

**TOWN OF WARREN  
DEVELOPMENT REVIEW BOARD  
MINUTES OF MEETING  
DECEMBER 5, 2001**

**MEMBERS PRESENT:** Eric Brattstrom, David Markolf, Peter Monte, Chair; Lenord Robinson, Jeff Schoellkopf.

**OTHERS PRESENT:** John & Heather Carino, Hiram Inc. Representatives; Robert Rushford, Pitcher Inn Attorney; Sue Carter, Barry Simpson, Craig Sooker, Robyn Shanni, Nate Seitz, Lisa Miserendino, Alice Cheney, Clayton Cormier, Ari Sadri, Kinny Connell, Laurie Roth, Jack Garvin, Barbara Christy-Garvin, Miron Malboeuf, Rudy Elliott, David Sellers, Jim Hilton, Margo Wade, DRB/PC Assistant.

**AGENDA:**

- 1) 7:30 p.m. Call to Order
- 2) Public Hearing: Pitcher Inn/Hiram Inc.
- 3) Other Business:
  - a) DRB Rules of Procedure – discussion
  - b) Signing of minutes

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**I. CALL TO ORDER**

Mr. Monte called the meeting to order at 7:35 p.m.

**II. PUBLIC HEARING: PITCHER INN/HIRAM INC – CONDITIONAL USE REVIEW**

Application #2001-96-MM: The Pitcher Inn/Hiram Inc. seek approval to move the service bar currently located in the kitchen, down stairs to the Tracks Room and to construct a bar counter. The project is located on the east side of Main St., in the Warren Village Commercial District and requires review under Article 5. *Development Review*, of the Warren Land Use & Development Regulations.

John Carino, Heather Carino and Robert Rushford came before the board to present the application.

**STAFF REPORT**

Mr. Monte read the public notice, which ran in the November 15, 2001 Valley Reporter.

**APPLICANT COMMENTS**

Mr. Rushford explained the Pitcher Inn application, which is requesting approval to move the function of the service bar from its current location in the kitchen downstairs into the Tracks Room, and construction of a bar counter. The applicant previously sought approval to move the service bar downstairs, installation of a bar with six bar stools, which was approved by the Warren ZBA in April 1999 and ultimately denied by the Vermont Environmental Court in January 2000 and Supreme Court in August 2001.

Along with the current request, the applicant has submitted a list of proposed conditions to ensure the service bar is used in a restaurant setting, as summarized below:

1. Locking (from the outside) of the Tracks Room exterior door and removal of the street level “tracks” sign;
2. Only individuals with dinner reservations will be allowed service in the Tracks Room;
3. No bar stool at the bar counter;
4. Tracks Room hours of operation will coincide with the restaurant hours; and
5. The bartender’s register will be maintained as a cashless drawer requiring all patrons to pay their tab at the conclusion of their meal (Note: the application includes more detailed condition language).

The current location of the service bar leads to congestion in the kitchen, service inefficiencies for the bartender and wait staff, and adverse affect to the wines and other beverages caused by the kitchen heat. The Tracks Room is setup with living room type seating with the service bar located against the east wall.

Mr. Markolf asked how the Tracks Room seating was calculated into the restaurant’s existing 40-seat limit. Mr. Carino responded that the number of dining patrons would not exceed the 40-seat limit, at any given time, including the patrons dining in the dining room and patrons waiting in the Tracks Room.

Mr. Schoellkopf asked how special events would be handled. Mr. Carino responded that special events differed, but that the 40-seat limit would be maintained.

Mr. Monte stated that the main objection of the court rulings was the service of cocktails alone at the inn, which was a change in the nature of the restaurant business. Mr. Rushford concurred.

#### **PUBLIC INPUT**

Mr. Cormier stated that he supported the application.

Ms. Cheney read her statement and submitted the statement in writing (attached at the end of these minutes). Ms. Cheney does not support the installation of the bar counter and contends that the current application is the same as past applications, which were denied by the courts. She requested that the board deny the current request.

