

**DEVELOPMENTAL REVIEW BOARD  
MINUTES**

*May 12, 2014*

**MEMBERS PRESENT:**

Phil Carter	Richard Harrison
John Boehrer	Julie Nicoll

**MEMBERS ABSENT:**

Linda Petty

**STAFF PRESENT:**

Rose Goings

**OTHERS PRESENT:**

Peter Alberti	Paul Olson	Merri Rubin
William Koski	Tom Phillips	Richard Walsh
Andrea Lehtonen	Joe Rolka	Lisha Klaiber, Recorder
Ralph Michael	Steve Rolka	Michelle Stinson, LPC TV
Mary Jane O'Hara	Joe Rubin	

1. **CALL TO ORDER**

A. Meeting opened at 6:00 p.m. by Phil Carter. All members present, except Linda Petty.

2. **OPEN THE PUBLIC HEARING FOR RODNEY GUTNER AND MEREDITH GUTNER RUBIN**

- A. Phil Carter advised that this is an application for a two (2) lot subdivision, including a variance. The property is located at 795 East Lake Road in the Lakes District. This hearing was recessed from the meeting of April 14, 2014. He explained that the permit must include both the subdivision and the variance and one may not be granted without the other.
- B. Rose Goings advised that this is application SUB14-004/410V-14-VA. Posted in the Town Hall bulletin boards April 21, 2014, advertised in THE VERMONT JOURNAL on April 23, 2014 and abutting property owners were notified on April 21, 2014. She noted that a letter was received from the Ambulance department.
- C. Phil Carter administered the oath to all wishing to speak at this hearing.
- D. Joe Rubin advised that he had sent in a letter describing the history of the ownership of the property and the criteria for a variance.
- E. Phil Carter acknowledged that the information was in the packets.
- F. Joe Rubin said that the property was in his wife's family for over 40 years and that they have been maintaining the two houses by themselves. The taxes started at \$8,000, increased to \$24,000 and recently went down to \$19,000.

- 
- G. Merri Gutner Rubin said that they have less than 3 acres and wish to subdivide and sell one lot. Both houses predate Ludlow Zoning Regulations. The houses are only 27 feet apart and anything less than 30 feet apart requires a variance.
- H. Joe Rubin said that the original house goes way back and the other was a barn. He said it was always one single property with 2 houses. Responding to the 4 criteria he said:
- i. The buildings predate the zoning regulations and there have always been 2 houses on the property.
  - ii. The existing buildings are 26-27 feet apart, corner to corner. The proposed subdivision will create one lot that conforms to regulations and the other lot will be 3 feet short of the required side setback. If the permit is granted, they will sell the smaller lot and include an addendum in the deed that if the existing house is ever demolished, if a new house were to be built, it would be built to meet all current zoning regulations.
  - iii. They did not create the configuration of the houses on the property. The distance between the houses was not changed (even after fire damage repairs were made.)
  - iv. The character of the neighborhood will not be affected. Visually it will look the same.
- I. Phil Carter noted that as Mr. Rubin explained, with the houses being 27 feet apart, the math does not work for them. Referring to the drawing, Phil Carter cited that proposed Lot #1 would be 1.76 acres and Lot #2 would be 1.21 acres. Both houses would have shoreline access and no new driveway would be required.
- J. John Boehrer asked about the well.
- K. Joe Rubin said that the houses would share both the brand new well and septic system.
- L. Phil Carter repeated that Mr. Rubin has also indicated that a deed to the new owner would contain language specifying that any new buildings on the smaller, non-confirming lot would be required to meet current zoning regulations.
- M. Joe Rubin said yes.
- N. Merri Gutner Rubin said that the property is very sentimental to them.
- O. **MOTION by John Boehrer and seconded by Julie Nicoll to close this hearing. Motion passed unanimously.**

3. **OPEN THE PUBLIC HEARING FOR DAVID FELDMAN AND JEFFREY KRINICK**

- A. Phil Carter advised that this is an application to amend a Planned Residential Development Permit to allow for a mudroom addition. The property is located at 91 Lower IV, 51A Trailside Lower IVA, in the Mountain Recreational District
- B. Rose Goings advised that this is application 128-98-PRD, Amendment #41. Posted in the Town Hall bulletin boards April 21, 2014, advertised in THE VERMONT JOURNAL on April 23, 2014 and abutting property owners were notified on April 21, 2014.
- C. Phil Carter administered the oath to all wishing to speak at this hearing.
- D. Peter Alberti this is the same mudroom enclosure as ones previously done. The applicants wish to enclose the existing deck to make a mudroom. The footprint and drawings will be the same, no changes.
- E. **MOTION by Julie Nicoll and seconded by Richard Harrison to close this hearing. Motion passed unanimously.**

