

**TOWN OF WARREN
DEVELOPMENT REVIEW BOARD
MINUTES OF MEETING
NOVEMBER 10, 2004**

MEMBERS PRESENT: Peter Monte, Chair, Eric Brattstrom, Lenord Robinson, David Markolf.

OTHERS PRESENT: Kevin Losty, Van Nilsson, William Revoir, Lynn Revoir, Miron Malboeuf, Steve Fowler, Patricia Fowler, Jeff Schoellkopf, Sheila Getzinger, Karen Van Gilder, DRB/PC Assistant.

AGENDA:

- 1) Call meeting to Order 7:00 pm
- 2) Nilsson, Losty, et al appeals of violation
- 3) Other Business
 - a) Review 2004-02-PRD Fowler/Rosita's submittals and decision
 - b) Personnel Discussion
 - c) 2005 Budget Discussion
 - d) Winter Holiday Scheduling
 - e) Review October 6, 2004 Minutes
 - f) Review October 13, 2004 Minutes
 - g) Review October 27, 2004 Minutes

I. CALL TO ORDER

Chair Peter Monte called the meeting to order at 7:05 PM.

II. NILSSON, LOSTY, ET AL APPEALS OF VIOLATION

Appeal of Notice of Zoning Violation dated September 18, 2004 regarding the failure to construct fire protection facilities, specifically turnouts, required in subdivision permit #1995-02-SD – Leinbach 4-lot subdivision.

STAFF REPORT

Ms. Van Gilder reported that Markolf, Monte, Malbeouf, Nilsson, and Van Gilder attended a site visit on 11/9/04 at 7:00 am. Eight property owners received notices of violation. Two timely appeals were received from Nilsson and Losty. As of this hearing four notices have been withdrawn (Kiendl/Lynch, WLC/Long Associates, Nilsson and Burke) because their lots were not created through the 1995 Leinbach subdivision. In addition, the 1998 Long Subdivision referenced in the notice of violation is not relevant because it divided a different piece of property. Violations still stand against Losty, Catania, Lucchese, and Weinstein. With Nilsson's violation withdrawn, only Losty's appeal will be heard. Catania's appeal was received after the appeal period ended. A Fire Department letter dated 10/28/04 has been received which states that all but the Losty driveway could be used as turnouts by emergency vehicles and that the culvert in that driveway should be lengthened. The letter also remarks on the diversion of the spring that had fed the fire pond.

PUBLIC INPUT

Nilsson helped orient the DRB to the plan. Revoir stated that he would represent Frank Catania. Getzinger stated that she was not representing anyone specifically but that her clients, Long Associates, had received a notice that had been withdrawn.

GENERAL DISCUSSION

Mr. Monte stated that the turnouts did not appear on the recorded plat for the subdivision and that he felt it was not clear that they were required. He asked for clarification. He also stated that on the four lots created in 1995, two houses had been completed (Lot 1 & 4), one was under construction (Lot 2), and one lot remained vacant (Lot 3). He stated that the driveway for the house under construction (Losty) is challenging because it is narrow and goes straight up a steep hill without leveling out at the road. The Lucchese house (Lot 4 accessed through Lot 3) has a driveway that is very wide (58' +/-) and level at its base, which could probably serve as an emergency turnout if it was kept open and plowed. He also noted that before the turn onto Morningstar Road there is a driveway that could serve as a turn out. He added that that still left a great distance from the Sugarbush Access Road to that turn to be evaluated.

Mr. Robinson asked where the culvert referred to in the Fire Department letter dated 10/28/04 is. It was determined that it referred to the culvert at Losty's house.

Mr. Markolf measured the distance from the intersection of Tishman and Morningstar to the driveway accessing Lot 4 and found it to be less than 400 feet, which makes Morningstar in compliance. He added that the Fire Department letter from 10/28/04 states that the Lot 2 drive culvert should be extended, but that he does not see why that would matter, since the other two driveways would suffice as the recommended turnouts.

Mr. Markolf stated that he does not understand Mr. Monte's question about whether the turnouts were required because in the Findings of Fact, the Planning Commission (which was reviewing applications at the time) found that "the application satisfies recommendations in the Fire Chief's letter of April 12, 1995." That letter includes the requirement for turnouts.

