



## DEVELOPMENT REVIEW BOARD

Meeting Type: ..... **Regular Meeting**  
Date: ..... **Thursday, May 14, 2020**  
Time: ..... **6:00 p.m.**  
Place: ..... **Via Teleconference**  
Address: ..... **43 Bombardier Road Milton, VT 05468**  
Contact: ..... **(802) 893-1186**  
Website: ..... **www.miltonvt.gov**

## MEETING MINUTES

*Bruce Jenkins, Chair      Henry Bonges, Vice Chair      Julie Rutz, Clerk      Robert Brisson      MaryAlice Callahan*

### 1. Call to Order

The meeting was called to order at 6:05 p.m.

### 2. Attendance

**Members Present:** Bruce Jenkins, Chair; Henry Bonges, Vice Chair; Julie Rutz, Clerk; Robert Brisson, MaryAlice Callahan

**Members Absent:** None

**Staff Present:** Richard Saunders, Development Review Planner

**Others Present:**

**Hearing 1:** Dave Marshall, Danielle Whitten, Kelsey Whitten, Cynthia Burton, Ruth Turner, Calinda Turner

**Hearing 2:** Andy Rowe, Bart Frisbie, Steven Reynolds, Lauren Morriseau, Lizzie Filosa, Collin (unknown), Michael Dickerson, Matthew Lyman, A.J.LaRosa, Robert Griswold, Ann Griswold

### 3. Agenda Review

### 4. Public Forum

*The public may attend and be heard in accordance with Vermont's Open Meeting Law (1 V.S.A. 312).*

No issues raised.

### 5. New Hearings/Business:

**A. Danielle and Kelsey Whitten**, applicant, is requesting a **Flood Hazard Variance** for a destroyed seasonal camp. The variance would waive the Town's requirement to consider the camp abandoned after 12 months of discontinued use under UDR Section 2201.J(2), and allow the applicant to plan substantial improvements to the site. The applicant intends to seek Conditional Use approval for a 1,500 square foot seasonal camp with 275 square foot attached deck at 11 Champlain Lane, described as Parcel #242001-002000, Deed Book 465 & Page 303, SPAN 396-123-13803. The subject property is recorded as having 0.46 acres and is located within the Shoreland Residential (R6) zoning district, the Flood Hazard Overlay (FHO) district, and the West Milton Planning Area.

The Applicants, D. and K. Whitten, were present for this hearing. Applicant's consultant, D. Marshall, was present to represent the applicant.

B. Jenkins, Chair, swore in the applicant and interested parties.

D. Marshall explained the project.

B. Jenkins read numbered items:

1. The applicant must meet all of the following criteria to secure a variance. Staff has provided comment on each criterion accordingly.

a. The proposed land development will not alter the essential character of the area or district in which the property is located.

i. Staff finds that the proposed development is complementary to or enhancing of the

