

TOWN OF WARREN
DEVELOPMENT REVIEW BOARD
MINUTES OF MEETING
JANUARY 4, 2006

Members Present: Peter Monte, David Markolf, Chris Behn, Eric Brattstrom and Lenord Robinson.

Others Present: Carol Thompson, Anna Whiteside, Shelia Getzinger, Neil Johnson, Joan Langsam, Ted Joslin, Miron Malboeuf and Ruth Robbins.

Agenda:

Call the meeting to order 7:00 pm

- 1- Applications **2006-1-SD**, 2-lot (Minor) Subdivision. **Carol Thompson** seeks approval to subdivide and existing 2.4 ± acres, parcel id # 005001-800 into two lots, 1.1 ± acres and 1.3 ± acre parcels, located 72 Middle Pines Road off the Sugarbush Access Road in the Rural Residential District. Application requires review under *Article 6, (§6.3) Preliminary Plan Review, Article 7, Subdivision Standards*
- 2- Application **2006-01-PRD Amendment** to, 2003-03-PRD as Amended, **The Maples**, 18 Residential Condominium units, a previously permitted Planned Residential Development, located at 64 Golf Course Road/Sugarbush Access Road in the Vacation Residential District. Applicant, **F & J INC**, seeks permission to amend foot print of building *D, Unit number 5*, for an additional one story structure, 12' wide and 14' long and with decks measuring 12'Wide and 14' long on the South West Side and 6' wide and 24' long on the North West side. This structure with decks is attached to Unit 5 in the place of a permitted deck. This project requires review under *Article 6, Subdivision Review and Article 7, Subdivision Standards and Article 8*
- 3- *Appeal of Zoning Permit 2005-93-ZP*, The applicant (**Buckley**) seeks to appeal the Zoning Administrators finding that the Structure be located one hundred feet from the top of the stream bank.... This project requires review under *Article 9, Section 9.5 Appeals, of the Warren Land Use & Development Regulation*
- 4- Application 2006-01-CU, in the event of denial of appeal of 2005-93-ZP, Applicant seeks approval for relief from stream set back This project requires review under General Provisions *Article 3, § 3.13(B), Surface Water Protection and Article 5, Development Review, of the Warren Land Use & Development Reg*
- 5- Other Business:
 - a. Review and approve Minutes from December 14th, 2005

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

- 1- Application # **2006-1-SD**, 2-lot (Minor) Subdivision submitted by **Carol Thompson**.

Ms. Thompson explained the DRB that her intention was to subdivide her 2.4+/- acre parcel into two lots – one with her existing house and detached garage, and the other for a proposed new home that was smaller and more energy efficient than her current home which she would then sell. This would create a lot of approx 1.1 acre (Lot 11/7B) and one that was 1.3 acre (Lot 7A). A wastewater system had been designed for the proposed Lot 7B and that the properties were accessed by a private road.

Mr. Malboeuf brought up that he had been asked by the Select Board to mention that with the Town's purchase of the adjoining Aldenborgh/Roe parcel that they were interested in a

TOWN OF WARREN, VT

Received for Record Jan 17 20 06
at 11:30 o'clock AM and Received in

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Claire E. Feeler
assistant

TOWN CLERK

potential development road as per § 7.7 (F) which calls for the arrangement of roads to be coordinated with adjoining properties for future development. Mr. Markolf asked the applicant if she was aware of this prospect, and she said yes, though she was shocked about it, and that she had heard several of her neighbors were not happy about it. Attorney Getzinger, who was in the audience, stated that her feeling was that Ms. Thompson did not have the authority to grant access via the private road to an additional parcel. Mr. Monte asked if in putting aside any overburdening that would result, was there a practical route that could be utilized to accomplish what the Select Board was requesting. Ms. Thompson said that conceivably there probably was.