Mr. Monte stated that he agreed with what Markolf was saying, but that he did not see how that became a permanent condition of development.

Ms. Van Gilder stated that there are many early decisions in which things are stated in the Findings but are not carried over into the Conditions section of the Notice of Decision.

Mr. Markolf stated that he felt that the intent to include the recommendations as conditions is clear.

Mr. Losty stated that he had all of the land and subdivision records since 1960 for his parcel and that the Fire Department letter has never been a part of the record regarding his parcel.

Ms. Van Gilder confirmed that in this format, the Fire Department letter itself would not have been recorded.

Mr. Losty stated that he had seen a Fire Department letter that recommended a fire hydrant.

Mr. Monte stated that that particular recommendation had been explicitly excluded in the decision. He reminded the group that the Fire Department makes recommendations which the DRB may apply as conditions or not as it sees fit.

Mr. Losty stated that the plot plan for his property states "spring to be abandoned" despite the apparent assumption by the Fire Department that that spring would feed the fire pond as stated in the letter dated 10/18/04. He stated that he has no documentation on the fact that that spring should be used to feed the pond.

Mr. Monte stated that he felt that the issue of the pond was beyond the task before the DRB at this point because the Notice of Violation refers to the turnouts only.

Ms. Getzinger brought the DRB's attention to the Fire Department letter of 3/18/99, which says that the Fire Department inspected the road and found it satisfactory for their purposes.

Mr. Monte stated that it is a serious matter to violate a zoning permit. He added that it is necessary to be clear about the conditions of a permit so that both current and future owners can understand what is required of them.

DELIBERATION/DECISION

MOTION by Mr. Markolf, seconded by Mr. Brattstrom, to find that the private drive between Lots 1 and 2 and the private drive on Lot 3 servicing Lot 4 meet the requirements set forth in the Fire Department letter dated 5/12/95. The distance between the two driveways appears to be less than 400'. VOTE: unanimous; motion carried.

Mr. Monte stated that the distance between the intersection with the Sugarbush Access Road and the drive between Lots 1 and 2 is greater than 400' and must be considered.

Mr. Markolf referred to the Fire Department letter dated 3/18/99, which states that the Fire Department found the road satisfactory, which he signed, and stated that he believed that the circular drive servicing Lot 1 was found to be a satisfactory turnout.

Mr. Robinson stated that the opening to the driveway was quite wide. He stated that he plowed it for years.

MOTION by Mr. Markolf, seconded by Mr. Robinson, to find that the Tishman Road portion of the subdivision is satisfies the requirements because the existing drive on Lot 1

can serve as a turnout and to take into consideration the findings of the Fire Department letter dated 3/18/99. VOTE: AYES – Markolf, Robinson, Brattstrom; NOES – Monte; motion carried.

Mr. Monte stated that he voted against the previous motion because he is not convinced that the recommendations from the Fire Department letter dated 5/12/95 were every truly made part of the conditions of the permit.

MOTION by Mr. Monte, seconded by Mr. Markolf, to find that any issues other than turnouts are not before the DRB because of the wording in the Notice of Violation dated 9/18/04. VOTE: unanimous; motion carried.

Mr. Monte stated that it would be good if the neighbors could find a way to fix the pond, but that the question is not before the DRB tonight. He also asked that the Notice of Decision include a statement that the finding of an absence of violation will stand only if the mentioned driveways are kept plowed and maintained at all times.

MOTION by Mr. Markolf, seconded by Mr. Monte, to grant Losty's appeal based on the aforementioned findings. VOTE: unanimous; motion carried.

Mr. Monte stated that the DRB declines to consider the situation for the remaining 3 owners of property in the subdivision (2 of whom never filed appeals and 1 of whom filed a late appeal).

Mr. Monte stated that he feels that the DRB needs to be very careful about making sure that all conditions are as clear as possible in future decisions. He also stated it was his opinion that if the conditions were not clear in the past that the recipients may have gotten a free pass.

III. OTHER BUSINESS

a) Review 2004-02-PRD Fowler/Rosita's submittals and decision

Mr. Fowler and Mr. Schoellkopf presented excerpts from the Condominium Documents and the Stormwater Management and Sediment Control Narrative that were required for approval of the Notice of Decision.