- essential character of the area.
- b. The proposed land development will not substantially or permanently impair the lawful use or development of adjacent property.
    - i. Staff finds that the proposed development does not impair the lawful use or development of adjacent property.
  - c. The proposed land development will not be detrimental to public health, safety or welfare.
    - i. Staff finds that the proposed development is unlikely to be detrimental to public health, safety, or welfare.
  - d. The applicant has not created the unnecessary hardship.
    - i. Staff finds that the applicant does not appear to have created the unnecessary hardship. The DRB shall make a determination.
  - e. The applicant is proposing the least deviation possible from these regulations that will afford relief.
    - i. Staff finds that the applicant is proposing the least deviation possible that will afford relief; if the variance is approved by the DRB the proposed development will bring the formerly nonconforming structure into conformity and will be required to meet all applicable regulations including obtaining Conditional Use approval.
  - f. There are unique physical circumstances or conditions, including irregularity, narrowness, or shallowness of lot size or shape, or exceptional topographical or other physical conditions peculiar to the particular property. These conditions, and not the circumstances or conditions generally created by the provisions of these regulations in the district in which the property is located, have created an unnecessary hardship for the applicant. These physical circumstances or conditions prevent the property from possibly being developed in strict conformity with these regulations and a variance is necessary to enable reasonable use of the property.
    - i. The DRB is advised that the applicant is not seeking a variance from any dimensional standard; proposed development will be in compliance with applicable dimensional standards.
    - ii. Staff finds that the unintentional destruction of the former structure by fire created unique physical circumstances that, in addition to personal physical circumstances outlined by the applicant, created an unnecessary hardship. These unique circumstances appear to have prevented the applicant from developing the property in strict conformity with the 12 month requirement of Section 2201.J. If the structure had not been destroyed, there would be no need for a variance from Section 2201.J. The proposed development would constitute a substantial improvement to an existing structure rather than a new structure, and would then be subject to Conditional Use review.
  - g. The proposed land development meets all applicable federal and state rules for compliance with the National Flood Insurance Program.
    - i. As part of a subsequent Conditional Use review the proposed development would be reviewed by and a determination received from the NFIP Coordinator. The applicant will be required to comply with this determination and all applicable state and federal rules.
2. Upon review of the staff report, application, and evidence submitted during the DRB hearing, the DRB shall determine if the applicant meets all of the criteria for variance approval.
  3. Omission or misstatement of any material fact by the applicant or agent on the application or at any hearing which would have warranted refusing the permit or approval shall be grounds for revoking the permit or approval at any time.
  4. The DRB shall motion to recess or close this hearing. If recessed, a specific time, date, and place shall be designated to resume the hearing. If closed, the DRB shall issue a decision within 45 days.

J. Rutz requested confirmation that interested parties have ten days to comment after the hearing, that the deliberative session will take place 14 days from the hearing, and that the hearing would require continuation. DRB confirmed and agreed to continue the hearing. J. Rutz requested a site visit. DRB agreed and scheduled a site visit on Wednesday, May 20, 2020 at 6 p.m. D. Marshall agreed to stake the site for the site visit.

R. Brisson asked that a letter from A. & B. Griswold be considered. B. Jenkins confirmed that all comments would be addressed when the hearing was continued.

R. Brisson sought assurance from D. Marshall that wastewater will be appropriately constructed and permitted, and asked if the structure was a 2 or 3 bedroom structure. D. Marshall confirmed that use of the existing system was allowed and that the wastewater tank would be replaced, and that the structure was believed to have previously been a 3 bedroom seasonal camp.

C. Burton asked if the current wastewater system is functioning and sought clarification on the size of the destroyed camp. D. Marshall confirmed wastewater system is functioning, and that the original camp was believed to be 3 bedroom in 1987.

R. Brisson stated that original plans stated the original camp was 750ft<sup>2</sup>, asked if the applicant needs to meet state and other standards. B. Jenkins and staff confirmed that all applicable Conditional Use regulations would need to be met before the proposed construction could proceed.

R. Griswold asked about whether their comments would be heard. B. Jenkins confirmed those questions will be addressed after the comment period. R. Griswold asked whether current camper is attached to the leach field. B. Jenkins indicated that the current leach field connection is not relevant to the current hearing.

Motion by J. Rutz to continue the hearing until 6.p.m May 28, 2020, at 6:39 p.m. with a second by H. Bonges. Motion affirmed.

**B. Sterling Land Co., LLC**, applicant, is requesting a **Major Conventional Subdivision** for a 39 lot subdivision containing 34 single family homes and 5 duplexes. This is an amendment to phases 3, 4, and 5 of the Clearview Estates subdivision. Applicant is also requesting a **Frontage Waiver** allowing up to a 10% deviation from the dimensional standard for lots 27-32. The subject property is located at 0 Westford Road (Horseshoe Circle), described as Parcel #211088-000000, Deed Book 317 & Page 522, SPAN 396-123-10574. The property is recorded as having 37.86 acres and is located within the Old Towne Residential (R1) zoning district and the Town Core Planning Area.

S. Reynolds, original landowner, was present for this hearing. A. Rowe and B. Frisbie, applicant's consultants, were present to represent the applicant.

