

**TOWN OF WARREN
DEVELOPMENT REVIEW BOARD
MINUTES OF MEETING
WEDNESDAY JANUARY 21, 2009**

000109

Members Present: David Markolf, Lenord Robinson, Chris Behn, Jeff Schoellkopf and Virginia Roth.

Others Present: Carl and Linda Schwartz, Donarae Cook, Paul and Joannene Kidder, Bill Peatman, Dick King, Shelia Ware, Piero Bonamico, Susan Simpson, Alan Solomon, Shelia Getzinger, Miron Malboeuf and Ruth Robbins.

Agenda: Call meeting to order, 7:00 pm.

1. Application, **2009-02-CU**: Change of Use from Residential to Mixed Use, Lodge & Artist Studio –147 HAMILTON HOUSE RD in the Vacation Residential District: The applicants, **MRC Bundy Inc and John & Barbara Mansfield** request Conditional Use Review for a proposed change of use to Lodge & Artist Studio(Article 10) and Mixed Use for their property (Parcel ID 006000-400) in the Vacation Rural Residential District This application requires review under Article 2 (Table 2.5) VR District; Article 3, §3.10, Parking, Load and Service Area Requirements, Article 4, Specific Use Standards, §4.10, Lodging Facilities, §4.11, Mixed Use and Article 5, Development Review of the Warren Land Use and Development Regulations.
2. Application, **2008-07-SD**: Two Lot Minor Subdivision, Final Plan Approval –119 Potato Lane in the Rural Residential District: The applicant, Donarae **Cook** requests a Final Plan Approval Hearing for a proposed two lot subdivision on her property (Parcel ID 009008-230) in the Rural Residential District This application requires review under Article 2 (Table 2.2) Rural Residential District; Article 6(Subdivision Review), §6.4, Final Plan Approval, and Article 7, Subdivision Standards of the Warren Land Use and Development Regulations.
3. **Reconsideration /Rehearing** of the Warren Development Review Board Decision, signed October 22nd, 2008 in RE: Appeal of the Administrative Officer's Determination Letter: Don & Susan **Simpson** have appealed the Administrative Officer's letter of August 15th, 2008 which required the land owners to file for an Accessory Dwelling permit (Article 4. § 4.1)for a camper trailer on their property located 493 Prickly Mountain Road(parcel id.#210013-000) in the Rural Residential District. The camper trailer is connected to the existing septic system. This appeal requires review under Article 9, §9.5, Appeals, of the Warren Land Use and Development Regulations.
4. Other Business
 - ✓ Review & Sign Mylar for Lincoln Ridge Lots 9,10, 11 & 12
 - ✓ Review DRB Schedule February – April 2009 Schedules

Mr. Markolf called the meeting to order at 7:06 pm.

- 1- Application, **2008-07-SD**: Two Lot Minor Subdivision, Final Plan Approval –119 Potato Lane in the Rural Residential District: The applicant, Donarae Cook requests a Final Plan Approval Hearing for a proposed two lot subdivision on her property (Parcel ID 009008-230) in the Rural Residential District.

Mr. Markolf began the hearing stating that they had conducted a site visit on Saturday January 17, 2008 that was attended by Mr. Monte, Mr. Robinson, Mrs. Roth, Mr. Schoellkopf, Mr. Kaufmann, Mr. Markolf, Mr. Behn, Mr. Malboeuf and Mr. Brodeur, Ms. Cook, Ms. Getzinger and Mr. & Mrs. Peatman. Ms. Getzinger shared with the members the changes that had been made

following the site visit. The main changes were that the dividing line was changed to go straight across the parcel, and that the house site would be as it was shown on the ground at the site visit, not as it appears on the map. [See site plan by Jeff Kelley dated 1/20/09] At the request of the neighbors, the Peatmans, discussion took place about establishing a *no-cut vegetated buffer [except for dead and diseased]* on the western end of the newly created parcel [lot # 2]. It was determined that an 80 foot buffer would be noted on the final site plan as measured from the property line shared with the Peatmans. The next item of discussion was about *the utilities*; above ground or underground. It was decided that the power line would go in above ground from Potato Lane to the most northern corner of the newly created Lot # 2 then underground to the dwelling. From this point it would be placed underground to the house site. The applicant was informed of having to show building envelopes for both parcels, not just the newly created one, on the final site plan. Agreed upon envelopes were indicated on the site plan before them in blue pen.

