TOWN OF WARREN
DEVELOPMENT REVIEW BOARD
MINUTES OF MEETING
WEDNESDAY JULY 18, 2007

Members Present: David Markolf, Bob Kaufmann, Virginia Roth, Jeff Schoellkopf, Lenord Robinson and Peter Monte (arr. 7:38).

Others Present: David and Alice Olenick, George and Susanne Schaefer, Bruce Fowler, Brian Shea, Jim Trihy, Erin Post, Dick King, Phil Clapp, Mark Bannon, Gary and Joan Shivo, Miron Malboeuf and Ruth Robbins.

Agenda: Call the meeting to order 7:00.

1) Review Notes of Site Visit:
Shivo – Violation
Schaefer - Conditional Use, Forest Reserve District

2) **Application 2007-01-PRD/SD & 2007-10-CU**, Continued from June 6th, 2007: **Summit Ventures NE LLC** (dba Sugarbush Resort) seeks approval to add a zip line, disc golf course and new mountain bike trails and to reintroduce Mountain Biking to the existing mountain recreation center which offers hiking and lift access at the Lincoln Peak base area, located in the Sugarbush Village Commercial and Sugarbush Village Residential Districts, through out summer and fall months. These uses will modify the existing permits 2006-02-PRD & #2006-02-CU-A1 (issued by the Town of Warren Development Review Board on December 20, 2006)

3) **Applications, 2007-07-SD & 2007-07-CU**: Two Lot Subdivision Partially Located in Meadowland Overlay District for Preliminary Plan Review/Final Plan Approval. The applicant, Bruce **Fowler**, seeks permission to subdivide a 4.9± acre parcel located at 258 Senor Road. The parcel, ID # 023009-000, is located in the Rural Residential District and partially located in the Meadowland Overlay District. This application requires review under Article 2 ,Table 2.2 (Rural Residential District), Article 2, Table 2.13, (Meadowland Overlay District), Article 5, Development Review and also under Article 6, Subdivision Review, § 6.3, Preliminary Plan Review, § 6.4, Final Plan Approval and Article 7, Subdivision Standards of the Warren Land Use and Development Regulations.

4) **2007-10-CU & VA**, Conditional Use /Variance at 2135 Roxbury Mountain Rd. for the construction of Residential Addition & Accessory Structure in the Forest Reserve District. The applicants, George & Susanne **Schaefer**, seek approval to add garage to an existing structure and to convert a deck to living space and also add a storage shed, Accessory Structure, on 6.0 ± acres at located in the Forest Reserve District This application requires review under Article 2, Table 2.1, (Forest Reserve District) , Article 5, Development Review and Article 9, § 9.7 Variances, of the Warren Land Use and Development Regulations.

5) **2007-13-SD**, Amendment to Application #2005-10 SD, 5-Lot Subdivision located Hiddenbrook Lane and Behn Rd. The applicant, James R. **Trihy**, seeks approval to relocate the building envelopes on lots 1, 2, and 3 and to relocate the leach field on lot 2. The 23.77 +/- acre parcel, ID # 023003600, is located in the Rural Residential District. This application requires review under Article 2, Table 2.2, (Rural Residential District) Article 6, § 6.7, Revisions To An Approved Plat and Article 7, Subdivisions Standards of the Warren Land Use and Development Regulations.

6) An **appeal to a zoning violation** issued to Garrett J. **Shivo** on June 1st, 2007, parcel ID # 418718-00(7.4 ± acres located off Lake Road), for a violation of Article 3, §3.4, Erosion Control & Development on Steep Slopes and § 3.13, Surface Water Protection of the Warren Land Use and Development Regulations. This parcel is located in the Alpine Village Residential District, Article 2, and (Table 2.6).

7) **Other Business**:

a. Review and approve Minutes from May 23, 2007 June 20th, 2007
b. Mylar for Booher

Mr. Markolf called the meeting to order at 7:21 pm.

1. **Application 2007-01-PRD/SD & 2007-10-CU** Continued from June 6th, 2007: **Summit Ventures NE LLC** (dba Sugarbush Resort) seeks approval to add a zip line, disc golf course and new mountain bike trails and to reintroduce Mountain Biking to the existing mountain recreation center.

At the hearing on June 6th it was determined that the applicant had not fully notified all abutters. The Board gave approval for their application with the condition that the applicant gives full notification with the opportunity for any of the abutters to come before the DRB to give comment. Notification was given, no response from any of the abutters, thus the Board moved to close the hearing on this application.

MOTION by Mr. Markolf that the hearing on application 2007-01-PRD/SD & 2007-10-CU submitted by Summit Ventures NE LLC is hereby closed. **SECOND** by Mr. Kaufmann. **VOTE**: all in favor, the motion passed.

