

**TOWN OF WARREN
DEVELOPMENT REVIEW BOARD
MINUTES OF MEETING
WEDNESDAY SEPTEMBER 9, 2009**

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

Others Present: Jeremy Rathburn, Bob Messner, Jackie Coates, Henry Erickson, Jon Rubinstein, Gunner McCain, Chris Nordle, Wayne Mackie, Steve Butcher, Miron Malboeuf and Ruth Robbins.

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

1. Application **2009-01-VR**: Variance from the Sugarbush Access Rd. for a Water Utility Structure. The applicants, the **Timberline Association** and Phelps Engineering, Inc, request a variance for a water utility structure on their property at Timberline Rd off the Sugarbush Access Rd. The applicants were required to construct 152 Square foot water pumping station for an existing public water system serving the Timberline Condominiums. The property is located in the Rural Residential District. This Application requires review under Article 9, § 9.6(Variances) of the Warren Land Use and Development Regulations.
2. Application **2009-10-CU**: Conditional Use for setback relief and development on steep slopes: The applicant, Steve **Butcher**, requests a conditional use permit for setback relief and construction on a steep slope for his property at the corner of Dump Rd and Brook Rd in the Rural Residential District. This application requires review under Article 2 (Table 2.2, Rural Residential (RR)); Article 3, §3.4, (Erosion Control & Development on Step Slopes) and §3.6 (Height & Setback Requirements), and Article 5, (Development Review), of the Warren Land Use and Development Regulations.
3. Application **2009-09-CU**, Conditional Use: Construct a Single Family Dwelling and Accessory Structure in the Forest Reserve District – off Burnt Mtn. Rd. (continued from July 22nd, 2009). The applicant, Wayne D. **Mackie** request permission to construct a single family dwelling and accessory structure on 34 ± acres, located in the Forest Reserve District, accessed by Burnt Mtn. Rd. (parcel ids. 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) and Article 5, Development Review, of the Warren Land Use and Development Regulations.
4. **Other Business:**
 - a. Sign Minutes from July 22nd, meeting

Mr. Monte called the meeting to order at 7:01 pm.

- 1) Application **2009-01-VR**: Variance from the Sugarbush Access Rd. for a Water Utility Structure. The applicants, the **Timberline Association** and Phelps Engineering, Inc, request a variance for a water utility structure on their property at Timberline Rd off the Sugarbush Access Rd. The applicants were required to construct 152 Square foot water pumping station for an existing public water system serving the Timberline Condominiums. The property is located in the Rural Residential District.

Jeremy Rathburn of Phelps Engineering explained to the Board that the Zoning Administrator, Miron Malboeuf, had brought to their attention that they had neglected to secure the appropriate zoning permit for the utility structure they were constructing. Mr. Rathburn explained that the

error was due to the unusual circumstances of having a public water system combined with a private entity and generally when working with a public system, if a variance of any nature is needed the municipality has already taken care of the issue. Since this is a private entity, Timberline Condo Association, they have now filed the appropriate application and are in front of the DRB. The existing water system was underground and had become degraded. Therefore, the VT Water Supply Division mandated that the deficiencies be corrected. One of the challenges of introducing the new system was that the old system had to remain in place until the new was up and running which limited the placement of the new tank and shed that housed the pumping equipment. Because of having to keep the existing system in place, they ended up locating the pumping shed within the setback. Mr. Rathburn continued to say that to help mitigate the situation, they attempted to keep the pumping station shed as close to the general look of the condominiums so as to not stand out anymore than necessary such as using similar cedar siding, roof pitch and exterior color. They were aware of the surrounding trees and vegetation and tried to disturb as little as possible. Mr. Rathburn noted that the condo association president, Henry Erickson, had gotten a landscaper to put together a landscape plan to restore the screening of the shed from the Access Road.

Mr. Ericson presented the Board with a list of proposed plantings put together by the Mad River Garden Center [dated 9/8/09]. Mr. Monte asked who the adjoining owners were who might be affected by the setback encroachment. Mr. Rathburn recounted the list of who was served notice. Mr. Markolf asked what was there before the improvements were made. Mr. Rathburn said that there were two 1,000 gallon underground tanks approx. 10 feet by 5 feet and an 8 foot by 8 foot cinder block "vault" that was about one foot above ground level that was covered with tar paper. Mr. Behn asked just how much the encroachment was. Mr. Rathburn stated that it was between fifteen and seventeen feet. He continued to say that the setback is suppose to be forty feet but that it is only twenty-three to twenty-five feet. [off of the ROW, off of the edge of the road it is 36 feet]. The Board then took a minute to review the regulations to see if there was any way they could utilize the setback relief allowed under section 3.6 or have to meet the requirements as outlined under section 9.6 for a variance.