The applicant had been asked to look into what the cost might be to improve the road, as concern had been expressed at the previous hearing s to whether or not the road could handle additional development. An estimate was provided and Ms. Getzinger noted that they had requests for estimates out to a couple of other companies as well. She continued by saying that she had a proposed condition that at the time either lot is sold, an amount equal to the agreed upon estimate, be escrowed so that the road could be repaired and improved once the construction of the new home was substantially complete (all heavy equipment use was finished). Ms. Getzinger also noted that though she had submitted an estimate, that it would be prudent to wait until the lot sold as it could be a year or so and the price of improvements could change. The current estimate is especially helpful as it outlines the kind of work to be done. Ms. Getzinger also presented that Board with proposed language for the warranty deed that provides for shared road maintenance cost including the cost of attorney fees if so incurred.

Mr. Peatman reiterated his concern about additional traffic on Potato Lane. He said that if the additional lot is not sold for a year or two that the road would continue to deteriorate and something would have to be done before Ms. Cook's road improvement condition would kick in. Mr. Markolf said that the DRB had no say in imposing improvements prior to the sale and development of the newly created subdivision. Mr. Peatman said he understood but wanted to express his concern about the condition of the road. Mr. Peatman also submitted a memo that states his agreement with how the proposed house is sited as of the site visit on 1/17/09 and the requirement for the vegetation to remain as a buffer on the common property line between the two parcels [as determined earlier to be 80 feet]. The memo also requested that any new dwelling must fit in with the surrounding homes and not exceed the current height of the Cook's home. Mr. Markolf said since there was no proposed house at this time and that we had a height restriction in the zoning bylaws that the Board didn't really have a compelling reason to impose any further restrictions. It was also noted that the oversize of the house would be limited by the fact that it has a wastewater permit for a maximum three bedroom dwelling. The location of the driveway, due to the well location and the newly designated buffer zone is fine as shown.

The Kidder's who live on Potato Lane but are not direct abutters, had a concern about the possibility of someone beginning construction of a new home but then either taking forever or having to abandon their plans for some unforeseen reason. Mrs. Kidder was specifically concerned about how that could delay the agreed upon improvements to the common road. Discussion then ensued as to at what point during construction could the road be improved without being damaged by the remaining building process. Ms. Getzinger suggested that any house permit issued be conditioned to be completed in twelve months. Mr. Behn added that he thought that eighteen months to complete the dwelling to the point of obtaining a Certificate of Compliance would be fair and address the concerns voiced. Mrs. Kidder also asked for clarification on the road standard as far as width. Mr. Markolf told her it was sixteen feet wide, plowed or maintained to a width of fourteen feet wide.

Ms. Getzinger then asked the Board for a waiver as authorized under Sec. 6.1 to approve the application subject to the final plat which will be the same as presented only with the surveyors stamp verifying the information contained within.

Mr. Markolf then outlined the conditions that had been discussed:

- 1) Clearing restrictions/vegetated 80-foot buffer as shown on site plan
- 2) Power lines – above ground to the most northern corner of the newly created Lot # 2 then underground to the dwelling
- 3) Potato Road improvement after lot development as described in the document submitted 1/5/09 titled “Donarae Cook Proposed Permit Condition”
- 4) Shared road maintenance agreement [between lot 1 and lot 2]
- 5) Maximum of 18 months to complete construction of new dwelling and obtain Certificate of Compliance from Zoning Administrator.
- 6) Final survey and mylar with building envelopes indicated on both lots

MOTION by Mr. Markolf that should the Board grant approval the aforementioned conditions as listed previously in this hearing will apply. **SECOND** by Mr. Behn. **VOTE:** all in favor the motion passed.

MOTION by Mr. Behn that the Board find the application to be complete and classified as a minor subdivision. **SECOND** by Mr. Markolf. **VOTE:** all in favor, the motion passed.

MOTION by Mr. Markolf that the Board approves the applicant’s request for a two-lot subdivision subject to the conditions already voted on. **SECOND** by Mr. Robinson. **VOTE:** all in favor, the motion passed.

