

**DEVELOPMENTAL REVIEW BOARD  
PRELIMINARY MINUTES**

*May 9, 2016*

**MEMBERS PRESENT:**

Phil Carter, Chairman	Julie Nicoll
John Boehrer	Linda Petty

**MEMBERS ABSENT:**

Richard Harrison

**STAFF PRESENT:**

Rose Goings

**OTHERS PRESENT:**

Gail Beardmore	Mike Doran	Dan McSweeney
Robert Beardmore	Bob Gilmore	Beth Merrill
Constance Bixby	Don Guillow	Lisa Merrill
Mary Jane Casey	Glenn Heitsmith	Sandra Merrill
Jim Casey	Jon Hiller	Raymond Merrill
John Donohue	Jack Kennelly	Lisha Klaiber, Recorder
Rosa Donohue	Michael Maston	Patrick Cody, LPC TV

**I. CALL TO ORDER**

1. Meeting opened at 6:02 p.m. by Chairman Phil Carter. All members present, except Richard Harrison.

**II. OPEN THE RECESSED PUBLIC HEARING FOR THE 5 SPOT LLC**

1. Phil Carter advised that this hearing was recessed from the April 11, 2016 meeting. This is an application to consider an amendment to a Conditional Use permit to change the previously permitted space for a laundromat into a bar and grill with thirty (30) seats. The project is located at 6 Andover Street in the Village Residential Commercial District.
2. Rose Goings advised this is application is 286-05-CU, Amendment #3. The application was originally posted in the Town Hall bulletin boards, the Berkshire Bank Bulletin Board, the Post Office Bulletin Board and on the website on March 18, 2016, advertised in THE VERMONT JOURNAL on March 23, 2016 and abutting property owners were notified on March 18, 2016. Rose Goings advised that for clarification, the space is permitted for use as a laundromat; however, it was never used for that purpose. She noted that Mr. White and Mr. Hodges are not present tonight.
1. Phil Carter advised that this is the first time that this has happened when the applicant did not appear. He advised everyone who had testified at the last hearing that they are still under oath and administered the oath to all (Glenn Heitsmith and Michael Maston) wishing to speak at this hearing.
2. Rose Goings advised that she had tried several times to contact Mr. White. She noted that she does not have a phone number for him, but has sent several emails, including questions

- regarding communication with the Fire Marshal (L&I). She did speak to Mr. Hodges who is out of town tonight and he said that Mr. White is not going forward with the application. She said that she contacted L&I and they had not heard from Mr. White, but they had also heard that he is not going forward with the application.
3. Phil Carter asked if there was a letter from the Ludlow Fire Department.
  4. Rose Goings said no.
  5. Phil Carter advised that the DRB would accept new evidence, not evidence presented last month. He noted that there was possible confusion regarding the back parking area. The applicant would still have to come up with those 5 parking spaces somewhere else. He used, as an example, a possible lease of space use, from the bank. Mr. White will have to come back to the board with those spaces.
  6. Bob Gilmore asked if Mr. White has dropped this application, but in the future, decided to go through with it, how would that happen.
  7. Phil Carter said Mr. White would have to submit an entirely new application.
  8. Jack Kennelly said that he had submitted a letter, on behalf of his clients, the Donohues, that includes a link regarding transportation issues, specifically, that the corner of Andover and Main is noted for the high crash volume.
  9. Phil Carter noted that was one of the areas not addressed at the last meeting. Other items not covered included dumpsters and trucks for deliveries.
  10. Jack Kennelly asked if the applicant does not show, can the application be dismissed.
  11. Phil Carter said that he had spoken to Chris Callahan, the attorney for the town, and was told that the hearing would have to be formally closed and a decision made with no additional evidence to be accepted.
  12. Dan Mc Sweeney said that he does have more evidence to add, but if it appears that the application will be denied, he does not want to spend the time.
  13. Phil Carter said this is the first time that this has happened and we don't know why he isn't here. There could be a reason. We will accept new evidence tonight.
  14. Dan Mc Sweeney noted that the municipal parking lot is leased on a yearly basis. If the town stops leasing the lot, that would decrease available parking that the 5 Spot could use.
  15. Phil Carter said that is correct. He added that Mr. White would have to contract additional offsite parking, in perpetuity.
  16. Dan McSweeney asked what Mr. White would do.
  17. John Boehrer said this board knows as much as Mr. McSweeney does.
  18. Michael Maston asked what would happen if the bank were sold.
  19. Phil Carter used, as an example, a possible lease of space use, in perpetuity, from the bank. If the bank were ever sold, the new owners of that property would have to honor the lease. The lease would have to be written so that the bank could not back out. The DRB would have to see the lease and have it reviewed by our attorney. He added that it would be an imposition to encumber your property with a lease like that.
  20. Bob Gilmore said that Mr. White still needs 5 more parking spaces.
  21. Phil Carter said that is part of the evidence this board will weigh. He said that anyone who wants to use that property will have to consider that. He said that this application will be weighed on the evidence that we have.
  22. **MOTION by John Boehrer and seconded by Linda Petty to close this hearing. Motion passed unanimously.**