4. **OPEN THE PUBLIC HEARING FOR LARRY AND STACEY FELDMAN**

- 
- A. Phil Carter advised that this is an application to amend a Planned Residential Development Permit to allow for a mudroom addition. The property is located at 95 Okemo Trailside Extension, 50 Trailside Lower IVA in the Mountain Recreational District
  - B. Rose Goings advised that this is application 128-98-PRD, Amendment #40. Posted in the Town Hall bulletin boards April 21, 2014, advertised in THE VERMONT JOURNAL on April 23, 2014 and abutting property owners were notified on April 21, 2014. She noted that letters have been received from the Police, Fire and Ambulance departments.
  - C. Phil Carter administered the oath to all wishing to speak at this hearing.
  - D. Peter Alberti this is the same mudroom enclosure as ones previously done. The applicants wish to enclose the existing deck to make a mudroom. The footprint and drawings will be the same, no changes.
  - E. Phil Carter asked if they had been before the Owners' Association board.
  - F. Peter Alberti said yes and they have to use the same clapboard, color and door sizes.
  - G. **MOTION by John Boehrer and seconded by Richard Harrison to close this hearing. Motion passed unanimously.**

**NOTE: Phil Carter advised that the next two hearings would be addressed together.**

5. **OPEN THE PUBLIC HEARING FOR PAUL OLSON**

- A. Phil Carter advised that this hearing is an application for Flood Hazard Review to increase the volume of the enclosed interior space within the front setback. The project is located at Sam's Steakhouse 91 Route 103 South in the Special Flood Hazard Area.
- B. Rose Goings advised that this is application 411-14-FHR. Posted in the Town Hall bulletin boards April 21, 2014, advertised in THE VERMONT JOURNAL on April 23, 2014 and abutting property owners were notified on April 21, 2014. She noted that a letter was received from the Ambulance department.

6. **OPEN THE PUBLIC HEARING FOR PAUL OLSON**

- A. Phil Carter advised that this hearing is an application for variance to increase the volume of the enclosed interior space within the front setback. The project is located at Sam's Steakhouse 91 Route 103 South in the Special Flood Hazard Area. He said that the project does not meet the front setback.
- B. Rose Goings advised that this is application 412-14-VA. Posted in the Town Hall bulletin boards April 21, 2014, advertised in THE VERMONT JOURNAL on April 23, 2014 and abutting property owners were notified on April 21, 2014. She noted that a letter was received from the Ambulance department.
- C. Phil Carter administered the oath to all wishing to speak at these hearings.
- D. John Boehrer advised that he would recuse himself from these hearings.
- E. Ralph Michael advised that the property consists of 4.1 acres in the RC district. It is in the Flood Plain, not the Floodway. They wish to enclose the existing entrance canopy and 4 foot depression to the right, under the existing roof. They will transform 54 square feet exterior space into interior space. The building will still look the same. He said that he sent the board a letter about the flood plain.
- F. Rose Goings said that letters had been received from Police, Fire and Ambulance.

- 
- G. Ralph Michael said he also had sent letters to the Electric Company, Rutland Windsor Supervisory Union and the Telephone Company. He said that this project would not affect any of them.
- H. Phil Carter asked about a letter to Sasha Pealer from ANR.
- I. Rose Goings said that Sasha Pealer has been replaced by Joshua Carvajal in the Rutland office and that she had not heard from him. He has 30 days to respond.
- J. Phil Carter said that this board needs to see that letter. Since Irene, the state and FEMA is now harder on any project near water. The state will need to look at the project and make a determination. This board holds them accountable. There have been projects where the state has come back a year after the decision and said the project would have to be changed and that they had not given their approval.
- K. Ralph Michael said that this project is in the flood plain and there will be no increase in the existing structure.
- L. Phil Carter asked Rose Goings if plans had been sent to Joshua Carvajal when the letter was sent.
- M. Rose Goings said yes, she had sent the entire package.
- N. Phil Carter said that Joshua Carvajal would comment on the plans and let them know if breakaway panels would be needed. We need the state to sign off first.
- O. Ralph Michael addressed the criteria for the variance request.
- i. Capacity of Existing and Planned Community Facilities – Ralph Michael advised that there would be no estimated additional costs to the town and also no additional income. He said that there would be no changes to sewage or solid waste disposal, the water supply, Police, Fire or Ambulance Services. There is no highway maintenance or recreational services. There is no change in educational services. Letters have been received from Fire, Ambulance and Police.
  - ii. Character of the Area – Ralph Michael advised that he included site plans and street views showing the area to be changed. There would not significant changes in the appearance of the building from the street. There would also be no new lighting. There are 2 existing lights under the canopy. The sign would not change. Air and Water quality would not be affected. There is a brook behind the building but there would not be any changes that would affect it. There is no shoreline.
  - iii. Traffic - There would not be any changes to the traffic.
  - iv. Conformance to Zoning Regulations – the building is in the Town Residential/Commercial District and is a restaurant. The building is on the floodway fringe and not in the floodway. Ralph Michael said that as project engineer, he certifies that the site plan is in compliance to accepted standards per Article 6 of the Flood Hazard Regulations. The building addition will be properly anchored 5 feet below grade.
    - a) Phil Carter asked if there would be breakaway panels.
    - b) Ralph Michael said there would not be anything that would require breakaway panels. The canopy is upstream and you can't put breakaway panels on the door to the entrance. The existing building does not have flood gates. The addition will be built on a foundation that won't wash away. The existing building did not move in the floods from Irene. The land there is flat and wide and the water has a low velocity. He said that in his opinion, flood gates are not needed.
    - c) Phil Carter said that there are other projects down in that part of town and flood gates were required. Brookhaven is built on stilts and the trailer park has breakaways.

