

TOWN OF WESTFORD
DEVELOPMENT REVIEW BOARD MINUTES
Minutes for October 26, 2011 Meeting
Approved on November 9, 2011

Board Members Present: Wayne Brown, Jason Hoover, Eric Jacobsen, Tony Kitsos (Chair), Don Maddocks, Casey Mathieu and Matt Wamsganz.

Board Members Absent: N/A

Also Present: Melissa Manka (Planning Coordinator), David Sunshine, Melissa Tourangeau, Randy Bishop, Lexie Green, Ed Green, Nick Labelle (on behalf of Mark and Robin Labelle, Kevin Giles, Maurice Rathbun, Bob Williams and Paul Kolbenson.

The meeting began at approximately 7:15 p.m.

Tony began by asking whether anyone had an issue with the DRB hearing the Variance application prior to the Appeal application. No comments or concerns were heard.

Variance Public Hearing - Randy Bishop Property (3.1 acres)

Randy Bishop (applicant), Melissa Tourangeau (applicant's girlfriend), and David Sunshine (attorney), were present.

Randy began by explaining that the topography of the area makes it difficult to stay out of the right of way. He said neighboring properties have received variances for outbuildings and garages within setbacks.

Tony asked if the 3.1 acre lot was undeveloped and Randy said yes.

Tony asked whether the lot was used in conjunction with a business.

Randy said the items stored on his lot were for his personal use.

David verified that Randy stored construction equipment on site, but he did not meet clients or have crews on site.

Randy agreed and added that he keeps wood and personal items on the 3.1 acre lot as well.

Tony stated he would like to conduct a site visit of the property and have an engineered drawing of the site resources and proposed development. He said there wasn't enough information submitted for the DRB to make a decision and a site walk and site plan would be necessary to determine whether the property could be developed outside of setback areas without impacting steep slopes and/or rock outcroppings.

Don asked how much of the 3.1 acre lot was located in Underhill.

Randy said the lot was a total of 5 acres with 2 acres in Underhill and 3 acres in Westford.

Don asked if there were any structures on said lot.

Randy said no but stated there were parking areas on the lot.

Tony asked if the parking areas were created by filling in areas of the lot.

Randy said yes.

Don asked if there were any areas on the lot where a home could be built.

Randy said possibly, but perc testing would be necessary.

Don suggested the DRB review the five state criteria for granting variances.

The DRB went through the first criteria.

Randy said the lot couldn't be developed outside the right of way without hitting ledge or steep slopes.

Tony asked if Randy was saying the lot could not be developed outside of the setback.

Randy said yes.

David said there wasn't anything in the Town's ordinance stating his client would need a site plan.

Tony explained that the applicant was proposing land development and all land development requires a site plan. He added that the construction business may need further permits, such as conditional use and site plan review.

Don asked if there was a survey of the property.

David said yes and submitted it for review.

The DRB discussed criteria number two.

Tony said a site plan of the property depicting the natural features and resources of the property will help the Board determine whether the application meets criteria two.

Randy was concerned with the expense of a site plan if the variance wasn't granted.

Jason stated that the site plan will allow the Board to determine whether the property meets the criteria, which cannot be done by conducting a site visit alone. He said criteria one and two can only really be determined with a site plan as well as a site visit. He said the applicant can decide after the site visit whether to proceed with the site plan.

The DRB discuss criteria number three and agreed the issue appeared to be a result of natural topography and not something created by the applicant.

The DRB discussed criteria number four regarding neighborhood character.

David said two other homes on the road have variances and/or parking areas located within setbacks. He further explained that the property to the north received a variance in 1998 for a garage.

Tony said a variance granted in the past does not tie the DRB to granting this variance without meeting all criteria.

David said he thought the past variance helps to determine the character of the area.

Tony asked if the existing parking lots in the neighborhood were of similar size and stored the similar types of materials.

Randy said they were used for campers, boats and cars.

Tony said it appeared as though one of the applicant's parking areas was approximately 36' by 90' and asked whether the neighboring properties had parking areas of similar sizes.

Randy said he could make his parking areas grassed as opposed to gravel.

The DRB discussed number five of the criteria.

Tony asked whether the applicant thought his proposal was the least deviation possible to afford relief. He also said he believed the land developed located within the actual right of way was a problem regardless of the request for variance to develop within setbacks.

David said his client has an easement to use the right of way.

Tony asked whether he had an easement to conduct land development in the right of way.