Mr. Markolf asked for some clarification of measurements. Mr. Rathburn told him that the distance of the new shed was 48 feet from the center of the road [a 3 rod road which is 55 feet wide]. The old tank cover was 56 feet from the center of the road. Unfortunately, it was determined that section 3.6 would not work in this situation. The Board then spent some time looking to see if there were any other options as to where to place the shed. They then looked at the standards under section 9.6 variances. One of the most challenging standards is 9.6 (A) (2) which states that there "...is no possibility that the property can be developed in strict conformity with the provisions of the zoning regulations...". As the Board has historically differed on how they view this standard they spent some time discussing it. Mr. Behn said he felt #2 was met, but did note that this was after the fact versus before. Mr. Rathburn quickly spoke up and said he took full responsibility for missing the step in the process and did his best to rectify it as soon as he could. R. Markolf asked / stated that if the applicant had come before the Board before construction that they probably could have found a way for the project to conform. Mr. Rathburn replied that though they would not have been able to meet the full setback requirement, they may have been able to qualify for the 30% setback relief allowed under the zoning regulations. Mr. Behn asked if they considered any other locations when coming up with the plan. Mr. Rathburn said not really as they wanted to be as close as possible to the tie ins and to the source.

Mr. Monte said that according to the ordinance he could not in good conscience agree that item #2 was met, however, he also felt it would be a waste of resources should the applicant be required to undo what has been done.

MOTION by Mr. Behn that the applicant has satisfied Sec. 9.6 (A) (2). **SECOND** by Mrs. Roth.
DISCUSSION: Mr. Behn wanted it included in the record that though the Board is here to uphold the regulations, and would have much preferred to review this situation prior to its construction, he felt that there was no malicious intent on the part of the applicant in failing to come before the

Board at the outset. **VOTE:** YEA: Mr. Behn, Mr. Robinson and Mrs. Roth. NAY: Mr. Monte and Mr. Markolf. The motion passed with a majority of the Board members in the affirmative.

Mr. Monte commented that he was pleased at the outcome of the vote yet he was able to stand on principal with a “nay” vote.

MOTION by Mr. Behn that the applicant has satisfied Sec. 9.6 (A) (1) due to the existing infrastructure. **SECOND** by Mr. Robinson. **VOTE:** YEA: Mr. Behn, Mr. Robinson, Mr. Monte and Mrs. Roth. **OBSTENSION:** Mr. Markolf. The motion passed four to one.

MOTION by Mr. Monte that the applicant has satisfied Sec. 9.6 (A) (3). **SECOND** by Mr. Robinson. **VOTE:** YEA: Mr. Behn, Mr. Robinson, Mr. Monte and Mrs. Roth. NAY: Mr. Markolf. The motion passed four to one.

MOTION by Mr. Robinson that the applicant has satisfied Sec. 9.6 (A) (4). **SECOND** by Mr. Behn. **VOTE:** all in favor, the motion passed unanimously.

MOTION by Mr. Behn that the landscape plan submitted is acceptable to the Board and that should any of the plantings fail [die], they will be required to be replaced. **SECOND** by Mr. Robinson. **VOTE:** all in favor, the motion passed unanimously.

MOTION by Mr. Behn that the applicant has satisfied Sec. 9.6 (A) (5). **SECOND** by Mr. Robinson. **VOTE:** YEA: Mr. Behn, Mr. Robinson and Mrs. Roth. NAY: Mr. Monte and Mr. Markolf. The motion passed with a majority of the Board members in the affirmative.

MOTION by Mr. Behn that as the applicant has satisfied the requirements under Section 9.6, the Board hereby grants a variance for the purpose of encroachment on a setback with the conditions already voted on. **SECOND** by Mr. Robinson. **VOTE:** YEA: Mr. Behn, Mr. Robinson and Mrs. Roth. NAY: Mr. Monte and Mr. Markolf. The motion passed with a majority of the Board members in the affirmative.

