

WEST WINDSOR DEVELOPMENT REVIEW BOARD

Draft Minutes
January 12, 2010

Present: Glenn Seward, Shannon Harrington, Genevieve Lemire, Pete Ladd, Martha Harrison, Ted Emerson, Joel & Jan Schreibman

1. Call to Order: Chair Glenn Seward called the meeting to order at 7:00 PM.
2. Changes or Additions: Wording on Mylars, Rules of Procedure, Brown Subdivision Plan
3. PUBLIC HEARINGS: Glenn read the notice for the scheduled public hearing. The hearing was on application #2387 by Ted & Ava Emerson to appeal the decision of the Zoning Administrator to deny application #2383 to relocate the bottom portion of the driveway at 1119 Rush Meadow Road (parcel #1-61). The denial was issued in accordance with Sections 3.2-1, 3.14, and 4.11 of the West Windsor Zoning Regulations and is being reviewed by the DRB in accordance with Section 6.7. The hearing was preceded by a site visit to the property at approximately 4:15 PM. Glenn asked the members of the Development Review Board (DRB) if there were any conflicts of interest or any ex parte communication. All said no. Glenn reviewed the definition of an interested person. Glenn swore in all those present. Glenn asked Ted to provide an overview of his project for the record. Ted said he would like to move his driveway north 25', which would put it on the land of Joel and Jan Schreibman. Ted said the Schreibmans have granted an easement, but there may be setback issues. Ted said there are times when snow is blocking the view of oncoming traffic and he has had several close calls. Ted said his proposal would enable him to dispose of snow in a way that does not create piles that block his view of oncoming traffic, and would give him "a straight shot" across the bridge, which would enable him to make it up the hill. Glenn read section 3.2-1 of the zoning regulations which states that no driveway shall be constructed within 10' of a property line unless the driveway is going to be used as a shared driveway. Glenn said it sounds like there is an agreement between the Emersons and the Schreibmans for an allotment to allow for the 10' setback. Joel said he and Jan think the proposal is beneficial for the Emersons and the town and is of no consequence for them so they will do whatever is necessary to accommodate it. Shannon said the easement appears to provide an additional 35' along Rush Meadow Road. Ted said 35' gives him enough room to move the driveway 25' to the north and still have a 10' setback. Martha said, since it's an easement and not a boundary line adjustment, the property line doesn't actually change. Martha said that problem could be overcome with a boundary line adjustment but the stream and the stream buffer make the situation more complicated. There was discussion about whether an easement line can be considered a property line. Shannon and Glenn agreed that an easement or right-of-way can serve as frontage for properties that don't have frontage but the Emerson property has frontage. Glenn read Section 3.14, which requires a 50' natural, undisturbed, vegetated, stream buffer, and said this is the crux of the matter. Glenn asked Ted when the bridge was built. Ted said the bridge was built in 1974-75. Glenn asked Ted if he had to go through any regulatory process to build the bridge. Ted said no. Ted said there was an existing driveway prior to 1974-75, with a makeshift bridge at brook level, so the driveway was a lot steeper then. Ted said when they built the bridge, they made it a lot higher to reduce the angle of the driveway. Shannon agreed that the regulations clearly prohibit grading, filling, and excavation within the buffer. Shannon noted that she was surprised to see, at the site visit, that a wall had already been built. Ted agreed that he should have applied for a permit before starting to build the wall. Ted said he is weighing a safety issue against a state statute. Ted said he is concerned about endangering whoever he may encounter when he comes out onto Rush Meadow Road. Ted asked if there are grounds for a variance in state statute. Genevieve asked if Ted could get approval from the River Management Program. Glenn said he thinks Ted should have gotten a Stream Alteration Permit to do what he has done so far. Ted said he asked Mike Spackman to look at it and Mike told him that he would need a