Ms. Miserendino pointed out that the bar has already been constructed in the Tracks Room. She believes the court has already granted approval to move the service bar downstairs to the Tracks Room, but feels the construction of a counter is not allowed. Further, she is concerned that the conditions are inadequate, especially pertaining to special event provisions. Special events include wine tastings, receptions and the opera. Special events increase the village traffic significantly. How will the proposed conditions prevent additional traffic generated by special events, unless the applicants are not making any provisions for special events. She questioned the feasibility of keeping the door locked. What about during the summer, will there be tables and chairs set out on the terrace, and how is the town going to enforce the proposed conditions. Ms. Miserendino referred to the Supreme Court ruling, which acknowledged that it was not

constrained to ignore reality and permit a use that could not be contained, regardless of the conditions imposed.

Mr. Sellers stated his opinion as a town resident, citizen and participant on the project. He lives next door to the inn and was one of the architects of the building, has designed many inns around the country, teaches planning and architecture. He believes that the inn opponents have a completely different concept of a village versus what the majority of people who live in villages think the concept is. He quoted John Ruskin, Architect/Historian, whose definition of a village includes a church, a great house, an inn and a village tavern. Vermont's village history includes village inns as the gathering place for the town. To see the village as only residential ignores the historic vibrant nature of a village. He feels the need to get permission to move the bar function down stairs is unnecessary and the board should find the application process unnecessary. The proposed restrictions are silly and assume that patrons will be irresponsible and the owners do not know how to run a business.

Mr. Simpson stated that his statements are directed more to the inn owners, but are pertinent to the board's discussion. The town still does not have one internally consistent set of documents that represent what has been built. The cause of this inconsistency is the multiple permit reviews and appeals which have taken place since the reconstruction began in 1995. The 1995 stipulated settlement suggested a limited site plan review, which Mr. Simpson believes has still not taken place. Mr. Simpson feels that had the site plan been submitted, much of the court costs accrued by the town, applicant and appellants would not have occurred. He further requested the applicant to submit to the town an application for "as built" approval, which would benefit all parties when future application are processed and reviewed. Mr. Monte acknowledged Mr. Simpson's concerns with regard to the difficulty of determining the terms of the existing permits. Mr. Brattstrom added that the applicants did come back to the board for site plan review in 1999 and at that time an updated site plan was submitted.

Mr. Monte asked if the bar had been put in place on the east wall in the Tracks Room. Mr. Carino replied that the counters have been installed. Mr. Markolf asked if the bar had the same configuration as the plan that was submitted in 1999. Mr. Carino confirmed the configuration. The 1999 bar plan was dated 12/5/01 and added to the current application, noting that the bar stools included on the drawing are no longer included with this request.

Mr. Monte asked the applicants why they were applying for a use that had been approved by the courts. Mr. Rushford replied that there are questions regarding the nature of the service bar function versus the actual service counter.

Mr. Rushford asked if the exemption from permitting for interior construction less than \$5,000 was applicable. Mr. Monte asked what the concerns would be if the board found that this review was unnecessary. Mr. Rushford replied that the concerns would be the lack of conditions that would assure the use would not turn into a tavern.

Ms. Connell suggested that the definition of 'service bar' was in question and suggested that a free standing bar with ice making capabilities may not qualify and that a service bar would be constructed against the wall rather than built away from the wall. Further that the movement of the service bar function would not affect traffic, noise or parking. Mr. Sellers suggested the definition of 'service bar' to be the mechanical accommodation to provide the restaurant the facilities to serve the customers the current beverages demanded at the time, which would allow for the service and storage of beverages, as well as the storage and maintenance of items necessary to serve those beverages. The location of the bar does not matter. Once there are no bar stools only employees approach the bar not patrons. Ms. Connell added that the Environmental Court denied the installation of a bar counter and bar stool seating, but granted the request to move the service bar function downstairs to the Tracks Room against the east wall, which is where the question of the definition of 'service bar' comes into play.

Ms. Miserendino stated that she believes what has been built in the Tracks Room is not what was granted by the courts. Mr. Rushford stated that a service bar could have a service bar counter even if it is not along the wall because patrons cannot sit at the service bar counter.

