

**TOWN OF WARREN
DEVELOPMENT REVIEW BOARD
MINUTES OF MEETING
WEDNESDAY JULY 22, 2009**

Members Present: Lenord Robinson, David Markolf, Peter Monte and Virginia Roth.

Others Present: Gunner McCain, Michael Bransfield, Wayne Mackie, Bob Messner, Miron Malboeuf and Ruth Robbins.

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

Hearing:

1. **Application 2009-09-CU**, Conditional Use: Construct a Single Family Dwelling and Accessory Structure in the Forest Reserve District – off Burnt Mtn. Rd., The applicant, **Wayne D. Mackie** request permission to construct a single family dwelling and accessory structure, with an Accessory Dwelling, on 34 ± acres, located in the Forest Reserve District, accessed by Burnt Mtn. Rd. (parcel Id's 00101-174 & 002001-901). This application requires review under Article 2, Zoning Districts & District Standards, Table 2.1, Forest Reserve District(C) (1) Accessory Use Structure & (7) Single Family Dwelling: (D) Dimensional Standards and (C) Supplemental Development Standards; Article 3, §3.1 (Access, Driveway and Frontage Requirements), §3.4 (Erosion Control & Development On Steep Slopes), §3.6 (Height & Setback Requirements); Article 4, §4.1(Accessory Dwellings); and Article 5, Development Review, of the Warren Land Use and Development Regulations.
2. **Application 2009-03-SD**: Minor Subdivision, 4 lots, Preliminary Plan Review /Final Plan Approval - 323 Carleton Rd... The applicant, **Denise D Durling**, request a Preliminary Plan Review/Final Plan Approval hearing for a 4 lot subdivision of 65.5 ± Acres located off West Hill Rd at 323 Carleton Rd in the Rural Residential District. This application requires review under Article 2 (Table 2.2, Rural Residential (RR)); Article 6, §6.4,(Final Plan Review); and Article 7, Subdivision Standards of the Warren Land Use and Development Regulations.(Applicant requests a postponement to August 19th, 2009)
3. *Other Business*:
 - a. Hartshorn Mylar

Mr. Monte called the meeting to order at 7:03 pm.

- 1) **Application 2009-09-CU**, Conditional Use: Construct a Single Family Dwelling and Accessory Structure in the Forest Reserve District – off Burnt Mtn. Rd., The applicant, **Wayne D. Mackie** request permission to construct a single family dwelling and accessory structure, with an Accessory Dwelling, on 34 ± acres, located in the Forest Reserve District, accessed by Burnt Mtn. Rd. (parcel Id's 00101-174 & 002001-901).

Mr. Monte began the hearing by bringing to the Board's attention a procedural issue. It appears that the original warning did not include the information about an Accessory Dwelling as part of the proposed barn. Mr. McCain offered up new, clarifying information that the floor plan in the barn only includes sleeping accommodations and a bathroom – no kitchen facilities or “food preparation” as is included in the definition of an accessory dwelling. The intention of the property owner is to use it just as a “guest room”. Mr. Mackie also noted that his State wastewater permit does not consider it a separate unit and he (Mr. Mackie) has no desire to amend his wastewater permit. After some brief discussion, and due to the newly disclosed information, it was determined that a new warning was not needed. However, Mr. Monte suggested that the Board consider a formal condition to any permit issued that addresses the use

of the barn. Mr. Markolf noted that the floor plans do show a counter with a sink – the possible beginnings of a kitchen or food preparation area.

MOTION by Mr. Monte that any approval contain a condition that the barn structure is not to be used as a primary or accessory dwelling without first obtaining all required state and local permits for such use. **SECOND** by Mr. Markolf. **VOTE:** all in favor, the motion passed.

The Board then decided to review the checklist items from the past meeting. Mr. Monte did state for the record that since the last meeting they had conducted a site visit that was attended by Mr. Markolf, Mr. Malboeuf, Mr. Behn, Mr. Robinson, Mrs. Roth, Mr. McCain and himself. He reported that they did attempt to utilize balloons but that they were lying on the ground for most of the time.

