

**TOWN OF WARREN  
DEVELOPMENT REVIEW BOARD  
MINUTES OF MEETING  
AUGUST 27, 2003**

**MEMBERS PRESENT:** David Markolf, Chris Behn, Eric Brattstrom, Lenord Robinson, Virginia Roth & Jeff Schoellkopf.

**OTHERS PRESENT:** Tom Clark, Jim Caffry, Robert Neuberger, Neuberger Representatives; Jason Heroux, River Watch Real Estate Representative; Shannon Hill, DRB/PC Assistant.

**AGENDA:**

- 1) 7:30 PM - Call to Order
- 2) 7:30 Neuberger – Residential Addition
- 3) 8:15 River Watch Real Estate / Senor
- 4) Mill Brook Imports - Landscape & Erosion Control Plan.
- 5) Signing of Minutes & Decisions
  - a) Sugarbush Bound Exhibits
  - b) Review Wade Updated Site Plan

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**I. CALL TO ORDER**

Ms. Roth called the meeting to order at 7:35 PM.

**II. NEUBERGER VARIANCE/CONDITIONAL USE**

Application # 2003-11-ZP submitted by Robert Neuberger seeking a variance for the Maximum Lot Coverage in the Forest Reserve District. This project requires Review under Article 5, *Development Review*, and Article 9.6, *Variations*, of the *Warren Land Use & Development Regulations*.

**STAFF REPORT**

Ms. Roth read the legal warning which ran in the Vermont Journal on August 6, 2003.

Mr. Markolf noted that this hearing has been re-warned and the board is beginning a new review process and will review the application as a Conditional Use in the Forest Reserve & a Variance for the maximum lot coverage. He believes that since the hearings are starting over the prior application needs to be denied or withdrawn by the applicant to prevent it from being automatically approved after 45 days.

Mr. Schoellkopf noted that since the board is starting a new review process, he had requested more board members sit on the board so they are not the minimum quorum. Per his request Mr. Markolf joined the board.

**APPLICANT COMMENTS**

Mr. Neuberger voluntarily withdrew his prior application for the conditional use. He does not object to Mr. Markolf sitting on the board.

Mr. Caffry, Mr. Neuberger's attorney, noted that the board could take judicial notice of the findings that were made at prior hearings since the site plan and house design has not changed since the findings were made.

Mr. Neuberger has been trying to acquire an acre of land from an adjoining property owner so he would own enough property to expand his house and remain below the 2% maximum lot coverage. He has been unsuccessful in obtaining the land and does not think that more time would provide any additional land.

Mr. Neuberger stated that he could only add a small amount of footprint to his house and stay within the 2% maximum lot coverage. However, he noted that he could build up another 12 feet and stay within the dimensional height standards for the district. Mr. Neuberger presented a plan for “building up” and staying within the 2% lot coverage and making the structure 32.5 ft tall. Mr. Neuberger also stated that building up would be the most expensive way to add onto the house.

Mr. Caffry feels that if the house were taller it would be more visible from the road and the valley below. He testified that if the variance were issued the addition would be hidden behind the existing trees.

Mr. Caffry noted that based on the prior minutes he concludes that the question the DRB is grappling with is if the denial of the garage would prohibit the applicant reasonable use of his property. He feels that the decision comes down to whether or not the board considers the denial of a garage prohibiting reasonable use of the property. He stated that if the lot were in another district a garage would be a “use by right”. If the DRB decides that denying a garage would be prohibiting Mr. Neuberger’s reasonable use of his property than they would also need to determine what the minimum variance that will afford relief would be. He feels that the variance would be issued for the garage, not the development above the garage, because the degree of non-compliance is based on the footprint not the volume of the development. Mr. Caffry states that the Town of Warren Zoning Regulations specifically states that the degree of non-compliance is based on the encroachment on the setback and the footprint of the building, not the volume of the building.

Mr. Neuberger’s intention is to move up to Warren and live on top of the mountain year round. He has owned the property for approximately 31 years. He requires more space for the house to be comfortable for year round living. If the variance is denied he requests the DRB hold a hearing to discuss a revised plan for “building up” at their nearest convenience so he can get some of the work completed before it snows.

#### GENERAL DISCUSSION

Mr. Schoellkopf noted that the definition of a “reasonable use” in the Town of Warren zoning regulation specifically states that a garage is not required to have reasonable use of the property.