Ms. Cheney asked how the town was going to enforce the use of the service bar as a service bar with the proposed conditions. Mr. Rushford added that these conditions are no different than other conditions imposed by the zoning regulations. He added that the proposed conditions are easily observable.

Ms. Cheney stated that the applicant was seeking for a permit for what was built, which is contrary to what was approved by the courts.

Concerning enforcement Mr. Sellers added that the proposed conditions are asking for problems. The courts should be asked what was allowed for a counter and the town should move on and trust that the inn owners will carry on a decent business.

Mr. Monte acknowledged the letters submitted by Ginny & John Roth, and Gordon Hoare, both supporting the application.

Mr. Monte questioned the practicality of locking the door to the Track Room and asked if there were other means to restrict access by that route. Mr. Carino responded that keeping the door lock in the summer would be impractical. Ms. Carino added that the system is setup such that a person could not walk in off the street and order a drink because the bartender would not have a reserved table to charge the drink to. In addition, the host usually escorts the guest downstairs to the Tracks Room.

Mr. Monte asked if there was public access to the Tracks Room from the street and the practicality of requiring some form of gate. Mr. Carino replied that inn guests do use the street access during the day to get down to the terrace and back yard.

Ms. Miserendino asked if the same system would be used for special events. Ms. Carino responded that the wine tastings are paired with meals; therefore, patrons would have a dinner reservation.

Ms. Christy-Gavin asked why the review process was so stringent today for the new Pitcher Inn when the old Pitcher Inn used to have many large parties with few restrictions. She feels this whole process is reverse discrimination.

Mr. Schoellkopf asked that hours of operation for the service bar be included with the conditions. The 1999 town permit required a closing time of 10:30 p.m. Sunday through Thursday, and midnight Friday and Saturday. Mr. Carino responded that these are the closing hours for the restaurant.

Mr. Sellers questioned the grandfathered functions of the old Pitcher Inn and whether those functions were still allowed at the new Pitcher Inn. Mr. Monte replied that the negotiated settlement probably mooted the possibility of grandfathered functions carrying over.

Mr. Monte posed the question whether the board needed to consider the request. In answer to his own question, he stated that while there is differing interpretation of what the courts approved it is worthwhile for the board to proceed with the review. Mr. Schoellkopf added that the proposed conditions, responding to the Supreme Courts concerns pertaining to control of the public, are a good reason to proceed.

Mr. Markolf asked if the applicant would consider posting signs at the bar restricting service to patrons with dinner reservation. Mr. Carino replied that he would prefer not to post such signage.

#### DELIBERATION/DECISION

**MOTION by Mr. Schoellkopf, seconded by Mr. Markolf to waive further submittal material as required in Table 5.1 because the material received with the application is sufficient to review the request. VOTE: unanimous; motion carried.**

Mr. Monte suggested that the difference between this application and the 1999 request were the proposed conditions and that there will be no bar stools at the bar counter.

**MOTION Mr. Monte, seconded by Mr. Schoellkopf to find the proposed service bar will not adversely affect the capacity of existing or planned community facilities or services, which is consistent with our 1999 decision and the Environmental Court's decision, because the proposed use would not enlarge the allowed seating capacity of dining patrons, at any given time, or length of time parking spaces are employed by restaurant patrons. VOTE: unanimous; motion carried.**

Mr. Schoellkopf stated that the board did not find the request in 1999 would significantly alter the character of the area and is now responding to the court decisions. Mr. Monte added that when the application was before the board in 1999 the use was intended to be confined to

dining patrons, but the use changed as it progressed through the court review processes. The current application proposes conditions that require that dining patrons only will be served.