Mr. Monte continued and said that thought there were several things they observed, one thing that they wanted more information on was the apparent clearing of a significant number of trees on the north side of the property yielding a clear view of Camel's Hump. He also noted that they could see the Messner's house from the site and therefore the proposed house would be in the view shed of those properties. Mr. Robinson asked if a permit had been obtained for the clearing done to the north. Mr. Malboeuf replied no. Mr. Robinson asked if one was needed and was told yes. Mr. Malboeuf also stated that had he had access to the property, a zoning violation would have been issued. He said he had received from Mr. McCain some antidotal information that said Mr. Winter had performed the logging and had followed the practices outlined in the ordinance. Mr. Malboeuf noted that one of the intentions of the Forest Reserve is to limit clearing of this nature as it also creates visibility from down below. He continued to say that unfortunately he had no idea just how many trees were there prior to the clearing.

Mr. Monte said that at the site visit they also noted an area to the west/southwest that had been cleared some time ago where there were some large trees left. This area may have been cleared prior to the creation of the Forest Reserve District and the trees remaining would be critical to breaking up the façade of any dwelling built there. Mr. Monte continued to note that there may be a need for additional plantings to facilitate the screening of the dwelling. A member of the public asked why the clearing was done and Mr. Monte turned to Mr. Mackie and asked him to respond.

Mr. Mackie stated that the clearing on the north side of the property had been done this past winter and it was done specifically in order to plant some crops, of which there are a couple of possibilities. He continued by saying that hay would be easy to do and with 37 acres of land of which some is plant-able, and this area being relatively level, that it shouldn't be used for agriculture. Mr. Monte asked what he planted after having the area cleared. Mr. Mackie said he planted conservation mix. Mr. Monte asked if it was a specific fodder crop such as timothy. Mr. Mackie said no, it was a mix for erosion control and not a feed grass. Mr. Monte asked that if his intention was to plant some crops, such as hay, why didn't he plant a specific fodder type crop. Mr. Mackie replied that until he receives his approval on his application he was not going to plant anything other than the erosion control mix he has already utilized. He continued to say that unless he received a reasonable approval for a house he'd like to build then he wasn't sure what he'd do, maybe sell it, and he was not going to grow anything or plant anymore trees. Mr. Markolf asked why then did he clear the land and Mr. Mackie replied that he assumed it would be a straight forward process.

Mr. Monte asked again whether Mr. Mackie had cleared the area to the north for the purpose of planting crops. Mr. Mackie said yes, that was what the north area was for. It was well away from the house, the only thing you can see is Bragg Hill in Waitsfield which is almost six miles away. Mr. Monte asked if the barn he was proposing to build would be used as a horse barn and Mr. Mackie said no. Mr. Monte then asked if Mr. Mackie had had any soil testing done to determine which crops would grow best in that area. Mr. Mackie replied that he hadn't done that yet. He continued to say that given it was Vermont and given that he suspected it was a farm field at one time that it would be pretty easy to grow a number of different things. Mr. Monte asked when was it a farm field and Mr. Mackie replied one hundred or so years ago. Mr. Robinson disagreed

saying that he could remember back close to 75 years ago and that it had always been wooded. Mrs. Roth said that there was a sugarbush up there and other farming activity. Mr. Robinson agreed that there had been a sugaring operation up there but that it took a good team of horses to get up there.

Mr. Monte said that if he were going to grow crops there, and if he had made a careful study of the ordinance as Mr. Mackie stated he had in the previous hearing, that the review would have tipped him off to avoid the kind of clearing that took place. Additionally, he would determine the suitability of growing crops on that portion of the land before going to the expense of clearing. At this point, the only benefit we know for certain that has been derived from the clearing is that it opens the view in a way that wasn't available before. Mr. Mackie replied that the view was only increased minimally. He continued to say that he was under the belief that agriculture was a use by right, even in the Forest Reserve District and therefore not an issue.

