

**DEVELOPMENT REVIEW BOARD
MINUTES**

September 12, 2016

MEMBERS PRESENT:

Phil Carter, Chairman
John Boehrer

Richard Harrison
Julie Nicoll

Linda Petty

STAFF PRESENT:

Rose Goings

OTHERS PRESENT:

Terry Bane
Leslie Blair
Scott Blair
Hans Bruning
Alan Goralnik
Don Guillow
Abby Lechthaler

Sam Markowski
George McNaughton
Steve Mongeon
Alice Nitka
Marty Nitka
Mary Jane O'Hara
Mike O'Neil

Robin Reilly
Terry Shearer
Iris Simon
Vicki Thornton
Adam Sayres, LPC TV
Lisha Klaiber, Recorder

I. CALL TO ORDER

1. Meeting opened at 6:00 p.m. by Chairman, Phil Carter. All members present, except Richard Harrison, who arrived later.

II. RE-OPEN THE RECESSED PUBLIC HEARING FOR ALAN GORALNIK AND IRIS SIMON

1. Phil Carter advised that this is an application to subdivide a lot into 2 separate lots that was recessed from the DRB meeting on August 8, 2016. The project is located at 142 North Ridge Road in the Town Residential District. It is application SUB17-001. He said that the hearing was recessed for more information.
2. Phil Carter advised all persons who spoke at the hearing at the last meeting that they are still under oath and administered the oath to all (Iris Simon and Terry Shearer) wishing to speak at this hearing.
3. Steve Mongeon referred to a submittal that shows well shields and it he included a Deferral Note that says they will need to obtain a state permit for Lot B, as per Section 4.7 of the zoning regulations. It says that the DRB may issue a permit with Deferral Notice.
4. Phil Carter said that deferral language may be used if they are not in the process of development. This is a developable lot and the board has to take evidence. We need to see a state approved septic design before we issue the subdivision permit. We also have to clarify the number of bedrooms.
5. Marty Nitka said that he has a letter outlining his position and 3 exhibits to consider:
 - a. The original Act 250 (1984) permit
 - b. The original subdivision with water/wastewater permit
 - c. A section of the map from Nolan Engineering.He said that these make clear that it was to be a 3-bedroom, single family home.
6. Phil Carter said that is in our zoning. We need to know how many bedrooms are in the house and how many are on the septic system.
7. Steve Mongeon said they asked for conditional approval.
8. Phil Carter said we can do that only if this was just to be a subdivision. He said they have triggered this as a lot that is going to be developed.

9. Steve Mongeon said that could have been stated at the last meeting. There are provisions in the rules for deferrals.
10. Phil Carter said that evidence was given and it was clearly shown that this lot is going to be developed.
11. Steve Mongeon said that the application said Construction. Could this have been approved if it was not going to be developed?
12. Phil Carter said yes, but you have triggered this with evidence that it is going to be developed.
13. Steve Mongeon said that his customers are willing to get the permit.
14. Terry Shearer advised that he is with the regional Water Office and said that he can send copies of whatever information he has and can only answer questions based on state regulations, based on Chapter 1-304A.1.a. , effective January 1, 2007. It says that any system that was in place prior to or on January 1, 2007 remains in status. It can't be increased without state permit. He said that in this case, where the permit says 3 bedrooms, but it may really be 5 bedrooms is okay for now. If the system fails, it must be replaced as a 5 bedroom. If bedrooms are added, it would have to have a permit for the total number of actual bedrooms.
15. Phil Carter said that in this case, they are adding a new house with bedrooms.
16. Iris Simon said it would be 2 bedrooms.
17. Phil Carter asked how the state looks at this.
18. Terry Shearer said if it is going to go into the existing system, we would look at pre-treatment and we would look at the entire design flow and GPD.
19. Phil Carter asked what it means when a system is upgraded.
20. Terry Shearer said if you add pretreatment after the septic, before the system, it removes some of the biologicals and allows for less square footage. With mound systems, you need 1 GPD per square foot. If you add pretreatment, you can do 210 GPD.
21. Phil Carter asked if this will have pretreatment.
22. Terry Shearer said that would have to be determined based on the entire stream.
23. Phil Carter asked where the septic are located.
24. Steve Mongeon said on the Watson property.
25. Phil Carter said what type of disturbance would this have on the Nitka property.
26. Steve Mongeon said potentially no effect. It would require small scale, shovel, digging. They would not use a backhoe or change the terrain. There are no plans to disturb the Nitka lot.
27. Terry Shearer said if the design flow increases, they must have a full review of the system. He said he would not approve a permit without confirming what is there.
28. Steve Mongeon said he is licensed to do this work. He is not proposing anything outlandish. There would need to be an agreement between his clients and the Nitkas.
29. Phil Carter said that would all have to be in the permit. The DRB can't write a permit until we have information on a maintenance agreement. Who would be responsible if the system leaks or fails?
30. Steve Mongeon said, if the Nitkas noticed breakout or a problem at the bottom of the slope, they would tell the people. There is nothing in the deed about keeping an eye out on the septic. He said, usually people don't even check the filters.
31. Marty Nitka asked when the proposed house went from 3 to 2 bedrooms.
32. Iris Simon said it was always supposed to be a 2 bedroom cottage.
33. Phil Carter said the state will look at what's on the system.
34. Terry Shearer said the state will check the design flow of the whole system and number of bedrooms.
35. Phil Carter asked for an answer under oath, if the system fails, and there is no maintenance agreement in the deed, but it was put on the state permit. Is there any language if no one is held responsible?
36. Steve Mongeon said the state does not have troopers who go around checking systems.
37. Phil Carter asked again, what if it fails.