A. Rowe provided a summary of the proposed development.

M. Dickerson requested clarification on the number of duplexes proposed. A. Rowe confirmed 5 duplexes were proposed.

L. Morrissette asked where construction would begin. A. Rowe stated construction would be in 2 phases, the first commencing at the bottom of the hill and the second is the completion of Horseshoe Circle. M. Dickerson sought clarification on the planned phase names. A. Rowe clarified that phases 1 and 2 have been completed and phases 3 and 4 were in the subject of these proceedings.

M. Dickerson indicated that he believed not all conditions required for the completion of phases 1 and 2 were met.

Bruce Jenkins read through the following numbered items.

1. The applicant shall obtain a Project Review Sheet and all applicable permits for the proposed
  - a. Applicant agreed.
2. The DRB shall determine whether the proposed development is in compliance with Department of Public Works requirements outlined in the attached Public Works Comment document.
  - a. A. Rowe indicated that the applicant has worked and will continue to work with Staff, Public

- Works, and Fire Department to provide compliant solutions to the items raised by Public Works, including the construction of a turnaround on the Lot 53-54 driveway.
- b. M. Dickerson indicated concern over the road's ability to sustain additional traffic as there appears to be damage, that the existing development did not have lighting, and that the phase 1 & 2 lots and trees were not completed. M. Dickerson also requested a traffic study. B. Jenkins indicated the DRB would discuss these issues. A. Rowe stated that the existing road cross section was constructed to Public Works specifications and that the town has taken ownership of it, confirmed concrete curb will be constructed on both sides of the road. S. Reynolds stated the applicant had made genuine efforts to ensure all affected persons who were properly informed about the density of the development and the future plans, that the town engineer had requested tree planting be suspended due to stormwater concerns, that the street lighting was designed to be compatible and consistent with the area. adjacent development.
3. The applicant may be required by the state to meet additional Act 250 requirements. A PRS is required.
    - a. Applicant understands.
  4. The DRB shall determine whether the proposed driveway must be moved to avoid the fluvial erosion hazard and riparian corridor. The DRB may impose additional conditions to ensure riparian corridors, wetland areas and their buffers are retained.
    - a. A. Rowe asked the DRB to defer to the pending ANR decision regarding development encroachment by the Lot 53-54 driveway. A. Rowe agreed that if ANR requires design changes the applicant will comply.
  5. The DRB shall determine whether the proposed Lot 53 configuration is allowed.
    - a. B. Jenkins asked how much of the lot is buildable. A. Rowe indicated approximately 20% of depth. The DRB shall determine.
    - b. M. Callahan asked whether a flashing traffic light will be installed at Westford Road and East Road. R. Brisson indicated that a traffic study should be required. Staff indicated that the regulations do not require it. H. Bonges asked to postpone these questions and discuss in deliberative session. DRB agreed.
  6. The DRB shall determine whether a deviation from the frontage requirements of Section 2115.C is allowed for Lots 28-32.
    - a. A. Rowe explained the waiver request. M. Dickerson asked what the practical effect is. A. Rowe stated the effect is minimal as it does not affect the position of structures.
  7. The applicant is advised that town highway access permits will be required for new curb cuts before a zoning permit can be issued.
    - a. Applicant understands.
  8. The DRB shall determine whether to allow two curb cuts on each of Lots 25, 26, 44, & 45.
    - a. A. Rowe explained that 2 curb cuts are required for these properties to allow 4 of the 5 duplexes to have their own driveways and to stagger the elevation of the garages.
  9. The proposed driveway must comply with Section 3002.H and Fire Department requirements as outlined.
    - a. Applicant understands.
  10. The applicant shall file an agreement for perpetual maintenance of the driveway shared by Lots 53 and 54 in the Town's land records.
    - a. Applicant understands.
  11. The DRB shall determine whether the applicant is required to reconfigure the Lot 53 and 54 driveway to avoid the riparian corridor.
    - a. A. Rowe clarified the location of the road and the reasons for the proposed configuration. M. Dickerson, R. Brisson asked if the applicant had considered utilizing a road from Horseshoe Circle to lots 53 & 54 and East Road. A. Rowe indicated that this option was not

