.
- J. Derk Beardmore said this would be the same design as previous applications.
- K. **MOTION by Julie Nicoll and seconded by Richard Harrison to close this hearing.**
Motion passed unanimously.

3. **OPEN THE PUBLIC HEARING FOR MARC AND LESLIE STUART**

- A. John Boehrer advised that the first is an application for an amendment to a conditional to increase the number of seats for the wine bar from 23 to 50. Property is located at 46 Depot Street in the Village Residential/Commercial District.
- B. Rose Goings advised that this is application 109-96-CU, Amendment #2. Posted in the Town Hall bulletin boards August 19, 2013, advertised in THE VERMONT JOURNAL on August 21, 2013 and abutting property owners were notified on August 19, 2013. She added that letters had been received from the Andrie Rose, the Welsh's, the Greenbergs and Ida Gilmore.
- C. John Boehrer administered the oath to all wishing to speak at this hearing.
- D. Leslie Stuart advised that she owns the property on Depot Street and had run the Wine and Cheese Depot for years. She said that she and Wendy Neal will be opening a wine and cheese bar called Stemwinder and have had positive comments from many people. People have asked if they would be able to host special events and fundraisers. They decided to apply for the increased seating to accommodate these requests. They would like to add the additional seating upstairs on the 2nd level. She said that they would also like to hold seminars and dinners on the 2nd floor.
- E. John Boehrer asked if there would be nightly dining.
- F. Leslie Stuart said yes. She said that she had submitted a letter from Berkshire Bank allowing use of their parking lot. Additional parking would be on Depot Street, Main Street and around town.
- G. Rose Goings advised that the applicant has already received additional water/sewer allocation from the Trustees. They also have submitted Fire, Ambulance and Police letters. She said that in their letter, the police approved of the parking in the rear of the building and on the street. She also advised that parking is based on square footage not number of persons. There are 6 spaces and 1 handicapped space.
- H. Bonnie Zipeto submitted documentation to be considered as evidence. She said that she and her husband bought the adjacent property in 1998 and made renovations to this property and others that they own. She said that the tenants in their buildings provide services vital to the economy of the town. She voiced her concerns over possible noise, cigarettes, car doors and noises and safety issues that may arise from this project. She is concerned that people will pass through her property coming and going from the facility. She said that she does not believe that there really is enough room for 6 parking spaces. She said that a large propane tank has been moved adjacent to her tanks. She said that Irving said that tanks must be 10 feet from the property line.
- I. Leslie Stuart said the tank had not been moved. It is on blocks and within 2 feet of the driveway. It is not hooked up and they are using a temporary tank during construction. She said that it is where it has always been.
- J. Bonnie Zipeto said that the drawing for parking does not show the handicap ramp. She thinks the space will accommodate only 2-3 cars. She is concerned about liability, car doors slamming and thinks the increase is unreasonable.