38. Terry Shearer said he does not know about the existing language.
39. Phil Carter said there is nothing in the deeds about maintenance.
40. Terry Shearer said in 9 out of 10 cases, there is no maintenance agreement. If pretreatment is added, then there will be a maintenance contract and yearly inspections. He said that Montpelier tracks the systems and sends out letters. If pretreatment is included, they are required to keep the contract. If there is no pretreatment, the effluent is not as clean.
41. Steve Mongeon asked for a copy of the Wastewater permit. He said he had one at the last meeting.
42. Rose Goings gave him a copy.
43. Steve Mongeon said it has generic language.
44. Phil Carter asked what's to protect the owners of the land the septic is on.
45. Terry Shearer if the septic is on someone else's property, they would need an easement to go on that property. That easement would run with the land. If the current system fails, it must be fixed. It is a violation to operate a failed system. He said that any new permits say if the system fails, it must be fixed.
46. Marty Nitka said they think they should be able to see the permit before the subdivision permit is issued.
47. Steve Mongeon said they need permission to go on the Nitka land to do the testing. They will use hand augers and shovels. They will not use machines. If they don't get his permission, they can't do the testing.
48. Terry Shearer said he can issue a permit with one signature, but it becomes null and void if the easement exists.
49. Phil Carter said this easement does not have that language.
50. Steve Mongeon said if the current system fails and we need to fix it, the easement allows us to fix it without permission.
51. Marty Nitka said that would not be a problem with the current system.
52. Alice Nitka said with the current system that would be okay. The intent of the original design was a single family house, not a development. It is absurd to put another house and wastewater from another home, on the land. We bought the land from Watson.
53. Steve Mongeon said Watson bought the lot and built the home, then created the 2nd lot. That is what these people want to do.
54. Julie Nicoll asked if it matters how many bedrooms are there.
55. Phil Carter said the lister's card says 5 bedrooms, initially the testimony was 4 bedrooms and now they are saying 3 bedrooms.
56. Iris Simon said it is a 3 bedroom house. She added that the family room, on the 2nd floor also has beds. She said they have 6 kids, with dogs and the 2 bedroom cottage would help at the holidays when everyone is there. They want to build the cabin to keep, not to sell.
57. John Boehrer said that may be so, but down the road, the house and cabin may not be in your family. This is an issue.
58. Julie Nicoll said at the last meeting testimony was given that it was going to be a 3 bedroom cabin. She also agreed with John Boehrer, that they could sell after the house is built.
59. Phil Carter said there are situations with share wells and septic all over and they exist pre-zoning. The job of the DRB is to interpret zoning and our position will be whatever is the best way, based on state and local regulations
60. Iris Simon testified that if anything happened to the septic system, they would be responsible.
61. Phil Carter said the DRB would make that a condition of the permit. He said that in 30 years, maybe there will be a new owner and our conditions would stand for the life of the property.
62. Iris Simon said this was not disclosed to them when they bought the property.
63. Phil Carter asked Terry Shearer if the state ever relies on the town records.