David said that was a good question.

Tony said the DRB would like to see the deeds and covenants for the subject property and road way.

David said the deed only says there is a right of way to access the property and he has not looked for any associated covenants yet.

Don said rights of way are not for building or storage, because others have the right to use the right of way to access their homes and property.

Don said he is hesitant that three to four parking areas would be the minimum relief and least deviation and suggested the applicant determine which parking area were of most value to him and to reassess his request.

Eric asked if there was a road association to maintain the road.

Eric asked if there was a concerted effort among property owners to maintain the road and Randy said no.

Tony opened the hearing to the public.

Melissa handed out a letter that the Atherton's submitted prior to the meeting since they were unable to attend.

Tony asked the proposed size of the storage building.

Randy said approximately 28 feet by 38 feet.

Tony asked if it would have a foundation and Randy said yes.

Eric asked what would be in the storage building.

Randy said a tractor, excavator, building materials, firewood, etc. He added that it would be a multi-use building.

Ed Green offered a rebuttal. He said he was not in favor of the variance, the applicant has enough area near his home to store materials or he should find a non residential area suitable to do so, the garbage in the fill detracts from environment and neighborhood, 100% of the applicant's property does not need to be developed or used to store equipment, all property owners on Duffy Hill Road help to maintain the road, the applicant uses the right of way as well as the setbacks with no regard for neighboring properties that have to use the road as well, and he would like all material removed from the right of way and setbacks.

Tony asked that Mr. Green's statement be submitted for the record.

Maurice said the adjoining property was given variance for a garage.

Don said that happened when the ZBA heard variance applications and at that time they were working with the belief that all Vermonters need a garage.

Bob Williams of Roy Road said he was concerned with the amount of water runoff further development on Randy's property would cause. He said the water on the applicant's property currently runs towards his property and down the ledges to his home. He said the filling has exasperated the problem and he will not be able to handle further runoff caused by the proposed development.

Lexie Green said the applicant's encroachment on the road currently affects their ability to plow, store snow, and maintain their homes since utility and services vehicles are unable to pass through Randy's storage. She added that Randy becomes upset when plowing effects his ability to store equipment within the right of way and setback.

Tony reiterated that the applicant should submit his deed and the road covenants for review.

Jason MOVED to continue the public hearing until November 9, 2011 at 7:15 pm at the Town Office and conduct a site visit on November 5, 2011 at 9:00 am at 33 Duffy Hill Road.

Matt SECONDED the motion.

The motion PASSED: 7 – 0.

Appeal of Notice of Violation Public Hearing –Randy Bishop Properties (10.1 & 3.1 acres)

Randy Bishop (applicant), Melissa Tourangeau (applicant's girlfriend), David Sunshine (attorney), and Maurice Rathbun (zoning administrator), were present.

Tony reviewed the notice of violation with the DRB.

Tony said it appeared as though the main issue was with the timeline and whether the notice of appeal was submitted within the 15 day statutory requirement.

Melissa said the DRB must decide whether the appeal was submitted on time prior to hearing the notice of appeal.

Randy said the Violation was dated June 20th and he picked it up from the post office on June 28th. He went on to say that he tried to contact Maurice but Maurice was not available. Randy said he met with Maurice on July 6th to discuss the violations and, at that time, Maurice said he did not need to submit any permits and could not submit an appeal since it was the 16th day from the date of mailing.

Maurice said he was hoping he could work with Randy to correct the issues.

Randy said work on the steep slopes has ceased and the stonewall has been demolished.

Tony said Maurice required a mitigation plan to stabilize the effected slopes.

Randy said the slopes were stable and a mitigation plan was not necessary. He added that the stonewall was not over 6 feet. Therefore, it was not a structure and did not need to be removed.

Melissa reiterated that the DRB should first and foremost determine whether the notice of appeal was timely.

Jason read Section 7.4.1 of the Zoning Regulations, which states notices of appeal must be submitted within 15 days from the mailing date. He explained that the 15 day deadline was a town and state regulation.

David said his client met with Maurice on July 6th with applications in hand and was told not to submit them. David then submitted a handful of applications to the DRB.

Tony asked Maurice if he told Randy not to submit the applications.

Maurice said he hoped they could work out the violations.

Tony asked Randy why he submitted the appeal on September 8th.

Randy said he did so after receiving a letter from the Town Attorney and the Town Attorney told him he could still submit the appeal.

