

**TOWN OF HINESBURG
DEVELOPMENT REVIEW BOARD
FINDINGS OF FACT, CONCLUSIONS & ORDER**

**For Hinesburg Center LLC
Subdivision Revision Approval
Parcel Number 08-01-06.322, 323, 324, 326, 327 and 329.**

This matter came before the Hinesburg Development Review Board (DRB) on an application of Hinesburg Center LLC, hereafter referred to as the Applicant, to revise the wording of the final plat approval for a 12-lot subdivision and Planned Unit Development (PUD) in the Village and Agricultural Zoning Districts, lot Tax Map Number 08-01-06.320 located on the west side of Route 116 and the north side of Farmall Drive. The DRB held a public hearing on November 5, 2013, November 19, 2013, and December 17, 2013. Brett Grabowski, representing the Applicant, was in attendance at the meetings.

Based on the above-mentioned public hearing and the documents contained in the “document” file for this proposal, the DRB enters the following Findings of Fact, Conclusions and Order.

FINDINGS OF FACT

- 1) The Applicant is requesting a revision to a previously approved 12-lot subdivision and PUD in the Village and Agricultural Zoning Districts, (Tax Map Number 08-01-06.320) located on the west side of Route 116 and the north side of Farmall Drive. The Applicant is requesting after-the-fact revisions to remedy discrepancies between what was approved and what was actually built. The original approval was granted to David Lyman and Milot Real Estate on September 7, 2010 and subsequently revised on May 15, 2012. This mixed use subdivision and PUD is now owned solely by Hinesburg Center LLC. The September 7, 2010 subdivision approval included setback waivers which were granted under the PUD regulations. Setback waivers were granted for structures on most lots, including lot 40 (08-01-06.321, Kinney Drugs), 41 (08-01-06.322, Bristol Bakery), 44/45/46 (now a single lot 08-01-06.323, three residential structures), 47 (08-01-06.324, mixed use structure), 42, 43 and 48. Lot layout was partially reconfigured, and some of these waivers were revised in a subsequent May 15, 2012 decision. Structures have been built on lots 40, 41, 44/45/46, and 47. No structures have been built yet on lots 42, 43, 48.
- 2) The structures built on three lots (41, 44/45/46, 47) were not built per the approved plans and setback waivers. The requested revisions to the setback waivers would, in effect, approve the as-built locations of these structures. The Applicant’s engineer (Kevin Brzys of Ruggiano Engineering) submitted a letter dated 11/11/2013 outlining the as-built discrepancies from the approved plans, which include items beyond purely building setback issues. Discussion at the hearings revised and illuminated several of these items. Items a-i below relate to discrepancies noted in the aforementioned letter. Items j-n below are further discrepancies that were discovered/discussed during the review process.
 - a) Another sidewalk/walkway added to south entrance of the bakery on lot 41.
 - b) Four additional walkways added from Farmall Drive to the three buildings on lot 44/45/46. The letter does not accurately explain why individual walkways were added for