64. Terry Shearer said he does ask to see the lister's card. He said they would check the previous owners and ask them to sign an affidavit. If the system is increased, he would look at all of the requirements for water/wastewater permits.
65. Phil Carter asked if the listers should go into the property to clarify the number of bedrooms.
66. Iris Simon said okay.
67. Phil Carter asked if there are 5 bedrooms and you add 2 more, is a bigger system needed.
68. Steve Mongeon said he does not have an answer at this point. He said the permit says the house is a 3 bedroom house. He said that he submitted the listers' card that said 5 bedrooms.
69. Marty Nitka said when the house was on the market, it was listed as 5 bedrooms.
70. Steve Mongeon said it is 3 bedrooms.
71. Phil Carter said evidence is evidence and Steve Mongeon did submit the listers' card that says 5 bedrooms.
72. Steve Mongeon said what he gave the board was information he got from the town.
73. Al Goralnik asked the definition of bedroom.
74. Rose Goings said it is viewed in 2 ways:
 - (A) Any room in a residential structure that is at least 80 square feet in area, that is susceptible to present or future use as a private sleeping area and that has at least:
 - (i) One window;
 - (ii) One closet; and
 - (iii) One interior method of entry and exit, excluding closets and bathrooms, allowing the room to be closed off from the remainder of the residence for privacy; or
 - (B) Any room within a building or structure that actually serves as primarily as sleeping quarters.She added that is what the listers look at.
75. Phil Carter said they will need to apply for the septic system permit from Terry Shearer.
76. Marty Nitka asked where things stand now.
77. Phil Carter said the DRB can't issue a permit because we are bound to have an approved wastewater permit by statute. The land is developable.
78. Iris Simon asked what if the cabin is like a garage.
79. Rose Goings said if it is attached, you would still have to increase the septic system.
80. Iris Simon asked what is we attached it to the house.
81. Rose Goings said you would still have to come to the DRB and the State Fire Marshal to change it to a 2-family home and increase the septic.
82. Phil Carter said that if it has a kitchen, it would be considered a 2-family home.
83. Terry Shearer said if the number of bedrooms increases, they would still have to come to him.
84. **MOTION by John Boehr and seconded by Linda Petty to recess this hearing, until October 24, 2016 pending receipt of Waste Water permit from the state.**
85. Marty Nitka said it should remain open until they get the permit.
86. Phil Carter said if they do not receive the permit by October 24th, to call Rose Goings and we can extend the recess.
87. **Motion passed unanimously.**

III. **OPEN THE PUBLIC HEARING FOR TYLER RINDLER & CHRISTINE MARTINO**

1. Phil Carter advised that this is an application to amend a Planned Residential Development Permit to convert a deck into a mudroom. The project is located at 42 Lower IV, Trailside Lower IV A, 49B, in the Mountain Recreational District.
2. Rose Goings advised that this is application 128-98-PRD, Amendment #57. Posted in the Town Hall bulletin boards, the Berkshire Bank Bulletin Board and the Post Office Bulletin Board and

- on the website on August 19, 2016, advertised in THE VERMONT JOURNAL on August 24, 2016 and abutting property owners were notified on August 25, 2016.
3. Phil Carter administered the oath to all (Don Guillow) wishing to speak at this hearing.
 4. Don Guillow advised that the applicant wishes to enclose an existing deck to make a mudroom,
 5. Phil Carter asked if it is similar to previous projects
 6. Don Guillow will be exactly the same as the previous projects.
 7. Phil Carter asked if there would be any expansion to the footprint.
 8. Don Guillow said no.
 9. John Boehrer asked if the drawings are specific to this unit or standard.
 10. Don Guillow said standard.
 11. Rose Goings asked if they had contacted the Fire Marshal.
 12. Don Guillow said he has sent letters.
 13. Phil Carter asked if there would be more units.
 14. Don Guillow said maybe one.
 15. **MOTION by John Boehrer and seconded by Julie Nicoll to close this hearing. Motion passed unanimously.**