- 2) Application **2009-09-CU**, Conditional Use: Construct a Single Family Dwelling and Accessory Structure in the Forest Reserve District – off Burnt Mtn. Rd. (continued from July 22nd, 2009). The applicant, Wayne D. **Mackie** requests permission to construct a single family dwelling and accessory structure on 34 ± acres, located in the Forest Reserve District, accessed by Burnt Mtn. Rd.

Mr. Mackie started his continued hearing by introducing Attorney Chris Nordle of Darby Stearns who is now working with him on this application. Mr. Nordle stated that Mr. Mackie had opened up some wooded area on his property earlier in the year for the purpose of planting some other type of crop with the belief that it was ok and that no review was required. Mr. Mackie would like to maintain the crop planting area though he does understand the Board's concerns. Since the last hearing Mr. Mackie has had some soil analysis done by the UVM extension to aid in developing a plan for an appropriate crop. Mr. Nordle also said that they would be sharing a planting plan that would hopefully alleviate the Board's concern about the exposure to the north as a result of the cutting. Mr. Nordle then told the Board that Mr. Mackie would bring them up to date on what he had done since the last hearing and that Mr. McCain would speak to where the proposed plantings would be located.

Mr. Monte commented that he thought this was all after the fact, and that it was his impression that the Board pretty much was of the opinion that the clearing (to the north) was a pre-development site preparation activity with the agricultural use some distance down the list as there was no history of prior agricultural use. He then asked if the agricultural use would be a commercial activity or as a hobby. Mr. Mackie replied that he did not consider it a commercial

enterprise but that he would be disposing of the harvest, whether he gave it away or sell it if possible. Mr. Mackie then asked to back up for a minute as he felt the cutting issue had gotten off on the wrong track. He continued to say that from a layman's perspective he believed that he did not need a permit. As to the agricultural use, though it may not seem credible to some, it represented an idea he has had for many years, nothing formal or written down, but an idea. Though the cutting does improve the view that was not his motivation behind the cutting. If, he had wanted to just create a view, he wouldn't have gone, at considerable cost, to the extent of de-stumping and re-grading the area where the trees were cut said Mr. Mackie. More recently, Mr. Mackie told the Board that he had engaged the University of Vermont and had soil tests done to help develop a plan. As a result, the area has been fertilized and seeded with sunset timothy, a hay crop. Mr. Mackie emphasized that the idea of some sort of crop growing in the cleared area to the north was not just a last minute interjection to appease the Board, but rather an idea he has had slowing developing over some time.

Mr. Monte reminded the Board that the issue was the Supplemental Development Standard under Table 2.1 (E) (2) that states that "forest management activities designed as pre-development site preparation,.....shall be reviewed by the DRB under these regulations..." In addition it states, "where a landowner fails to submit pre-development plans for review, the Board may limit development to the non-impacted portion of the property and/or direct the manner in which the site will be restored or re-vegetated prior to development." Mr. Mackie interjected that he wanted it to be clear that his intent in cutting the trees was not for the view – if it had been he could have easily left the stumpage, and is bothered by the fact that his integrity is being questioned. Mr. Monte said that he might be willing to accept that Mr. Mackie's actions were done innocently but that doesn't allow the Board to ignore what has been done.

Mr. McCain said that they have attempted to remedy the concerns of the Board and would like to move forward. He presented the Board with a site map and explained that after walking the property they found that the supposed benefit of a view to the north was really very small and could be remedied easily. Mr. McCain showed how if they planted some [three] staggered trees along the break in slope, it would retain the crop area below but create a break in the open view shed. The trees proposed would be sugar maples of two to three inch caliper and ten to fifteen feet tall. It was asked how large a tree could you safely transplant and expect it to survive and Mr. McCain said the folks he talked with said a four inch caliper twenty foot tree could be successfully transplanted with a tree spade. Mr. Monte asked for thoughts from the other members. Concern was expressed about the ability to transplant trees on ledge, as one member said that when they start from seed, they can thrive on ledge but transplanted could be a challenge. Mr. Mackie said that with his knowledge of the parcel that having an adequate depth to plant should not be a problem.