- 
- d) Ralph Michael said that he designed the anchorage for the trailer park.
  - e) Richard Harrison said that the existing building has been flooded twice within a short period of time. He suggested that if there are flood warnings in the future, that Mr. Olson try to move as many things upstairs as possible. He added that the
  - f) Hardship - He said that this project has unique physical circumstances and the hardship is due to those conditions. The structure preexists zoning regulations and has operated continuously as a restaurant. At one time there were even gas pumps there. The depth of the parcel from the centerline of Route 103 to the stream is 80+/- feet. The existing restaurant is less than 75' from the center of the highway and the zoning regulations require 75 feet. These are minor alterations to the existing structure and are confined to the area covered by the existing roof. They would not be adding to the non-conformity.
  - g) Phil Carter asked when the canopy was built.
  - h) Richard Harrison said it has been there for a long time.
  - i) Ralph Michael said they would be converting 50.7 of exterior space to interior space. The unnecessary hardship was due to circumstances not the zoning regulations.
  - j) Character of the Neighborhood – Ralph Michael said that the existing restaurant is in the town Residential Commercial District and it is not possible to develop the property in strict conformance to the zoning regulations. They will be adding an airlock for energy efficiency and it is reasonable to have an airlock entrance. Also, the flow of traffic between the bar area and the restaurant is another consideration. It is tight there and the additional space would make that area bigger.
  - k) Phil Carter asked, in the existing space, how people would get out in case of fire.
  - l) Paul Olson said that there are 4 major exits in the core and many windows. There is an exit by the salad bar, another by the double door in the back room and 2 doors in the bar area.
  - m) Ralph Michael said that the purpose if this project is to provide an airlock for energy efficiency, that would also solve the frost problems. They want to add 4 feet to the walk-through area. This would be a minor alteration that would barely change the appearance of the building. He added that it would be impossible to make these alterations without a variance. The variance is necessary for reasonable use of the property with minor variance. The hardship was not caused by the applicant and the building preexists the zoning regulations. There is no change to the character of the area. There will be no changes to renewable energy sources. This is a minor variance that will affect the least deviation. The architecture will be the same style and unnoticeable.
  - n) Phil Carter asked about the two dining tables that are in the area.
  - o) Paul Olson said they would be removed for better traffic flow.
  - p) Phil Carter asked if the proposed increased interior area would have tables.
  - q) Paul Olson said no.
  - r) Phil Carter asked if the reason for this change is to improve interior traffic flow.
  - s) Paul Olson said yes.
  - t) Ralph Michael said that the repairs that were done in 2012 amounted to \$96,223 and the value of the building was \$404,300. The cost of the damages

was 23.8% of the value. The estimate for these alterations is \$26,500, under 50% of the value. He added that he has a letter from Jason Rasmussen from the Regional Planning Commission and John Broker Campbell. They reviewed the project and noted that the SW corner of the existing building is close to the floodway. They also would like a more detailed site plan and if the portion of the building is in the floodway, it will incur the most restrictive standards.