IV. **OPEN THE PUBLIC HEARING FOR SCOTT AND LESLIE BLAIR**

1. Phil Carter advised that this is an application to consider an amendment to a Conditional Use Permit to add 8 seats to a bakery and retail space. The project is located at 28 Main Street in the Village Residential Commercial District.
2. Rose Goings advised that this is application 247-04-CU, Amendment #4. Posted in the Town Hall bulletin boards, the Berkshire Bank Bulletin Board and the Post Office Bulletin Board and on the website on August 19, 2016, advertised in THE VERMONT JOURNAL on August 24, 2016 and abutting property owners were notified on August 25, 2016.
3. Phil Carter administered the oath to all (Leslie Blair, Scott Blair and Vicki Thornton) wishing to speak at this hearing.
4. Leslie Blair said they wish to add 8 seats to the space. There will not be cooking done on-site. They will also serve coffee and tea. Hours of operation will be 7 days per week, from 7:00 a.m. to 11:00 p.m.
5. Phil Carter asked if it is 8 seats or 8 tables.
6. Leslie Blair said 8 seats.
7. Julie Nicoll asked if they are allowed to cook on premises.
8. Rose Goings said the previous tenant did bake on site and it is already permitted for that.
9. Scott Blair said the only changes are to add the 8 seats and no baking.
10. Phil Carter asked if they had contacted the Fire Marshal.
11. Leslie Blair said they had contacted the Health Department and were trying to get to the Fire Marshal. They have letters from the police, fire and ambulance departments.
1. Rose Goings said they also have approval from the Water Commissioners.
12. Phil Carter said in the previous permit, the DRB has conditioned parking in the back with signs directing people where to park.
13. Scott Blair said that is also in their lease.
14. Phil Carter asked them to discourage people from parking in the front. He asked if they had applied for the sign permit.
15. Scott Blair said they will talk to Rose Goings about that.
16. Linda Petty asked if there would be any extra lighting at night.
17. Leslie Blair said no.
18. **MOTION by John Boehrer and seconded by Julie Nicoll to close this hearing. Motion passed unanimously.**

V. **OPEN THE PUBLIC HEARING FOR ROGAN AND ABBY LECHTHALER**

1. Phil Carter advised that this is an application for a Variance to allow for seventy-five (75) square feet of signage. The project is located at 190 Main Street in the Village Residential Commercial District.
2. Rose Goings advised that this is application 444-17-VA. Posted in the Town Hall bulletin boards, the Berkshire Bank Bulletin Board and the Post Office Bulletin Board and on the website on August 19, 2016, advertised in THE VERMONT JOURNAL on August 24, 2016 and abutting property owners were notified on August 25, 2016.
3. Phil Carter administered the oath to all (Abby Lechthaler and Mary Jane O'Hara) wishing to speak at this hearing.
4. Abby Lechthaler said they will be opening a new business at the old Trapper's space. They need to have more sign space. They will be serving gourmet lunch and take out in what was the bar space. They will serve dinner in the other side of the space. They want to have a sign that says, LUNCH, SUPPER, TAKE-AWAY & PHONE NUMBER. On the bricks of the building, they want to put a stenciled sign with the name of the business. They will put gooseneck lights to illuminate the sign. They need for people to be able to see what they will be offering. They are bringing a great project to Main Street to better the community. She is not sure of the exact dimensions, and maybe 75square feet will be too much, but they want to fill the entire space. It used to be 2 businesses.
5. Phil Carter asked if the intent is to catch peoples' eyes.
6. Abby Lechthaler said she wants people to see the signage and get a feel for what is there from the sign. They need to capture peoples' attention. The building has been there for a long time and we want people to understand this is all new. We need more options to capture their attention.
7. Phil Carter said that is a busy part of town and with the stop light and Dunkin' Donuts and people are driving through town. He asked if it wouldn't be more advantageous to have the sign 90° out.
8. Abby Lechthaler said maybe, but it would be a different design. They want to utilize the cement pole where the Trapper sign was to capture their attention and take a second look. They want to have options. They are getting their plans and permits in place. They are working on the roof, moving bathrooms and electricity. They want a chance to tell more and to convey more to distracted drivers. It will be a great looking space.
9. Phil Carter asked if they could do something more creative in the brick space that is not a sign.
10. Abby Lechthaler said they would like it to speak to their brand. They need the type to be an extension of the name. They need brand recognition. She thinks the bricks would be a perfect backdrop for the name. It needs s strong, masculine feel and the bricks is where the main name should be.
11. Phil Carter asked what the square foot allotment is.
12. Rose Goings said 30 square feet.
13. Phil Carter said, you want 75 square feet. He asked if that is a combination of the 2 signs.
14. Abby Lechthaler said yes. The brick space is about 3 feet. She can't tell the board what the exact dimensions will be. It will absolutely be a clean stenciled look with gooseneck lamps.
15. Phil Carter asked Rose Goings if something could be done on the glass.
16. Rose Goings said they could do something on the inside of the windows.
17. Abby Lechthaler said the problem is that drivers on Main Street may not be able to see it.
18. Julie Nicoll said that she thinks they are underselling themselves. Cookster sells out every day and you are well known and have great reviews. You have name recognition.
19. Abby Lechthaler said that Downtown Grocery only have 15 tables. This property is huge and we will be creating 3 businesses. To do that and stay afloat, we need to capture people driving through town.