Tony said Maurice may have wrongly stated that the appeal could not be submitted on the 16th day because it is ultimately up to the DRB to decide timeliness.

David said he believes there should be a defacto stay of enforcement because Maurice told Randy not to appeal which has drawn out the problem.

Tony asked Randy what happened between July 6th and August 18th when the Town Attorney sent him a letter and whether Randy had been working with Maurice during that time to correct violations.

Randy said Maurice came out to look at the site, Melissa told him to determine where the steep slopes were located, and he took apart the stonewall and removed the RV.

Tony asked Maurice if he had a log of this activity.

Maurice said he did not, but all activity took place after the Town Attorney's letter was sent to Randy.

Matt said Randy picked up the notice of violation on June 28th and didn't come in to the Office until July 6th was still the 16th day from the mailing of the violation. He said Randy had seven days to address the issue or submit an appeal from the time he picked up the notice.

Randy said Maurice is only in the office four hours a week and he wanted to talk to Maurice to understand the violations. He said he was not sent an appeal application as noted in the notice of violation he was sent either.

Tony said they could not verify that.

Casey said there was an inherent problem if Randy could not get a hold of Maurice to discuss the matter and Randy was trying to resolve the situation. He added it was also wrong of Maurice to tell Randy not to appeal.

Eric agreed that Randy appeared to be making a good faith effort to correct the problem.

Randy said the Office was closed on July 5th due to the holidays, which was the 15th day from the mailing of the violation.

David said in most cases the holiday would extend the time limit for submission.

Maurice said he had also issued a warning in May but Randy failed to act on it.

The DRB went around determining the member's thoughts regarding timeliness. There were three members who felt the application was timely and four members who felt the application was not timely. Therefore, the majority of the DRB agreed the appeal was not timely and the DRB was not in a position to hear the notice of appeal.

The DRB went on to discuss the request for a stay of enforcement.

Don asked what issues were outstanding.

Randy said he didn't know and he thought everything had been taken care of.

The DRB went through the issues.

For number one, Maurice said the steep slopes needed to be verified and stabilized.

Casey asked if a letter from an engineer would suffice and Maurice said yes.

The second issue stated storage and parking were not permitted within the setback and Maurice said there were still items located within the setback.

David said that number three was exempt from the regulations because the stonewall was less than 6 feet.

Maurice said that the wall was located within the right of way and it is still stored within the right of way.

Don said a person cannot build within a right of way used by other individuals.

Randy said the wall and stone could be moved.

Randy said the RV in number four had been removed from the property, but he does not understand why the RV was an issue since it was used recreationally.

Maurice said the vehicle was used from June to September and the issue was the fact that it was parked within the setback.

Melissa questioned how the discussion was related to the request for stay.

Jason said he wanted to know the motivation to correct the violations to determine if a stay should be granted.

Don said steep slopes should be stabilized before winter and Maurice should receive verification it has been done properly.

The hearing was opened to the public.

Lexie Green said Randy's stuff should not be located within the setback and Randy has made no attempt to remove anything since being notified of the issue.

The Greens submitted pictures of the items being stored on Randy's property.

Ed Green said he is not in favor of fines, but the Town needs to make it not beneficial for individuals to ignore violations.

Nick Labelle submitted a letter on behalf of his parents Mark and Robin Labelle and Tony read it to the group. Nick reiterated that Randy's storage, use of the right of way and use of the setbacks were affecting his parent's ability to maintain their house and road.

Bob Williams reiterated his concern that the unpermitted development was exasperating stormwater problems and creating wastewater system failures below Randy's property.

Tony MOVED to continue the public hearing until November 9, 2011 at 7:15 pm at the Town Office and conduct a site visit on November 5, 2011 at 9 am at 33 Duffy Hill Road.
Wayne SECONDED the motion.
The motion PASSED: 7 – 0.

Draft FY 2013 DRB Budget

Tony MOVED to approve the level funded budget.
Mat SECONDED the motion.
The motion PASSED: 7 – 0.

Minutes of the August 24, 2011 Meeting

The DRB will review the minutes of the August 24, 2011 meeting at their next meeting.

Executive Session: Planning Coordinator Job Evaluation

The DRB will conduct the Planning Coordinator job evaluation at their next meeting.

Matt MOVED to close the final plat hearing.
Wayne SECONDED the motion.
The motion PASSED: 4– 0.

The meeting adjourned at approximately 10:30 p.m.

Submitted by,
Melissa Manka, Planning Coordinator