

TOWN OF WARREN  
DEVELOPMENT REVIEW BOARD  
MINUTES OF MEETING  
MONDAY OCTOBER 15, 2012

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Members Present: Lenord Robinson, Peter Monte, Tom Boyle and Jeff Schoellkopf.

Others Present: Shelia Getzinger, David Sellers, Peter MacLaren, Miron Malboeuf and Ruth Robbins.

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

- 1) Application **2012-47-CU**, Conditional Use Review, for the construction of a Single Family Dwelling (SFD) on a one-acre parcel located in the Meadow Land Overlay district. The Zoning Administrator has referred the application of Anne B. Burling for the construction of a SFD on a pre-existing lot, shown as part of a 94.39 acres parcel located at 512 Roxbury Mtn Rd. parcel id #001007-501. The property is located in the Rural Residential and Meadow Land Overlay Districts.  
This application requires review under Article 2, table 2.2 & 2.13; and Article 5, § 5.3 of the Warren Land Use and Development Regulations as adopted by the Warren Select Board on March 25, 2008 and last amended January 31, 2012.
  
- 2) An appeal of the **Zoning Violation** issued to David Sellers for two properties located in the Rural Residential District at 1501 & 1635 West Hill Rd, Parcel ID #'s 016003501 & 016003502, respectively. The violation consists of failure to file for a Certificate of Zoning Compliance and Operation of a Conditional Use in the Rural Residential District without a permit.  
This appeal requires review under Article 9, §§ 9.4, 9.5 & 9.7) of the Warren Land Use and Development Regulations as adopted by the Warren Select Board on March 25, 2008 and last amended January 31, 2012.
  
- 3) Other Business:

Mr. Monte called the meeting to order at 7:01 pm.

1. Application **2012-47-CU**, Conditional Use Review, for the construction of a Single Family Dwelling (SFD) on a one-acre parcel located in the Meadow Land Overlay district. The Zoning Administrator has referred the application of Anne B. Burling for the construction of a SFD on a pre-existing lot, shown as part of a 94.39 acres parcel located at 512 Roxbury Mtn Rd. parcel id #001007-501. The property is located in the Rural Residential and Meadow Land Overlay Districts.

Mr. Monte read the warning for the first application, a Conditional Use Review for the construction of a single family home in the Meadowland Overlay District. Representing the applicant, Anne Burling, was Attorney Getzinger. Mr. Malboeuf noted for the Board that the property formerly owned by the Mobis family, did not have any structures on it at the time the Meadowland Overlay District was established so no carve outs were done to allow for a dwelling. He continued to tell the Board that Ms. Burling's intent is to build a home for the purpose of housing for the farmers who will be farming the parcel. This activity will in turn help with preserving the agricultural soils which is the main intent of the Meadowland Overlay District. Ms. Getzinger went on to tell the Board that the house was sited where it was due to the location of the wastewater system and that it would be a small cape style home of approx. 1,000 square feet. She also told the Board that a newly confirmed curb cut had been approved by the Select Board.

The DRB then reviewed the standards of the Meadowland Overlay District as listed under Table 2.13. As the entire parcel is in the MO District, the review was made under (E) Supplemental Development Standards (1) (b).

**MOTION** by Mr. Monte that the Board finds that the proposed development "minimizes the disruption of the scenic quality of the site" [Table 2.13 (E) (1) (b) (i)]. **SECOND** by Mr. Robinson. **VOTE:** all in favor, the motion passed.

**MOTION** by Mr. Monte that the criteria under Table 2.13 (E) (1) (b) (ii) that calls for the retention of the maximum possible amount of meadowland for agricultural use via clustering and reduction in density is satisfied in that most of the parcel is suitable only for forestry. **SECOND** by Mr. Robinson **VOTE:** all in favor, the motion passed.

