

**TOWN OF WARREN  
DEVELOPMENT REVIEW BOARD  
MINUTES OF MEETING  
THURSDAY MARCH 19, 2009**

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Members Present: David Markolf, Lenord Robinson, Bob Kaufmann and Peter Monte.  
NOTE: Virginia Roth was in attendance, but *not* participating as a Board member.

Others Present: Dave Olenick, Shelia Getzinger, Tracy Lynn, Stefanie and Bill Wright, Dick King, Miron Malboeuf and Ruth Robbins.

Agenda: Call meeting to order, 7:00 pm.

- (1) Applications, **2009-03-CU**: Conditional Use, Reauthorization of Prior Lapsed Use, Inn; 203 Powderhound Rd: The applicants, **Lynn & Lynn LLC**, request Conditional Use Review for a proposed change of use to Inn (Article 10) for their property (Parcel ID 100002-001) in the Access Road Commercial District. This application requires review under Article 2 (Table 2.9, ARC) Access Road Commercial District; Article 3, §3.10, Parking, Load and Service Area Requirements, §3.11, Performance Standards, Article 4, Specific Use Standards, §4.10, Lodging Facilities, and Article 5, Development Review of the Warren Land Use and Development Regulations. (hearing continued from March 5th, 2009)
- (2) **Deliberative Session**: Reconsideration /Rehearing (continued from January 21st, 2009) of the Warren Development Review Board Decision, signed October 22nd, 2008 in RE: Appeal of the Administrative Officer's Determination letter: Don & Susan **Simpson** have appealed the Administrative Officer's letter of August 15th, 2008 which required the land owners to file for an Accessory Dwelling permit (Article 4. § 4.1) for a camper trailer on their property located 493 Prickly Mountain Road (parcel id. #210013-000) in the Rural Residential District. The camper trailer is connected to the existing septic system. This appeal requires review under Article 9, §9.5, Appeals, of the Warren Land Use and Development Regulations. (hearing continued from March 5th, 2009)
- (3) Other Business
  - a) Review & Sign Minutes from March 5th, 2009,
  - b) Review DRB Schedule April – May 2009 Schedules

Mr. Monte called the meeting to order at 7:17 pm.

1. Applications, **2009-03-CU**: Conditional Use, Reauthorization of Prior Lapsed Use, Inn; 203 Powderhound Rd: The applicants, **Lynn & Lynn LLC**, request Conditional Use Review for a proposed change of use to Inn (Article 10) for their property (Parcel ID 100002-001) in the Access Road Commercial District.

This hearing was continued from March 5<sup>th</sup> at which time the applicant was lacking in specificity as to their request. Mr. Olenick assured the Board that they had better prepared and knew what they were asking for as to the number of rooms, number of gallons for wastewater and the number of parking spaces. He continued and told the Board that the current Act 250 permit [3<sup>rd</sup> revision] for the property allows a total wastewater capacity of 4716 gallons. The applicant would like to request a breakdown of the usage of those gallons as follows: An innkeeper's room for two people at 150 gallons; 6 inn rooms, four beds per room at 50 gallons per bed for 1,200 gallons; and 74 restaurant seats at 45 gallons per seat for 3,366 gallons. These allocations equal the total usage allowed of 4716 gallons. Mr. Olenick also submitted a site plan showing the amount of parking spaces that is required under the regulations including a maximum of four full time employees, the number of inn rooms and the restaurant.

Mr. Markolf asked about the four full time employees. Mr. Olenick said he thought that was a generous number and Mrs. Lynn said they had never had the need for four full time people. Mr. Markolf said that in his calculations for the parking spaces that it was shy one space. Mr. Olenick said there was no problem in reducing the request to three potential full time employees instead of four.

**MOTION** by Mr. Markolf that the Board waives the requirement for a licensed engineer to prepare the parking plan. **SECOND** by Mr. Kaufmann. **VOTE:** all in favor, the motion passed.

*NOTE:* Board member Virginia Roth did not participate as a DRB member during this hearing as she was representing the potential buyers of the subject property.

Mr. Markolf asked Mr. Olenick if the lighting he was showing on the site plan was anything different or just indicating what existed. The reply was no change from what was there, but the Zoning Administrator pointed out that the lighting of the existing sign was non-conforming and that this might be a good time to require it to be brought into compliance. Mr. Malboeuf added that it was a simple case of changing the lighting from up cast to downcast.

**MOTION** by Mr. Monte that the Board approves the lighting plan as shown with the condition that the lighting of the sign is brought into compliance as per Section 3.9 within ten days after this permit is signed. **SECOND** by Mr. Kaufmann. **VOTE:** all in favor, the motion passed.