- each unit on lot 44/45/46. These additional walkways were added for resident convenience rather than handicap access.
- c) Street pole light locations along Farmall Drive modified. It was ascertained at the hearing that the outdoor street pole lights were in fact installed per the approved lighting plan.
 - d) Changes to the north building façade. It was determined at the hearing that overhangs over the entrances and mechanical rooms on the north side of the three buildings on lot 44/45/46 were in fact per the approved plans, per building elevations submitted as part of the 8/21/2012 site plan approval.
 - e) The three buildings on lot 44/45/46 were moved north significantly so that the front of the covered porch rather than the main building face would align with the front of the buildings on lots 41 and 47. The three buildings on the lot 44/45/46 were also built substantially closer together than approved (5' separation instead of approximately 8-9' separation). The Board disagrees with the Applicant's contention that the spacing between these buildings was approved at only 5'-6". See Finding of Fact #7 for further discussion of this issue.
 - f) Additional landscaping was added to lots 44/45/46 and 47. However, other revisions to the quantity, location and distribution of landscaping elements were also made due to the unauthorized relocation of the buildings, installation of the extra walkways, large size of the utility pad within the pocket park, etc.
 - g) The building on lot 41 does not meet the approved rear setback waiver (west lot line). The standard minimum setback is 10'. The approved setback was 2 feet, and as built, the setback is only 5 inches.
 - h) The building on lot 47 does not meet the approved side setback waiver (east lot line). The standard minimum setback is 10'. The approved setback was 2 feet, and as built the setback is only 3 inches.
 - i) The eastern and western buildings on lot 44/45/46 do not meet the approved side setbacks (east and west lot lines). The standard minimum setback is 10'. The approved setback was 4 feet, and as built the setback is only 3.5 feet.
 - j) The north/south dimensions of the pocket park and the adjacent lawn space between the pocket park and the northern face of the buildings on lot 44/45/46 are approximately 10' - 12' less than what the approved plans required.
 - k) The bike rack shown next to the south entrance to the bakery on lot 41 on the approved plans must be relocated because of the additional walkway noted above.
 - l) The utility pad and associated electrical transformers in the northeastern corner of the pocket park are significantly larger than what was represented on approved plans. The size difference is substantial enough that a tree shown on the landscaping plan had to be relocated.
 - m) The stormwater collection system does not appear to be constructed according to the approved plan. Stormwater from the southerly roof lines of the buildings on Farmall Drive discharges to Farmall Drive rather than being collected and directed to the north for capture in the project's stormwater detention pond.
 - n) Exclusive of the mechanical rooms and entrance overhangs on the north side, the three buildings on lot 44/45/46 are two to three feet larger in the north/south dimension than what is shown on the approved Llewellyn-Howley site plan (last revised 4/23/12). In other words, the footprints of these three buildings are larger than what was shown on the approved site plan. Board members repeatedly asked the Applicant if the buildings were

any larger, and the Applicant consistently answered that they were not. See Finding of Fact #10 for further discussion of how this discrepancy was also not made plain when building permit applications for these three structures were submitted to the Zoning Administrator.

- 3) To make up for the reduced size of the original pocket park, the Applicant has submitted a conceptual proposal for a second pocket park on lot 42, accompanied by a plan for the development of lots 43 and 48. As depicted on two plans by T.J. Boyle Associates: L-100, Hinesburg Center Base Plan, dated 12/10/2013; L-101, Hinesburg Center Base Plan – Focus Area, dated 12/11/2013.
- 4) Revisions to the setback waivers will remove the apparent setback conflicts, and collaterally, zoning application modifications. However, a myriad of other site plan discrepancies remain which must be resolved, including a final plan for the second pocket park. The hearing for this application included substantial discussion of those issues; however when the hearing was warned it was not apparent that they existed, and no application for site plan revision was made. This approval is intended to solely address the subdivision issues; however, some of the findings will, out of necessity, discuss site plan issues as well.
- 5) On September 7, 2010 the Hinesburg Development Review Board granted Planned Unit development subdivision approval for the creation of 12 lots on lot tax map number 08-01-06.320 which contained setback waivers for the locations of some of the proposed structures. There were three subsequent subdivision revisions granted to that approval however the only one, granted on May 15, 2012, required plan and plat changes. It approved:
 - a) Consolidation of lots 44, 45, 46 into a single large lot called “44/45/46” (now lot tax map number 8-1-6.323). These three original lots each were planned for a 3-unit multi-family dwelling (i.e., total of nine dwelling units in three buildings). The decision stated: “The plan for the buildings has not changed. The **only** change proposed in this application is the ownership pattern – i.e., one lot instead of three lots, but with the same buildings”.
 - b) The locations for three buildings that were originally proposed on lots 43, 47, 48 were switched. One of the two commercial buildings that were proposed behind the Kinney Drugs was relocated to the corner of Farmall Drive and Kaileys Way. The two residential buildings planned for this corner traded places with the commercial building and were relocated to behind Kinney Drugs. This required changes to the subdivision lot layout. Finding 2(b) of that decision included the following “ Lot 47 will become larger (4’6” wider along Farmall Drive) to accommodate the commercial building on the corner of Farmall Drive and Kaileys Way””.
 - c) The approved increase in the width of lot 47 required corresponding reductions in other lot dimensions.
- 6) No draft survey plat was submitted with the May 15, 2012 application and the approval relied on the submitted site plan by Llewellyn-Howley titled Hinesburg Center Site Plan and last revised 4/23/12. The site plan included revised lot configurations along Farmall Drive. The new lot # 47 was 4’6” wider, the space between lot 47 and the center lots reduced by 1’9” (the common land sidewalk area) and the newly combined lot (44/45/46) to be 2’10”

narrower. The width of the “bakery” lot, # 41, and the common space between it and the center lot remained the same as the original plat.