III. **OPEN THE PUBLIC HEARING FOR RICHARD YATES**

1. Phil Carter advised that this is an application to amend a Planned Residential Development Permit to convert a porch into a mudroom addition. The project is located at 49 Village IV, 38B New Middlesex, located in the Mountain Recreational District.
2. Rose Goings advised that this is application 128-98-PRD, Amendment #54. Posted in the Town Hall bulletin boards, the Berkshire Bank Bulletin Board and the Post Office Bulletin Board and the website, on April 15, 2016, advertised in THE VERMONT JOURNAL on April 20, 2016 and abutting property owners were notified on April 19, 2016. She said the letter from the fire department is not in.
3. Phil Carter administered the oath to all (Don Guillow and Glenn Heitsmith) wishing to speak at this hearing.
4. Don Guillow advised that this is the same as all previous mudroom enclosure projects.
5. John Boehrer asked if they were new drawings.
6. Don Guillow said yes.
7. Phil Carter advised that there have been a number of these enclosures on the Trailside units. He asked if there would be any change in the footprint of the unit.
8. Don Guillow said no.
9. Rose Goings asked if they would be redoing the interior.
10. Don Guillow said no, it was already done.
11. Rose Goings advised that per new state statute, they will need a Builder Residential Code Audit Certificate showing that they have abided by the energy codes. This is required for the CO.
12. Don Guillow asked where he could get the paperwork for it.
13. Rose Goings asked his to stop by the office.
14. Linda Petty asked about the fire letter.
15. Rose Goings said they would get it.
16. **MOTION by Linda Petty and seconded by Julie Nicoll to close this hearing, pending any conditions in the letter from the fire department. Motion passed unanimously.**

#### IV. **OPEN THE PUBLIC HEARING FOR ROBERT AND GAIL BEARDMORE**

1. Phil Carter advised that this is an application to amend a Conditional Use Permit to change a retail space into an office space. The project is located at 126 Main Street in the Village Residential Commercial District.
2. Rose Goings advised that this is application 214-02-CU, Amendment #2. Posted in the Town Hall bulletin boards, the Berkshire Bank Bulletin Board and the Post Office Bulletin Board and the website on April 15, 2016, advertised in THE VERMONT JOURNAL on April 20, 2016 and abutting property owners were notified on April 19, 2016.
3. Phil Carter administered the oath to all (Gail and Robert Beardmore, Glenn Heitsmith) wishing to speak at this hearing.
4. Robert Beardmore advised that they wish to change the use of the space from retail to office. It has already been rented to a mortgage company.
5. Phil Carter asked if they would be changing the footprint.
6. Robert Beardmore said no.
7. John Boehrer asked if they would be changing the exterior lighting.
8. Robert Beardmore said no. He said there would be no changes outside at all.
9. Phil Carter asked about parking.
10. Robert Beardmore said there are 15 spaces that were all on the original permit plan for the building.
11. John Boehrer asked about L&I.