- feasible due to grade and engineering issues, and public works requirements.
- b. B Jenkins asked if the applicant is amenable to reconfiguring the Lot 53 & 54 driveway to address concerns raised in the hearing. A. Rowe requested the DRB defer to ANR requirements.
12. A PRS and any applicable permits are required.
    - a. Applicant understands.
  13. The applicant must secure amended Water and Wastewater permits and Town connection permits for the proposed changes prior to receiving a zoning permit. A PRS is required.
    - a. Applicant understands. A. Rowe stated the applicant has taken steps to acquire the required permits.
  14. The applicant must secure an amended state Construction General Permit prior to receiving a zoning permit. A PRS is required.
    - a. Applicant understands.
  15. The applicant must secure an amended state Stormwater Permit that accommodates the proposed changes prior to receiving a zoning permit.
    - a. Applicant understands.
  16. The DRB shall determine whether the proposed driveway to Lots 53 and 54 satisfies Section 3404.A(4) requirements.
    - a. Staff clarified that this item was included due to fluvial erosion hazard applicability. A. Rowe stated if the DRB requires it the applicant can move the driveway to the edge of meadow.
  17. The DRB shall determine whether street lighting is required for the proposed subdivision.
    - a. B. Jenkins asked if an HOA exists. A. Rowe indicated the applicant understands that one will need to be created; B. Frisbie clarified that technically one does exist. B. Frisbie indicated that the precedent for the area was to not install street lighting. B. Jenkins indicated the DRB will deliberate on this item.
    - b. R. Brisson indicated concern that the agreement between the applicant and the town to construct sidewalk on Main Street had been made without DRB discussion. B. Jenkins pointed out the DRB has discretion over the approval of the agreement. M. Dickerson & L. Morrisseau objected to sidewalk being constructed on one side only.
  18. The DRB shall determine whether the proposed landscaping plan provides sufficient tree cover and fulfills the intentions of the UDR, Comprehensive Plan, and Public Works comments.
    - a. A. Rowe indicated the applicant interprets Section 3405.D as not applicable as it refers to Section 3204.E requirements which apply to Major Site Plan approvals, which this development does not require. The DRB agreed to discuss landscaping further.
    - b. S. Reynolds indicated that the development had complied with all changing requirements of the town and state, at their own expense, since the commencement of the development.
  19. The applicant must obtain all appropriate permits for the construction of water, wastewater, and stormwater infrastructure for the proposed development.
    - a. Applicant understands.
  20. The DRB may require the applicant to implement additional fire protection measures in accordance with Fire Department comments to ensure Lots 53 and 54 are afforded adequate protection.
    - a. A. Rowe indicated that the applicant will include required turnaround detail in future documentation, believes they have met all fire protection requirements, and will obtain Fire Department approval.
  21. The DRB shall determine whether the applicant is required to reserve a 17,600 ft<sup>2</sup> section of the property for common recreation purposes.
    - a. Applicant proposed reserving a section encompassing the easement and stormwater areas, and illustrated by a sketch design provided recently to Staff. Staff agreed to make the sketch proposal provided by the applicant available to the DRB and interested persons, if requested.

