

**TOWN OF WARREN
DEVELOPMENT REVIEW BOARD
MINUTES OF MEETING
APRIL 18, 2001**

- MEMBERS PRESENT:** Eric Brattstrom, David Markolf, Peter Monte, Chair; Lenord Robinson, Jeff Schoellkopf.
- OTHERS PRESENT:** Bennett Norman, Applicant, Gary Bombard, Norman builder; Gunner McCain, Estin Representative; Ernest Jr. Levesque Jr., Applicant; Ernest Levesque III, Margo Wade, DRB/PC Assistant.
- AGENDA:**
- 1) 7:30 p.m. Call to Order
 - 2) Public Hearing: Elizabeth Norman – Conditional Use Review
 - 3) Public Hearing: Hans Estin – Subdivision & Variance Review
 - 4) Public Hearing: Ernest & Donna Levesque – Appeal
 - 5) Other Business:
 - a) Signing of minutes & decisions

I. CALL TO ORDER

Mr. Monte called the meeting to order at 7:30 p.m.

II. PUBLIC HEARING: Elizabeth Norman – Conditional Use Review

Elizabeth Norman seeks approval for a residential addition to a single-family dwelling located on 28 +/- acres off the south side of Roxbury Mountain Road in the Forest Reserve District. This application requires Conditional Use Review under Article 5 of the Warren Land Use & Development Regulations.

Bennett Norman and Gary Bombard came before the board on behalf of the applicant.

STAFF REPORT

Mr. Monte read the warning, which ran in the March 29, 2001 issue of the Valley Reporter.

A site visit was conducted at 6:00 p.m. before the hearing. Eric Brattstrom, David Markolf, Peter Monte, Lenord Robinson, Jeff Schoellkopf, Bennett Norman, and Margo Wade attended. At the visit the group toured the site and inspected the location of the proposed addition, existing clearing, existing and proposed landscaping, and visibility of the structure and property from other areas of town.

DISCUSSION

Mr. Bennett described the application. The property is being developed in two phases. The first phase, which was completed in 1995, included site clearing and preparation, construction of the attached garage and the tallest portion of the structure, and excavation of the ponds. The second phase includes the construction of the remainder of the structure. All of the blasting of ledge for the project was done during the first phase.

The color of the existing exterior portion of the structure consists of a dark gray/black roof, and the walls are dark brownish gray with lighter brownish gray shutters. The proposed addition will have the same color scheme as the existing structure.

The structure is predominantly visible from the southwestern portion of town (Airport Road, Brook Road, Plunkton Road, and Fuller Hill Road). The existing structure sits just above the canopy of the clearing, is tucked into the northern portion of the clearing, and has a fully wooded backdrop. The addition will be attached to the north side of the existing structure, therefore will be less visible than if it were placed on the south side of the structure.

The septic system is designed to accommodate a four-bedroom dwelling. The existing structure has one bedroom and an office that is also used as a guest bedroom. The proposed addition will have two bedrooms.

The tallest portion of the proposed addition is lower than the tallest portion of the existing structure.

No additional clearing will be needed for the proposed addition.

Mr. Norman is willing to plant a few trees along the western portion of the structure to mitigate the visibility of the structure from other areas of town. The goal of planting trees is to visually break up the western façade of the structure. Mr. Markolf recommended the planting of six trees with an “at planting” height of 6 feet in a variety of deciduous and coniferous species.

The location of the house was chosen because it had few trees due to the shallow ledge. No significant additional clearing will be done at the site. The forested backdrop will remain intact.

PUBLIC INPUT

There was no public.

DELIBERATION/DECISION

MOTION by Mr. Markolf, seconded by Mr. Brattstrom to require the applicant to plant and maintain six trees along the western façade of the existing and proposed structure. The trees will be 6 feet tall at planting; will be planted between 10 and 20 feet away from the western façade of the structure; and will be of mix deciduous and coniferous species.

VOTE: unanimous; motion carried.