- 7) The above referenced site plan also had the spacing between the structures of the newly combined lot reduced. There is no evidence in the record that this reduction in the spacing was ever brought to the attention of the DRB, the staff, or the public and it was never discussed. In direct contradiction to the lessened spacing of the site plan a streetscape was also submitted, which *was thoroughly* discussed. It had the spacing of the structures depicted at the original wider spacing before the lot was made smaller. While the consolidation of the center three lots into one technically removed the center lot lines, creating a situation where no side yard setbacks existed in the center of the lot (the yards had been eliminated with the removal of the lot lines) the revised waivers included in this decision remained the same as the 2010 decision, implying that there was a wider spacing between the structures than the new site plan indicated. The approval clearly states in condition #4 that: “All provisions and conditions from the original September 7, 2010 subdivision approval, which have not been **specifically revised**, shall remain in force.”
- 8) A survey plat was filed on September 10, 2012 which complied with order # 1 of the May 15, 2012 approval which required this plat to reflect the revised lot lines above mentioned site plan and it did. It included the reduction in the width of the common sidewalk areas and the larger dimension of the corner lot and a corresponding change in the width dimension of the center lot.
- 9) While numerous site plans have been submitted at various times by the applicant, the August 21, 2012 approval required that the submitted site plan by Llewellyn-Howley titled Hinesburg Center Site Plan marked “DRAFT” and last revised 4/23/12 should be revised to reflect changes in parking on Farmall Drive. It was this submitted site plan that was the basic plan approved by the DRB. Although it included lot size changes, no changes to the structure footprints or locations were on it.
- 10) On December 10, 2012 zoning applications were granted for the three center structures. The applications referred to the “approved plans” and a copy of plans was contained in the application packet. These plans, while certified by the applicant to be the approved plans were not the plans required to be submitted by the DRB in their August 21, 2012 decision. This mis-statement was not noticed by the Zoning Administrator. The structure plans that were submitted were larger (i.e. the structures were deeper north and south) and located approximately six feet further to the north than the approved footprints. No approval for these changes had been granted and the area of adjoining pocket park was significantly reduced because of them.
- 11) On March 13, 2013, the Applicant recorded in the Town Clerk’s office three plans: 1) the “Draft” Hinesburg Center Site Plan by Llewellyn-Howley last revised 4/23/12 (slide 198A); 2) a revised version of this Hinesburg Center Site Plan by Ruggiano Engineering last revised 2/28/13 (slide 198B); 3) the plan for the pocket park titled Hinesburg Village Center Base by T.J. Boyle Associates dated 8/1/2012. The revised site plan by Ruggiano Engineering contained revisions that were not approved by the DRB. Furthermore, this site plan was not

submitted to the Planning and Zoning Office for review, and Planning and Zoning staff did not become aware of it until after the DRB review of the current application began. The revised site plan by Ruggiano Engineering (last revised 2/28/13) is not the approved site plan.

- 12) The structures on lots 41, 44/45/46, 47 are now substantially complete. The structure on lot 41 was granted a certificate of occupancy based on certification from Ruggiano Engineering that the structure was in the approved location when it is not. The rest of the structures have not been granted Certificates of Occupancy because of the setback discrepancies and numerous site plan issues. Some are occupied in violation of the Hinesburg Zoning Regulations. These occupancy violations have been issued by the Zoning Administrator and are being pursued by the Town Attorney and Selectboard.
- 13) Waivers requested by this PUD subdivision plat application are as follows:
 - a) Lot # 41 - lot size is waived to 5760 sq.ft., lot depth to 53 feet in the east-west dimension, front setback to 8 feet from the east, rear setback 5 inches on the west.
 - b) Lot # 42 – lot size 3270 sq.ft., lot frontage 45.3 feet, lot depth 72 feet, side setback south 2', side setback north 4', rear setback east 3'
 - c) Lot # 43 – Lot size 3040 sq.ft., lot frontage 42.2 feet, Lot depth 72 feet, side setback south 5' and north 5'
 - d) Lot # 44/45/46 (a single lot) – side setback 3'6" east and west
 - e) Lot # 47 – Lot size 5200 sq.ft., lot frontage 51'4" south, front setback (to Kaileys Way) 8', side setback 3" east
 - f) Lot # 48 – Lot size 3040 sq.ft., lot frontage 42.2 feet , lot depth 72', side setback south 5'
- 14) The application was received on October 27, 2013. The application included a variety of narratives, as-built plans, and related documents. All of these submissions are contained in the document file (08-01-06.323) in the Hinesburg Planning & Zoning office. This file also contains staff reports and correspondence from other parties that were discussed during the review and are part of the record.
- 15) The hearing was closed on November 19, 2013, but was reopened (with abutters noticed again) by the DRB on December 17, 2013 to allow the Applicant an opportunity to address certain problematic elements identified by the Board during the initial deliberations.
- 16) The following members of the DRB were present for the hearing on November 5, 2013, constituting a quorum: Zoe Wainer, Dennis Place, Kate Myhre, Ted Bloomhardt, Greg Waples, Dick Jordan. The following members of the DRB were present for the hearing on November 19, 2013, constituting a quorum: Zoe Wainer, Dennis Place, Kate Myhre, Ted Bloomhardt, Greg Waples, Dick Jordan, Sarah Murphy. The following members of the DRB were present for the hearing on December 17, 2013, constituting a quorum: Zoe Wainer, Dennis Place, Kate Myhre, Ted Bloomhardt, Greg Waples, Dick Jordan, Sarah Murphy.
- 17) At the December 17, 2013 hearing, the Applicant indicated that he could easily submit a final plan for second pocket park and any associated development on lots 42, 43, 48 within a few months.

