

Shaftsbury Development Review Board
Shaftsbury Town Hall
Buck Hill Rd at 7:00 pm
DRAFT Minutes of Regular Meeting
July 11, 2012

Members Present: Gary Burgess, Tom Huncharek, David Mance, Bob Holmes, Megan Donckers Chris Ponessi and Jennifer Viereck (alternate).

Members Absent: Fritz Ludwig,

Others Present: William Jakubowski (Interim Zoning Administrator), Dale Snide, Megan Snide, Allyn Lindsey, Bryon Wade Sr., Sue Balutis, Tom Getz, Michael Gardner, Linda Mitrovich, Kathy Geneslaw, Robert Geneslaw, Carl Goodwin, Dennis Goodwin, Phylis Porio, Helen Bernard, Norma Peebles, Richard Peebles, Barbara Buxbaum, Joann Race, David Woodward, Jim Cassing, Ronald Schoof, Jay T. Palmer, Barry Richardson Sr., Martha Brown, Arlin Brown, Brittany Bentley, Joyce Kennedy, Diane Mayer, Barry S. Mayer, Sara Restroudt, Norman Gronning, Mary Gronning, Mitchell Race, Ellen Fisher, Kathy Link, Anthony Gaeta, Catherine Gaeta, Donna Savoia, Bert Savoia, Carl A. Davis, Dick Knecht, Kathy Jo Magan, Margaret Affleck, William Pennebaker, David Spurr, Karen Mellinger, Chris Williams, Judy Knecht, Daniel W. Palmer, Pete Sternberg, Lin Sternberg.

1. **Call to Order:** Chairman Gary Burgess called the meeting to order at 7:05 p.m.

Followed by the Pledge to the Flag.

2. **Conflict of Interest Statement –**

There were no conflicts noted. See Item # 6.

3. **Application # 12- 9264** - Parcel ID # 15 20 26 and 15 20 27 –pursuant to Sec 5.01 of Subdivision Regulations for a Lot Line Relocation at # 196 and #164 VT RTE 67E for R. and L. Lindsey and D. and M. Snide, in a VR and RR-40 Zone

It was noted this Hearing has been properly warned and the applicants had verification of mailing notices to adjacent neighbors. The applicants presented their request for a Lot Line Relocation It was their hope to be able to square of the back of the Snide property, now a small triangular shape to become a rectangular lot. Mr. Mance brought up the fact that a State Waste Water Permit or exemption will be required. The Applicants were advised to seek professional help for the waste water permitting process and the Hearing was adjourned until the first meeting in August to allow time to obtain the required documents.

4. Application # 12-9281 – Parcel ID# 15 20 27 – Pursuant to Sec. 3.3 and 3.3.2 to allow a carport previously permitted for residential use and a trailer, to be used for the protection of machines and tools used for firewood production by Richard and Lois Allyn Lindsey at 196 VT RTE 67E. The fire wood sales and production exists as a non conforming use in a VR and RR-40 Zone. It was noted this Hearing has been properly warned and the applicants had verification of mailing notices to adjacent neighbors. The applicant Mrs. Lindsey spoke of the history of the property as a pre-existing non-conforming use. Discussion centered around the continuation of the use as; the Applicant’s husband has been ill, it was difficult to find employees lately and they are contemplating selling the house.

Motion: by Bob Holmes, seconded by David Mance to discontinue the business use, remove the trailer, withdraw the application and urge the Select board to refund the Applicants filing fee. The vote passed 4-3-0. In favor – Megan Donckers, Bob Holmes, Tom Huncharek and Chairman Gary Burgess. Opposed – David Mance, Chris Ponessi and Jennifer Viereck. Mr. Ludwig was absent.

There was unruliness in the audience and discussion from the public regarding the sound system and it being ineffective. The volume was raised and the response was better.

5. Application # 12-9278 - Property ID # 02 01 42 - Appeal of the Zoning Administrator’s Determination dated May 31, 2012 by M. Gardner – 272 Rod and Gun Club Rd. pursuant to Subchapter 11 Section 4465 (b) (3) permitting the sale of ice cream at the Chocolate Barn ; located at 5055 VT RTE 7A in an RR-80 Zone

It was noted this Hearing has been properly warned. Tom Huncharek recused himself and left the table. Mr. Williams requested that Ms. Vierick recuse herself from the hearing based on her prior involvement with the Chocolate Barn case review. Ms. Viereck withdrew stating Mr. Williams made factually incorrect statements.

Town Attorney R. Woolmington joined the DRB at the table. The Attorney representing the Chocolate Barn defense of the Appeal, Mr. Tom Getz, had filed a Notice of Appearance, and was joined by Sue Balutis and Tom Hunchareck, of the Chocolate Barn.

Mr. Michael Gardner, the Applicant in this matter was also present.

Chairman Gary Burgess asked that the Town Attorney to assist in the legal determination regarding the Motion to decide on the appropriateness of a Motion to Dismiss filed by the defendant. Attorney Woolmington responded the Board had to show a need for the Motion to succeed.

Mr. Getz spoke for the defense as a representative of Primmer, Piper, et al., attorneys for the Chocolate Barn. He directed the Board’s attention to VT Standards existing to determine Interested Party Status - 24 VSA Sec 4465, particularly that; the appellant be an immediate neighbor, the decision would result in a direct impact and that the use as proposed would not fit within the Town Bylaw or Plan. Attorney Getz stated the filing did not show impact as Gardener’s location distance is to far from the questioned site. There is no impact directly related to his

property and because neither standard has been met he feels the motion to dismiss must be upheld.