**MOTION** by Mr. Monte that the Board finds that the project "utilizes the least productive land and protects primary agricultural soils" [Table 2.13 (E) (1) (b) (iii)]. **SECOND** by Mr. Robinson. **DISCUSSION:** Ms. Getzinger noted that in a plan for conserving part of the parcel in a land trust, this area was excluded to allow for a dwelling and as it had the least productive agricultural soils. Mr. Robinson stated that in his memory he was not aware of any farming taking place on that piece of land though it may have been long before his time. It was also noted that if the soils were any good then the wastewater system would not have been located of site. **VOTE:** all in favor, the motion passed.

**MOTION** by Mr. Schoellkopf that the proposed project will not have an adverse affect in regard to the standards of Sec. 5.3 (A) items (1) through (5) of the Conditional Use regulations. **SECOND** by Mr. Boyle. **VOTE:** all in favor, the motion passed.

**MOTION** by Mr. Monte that the Board approves the application for a single family dwelling in the Meadowland Overlay District subject to the project being developed as presented in the application. **SECOND** by Mr. Schoellkopf. **VOTE:** all in favor, the motion passed.

2. An appeal of the **Zoning Violation** issued to David Sellers for two properties located in the Rural Residential District at 1501 & 1635 West Hill Rd, Parcel ID #'s 016003501 & 016003502, respectively. The violation consists of failure to file for a Certificate of Zoning Compliance and Operation of a Conditional Use in the Rural Residential District without a permit.

Mr. Monte asked for details from the Zoning Administrator regarding the zoning violation which is being appealed by Mr. Seller. Mr. Malboeuf told the Board that there were two main issues, the first being that there had never been a request for certificates of compliance for either of the properties that Mr. Sellers owns on West Hill Road. Mr. Malboeuf did tell the Board members that Mr. Sellers has agreed to apply for and schedule a time for an inspection to obtain the Certificates of Compliance so that should no longer be outstanding. The second issue is a question of the use of the properties which may require a conditional use approval of which there is none. Mr. Malboeuf stated that though folks can own and in turn rent their property, the activities taking place on those properties are not a given. For example, though there is no issue with renting a property for residential use, should those residents want to have a wedding as the property was advertised as being available for, then that is an activity that requires a permit. Mr. Malboeuf went on to relate a couple of incidents where such an event took place and the music went on well into the night. Fireworks had also been utilized at a late hour. As Mr. Malboeuf pointed out, a nearby neighbor who also allows weddings for their guests does so under restrictions of a Conditional Use permit. To clarify, Mr. Malboeuf said that the violation at issue is that of the

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rental of the property with the adjunct activity of having events that have been offered via advertisement.

Mr. Sellers spoke up and asked if he could tell the Board how his properties are utilized. He explained how he has two adjacent properties, one with a large workshop in it which at one time he lived in and is referred to as the "Temple". At any time there may be one to four employees making things in the workshop. However, due to the size and attractive fireplace, it invites requests for parties to take place there such as the two weddings that took place there over the past two years. Mr. Sellers also told the members about a one time event when he loaned out his property for the local radio station WMRV for a fundraising event. He added that there have been several birthday parties on the property and that they have an annual 4<sup>th</sup> of July party there as well. The other property, known as the "Bunker" house Mr. Sellers stated that he rents out approximately 25 days per year. Between the money he makes with the workshop at the "Temple" and the rentals at the "Bunker" house it allows him to pay his taxes and maintain the properties. He also noted for the Board that his properties were not equipped for catering – anything would have to be brought in. He also said he didn't see this activity as needing a permit for as they are activities that anyone might do at their own homes and he wanted to continue to do as he has done.

Mr. Monte asked for clarification of how often the property is rented just for vacation use and how often is an event involved. Mr. Sellers said he had had two weddings at the house [bunker] and one at the workshop [Temple] over the past three years. Mr. Monte asked if he was made aware that the renters intended to have an event [wedding] during the pre-rental discussion and Mr. Sellers said yes, he did. Mr. Monte asked Mr. Malboeuf if there were any other commercial type activities that he had identified. Mr. Malboeuf said he has had complaints about the use of the workshop in a residential neighborhood for commercial purposes. He continued to say that home-based businesses and cottage industries are allowed but by permit only and usually with conditions regarding hour, parking, number of employees, residency etc. With this being in the Rural Residential District it is important to be careful not to stretch the limits with a commercial activity. He also said that he attempted to administer the ordinance in a fair and reasonable way or no one would even care about it.