2. **Applications, 2007-07-SD & 2007-07-CU**: Two Lot Subdivision Partially Located in Meadowland Overlay District for Preliminary Plan Review/Final Plan Approval. The applicant, Bruce **Fowler**, seeks permission to subdivide a 4.9± acre parcel located at 258 Senor Road.

[NOTE: though at the table, Mr. Monte recused himself from the deliberations of this hearing as he is a nearby neighbor of the applicant]

Mr. Markolf asked Mr. Bannon to bring the Board up-to-date on the status of the application. Mr. Bannon said that since the last meeting he had invited the State Stream alteration engineer, Patrick Ross, to visit the watercourse/drainage ditch. Mr. Ross told Mr. Bannon that however it was defined, he did not have any jurisdiction over it but that he would have no problem in moving it if he did have jurisdiction and that he did not want to enter into the controversy over what it was.

Mr. Bannon continued to say that further information had come to light when in doing additional verification he found on a USGS map a "blue line" in the vicinity of the disputed water course. With that being the case, the plans have been modified: the building envelope has been changed and the water course has been relocated. The proposed house footprint has also been modified to meet a minimum 50 foot distance from the relocated water course. Other changes are the addition of the location of a hydrant, a defined building envelope for the existing house and he cleaned up the dimensions on the front lot line. Discussion continued regarding the definition of the water course. Though it is man-made, the fact that it is mapped gives it status as a water course that needs to be recognized as more than just a drainage ditch. Mr. King also added that he had found an ortho of the area from 1979 that also showed the water course.

The question of whether or not the wastewater system encroaching into the well shield on the lot with the existing house was once again brought up. Mr. Bannon pointed out to the Board that the

wastewater system would be submitted to the State and they would either approve or not, that the DRB did not have to make a determination. Also brought up was including in the covenants a requirement to maintain the meadowland at the back of both lots in a consistent manner to truly embody the intent of preserving meadowland areas. Mr. King raised the question of the interpretation of the regulations on the issue of frontage. The Board has taken the position that frontage can be figured along both the road and a right-of-way and Mr. King's position is that it should be only that length along the road. Mr. Bannon read the definition of frontage from the regulations as: "the distance of the portion of a lot line abutting a road right-of-way" and commented that he did not think it was ambiguous at all.

After confirming that the application had been deemed complete and classified as a minor subdivision the previous hearing, Mr. Markolf made the following motion;

MOTION by Mr. Markolf that the Board grants Preliminary Plan approval with the following items to be satisfied prior to any Final approval: 1) updated site plan made available to any interested parties [specifically Mr. King] prior to the next hearing, 2) State wastewater approval [as a condition of any Final approval], 3) Reduction of 100 foot stream vegetated buffer ["vegetated buffer" lies within the Meadowland Overlay – comments were made that the vegetation should be consistent with what already exists and that some vegetation was desirable, though in the meadowland, for the purpose of absorbing any pollutants. It was also noted that the buffer and the maintenance of such will be noted on both the mylar and in the covenants.] to 50 feet and 4) building envelopes to skirt the perimeter of the pond. **SECOND** by Mr. Robinson. **VOTE**: all in favor, the motion passed.

MOTION by Mr. Markolf to continue this hearing until Wednesday August 22, 2007 at 7 pm. **SECOND** by Mrs. Roth. **VOTE**: four in favor, one opposed, the motion carried.

3- **2007-10-CU & VA**, Conditional Use /Variance at 2135 Roxbury Mountain Rd. for the construction of Residential Addition & Accessory Structure in the Forest Reserve District. The applicants, George & Susanne Schaefer, seek approval to add garage to an existing structure and to convert a deck to living space and also add a storage shed, Accessory Structure, on 6.0 ± acres at located in the Forest Reserve District.

Mr. Monte started the hearing by stating for the record that a site visit had been conducted earlier in the evening and attended by Mr. Markolf, Mr. Malboeuf, himself and the applicants Mr. and Mrs. Schaefer. Mr. Robinson conducted a site visit on his own. Mr. Monte said that the main issue was concerning the setback. Since the property is in the Forest Reserve District, the setbacks are 150 feet, all sides. This lot was pre-existing to the zoning regulations thus the lot is smaller than currently required for the district and the dwelling does not conform to the current setback standards. In addition to the home addition and the new garage, the applicants also plan to cover the existing siding with hardy plank in an earth tone color and replace the red roof with one in a bronze, mat finish. It was noted that there already exists a one car attached garage and that the applicants were requesting a second bay.