Ms. Roth stated that the towns’ attorney, Mr. Stitzel, as well as the chair of the DRB, Mr. Monte, both advised the board on the issue of a variance. Mr. Monte would not support a variance and believes that if a variance were granted and appealed that it would not be upheld in Environmental Court. He believes that Mr. Neuberger has used the property for over 25 years so how can the DRB say that he does not have reasonable use of the property. Mr. Stitzel advised that the DRB should consider whether a ski house in the Forest Reserve on a 1-acre lot is a reasonable use of the property. He also stated that the reasonable use of a property is not based on the applicants highest and best use of the property.

The DRB discussed their thoughts on the minimum variance that could afford relief on Mr. Neuberger’s Lot. They would be more prone to approve the Variance/Conditional Use if the lot coverage were reduced to as close to 2% as feasible. The board requested Mr. Neuberger

come back with a design for a smaller garage. They will continue reviewing the application under the variance criteria.

Mr. Neuberger offered to come back with a plan for a 24' by 24' garage up against the house. The smaller garage would reduce the addition footprint from 44' to 24' long.

**Motion by Mr. Schoellkopf, seconded by Mr. Markolf, to continue the hearing to Monday, September 15<sup>th</sup>, 2003 at 7:30 PM. VOTE: unanimous; motion carried.**

Mr. Behn and Mr. Robinson arrived at 8:15 PM. Mr. Schoellkopf and Ms. Roth departed at 8:35 PM.

### **III. RIVER WATCH REAL ESTATE – 2 LOT SUBDIVISION ON SENOR ROAD**

Application #2003-07-SD submitted by River Watch Real Estate requesting a 2-Lot subdivision of 25.5 +/- acres into Lot 1(12.5+/-) and Lot 2 (13.0 +/-). The project is located on Senor Road in the Rural Residential and also contains a portion of the Meadowland Overlay District.

#### **STAFF REPORT**

Mr. Markolf read the legal warning which ran in the Vermont Journal on August 6, 2003.

A site visit was conducted on August 27, 2003 at 6:45 PM. Present at the site visit were board members Dave Markolf, Eric Brattstrom and Lenord Robinson. Others present at the site visit were Jason Heroux, applicant and Shannon Hill, DRB/PC Assistant. At the site visit the location of the proposed road, houses and septic system were all discussed.

#### **APPLICANT COMMENTS**

Mr. Heroux came before the board to present the project which consists of a 2-Lot subdivision of 25.5 +/- acres into Lot 1(12.5+/-) and Lot 2 (13.0 +/-). The project is located on Senor Road in the Rural Residential and also contains a portion of the Meadowland Overlay District. The proposed project will have a shared driveway and leach field.

#### **GENERAL DISCUSSION**

The board reviewed the location of the meadowland overlay district. The meadowland is located on the eastern most corner of the Parcel. Mr. Heroux is not proposing any development in the meadowland overlay district.

King & King Attorneys submitted a memo to the DRB stating that Mr. Fowler, the adjacent property owner, has deeded rights to a spring that runs through the Senor property. The memo indicated that Mr. Fowler is very concerned that the subdivision and development of the Senor property not impact his water supply.

Mr. Heroux stated that he has indicated the location of the Fowler spring on the site map, as well as relocated the driveway to minimize the impact on the spring.

There will be bylaws for the shared gravity fed leach field and the driveway maintenance.

Adjacent property owners have expressed interest in pursuing a Lot-Line adjustment to purchase some of the land. Mr. Heroux is not proposing any Lot-Line adjustments at this time.

DELIBERATION/DECISION

**MOTION by Mr. Markolf, seconded by Mr. Behn, to accept the application as complete, categorize it a minor subdivision and approve the waiver request for the initial hearing. VOTE: unanimous; motion carried.**

**MOTION by Mr. Markolf, seconded by Mr. Brattstrom, that the houses shall not move more than 200' in any direction from where the houses are located on the site plan, provided the new location does not infringe on any setbacks and conforms to the Town of Warren Zoning Ordinance. VOTE: unanimous; motion carried.**

**MOTION by Mr. Behn, seconded by Mr. Robinson, pursuant to §7.2 (A) thru (E) that the project satisfies, subject to the conditions contained herein, the criteria for character of the land, conformance with the Town Plan, compatibility with existing settlement patterns, density and lot layout and the establishment of a building envelope. VOTE: unanimous; motion carried.**

**MOTION by Mr. Behn, seconded by Mr. Brattstrom, pursuant to §7.2 (F) that the project satisfies, subject to the conditions contained herein, the criteria for landscape and screening. VOTE: unanimous; motion carried.**

The applicant represents that he may clear part of the property for use as pastureland.

**MOTION by Mr. Behn, seconded by Mr. Markolf, pursuant to §7.2 (G) & (H) that the project satisfies the criteria for energy conservation and disclosure of development plans. VOTE: unanimous; motion carried.**

The applicant represents that one of the homes will be partial solar.

