

Town of Hinesburg
Development Review Board
April 17, 2018
Draft

Members Present: Greg Waples, John Lyman, Ted Bloomhardt, Dennis Place, Dick Jordan, Sarah Murphy, Jonathan Slason (Alternate)

Members Absent: Rolf Kielman, Andy Greenberg (Alternate)

Applicants: Paul Lesure, David White, Scott Jaunich, Paul O'Leary, Tyler Sterling

Public Present: James Dumont, Stephen Revell, Andres Torizzo, Anthony Stout, Robert Hyams, John Kiedaisch, Gill Coates, Karl Novak, Carl Bohlen, Johanna White, Steven Giroux, Barry Russell, Bryce Busier, M. Laurie Barnett Sr., EM Allen, Dena Monahan, Jeff French, Stevie Spencer, Maggie Gordon, Mary Beth Bowman, Kenneth Brown, Carol Jenkins, Jean Kiedaisch, Terry Henning, Tom Sopchak, Debora Goudreau, Bill Marks, Meg Handler, Catherine Goldsmith, Bob Thiefels, Merrily Lovell, George Dameron, Deidre Erb, Peter Erb, Martha Illick, Rolf Kielman

Also Present: Alex Weinhagen (Director of Planning & Zoning), Mitchel Cypes (Development Review Coordinator), Dawn Morgan (Recording Secretary)

Dennis P. called the meeting to order at 7:32 pm.

Agenda Changes: Mitchel C. added a brief discussion regarding a minor site amendment under Other Business.

Review minutes of the 4/3/18 meeting: Ted B. made a motion to approve the 4/3/18 meeting minutes as written. John L. seconded the motion. The Board voted 6-0, Dick J. abstained.

Green Mountain Solar: Sign review for a proposed 43.7 square foot wall sign for Unit 10 in Firehouse (Aubuchon) Plaza located at 22 Commerce Street in the Commercial Zoning District.

Paul Lesure (the Applicant) said that his company recently leased commercial space in the Firehouse Plaza. He said he was seeking approval to install a 43.7 square foot illuminated sign above the entrance. The proposed sign will feature the company's logo, is 61-3/8" by 102-1/4" in size and will be printed on a metal background with a wood frame.

Greg W. asked how the sign would be illuminated and Paul L. said he planned to utilize the 2 existing halogen flood lights that were used by the previous tenant. He said that the fixtures are currently pointing up, but they would be adjusted to minimize light spillage beyond the sign's location. Paul L. went on to say that the lights were operated by a switch located inside the building and would be turned off outside business hours, which he said would be 8:00 am to 6:00 pm.

Dick J. said that having the sign lit only during business hours lessened his concern but noted that upward facing lighting runs counter to current zoning regulations. Because of this, he said he was

hesitant to approve the application but acknowledged that the other tenants in the building used similar lighting.

Jonathan S. asked if it would be possible to extend the conduit to the top of the sign in order to reorient the lighting downward while still utilizing the existing hardware. Paul L. said that the change would be expensive and as a small business he was trying to minimize costs.

Dennis P. opened the discussion to the public. There were no public comments.

Ted B. **moved to approve the draft as written.** Greg W. **seconded the motion.** The Board voted **6-1.** Dick J. voted no.

Martin's Foods of South Burlington, Inc. (Hannaford): Subdivision Revision of the Commerce Park subdivision approval to modify the building envelope and site plan review for a proposed 36,000 square foot grocery store for a 4.8-acre undeveloped parcel (lot#15) located on the south side of Commerce Street in the Commercial Zoning District.

Greg W. said that it is important to have a continuous Board throughout the proceedings. He requested that if Board members have to miss a meeting they plan to review the materials so they are prepared for the next meeting.

Alex W. began the hearing with a broad overview of the history of the application. He said that the initial application was submitted in 2010 and was reviewed at multiple meetings. The Board reached a decision in 2012, which was then appealed in court. Among other decisions, the Vermont Supreme Court (VSC) ruled that the Applicant must return to the DRB for site plan approval and to seek approval for revision of the 1986 subdivision. He said these are the topics being discussed at this meeting.

Alex W. went on to say that there is disagreement amongst the parties as to how to proceed with the site plan application. The Town requested a legal opinion from the Town's lawyer, who determined that the site plan application is to be reviewed under the current zoning regulations (effective 10/3/2016) and not the 2009 zoning regulations. Additionally, the opinion initially stated that the DRB should only review the site plan application items not addressed in the VSC decision, or that have changed. Specifically, the DRB should only focus on stormwater treatment and traffic control.

However, Alex W. said that the Town's lawyer gave a revised opinion a week ago recommending that the DRB apply all of the site plan review standards to the application, rather than limiting the review to just stormwater and traffic issues. As a result of the timing of the revised opinion, the published staff report was not comprehensive. Therefore, this meeting will be focused on the subdivision revision request and stormwater issues. Other issues will be scheduled for future meetings.

Alex W. acknowledged that there was disagreement between attorneys on which set of regulations and standards to use, and Dennis P. opened the discussion for each lawyer to summarize their position on how to proceed.