Mr. Robinson said that if the barn was not going to be a horse barn, sheep barn or cattle barn, then growing hay is not going to be a very profitable enterprise. Mr. Robinson continued and said that in his opinion it was cleared for only one purpose and that was for Mr. Mackie's view to the north which is spectacular. Mr. Mackie said he understood Mr. Robinson's view but that growing some sort of crop was his intention not only in that location but elsewhere on the property where open space already existed.

Mr. Monte then asked if there were any other comments from the Board, and hearing none, asked for comments from the public that was in attendance. Mr. Messner said the comments by Mr. Robinson pretty much answered his questions as the viability of growing hay in that location seemed to be questionable. Mr. Mackie said that he wasn't concerned about the financial viability of growing hay but rather the tax advantage in regards to his property taxes. Mr. Monte said that if in the current use program why not utilize a managed timberland approach instead of farmland. Mr. Mackie replied that if he stayed with a timber program he would eventually take down all the trees to which Mr. Monte said that he has never seen a managed timberland program that resulted in clear-cutting.

Since the clearing on the north side of the property, though well intended, was done so without a permit, Mr. Monte asked Mr. Mackie if he had any thoughts about remediating the problem. Mr. Malboeuf pointed out that under Supplemental Development Standards of Table 2.1 Forest Reserve District, that it was pretty straight forward as to clearing and landscaping. Mr. Monte then told the applicant what the different courses were that the DRB could take as a result of his unpermitted activity (Table 2.1 (E) and (F)). Mr. McCain said that Section 9.2 allows for acceptable management practices for agriculture and forestry and requires no authorization from the Zoning Administrator or the DRB.

Mr. Monte replied that that would depend on what the action was actually intended for: agriculture or pre-development work. Frankly, at this point with what he had heard, Mr. Monte was of the mind that it was pre-development work. Mr. McCain pointed out that though the clearing to the north opened up a view, its probability of being seen from so far away would be next to nothing. Mr. Monte said he heard the point he was making yet others come before the DRB and follow the rules so that when someone just does something that is in violation it's kind of a "bummer" and the DRB can't really say "oh, so what" and just go forward. Mr. Messner pointed out that the earlier clearing by the ledge is clearly visible from top of Sugarbush but at least it has started to grow back. Mr. Monte said that the clearing of that ledge many years ago was not a violation but that the Board would be considering a landscaping plan that may include that area of the property.

Mr. Markolf asked if it wasn't the policy of the Board to not review an application if there was an outstanding violation. Technically, a written violation has yet to be issued. Mr. Monte said he did not think it was specifically mandated by the ordinance but that it was a practice they had utilized in the past. Mr. Monte then asked the Board what their initial thoughts were as to how to proceed

as this was a new situation they hadn't encountered before. Mr. Monte said he thought that there were two avenues: one, relocate the propose structure so as to not be able to take advantage of the unpermitted view shed, or require significant replanting. Mr. Monte said that he would be open to seeing if the area would truly support an agricultural use, but would want to be convinced by the science that defines its viability. However, he doubted that the soils would prove out.

Mr. Markolf asked if they should put this aside for now and deal with other issues. Mr. Monte said he had mentioned to Mr. McCain at the site visit that the Board would entertain a plan for a cure to the violation but Mr. McCain said that after talking to Mr. Mackie that the plan was still to use the cleared area for crops. Mr. Monte said that until he was convinced that the area cleared had a productive capacity at a reasonable cost for some sort of crop that he found it hard to accept that that was what the true intention of the clearing was for. Mr. Markolf agreed and said that even if Mr. Mackie had come to the Board for a permit to clear for agricultural purposes he would have been skeptical. Mr. Robinson also chimed in and stated that he felt the land was cleared for one purpose only and that was to enhance the view, unless someone could convince him otherwise.