- 2- Application, **2009-02-CU:** Change of Use from Residential to Mixed Use, Lodge & Artist Studio –147 HAMILTON HOUSE RD in the Vacation Residential District: The applicants, **MRC Bundy Inc and John & Barbara Mansfield** request Conditional Use Review for a proposed change of use to Lodge & Artist Studio (Article 10) and Mixed Use for their property (Parcel ID 006000-400) in the Vacation Rural Residential District.

Board member Virginia Roth recused herself from the hearing for the Bundy/Mansfield application due to her involvement with both the Bundy and the property owners. Chris Behn also excused himself and left the meeting. Those members hearing this application were: Mr. Markolf, Mr. Schoellkopf and Mr. Robinson.

Attorney Shelia Ware spoke for the applicants and explained to the Board what their plans were. The property, know as the Hamilton House, was at one time permitted for use as a small lodge. Currently, it is used as a private residence and the permit as use for a lodge has lapsed. Ms. Ware told the Board that MRC Bundy, Inc., a company of four different vocal groups, had discontinued their relationship with the Bundy Performing Arts Center as of December 31, 2008 and were now looking for a new home. The application asks for a Conditional Use Mixed Use/Lodge permit. MRC Bundy would specifically be using the house to provide member space for private music study, small rehearsals, classes and recitals. Ms. Ware noted though that there would be no public performances. In addition, they would like to also be able to use two guest rooms for visiting artists – not the general public. There is also caretaker quarters that would be utilized as well. No exterior changes are planned, only some interior changes. They did intend to add marked handicapped parking and a ramp for handicapped access to the house.

The largest of the vocal groups is the Mad River choral which has approximately 40 to 50 members. Their rehearsal periods consist of once a week during two sixteen week periods: one in the spring starting mid March and the other in September. Ms. Ware said that while the choral groups would be practicing inside, she could envision some of the visiting artists or chamber

groups occasionally wanting to practice out in the garden on a nice day. However, she noted that any of those practices would not be amplified – acoustic only. Ms. Ware also emphasized that any general performances would be conducted off site. Mr. Markolf asked if the applicant knew if any state permits would be required and Ms. Ware thought there might be but since they had not bought the property yet that she was not absolutely sure.

Abutters Carl and Linda Schwartz were in attendance and expressed concern about traffic and parking but otherwise were very much in favor of the proposed activities. There is actually two ways into the property – the main driveway at the southern end of the property and then a 25 foot right of way that is sometimes used at the northern end. It is this 25-foot right of way [that is approx. 10 or 11 feet wide] that goes by the Schwartz's house that is of concern. Ms. Ware said that they really wanted to keep the circular drive for purposes of emergency (fire) access, but that they would be willing to use a temporary "obstacle" to prevent members from exiting by the Schwartz's house on rehearsal nights. Mr. Schwartz said he had no concern about the daily comings and goings of a caretaker, but 40 to 50 people on a rehearsal night was a problem to him.

Mr. Schwarz also expressed concern about the parking area by the shed. That area was visible from his kitchen and some additional screening would be appreciated. He also wanted to know if the area where the shed was might become a dumpster or trash location – another concern that he'd like to see screened. Ms. Ware did not think their operation would be generating enough trash to warrant a dumpster, but if so they would make sure it was located out of sight. It was also noted that if there was any maintenance equipment that it also be stored out of sight of the Schwartz's house.

MOTION by Mr. Markolf to impose the following conditions should the Board approve this application:

- 1) Use restricted to member and guest use only – no general public activities.
- 2) Demonstrate the ability to park a minimum of 30 cars on site plan.
- 3) Traffic flow to be restricted during choral rehearsals to Hamilton Drive only for both ingress and egress.
- 4) No dumpsters or maintenance equipment to be placed as to be visible from the Schwartz's home.
- 5) Applicant is responsible for acquiring any applicable State permits prior to use of the property

SECOND by Mr. Schoellkopf. **DISCUSSION:** No screening necessary since there should be nothing visible to be screened. **VOTE:** all in favor, the motion passed.

MOTION by Mr. Schoellkopf that the application meets the standards found under Sec. 5.3 Conditional Use Review Standards (A) General Standards items (1) through (5). **SECOND** by Mr. Markolf. **VOTE:** all in favor, the motion passed.