- u) Ralph Michael said that the building is not in the floodway and referred to two drawings that he submitted.
- v) Phil Carter said that the 2 drawings look the same and noted that one is more detailed than the other.
- w) Ralph Michael said yes, the Google photos show the building. He agrees that it is close, but the floodway does not touch the building. He said that he also noted the base flood elevation on the Elevation Certificate and that he prepared maps that he gave to Rose Goings. The floor elevation is 971.1 feet and the airlock would be 971.0 feet. He said that the application is seeking a variance for setbacks, not flood standards.
- x) Phil Carter said that this board does need a letter from Joshua Carvajal.
- y) Ralph Michael said he would give Joshua Carvajal a call.
- z) Phil Carter said that the board can recess this hearing pending the letter from Joshua Carvajal. If he puts conditions on the permit, the applicant would have to come back.
- aa) Ralph Michael asked if they do have to come back.
- bb) Phil Carter said that if the board closes this hearing effective 2 weeks from now and the letter from Joshua Carvajal has conditions and requirements, you will have to come back and start the process all over again.
- cc) Ralph Michael said that they should get some response from the state. The state people should do their job.
- dd) Phil Carter said that the state has shown up one year later and not approved a completed project.
- ee) Tom Phillips said that other considerations were to accommodate handicapped persons, stretchers and to provide an airlock. There will be no additional tables.

P. **MOTION by Julie Nicoll and seconded by Richard Harrison to recess this hearing until June 9, 2014.**

Q. Phil Carter said that this board is looking for the last piece of evidence from Joshua Carvajal, but that if the applicant would like to submit any additional evidence, they may do so.

R. **Motion passed unanimously.**

7. **OPEN THE PUBLIC HEARING FOR STEVE ROLKA**

- A. Phil Carter advised that this is an application for Design Review to replace and enlarge a garage, renovate the house with new siding, doors, windows and a new porch. The property is located at 59 Main Street in the Preservation District.
- B. Rose Goings advised that this is application 413-14-DR. Posted in the Town Hall bulletin boards April 21, 2014, advertised in THE VERMONT JOURNAL on April 23, 2014 and abutting property owners were notified on April 21, 2014.

- 
- C. Phil Carter administered the oath to all wishing to speak at these hearings.
  - D. Richard Walsh said that this hearing is being presented as a design review.
  - E. Rose Goings said that the district standards are found in the appendix in the back of the zoning regulations book.
  - F. Phil Carter said they also need to discuss demolishing of a historic structure.
  - G. Richard Walsh said that the garage is poor construction. He went on to discuss the proposed renovations to the house. He said that for the windows they will use replacement sashes and use – as much as possible – the existing trim. The windows will be modern thermo-pane. The clapboard will be replaced with something similar to the siding on Sports Odyssey. It will not be vinyl. It will mimic wood, and be dark red that will hold the color and not fade. They have not decided on the final product. There will be insulated doors that will look historical with glass. They have not chosen the doors, yet. The existing roof is slate in the front and they hope to preserve it. The back will probably be standing seam. The storage containers will be removed. The plan is to do the addition first, then renovate the interior and exterior of the house. It will continue to be a 2-family house. They will contact the fire marshal and comply with all of their requirements.
  - H. Phil Carter asked if the porch would wrap-around the front and east sides.
  - I. Richard Walsh said yes.
  - J. Phil Carter asked about the slate roof on the porch.
  - K. Richard Walsh said they want to use standing seam.
  - L. Phil Carter asked about the garage.
  - M. Richard Walsh said it is 3-bay and they have applied for a new driveway cut on the OMS side. Ron Tarbell has approved it.
  - N. Steve Rolka said that it was approved with conditions including replacing the sidewalk and curb and repairing any damages.
  - O. Richard Walsh said that they also applied for sewer allocation for 2 additional bedrooms.
  - P. Rose Goings advised that was approved by the Trustees.
  - Q. Phil Carter observed from the drawings that the buildings look pretty equal.
  - R. Richard Walsh said yes, height wise. He added that they would have new modern furnaces that do not require chimneys, although there would be a chimney for the fireplace.
  - S. Phil Carter asked about the trim.
  - T. Richard Walsh said they would try to keep as much as possible.
  - U. Phil Carter asked about the big maple tree in the front yard.
  - V. Steve Rolka said that is on his property.
  - W. Rose Goings said that maintenance of the tree may be part of the subdivision.
  - X. Joe Rolka said that they have already planted 6 sugar maples and it will be landscaped with sugar maples and pine trees to replace those 2 trees.
  - Y. Phil Carter asked if they were sick.
  - Z. Steve Rolka said one is for sure.
  - AA. Phil Carter asked about the big old tree.
  - BB. Steve Rolka said it would be replaced.
  - CC. Phil Carter said the intent was to keep the historical look.
  - DD. Rose Goings asked the time frame.
  - EE. Richard Walsh said they hope to start this summer.
  - FF. Steve Rolka said they would like to start work as soon as possible and be in by fall.
  - GG. Joe Rolka said that when they purchased the property, these homes were not in the historic registry.
  - HH. Phil Carter said they could recess this hearing until June or close in 2 weeks.