**MOTION by Mr. Monte, seconded by Mr. Brattstrom to impose the conditions to prevent cash transactions at the service bar by precluding a cash draw being maintained at the service bar, this would require that all purchases at the service bar must be paid for with the meal ticket; no barstools will be allowed at the service bar counter; the service bar is open only to dining patrons; and hours of operation of the service bar will coincide with the restaurant hours, which is open until 10:30 p.m. Sunday through Thursday, and until midnight Friday and Saturday.**

Ms. Miserendino added that she is troubled with the president the bar sets. She is also concerned about the restaurant hours. The stated hours do not specify the opening hours. When events start early, they coincide with the busy time down town when school busses come through. She stated that the bar is opening up the facility to more happenings. Mr. Monte questioned how the service bar is increasing the intensity when the allowed seating capacity is not changing and will still be open for only two meals, breakfast and dinner. Ms. Miserendino responded that more events starting earlier now with a bar would increase the intensity. Ms. Carino added that the restaurant begins serving dinner at 5:00 p.m. Ms. Miserendino asked if by no specific opening hour the restaurant could start serving dinner at 4: 00 p.m. Mr. Monte stated that this review is not addressing the restaurant's hours of operation.

**MOTION by Mr. Monte, seconded by Mr. Markolf to find the proposed service bar will not adversely affect the character of the neighborhood or area affected because the conditions imposed will give practical assurance that the service bar patrons will be dining patrons and the existing 40-seat limitation will be maintained. VOTE: unanimous; motion carried.**

**MOTION by Mr. Markolf, seconded by Mr. Robinson to find the proposed service bar will not adversely affect traffic on roads and highways in the vicinity because the service bar is only open to dining patrons and the 40-seat limit is unchanged. VOTE: unanimous; motion carried.**

**MOTION by Mr. Monte, seconded by Mr. Markolf to find the proposed use conforms to all municipal bylaws and regulations in effect. VOTE: unanimous; motion carried.**

**MOTION by Mr. Markolf, seconded by Mr. Schoellkopf to find the utilization of renewable energy resources criteria is not applicable. VOTE: unanimous; motion carried.**

**MOTION by Mr. Markolf, seconded by Mr. Brattstrom to require that the service bar shall conform with the general configuration of the submitted designs, along the east wall of the Tracks Room, and that there will be no bar stools. VOTE: unanimous; motion carried.**

Ms. Cheney asked what the board is referring to as far as construction of the bar. Mr. Monte responded that bar will include the whole horseshoe configuration as drawn. Ms. Cheney stated that part of the bar is projecting into the room and not against the east wall. Mr. Schoellkopf responded that the service bar includes the whole unit including all counters. Ms. Cheney stated that the Environmental court did not allow an ice sink or mechanicals behind the counter. Mr. Markolf stated that the Supreme Court ruling disallowed the installation of a bar counter and bar stool seating for six customers, while this proposed counter alone is for wait staff and employees. Mr. Monte added that the presence of a sink does not have an affect on the character of the area; the question is whether the board created a situation where drinkers only can come in and use the establishment, which would be a change.

The board discussed the §5.3(B) – Specific Standards and determined that further review under these standards was not necessary.

**MOTION by Mr. Schoellkopf, seconded by Mr. Brattstrom to approve the application as submitted with conditions. VOTE: unanimous; motion carried.**

**III. OTHER BUSINESS**

a) DRB Rules of Procedure – discussion

The board discussed the current meeting schedule and decided to move the Heroux/Clark application to January 9, 2002 at 7:30 and to discuss the draft DRB rules of procedure on the 9<sup>th</sup> after the hearing. All regular & alternate members will be invited to participate in the discussion of the draft rules of procedure.

b) Signing of minutes

**MOTION by Mr. Markolf, seconded by Mr. Monte to approve the October 31, 2001 meeting minutes as submitted. VOTE: 3 ayes, 2 abstention (LR, JS); motion carried.**

**IV. ADJOURNMENT**

**MOTION by Mr. Markolf, seconded by Mr. Monte to adjourn the meeting. VOTE: unanimous; motion carried.**

The meeting adjourned at 9:30 p.m.

Respectfully submitted,  
Margo B. Wade  
DRB/PC Assistant

**DEVELOPMENT REVIEW BOARD**

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Eric Brattstrom

(date)

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Lenord Robinson (date)

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David Markolf (date)

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Peter Monte, Chair (date)

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Jeff Schoellkopf (date)

Attachments:

- 1) Written statement submitted by Alice Cheney