Mr. Monte asked if the site was accessible as in his opinion he would need to see the site again to judge whether or not this plan would be sufficient. Mr. Nordle did offer some photos to help illustrate where the proposed trees would be placed. Mr. Markolf asked if the amount of land planted, and with what it is planted with actually constitutes agricultural use. Mr. Robinson found it hard to believe that after the previous clearing many years ago that inspired the current Forest Reserve District standards that Mr. Mackie thought he could just go ahead and clear again with out any sort of permit or approval. Mr. Mackie said that as a layman he read the guidelines as they pertained to timber work which he took as being an ok thing and away he went. He admitted to misinterpreting what he read and now all he wants to do is get back on track. Mr. Robinson said he remembers a lot of older larger trees of twelve to eighteen inches and fifty sixty feet high that now are gone.

Mr. Markolf asked if the Board could move forward and discuss the other items that need to be resolved. Mr. McCain said that as far as the window issue, that Mr. Mackie will accept a condition that requires him to use either non-reflective glass or year-round screening on the western façade of both the house and the barn. Mr. McCain then addressed the colors to be used for the dwelling and the barn. He said that a color palette was not yet put together but it would be

presented for approval at the next meeting. Mr. McCain also summarized the landscaping plan that includes the additional trees previously discussed. He also noted that any trees existing or new would be replaced should they not survive. Maintenance on the culverts/drainage ditch will be noted on the final erosion control plan.

The Board members then each gave the applicant their suggestion(s) of they wanted to see: Mr. Markolf said he wanted to see more plantings in the north; Mrs. Roth thought the proposed development would be good for the East Warren Ridge; Mr. Behn said that the unapproved clearing created an amenity to the property and had a hard time with only five trees; Mr. Robinson said he wanted to visit the site again and Mr. Monte said he'd like to visit the site also; Mr. Monte also stated that he didn't think that the addition of three trees was politically acceptable under this situation and also would like to see a mix of soft woods as well as hard woods. He also questioned the spacing as well as the overall number of trees.

Mr. Mackie asked if this was about the trees being cut or the view being enhanced. Mr. Monte said that he was willing to accept that he acted with a pure heart and an innocent mind but it did happen. He continued to explain that this site was still in its "15 minutes" of fame as it was the location where the rocket went off to create the Forest Reserve District. Mr. Monte pointed out that the Board has been hard on all other applicants that have come before them with plans to build in the Forest Reserve District and that they will continue to scrutinize future applicants with property in this district.

Mr. Nordle pointed out that the State Exemptions have a pretty broad carve out for accepted agriculture and best management practices [Sec. 9.2 (B)] . Further discussion revealed that there is a "disconnect" between the allowed State Exemptions for agricultural/forestry activities and the intent and standards of the Forest Reserve. He continued by pointing out that the area cleared to the north was a distance away from the proposed house site and several feet lower in elevation. Mr. Monte said that he still was of the mind that the clearing that took place was within the spirit of those who wrote the ordinance as being that which should have had review.

MOTION by Mr. Markolf to continue this hearing until Wednesday October 7th at 7:00 pm and a site visit to be held on Saturday September 12th at 9am. **SECOND** by Mr. Monte. **VOTE:** all in favor, the motion passed.

- 3) Application **2009-10-CU**: Conditional Use for setback relief and development on steep slopes: The applicant, Steve **Butcher**, requests a conditional use permit for setback relief and construction on a steep slope for his property at the corner of Dump Rd and Brook Rd in the Rural Residential District.

NOTE: David Markolf, DRB member, is recusing himself and not participating as a Board member during this application as he is representing the land owner, Steve Butcher.

Mr. Markolf began the presentation stating that the applicant is seeking setback relief under section 3.6 (C) (1) which allows up to 30% relief of the required setback amount. Additionally, the applicant is also seeking relief under section 3.4 (B) (1) for development on steep slopes less than 1000 square feet.

On the setback relief Mr. Markolf explained they wanted to site the proposed dwelling closer than the required 40 foot front yard setback as the slope of the property increases as you move back away from the road. Mr. Monte asked why the driveway into the property was so "large". Mr. Markolf explained that the Select Board granted the road cut and that the driveway was designed to 1) allow for a car to back out of the garage and turn around so as to enter Dump Road without having to back into it, and 2) to allow enhanced access to a spring/cistern and its right-of-way for the neighbor, Ms. Coates.