Time was then spent discussing/debating how Mr. Seller's uses could be permitted so that he could be compliant with the Warren Land Use and Development Regulations. Mr. Sellers said that he was an artist who made "stuff" which he thought was a perfectly allowable residential use. Mr. Monte pointed to the ordinance and suggested that Mr. Sellers look at it to see what might fit.

Mr. MacLaren spoke up who is the owner and operator of the West Hill House B&B. He started out by saying that he and Mr. Sellers have had a friendly neighborly relationship. His specific concern was about a recent event that went on into the late, late hours, and his guests who were here for the Stage Race had their sleep disturbed at one in the morning by fireworks. Mr. MacLaren felt that that was not to be considered "neighborly". He continued to say that though they may do similar things at the West Hill House, they do so under the conditions of their Conditional Use permit which states that things are pretty much over at 10 pm which is reasonable for a residential area. Mr. Malboeuf also added that he had gotten comments about traffic resulting from the Seller's properties. Mr. MacLaren chimed in that he has strict parking rules he has to comply with and the parking at the event he spoke of at the Seller's property was rather chaotic.

Mr. Monte clarified what they needed to do right now which was to look back and if they find a violation then in going forward it must be fixed. As Mr. Monte pointed out, there was no problem with Mr. Sellers renting his property but that most rental agreements prohibit the tenants from creating a "nuisance". A residential social gathering can be a problem when it impacts the neighborhood. Mr. Monte asked about the first issue about the lack of Certificates of Compliance

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and if Mr. Sellers wanted to withdraw his appeal on that one since it appeared as if he and Mr. Malboeuf were on track to get it resolved. Mr. Sellers agreed that was the case. That left the consideration of whether or not historically there had been an operation of a conditional use without a conditional use approval from the DRB. Despite the frequency or infrequency of the activity, an unapproved use is still a violation.

Mr. Monte stated that there was a difference between incidental use when residing on a property [such as a family wedding] versus the wedding no matter how little one may charge but has still advertised for which is more of a commercial use, not residential. Mr. Monte assured Mr. Sellers that he could rent his property for residential use and might want to have language in his lease that prevents the renters from activities that you are not permitted for. Mr. Monte noted that there was no fine at this time, however, should the activity continue without proper permitting then the future violation could create a payable fine.

**MOTION** by Mr. Monte that the Board finds that the rental of the property for monetary gain when it is advertised for and utilized for a wedding is a violation due to the absence of a Conditional Use approval from the DRB therefore the Zoning Administrators notice of violation was justified. **SECOND** by Mr. Boyle **DISCUSSION:** Mr. Schoellkopf commented that it was his hope that there was a way to support some sort of mixed use activity and non-offensive commercial ventures in the RR District. Mr. Monte said that he agreed with that but that this was a technical violation. **VOTE:** all in favor, the motion passed.

**MOTION** by Mr. Monte that the DRB dismiss the appeal made by Mr. Sellers. **SECOND** by Mr. Robinson. **VOTE:** all in favor, the motion passed.

Mr. Monte adjourned the meeting at 8:22 pm

Respectfully submitted,

Ruth V. Robbins  
DRB/PC Assistant

DEVELOPMENT REVIEW BOARD

Lenord Robinson 11/5/12  
Lenord Robinson date  
Peter Monte 11/5/12  
Peter Monte date

Tom Boyle date  
Jeff Schoellkopf 11/6/12  
Jeff Schoellkopf date

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Received for Record 119 2012  
at 11:51 o'clock A M and Received in  
Vol. 219 Page 207-210  
R. Robinson  
TOWN CLERK