20. Rose Goings said the free-standing Trappers sign is 24 square feet, 6 inches.
21. Mary Jane O'Hara said she likes the idea and this will add to the appearance of the building.
22. Abby Lechthaler said we bought the building and are excited. It's about aesthetics and cool vibes. We want the option to do more. We feel with a multidimensional, three-pronged plan, we need to capture 3 times the traffic.
23. Mary Jane O'Hara asked if it is 3 businesses, would they be allowed 90 square feet.
24. Abby Lechthaler said it is one LLC.
25. Phil Carter said that this board is bound by criteria for a variance. We can only look at them.
26. Abby Lechthaler said that she does not think they could do this business with 30 square feet. We need more. The signs need to read really clearly.
27. Phil Carter asked if the existing sign is blocked by trees.
28. Abby Lechthaler said she doesn't think so.
29. Phil Carter said if this request does not fly by the board, you will have to be creative, maybe put signs on the building like the Hatchery. If the sign is flat, people might miss it.
30. Abby Lechthaler said they are trying to work with what's there. The cement post is dug real deep.
31. Phil Carter said if the original sign was internally lit, possibly the electricity is still there.
32. Rose Goings said it has not been lit in a long time.
33. Abby Lechthaler asked if the board needs the dimensions.
34. Phil Carter said all we need to know is 75 square feet.
35. Mary Jane O'Hara asked if there would be other signs in the window.
36. Rose Goings said Abby Lechthaler may put signs in the windows if she wants to, they are exempt.
37. Abby Lechthaler showed pictures of a shop that has similar signage and said they have a lot of information to convey in a clean, straightforward way to get people (out-of-towners) to stop.
38. **MOTION by Linda Petty and seconded by Richard Harrison to close this hearing. Motion passed unanimously.**

NOTE: Phil Carter asked the applicants if the two applications may be combined and discussed concurrently. This was agreed to by all parties.

VI. **OPEN THE PUBLIC HEARING FOR IMERYS TALC VERMONT, INC**
VII. **OPEN THE PUBLIC HEARING FOR IMERYS TALC VERMONT, INC.**

1. Phil Carter advised that this is an application for a Conditional Use permit to amend State issued Act 250 permit to authorize crushing of previously authorized overburden into aggregate for sale primarily to state and local municipalities for infrastructure projects. The project is located on East Hill Road in the Industrial District.
2. Phil Carter advised that the second hearing is for local Act 250 Review to permit to amend State issued Act 250 permit to authorize crushing of previously authorized overburden into aggregate for sale primarily to state and local municipalities for infrastructure projects. The project is located on East Hill Road in the Industrial District.
3. Rose Goings advised that the first application is 432-15-CU, Amendment #1. The second hearing is application 443-17-ACT250. Both applications were posted in the Town Hall bulletin boards, the Berkshire Bank Bulletin Board, on the website and on the Post Office Bulletin Board on August 19, 2016, advertised in THE VERMONT JOURNAL on August 24, 2016 and abutting property owners were notified on August 25, 2016.
4. Phil Carter administered the oath to all (GT McNaughton, Hans Bruning, Sam Markowski, Robin Reilly and Terry Bane) wishing to speak at this hearing.