MOTION by Mr. Markolf that the application meets the standards or find them not applicable based on conditions imposed as found under Sec. 5.3 Conditional Use Review Standards (B) Specific Standards items (1) through (11). **SECOND** by Mr. Robinson. **VOTE:** all in favor, the motion passed.

MOTION by Mr. Schoellkopf that any outdoor musical rehearsals will be non-amplified sound. **SECOND** by Mr. Markolf. **VOTE:** all in favor, the motion passed.

MOTION by Mr. Markolf that the Board grants the Conditional Use permit for a mixed use/ lodge at Hamilton House Road subject to the conditions already voted on and that the final site plan must be submitted to the DRB a minimum of 45 days prior to the scheduled property transfer. **SECOND** by Mr. Schoellkopf. **VOTE:** all in favor, the motion passed.

- 3- **Reconsideration /Rehearing** of the Warren Development Review Board Decision, signed October 22nd, 2008 in RE: Appeal of the Administrative Officer's Determination Letter: Don & Susan **Simpson** have appealed the Administrative Officer's letter of August 15th, 2008 which required the land owners to file for an Accessory Dwelling permit (Article 4. § 4.1) for a camper trailer on their property located 493 Prickly Mountain Road (parcel id.#210013-000) in the Rural Residential District. The camper trailer is connected to the existing septic system. This appeal requires review under Article 9, §9.5, Appeals, of the Warren Land Use and Development Regulations.

Mr. Solomon reviewed his summary that outlined the history of the use of the camper pad and camper. The history demonstrates, said Mr. Solomon, that the use of a camper in that location has taken place well over 15 years ago. He also stated case law that said the reduction in the level of activities does not imply abandonment of non-conforming use. [154VT327 Franklin City vs. the city of St Albans in 1990]. In this case it was the on and off use of housing inmates in a jail. It was argued that the use of the jail changed but the jail itself did not. Mr. Solomon said that even during times when a camper was not present, the camper pad and utilities was still present. He continued with a couple more citations and said that it was a continuing use and continues to be. Mr. Solomon then commented on Mr. King's citing of rules of civil procedure. He said that administrative agencies [the DRB] do not follow court rules of civil procedures. The question was asked as to the intended use going forward. Ms. Simpson said that it would be used as in the past, for the summer housing of family (her father lives in New Zealand and comes back to visit).

Mr. Markolf then asked for Mr. King for his comments. Mr. King said that in reviewing the minutes of the last meeting he felt that Mr. Monte had addressed the issue and he (Mr. King) pointed out that the standard for adverse possession and continuity of use has nothing to do with the standard for the continuity of use for a pre-existing non-conforming use. Mr. King then suggested that the Board continue this hearing until such time as the Chairman, Mr. Monte, and Mr. King's client, Ms. Barr, could be in attendance.

Discussion then ensued regarding the classification of the Simpson home, since Mr. King said he thought it may be a duplex. Ms. Simpson said that the home has always been a single family and there seemed to be some confusion with the information in the lister's office. Mr. Solomon also noted that Mr. King's client, Ms. Barr has been renting out a portion of her house for years. Mr. Markolf asked for clarification on the information on record with the lister's office and Ms Simpson said she would provide that. It was also noted that though there was a communication from Ms. Barr's partner that he in fact was not an owner of record.

MOTION by Mr. Markolf to continue the hearing until February 19, 2009. **SECOND** by Mr. Robinson. **DISCUSSION:** Mr. Solomon contended that the use and existence of the pad is more than 15 years and should be allowed to continue. Mr. King stated that the existence of the pad was allowable but he questioned the use of the pad. **VOTE:** all in favor, the motion passed.

Mr. Markolf adjourned the meeting at 9:17 pm.

Respectfully submitted,

Ruth V. Robbins
DRB/PC Assistant

TOWN OF WARREN
DEVELOPMENT REVIEW BOARD
MINUTES OF MEETING - 1/21/09

DEVELOPMENT REVIEW BOARD

David Markolf 2/19/09
date

Lenord Robinson 2/19/09
date

Jeff Schoellkopf 2/20/09
date

Chris Behn date

TOWN OF WARREN, VT

Received for Record 2/20 2009

at 10:45 o'clock A M and Received in

Vol 199 Page 109-114

Rita Yon
TOWN CLERK