Comments were made that in addition to changing the siding and roof, both of which will decrease the visibility of the home, that anti-glare measures should also be employed for any of the west or south facing windows. This would include the request to enclose the deck area. It was debated whether or not the Board could impose anti-glare requirements on existing windows or just newly installed windows. Mr. Robinson also commented that if they approved the shed that the trees currently located below the shed should be maintained and not allowed to be cut.

Mr. Monte addressed the setback issue by stating that the setback relief allowed under Article 3 § 3.6 (C) (1) does not work in this situation which leaves the Board with looking at possibly granting a variance. He pointed out that one of the criteria to be considered in granting a variance was that the request be "necessary for the reasonable use of the property".

The Board then went through the standards for allowing a variance under § 9.6 Variances (A) (1) through (5). For item 1 it was determined that there existed a limited building area, thus there were unique physical conditions to the site due to topography. Item 2, due to the physical aspects of the property, there was no ability to conform to the required 150 foot setback requirement. For item 3, the unnecessary hardship of the circumstances were not created by the applicant, and item 4, it the variance is granted the essential character of the neighborhood will not be impacted in a negative way, substantially or permanently impair the appropriate use or development of adjacent property, reduce access to renewable resources nor be detrimental to the public welfare. If anything, with the property becoming less visible, it will become more compliant to district standards. Item number 5 asks the Board to determine if this request is the minimum that will afford relief.

Mr. Clapp, a neighbor asked to comment and stated that they had taken a look and that there was nothing they found to be objectionable. They particularly liked the location of the storage shed as it was tucked next to an embankment and they would not see it at all as there house was above it. He also said he had a proxy for the other neighbor, the Luces and that they felt the same way.

Mr. Monte revisited item 2 to further discuss the aspect of "reasonable use of the property". He noted that they may already enjoy reasonable use of the property and that a variance does not entitle them to the optimal or preferred use of the property. Mr. Robinson said he felt that having a garage was a reasonable request and falls under the criteria of reasonable use of the property. Mr. Markolf noted that they already had one garage, but Mr. Robinson countered that he had plowed up there for years and that he thought a second garage would be a good thing.

Mr. Clapp interjected that the original builders of the house had built it with the intention of only occasional or part-time use. The current owners and applicants the Schaefers will shortly be becoming full time occupants. Mr. Schoellkopf asked if there was any possibility for some boundary line adjustments or land swaps that might improve the setback situation. It was determined to be not practical and expensive. It was also noted that from a legal perspective a variance probably should not be issued even though from a common sense standpoint there seems to be no problem. Mr. Monte also expressed the concern of opening the door of approving variances that are not appropriate then when you say no to someone else it might be perceived as inconsistent or possible favoritism.

MOTION by Mr. Robinson that the Board approve the application on the basis that it will improve the house so that it will be less visible, with the condition that no trees are cut and that the new addition has anti-glare glass or year-round outside screens as well as screening for the bottom floor below the new addition. For lack of a **SECOND**, the **MOTION** was **WITHDRAWN.**

MOTION by Mr. Monte that should the Board approve the request for a variance, that the following conditions as stated in the applicants plans will apply:

- The roof be of a earth tone color with a matt or flat finish
- The old structure and any new structures, will have siding of a earth-tone color as will any trim
- No tree cutting south or west of any approved structures
- Any new glass facing south or west must have year-round exterior screening or anti-glare glass

SECOND by Mr. Schoellkopf. **VOTE**: all in favor, the motion passed.

MOTION by Mr. Robinson that any existing glass that faces west have year-round exterior screening to reduce glare. **SECOND** by Mr. Schoellkopf. **VOTE**: four members voted *YEA*, two members voted *NAY*. The motion passed four to two.

The Board then went through the criteria under § 9.6 Variances (A) (1) – (5) and took actual votes.

MOTION by Mr. Markolf that item 1, due to topography and the zoning change has been satisfied. **SECOND** by Mr. Robinson. **VOTE**: all in favor, the motion passed.

MOTION by Mr. Monte that item 3 has been met as the hardship has not been created by the applicant. **SECOND** by Mr. Markolf. **VOTE**: all in favor the motion passed.

MOTION by Mr. Monte that item 4, has been satisfied as the variance, if authorized, will not alter the essential character of the neighborhood or district in which the property is located, substantially or permanently impair the appropriate use or development of adjacent property, reduce access to renewable resources nor be detrimental to the public welfare. **SECOND** by Mr. Markolf. **VOTE**: all in favor, the motion passed.

MOTION by Mr. Robinson that the criteria of item 2 is satisfied due to the physical circumstances of the property. **SECOND** by Mr. Markolf. **VOTE**: 5 *YEA*, I *NEA*, the motion passed 5 to 1.

