

**TOWN OF WARREN
DEVELOPMENT REVIEW BOARD
FINDINGS OF FACT & NOTICE OF DECISION
CONDITIONAL USE REVIEW – FOREST RESERVE DISTRICT
#2009-09-CU MACKIE**

Mr. Wayne Mackie is proposing to build a single family residence and detached barn on his property located at 500 Burnt Mountain Road, parcel id # 001011-740 / 002001-901 on a total of 34 +/- acres. The property is located in the Forest Reserve District which requires Conditional Use Review by the DRB prior to any development as per the Warren Land Use and Development Regulations.

A duly warned hearing was held on Wednesday July 8, 2009 and attended by the following members: Peter Monte, Lenord Robinson, David Markolf, Virginia Roth (arr. 7:08) and Chris Behn (arr. 7:23). Others in attendance were: Wayne Mackie, Shelia Getzinger, Gunner McCain, Rick Gehlert, Bob Messner, Miron Malboeuf and Ruth Robbins.

Additional hearings were held as follows:

July 22, 2009, attended by members Lenord Robinson, David Markolf, Peter Monte and Virginia Roth. Others attending were: Gunner McCain, Michael Bransfield, Wayne Mackie, Bob Messner, Miron Malboeuf and Ruth Robbins.

September 9, 2009, attended by members Peter Monte, David Markolf, Chris Behn, Virginia Roth and Lenord Robinson. Others attending were: Jeremy Rathburn, Bob Messner, Jon Rubinstein, Gunner McCain, Chris Nordle, Wayne Mackie, Miron Malboeuf and Ruth Robbins.

November 18, 2009, attended by members Peter Monte, Bob Kaufmann, Virginia Roth, Lenord Robinson and Chris Behn. Others attending were: Wayne Mackie, Stu Libby, Miron Malboeuf and Ruth Robbins.

December 14, 2009, attended by Mrs. Roth, Mr. Monte, Mr. Behn, Mr. Robinson and Mr. Kaufmann (arr: 6:52pm). Others attending were: Gunner McCain, Bob Messner, Miron Malboeuf and Ruth Robbins.

A site visit was held on Saturday July 11, 2009 and attended by Mr. Markolf, Mr. Malboeuf, Mr. Behn, Mr. Robinson, Mrs. Roth, Mr. McCain and Mr. Monte.

Findings of Fact and Conclusions of Law:

1. Applicant submitted a complete application, Conditional Use Worksheet, notice to abutters and proof of mailing. In addition, the following documents were submitted as part of this application:
 - a. Site Plan and wastewater design prepared by McCain consulting dated 1/15/09.
 - b. Site Plan by Catalano Architects [L1.0] dated 5/27/09.
 - c. Floor plans and elevation drawings for the Barn dated 6/2/09 and for the Main Residence dated 5/27/09 prepared by Catalano Architects.
 - d. Letter from Ken Winter dated 6/23/09.
 - e. Exterior lighting information [theledlight.com] "Polaris in-ground or up light LED fixture".
 - f. Site Plan with Erosion Control & Landscaping Plan dated 7/20/09 prepared by McCain Consulting.
 - g. Color Chart for the Barn roof color from MBCI [metal roof and wall systems] indicating the possible colors allowed by the DRB.

