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TOWN OF WARREN
DEVELOPMENT REVIEW BOARD
MINUTES OF MEETING
MONDAY MARCH 4, 2013

Members Present: Lenord Robinson, Don Swain, Peter Monte, Tom Boyle and Chris Behn.
Others Present: Sue Carter, Kirsten Johannesen, Gary Johannesen, Miron Malboeuf and Ruth Robbins.
Agenda: Call meeting to order, 7:00 pm.

- 1) Application 2013-02-ZP/CU (continued from February 4th, 2013), Conditional Use Review, for the construction of an Accessory Structure (Deck) in the Flood Hazard Overlay District (FHO). The Zoning Administrator has referred the application of Gary & Debora Johannesen for the re-construction of a deck and adjacent retaining wall on their property located at 59 Main Street, parcel id #004000-200. The property is located in the Warren Village Historic Residential and Flood Hazard Overlay Districts. This application requires review under Article 2, table 2.2 & 2.14 (3); 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 November 11, 2012.

2) Other Business:

Mr. Monte called the meeting to order at 7:09 pm.

NOTE: as part of this hearing there is a submission of a letter from the abutting neighbor Tomislav A. Marincic.

Mr. Johannesen is requesting a conditional Use approval for the construction of a deck and adjacent retaining wall that is located in the Flood Hazard Overlay District (FHO). Mr. Johannesen told the DRB that there has always been [since they purchased the property] a deck in their backyard by the river and lights in the trees. The lights are infrequently used though we were away for a two week period during which time our house sitter was unaware of the switch and the lights were left on accidentally. The deck has been reconstructed due to damage sustained during Tropical Storm Irene and Mr. Johannesen noted that the deck did not break loose and cause any damage downstream. Additionally, the newly built retaining wall was constructed to hold their backyard from caving in as a result of water erosion from TS Irene. To help hold the retaining wall a 100 square feet of deck was attached. Even with this some of the yard has caved in. Mr. monte asked if this area was in the Flood Hazard Area {FHA} and Mr. Malboeuf confirmed that it was. Mr. Johannesen admitted that he did not know he needed to get permission/a permit to repair the deck following TS Irene.

In discussion between the DRB members and the Zoning Administrator they agreed that any improvement to an existing structure would require a Conditional Use approval. It was also noted that Article 3 speaks to the replacement of a non-conforming structure after damage or destruction, but the Flood Hazard Area [FHA] standards would have to be applied. It was also brought up by Mr. Monte that there were two components: the replaced deck and the addition of the retaining wall. Mr. Malboeuf told the DRB that he was led to believe that the deck was increased in size and that the retaining wall was constructed as a result of TS Irene. Additionally, the neighbor reported that the deck had been increased prior to TS Irene, during the spring of 2011.

Mr. Johannesen told the Board that the reconstructed deck was made smaller than the original. Mr. Monte asked in what dimension was the deck made smaller and Mr. Johannesen replied that the depth was less than before but a little wider [longer] but square footage was less than before. Mr. Monte and the Board started looking at the FHA regulations. They agreed that the deck could be considered an "accessory structure" and cited Article 5 Sec 5.3 (E) Flood Hazard Overlay

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District – Development Standards (1) Special Flood Hazard Area (h) which allows for a structure of 500 square feet or less provided that it offers the minimum resistance to the flow of floodwaters.

Mr. Monte asked the applicant if the structure was 500 square feet or less and Mr. Johannesen said yes. Mr. Monte asked if that also included the retaining wall and the reply was that if included then yes, the overall size would be less than 500 sq. feet. Mr. Swain asked if water could pass under/through the structure and Mr. Johannesen said yes. Mr. Swain continued and noted that unless the water could flow through, get in and get out, then the structure would effectively raise the water level which would not be desirable. Mr. Johannesen added that the deck is on three 6 by 6 posts and his daughter said she could easily crawl underneath. Mr. Swain then asked if there was fill behind the retaining wall and was told that there was not much at all as there is still a hole there and that they had been adding rocks from time to time in an effort to keep the yard from falling in. Mr. Swain noted that since there seemed to be no question that the location of the deck and retaining wall was in the Flood Hazard Area [FHA] that his main concern was the retaining wall and the addition of fill which is a "no-no" in the FHA. Mr. Behn asked how this is different from "rip-wrap" that helps in keeping erosion from taking ones yard away. The members were not sure what the technical difference was but did note that the State would need to be involved.

Mr. Monte said that he didn't see a problem with the deck since it was a replacement of a previous structure and the applicant has said it is smaller than before. The retaining wall however is a separate issue. Mr. Behn said he disagreed about it being smaller as there is a second level, though utilized as "bracing" that creates a deck area in addition to the original deck space. Mr. Monte summarized the situation by calling it a "stream bank alteration" situation which the State would have to weigh in on. He then asked for clarification on the procedure – DRB findings before the State comments? What if they don't like our findings? If we have to defer to them shouldn't they see it first? Mr. Malboeuf said that now that he had some pictures he could pass it by the state person. Both Mr. Monte and Mr. Malboeuf expressed concern about water getting behind the retaining wall and further erosion taking place though they both admitted to not being engineers with the expertise in this type of thing. Mr. Swain commented that he thought the main consequence that the State would be interested in was if the water got behind and broke the decking material free and then washed downstream with the possibility of causing additional damage. Mr. Monte stated that he needed advise as to whether or not a structure like is sound in stabilizing the stream bank and didn't feel qualified to answer that question.

Mr. Behn thought that fellow member Mr. Swain might be the most knowledgeable on the Board. Mr. Swain asked Mr. Johannesen how the deck was anchored and he was told the original deck, which did not break free during TS Irene, was anchored by chains into the existing ledge. The replacement deck is anchored in a similar fashion, only more so, said Mr. Johannesen. Mr. Swain then asked the Chairman if they could go through the criteria to see if they had enough information to respond or not. They began with taking a look at Article 5 Sec 5.3 (E) Flood Hazard Overlay District – Development Standards which mentions that electrical systems be kept from possible flood hazard [(E) (1) (a) (v)] which in turn had the question asked as to where the lights were. Mr. Johannesen said on the deck but that he could disconnect them. Continuing on Mr. Monte looked at the Administration section [(F)] where the Vermont Agency of Natural Resources has required a Project Review sheet that is part of the application. Upon further discussion it was determined that the applicant needed to do some "homework" with the State before the Town could move forward. Once the applicant's application is complete, the Zoning Administrator can then submit a copy to the State National Flood Insurance Program (NFIP) Coordinator at the VT Agency of Natural Resources. With that being said, Mr. Monte noted that the DRB really couldn't make any sort of determination until Mr. Johannesen's project had been reviewed by the State.

MOTION by Mr. Monte that the Board continues this hearing until Monday May 6th. SECOND by Mr. Behn. VOTE: all in favor, the motion passed.

In other business the DRB members reviewed and signed the minutes from 2/4/13 as well as the Decision for the Bokay Ltd. PUD approval.

The meeting was adjourned at 8:24 pm

Respectfully submitted,

Ruth V. Robbins
DRB/PC Assistant

DEVELOPMENT REVIEW BOARD

Lenord Robinson 5/6/13
Lenord Robinson date

Peter Monte 4-15-13
Peter Monte date

Tom Boyle 4-15-13
Tom Boyle date

Don Swain date

Chris Behn date

TOWN OF WARREN, VT
Received for Record 5/7 2013
at 1:04 o'clock P M and Received in
Vol 222 Page 263-265
Robinson
TOWN CLERK

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