

**Town of Warren
Development Review Board
Minutes of Meeting
Monday November 4, 2019**

Members Present: Peter Monte, Tom Doyle, Devin Corrigan, Charlotte Robinson, Chris Behn

Others Present: David Frothingham, Lucy O'Brien, Peter MacLaren, Jack Garvin, Dotty Kyle, Eric Brattstrom, David Sellers, Sandra Nohejl, Virginia Roth, Rita Ionnipis, and Ruth Robbins, Amy Scharges.

Agenda: Meeting Called to order at 7:10 p.m.

- 1) Application **#2019-04-PUD/SD/BLA**: Preliminary Plan/Final Plan Review. Applicant **Lucy O'Brien /BOKAY Ltd** is requesting a revision of her previously approved PUD #2012-22-CU/SD/PUD to cure an encroachment on the right-of-way leading to lots 5 and 6. This includes a boundary line adjustment to the parcels and the elimination of one parcel that conforms as a single lot under a different owner. This application will be reviewed under the Warren Land Use and Development Regulations as adopted by the Warren Select Board on March 25, 2008 and last amended November 11, 2012. [Article 8 Article 3, Sec. 3.4 Erosion Control & Development on Steep Slopes and Article 5 Development Review Sec. 5.3 Conditional Use Review Standards].
- 2) The applicant, **MacLaren Holdings, LLC [DBA West Hill House B&B]**, is requesting to replace a pre-existing non-conforming shed with a two-car garage that would extend back over a terraced slope and measure overall 21' x21'. The property, located at 1496 West Hill Road, grand list number 016003-5, is in the Rural Residential District. This application **# 2019-09-CU** will be reviewed under the Warren Land Use and Development Regulations as adopted by the Warren Select Board on March 25, 2008 and last amended November 11, 2012. [Article 3, Sec. 3.4 Erosion Control & Development on Steep Slopes, Sec. 3.8 Nonconforming Structures & Uses and Article 5 Development Review Sec. 5.3 Conditional Use Review Standards].
- 3) The applicant, **Sandra Nohejl**, and land owner **Virginia Roth**, are requesting with their application **#2019-10-CU** for a change in use from real estate office on the first floor, to a retail use of a "grab & go" coffee shop with coffee beans and coffee accessories for sale. The location is at 264 Main Street, parcel id # 004001-900, in the Warren Village Commercial District. This application will be reviewed under the Warren Land Use and Development Regulations as adopted by the Warren Select Board on March 25, 2008 and last amended November 11, 2012. [Table 2.10; Article 5, Sec. 5.3, Conditional Use Review Standards]

Meeting called to order at 7:10 p.m.

1. The applicant, **MacLaren Holdings, LLC [DBA West Hill House B&B]**, is proposing to replace an existing shed/temporary structure which was never originally approved by the DRB and has been on the property since approximately 2000.

The most feasible plan is to convert the structure into a garage with a proposed walkway to the house. The Applicant presents two details for consideration, 1) while the intent is to replace the existing shed with frontage that will increase from 16' to 21' the existing 160 sf shed is a temporary structure. 2) In 2011 Miron did a review of the property and declared everything in conformance. The proposed design will expand the

structure by 5' which is currently 16' wide with no dramatic impact on the frontage. Changes will be made to the roof profile as per the guidance of Jeff Schoellkopf. Referencing a photo, the applicant indicates that the roof will come out to the stone wall.

The design proposes building over an existing terrace, not a slope. Effort was made by the Applicant to find the property line however since the shed was never approved it was never surveyed. The Applicant proposes to come 24' 3/4" from the centerline with the new design frontage. This design will only work if it is positioned on the property line as there is not sufficient space in the back. The existing shed encroaches 2' in front of the property line on the town right of way. It is noted that the Applicant has the full support of his neighbors to pursue this project.

Mr. Monte preliminarily stated that as a Town Board, they do not have the power to authorize the Applicant to encroach in the right of way, this is the Select Board's jurisdiction. It is possible you could be encroaching, possibly not. Mr. Monte asked that the Applicant be aware that if encroachment is the case, it will need to be addressed by the Select Board. Ultimately, if the DRB approves and there is encroachment, it would be considered trespassing. Mr. Monte then asked how the existing shed was attached to the ground. Mr. MacLaren explained that the structure is on a wood foundation with bricks. Mr. Monte stated that he would need an exemption because he has an existing structure, temporary is not relevant to the way the Ordinance is written. The structure must be on a foundation attached to the land. Mr. Brattstrom clarified that the structure is on soni-tubes, which are permanent pieces in the ground.

Mr. Monte then **MOVES** to find that the existing shed is a structure as defined in the Ordinance because of the description provided relative to the pilings that attach to the ground. Ms. Corrigan **SECONDS**, all in favor, motion **PASSED**.