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- K. John Boehrer asked Bonnie Zipeto if they dispute the entire project.
- L. Bonnie Zipeto said that in 2012, Marc Stuart told her that they were considering wine tastings. She said the next thing was a letter that the Stuarts about seating for 23. She thought that was a lot. Marc Stuart told her that they would be fixing the barn, but a giant structure arose and now they want larger capacity. She is not happy with the increase. She thinks that the board should consider safety issues and the well-being of her tenants. The area has been residential for 100 years. She will suffer a loss of income if tenants move because of the noise. She is not happy with the 7day per week, open until midnight.
- M. Leslie Stuart advised that the building that was built is only 4 feet higher than the original attached garage and improvement over what was there. This will be a small, intimate establishment, not a night club. They do not anticipate 50 people per night year round. People find places to park around the village. There are no signs to say that there is no parking on Pleasant Street. This is a Residential/Commercial district and new businesses encourage more people to spend money in town.
- N. Michael Maston said that he lives on Pleasant Street and operates the Andrie Rose Inn at 13 Pleasant Street. He is in favor of the project and is in favor of anything legal that brings people to the downtown to spend money. He also said that this is a Residential Commercial District and seating for 50 is fine. We can use more competition. He is in favor of the expansion.
- O. Frank Ellison said that he is concerned about people parking in his lot. Seating for 50 would be a challenge. He is concerned about the bar being open until midnight.
- P. Leslie Stuart explained that when she initially went to the DRB for the permit, she was told not to box herself in on the hours of operation that is why she asked for 10:00 a.m. to 12:00 a.m.
- Q. Frank Ellison said that when they close up in the evenings, people will have to go to their cars and will make noise and be closing car doors. It is not conducive to his tenants. It is also a residential area.
- R. Julie Nicoll asked Frank Ellison is there is a noise problem with DJs.
- S. Frank Ellison said yes.
- T. John Boehrer administered the oath to John Donohue.
- U. John Donohue said that he lives at 8 Pleasant Street and is not concerned about noise and none of his neighbors have expressed any concerns and they are looking forward to the new business.
- V. Richard Harrison referred to pictures submitted by Bonnie Zipeto and said that they are not fair because the construction debris is still there and it would be hard to tell about parking.
- W. Bonnie Zipeto said that picture was to show location of her bedrooms relative to the entrance.
- X. Richard Harrison said they want to make a living.
- Y. Bonnie Zipeto said people need to sleep and she has had one tenant there for 18 years.
- Z. Rose Goings said that per the zoning regulations, restaurants are required to provide 1 parking space for every 150 square feet of seating area. She asked Leslie Stuart the square footage.
- AA. Leslie Stuart said 420 square feet.
- BB. Rose Goings said that 6 spaces are sufficient without use of the bank lot.
- CC. Austin Zipeto said they don't think there is room for 6 spaces.
- DD. John Boehrer said they based on the square footage; they would only need 3 spaces according to the zoning regulations. He advised that this board is bound by zoning regulations.
- EE. Bonnie Zipeto asked about the propane tank.
- FF. Rose Goings repeated that Leslie Stuart had said that the tank is on blocks and had not been moved. She suggested that Leslie Stuart get a letter from the propane company about the location of the tank. If it is less than 10 feet from the property line then it may have to be moved as also with the Zipeto's tank.

- GG. Austin Zipeto said that Landon (Wheeler) said the tanks will have to be moved because they are too close to his property line.
- HH. Frank Ellison asked if they would put up a sign indicating parking in the rear.
- II. Leslie Stuart said that they could do that.
- JJ. Wendy Neal said that regarding hours of operation, they applied for the late hours in case an event ran late. She said that basically, most of the activities would be from 3:00 p.m. to 9:00 p.m.
- KK. Julie Nicoll asked about the letter from the Greenbergs that said they wanted the business to erect a fence on the Greenberg property and for the business to pay for it.
- LL. Leslie Stuart said that she had a conversation about that with a landscape architect to discuss fencing, shrubs or screening. A fence would be difficult to maintain in the winter because of the location and snow. She will try to assuage the people and if something happens she will address it.
- MM. Rose Goings noted that there is a fire escape on that side of the property and she would be afraid to see a fence there. She suggested that Leslie Stuart talk to the Fire Marshal about it.
- NN. Linda Petty asked Frank Ellison if the parking lot for the tenants in the apartments had designated spaces and signs.
- OO. Frank Ellison said that there are signs, barricades and numbers on the spaces.
- PP. **MOTION by Julie Nicoll and seconded Linda Petty to close this hearing. Motion passed unanimously.**

4. **OPEN THE PUBLIC HEARING FOR HERB AND DARYL WISCH**

- A. John Boehrer advised that the first is an application for an amendment to a conditional to convert a real estate office into a retail store. Property is located at 138 Main Street in the Village Residential/Commercial District.
- B. Rose Goings advised that this is application 405-84-CU, Amendment #3. Posted in the Town Hall bulletin boards August 19, 2013, advertised in THE VERMONT JOURNAL on August 21, 2013 and abutting property owners were notified on August 19, 2013.
- C. John Boehrer administered the oath to all wishing to speak at this hearing.
- D. Daryl Wisch advised that they wish to open a women's boutique and gift shop. The retail space will be downstairs and they will make no changes to the exterior of the building. Hours of operation will be from 10:00 a.m. to 9:00 p.m. seven days per week. They do not anticipate staying open until 9:00 every evening, but on holiday weeks and special sale events.
- E. John Boehrer asked about a sign.
- F. Daryl Wisch said they would put a sign where the Kelley Real Estate sign was, in the front of the store, there are already posts there.
- G. John Boehrer noted that there is also a Kelley sign on the building and asked about it.
- H. Daryl Wisch said it was put there by Larry Kelley and they would either remove it or paint over it.
- I. John Boehrer asked if there would be any changes to the exterior.
- J. Daryl Wisch said they would plant some flowers.
- K. John Boehrer administered the oath to Willow Feller.
- L. Willow Feller said that there is a contract for non-compete in effect and they should not open the store.
- M. Herbert Wisch said it had expired in May.
- N. John Boehrer said that would be a civil matter and not part of this hearing.
- O. Julie Nicoll asked about parking.