12. Robert Beardmore said he spoke to them last month and they told him that for them, retail and office space are considered the same.
13. Phil Carter asked about the ADA bathroom.
14. Robert Beardmore said that the flooring is going in and after that, they will put in the fixtures. He said that they will put in the protection for the gas tanks to prevent them from physical damage. That is part of the permit for the whole building. He said that the tenant is coming on May 15, 2016 and asked the board for an UP/Down vote.
15. Phil Carter polled the board and they all agreed to an Up/Down vote.
16. **Phil Carter asked all in favor of approving this application to say aye. Application approved unanimously.**
17. **MOTION by John Boehrer and seconded by Julie Nicoll to close this hearing. Motion passed unanimously.**

V. **OPEN THE PUBLIC HEARING FOR SANDRA MERRILL AND CONSTANCE BIXBY**

1. Phil Carter advised that this is an application to subdivide a lot into two separate lots. The property is located at 731 Bixby Road in the Town Residential District.
2. Rose Goings advised that this is application SUB16-005. Posted in the Town Hall bulletin boards, the Berkshire Bank Bulletin Board and the Post Office Bulletin Board and the website, on April 15, 2016, advertised in THE VERMONT JOURNAL on April 20, 2016 and abutting property owners were notified on April 19, 2016.
3. Phil Carter administered the oath to all (C. Bixby, B. Merrill, L. Merrill, S. Merrill and R. Merrill and Glenn Heitsmith) wishing to speak at this hearing.
4. Beth Merrill advised that Constance Bixby wishes to subdivide the property to lower her tax burden. Constance Bixby will retain 11.1 acres with the house and the remaining 69.1 will be put into Current Use.
5. Phil Carter referred to the drawing and advised that the current property is 80.31 acres. The new Lot #1 will have 11.18 acres and Lot #2 will have 69.13 acres. Lot #2 will have about 2,000 feet of road frontage and not be landlocked. He asked if the property has any special conditions such as historic or wetlands.
6. Beth Merrill said no.
7. Rose Goings advised that she has the Mylar and there are no changes from the preliminary to the final drawing.
8. Phil Carter asked the board if they would consider an Up/Down vote for this application.
9. Board members all agreed.
10. **Phil Carter asked all in favor of approving this application to say aye. Application approved unanimously.**
11. Phil Carter signed the Mylar and said it would be recorded tomorrow.
12. **MOTION by John Boehrer and seconded by Linda Petty to close this hearing. Motion passed unanimously.**

VI. **OPEN THE PUBLIC HEARING FOR JAMES & MARY JANE CASEY IRREVOCABLE TRUST**

1. Phil Carter advised that this is motion to reconsider a denied Variance decision to enlarge the existing kitchen/laundry room on the footprint of the existing deck. The project is located at 1432 Route 100 North in the Lakes District.

2. Rose Goings advised this is application 441-16-AP. Posted in the Town Hall bulletin boards, the Berkshire Bank Bulletin Board, the Post Office Bulletin Board and the website on April 15, 2016, advertised in THE VERMONT JOURNAL on April 20, 2016 and abutting property owners were notified on April 19, 2016.
3. Phil Carter administered the oath to all (Mary Jane and Jim Casey and Glenn Heitsmith) wishing to speak at this hearing.
4. Jim Casey said that he sent in a color-coded copy of the original drawing.
5. Mary Jane Casey said the new area is in yellow.
6. Jim Casey said the addition would be no closer to the lake.
7. Phil Carter referred to the drawing and noted that the new addition is 37 feet from the lake.
8. Jim Casey said the variance is only for the kitchen and laundry room, for a total of 100 square feet. There is no other area for a larger washer and dryer. He added that they are not full time residents. He said when they have the whole family to visit, they need the larger utilities. This happens about 2 or 3 times a year. Considering their age and physical health, it is hard for them to do the stairs more than once or twice a day.
9. Mary Jane Casey read a letter to the board. A copy was given to Rose Goings for the record.
10. Phil Carter advised that this is a difficult situation. The DRB must abide by state statute that includes 5 criteria for a variance. He said that the DRB's initial decision was based on the criteria and very specifically explained in the decision. A copy of this decision was sent to the Caseys. The DRB has no further leniency to consider other reasons for a variance. He said the board would take their new information and weigh it against the 5 criteria. The reasons for the denial of the first application were listed in the copy of the denial. He said that is how the process works.
11. Jim Casey said it is very important to them.
12. Phil Carter said the DRB cannot change the procedure.
13. **MOTION by Linda Petty and seconded by John Boehrer to close this hearing. Motion passed unanimously.**