Mr. Malboeuf also commented that the Town's plan as to density (2 to 4 units) and the character of the neighborhood was a good match for the location. Mr. Robinson said he wanted to make sure any and all options had been investigated. Mr. Behn asked how the Board could even consider this with so many other parties needed to be involved (the owners of the current ROW). Mr. Monte stated that he believed the Board had the power to impose a condition that would reserve a ROW for if and when the Town moved forward. The Town would then at that point have to do whatever they deemed necessary to make the ROW happen. Mr. Behn then asked if access from the Christmas Tree Inn property might not be a better option. Mr. Monte pointed out that Ms. Thompson was here with an application, not the Inn. Mr. Monte also added that he thought the use of § 7.7 (F) was not appropriate in this circumstance – that it's intended use would have been imposed when the Lower Pines development was originally developed. Mr. Behn said that if the Affordable Housing group wanted this then they should be at the meeting. Mr. Monte agreed, but said that if the Board was to pursue this that *a site visit should be held and that a representative of the Affordable Housing Committee should be able to show the Board why this makes the most sense.*

MOTION by Mr. Monte that the Board defers any conversation about reserving a right-of-way until after a site visit and a presentation by the Affordable Housing Committee. **SECOND** by Mr. Markolf. **VOTE:** all in favor, the motion passed.

Mr. Monte then suggested that the Board move forward with the consideration of the 2-lot subdivision request.

MOTION by Mr. Monte that the Board find the application complete and classify it as a Minor Subdivision. **SECOND** by Mr. Brattstrom. **VOTE:** all in favor, the motion passed.

Mr. Monte then asked the Board members if they had any questions regarding the site plan. He noted that the proposed building envelope appeared to conform to the town setback requirements. Mr. Markolf asked if there was a road maintenance agreement. Ms. Thompson replied that there was not, that they just fixed the road when it needed it. She went on to say that it was a pretty "loose" arrangement, with the full time residents usually paying for the bulk of the costs. Mr. Markolf asked the Board how they felt about creating a new lot on a private road without the standard road maintenance agreement. Mr. Monte said that they really couldn't impose a condition of an agreement after the fact. Conversation amongst those at the table indicated that the road historically had been in good repair and that since it was a level road didn't pose any major problems.

Mr. Markolf then asked if Mr. Monte planned on taking the application as far as they could go this evening. He replied yes but asked what the other Board members felt. Both Mr. Markolf and Mr. Behn felt they should hold off pending the site visit and information from the Affordable Housing Committee. Mr. Monte then proposed that they look at this evenings review as a "Sketch Plan" review and then continue the meeting until the next scheduled meeting. Mr. Monte added that when the final map was presented it should exclude some of the historical boundary lines that were currently shown to alleviate any confusion.

Mr. Monte suggested that the Board schedule a time for the site visit subject to the confirmation of the Town that they wanted to pursue the reservation of a ROW. It was agreed upon by the members that a site visit would be conducted on Wednesday morning January 18th at 8:00 am with a representative of the Affordable Housing Committee and/or Select Board unless the Town indicates they do not want to pursue a ROW.

MOTION by Mr. Monte that they recess this hearing until Wednesday January 18th at 7 pm.
SECOND by Mr. Markolf. **VOTE:** all in favor, the motion passed.

2- Application **2006-01-PRD Amendment** to, 2003-03-PRD as Amended, *The Maples*

Mr. Malboeuf explained to the Board that this was a minor amendment to a previously approved building footprint that though it meets the setback requirements he felt he shouldn't approve on his own, thus it was warned and brought before the Board. He went on to describe that Mr. Langsam had enclosed his deck area to create a year-round living space with a foundation and then put a deck onto that.