MOTION by Mr. Markolf, seconded by Mr. Brattstrom to require the applicant to continue the exterior finish, in color and texture, of the existing structure on the proposed addition (i.e. dark gray/black roof, earth tone gray/brown siding); that any glass expanse larger than 4 feet by 6 feet will have fiberglass screening on the exterior and that the screening will remain in place year round; and that all exterior lighting on and/or of the southern and western façades will be incandescent, down cast and shielded, and will not exceed 150 watts. VOTE: unanimous; motion carried.

MOTION by Mr. Monte, seconded by Mr. Schoellkopf that the above stated conditions addressing Table 2.1(F) criteria also satisfy §5.3(A) Conditional Use criteria. VOTE: unanimous; motion carried.

Motion by Mr. Monte, seconded by Mr. Schoellkopf to continue the Norman conditional use hearing until May 9, 2001 at 7:30 p.m., at which time timely abutter notification will be submitted. VOTE: unanimous; motion carried.

III. PUBLIC HEARING: Hans Estin – Subdivision & Variance Review

Hans Estin seeks approval for a 2-lot subdivision of 2.4 +/- acres on Golf Course Road in the Vacation Residential District, and a variance from road setback requirements. The application requires review under provisions of the Warren Permanent Subdivision Regulations, and Article IV, § 3.C. of the Warren Zoning Bylaws.

Gunner McCain came before the board on behalf of the applicant.

STAFF REPORT

Mr. Monte read the warning, which ran in the March 29, 2001 issue of the Valley Reporter.

A site visit was conducted at 6:30 p.m. before the hearing. Eric Brattstrom, David Markolf, Peter Monte, Chair; Lenord Robinson, Jeff Schoellkopf, Gunner McCain, and Margo Wade attended. At the visit the group toured the parcel and inspected the proposed house sites, location of the proposed driveways and site lines from the curb cuts along Golf Course Road.

DISCUSSION

Mr. McCain described the project. Mr. Estin owns a 2.4 +/- acre parcel, which is split by Golf Course Road. The parcel is part of the Estin Estates subdivision, which was created in the 1960s before state or town subdivision requirements.

Mr. McCain submitted an updated site plan which include corrected lot acreages; building envelopes with road setbacks indicated; renamed lots; and approximate locations of existing houses on abutting lots.

The septic disposal areas will be located on Lot A with a septic easement granted to Lot B.

As discussed at the site visit the driveway location on Lot B will be shifted east to achieve a better line of site along the Golf Course Road. This change will be indicated on the mylar.

The setback requirement on Golf course Road is 150 feet. The depth of the lots is between 120 and 130 feet, therefore a road setback variance is necessary. The front of the proposed building envelopes have been setback 25 feet from the edge of the road right-of-way. Surrounding homes along the road have an estimated average road setback of 25 feet.

The adjoining Lots 11 and 12 are part of the original Estin Estate subdivision and owned by Mr. Estin. Lot 11 is approximately 0.99 acres and Lot 12 is approximately 0.48 acres. The minimum lot size in the Vacation Residential District is one acre. Since Lots 11 and 12 are under affiliated ownership and both are less than the minimum lot size for the district these lots would be considered merged.

PUBLIC INPUT

There was no public input.

DELIBERATION/DECISION

The board read through the applicable zoning and subdivision criteria.

SETBACK VARIANCE – Article IV, §3.C.

MOTION by Mr. Markolf, seconded by Mr. Monte, pursuant to §3.C.1., to find that there are unique physical circumstances of conditions due to the shallowness of the lots. VOTE: unanimous; motion carried.

MOTION by Mr. Markolf, seconded by Mr. Robinson, pursuant to §3.C.2., due to the shallowness of the lots, to find there is no possibility the property can be developed in strict conformity with the provisions. VOTE: unanimous; motion carried.

MOTION by Mr. Brattstrom, seconded by Mr. Schoellkopf, pursuant to §3.C.3., to find that the unnecessary hardship has not been created by the applicant, because the original Estin Estate subdivision was created before the Town adopted zoning and subdivision regulations. VOTE: unanimous; motion carried.