5. George McNaughton said there is an error in the project description it said the crushing is limited to mining and should read primarily. He continued, this project will not have any new buildings, require no new machinery and will not disturb the land. We will use the existing crushers and there will not be an increase in the size of the number of trucks. We extract 170,000 CY of ore and also 170,000 CY of overburden. We have storage areas and they will be reclaimed. They will sell primarily to state and local municipalities that need aggregate. This will not be open to the public. They may possibly sell to companies having large projects, such as Okemo. The portable crusher is already permitted. They will haul the overburden from the stockpile at the former Rainbow mine. They will not crush a lot at a time, mostly for orders. Trucks will enter and exit from the existing crusher road. They are asking for up to 75 round trips per day for this operation (not including other operations.) If there is a big project going on, it may take 75 RTs per day for a period of time. Overall, there will not be additional traffic, in totality. This project will stay within the regular operating hours for mining. This project will occur primarily during construction season, rather than in the winter. When it is a state project, the state has its own traffic scheduling. There will not be any impact on wetlands, deer habitats or existing roads. They will get the required Air Permit.
6. Phil Carter asked about storm water.
7. George McNaughton said it has already been protected.
8. Robin Reilly said there is already a multi-sector general permit for the entire location. They will improve the storm water protection that site.
9. George McNaughton said that they will enhance the berm which will enhance the sediment trap.
10. Phil Carter asked what aggregate is.
11. Hans Bruning said it is overburden rock and it is non-talc bearing.
12. Pc asked if they are gearing this toward state and municipalities.
13. George McNaughton said yes.
14. Hans Bruning said they will also sell to large subcontractors (ones doing the mining for us.) He added that they have to control the traffic into the site.
15. George McNaughton said this will not be for people to come in and pick up.
16. Phil Carter asked if it would be by order.
17. George McNaughton said yes. He added they are subject to control to who comes onto the property.
18. Phil Carter asked if someone would pre-order the size of the aggregate.
19. George McNaughton said yes and there would be some in stock. It would not be in the best interest of IMERYYS to crush when the overburden it not needed.
20. Phil Carter asked if the trucks would use jake brakes.
21. Sam Markowski said the trucks would probably be loaded and there is not great site visibility for trains. They would probably coast to Route 103 from the railroad tracks.
22. John Boehrer said you really have to stop at those railroad tracks.
23. Phil Carter asked when this would start.
24. George McNaughton said he talked to Act 250 and filed for the permit and the state Air Permit.
25. Phil Carter asked if they would be adding additional employees and if this would affect the schools.
26. Robin Reilly said no to both.
27. Phil Carter asked if there would be any effect on the town of Ludlow.
28. George McNaughton said no.
29. Sam Markowski said he spoke to the town highway department and they used this aggregate after Irene and are anxious to purchasing it again from IMERYYS. They said that earlier this summer they had to truck some in by railroad and it was very expensive. It is very good aggregate.

30. Phil Carter asked what they would do with the overburden if the DRB said no.
31. George McNaughton said they would bury it and reclaim the land, plant trees.
32. Linda Petty asked if they would give the Town of Ludlow a discount.
33. George McNaughton said they would bury it, plant trees and reclaim the land.
34. Linda Petty asked if they would give Ludlow a discount.
35. George McNaughton said it may cost less.
36. **MOTION by John Boehrer and seconded by Linda Petty to close this hearing. Motion passed unanimously.**

VIII. **APPROVE MINUTES**

2. Phil Carter advised that the minutes to be reviewed are from August 8, 2016.
3. Linda Petty noted that on page 1, item 5, should read "...well shield is near or onto..."
4. **MOTION by John Boehrer and seconded by Linda Petty to approve the minutes from August 8, 2016 as corrected. Motion passed unanimously.**

IX. **OTHER BUSINESS**

1. Permits from Last Meeting
 - a. 57 Pond Street - approved
 - b. 142 North Ridge – recessed and recessed again.
2. Next Meeting
 - a. October 24, 2016 at 6:00 p.m.

X. **ADJOURN**

1. **MOTION by John Boehrer and seconded by Phil Carter to adjourn. Motion passed unanimously.**
2. Meeting adjourned at 8:23 p.m.

Respectfully submitted,

Lisha Klaiber

Phil Carter, Chairman

Julie Nicoll

John Boehrer

Linda Petty

Richard Harrison