Mr. Behn asked if this would open the door for the other owners in the complex to want to do the same thing. Mr. Malboeuf replied that he too had asked that question. He was told by Mr. Langsam, who is also the developer of the complex that this option would not be made available to the other owners. Mr. Behn continued and asked Mr. Malboeuf what would happen when "Mr. Smith" wanted to enclose his deck area? Mr. Malboeuf replied that under the current ordinance every request would have to come back to the Board for approval. Mrs. Langsam added that anyone seeking to do such would also have to get approval from the complex association Board of Directors as per their covenants and bylaws. Mr. Malboeuf stressed that it was his opinion that people would want the option. The solution he felt was if with changes to the ordinance underway, that a provision was allowed for the Zoning Administrator to be able to authorize minor amendments with a 15 day notice to all abutters, and Board involvement only if someone objected to the requested change.

MOTION by Mr. Monte that the Board approves the application for Unit D5 allowing for the addition subject to the new space not being utilized as a bedroom. **SECOND** by Mr. Behn. **DISCUSSION:** Mr. Markolf asked if abutters had been notified, the reply was yes. He also asked if they were approving the deck as well as the addition that replaced the original deck. The answer was also yes. **VOTE:** all in favor, the motion passed.

3- *Appeal* of Zoning Permit **2005-93-ZP**, The applicant (**Buckley**) seeks to appeal the Zoning Administrators finding that the Structure be located one hundred feet from the top of the stream bank

Mr. Malboeuf explained that this was a building permit application that seemed pretty straightforward. He made two site visits and due to the severe drop-off of the riverbank, determined that the "top" of the bank was also the "edge" of the river. As such, and being extra cautious, he conditioned the permit to restrict the dwelling to be no closer than 100 feet from the top of the bank. Section 3.13 (B) states "*no building or structure is allowed within 100 feet of any stream or river without approval of the Development Review Board in accordance with Article 5*". Section 3.13 (A) also notes "*a vegetated buffer strip shall be maintained for a minimum of 50 feet from all lakes or ponds with a surface area greater than one acre, wetlands, streams and rivers. The 50 foot buffer strip shall be measured from the top of the stream bank.*" Mr. Malboeuf said that the applicant's attorney, Mrs. Getzinger disagreed with Mr. Malboeuf's condition and thus the appeal to the DRB.

Mrs. Getzinger pointed out to the Board on the map produced by McCain Engineering that the applicant had satisfied the 50-foot setback under § 3.13 (A) and the 100-foot setback

under § 3.13 (B). Mr. Malboeuf stated that the “top of bank” appeared closer to the stream in person than it is depicted on McCain’s drawing. Mr. Monte asked Mrs. Getzinger if she had seen the site. She said she had not. Ms. Whiteside was also in attendance on behalf of the applicant and said she had been to the site. Mr. Monte asked her if the map seemed to be an accurate depiction. Ms. Whiteside said she had been to the site but that she took McCain’s measurements to be accurate.

Mrs. Getzinger emphasized that the plan satisfied both provisions. Mr. Monte asked if the line on the map for the stream was the edge of the stream or the center of the stream. Mrs. Getzinger said she believed it to be the center of the stream. Mr. Monte asked how wide the stream was. Mr. Malboeuf replied that the stream was subject to seasonal flows and that upon inspection there was basically a gully there with a small stream. He went on to say that his intention in conditioning from the top of the stream bank was in the event the stream waters ran high, thus the edge of the actual stream would also be closer. He was skeptical of the map and wanted to protect the stream. Mrs. Getzinger stated that unfortunately the way the permit was worded precluded the applicant from being able to build.

Mr. Markolf said that based on the scale of the map, it didn’t appear as if the house did meet the 100-foot setback from the stream. Mrs. Getzinger said that if that were truly the case, then could they move forward with a request for a variance. Mrs. Getzinger also added that she had a letter from McCain certifying that the house site was not located in a floodway or floodplain and thus did not interfere with the ability for the stream to carry floodwaters. Mr. Monte said that the Board usually conducted a site visit prior to granting variance requests.