**MOTION** by Mr. Monte that the application satisfies the requirements of Section 5.3 Conditional Use Review Standards (A) General Standards (1) – (5). **SECOND** by Mr. Markolf. **VOTE:** all in favor, the motion passed.

**MOTION** by Mr. Markolf that the application satisfies the requirements of or is found not applicable for Section 5.3 (B) Specific Standards (1) – (11). **SECOND** by Mr. Robinson. **VOTE:** all in favor, the motion passed.

**MOTION** by Mr. Markolf that Section 5.3 (C) District Standards and (D) Flood Hazard Overlay District Standards are not applicable to this application. **SECOND** by Mr. Kaufmann. **VOTE:** all in favor, the motion passed.

**MOTION** by Mr. Monte that the Board approves the application subject to the voted on conditions and adherence to the plans as submitted. **SECOND** by Mr. Markolf. **DISCUSSION:** The applicant was advised that they were responsible for obtaining any and all applicable State permits if required. **VOTE:** all in favor, the motion passed.

2. **Deliberative Session:** Reconsideration /Rehearing (continued from January 21st, 2009) of the Warren Development Review Board Decision, signed October 22nd, 2008 in RE: Appeal of the Administrative Officer's Determination letter: Don & Susan **Simpson** have appealed the Administrative Officer's letter of August 15th, 2008 which required the land owners to file for an Accessory Dwelling permit (Article 4. § 4.1) for a camper trailer on their property located 493 Prickly Mountain Road(parcel id.#210013-000) in the Rural Residential District.

Mr. Monte began the deliberations by saying that he saw this as a two step process: one, decide to whether or not to alter the decision previously made, and if not then the sustaining of the Administrator's decision will remain in effect; secondly, if the Board decides to re-open the decision, then they can take what they have on record as evidence and make a change or decide we need to make a change but also need to get more evidence to make that change.

Mr. Monte noted that he thought Mr. King had a valid argument regarding the 15 year rule. Even if it had been demonstrated conclusively that the camper/trailer had been located there

consistently 24/7, the clock does not start running until the ordinance required a permit for such. Everything that transpired prior to 2002 is of no legal consequence. Mr. Markolf asked for clarification as to whether or not they were considering the pad or just the trailer and was told they were just looking at the trailer. It was brought up, by various members, that the burden of proof as to the constant, continued use of the camper, was not met beyond a reasonable doubt by the Simpsons. However, the lapses, if any, are of no consequence if one uses the 15 year statute of limitation rule as 15 years has not transpired since the ordinance governing this issue came into effect.

**MOTION** by Mr. Monte that the Board affirms their decision of October 1, 2008 on two independent grounds: **1)** the Simpsons have failed to sustain their burden of proof that the camper has been placed on the property each and every summer for the past fifteen years and therefore the statutes of limitations does not apply; and **2)** the camper's presence on the property before amendments to the zoning regulations that took place in March of 2002 was in compliance with the regulations at that time [apart from its placement in regards to the setbacks] and did not violate the requirements of the zoning ordinance thus the statutes of limitations would not start to run until March of 2002. Given the lack of specificity of the evidence it is unclear whether the trailers on the property before 2002 were "structures" to which the setback requirement is applicable. **SECOND** by Mr. Markolf. **DISCUSSION:** Mr. Robinson expressed his feeling that he still didn't know if he understood or agreed as his opinion was that there had been a trailer there and that there was no emphatic proof that one hadn't been there. Mr. Markolf said that there was a three or four year period during which the testimony was not clear. Mr. Monte said he'd be no more surprised to learn that one had been there every year then I would be if they had missed a year for some reason. It especially seems to become unclear after the Idols sold the property and moved to New Zealand. It would have been so easy for them to say that someone/anyone had used the /a camper for even a night or two every summer but they never came right out and stated that noted Mr. Monte who also said he felt he gave them every opportunity to say so. **VOTE:** three (3) members "yea" and one (1) member "nay", the motion passed.

### 3. Other Business

In other business the members reviewed and signed the Bundy/Mansfield decision and briefly discussed the Planning Commission's submission to Act 250 regarding Sugarbush's current development plans and the issue of connectivity. Also brought to the Board's attention were other pieces of correspondence on the same issue from Attorney Blythe representing Mountainside Condominiums, a letter from Sugarbush Village Condominiums and a Mr. Wendell Anderson.

The next scheduled meeting of the DRB is for April 9, 2009. Mr. Monte adjourned the meeting at 8:47 pm.

Respectfully submitted,

Ruth V. Robbins  
DRB/PC Assistant

### DEVELOPMENT REVIEW BOARD

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Peter Monte                      date

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Bob Kaufmann   date

TOWN OF WARREN  
DEVELOPMENT REVIEW BOARD  
MINUTES OF MEETING – 3/19/09

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David Markolf                      date

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Lenord Robinson                      date