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MORRISTOWN/MORRISVILLE DEVELOPMENT REVIEW BOARD

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Minutes of December 9, 2004

Members Present: Gary Nolan, David Silverman, Carl Fortune, Paul Trudell, Jean Wickart, Theresa Breault

Members Absent: Carol Jennings

Recorder: Mark Leonard, Zoning Administrator (ZA)

Guests: Mitchell Diamond, Ellen O'Toole, Heidi Krantz, Kirk Brisson, Julia Compagna

Chairman Gary Nolan called the meeting to order at 7:30 PM. David moved to approve the minutes of November 11, 2004. Carl seconded the motion and it passed unanimously.

WARNED HEARING: KIRK BRISSON, CONDITIONAL USE: POND SETBACK WAIVER, 1195 RIVER RIDGE ROAD

Gary introduced the application, to be reviewed under sections 426.2 and 633 of the zoning and subdivision bylaws. Theresa administered the sworn oath to Kirk Brisson.

The ZA prefaced the application by explaining that the Planning Commission had revised the zoning bylaws last year to explicitly require zoning permits for ponds, as an accessory use. The revised bylaws established setbacks for ponds, which could be waived by the DRB as a conditional use.

Kirk has an 11.66-acre parcel on River Ridge Road in the Ten Bends subdivision on which he eventually intends to build a single-family home. He plans to build a pond that due to the lot's topography would be 50 feet from the planned septic system leach field. The required setback from leach fields is 100 feet.

Kirk presented photos of the site and explained the site's restrictions that limited the pond's placement to the proposed location. He noted that the pond site and prospective leach field are separated by rock ledge, which should prevent any cross-contamination between both features. He also noted that ANR requires a minimum setback of 50 feet from leach fields for ponds requiring a state permit, suggesting that the town's recently adopted requirements may be overly restrictive.

Carl asked if an engineer had reviewed the proposal. Kirk said that only the septic system placement and design had been reviewed by an engineer.

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Paul asked what was the elevation difference between the pond and leach field, noting that there was no topographic information on the site plan. Kirk said the pond would be slightly lower than the leach field.

David asked if the site had received a state wastewater permit; Kirk said it had.

Jean moved to approve the pond setback waiver as requested. David seconded the motion and it passed unanimously.

WARNED HEARING: MITCHELL & ELAINE DIAMOND, CONDITIONAL USE: HOME BUSINESS, 374 FARM HILL ROAD

Gary introduced the application, to be reviewed under sections 263, 460 and 630-636 of the zoning and subdivision bylaws. Theresa administered the sworn oath to Mitchell Diamond, Heidi Krantz (adjacent property owner), and Ellen O'Toole (representing property owners Iain & Donna Davies).

Mitch outlined the home business he said he and his wife had been conducting for about five years from their home. The business involves technical illustrating. It is done out of a portion (approximately half) of a separate 575 square-foot finished workshop they constructed in 2000. Most of the work is done on a computer, with some done by hand. All contacts with their clients are by phone or via the computer. They had very occasional (1-2 per month) service deliveries. They engage the services of one part-time subcontractor to work at their home on an 'as required' basis. There are no exterior indications of the business.

Mitch said he had come forward at this time to get approval for the home business as a result of concerns among the property owners in the subdivision regarding various home occupations and businesses either existing or contemplated within the neighborhood. He said he was aware of these concerns and had expressed similar concerns regarding some of these himself. He stated his belief that his business was consistent with the protective covenants of the subdivision and that it would not cause any change to the character of the area.

Ellen O'Toole and Heidi Krantz voiced their concerns and those of other property owners who had submitted letters to the board opposing the application. Both cited the subdivision covenants allowing home occupations, not home businesses as defined in the zoning bylaws, and concerns about the potential for increased traffic and resulting road repair costs for the privately maintained road serving the community. They said they were also concerned about setting a precedent for other home businesses in the neighborhood. Both expressed the opinion that the Diamonds had not acted in good faith in bringing this application forward after a meeting with the property owners association last month had raised these concerns.

Heidi noted that the subdivision was subject to an Act 250 permit and that the covenants were part of the Act 250 application. She said she wanted to ensure that the workshop, which had a fully functioning bathroom, and the business use of it complied with all Act 250 permit requirements, in particular those dealing with the property's septic system. She said the Diamonds' leach field and replacement site were located on other parcels in the subdivision by easement. She said that the municipal septic permit, as well as the Act 250 permit, approved only a three-bedroom single family home. She felt it was necessary to determine that the additional usage created by the home business would not exceed the capacity of the septic system.

Mitch offered to agree to limit the life of any permit approved for the home business to his and his wife's ownership of the property to allay concern about other home businesses succeeding his and submitted a notarized statement to that effect. He disputed the concerns about the septic system, noting that the system is still only being used by fewer persons (three in his household and the part-time subcontractor) than are authorized for a three-bedroom home.

Ellen O'Toole asked the board to recess the hearing until the Diamonds had obtained an Act 250 project review. She also stated her belief that any permit approved would run with the land, notwithstanding the Diamonds offer to limit it to their use only.

Gary advised the participants that the Act 250 permit and the protective covenants were not within the DRB's jurisdiction. If any party had issue with either of these, there were separate avenues of review and enforcement available to them. He noted that the board's decisions include a statement that any permit it may approve is only a local zoning permit and that the applicant is responsible for obtaining any other local, state, or federal permits that may be required.

David asked if the application complied with each of the requirements of the home business bylaw (section 460). Mitch answered that it conformed to the specific requirements.

David moved to approve the application with the condition that the conditional use permit was limited to the applicants only and would expire upon their sale of the property. Jean seconded the motion and it passed unanimously.

OTHER BUSINESS:

The board met in deliberative session on the Lebovich conditional use application for a transient lodging facility. Previous zoning permits for the property were reviewed. David moved to approve the application with the conditions that on-street parking and revenue-generating public gatherings on the premises were prohibited. Jean seconded the motion and it passed unanimously.

The ZA presented an amended Notice of Decision on the previously approved Huard Conditional Use permit for a home business. The amended decision corrected an oversight in the original decision that failed to identify a specific time of day when the permitted business activity must cease on week days. On a voice vote, the board unanimously approved the amended decision and Gary signed it.

The ZA briefed the board members on the recent Vermont Supreme Court decision on the appeal by Leikert regarding his home business application. The court has remanded the matter back to the board for additional findings of facts and conclusions and, if necessary, an additional hearing. The board felt that no additional hearing was needed, there having been two hearings on this application already. The town's attorney in this matter will draft a more comprehensive decision, based on the information in the record from both previous hearings, for the board's review and approval. Once approved, the decision will be sent to all interested parties who may appeal if they so desire as provided in the bylaws and state statutes.

The ZA proposed a joint meeting be scheduled with the Planning Commission on Dec 21st to review issues that may require bylaw changes and for an update on bylaw changes mandated by recent legislation.

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Gary reviewed and signed the final plat for the Benoit three-lot subdivision off Walton Road.

On a motion by David, seconded by Carl, the meeting adjourned at 8:55 PM.

Respectfully submitted,
Mark Leonard, Recorder

Minutes approved on: 1/13/05 TB/PT