CONCLUSIONS

- 1) The reduction in the size of the pocket park and the spacing between the center structures has significantly impacted the Farmall Drive streetscape, the required open space and the configuration of the pocket park of this PUD.
- 2) The Board is extremely disappointed that the Applicant did not follow the approved plans for the project. The Board is especially frustrated that the Applicant admitted to making certain changes (e.g., moving the three buildings on lot 44/45/46 to the north; adding additional walkways on lot 44/45/46) with full knowledge that the resulting construction would not be per the approved plans. Of the many construction discrepancies, these were not innocent mistakes. These changes had a material effect on key elements of the project design, which the Board, community members, and the Applicant spent considerable time and energy designing and discussing as part of the original approvals. With that said, mandating the removal or relocation of the buildings in question is not in the best interest of the Town or the project. The appropriate remedy (beyond obtaining this approval) is to make further modifications to the project to introduce additional green space and landscaping, and reduce the previously approved build out, which is not yet complete.
- 3) The construction of a pocket park equal in size to the loss of the area of the originally-approved pocket park will not create a viable second pocket park. Sufficient space for a complete, viable, second park is necessary to mitigate the annexation of park area due to the applicant's unauthorized relocation and size increase of the structures on lot 44/45/46.
- 4) The Applicant's proposal to create a second pocket park will be part of the remedy. However, the design plans from T.J. Boyle (L100 and L 101) submitted by the applicant for the development of currently vacant lots (42,43,48) have not been accepted by the DRB and should be reviewed as separate issues in future applications. The actual size and configuration of this second pocket park is yet to be determined, as is the Applicant's ability to place any additional buildings on these undeveloped lots.
- 5) The four additional walkways constructed from the buildings on lot 44/45/46 to the Farmall Drive sidewalk are not necessary to facilitate convenient and safe access to the dwelling units. The original plans showing one walkway to Farmall Drive per structure reflects what was approved and what is adequate. The additional walkways add excessive concrete and impervious surface, which negatively impacts the Farmall Drive streetscape and stormwater runoff. These unauthorized and unnecessary walkways should be removed, and the Board encourages the Zoning Administrator to ensure this happens (including soil stabilization/repair, seeding/planting, and mulching) by June 1, 2014.
- 6) While it is the intention of this decision to approve setback revisions to the original waivers to reflect, and accept, the as-built locations of the structures, it is not intended to ratify the site plan discrepancies detailed in Finding of Fact 2 – a, b, f, j, k, l, m, n. Any Certificate of Occupancy that is issued should be conditional and insure that the approved plans will be in place.

- 7) Given the various plans submitted to date (some not in compliance with approvals), a revised site plan will be necessary to reflect only what the DRB has approved to date.

ORDER

Based on the Findings of Fact and Conclusions set forth above, the Hinesburg DRB approves the proposed revisions to the Hinesburg Center LLC subdivision subject to the conditions listed below.

