

**Town of Hinesburg
Development Review Board
May 2, 2017**

Approved May 16, 2017

Members Present: Greg Waples, Dick Jordan, Dennis Place, Ted Bloomhardt, Andy Greenberg (Alternate) Jonathan Slason (Alternate), Sarah Murphy arrived at 7:40 pm

Members Absent: John Lyman, Rolf Kielman

Representing Applications: David Newton, Kathleen Newton

Public Present: None.

Also Present: Dawn Morgan (Recording Secretary), Mitchel Cypes (DRB Coordinator & Zoning Administrator)

Dennis P. chaired the meeting, which was called to order at 7:32 pm.

Agenda Changes: None.

Public Comments for Non-Agenda Items: None.

Minutes of 04/04/17: Dennis P. made a **motion to approve the 04/04/17 minutes as amended.** Greg W. **seconded the motion.** The Board voted **5-0.** Ted B. abstained.

David & Kathleen Newton: Variance and Conditional Use Review for a cottage industry on a 0.57-acre property located at 9303 VT Rte 116 (east side of VT Rte 116 south of the intersection with Place Road) in the Rural Residential 1 Zoning District. The applicants are proposing to expand the existing building by adding a one-story 12' x 55' shed to create additional interior workspace. The business had previously been categorized as a contractor's yard. Hearing continued from 4/4/17.

Dennis P. recused himself from the conversation. Ted B. and Andy G. both said they had reviewed the materials as well as the 4/4/7 minutes and are prepared to participate in tonight's meeting.

There was some discussion about the lawyer's opinion and Mitchel C. clarified that in 1997 the lot size was .33 acres, which resulted in a previously approved 2.67-acre variance from the 3-acre property size requirement for a contractor's yard. Mitchel C. went on to say that he was able to locate the motion for a property transfer in the January 14, 2002 Select Board meeting minutes, which confirms the transfer of the old Place Rd. West to Leon Place, increasing the lot size from .33 acres to .57 acres.

Mitchel C. said that the property around the Newton's business property is a 3.8-acre residential property which they did not own in 1997, but they do own it now. Dick J. asked if that meant the tax map was incorrect, and Mitchel C. confirmed that it was.

Dick J. commented on the legal opinion that said the 3-acre minimum lot size variance is not transferrable from a contractor's yard use to a cottage industry use. Dick J. said that he agreed that it should not be transferrable, saying that he felt variances needed to be able to stand on their own. He went on to say that, after reviewing the materials and staff comments, he believed a new variance is a possibility. Ted B. noted that the Board needed to vote on the 5 variance criteria, with a majority of the Board agreeing that each one is sufficiently met.

Greg W. explained that he did not believe the variance was legally authorized, but said that he would vote in favor regardless. He said that criterion #2 cannot be met under Supreme Court authority. Greg W. went on to read the criterion aloud and asked Mitchel C. to discuss if he believed it was met.

Mitchel C. said that he believed the criterion was met. He said it would not be possible to increase the size of the property. He went on to say that much of the property has disturbed ground limiting the opportunity for septic systems if the owners wanted to turn it into a residence. Finally, Mitchel C. said that there are prior approvals which encouraged the type of the development they have now.

Greg W. said that, although he was going to rely on those reasons, he did not believe it to be sufficient legal justification. He referenced a legal opinion about Marcotte Appliance saying that if there is an ongoing business there cannot be a variance because it is already developed. Greg W. said that he would still vote in favor because the history of this enterprise predated zoning ordinances, there were other variances approved in the past, and that this application is reducing non-compliance significantly which will result in only one variance instead of the previously approved four or five variances.

There was additional discussion regarding the rarity of variance approval, the legal challenges with this criterion and the general review process.

Dick J. read each lot size variance criteria aloud and the Board voted 6-0 in agreement that all five criteria were met.

Dick J. said that it appears the application meets the criteria for a cottage industry. Jonathan S. noted that, regarding Section 5.2.4, the hours of operation are on weekdays only. Dick J. read aloud each conditional use review point as listed in the Staff report. Dick J. said that all seven criteria were reasonable.

Jonathan S. expressed concern about dual access to the property from Rte 116. He said that he is comfortable with Staff comments that they do not see any major concern with it, given the limited traffic generation of the current and proposed uses.

Sarah M. said that, after driving by, it appears the southern driveway is used quite a bit and Jonathan S. reiterated his suggestion from the previous meeting to block the non-residential portion from truck access (e.g., with a chain). There was additional conversation about ways to mitigate business access through the southern driveway, as well as ways to slightly decrease the impervious surface (e.g., planting additional grass in select areas).

Jonathan S. expressed concern about lack of onsite waste water, suggesting that the use not be transferrable and that a new application should be required for subsequent owners. Ted B. also suggested that it should not be transferrable unless there was a demonstration of adequacy of waste

water. Dick J. and Ted B. discussed the possibility of a permanent arrangement to use the facilities on the other property, or perhaps an easement to use the septic system.

Ted B. noted that there would be one tree replaced and Dick J. said the cedar hedge was still in question. The Applicant said that a stone wall has been constructed since the last meeting. Dick J. inquired about stormwater drainage, and the Applicants showed on screen the locations of catch basins as well as the location on the opposite side of Rte 116 where the water drains.

Dick J. opened the hearing to the public. There were no public comments and Dick J. closed the public hearing.

Ted B. made a **motion to direct Staff to draft conditions of approval for the variance, conditional use and site plan for the cottage industry.** Greg W. **seconded the motion.** The Board **voted 6-0.**

Dennis P. returned to the Board.

News/Announcements/Correspondence

Mitchel C. reminded the Board about a planning and zoning workshop on June 14th in Fairlee.

Mitchel C. said that there are several applications in process to be reviewed over the next few meetings, providing a broad overview of each.

Mitchel C. said that iPad training will be scheduled for some time in the next few meetings.

Mitchel C. said that June 20th is tentatively scheduled as a Board field trip meeting and that the first meeting in July falls on July 4th. There was some discussion about whether to cancel or reschedule the meeting and the Board agreed to wait to see how busy the schedule looked in the weeks leading up to the 4th.

The meeting adjourned at 8:24 pm.

Respectfully submitted,
Dawn Morgan, Recording Secretary