

**Town of Warren
Development Review Board
Minutes of Meeting
Monday December 5, 2016**

Members Present: Peter Monte, Chris Behn, Don Swain and Tom Boyle.

Others Present: Don Marsh, David Frothingham, Bill Moore, Tomislav Marincic, Jas Smith, Miron Malboeuf and Ruth Robbins.

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

- 1) Application 2016-80-SD, Revisions to an Approved Plat: The applicant Peter Lazorchak, P.E., LEED AP, Wilcox & Barton, Inc. has requested an amendment to the approved plat; the project proposes to relocate the previously approved building envelope downhill 25' in a South-Easterly direction, to accommodate a new house location, septic system and driveway. The property is owned by Dushyant & Neela Chipalkatty and is located in the Rural Residential District at 77 Timber Ridge Road, ID. # 048000-111.
- 2) Application 2016-61-CU Relocation for the Reconstruction of a non-complying structure, Accessory Dwelling. The purpose of this application is reauthorize the site of the structure, as permitted by either the location of the pre-existing shed , now demolished or to a location that is in greater degree of compliance with the existing front setback and principal dwelling . The property is owned by James S. Smith III, and is located in the Rural Residential District at 151 Larrow Farm Road, ID. # 038000-103.
- 3) New and Other business

Mr. Monte called the meeting to order at 7:03 pm.

1. Application 2016-80-SD, Revisions to an Approved Plat: The applicant Peter Lazorchak, P.E., LEED AP, Wilcox & Barton, Inc. has requested an amendment to the approved plat; the project proposes to relocate the previously approved building envelope downhill 25' in a South-Easterly direction, to accommodate a new house location, septic system and driveway. The property is owned by Dushyant & Neela Chipalkatty and is located in the Rural Residential District at 77 Timber Ridge Road, ID. # 048000-111.

[TBD]

2. Application 2016-61-CU Relocation for the Reconstruction of a non-complying structure, Accessory Dwelling. The purpose of this application is reauthorize the site of the structure, as permitted by either the location of the pre-existing shed , now demolished or to a location that is in greater degree of compliance with the existing front setback and principal dwelling . The property is owned by James S. Smith III, and is located in the Rural Residential District at 151 Larrow Farm Road, ID. # 038000-103.

Mr. Smith was back in front of the DRB to get a reauthorization of a building permit for an accessory dwelling which when initiated violated the terms of the permit issued. He is now looking to cure the violation by relocating the partially built structure that will be in compliance. Mr. Monte began by recapping the previous

hearing for those members who were not there which was about the violation and Mr. Smith's appeal, which was dismissed by the DRB. Mr. Smith spoke up to clarify what he believed the permit allowed only to be corrected by the Zoning Administrator who said that the applicant had been rather vague about what he wanted to do. After three visits to the site, Mr. Malboeuf said that he observed that the original shed had been demolished leading him to wonder what would happen next. Mr. Monte redirected the conversation back to the original application and what it requested. He noted for the members that the original shed was much closer to the road than the required 40 foot setback, thus a non-compliant structure. The structure that was put up, not on the footprint of the old structure, is located even closer to the road therefore increasing the degree of non-conformity said Mr. Monte. The road is a private road to which Mr. Smith has a deeded right-of-way. The road itself is owned by the Kathan family. In continuing on background information, Mr. Monte read from the Zoning Administrator's permit that states the purpose as being: Accessory Dwelling [Convert Existing shed to Accessory Dwelling – 20'L x 20'W x 18'H]. Mr. Monte also noted that an alternate location from the original site could be utilized with the understanding that it could not increase the degree of non-conformance of the old shed. Mr. Monte continued to say that it was found to be in violation but since an investment has been made can the Board allow it to go ahead?

Mr. Malboeuf brought up the point that the new structure was so close to the road that it would impinge on any development or even logging of the 62 acre parcel. Mr. Malboeuf went on to say that he has never had such a difficult time trying to explain the standards of non-compliant structures. Mr. Monte said that it was his feeling that it was not an intentional violation and that no body meant to do the wrong thing but rather a miscommunication/understanding. Mr. Malboeuf offered up his solution which was to have the new structure moved to a compliant location or at least at a minimum in line with the existing primary structure [the house/home] even though that appears to be encroaching on the required 40 foot setback. Mr. Smith spoke to the Board emphasizing that he attempted to communicate what he planned to do prior to the pouring of the footings, indicating that the location was not that of the footprint of the original shed. Mr. Swain asked if the current structure could be moved and Mr. Smith said yes, it could, and that he had been in touch with a moving company to obtain a bid for the work. Mr. Smith also noted that it was an expensive remedy.