- h. California Paints Storm Stain color chart showing Seacoast Gray #36 as the exterior color choice for the main dwelling that was agreed to by the DRB.
 - i. Site Plan with Newly Planted and with mature trees submitted 11/18/09 [3 sheets].
 - j. Site Plan, Erosion Control and Landscaping Plan prepared by McCain Consulting dated 7/20/09 REVISED date of 12/3/09. [This is the final APPROVED landscaping plan]
2. Mr. Mackie bought the property in 1983 and obtained permits in 2001, 2003 and 2005 with the 2005 permit having expired.
3. Both a driveway and underground power have been installed on the site under the previous permit(s). Additional driveway has yet to be constructed.
4. A current State wastewater permit has been issued. [WW-5-5038 dated 2/6/09] The permit allows for a 4-bedroom single family residence and a detached barn with a single occupancy bedroom and bathroom.
5. It is the applicant plans to build the barn before the dwelling to provide for a place to sleep and to oversee agricultural endeavors on the property while the house is being built. After the dwelling is completed, the applicant does not intend to prepare food in the barn or otherwise use the barn as dwelling as defined under the ordinance.
6. The barn structure is not to be used as a primary or accessory dwelling without first obtaining all required state and local permits for such use.
7. Neighbor's expressed concern(s) about the impact the project would have on the hillside, erosion/water diversion, exterior lighting and the proposed blasting. All of these issues were addressed by the DRB [over several hearings] as required under the ordinance, specifically as required by the standards of the Forest Reserve District and are reflected in these Findings.
8. Mr. McCain stated that erosion would be minimal as the site contains a significant amount of ledge. He also said that only a licensed and insured blaster will be employed, and only shallow blasting is expected. There would be no problem with notification to the neighbors of when the blasting was to take place. The blasting should not interfere with any water supplies due to the shallow depth planned. It was further suggested that the applicant would notify the Five Ways Farm and/or their attorney, Shelia Getzinger, as soon as the blasting was scheduled to take place as well as anyone who files a request for notification at least ten days prior to the scheduled blasting.
9. The exterior lighting plan calls for downcast and shielded fixtures as per allowed by the ordinance. They are under deck roof type lights to illuminate the decks themselves, none of the spotlight variety. The wattage light bulb that would be comparable to what was being proposed would be a 15 watt light bulb.
10. Mr. McCain stated that a State GCP would not be required for this project.
11. Stormwater runoff is currently handled by stone-lined ditches which have held up very well after some recent rain storms stated Mr. McCain. Maintenance of those ditches will be important going forward and Mr. McCain was asked to include the maintenance process of those ditches with his erosion control plan. This

maintenance is incorporated by condition number 1, below, as an ongoing obligation of the property owner.

12. The initial site plan showed all the significant trees which the applicant said wouldn't hide the house but would break up its appearance. In an attempt to measure the visibility of the proposed dwelling from elsewhere in the valley, a "balloon" test was conducted at the site visit. It was largely inconclusive as the balloons did not perform as desired.
13. The site visit revealed the apparent clearing of a significant number of trees on the north side of the property yielding a clear view of Camel's Hump. It was also noted that they could see the Messner's house from the site and therefore the proposed house would be in the view shed of those properties.
14. There is also an area to the west/southwest that applicant cleared some time ago (but after the forest reserve district was added to the ordinance) where there were some large trees left.
15. The applicant told the Board that the clearing done to the north was for the eventual purpose of planting some sort of crop. Since the clearing was done in early 2009, a grass mix for erosion control purposes has been planted.
16. The applicant stated that he had not determined the suitability of growing crops on that portion of the land before going to the expense of clearing. Only after these hearings began did the applicant begin any soil analysis to aid in developing a plan for an appropriate crop.
17. Though Article 9, Section 9.2 Exemptions (B) State Exemptions (2) allows for accepted management practices for forestry, the Board viewed the clearing of the north side of the property as pre-development site preparation as stated under Article 2, Table 2.1 Forest Reserve District (E) Supplemental Development Standards – Permitted Uses, (2).
18. It was determined by the Board that the only side requiring non-reflective window treatment [non-glare glass or year round full screening] would be the southwest/west facing side of the dwelling or barn.
19. The barn exterior will be red and the trim on both the house and the barn will be white.
20. Several landscaping plans were submitted by the applicant before one was approved by the Board. Concern was expressed about the ability to transplant trees on ledge, as one Board member said that when they start from seed, they can thrive on ledge but transplanted could be a challenge. The applicant said that with his knowledge of the parcel that having an adequate depth to plant should not be a problem.
21. Under the terms of the Development Review Ordinance, the applicant will not be able to obtain a Certificate of Compliance for the main house until the landscaping plan has been fully implemented. The Board will also require that three (3) years from the date of the issued Certificate of Compliance, a re-certification by Gunner McCain or his designated licensed engineer stating that the landscaping plan was still in full effect would also be required.
22. A separate Certificate of Compliance for the construction of the barn should be obtained upon its completion.