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- P. Herbert Wisch referred to a parking diagram and said there are 13 spaces and 1 on the street.
- Q. John Boehrer asked how people would be directed to the parking area.
- R. Daryl Wisch said they would put up a sign and would talk to Aubuchon. They will park in the rear.
- S. John Boehrer asked about exterior lighting.
- T. Daryl Wisch said only Christmas lights.
- U. Rose Goings said that they will need a letter from the fire marshal and told them to stop in to her office for his number.
- V. Richard Harrison asked about putting in a rear entrance.
- W. Daryl Wisch said that would have to be discussed with Aubuchon. She added that they will not be using the back as Aubuchon has things there.
- X. Linda Petty asked about upstairs.
- Y. Daryl Wisch said they would be using it for office space and they would put up "Private" signs.
- Z. **MOTION by Linda Petty and seconded by Richard Harrison to close this hearing. Motion passed unanimously.**

5. **OPEN THE PUBLIC HEARING FOR ANDREA LEHTONEN**

- A. John Boehrer advised that the first is an application for a design review to add a porch to the previously permitted addition, a barn with a loft, run-in shed and storage shed. Property is located at 75 Main Street in the Village Preservation District.
- B. Rose Goings advised that this is application 369-13-DR, Amendment #2. Posted in the Town Hall bulletin boards August 19, 2013, advertised in THE VERMONT JOURNAL on August 21, 2013 and abutting property owners were notified on August 19, 2013.
- C. John Boehrer administered the oath to all wishing to speak at this hearing.
- D. Andrea Lehtonen said this application is 2-fold and both are for permitted uses in the Preservation District. She wishes to enclose the porch on the addition. This is less than 2,500 square feet. It will look similar to the primary residence with the same siding, paint and roof. The windows will be different, without panes and also Marvin windows.
- E. Linda Petty asked if this would be a 3-season room.
- F. Andrea Lehtonen said yes, repeating that this is just design review.
- G. Linda Petty asked about lighting and /or spotlights.
- H. Andrea Lehtonen said no, just a normal porch light.
- I. Julie Nicoll asked if there is a pathway between the porch and garage.
- J. Andrea Lehtonen said yes.
- K. John Boehrer asked if it would be wide enough to walk on.
- L. Andrea Lehtonen said yes and she would probably put in a gate for the dogs. She said that the accessory building would consist of a horse barn, storage space, and run-in for the horses. It would be less than 120 square feet and therefore no permit would be needed, it would just be design review.
- M. Linda Petty asked how many animals it would fit.
- N. Andrea Lehtonen said that would depend on what types of animals. She said there is no law in Vermont against animals. She said that manure from horses does not smell like manure from other animals and it would be far back in her property. Referring to the barn, she said it is the same design as the one she has. The design comes from Lancaster, PA and it a historical Monitor type barn. She would be recreating a historical structure. It would be painted the