MOTION by Mr. Monte, seconded by Mr. Markolf, pursuant to §3.C.4., to find that homes in the area are set close to the road, therefore a variance will not alter the essential character of the neighborhood. VOTE: unanimous; motion carried.

MOTION by Mr. Robinson, seconded by Mr. Markolf, pursuant to §3.C.5., to find that the variance represents the minimum variance that will afford relief and will represent the least deviation possible from the zoning regulations and plan. VOTE: unanimous; motion carried.

MOTION by Mr. Markolf, seconded by Mr. Brattstrom to grant the variance as requested, which will allow the proposed building envelopes to be setback 25 feet from the edge of the Golf Course Road right-of-way. VOTE: unanimous; motion carried.

SUBDIVISION REVIEW

MOTION by Mr. Markolf, seconded by Mr. Brattstrom to deem the Estin Subdivision application complete. VOTE: unanimous; motion carried.

MOTION by Mr. Monte, seconded by Mr. Markolf to find the application satisfies the Article IV, §1. and §2. criteria with the relocation of the Lot B driveway east to achieve the best possible site lines along the road. VOTE: unanimous; motion carried.

MOTION by Mr. Monte, seconded by Mr. Brattstrom to find that §3 through §12 are not applicable to the application. VOTE: unanimous; motion carried.

MOTION by Mr. Markolf, seconded by Mr. Brattstrom to find the application satisfies the §13 criteria, that Lots 11 and 12 are part of a previous subdivision and by operation of the current zoning and subdivision regulations are effectively merged. VOTE: unanimous; motion carried.

MOTION by Mr. Monte, seconded by Mr. Markolf to approve the Estin 2-Lot Subdivision as submitted with the following condition:

- 1) the mylar will be timely filed and will include all metes and bounds, building envelopes and envelope setbacks, updated site plan information, and septic easement area.**

VOTE: unanimous; motion carried.

IV. PUBLIC HEARING: Ernest & Donna Levesque – Appeal

Ernest & Donna Levesque appeal the Zoning Administrator's issuance of a zoning violation. The two-unit dwelling is located on 0.44 +/- acres on the west side of German Flats Road in the Vacation Residential District. The appeal will be heard pursuant to Article 9 of the Warren Land Use & Development Regulations.

Ernest Levesque Jr. and Ernest Levesque III came before the board.

STAFF REPORT

Mr. Monte read the warning, which ran in the March 29, 2001 issue of the Valley Reporter.

A site visit was conducted at 7:00 p.m. before the hearing. Eric Brattstrom, David Markolf, Peter Monte, Chair; Lenord Robinson, Jeff Schoellkopf, Ernest Levesque Jr., Ernest Levesque III, and Margo Wade attended. At the visit the group toured the site and inspected the exterior of the structure and setting.

DISCUSSION

Mr. Monte asked Mr. Levesque Jr. what he was appealing and on what basis he was appealing. Mr. Levesque replied that he was appealing the Warren Zoning Administrators notice of violation issued on May 30, 1996, and the basis for the appeal is that the ZA did not issue the notice within the 15-day appeal period of the issuance of building permit # 1994-70-MM. Mr. Monte asked if all of the information submitted on the site plan was prepared by the site technician and engineer indicated on the site plan. There was discussion about what information on the submitted site plan was certified by the site technician and/or the engineer. Mr. Levesque Jr. stated that the submitted site plan is a copy of the plan prepared by McCain Consulting and

Eric H. Goddard. Mr. Levesque Jr. added the road, side and rear setback measurements; dimensions of the structure; proposed addition; and decks. Mr. Levesque stated that the septic details, shed and metes and bounds were prepared by McCain and Goddard. Mr. Monte cautioned Mr. Levesque Jr. that presenting misleading information could cause a problem with the licensed site technician and/or the engineer. Mr. Levesque Jr. replied that he added the additional information to make the site plan more clear.