- II. Rose Goings said that regulations regarding demolition of historic structures are on page 21 of the zoning regulations. If the building is on the registry, they would need to provide pictures and provide details of the condition of the building and why it needs to come down. There is a copy of the Vermont Historic Sites and Structures Registry in the town clerk's office.
- JJ. Phil Carter said that if the building is not in the registry, they would not have to provide the pictures or reasons.
- KK. Rose Goings said the house may be in the registry, but the garage may not be.
- LL. Richard Walsh said he would like to close the hearing in two weeks. He said he would be able to get the needed information.
- MM. **MOTION by John Boehrer and seconded by Julie Nicoll to close this hearing on May 27, 2014 at 4:30 p.m. Motion passed unanimously.**

8. **APPROVE MINUTES**

- A. Phil Carter advised that the minutes to be reviewed are from the meeting of April 14, 2104.
- B. **MOTION by Julie Nicoll and seconded by Richard Harrison to approve the minutes from April 14, 2014 as submitted. Motion passed unanimously.**

9. **OTHER BUSINESS**

- A. **Williams Decision**
  - i. Mary Jane O'Hara asked the status of the decision.
  - ii. Phil Carter said it is over. He said that a letter was received today, from the applicants stating that they no longer wish to purchase 70 Main Street and also stating that part of the reason was the neighbors.
  - iii. Andrea Lehtonen said that the court had ordered a remand and will the board be doing this.
  - iv. Rose Goings advised that the town attorney, Chris Callahan, has advised them that nothing else needs to be done. A remand is not necessary. They need only to record the letter received today, in the land records.
  - v. Mary Jane O'Hara asked why they do not have to do the remand.
  - vi. Phil Carter explained that since there is no longer anything to go forward, there would be no purpose to writing a remand.
  - vii. Mary Jane O'Hara asked what a remand is.
  - viii. Andrea Lehtonen explained that the board would need to rewrite its decision. If the application has been withdrawn, no new decision is needed. The applicant can always reapply.
  - ix. Phil Carter said they would have to start again from the beginning.
  - x. Mary Jane O'Hara said if the permit is filed in the land records they must also file a remand.
  - xi. Rose Goings said that she would check with the town attorney.
  - xii. Phil Carter said the board would let the town attorney guide them.
  - xiii. Mary Jane O'Hara said this was my appeal.
  - xiv. Phil Carter repeated that the board would check with the town attorney and do what he says they must do, properly signed, sealed and delivered.
  - xv. Mary Jane O'Hara asked about the 5 criteria.

- 
- xvi. Andrea Lehtonen said it describes how the state wants the DRB to write its Findings of Fact. It is mentioned in the remand letter.
  - xvii. Mary Jane O'Hara said she would like a copy of the criteria.
  - xviii. Rose Goings said it is case law and not something we have.
  - xix. Phil Carter said that it is what the judge feels was not addressed thoroughly or the judge has questions about it. It is not set down.
  - xx. Mary Jane O'Hara said that a home occupation can only occupy 25% of the house.
  - xxi. Rose Goings said this was not a home occupation.
  - xxii. Phil Carter advised that the Environmental Court has changed what DRBs on record must do. The court has stepped up its game. There are new laws and new judges. They want it more quasi-judicial. They have changed how we write our decisions and finding of fact. They are setting new precedents.
  - xxiii. Mary Jane O'Hara said there is too much liability on the towns. We should go to de Novo.
  - xxiv. Rose Goings said that is not going to happen.
  - xxv. Richard Harrison said the attorney will take care of this.
  - xxvi. Phil Carter said that the DRB is a citizens' board and we interpret the zoning regulations to the best of our ability. There is leeway. This board will look at how we write decisions and take evidence. Ludlow is very complicated and the zoning is not easy.
  - xxvii. Mary Jane O'Hara said that the court decision in this case does not say the DRB is not professional as it has in the past.
  - xxviii. Phil Carter said that the Williams' hearing is done.

10. **ADJOURN**

- A. **MOTION by John Boehrer and seconded by Julie Nicoll to adjourn this meeting.**  
**Motion passed unanimously.**
- B. Meeting adjourned at 7:50 p.m.

Respectfully submitted,

Lisha Klaiber

---

Phil Carter, Chairman

---

Julie Nicoll

---

John Boehrer

---

Linda Petty

---

Richard Harrison