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MORRISTOWN/MORRISVILLE
DEVELOPMENT REVIEW BOARD
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Minutes of January 27, 2005

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

Members Absent: Carol Jennings, Carl Fortune

Recorder: Mark Leonard, Zoning Administrator (ZA)

Guests: Matt Nadeau, Larry Bertrand, Judith St Aubin, Susan Low, Kenneth Williams, Elerson (Bobby) Roberts, Nicole Fitch, Gunner McCain, Travis Apple

Chairman Gary Nolan called the meeting to order at 7:35 PM. Theresa moved to approve the minutes of January 13, 2005. David seconded the motion and it passed unanimously.

WARNED HEARING: ELERSON ROBERTS, 4-LOT SUBDIVISION, 5733 RANDOLPH ROAD

Gary introduced the application, to be reviewed under sections 260, 740, 780, and 800 of the zoning and subdivision bylaws. David recused himself due to a business relationship with the applicant. Theresa administered the sworn oath to Bobby Roberts.

Bobby Roberts explained his plan to subdivide a 50-acre parcel currently owned by Lester and Madonna Small into four lots. The Smalls would retain three lots (one 15 acre lot and two 5 acre lots) and sell the remaining 25-acres to Bobby. One of the Small lots currently has a mobile home and septic system on it; the others are undeveloped. Bobby indicate he plans to further subdivide his parcel once he obtains ownership. The Small lots would be accessed from Randolph Road. Bobby's lot would be accessed from the Stowe side of Elmore Mountain Road.

Theresa asked if there were any comments from adjainers; the ZA reported that none had been received.

Theresa moved to approve the application as requested. Paul seconded the motion and it passed unanimously.

WARNED HEARING: MATT NADEAU, CONDITIONAL USE: RETAIL SALES INCIDENTAL TO INDUSTRIAL USE, 254 WILKINS STREET

Gary introduced the application, to be reviewed under sections 233f, 450, and 630-635 of the zoning and subdivision bylaws. Gary recused himself due to a possible conflict of interest

and David assumed the chair for this application. Theresa administered the sworn oath to Matt Nadeau.

Matt explained that he has been operating a brewery (Rock Art) in one half (5000 square feet) of the former Vermont Asbestos Group building at the end of Wilkins Street for the last year and a half. In response to public interest, he'd like to establish a 20-seat pub within the brewery that would serve his products as well as other locally produced wines and light snacks. The pub would be open daily from noon to 9:00PM. He would anticipate adding up to six employees. Parking for patrons and employees is available on-site. Upon approval by the DRB, he will apply for the necessary Labor & Industry permits and a liquor license.

Theresa asked if he would be adding any signs or lighting. Matt replied that he might modify the existing sign on Brooklyn Street and could anticipate putting one light on the exterior wall facing the parking area.

Theresa asked Matt whether he planned to provide music or live entertainment. He said not at this time. David noted that any change of operating hours or expansion of the use (to include entertainment) would require DRB review and approval.

Theresa moved to approve the application as presented. Jean seconded the motion and it passed unanimously.

RECESSED HEARING: LARRY BERTRAND, CONDITIONAL USE: RESIDENTIAL DWELLING, 84 LOWER MAIN STREET

Gary introduced the application, to be reviewed under sections 208, 421, 422, 450 and 630-635 of the zoning and subdivision bylaws. David recused himself from the hearing due to a business relationship he had with the applicant. Paul assumed the chair for this hearing, Gary having been absent from the initial hearing on January 13, 2005. A site walk of the subject property attended by Theresa, Jean, and the ZA had been conducted on January 23, 2005. Theresa administered the sworn oath to Kenneth Williams. Larry Bertrand, Judith St Aubin and Susan Low (adjacent property owners) had been previously sworn in.

Larry began by saying that the process of his acquisition of the small parcel that lies between the two lots (A and B) that he presently owns is ongoing. He expects to receive the deed from the Birmingham estate in the next week or so and will record it in the town land records as soon as he does. When he joins this 1765 square foot parcel with Lots A and B, Lot B will exceed the minimum lot size of one-eighth of an acre required under section 421 of the zoning bylaws. He asked the board to consider approving his application with the condition that he complete the process of merging the two parcels.

Paul referred to section 422 regarding access to the lot. Larry repeated his assertion from the previous hearing that Lot B is an existing parcel that has been and continues to be accessed via a deeded easement along the driveway owned by Judith St Aubin. The driveway may be less than the 50 feet required in section 422, but Larry felt that the access width was a pre-existing non-conforming use.