MOTION by Mr. Markolf that item 5, if the variance is authorized, will represent the minimum that will afford relief and will represent the least deviation possible from the zoning regulations, is satisfied due to the dimensional requirements of a garage and the additional living space is minimal. **SECOND** by Mr. Robinson. **VOTE**: 5 *YEA*, I *NEA*, the motion passed 5 to 1.

MOTION by Mr. Markolf that the Board approve the variance requested. **SECOND** by Mr. Monte. **VOTE**: all in favor, the motion passed.

The Board then went through the conditional use process as the property is located in the Forest Reserve District.

MOTION by Mr. Monte that the application satisfies all the general standards of *§ 5.3 (A)* under Conditional Use review. **SECOND** by Mr. Markolf. **VOTE**: all in favor, the motion passed.

The Board determined that the Specific Standards of *§ 5.3 (B)* had been addressed during the Variance review process.

MOTION by Mr. Markolf that the Board approves the application with the conditions previously voted on. **SECOND** by Mr. Kaufmann. **VOTE**: all in favor, the motion passed.

4- **2007-13-SD**, Amendment to Application #2005-10 SD, 5-Lot Subdivision located Hiddenbrook Lane and Behn Rd. The applicant, James R. **Trihy**, seeks approval to relocate the building envelopes on lots 1, 2, and 3 and to relocate the leach field on lot 2.

Mr. Shea walked the members through the changes/modifications they were requesting. In Lot 1, the building envelope has been shortened and thus is smaller, gives more privacy from the road and better views. In lot 2 they switched the location of the building envelope with the area designated for the septic system and have also received State approval for the modified wastewater system. This again creates more privacy and also required less tree cutting than the original plan. Lastly, lot 3 has been reconfigured as once the slope was cleared it became evident that too deep a cut would have to be made into the slope. The change lessens that.

MOTION by Mr. Monte that the request for modifications to an approved plat is granted as the changes do not substantially affect any relevant standard under the ordinance. **SECOND** by Mr. Markolf. **VOTE**: all in favor, the motion passed.

5- An **appeal to a zoning violation** issued to Garrett J. **Shivo** on June 1st, 2007, parcel ID # 418718-00(7.4 ± acres located off Lake Road), for a violation of Article 3, §3.4, Erosion Control & Development on Steep Slopes and § 3.13, Surface Water Protection of the Warren Land Use and Development Regulations. This parcel is located in the Alpine Village Residential District, Article 2, and (Table 2.6).

Mr. Monte started off by recounting that the Board had made a site visit earlier in the evening. Present at the site visit were Mr. Markolf, Mr. Monte, Mr. Malboeuf and Mr. Shivo. Mr. Monte described that there was a steep drop off behind the house that leads down to a brook. Unfortunately, the homeowner was not at the site when the excavating team was there and intruded into the steep slope area. Since the incident, silt fences have been installed and some grading and seeding has occurred.

Mr. Malboeuf stated that this was not the first time that an excavator had run amok of the ordinance on their treatment of steep slopes. He continued to say that his recommendation was to impose remedial measures and go on from here. Mr. Robinson stated that in his experience as an exactor, that it was most likely a case of an honest mistake, that it was not unusual in this kind of circumstance to find yourself in a position you don't want to be in or have difficultly getting out of, especially with all the recent rain.

Mr. Shivo noted that the slope was actually very stable, but that rain coming off the roof was the main problem. He stated that they intended to have a gutter system installed that would channel the water away from the problem area. In addition they plan on planting the hillside with day lilies for additional stabilization as well as minimizing any lawn to be mowed.

MOTION by Mr. Monte that the Board finds the facts justify the notice of violation. **SECOND** by Mr. Markolf. **VOTE**: all in favor, the motion passed.

The Board discussed how to next proceed. It was determined that the remedial measures that were planned did not need approval by the Board. What needs to take place is for the homeowner to do remediation to the satisfaction of the Zoning Administrator and in order to avoid fines being imposed. It may or may not be necessary to file an application for permission to execute the remediation plans.

MOTION by Mr. Monte to deny the appeal. **SECOND** by Mr. Schoellkopf. **VOTE**: all in favor, the motion passed.

6- In other business the Board signed minutes from May 23, 2007 and June 20th, 2007 as well as reviewed and signed the final mylar for Booher.

The meeting was adjourned at 9:55 pm. The next scheduled meeting of the DRB is Wednesday August 8, 2007 at 7:00pm.

Respectfully submitted,

Ruth V. Robbins
DRB/PC Assistant

DEVELOPMENT REVIEW BOARD

_____		_____	
Peter Monte	date	David Markolf	date
_____		_____	
Lenord Robinson	date	Jeff Schoellkopf	date
_____		_____	
Virginia Roth	date	Bob Kaufmann	date