Mr. Monte stated that he was unhappy with having to impose additional expense upon the homeowner to make this happen, but, did not see an alternative in order to comply with the ordinance. He continued to say that there is a reason for setbacks and there appears to be no justification for the current location as is. If we are going to require that the newly built structure be moved see no reason why it shouldn't be put at least as far back as the house currently sits. Mr. Behn asked why the owner put the new structure where it is and was told it was personal choice based on view of the meadow and distance from the main house. Mr. Monte went on to say that allowing a structure to remain in a non-conforming place at least makes things not any worse though not any better. There is also the issue of not wasting the materials that are already in place though the location is non-conforming. In this instance the original building has been completely dismantled and neither of the standards apply to the new structure. Mr. Smith did note though that any and all materials from the old structure have been retained and have been or will be repurposed in the new structure. The old non-conformance issue is essentially gone said Mr. Monte. Therefore, Mr. Monte felt that the structure should be relocated to a conforming location that honors the 40 foot setback requirement.

Mr. Smith asked if he could still use the original site as it is level versus having to change the grade in any other location. However, the dimensions of the new structure do not match those of the old shed. Additionally, there is no actual foundation at the old shed site, just the "site" itself that Mr. Smith asked about using. Mr.

Swain commented that he thought that if the owner was willing to move the new structure to the footprint of the old shed so that no part of the new structure was any closer to the road than the previous shed that that could be a viable option. For clarification, Mr. Behn said that the proposed solution by Mr. Smith is that the new structure would be put parallel to the road at 20 feet from the property line on the location of the old shed whereas the corner of the old shed was 18 feet from the property line, thus the proposed decreases the degree of non-conformity by two feet.

Mr. Monte said that though that may seem to make sense, it did not to him. The reason it didn't to him is that the general rule is that everything should comply. We can make exceptions for existing structures because we do not want to create economic waste. To put a foundation in the old site is not materially different than to put one in a conforming location. Mr. Smith noted that they had come across several large boulders. Mr. Monte said that if the case for hardship could be made and no other location was suitable the Board did have the power to grant setback relief up to 30% of the required distance. Mr. Behn agreed that since there was not an existing foundation to move the new structure to that it really should be relocated to a conforming location. Mr. Smith offered up that to reduce his "economic waste" of abandoning the new foundation, could he at least use one side of the foundation and just move the structure back so that the front would now be on the back wall. He added that he would have to do some measuring to see how close it came to meeting the setback requirements with a possible request for setback relief. [Looking at the site plan Mr. Smith provided, it appears that that proposal would only put the structure back at 23 feet which would not be enough to comply even with setback relief]. Mr. Malboeuf was skeptical that there would be much in cost savings in doing that.

Mr. Smith commented that this is a complicated situation and that he has been looking into some other options beyond what was in front of the Board. He was willing to share them now but Mr. Malboeuf said it would be better to have any other proposal on paper as a revised site plan. Mr. Smith said he had spoken to the Kathan family about a possible boundary line adjustment that would also involve Mrs. Klein. Mr. Monte said that could be a possible solution. Mr. Malboeuf stated that the property would have to be resurveyed, property would have to be swapped with Mrs. Klein and that it may not be as cost saving as he may think.

After some further discussion by the Board members, there was a consensus by the Board that Mr. Smith's choices were 1) to move the new structure to a conforming location and that is he can show undue hardship in meeting the 40 foot setback the Board would consider setback relief of not greater than 30%; or 2) submit a complete application for a boundary line adjust that will create enough space for the existing new structure to meet the 40 foot setback without being moved. Any other viable solution will also be considered.

The question came up as to what is any further work was being done on the structure as it is in violation. Mr. Smith said that it was just being closed in and when asked if roofing, shingles and windows would preclude it from being moved he said no, it would not. Mr. Malboeuf also said that at this time there would be no violation fees levied as there was a good faith effort on the part of the applicant to find a resolution that would cure the violation.

MOTION by Mr. Monte that this hearing will be continued until January 16, 2017 at 7:00pm. SECOND by Mr. Behn. VOTE: all in favor, the motion passed.