23. The conditions of this approval that require landscaping plans are an adequate response under the Forest Reserve District requirements for the past tree cutting on this property. The required landscaping will provide a sufficient screening for proposed improvements on the property as the Development Review Ordinance requires (see section Article 2, Table 2.1 Forest Reserve District (E) Supplemental Development Standards – Permitted Uses).

Notice of Decision:

The Development Review Board imposes the following conditions on its approval:

1. The project may only be constructed in accordance with the plans and specifications as submitted by the applicant and approved by the Development Review Board.
2. The structures shall conform to the following requirements:
 - a. Colors: the house siding color shall be "Seacoast Gray, #36" by California Paints; roof color shall be charcoal, and barn color shall be red; trim color for both structures shall be white.
 - b. All windows on the south, west and southwest sides of the structures shall have screens on the outside of glass at all times of the year to reduce glare.
3. The barn may not be used as a primary residence except during such time as the primary dwelling is under construction. If the barn is so used as a primary dwelling, the primary dwelling must be completed during the life of the building permit for the barn. Upon completion of the primary dwelling, the barn may be used only as an accessory structure.
4. The barn may not be used at any time as an accessory dwelling. A separate Certificate of Compliance for the construction of the barn shall be obtained upon its completion.
5. Applicant and all subsequent owners of the subject property shall at all times adhere to the following landscaping plan:
 - a. Before occupancy of the dwelling, and before the Zoning Administrator shall issue a Certificate of Compliance, the property owner must complete the following requirements:
 - i. The property owner shall plant all trees shown on the plan titled "Site Plan, Erosion Control and Landscaping Plan" prepared by McCain Consulting dated 7/20/09 REVISED date of 12/3/09. (sometimes called herein the "Approved Landscaping Plan"). Each tree so planted shall conform to the size and species for each stated on the Approved Landscaping Plan. Tree locations may be moved not more than 10 feet from the locations shown on the Approved Landscaping Plan if it is apparent that site conditions do not allow planting at the precise location specified.
 - ii. If any pre-existing trees shown on the Approved Landscaping Plan are not then living and healthy, the property owner shall replace them by trees as specified by the Approved Landscaping Plan and this approval.
 - b. The property owner shall at all times promptly replace any diseased, dead,

or dying tree that is required to be present as shown on the Approved Landscaping Plan. This tree replacement shall comply with the following requirements:

- i. Before so replacing any tree, the property owner shall comply with any applicable notice requirement of this approval.
 - ii. Any tree shown on the Approved Landscaping Plan as a new planting shall be replaced in the same location by the same size and species of tree shown for that location on the Approved Landscaping Plan.
 - iii. Any tree shown on the Approved Landscaping Plan as a pre-existing tree shall be replaced in the same location at the tree replaced, by trees of the same species as the tree to be replaced, and of the same size as required for new plantings of that species on the Approved Landscaping Plan.
- c. No trees shown on the Approved Landscaping Plan may be cut without giving 30 days advance notice in writing to the Zoning Administrator unless the tree poses an imminent danger or blocks any access drive.
- i. The advance notice of tree cutting shall identify in detail the location, size and species of the trees the owner plans to cut. If the Zoning Administrator so requests, the owner shall flag the trees to be cut with a distinctive marking. The owner shall provide access.
 - ii. If the property owner cuts a dangerous or access-blocking tree, then within 10 days after the cutting, the property owner shall give written notice to the Zoning Administrator that clearly identifies the tree cut and the reasons why it was cut. The property owner shall retain the tree and its stump for inspection by the Zoning Administrator for 30 days after the notice is given.
 - iii. The property owner shall allow the Zoning Administrator to inspect the area of the property affected by any notice of intended or past tree cutting to confirm compliance with these conditions of approval.
- d. Three (3) years after the date of the **Certificate of Compliance** for the dwelling on this property, the property owner shall deliver to the Zoning Administrator a written certification signed by both (a) all property owners and (b) a licensed professional engineer or architect. The certification shall either:
- i. State that the property is in full compliance with the landscaping plan required by this approval; or
 - ii. Identify in full detail each and every failure of the property to be in full compliance with the said required landscaping plan.