James Dumont (Law Offices of James A. Dumont, Esq., P.C.), representing private citizens and Responsible Growth Hinesburg (RGH), provided the Board with a petition for their review. James D. said that he has submitted his position to the Board and said that the subdivision regulations explicitly state

that the current version of the State stormwater rules have to be complied with. He said that this project cannot possibly meet the current stormwater regulations, and he had three experts to explain why.

David White (White and Burk Real Estate Investment Advisors) said that he is representing the Applicant, but is not an attorney. He said that he had provided to the Board with a memorandum from Chris Roy (Downs Rachlin Martin PLLC and the attorney of record during the appeals process). He said the memorandum states the Applicant's position, based on case law, that the 2009 regulations are those that apply. He said that the Applicant is vested in the 2009 regulations, and that the open issues are those which the VSC did not rule (in addition to the subdivision revision application).

There was discussion about the submission of the Applicant's memorandum (that was received today) and the Board consequently had not had an opportunity to review. Alex W. said that the timing of the memorandum was likely a result of the Town's attorney revising his opinion a week ago, and David W. confirmed.

Alex W. suggested that the Board thank the representation for their legal reasoning and move forward with hearing the application for subdivision revision and site plan review. There was additional discussion about how to proceed with hearing the full application and the Board agreed to discuss the matter at their May 1st, 2018 meeting, possibly meeting with the Town's attorney in closed session.

Dennis P. opened the subdivision revision application hearing. David W. said that the VSC ruled the original setback lines for the commerce park subdivision (which call for a 75-foot setback from the canal) were enforceable. Greg W. asked why the subject of these setbacks had not come up during the original application hearings, and David W. said that it had not appeared in the permit conditions. Greg W. expressed surprise that none of the Applicant's attorneys or engineers noticed the setback issue, and David W. replied that with all of the other items to address this would have been a fairly minor issue.

David W. showed the proposed revised subdivision plan on screen and described the project setback lines. He said that the Applicant's request is to revise the subdivision to reflect current zoning regulations which call for a 25-foot setback from the canal. Ted B. noted that other buildings in the subdivision have been built without a subdivision revision, and general discussion followed about setbacks in Commerce Park as well as the proposed setbacks for the project.

Tony Stout (Senior Planner at Lakeside Environmental Group, representing citizens and RGH), said that he has been involved with the project for several years. He said that he looked at various drawings and created an orthophoto with the original plat lines drawn in. He acknowledged that his drawing was not exact, but that to his eye all of the buildings appear to be within the original subdivision stream and canal setback lines, although some of the parking lots are not. He said that, as a planner, it makes sense to him that building envelopes would be represented on a plat and would be adhered to even though zoning regulations may change in the future. He said that often times planners are looking for consistency within a development in terms of uniform building setbacks. Additionally, he said that his understanding is that the original intent of the 75-foot setback from the canal and Patrick Brook wasn't just for building setbacks but was also clearly intended as a stream buffer. Tony S., upon request, clarified that he was only reviewing and contesting the proposed setback from the canal and not the changes to the other property setbacks.

Dennis P. opened the hearing to the public. Jeff French said that he is interested in design review and the overall look and feel of the town. He said that all of the buildings in this area are within 20,000 square feet in size, and he felt it would be unrealistic to have a much larger building on lot 15.

John Kiedaisch said that his understanding was that the original 75-foot buffer setback was determined by a different permitting authority. He questioned whether the Town had the ability to modify the original subdivision setbacks if they were not the governing body to initially legally establish the setbacks. Alex W. said that the setbacks and buffers are established by the Town and can therefore be revised.

Peter Erb said that when a subdivision is permitted, there is a presumption on the part of neighbors that it will remain as permitted. He said that does not mean the subdivision cannot be revised but noted that in the past the Board has been quite sensitive that neighbors would not be surprised by changes. He encouraged the Board to ensure that was the case in this application as well.

Catherine Goldsmith said that when the Commerce Park subdivision was originally approved by the Planning Commission and DRB, they looked at the entire area. She said the building envelopes and setbacks were set at the time as a package. She said she felt like it was part of an organic decision that shouldn't be changed so many years later.

Kenneth Brown said that he sat on the Select Board when zoning for the village was created. He said that they decided that 20,000 square feet was the maximum that they wanted buildings to be, and they noted at the time that there were no buildings in Commerce Park larger than that size. He said that the Board discussed incorporating lot 15 into the village, but they felt they did not need to because it was a wetland and would not be able to hold a bigger building than 20,000 square feet. He said he believes the Board made a mistake in not incorporating the lot into the village.

Dennis P. opened the site plan hearing.

David W. showed the site plan on screen. He said that this plan is almost identical to what was approved by the Board in 2012. He described the project location in relation to nearby roads, neighboring buildings, Patrick Brook and the canal. He described proposed sidewalks, the design of the building and the canopy that is proposed to wrap around 3 sides of the building. He said there will be 128 parking spaces along the north and east sides of the building, with landscaping and plantings around the lot and along the canal. He said that the Applicant has offered an easement to the Town for slightly under 1 acre to be used as a public park and farmers market. He went on to describe changes to the stormwater plan that were made since the 2012 approval.