Mr. Monte noted that the Condominium Documents did not include a statement directly holding the association responsible for maintaining compliance with all applicable permits, which had been requested by the DRB. The statement was added to the version dated received 11/10/04 and initialed by Peter Monte and Steve Fowler and will be incorporated into the final Condominium Documents before they are recorded.

Mr. Malboeuf asked whether the state would be involved in the stormwater management plan. Mr. Schoellkopf stated that the disturbance would be less than an acre and would not trigger state review.

Mr. Monte stated that he thought it was a possible that this property has an indirect discharge into an impaired stream.

Mr. Schoellkopf stated that he had some questions about whether they needed to submit a mylar for a PRD. He asked what the building envelope would be.

Mr. Monte stated that the 30 feet mentioned in the item 5 of the decision referred to the required setback. The minutes would be changed to read that "units 3-8 may be shifted as much as 30 feet on the final site plan," rather than restricting the change to just units 5-8.

Mr. Monte stated that the building envelope should follow the setback and indicate a minimum spacing between the buildings.

Mr. Schoellkopf stated that if he understood the DRB requirements correctly there would have to be two mylars recorded for this development. The first with the building envelopes would have to be filed within 90 days to meet the Town requirements. The second would be filed later for the condominium with "as built" indicated. Mr. Monte confirmed his understanding.

Mr. Monte stated that as long as the footprints fit within the building envelopes, the applicants do not have to come before the DRB again.

Mr. Scheollkopf asked whether the first mylar would be pulled from the record when the second came in. Mr. Monte replied that both would remain on record.

Mr. Monte stated that Warren's PRD process incorporates the subdivision requirements and stated that footprints and topography are not required but that in addition to the items listed in the Land Use and Development Regulations, the following items would be required on the mylar:

- 1) building envelopes with reference to survey point;
- 2) boundary locations;
- 3) driveway and road locations;
- 4) sedimentation plan;
- 5) stormwater features;
- 6) landscaping provisions;
- 7) hydrant;
- 8) potential path location; and,
- 9) all points surveyed.

He stated that the items in Land Use and Development Regulations that are to be included on the plat to be approved are to be included on the mylar so that the parameters of the permit can be clearly understood.

Mr. Malboeuf stated that the mylar would become a more important record of what should and should not be done on the property than much of the rest of the material.

Mr. Markolf reminded the applicant that the hydrant needs to be installed prior to construction with combustible materials.

b) Personnel Discussion

Ms. Van Gilder stated that she had submitted her resignation to the Selectboard and would be leaving on November 19, 2004. It was decided that Peter Monte and David Markolf would represent the DRB in the hiring process. Mr. Monte stated that he thought this would be a two step process. The first step would be taking care of getting someone in to do the work. The second step would be working with the Selectboard and Planning Commission to discuss the potential of redesigning the position to better assist the DRB and the Planning Commission. Updating the fee schedule was discussed. The idea of having the person in this position take a more hands-on approach with the applicants to bring a more complete application to the DRB was also discussed. Mr. Malboeuf stated that he would like to be part of the hiring process, as well.

c) 2005 Budget Discussion

Ms. Van Gilder explained that a draft budget would be due on November 29, 2004. She explained that the Lister is working on a mapping project and that the Planning Commission will be adding a line item to complete the zoning portion of the project. The idea of restructuring the DRB/PC Assistant position was discussed and it was decided that a contingency should be added to the budget in case the restructuring could occur.

MOTION by Mr. Markolf, seconded by Mr. Monte, to add a \$3000 contingency for personnel. VOTE: unanimous; motion carried.

d) Winter Holiday Scheduling

It was decided that the DRB would meet on December 1, 8, and 15, 2004. The December 8, 2004 meeting will be a non-event because the Ward Property applicants have asked for a continuation.

e) Review October 6, 2004 Minutes

f) Review October 13, 2004 Minutes

g) Review October 27, 2004 Minutes

MOTION by Mr. Monte, seconded by Mr. Markolf, to approve the October 6, 13, and 27, 2004, minutes. VOTE: unanimous; motion carried.

IV. ADJOURNMENT

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

The meeting adjourned at 8:40 PM.

Respectfully submitted,
Karen Van Gilder
DRB/PC Assistant

Development Review Board

Peter Monte, Chair (date)

Lenord Robinson (date)

Eric Brattstrom (date)

David Markolf (date)