Mr. Behn noted that not only was the house site in question, but that it appeared that the septic system was encroaching on the 50 foot buffer area. Mrs. Getzinger pointed out to the Board that this was actually the combination of three parcels with septic capacity and a right to build. She went on to say that she felt it was reasonable to assume that the engineer located the septic in the best location for the property. Mr. Monte stated that at this point the house location appears to be a non-issue, but the septic location is a problem as it is shown on the site plan. Mr. Monte went on to say that until they knew whether or not the septic system could be moved they could not consider a variance. Ms. Whiteside emphasized that this was the best possible design that McCain had come up with and that it involved a long time of effort and coordination of the three property owners. Mr. Monte added that when considering a variance the Board is required to research the situation in order to make sure they are granting the minimum variance possible.

Ms. Whiteside asked if a letter from McCain stating this was the best location would be acceptable. Mr. Monte said ideally the Board would want McCain to come and talk with them to explain what was and wasn’t possible. Mr. Markolf said that the septic encroached into the 50-foot buffer zone by 20 feet, and that he couldn’t see why the system couldn’t be shifted 20 feet. Mr. Monte stressed that the Board couldn’t assume that this was the only location that the septic could be located.

Ms. Whiteside asked if the Board had a preference if they had to grant a variance for either the house being too close to the stream or the septic being too close. Mr. Monte replied that he didn’t see that as the choice before them. All that needs to be addressed is the relocation of a small portion of the leach field. He went on to say that it had to be demonstrated that anything located in the 50-foot buffer was the least amount of encroachment possible. Currently, as depicted on the site plan, it does not appear as if the 100-foot setback is an issue, where the plan doesn’t comply with the 50-foot setback, stated Mr. Monte. Mrs. Getzinger asked where they were making the 100-foot measurement. Mr. Monte said they were looking at it as the “nearest edge of the stream”.

MOTION by Mr. Monte that the Board grants the appeal to a limited extent. The limited extent is that the permit should read that there will be no structure erected within 100 feet of the near edge of Wheeler Brook, as shown by the high water mark; and that there will be no development, excavation, landfill or grading within 50 feet of the top of the bank as required in §3.13 (A). It is also noted that the present location of the leach field as shown on the site plan is within the 50-foot buffer zone and does not comply. It is also not clear as to the compliance of other improvements to the property as the "edge of stream" is not clearly noted. **SECOND** by Mr. Behn, with discussion. **DISCUSSION:** Mr. Markolf stated that he didn't know why they were issuing an approval with such wide-open contingencies. He felt it would be better to wait until they had a revised analysis from McCain as to what could and couldn't be done. Mr. Behn added an amendment that called for: a revised site plan that addressed the aforementioned standards in Mr. Monte's original motion as well as the "edge of stream" being clearly noted, to be submitted to the Zoning Administrator for review and approval. It is also agreed that this hearing will be continued until January 18th at 7:00pm in the event further consideration is necessary. **VOTE:** YEA: Mr. Monte, Mr. Behn, Mr. Brattstrom and Mr. Robinson. NAY: Mr. Markolf. The motion passed four to one.

4- Other Business

The Board reviewed and signed the minutes of December 14, 2005 and signed the revised mylar for application #2006-01-PRD (The Maples). Mr. Behn informed the staff that he would not be available for the January 18th meeting.

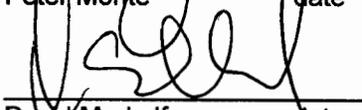
The meeting adjourned 1t 9:03pm.

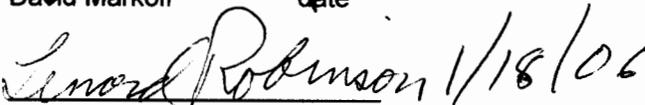
Respectfully submitted,

Ruth V. Robbins
DRB/PC Assistant

Development Review Board

 1/19/06
Peter Monte date

 1/18/06
David Markolf date

 1/18/06
Lenord Robinson date

Eric Brattstrom date

Chris Behn date