- same as the house, or would be natural. It would not be visible from the road and she would probably leave the trees.
- O. John Boehrer said that manure, even from horses, still smells, it's a reality. We have to agree that it would draw flies.
- P. Andrea Lehtonen said that it would not be near anything and there is no ordinance against animals or manure.
- Q. Julie Nicoll asked about where she would put the manure.
- R. Andrea Lehtonen said that in stalls, there is pine shavings and hay, in addition to the manure. It consists of about 85% shavings. It goes into a manure pile and left to decompose. She said that she encloses it to keep it in one place and keep animals out.
- S. Linda Petty asked how the shavings and food comes in.
- T. Andrea Lehtonen said in bundles. She said that she keeps the food in metal or plastic containers to keep horses and other animals out.
- U. Julie Nicoll asked if she would put a fence around the property.
- V. Andrea Lehtonen said yes – wood around the whole area and it would not be electrified.
- W. Linda Petty asked if it would be gated.
- X. Andrea Lehtonen said yes. She then repeated that this is for a design review and these are permitted uses. She said that she is not asking for conditional approval and has just provided the information for their information.
- Y. Richard Harrison asked about alarms in the barn that would be connected to the house.
- Z. Andrea Lehtonen said she would have smoke detectors in the barn, but they would not be connected to the house.
- AA. Richard Harrison asked how she would monitor it.
- BB. Andrea Lehtonen said she would probably hear it.
- CC. Laura Williams said that she is concerned about the size of the property relative to the number of animals. She is also concerned about internal parasites and rodents. She voiced concern about the distances from the barn to property lines.
- DD. Andrea Lehtonen said that the guidelines cited by Ms. Williams are not law and that the comments made by Ms. Williams are “theoretical retribution” because she filed an appeal against their permit.
- EE. Laura Williams said that her building is only 300’ away from the pile and she is concerned about odors. She added that there are no other farms in the Preservation District.
- FF. Darren Williams said that he does not think that the proposed buildings fit on the parcel.
- GG. Laura Williams said that she is also concerned about the braying of the mini-donkeys.
- HH. Andrea Lehtonen rebutted that there are no ordinances against animals and if there is a problem, they can file a complaint. She said the Preservation district is agriculturally zoned.
- II. Laura Williams said that the main reason for the Preservation District was because of the size of the building of a specific business. The buildings proposed are too large for the parcel. In Oregon, they require 1 acre per horse.
- JJ. Andrea Lehtonen said that she has had horses for 25 years and they do not need that. She said that her property is in trust for the Black River Academy Museum. She repeated that this is retribution for her appeal of their permit. She repeated that the barn and horses would be far away from their property. She said that she will appeal to the Vermont Supreme Court about the pending lawsuit.
- KK. John Boehrer said that is not part of this hearing.
- LL. Andrea Lehtonen said these are all permitted uses and this hearing is for design review.
- MM. Linda Petty asked if there ever had been a barn on this property.
- NN. Andrea Lehtonen said yes, when it was all agricultural.

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- OO. Linda Petty said the building next to Sports Odyssey was a barn and this proposed structure looks different from the barns in this area. The preservation District is more about keeping with what was there before.
 - PP. Andrea Lehtonen said there are other Monitor barns in Vermont and they are historic.
 - QQ. Linda Petty said that she has not seen one in this area.
 - RR. Andrea Lehtonen said that Vermont is an agricultural state and this can't be restricted because it is agricultural.
 - SS. Rose Goings said that this does not fall into the agricultural use category. This is strictly design review.
 - TT. Andrea Lehtonen said that the Preservation District was enacted not just because of a specific business but also to keep the area non-commercial.
 - UU. **MOTION by Richard Harrison and seconded by Julie Nicoll to close this hearing.**
Motion passed unanimously.

6. **OPEN THE PUBLIC HEARING FOR MICHAEL AND AMY O'NEIL**

- A. John Boehrer advised that the first is an application for flood hazard review to build a garage with a bedroom on the second floor in the Flood Hazard Area. Property is located at 75 Fishing Access Road in the Lakes District of the Town of Ludlow.
- B. Rose Goings advised that this is application 379-14-FHR. Posted in the Town Hall bulletin boards August 19, 2013, advertised in THE VERMONT JOURNAL on August 21, 2013 and abutting property owners were notified on August 19, 2013.
- C. John Boehrer administered the oath to all wishing to speak at this hearing.
- D. Amy O'Neil said that they wish to construct a 23' x 28' garage with upstairs bedroom and bathroom.
- E. John Boehrer asked about a letter from the state.
- F. Rose Goings said that it had come in.
- G. John Boehrer said that board members had not had the chance to review it.
- H. Jason Rasmussen said that they take the bids and estimates and they show the highest at 48% of fair market value. He said that when you hit the 50% mark, the entire structure must be raised above base flood elevation. The bids requested by the state and regional do not seem to be detailed and this board needs to decide how it wants to proceed.
- I. Amy O'Neil said that her understanding from Rose Goings was that they might do the conditional use part of the hearing. She said that FEMA wants 3 estimates and that she provided them. They are without specifications. She said that she gave the specifications to Rose Goings and all 3 are below 50% of the fair market value. She said that they were not notified until today that they needed to be below 40%. She said that she has the 2011 appraisal that was before Irene as it was \$198,386. After Irene, they did many renovations and repairs.
- J. John Boehrer asked for a copy of the paperwork.
- K. Amy O'Neil said yes, and that she wants to avoid another appraisal.
- L. Rose Goings said that the letter says that if the estimates are more than 40% of fair market value, the board needs to work on the costs.
- M. Amy O'Neil said the town needs to look at the estimates from 3 local builders. She said that she does not want to provide receipts – as requested by the state- because she considers it an invasion of privacy.
- N. Jason Rasmussen said that regional does not claim an Interested Party status. They have entered in to an advisory agreement with the town. Sasha Pealer says that when you get close