Mr. Monte said that it seemed apparent that a majority of the Board felt that a violation had occurred, and that they were yet to be convinced that the intention for agricultural use was a viable one nor was it an acceptable cure for the violation. Yet, Mr. Monte said he would listen to any evidence brought forth to the contrary. Even if it was found that growing crops was viable, that may not be acceptable as a cure to the violation as it still allows a benefit from the violation which just didn't sit right with him. Mr. Robinson said he thought Mr. Mackie should have thought that his clearing on the north side might be a problem as it was his clearing many years ago that inspired the creation of the Forest Reserve and it's conditions on tree cutting. Mr. Mackie replied that he certainly was aware of the motivation of his previous actions and the creation of the Forest Reserve. He also said that he had had a permit during which the rules had been changed and was taken away from him. Mr. Malboeuf reminded him that the rule change came from the state, not the Town.

Mr. Mackie said that he understood and appreciated the concerns that the Board and others had, but that prior to the meeting he took a drive down Woods Road South and looked back and it's already been done as he saw many homes that stood out like sore thumbs. He continued and said that even if he planted a thousand trees in front of his house, that wouldn't change anything. Mr. Monte said that it was due to those which you can see that the ordinance was changed and thus you won't see the newer homes that have been built as the DRB has granted several permits, with conditions, that have gone on and been constructed. He continued and said that he personally had no problem with Mr. Mackie building his home on that site, but did very much have a problem with the cutting that took place without a permit. Mr. Robinson told Mr. Mackie that he is not the only one affected by the rules – Mr. Robinson said he had 75 acres up on the ridge that faced the same way as his and he is subject to the rules - his son has property in Alpine Village which due to rule changes is difficult to develop today but many years ago he probably could have done whatever he wanted.

Mrs. Roth asked if the violation could be satisfied by levying a fine. Mr. Monte said that when it's a "done deal", after the fact, fines are meaningless and the ordinance outlines how it should be remedied under Table 2.1 (E) (2), i.e. site to be restored prior to development.

Mr. Mackie said he thought that the revisions showing the heights of the trees that provide partial screening of the house and barn was the main objective. Mr. Markolf said that that was before they had the site visit where they discovered the clearing to the north. Mr. Monte added that they also observed the limited extent to which the remaining trees provide any sort of screening of the proposed structures. He continued to say that the addition of more trees was mentioned to Mr. McCain at the site visit as being a potential condition of any approval.

The Board moved on and next discussed what visibility there was from properties situated below Mr. Mackie's parcel. Mr. Monte asked if an updated landscape plan was available showing how the project would be screened from below. Mr. McCain pointed out on the site plan the various trees that are there, with the height of each tree indicated as well. One of the key trees [a 14 inch ash tree] may not survive the construction of the proposed dwelling. Should efforts fail to retain it, a new tree will be planted to replace it. Mr. McCain added that one additional new tree is proposed to the north west to help in breaking up the façade where there was an obvious gap. He went on to explain that though the trees may not be as tall as the proposed house, that in looking up from a lower elevation the trees will appear taller. It was also noted that any replacement trees were to be ten to twelve feet tall with a minimum two inch caliper. In summary, only one new tree was added to the plan.

Mr. Robinson noted that the property could be seen from the East Warren Road where as Mrs. Roth stated she could not see it from her property. Mr. Robinson pointed out to her that she was tucked into the hill. Mr. Robinson continued by saying that though it looks like a lot of trees, since they were once part of a denser forested area, when the others were cut, those remaining did not have lower limbs, thus minimizing any potential screening – “lollipop” trees as characterized by Mr. Monte. Mr. Messner commented that from his home on Woods Road South he could not see the site. However, he urged the Board to follow through with the spirit of the regulation and agreed that though the remaining trees were tall, the lack of foliage on the lower part does not constitute adequate screening. He said that the structure's exterior materials and color could be a mitigating factor and help to reduce the impact of the house.

The Board next discussed what the proposed colors and materials were for the house and barn. Mr. Mackie told the members that he heard at the last meeting that his original intention of having the house painted white would not be acceptable and has agreed to change his color selection to a group of colors by Valspar “Earth elements” palette of colors which range in the reds, browns, tans and greens. At this point he had not settled on a specific color. Mr. Mackie also provided the Board with possible colors for the roof. Though he originally thought the house would have a metal roof, he has changed his mind and is looking at asphalt shingles in a dark color. The barn will still have a metal roof (color chart submitted) and the body of the barn will be red with white trim. The Board gave some direction as to colors that would be acceptable and told Mr. Mackie that he would have to propose which he'd like, that the Board could not pick the color for him.