Theresa stated that dispute between the applicant and the adjoining property owner who owns the driveway is beyond the board's ability to resolve. She suggested that the applicant obtain a legal ruling on the easement question for the board's review.

Larry responded that he believes that he has legal access to the lot and that the access question is outside the scope of his application. He is only seeking the board's approval to join the smaller parcel to Lot B to meet the minimum lot size requirement and to replace the barn with a single-family residence on the same footprint as the barn. He stated that if the board was unable to do this due to uncertainty over the access issue he would consider withdrawing his conditional use application and submitting a zoning permit application for a permitted use. He would rather not go that route as it didn't fit with his plans, but would do so if necessary.

Paul reviewed the legal opinion regarding the access easement of the Birmingham property prepared by Andrew Field of Field & Field, P.C. for Judith St Aubin. It concludes that "no other party can use...the easement other than as a means of ingress and egress for the benefit of the Birmingham house to service their garage and barn, as such". Paul suggested that this meant that Larry, as an 'other party', did not have the right to use the access. Larry saw it the opposite, stating that the access runs with the land and as such he has the same right to use it as the previous owners.

Jean said the board would be more comfortable in rendering a decision if the two parties and their lawyers could resolve this question.

The ZA asked whether the change of use of the property, from barn to something else, renders the easement invalid. He suggested that the board could approve the application, subject to resolution of the lot size issue, with a condition that the applicant obtain a declaratory judgment from Superior Court affirming his right to use the St Aubin driveway for the purpose proposed.

Susan Low said she had researched the applicable deeds and questioned whether the Birmingham estate in fact owns the small strip between Mr Bertrand's two properties and if not, it wasn't theirs to convey to him.

Kenneth Williams, speaking on behalf of Ms St Aubin, said he felt that her driveway was already being abused by tenants of Mr Bertrand's apartments in Lot A and patrons of a nearby café'. The ZA noted that those issues were not pertinent to the application before the board and if Ms St Aubin felt that her property was being used without her consent she could file a civil trespass suit against those concerned.

Paul noted that at least two members appeared unwilling to vote in favor of the application while the access question remained open. With only four members present for this hearing, the board would be unable to approve it without a unanimous vote. He suggested recessing the hearing while the legal questions were researched and resolved.

Theresa moved to recess the hearing for six months, until the fourth Thursday in July (July 28, 2005) to give the applicant time to resolve the access question. Gary seconded the motion and it passed unanimously.

OTHER BUSINESS:

Gunner McCain presented a plan for a proposed 3-lot subdivision for pre-application review. The plan subdivides a 22-acre parcel along Lower Elmore Mountain Road owned by Mark and Florence Farrell into three lots ranging in size from five to ten acres. On a motion by Theresa, seconded by Paul, the Board unanimously found that the application conforms to the

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Town Plan.

Travis Apple presented a proposed modification to the property lines of a recently approved 10-acre lot he is purchasing from Virginia and Hartley Neel on Cole Hill. The proposed adjustments do not change the size of either of the affected parcels. He asked if he needed to come back before the board for a formal hearing on the change. After reviewing the proposed change with the board members, Chairman Nolan advised that only a final plat review would be required.

The ZA reviewed the recent Environmental Court decision on the appeal of the Gregory subdivision approval and the Vermont Supreme Court's decision on the appeal by Leikert of the denial of his application for a home business. Both decisions cited flaws in the board's findings of fact and conclusions in the respective decisions and remanded the cases back to the board for further action. The question of conducting DRB hearings on the record, which the courts' decisions indicate require a greater level of supporting evidence and documentation in the findings and conclusions than is typically the case, was discussed. The relative merits of using 'on the record' procedures or reverting to the standard method, requiring appeals to be heard by the court 'de novo', were reviewed. The ZA will report back to the board on whether to recommend to the Select Board to keep the current procedure or to change the process.

Final mylar survey plats for the following applications were reviewed and signed:

- Englert/ Nicholls/Marcoux lot line adjustments
- Loura 2-lot subdivision (Mountain View Meadows Lane)
- Benoit 3-lot subdivision (off Walton Road)

On a motion by Paul, seconded by Theresa, the meeting adjourned at 8:45 PM.

Respectfully submitted,
Mark Leonard, Recorder

Minutes approved on: 2/10/05 (TB/sw)