- to the 50% make, you really need to be cautious and accurate and get more information. He said that he thinks that this board should table the Flood Hazard Review portion until the next meeting. They need to show costs or the state could potentially ask that they bring the primary structure up above Base Flood Elevation.
- O. Amy O'Neil asked what else they would need to show the fair market value. They have the listers' card and the 2011 appraisal. The previously had only electric heat, now central heat, they have all new windows and window vents in the basement. They have made significant improvements since Irene.
- P. Rose Goings said that one issue is that Sasha Pealer may suggest more detained estimates and the bids to be broken down. That can be done without receipts.
- Q. Amy O'Neil said that getting perfect numbers in advance is unreasonable. She said that all of the bids included management fees and they will be handling those themselves. There would also be a percentage off to do the framing in the winter.
- R. John Boehrer cautioned that if the project starts and the state/FEMA find a problem, then everything must stop.
- S. Amy O'Neil said that she thought that FEMA only makes recommendations and she thought that they could not add more than 50% of the fair market value without elevating the primary structure.
- T. Jason Rasmussen said that they all need to absorb Sasha Pealer's letter as it is her opinions that matter most. They need to provide which contractor they will use detailed scope of work and itemized cost estimates.
- U. Amy O'Neil said that if the costs did not exceed 40%, would Sasha Pealer insist on this.
- V. Jason Rasmussen said no.
- W. Amy O'Neil asked if they would accept the 2011 appraisal.
- X. Rose Goings said they would have to run that by Sasha Pealer. She will tell us if we can accept it.
- Y. Amy O'Neil said that each appraisal costs about \$500-\$600 and takes 3 to 4 weeks to get.
- Z. Rose Goings said that Sasha Pealer has 30 days to respond. Rose Goings said that she is concerned about the letter from Sasha Pealer. She may want all of that information before we can determine the numbers.
- AA. Amy O'Neil asked who determines substantial improvement.
- BB. Rose Goings said the town with FEMA guidelines. She added that when the value approaches 48% it is too close and must be detailed.
- CC. Amy O'Neil asked the board to review the letter and get back to them with what the board needs them to do. She said that she does not have the time in 3 weeks to come up with drawings and detailed specifications.
- DD. John Boehrer asked Rose Goings to get the 2011 appraisal to Sasha Pealer.
- EE. Rose Goings said she would take care of it tomorrow and would probably have an answer by the next meeting.
- FF. Amy O'Neil said to let Sasha Pealer know that appraisal was before Irene and that we have done significant renovations and repairs since then. IT is all new construction and there would not be as much depreciation.
- GG. John Boehrer said the board should recess this hearing.
- HH. Amy O'Neil asked about the conditional use portion.
- II. Rose Goings said it could be done at the next meeting. It is basically a site plan review and the biggest problem is the Flood Hazard portion. She added that she will send all of the documents to Phil Carter and that he will want to be part of this.
- JJ. **MOTION by Linda Petty and seconded by Julie Nicoll to recess this hearing until the next meeting. Motion passed unanimously.**

7. **APPROVE MINUTES**

- A. John Boehrer advised that the minutes to be reviewed are from the meetings of July 8, 2013.
- B. The board decided to table review of those minutes until the next meeting.

8. **OTHER BUSINESS**

- A. 70 Main Street
 - i. Rose Goings advised that there was a conference call today and a Motion to Dismiss Andrea Lehtonen due to lack of standing as an interested party. MJ O'Hara is still an applicant.
 - ii. Andrea Lehtonen said, for the record that the motion was dismissed not because of her argument, but because the judge did not consider her as an interested party because her property was not close enough to be considered.
- B. Next Meeting
 - i. Rose Goings advised that the next meeting would be on October 28, 2013.

9. **ADJOURN**

- A. **MOTION by Linda Petty and seconded by Julie Nicoll to adjourn this meeting. Motion passed unanimously.**
- B. Meeting adjourned at 7:42 p.m.

Respectfully submitted,

Lisha Klaiber

Phil Carter, Chairman

Julie Nicoll

John Boehrer

Linda Petty

Richard Harrison