Mr. Monte asked if the applicant had an erosion control plan and Mr. McCain said they did. Mr. McCain went through the plan with the members but noted that he still needed to include a maintenance plan for the stormwater ditches (along bottom of ledges). He also noted that this site was not particularly prone to erosion issues.

Mr. Monte said that the thought it would be a good idea to supply the neighbors with a blasting notification, an issue that was raised at the previous meeting. Mr. Monte asked who/how notification should be given. Mr. McCain replied that blasting takes place that nearby folks have no awareness of and with the proposed blasting on this site being in a small, shallow area, how necessary is it? To date, the only folks that have expressed concern about blasting were the owners of the Five Way Farm. After some brief discussion, it was suggested that the applicant would notify the Five Ways Farm and/or their attorney, Shelia Getzinger, as soon as the blasting was scheduled to take place as well as anyone who files a request for notification at least ten days prior to the scheduled blasting.

The next item on the “laundry list” was additional information on the Marvin “low glare” windows that Mr. Mackie has proposed to use on his house. Mr. Mackie explained that this type of window from Marvin was described as being one third less reflective than standard glass windows. Mr. Monte said that that did not tell the Board where that falls on the spectrum of reflectivity – really need a comparison to screens or a totally non-reflective glass window. It was determined during conversation that the only side requiring non-reflective window treatment would be the southwest/west facing side of the dwelling.

The next topic was the expanse of lighting on one side of the building, and the clarification of lumens versus watts and the amount of light that is given off by both. Mr. Mackie gave the members a chart showing the spread, radius of light based on different kinds of lighting. The lighting he is proposing had a very small radius of light and from a distance would hardly be seen. As the lights are downcast underneath a roof, they are partially hidden by the roof, and as well will only be illuminating what's below them. Mr. Monte asked what wattage light bulb would be comparable to what was being proposed. Mr. McCain said that the equivalent would be a 15 watt light bulb.

Mr. Monte then suggested that the Board digest the information they had heard at this hearing before continuing the process. He continued to say that it was important to hear how the applicant proposed to address the recent clearing to the north before they go any further. Mr. Monte also asked if the members felt the landscaping plan was adequate. Mrs. Roth was ok with what was proposed, Mr. Robinson wanted to see more trees (screening the house), some with more fullness like a flowering crab, and Mr. Monte thought the plan could be expanded from what was proposed as well. Mr. McCain said he thought he had heard from some that the color used on the house would help in screening as much if not more than additional trees. Mr. Markolf said that he agreed with that, as did Mr. Robinson, but Mr. Monte said he thought both the color and additional trees were necessary (especially to keep in line with the intent of the ordinance).

The updated "laundry list" is as follows:

1. Proposed remediation (by the applicant) for the unpermitted clearing on the north side of the property.
2. Marvin glass comparison
3. Modified landscaping plans
4. Color choices for house, barn (roof of barn ok)
5. Maintenance items added to Erosion Control Plan.

MOTION by Mr. Monte to continue this hearing until the meeting on September 9, 2009 at 7 pm.
SECOND by Mr. Markolf. **VOTE:** all in favor, the motion passed.

MOTION by Mr. Markolf to continue the Durling Subdivision review until August 19, 2009 at 7 pm at the request of the applicant. **SECOND** by Mr. Robinson. **VOTE:** all in favor, the motion passed.

The Board signed the minutes of the previous meeting and signed the mylar for the Hartshorn boundary line adjustment.

The meeting was adjourned at 8:58 pm.

Respectfully submitted,

Ruth V. Robbins
DRB/PC Assistant

Development Review Board

Peter Monte date

David Markolf date

Lenord Robinson date

Virginia Roth date