Mr. Monte claimed that the Applicant is a beneficiary of a unique provision in the ordinance that, when dealing with an existing structure that does not satisfy the setback requirement, enlarging the volume of the replacement structure that is offending the setback, it is then considered not applicable by expressed provisions.

Pg. 36, Sect. 3.8 A, Non-Conforming Structures

References in this section were addressed regarding the legality of the existence of the structure and the statute of limitations for a structure that has been there for approximately 19 years. Discussion ensued about the structure not being permitted when it was originally built and how it relates to the statute of limitations. If the original structure had a permit, it could be made legal, if was created without a permit then, it may be legal now. The applicant offers that in November 4th, 2010, the Zoning Administrator claimed everything to be compliant and conforming, however as Mr. Monte states, it was the Administrator's opinion and he was not a member of the DRB. Ms. Robbins confirmed that no permits are listed for this structure. Details on these statutes will need to be referenced.

Mr. Monte **MOVES** that if the existing structure proposed to be replaced was legally in existence today that the requirements of Sect. 3.8(A) 3 are satisfied by the dimensions of the new structure. Ms. Robinson **SECONDS**. Ms. Klein asks if deemed legal as of today, the Applicant has the right to pursue the changes. Mr. Behn stated that it becomes legal by the statute of limitations. Mr. Monte **further MOVES** to find that the

structure was built in 2000 or earlier and it is at least 19 years old. Mr. Behn **SECONDS**, All in favor, **MOTION PASSED**.

Mr. Monte inquired if the structure design will disturb the steep slopes and Mr. MacLaren indicated that they will be keeping the same slope and extending the terrace.

Mr. Monte **MOVES** to find that there are no steep slope issues because no steep slopes will be disturbed by the construction. Mr. Behn **SECONDS**, All in favor **MOTION PASSES**.

Mr. Monte **MOVES** to adjourn and suspend this application until November 18th to determine legality of the structure and the statute of limitations. Mr. Behn **SECOND**, all in favor, motion **PASSED**.

Ms. Corrigan introduced general discussion on the property line issue, Mr. Monte stated that it is incumbent on the Applicant to identify and present evidence of the property line. Unless evidence is found to the contrary, assumptions are made on the road width and travel way of the road. Mr. Monte recommended that the Applicant refer to his legal counsel for the relative State statute.

2. Application **#2019-04-PUD/SD/BLA**: Preliminary Plan/Final Plan Review. Applicant **Lucy O'Brien /BOKAY Ltd** is requesting a revision of her previously approved PUD #2012-22-CU/SD/PUD to cure an encroachment on the right-of-way leading to lots 5 and 6.

In review of prior activity, Ms. Robbins stated that the reason for the amendment is to put an addition on one of the buildings that encroached on the right of way to the lots behind. Discussion about access to propane tanks was addressed, the need for the current covenants for the PUD to be revised and a requirement of payment of attorney's fees be in place. Mr. Monte detailed the need for a cost sharing arrangement and practical means to enforce those payment obligations.

Mr. Monte asked to see the explicit cost sharing arrangement which is the practical means to enforce said arrangements, including attorney's fees.

Ms. O'Brien refers to part 7.1 in the covenant which states there were 6 lots, only 5 property owners had to be present to form a meeting. The Applicant is required to advise the owner of the 6th lot for the association. Also, there is a fine for tree replacement in the covenant, the DRB needs to see covenant to confirm practical means to enforce arrangements. Mr. Monte reviewed the Covenant on pg. 12 and determined that the lot remains in the PUD. The Applicant claimed the easiest method to disassemble the PUD is to have a meeting with herself stating owner of Lot 6 is no longer part of the PUD and send the owner of Lot 6 a letter. The Applicant clarified that since the owner of Lot 6 has the property on the market, she no longer wants her involved in the PUD.

Ms. Klein confirmed that Ms. O'Brien can vote Lot 6 out because Ms. O'Brien owns 5 of the parcels. Mr. Frothingham discussed how this PUD is unique because it meets the minimum standards for a lot in a zoning district.

Mr. Monte offered that 120 days from now, the Applicant needs to adjust the covenant and get permission from the DRB and the State to alter the PUD.

Mr. Monte **MOVES** to find that Lot 1 shown on the site plan 10.11.19 is a ¼ acre lot on its own which meets all requirements of the ordinance as stand-alone lot and it is not important to the functioning of the remaining property as a PUD. Ms. Klein **SECONDS**, all in favor motion **PASSED**.

Mr. Monte **MOVES** that Applicant has approval to amend the PUD documentation to exclude Lot 1 as long as it is recorded in the land records within 90 days from the date approval becomes final, or such additional time as the applicant may request from the DRB. General discussion was had on Lot formation, density changes and services by eliminating Lot 6 which includes the common area. Mr. Monte **AMMENDS** the **MOTION** to include the description of 4 residential lots and a common lot will remain in the PUD. Ms. Corrigan **SECONDS**, all in favor, motion **PASSED**.