Paul O'Leary (O'Leary – Burk Civil Associates PLC, representing the Applicant) described the stormwater plan at length. He said that it includes a catch basin, isolator rows a grass swale, and finally an increase in culvert size on Commerce Street from 12' to 15'. He said that the plan goes beyond the minimum requirements and they have added enough storage to hold a 25-year storm, when only a 10-year storm is required by the State. As such, he believes that the Applicant has agreed to do more than just the minimum required.

Jonathan S. noted that the State stormwater management manual was revised in 2017, but the project was designed to comply with the previous version. He asked what elements of the plan are not compliant with the 2017 regulations. Paul O. said that they have not examined the 2017 regulations in

detail point by point, and that to really prepare they would almost need to create a completely new application. He went on to discuss the main elements of the manual, saying that those components were basically the same in both versions.

Stephen Revell (Hydrogeologist, representing citizens and RGH) spoke at length about the overall existing water system in the area which includes precipitation, Patrick Brook and the canal, groundwater, bedrock and soil composition. He said that, while the project's stormwater chambers and drains are proposed outside the 75-foot building setback from the canal, their impact will extend well into that setback area, which was originally intended to protect the canal and stream. He said that maintaining the 75-foot setback and requiring that the groundwater table within the wetland not be altered by underground drains would maintain the groundwater filtration and groundwater storage for the continued benefit of Patrick Brook.

Laurie Barnett (a member of the public) said that she lives on the canal. She said that because the canal is man-controlled, the canal sometimes has water and sometimes does not. Steven R. said that he is aware of that and said that there is also stream flow in the canal that will seep into lot 15. He also said that there is a groundwater flow underneath the canal from upstream.

Andres Torizzo (Principal, Hydrologist at Watershed Consulting Associates, LLC, representing citizens and RGH) said that he has been looking at this project for a number of years. He said that the only water quality component of the Applicant's plan is the grass channel. He said that the tanks and chambers of the system are not approved as water quality devices under either the 2017 manual or the previous version. In addition, the grass channel, as detailed, is no longer an approved water quality system because the State has found them to not be effective. He said that in order for the grass feature to be approved, it would need a filtration component such as a sand filter. He went on to say that a filter is only possible if there is no groundwater at the surface, but this property has groundwater at the surface there is no separation and no opportunity for filtration. Additional discussion followed about predictive modeling and volume flow.

Bob Theifels (a member of the public) asked if the impact of the project on water flow could eventually result in a shift in the positioning of the underground tanks or the structure of the building. Steve R. said that he could not speak to the technical relationship between the ongoing stability of the tanks, chambers or building structure.

Dennis P. **made a motion to continue the subdivision revision hearing and the site plan review hearing to the May 15th meeting.** Ted B. **seconded the motion.** The Board voted **7-0.**

Other business:

Mitchel C. said that the Zoning Administrator approved a minor site plan amendment for Frost Beer works. He wanted to make sure that the members had received it and if there were any concerns. No concerns raised.

Deliberations:

Dick J. and Jonathan S. recused themselves from the deliberations as they were not present for the hearings.

Jade Jenny & Danielle Horan: Subdivision Amendment for a 31.08-acre undeveloped parcel located on O'Neil Road in the Agricultural Zoning District. The applicants are proposing a new location for the building envelope and driveway. Hearing closed on 4/3/18.

Ted B. suggested a grammatical change.

Greg W. moved to approve the draft as amended. Ted B. seconded the motion. The Board voted 5-0.

Prindle Baldwin LLC, c/o Andrea Haulenbeek: Sketch Plan review for a proposed 2-lot subdivision of a 162-acre property located on the east side of Baldwin Road in the Agricultural Zoning District. The applicant is proposing to create a 2.5+ acre lot for a single-family dwelling. Hearing closed on 4/3/18.

Ted B. moved to approve the draft as written. Greg W. seconded the motion. The Board voted 5-0.

Additional Discussion regarding the Martin's Foods application:

Alex W. said that the VSC reversed the Board's original application approval, which is why the application is now back before the Board. He went on to say that the VSC remanded the Act 250 approval to the environmental division. He said that trial was supposed to take place at the end of May. However, yesterday the Court granted the Applicant's motion to postpone the trial.

Alex W. said that the decision to postpone does not have much of an impact on the hearing, but he wanted the Board to know that all of the parties agreed that any decision the Board makes will be appealed to the environmental division. The parties have agreed that it would be in everyone's best interest to have a consolidated appeal of all of the issues in question.

Ted B. said that he would like an opinion from the attorney at Downs Rachlin Martin, because the amount of review the Board has to do for a new application is significantly more now that there are new people on the Board. Alex W. said that they could plan for a closed session to discuss the matter at their May 1st meeting. General discussion about various aspects of the application followed.

The meeting adjourned at 10:23 pm

Respectfully submitted,
Dawn Morgan, Recording Secretary