***NOTE: Phil Carter advised that the following two hearings are for OKEMO and asked the applicant if they could be addressed concurrently. The applicant's representative agreed.***

VII. **OPEN THE PUBLIC HEARING FOR OKEMO, LLC**

1. Phil Carter advised that this is an application to amend a Conditional Use Permit to allow for the expansion of the summer mountain biking, utilizing the Sunburst Six Chairlift and new gravel trails from the summit. Property is located on Mountain Road in the Mountain Recreation District.
2. Rose Goings advised that this is application 430-15-CU, Amendment #1. Posted in the Town Hall bulletin boards, the Berkshire Bank Bulletin Board and the Post Office Bulletin Board and the website, on April 15, 2016, advertised in THE VERMONT JOURNAL on April 20, 2016 and abutting property owners were notified on April 19, 2016.

VIII. **OPEN THE PUBLIC HEARING FOR OKEMO, LLC**

1. Phil Carter advised that this is an application for Local Act 250 Review to allow for the expansion of the summer mountain biking, utilizing the Sunburst Six Chairlift and new gravel trails from the summit. Property is located on Mountain Road in the Mountain Recreation District.
2. Rose Goings advised that this is application 431-15-ACT250, Amendment #1. Posted in the Town Hall bulletin boards, the Berkshire Bank Bulletin Board and the Post Office Bulletin Board and the website, on April 15, 2016, advertised in THE VERMONT JOURNAL on April 20, 2016 and abutting property owners were notified on April 19, 2016.
3. Phil Carter administered the oath to all wishing to speak at these hearings (Mike Doran and Glenn Heitsmith.)
4. Rose Goings advised that letters from fire, ambulance and police are in.
5. Mike Doran advised that Okemo had received an initial permit to develop the lower trails for mountain biking. They retrofitted some of the chairs to carry bikes up the hill. They want to expand the trails to the Sunburst lift and to begin work on a trail from the top of the mountain down to the base. They have competitors who are doing this successfully. He said that people and bikes would go up the mountain on the chairlift, with separate chairs fitted for bikes.
6. Phil Carter asked how the trails would be marked.
7. Mike Doran said there would be clearly defined gravel paths with signs and intersections marked. Difficulty levels would be indicated. The goal is to have a beginner path from top to bottom. There would not be any grade steeper than 10%.
8. Linda Petty asked about injuries.
9. Mike Doran said that last summer there were only 6 injury responses.
10. Phil Carter asked about the letter from the Ambulance Department.
11. Mike Doran said that Okemo appreciated the comments. The DRB could condition the permit to have an Emergency Plan in place that would be developed with the Ambulance Department. He said that signage would make more sense when in place, but will be comprehensive. The trails will be gated when not open, but it would be difficult to monitor what people do after hours.
12. Phil Carter said that the DRB would need Okemo and the Ambulance Department to work out this plan together.
13. Mike Doran said that is what we did for the zip line and mountain coaster.
14. Julie Nicoll said that DRB could ask for that prior to opening.
15. Linda Petty asked if they would keep a head count or do a sweep at the end of the day.
16. Mike Doran said they will be selling lift tickets and would do a sweep at night.
17. Julie Nicoll asked if it would be crossing Mountain Road.
18. Mike Doran said not, except at the bottom to get from one lift to the other.
19. John Boehrer asked if people would park at the base then take the lift up. He asked if people would park at the Sunburst lift.
20. Mike Doran said they would park at the bottom and not at the Sunburst lift.
21. Linda Petty asked how many people could ride on a chair.
22. Mike Doran said it holds 6 people. He added that every 2<sup>nd</sup> or 3<sup>rd</sup> chair would be fitted for bikes. They would not be stopping to unload every chair and the lift attendants would help unload the bikes.
23. John Boehrer noted that at the top of the Sunburst chair, there is a portion of the road that has a gate.
24. Mike Doran said he is not sure where that is.
25. Phil Carter asked about the Act 250 portion of this application.
26. Mike Doran responded to the following