22. The applicant must install permanent right-of-way monuments and lot corner markers in accordance with section 3405.K.
  - a. Applicant understands.
23. The applicant must establish an owner's association or similar legally enforceable mechanism to ensure ongoing maintenance of shared infrastructure and common lands/facilities within the subdivision in accordance with Section 3405.L(4). Documentation outlined in this section must be recorded with the Town prior to final approval.
  - a. Applicant understands.
24. The DRB may require the applicant to demonstrate how the proposed development will avoid, minimize, or mitigate impacts on wetlands, riparian areas, surface waters, and habitat areas located on the property, and may require the applicant to take additional action for this purpose.
  - a. Applicant understands.
25. The applicant shall follow the provisions of UDR 3409, Soil Preservation, to preserve the site's agricultural soils.
  - a. Applicant understands.
26. The applicant must meet all of the following criteria to secure a waiver. Staff has provided comment on each criterion accordingly, and recommends that the DRB approve the frontage waivers for Lots 27-32.
  - a. The proposed land development will not alter the essential character of the area or district in which the property is located.
    - i. Staff finds that the proposed development is compatible with the essential character of the area and serves the objectives of the R1 district.
  - b. The proposed land development will not substantially or permanently impair the lawful use or development of adjacent property.
    - i. The proposed development does not impair the lawful use or development of any nearby property.
  - c. The proposed land development will not be detrimental to public health, safety or welfare.
    - i. Staff has no concerns.
  - d. The proposed land development is beneficial or necessary for the continued reasonable use of the property.
    - i. The proposed development would facilitate the creation of lots that are similar in size, arrangement, and orientation to other lots in the subdivision while complying with all other dimensional standards, and would be beneficial to the overall design.
  - e. The applicant is proposing adequate mitigation of any dimensional encroachment through design, screening or other remedy.
    - i. Staff finds that the proposed design appropriately mitigates dimensional encroachment concerns.
27. Applicants shall submit one (1) full-sized (to scale) and one (1) reduced (11 x 17) complete final plan sets depicting the requested changes. The revised plans must be deemed Final by Planning Staff prior to being eligible for a Zoning Permit from the Zoning Administrator. The Applicant is advised to submit an electronic .pdf plan for staff review prior to submitting all the copies of the Final Plan set.
  - a. Applicant understands.
28. The final Plat shall be submitted on mylar (18" x 24"), signed by the licensed surveyor and the Chair of the DRB, and recorded in the Town Clerk's Office within 180 days of the date of the DRB's Final Approval Decision per Subdivision Regulations Section 4408. Final approval expires if not filed within 180 days, unless extended by the Zoning Administrator for pending local or state approvals. In the event a subdivision plat is recorded without complying with this requirement, the plat shall be considered null and void.
  - a. Applicant understands.
29. A Zoning Permit is required prior to construction and an associated Certificate of Compliance is

required following completion.

- a. Applicant understands.
- 30. The Zoning Permit shall expire two years from the date of issuance if the applicant does not receive a certificate of compliance by this date. The applicant may apply to the Zoning Administrator for a single one-year extension for the identical project.
  - a. Applicant understands.
- 31. Omission or misstatement of any material fact by the applicant or agent on the application or at any hearing which would have warranted refusing the permit or approval shall be grounds for revoking the permit or approval at any time.
  - a. Applicant understands.
- 32. The DRB shall motion to recess or close this hearing. If recessed, a specific time, date, and place shall be designated to resume the hearing. If closed, the DRB shall issue a decision within 45 days.

Motion by J. Rutz, second by H. Bonges, to conduct a site visit on Wednesday May 20, 2020 at 7:00 p.m. A. Rowe agreed to stake Lots 53 and 54.

Motion by J. Rutz at 8:03 p.m. to continue the hearing until 6:00 p.m. on May 28, 2020, with a second by R. Brisson. Motion affirmed.

**6. Other Business**

**Minutes of February 27, 2020:** DRB indicated minutes would be addressed at the next hearing.

**7. Staff Updates**

Staff informed DRB that the town has recruited a new Planning Director. The start date for the incoming Director has not been confirmed with staff but is scheduled for June.

**8. Deliberative Session**

*Private session for deliberations on applications and written decisions in accordance with 1V.S.A. 312. This hearing will remain open to submissions by parties with Interested Person status through Sunday, May 24, 2020. Submissions can be made on the town website or by emailing the Department of Planning and Zoning [rsaunders@miltonvt.gov](mailto:rsaunders@miltonvt.gov). Deliberative session will occur at a time and date determined by the DRB not more than 14 days from this hearing.*

**9. Adjournment**

Motion made by J. Rutz at 8:07 p.m. to adjourn the meeting with a second by H. Bonges. Motion affirmed.

Respectfully Submitted,  
Richard Saunders

APPROVED MINUTES:

  
Bruce Jenkins, Chair

Date: June 11, 2020

Filed with the Milton Town Clerk's Office on this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

ATTEST: \_\_\_\_\_, Milton Town Clerk