Mr. Monte asked if Mr. Levesque Jr. believed the 1994 building permit was still valid. Mr. Levesque stated the permit was legal. The portion of the building indicated as “Proposed Addition” on the site plan is the subject of a different permit application.

Mr. Markolf asked which notice of violation the board is addressing – the May 1996 or the March 1999. Mr. Levesque Jr. replied the May 1996.

Mr. Markolf pointed out the under the new zoning the road setback requirement on German Flats Road is 40 feet, while it was 150 feet under the old zoning.

Mr. Monte asked how many dwellings and how many rentals were housed within the structure. Mr. Levesque III replied that the structure is a grandfathered two unit dwelling. Mr. Levesque III resides in the south unit and rents out bedrooms 5 bedrooms within that unit, and the north unit is rented out separately – totaling 6 rentals.

Mr. Levesque III stated that he wishes to clear up the violation, turn the units into town houses and sell the north unit, while retaining the south unit for himself.

Mr. Monte pointed out that the definition of a “Family” in the zoning ordinance indicates that not more than five unrelated persons living together in a household constitute a family. Technically Mr. Levesque III can only rent to four tenants in the south unit, but that issue is not before the board at this time.

Mr. Monte read the provisions of 24 V.S.A. §4464 regarding appealing actions of the Zoning Administrator, which requires that appeals be filed within 15 days of the issuance of a notice of violation. Mr. Levesque stated that the 15-day period applies the issuance of 1994 building permit and that the Zoning Administrator issued the notice of violation a year and one half after the issuance of the 1994 building permit. Mr. Monte stated that under §4464 the board does not have the authority to hear an appeal once the 15-day period has run.

Mr. Schoellkopf asked for the chronology of the situation, which follows:

- Permit issued in August 1994
- A second permit was applied for in 1995, which required a setback variance; the ZBA denied part of the request for the setback variance in November 1995, which the Levesques appealed to the VT Environmental Court
- VT Environmental Court denied further expansion of the existing structure into the front set back.

There was discussion about the Environmental Court decision issued on May 21, 1996.

Mr. Monte pointed out that the violation could be cured by applying for a permit under the new ordinance because the setback requirement has been reduced to 40 feet.

Mr. Levesque Jr. stated that Mr. Malboeuf was not doing his job property when he issued a notice a year and one half after the issuance of the 1994 building permit.

Mr. Levesque III. asked if the ZA would be willing to drop the violation if they submitted an application under the new zoning and since the septic system is properly permitted. Mr. Monte stated that that was the ZA's decision not the DRB's. The violation fine is pending, and needs to be settled with the ZA.

PUBLIC INPUT

Ms. Lee stated that she is an abutter and came to the hearing to find out what was being appealed and the outcome.

DELIBERATION/DECISION

MOTION by Mr. Monte, seconded by Mr. Brattstrom that the board does not have jurisdiction to hear an appeal of a 1996 action of the Zoning Administrator because this appeal is not filed timely under 24 V.S.A. §4464(a) therefore we deny the appeal. VOTE: unanimous; motion carried.

Mr. Monte suggested that the Levesques file an application to limit the damage going forward and to talk to the ZA about settling the standing violation and fine.

V. OTHER BUSINESS

a) Signing of minutes & decisions

MOTION by Mr. Markolf, seconded by Mr. Brattstrom to approve the April 11, 2001 minutes. VOTE: 4 yes, 1 abstention (JS); motion carried.

The Sherman V. Allen and Jim Edgcomb decisions were approved and signed.

VI. ADJOURNMENT

MOTION by Mr. Brattstrom, seconded by Mr. Robinson to adjourn the meeting. VOTE: unanimous; motion carried.

The meeting adjourned at 9:50 p.m.

Respectfully submitted,
Margo B. Wade
DRB/PC Assistant

DEVELOPMENT REVIEW BOARD

Eric Brattstrom (date)

Lenord Robinson (date)

David Markolf (date)

Peter Monte; Chair (date)

Jeff Schoellkopf (date)