Mrs. Roth asked if the applicant had sought review with the fire department regarding the driveway. Discussion ensued as to whether or not it was necessary and several comments seemed to think it was not needed for a single family residence, unless it was an extremely long drive.

Mr. Markolf reviewed the topography of the parcel with the Board to illustrate why the setback relief was needed and that the proposed house site was in the best location due to the configuration of the parcel. Mr. Markolf also pointed out that there is an abandoned A-frame on the property in the approximate location of their proposed new dwelling.

Ms. Coates expressed her concern about her spring and the pipe that leads to her home for her water supply. She was especially concerned about heavy machinery on the property that might possibly damage her water source. Additionally, she wanted to know where the sewer connection would be made so that it did not interfere with her water line nor possibly contaminate it. Mr. Markolf replied that it was the applicant's intent to provide better access to Ms. Coate's spring. They also want to assure Ms. Coates that they will do everything they can to protect the spring and the spring line and in the event that they inadvertently damage any part of spring's operation they will repair it. Mr. Monte jumped in and clarified the point that the Board does not have the authority to get involved with land owners rights such as Ms. Coate's spring. He said that it was the responsibility of the two parties to come to their own agreement(s).

Mr. Markolf said that in regards to the placement of the sewer line that they did not have that information as of yet but assured Ms. Coates that there were strict requirements as to the placement in conjunction with her spring line. Mr. Robinson asked if the foundation would be deep enough to affect the spring. Mr. Markolf said that no, it was a day light foundation built on grade and does not sit above the spring which in that case might prove otherwise. Ms. Coates said that since her water pipe was not on the site plan, that she would like a site visit to further clarify where the house would be and she in turn could show the applicant where the pipe was located. She also noted that her pipe could not be relocated as it was gravity fed.

Though the application was warned for review of development on steep slopes, Mr. Markolf noted to the Board that the actual disturbance is only 750 square feet where a corner of the house encroaches on a 15% slope. This qualifies for exemption from steep slope review under Section 3.4 (B) (1) for development on steep slopes less than 1000 square feet. Mr. Markolf also noted for the Board that the intended dwelling, though not yet designed, is currently planned to be a 24 by 32 foot chalet with a walk-out basement finished in earth toned colors.

MOTION by Mr. Monte that under Section 5.3 Conditional Use Review Standards (A) General Standards (1) *The capacity of existing or planned community facilities or services* will not be adversely affected by granted front and setback relief. **SECOND** by Mr. Robinson. **VOTE:** all in favor, the motion passed.

MOTION by Mr. Behn that item (2) *Character of the neighborhood or area affected* of Section 5.3 (A) is not adversely affected by granting front yard setback relief. **SECOND** by Mr. Robinson. **VOTE:** all in favor, the motion passed.

MOTION by Mr. Behn that item (3) *traffic on roads and highways in the vicinity* of Section 5.3 (A) is not adversely affected by granting front yard setback relief. **SECOND** by Mr. Robinson. **VOTE:** all in favor, the motion passed.

MOTION by Mr. Monte that item (4) *bylaws and ordinances then in effect* of Section 5.3 (A) is not adversely affected by granting front yard setback relief. **SECOND** by Mr. Behn. **VOTE:** all in favor, the motion passed.

MOTION by Mr. Monte that item (5) *the utilization of renewable energy resources* of Section 5.3 (A) is not adversely affected by granting front yard setback relief. **SECOND** by Mr. Behn. **VOTE:** all in favor, the motion passed.

MOTION by Mr. Monte that the applicant has satisfied the standards for conditional use approval for front yard set back relief of 30% under Section 3.6 (C) (1) of the Warren Land Use and Development Regulations. **SECOND** by Mr. Robinson. **VOTE:** all in favor, the motion passed.

4) **Other Business:**

- b. Sign Minutes from July 22nd, meeting

In other business the Board reviewed and signed the minutes from July 22, 2009, reviewed and signed the Peltier decision and the Peltier mylar.

Mr. Monte adjourned the meeting at 9:52 pm. The next scheduled meeting of the DRB is Wednesday September 23, 2009 at 7:00 pm.

Respectfully submitted,

Ruth V. Robbins
DRB/PC Assistant

DEVELOPMENT REVIEW BOARD

Peter Monte date

Chris Behn date

Virginia Roth date

Lenord Robinson date

David Markolf date