Mr. Gardner felt his letters were concise in content ; the matter should have been properly before the DRB, rules should be applied fairly and “not circumvented by procedural shenanigans”. He mentioned a revised Appeal filing which the Chair stated had not been seen by the Board but they were aware of it.

The first need is to deal with the Motion to Dismiss. Attorney Woolmington supported the Chairman’s statement.

Megan Donckers mentioned a definition of an immediate neighbor which did not include a neighbor only slightly less than a mile away. Mr. Getz cited a case of a two lot sub division was appealed by person living less than ½ mile away and the court ruled they were not interested parties.

There was a concern that the time period for the original appeal was correct and R. Woolmington affirmed it was. The ZA indicated the Notice of Decision was posted in the 3 usual locations, mailed to the adjacent neighbors, and the Owners.

Members of the public were asked to comment.

Phylis Porio spoke on Community; people seeking change without regard to the community wishes. A DRB application would allow the people to see how the DRB works with community. It should show how a person would be seen by VT er’s.. Board member David Mance reprimanded the public about heckling. Everyone has a right to speak and be heard. He feels the current attitude does not reflect the spirit of people of Vermont . Norma Peebles spoke on her time in VT and in rebuttal she was against Ms. Porio’s characterization of Vermonters.

Trevor Mance spoke about his disappointment because we are losing transparency that the Town has been working towards these last several years. The matter should go to the DRB as a fair process that should be used.

Michael Gardner offered that his concern was not so much about the Chocolate Barn issue as about the process. He felt this was a substantial change of use and the DRB process would allow for opinions and decisions to be heard. He felt it was an egregious violation of the Community.

The Chairman spoke on opinion versus evidence and asked the ZA to address his decision and the basis for it.

The ZA was asked to comment and stated:

The operation of the Chocolate Barn was as a legal non-conforming use pre-dating the date of Bylaw enactment as a retail confectionery business.

There was no expansion of the building beyond its physical limits.

Was Ice Cream a confectionery, as a sugar, milk, and fruit combination, he felt it was. Was the use a restaurant? The State licenses restaurants. It has requirements for the operation of them. Those requirements are not the same as a confectionery retail sale location. The Bylaws have no definition of a restaurant. There is a section that does allow retail sales.

The impact was determined by the size of the area of production and the equipment used.

No in premises consumption, use only existing porch seating. The seasonal use for ice cream and candy are usually opposite in peaks. This is primarily a tourist, seasonal use.

There was no change of use, therefore no change required to parking.

Intensity increase does not change the use. (An example of a local restaurant that had operated at a medium capacity and then increased volume due to a change in the menu did not create a change in use.)

The Chair asked the ZA where he found the definition of “confection” The ZA replied, probably on line. Megan Donckers recalled seeing the same definition described in her review of the matter.

Sue Balutis referred to her experience with the former owner, C. Gregory. The production of chocolates and candy usually falls in the hot weather.

M. Foley questioned M. Gardeners use of ‘egregious ‘ so many times and also questioned the Town’s payment to Rob Woolmington.

Bill Obernauer felt Mr. Gardener’s impact was emotional and physical, not environmental or otherwise related to recognized impacts.

Mr. Chris Williams felt the DRB should dismiss the appeal. It is not an abuse of process, there is no impact upon Mr. Gardner.

The Chair asked for Motion to dismiss on the basis the applicant was not an immediate neighbor under the Statutes..

Motion: made by Megan Donckers, seconded by Chris Ponessi, to dismiss M. Gardner’s application as not in conformity with the requirements of 24 VSA Section 4465 (B) (3) for an interested party. A written decision is to follow.

The vote in favor of the motion was 4-1-2. The Vote was as follows: In Favor; Megan Donckers, Robert Holmes, Chris Ponessi and Chairman Gary Burgess; in Opposition; David Mance and, Recused; Tom Huncharek and Jennifer Viereck.

A brief recess was taken while the public cleared the room for the rest of the business.

6. **Discussion of Rules and Procedures.** An email had been forwarded to the DRB members from D. Mance regarding proposed changes to the language. Bob Holmes also had some changes he reviewed. Bob offered to do adds/ deletes as the review progressed due to the ZA being out of town for two weeks. Megan Donckers offered to do same as Bob had expressed some difficulties with some word processing.
7. **Driveway Access:** Application by Regina Shaler – Glastonbury Rd. for a permit to install a new curb cut. It is noted the Road Foreman approved the application with a culvert. Chairman Burgess asked to add a condition requiring at least 50 feet of brush grass or other growth that might disturb the line of sight be kept clear in perpetuity and maintained in that manner.

Motion to issue the Permit : made by Bob Holmes, seconded by Chris Ponessi and passed 7-0-0-

8. **Approval of Minutes:**

12/7/11, 4/4/12 – Approved previously, Phylis Porio signed as Chair of those meetings.

4/18/12 Motion to approve made by Bob Holmes, seconded by David Mance.

The motion was carried 4-0-3 with 3 members abstaining as they were not Board members at the time. P. Porio agreed the minutes were accurate and signed as Chair of those meetings

5/16/12 Motion was made to approve the minutes by David Mance, seconded by Chris Ponessi. Motion was carried 4-0-3 with three members abstaining as they were not Board members at the time.

6/6/12 Motion was made to approve the minutes by Chris Ponessi, seconded by David Mance. Motion was carried 6-0-1, with Gary Burgess abstaining since he was not present at that meeting.

9. Other Business: There was no other business.

10. Adjournment

Motion: To adjourn the meeting. Moved by David Mance; seconded by Chris Ponessi

The meeting was adjourned at 9:45 p.m.

Respectfully submitted,

W. Jakubowski (Acting Recording Clerk)