**MOTION by Mr. Markolf, seconded by Mr. Behn, pursuant to §7.3 (A), (B) & (C) that the project satisfies the criteria for design process, primary conservation areas and secondary conservation areas. VOTE: unanimous; motion carried.**

**MOTION by Mr. Markolf, seconded by Mr. Behn, pursuant to §7.4 (A), (B), (C) & (D) that the project satisfies the criteria for intent, preservation of open space and creation of common land. VOTE: unanimous; motion carried.**

**MOTION by Mr. Markolf, seconded by Mr. Behn, pursuant to §7.5 that given the conditions of the property the project is not applicable to the criteria for stormwater management & erosion control. VOTE: unanimous; motion carried.**

**MOTION by Mr. Markolf, seconded by Mr. Behn, pursuant to §7.6 (A) & (B) that the project satisfies the criteria, given the conditions contained herein, for municipal facilities & fire protection. VOTE: unanimous; motion carried.**

**MOTION by Mr. Markolf, seconded by Mr. Behn, pursuant to §7.6 (C) that the**

project is not applicable to the standards for parks and playgrounds. VOTE: unanimous; motion carried.

MOTION by Mr. Markolf, seconded by Mr. Robinson, pursuant to §7.7 (A) thru (O) that the project is not applicable to the standards for roads, road design, road construction, intersections, drainage and stormwater, coordination with adjoining properties, access permits, access management, traffic and road capacity, road names and signs, driveways, modification of road standards, parking and transit stops, pedestrian access and legal requirements. VOTE: unanimous; motion carried.

The fire department requirements are met based on the application.

MOTION by Mr. Markolf, seconded by Mr. Robinson, pursuant to §7.8 that the project satisfies the criteria for water supply and wastewater disposal. VOTE: unanimous; motion carried.

MOTION by Mr. Markolf, seconded by Mr. Behn, pursuant to §7.9 that the project satisfies the criteria for utilities. VOTE: unanimous; motion carried.

The applicant represents that all new utilities will be underground.

MOTION by Mr. Behn, seconded by Mr. Brattstrom, pursuant to §7.10 that the project is not applicable to the standards for signs. VOTE: unanimous; motion carried.

MOTION by Mr. Markolf, seconded by Mr. Behn to approve the 2-Lot subdivision of 25.5 +/- acres into Lot 1(12.5+/-) and Lot 2 (13.0 +/-) with the following conditions:

- 1) The applicant must locate and protect the deeded rights conveyed from Lester H. and Arlene D. Senor to Bruce and Angela Fowler as noted in the King Memo dated August 12, 2003;
- 2) the location of the houses shall not move more than 200' in any direction from where the houses are located on the site plan, provided the new location does not infringe on any setbacks and conforms to the Town of Warren Zoning Ordinance;
- 3) the applicant provide covenants and association agreements for the septic and road. VOTE: unanimous; motion carried.

#### IV. MILL BROOK IMPORTS

Motion by Mr. Behn, seconded by Mr. Brattstrom, to approve the Landscape and Erosion Control Plan as submitted by the Mill Brook Imports received August 4, 2003. VOTE: unanimous; motion carried.

#### V. OTHE BUISNESS

##### a) Sugarbush Bound Document

Mr. Markolf and Mr. Brattstrom are reviewing the bound Exhibits submitted by Sugarbush. The Lincoln Peak Lodge decision require the document be signed by at least two board members.

b) Wade Updates Site Plan

**MOTION by Mr. Behn, seconded by Mr. Markolf, to approve the Wade updated site plan dated August 14, 2003 with the condition that there shall be no further clearing other than necessary for the construction and maintenance of the leach field. VOTE: unanimous; motion carried.**

c) Approval of meeting minutes

**MOTION by Mr. Behn, seconded by Mr. Robinson, to approve the minutes from August 6, 2003 as corrected/amended. VOTE: unanimous; motion carried.**

**MOTION by Mr. Robinson, seconded by Mr. Markolf, to approve the minutes from July 30, 2003 as corrected/amended. VOTE: unanimous; motion carried.**

**MOTION by Mr. Brattstrom, seconded by Mr. Robinson, to approve the minutes from August 13, 2003 as corrected/amended. VOTE: unanimous; motion carried.**

**VI. ADJOURNMENT**

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

The meeting adjourned at 9:15 PM.

Respectfully submitted,  
Shannon M. Hill  
DRB/PC Assistant

**DEVELOPMENT REVIEW BOARD**

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David Markolf (date)

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Chris Behn (date)

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Lenord Robinson (date)

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Eric Brattstrom (date)

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Virginia Roth (date)

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Jeff Schoellkopf (date)