- 1) The specific dimensional measurements in chart form, noted on the original Overall Site Plan (sheet 3 of 9) and subsequently revised, shall be updated pursuant to waivers granted in this decision (see Findings of Fact #13). This revised chart shall be submitted to the Zoning Administrator before any certificate of occupancy (conditional or otherwise) is issued for the buildings on lots 47 and 44/45/46. The Applicant shall also cover the cost to have an independent civil engineer (to be selected by the Town) review the approved plans and the as-built situation to help ensure compliance.
- 2) A revised site plan shall be submitted by March 1, 2014 for DRB review and approval. This revised site plan shall show what has been approved to date, as well as any proposed revisions to address site plan discrepancies noted in Finding of Fact 2 and Conclusion 6. The DRB intends to expedite this site plan review to help ensure that all discrepancies have been addressed, and that there is a definitive and accurate site plan approved and on record.
- 3) This approval is solely to grant dimensional waivers and changes in lot configurations per previous approvals or per the submitted Hinesburg Center “Building As-Built Sketch” done by Button Professional Land Surveyors PC and not dated. This decision does not approve any other site level changes to the property that exist, which are not in compliance with the Llewellyn-Howley site plan titled Hinesburg Center Site Plan marked “DRAFT” and last revised 4/23/12 , subsequently revised solely per Order #6 of the August 21, 2012 decision. It is recognized that the locations of these structures have lessened the area and viability of the approved pocket park and this impact shall be mitigated by the installation of another pocket park on lots 42, 43, 48 that will require a separate application and DRB approval.
- 4) Pursuant to section 4.2.2 #3 of the Subdivision Regulations, the Applicant shall establish an escrow or 3-party financial agreement with the Selectboard to secure the completion of a second pocket park. Formal drafting of this legal agreement with the Selectboard will occur subsequent to this approval. This escrow or 3-party financial agreement shall be finalized and fully in place as soon as possible and no later than May 1, 2014. In the interim, conditional certificates of occupancy may be granted for the four buildings on lots 47 and 44/45/46; however, no final certificates of occupancy shall be granted until this escrow or 3-party financial agreement is fully in place. This agreement shall ensure that adequate funds are available to cover at least the cost associated with the pocket park shown in the conceptual design by T.J. Boyle Associates. However, the agreement shall allow the Town flexibility as to the design of what is actually installed in the area delineated in the conceptual design – i.e., not bound to specific elements of the conceptual design, should the Town be forced to install the improvements with the funds. This agreement shall ensure that the

Applicant install a second pocket park by June 30, 2015. As noted above, the Applicant is advised that further DRB review and approval is needed for this second pocket park, and that the final design may be substantially different, larger, or more costly.

- 5) The applicant shall submit a complete application with final plans for the build out of lots 42, 43, 48, including the second pocket park by June 1, 2014. This may include multiple applications if necessary – e.g., site plan review, subdivision review for further lot realignment.
- 6) This project shall be completed, operated, and maintained as set forth in the plans and exhibits as approved by the DRB and on file in the Town Office, and in accordance with the conditions of this approval. Deviations may be made from these plans if they are:
 - a) Approved by the designer, or equivalent
 - b) In conformance with the intent of this decision,
 - c) Determined by the Zoning Administrator that they are not significant enough to require a formal revision to the DRB decision.

Development Review Board

January 28, 2014
Date

Board Members participating in this decision: Zoe Wainer, Dennis Place, Kate Myhre, Ted Bloomhardt, Greg Waples, Dick Jordan, Sarah Murphy.

Vote: 7-0

30-day Appeal Period:

An “interested person”, who has participated in this proceeding, may appeal this decision to the Vermont Environmental Court within 30 days of the date this decision was signed. Participation shall consist of offering, through oral or written testimony, evidence or a statement of concern related to the subject of the proceeding. See V.S.A. Title 24, Chapter 117, Section 4465b for clarification on who qualifies as an “interested person”.

Notice of the appeal, along with applicable fees, should be sent by certified mail to the Vermont Superior Court - Environmental Division. A copy of the notice of appeal should also be mailed to the Hinesburg Planning & Zoning Department at 10632 Route 116, Hinesburg, VT 05461. Please contact the Court for more information on filing requirements, fees, and current mailing address.

State Permits:

It is the obligation of the Applicant or permittee to identify, apply for, and obtain required state permits for this project prior to any construction. The VT Agency of Natural Resources provides assistance. Please contact the regional Permit Specialist at 878-5676 (111 West St, Essex Jct., VT 05452) for more information.