Mr. Monte addressed the reconfiguring of the driveway which does encroach on steep slopes. The Applicant will add trees and vegetation for screening and additional controls for water run-off. Mr. Behn asked for the difference in the road grade from the original. Discussion addressed the minimal changes.

Mr. Behn **MOVES** to find that there is no material change to the impact of the steep slopes with the change in right of way proposal, therefore the change is appropriate. Ms. Robinson **SECONDS**, all in favor, motion **PASSED**.

Mr. Monte **MOVES** to approve the application as submitted, Ms. Corrigan **SECONDS**, all in favor motion **PASSED**.

3. The applicant, **Sandra Nohejl**, and land owner **Virginia Roth**, are requesting with their application **#2019-10-CU** for a change in use from real estate office on the first floor, to a retail use of a “grab & go” coffee shop with coffee beans and coffee accessories for sale.

It will specifically be a high-quality espresso bar with drinks to go product with no long-term seating or food preparation. There will be perhaps 4-5 barstools for short term stay in the small space. The Applicant desires to focus on traffic of guests. Mr. Monte and Ms. Roth debated if the space was to be termed retail or a restaurant based on the action of producing drinks.

Mr. Monte and Mr. Behn asked if there was ample parking allotted for the building where the map indicates 10+ spaces. Ms. Robbins detailed the relatively low impact of the spaces and indicated the Board will review the parking regulations in the ordinance. Mr. Monte identified one space for each seat plus one space per employee for a total of 5 spaces needed. The espresso bar is 250 sq. ft. requires 2 spaces, the retail area is 575 sq. ft. and requires 2 spaces. The upstairs real estate office is 1 space. The Gallery is 1,000 sq. ft., 4 spaces. Total spaces are nine. Mr. Garvin made known that he was present for information gathering, he also has thoughts and some concerns with parking.

Mrs. Roth commented about the parking design and clarifies that she has more than 10 spaces and much is used by the Warren Store. The applicant offered to provide additional spaces but the proposed plan shows ample space.

Mr. Monte **MOVES** to find that based on the Applicant’s representations they find that the following data concerning parking with reference to Table 3.1- the Gallery has approx. 1,000 sf. on 2 floors, which as a commercial establishment requires 1 parking space per 250 sq. ft. for a total of 4. The existing real estate office has 250 sq. ft., requires 1 additional space, retail space has 575 sq. ft. requires 2 spaces and proposed

bar has approximately 250 sq. ft. which requires 2 spaces total of 9 parking spaces. The plot plan submitted shows 10 spaces available on the property. Mr. Behn **SECONDS**, all in favor, motion **PASSED**.

Mr. Monte addressed the Conditional Use Review Criteria, Sec. 5.3, pg. 65. Mr. Behn inquired if bathroom facilities are required for the proposed bar area. The Applicant identified that a bathroom facility will be in place in the rear retail portion of the building. The Applicant will determine if a bathroom is required for the change of use, if ADA accessibility is needed, etc.

Mr. Behn **MOVES** that the Applicants prior to opening the Espresso Bar obtain the appropriate permits from the Town for septic system. Mr. Monte **SECONDS**, all in favor, motion is **PASSED**.

Mr. Behn **MOVES** to find that Sec. 5.3, items 1-5 are satisfied. Ms. Robinson **SECONDS**, all in favor, motion **PASSED**.

Mr. Monte **MOVES** to approve the application subject to the usual and voted conditions outlined during this meeting. **SECOND** by Ms. Robinson. Ms. Corrigan opened general discussion about the allocation and visual designation of parking spaces, both in front and in back of the buildings. Mr. Garvin stated that The Applicant currently allows Warren Store employees to park in the rear of the buildings. MR. Behn stated that the current parking arrangements tend to slow traffic which is advantageous to the Town from a safety stand point. **VOTE**: all in favor, the motion passed.

Mr. Monte addressed the approval for the O'Brien PUD noting an agreement on record requested by Ms. Robbins in the event that something happened to Ms. O'Brien, that none of the lots above her could be developed without the encroachment and right of way being addressed. This agreement must be released as a result of the determinations in this meeting for the approval of the PUD and right of way for Ms. O'Brien's revision of her PUD.

Mr. Monte **MOVES** that after the findings and conclusions our permit decision states that we released the applicant from its obligations under the agreement to suspend permit rights recorded in the Land Records September 28th, 2019. Ms. Robinson **SECONDS**, all in favor, motion is **PASSED**.

Additional decisions/minutes were signed and future meeting details were discussed.

Meeting adjourned at 9:52 p.m.

Respectfully submitted,

Amy Scharges
Recording Secretary

Development Review Board

Peter Monte date

Charlotte Robinson date

Tom Boyle date

Chris Behn date

Devin Klein date