- a. Municipal Services – the police and fire departments had no comments. They will work with the Ambulance Department to work on a plan.
  - b. Education – there will not be an effect on schools. The project will not be a big job creator, but will preserve some jobs.
  - c. This project is in the Mountain Recreation District and is related to additional outdoor recreational activities. Hopefully, it will bring more people to visit Ludlow in the summer.
27. Linda Petty asked the hours of operation.
  28. Mike Doran said similar to skiing, from about 8:00 or 9:00 a.m., to 4:00 p.m.
  29. Phil Carter asked if there would be a bike patrol.
  30. Mike Doran said yes. People would be patrolling the trails with rakes and also grooming. There would be first aid available on the trails all of the time.
  31. Phil Carter asked how someone who was injured would get down.
  32. Mike Doran said the trail will run mostly parallel to Mountain Road and they would be able to bring in a backboard from there, if needed.
  33. Julie Nicoll asked if this is in the bear corridor.
  34. Mike Doran said no. He added that the trail will be laid out with the Forest Department and ANR.
  35. Linda Petty asked if there would be erosion on the gravel trails,
  36. Mike Doran said that is an issue on the mountain. They are working with the Park Rangers. He added that the project was reviewed by the State Storm Water Division and they were told that no permit would be required and the project would not be a huge issue. Okemo will monitor the trails because they don't want a trail washing out.
  37. Linda Petty asked how wide the trails would be.
  38. Mike Doran said they would start at about 6 feet wide, and over time, it may decrease.
  39. Linda Petty asked if they would use it in the winter as a ski trail.
  40. Mike Doran said no, it would only have a 10% grade.
  41. Glenn Heitsmith asked if the Summit Lodge would be open.
  42. Mike Doran said that is not part of the current plan.
  43. Glenn Heitsmith asked how they can gate land owned by the state,
  44. Mike Doran said Okemo has a lease on the land. We will post NOTICE OF LIABILITY signs to people using the trails without lift tickets. This will be a learning process for all. The trail will be about 3 miles long and we won't have people there are night to patrol it.
  45. **MOTION by Linda Petty and seconded by Julie Nicoll to close these two applications for Okemo. Motion passed unanimously.**

IX. **APPROVE MINUTES**

1. Phil Carter advised that the minutes to be reviewed are from April 11, 2016.
2. Julie Nicoll noted that on page 2, item 2M should read “the ground is wet up there...”
3. Julie Nicoll noted that on page 3, item 4A should read “...to consider..)”
4. Julie Nicoll noted that on page 4, item 4N should read “vehicles, such as delivery trucks.”
5. Julie Nicoll noted that on page 5, item 4JJ should read “parking needs designated by...”
6. Phil Carter noted that on page 6, item 4VV should read “Phil Carter asked if the 5 Spot...”
7. **MOTION by Phil Carter and seconded by John Boehrer to approve the minutes from April 11, 2016 as corrected. Motion passed unanimously.**

X. **OTHER BUSINESS**

1. Permits from Last Meeting
  - a. Peace and Plenty Subdivision was approved
  - b. Skygate Financial was approved.
  - c. The 5 Spot - recessed
2. OMS Project
  - a. Rose Goings advised that she had received correspondence today from Chris Callahan and would forward it to the board members tomorrow.

XI. **DELIBERATIVE SESSION**

1. Phil Carter asked the board if they would like to enter into Deliberative Session.
2. The board agreed.
3. **MOTION by Julie Nicoll and seconded by Phil Carter to enter into Deliberative Session.**  
**Motion passed unanimously.**
4. Meeting adjourned at 7:03 p.m.

Respectfully submitted,

Lisha Klaiber

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Phil Carter, Chairman

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Julie Nicoll

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John Boehrer

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Linda Petty

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Richard Harrison