permit but not to get it too soon because it's only good for a year. Ted said he put off getting the permit and then forgot to get it but he stopped work as soon as he realized it. Joel said if the bridge has been there for 35 years, it is either approved or never needed approval, and all Ted is doing is modifying the driveway for his own safety and the safety of others. Martha said if someone were to replace an existing bridge, he would still need a state permit. Jan noted that Ted is not touching the bridge itself, only the access to the bridge. Joel asked if the DRB is saying that the VT Dept. of Fish and Wildlife would have to issue an approval. Glenn said he thinks they're headed in that direction. Glenn said he is not comfortable granting approval for any work in proximity to the brook without a review by the Dept. of Fish and Wildlife. Shannon agreed. Ted asked what is involved in initiating such a review. Glenn said the process includes a phone call to the Stream Alteration Engineer, followed by a site visit. Glenn said the Engineer will tell Ted what to do and what not to do. Joel asked the DRB to check on the easement issue. Glenn agreed. Glenn read Section 4.11 and said #3 is pertinent in this situation. Glenn asked Shannon about the state requirements for stream buffers. Shannon said she thinks the state generally requires a 50' buffer, as measured from the top of the bank. Shannon wondered if, in order to do this, the applicant would have to request a variance of West Windsor's zoning regulations. Glenn said he thinks so. Ted said he had a feeling he would have to ask for a variance. Ted asked if the state's decision is going to determine whether the DRB can grant him a variance or not. Shannon said state approval would help her feel more comfortable making that decision. Shannon said the DRB would need something to base their decision on but she thinks Ted would still need a variance from the DRB even if the state approves the project. Ted asked what kind of decision he could expect from the DRB if the state approves the project. Glenn said he would have to read what the state had to offer. Ted said if the DRB knew that they weren't going to approve it, then he wouldn't bother approaching the state. Martha said she can find the name of the Stream Alteration Engineer for Ted. **Glenn closed the public hearing and made a motion to go into a deliberative session. Shannon seconded the motion, which passed unanimously.** Following the deliberative session, **Shannon made a motion to deny the appeal of the Zoning Administrator's decision based on Section 3.14 and Section 4.11(3) of the West Windsor Zoning Regulations. Genevieve seconded the motion, which passed unanimously.**

4. Other Business – Wording on Mylars: Glenn said the DRB should be comfortable with the wording on the Mylar that the Chair or Vice Chair and one other member have to sign. Glenn said if the project was a boundary line adjustment, then the wording should refer to a boundary line adjustment; if the project was a subdivision, the wording should refer to a subdivision. Shannon agreed that the language on the Mylar should be consistent with the type of project. The DRB reviewed the language proposed by Bob Farnsworth and eliminated the phrase “and all other applicable laws and regulations.” Martha said that, according to Town Clerk Cathy Archibald, Mylars have to be recorded as soon as they are received and the DRB shouldn't be writing on them. Glenn said he checked with Peter Vollers and Peter said he has never heard that the DRB can't sign a Mylar. Shannon said Hartford has always required the DRB to sign Mylars. Genevieve asked who would sign them. Martha said Glenn or Shannon and one other member of the DRB. Genevieve asked who signed them in the past. Shannon explained that signing Mylars wasn't required in the past but the new regulations require it. The DRB agreed that Mylars shouldn't be recorded until they've been signed. Martha asked if the applicant could bring the Mylar to the Final Plat Review and the DRB could sign it then. Shannon said Mylars aren't usually made until everything is definitely finalized. Brown Subdivision: Martha showed the DRB the latest revision to the Brown subdivision and asked if the wetland delineation and the note about underground utilities are adequate. Shannon said the wetlands are shown correctly but there is not a 50' buffer between the wetlands and the building envelope. Martha noted that although subdivision regulations have been approved, the subdivision fees haven't been adjusted to reflect the fact that multiple public hearings are now required. In addition, Martha said, subdivision application forms have not been created. Glenn said he will send Phil an email

requesting that the Selectboard review the fees for subdivision applications. Meanwhile, Martha said, she doesn't think she can charge the Browns an additional fee. The DRB agreed. The DRB also agreed that, until we develop application forms, Dennis Brown can just sign and date a statement indicating that the information in the original application is still correct. Rules of Procedure: The DRB agreed that once a hearing is closed, it is closed for public comments as well as testimony.

5. Minutes: December 8, 2009 - **Glenn made a motion to approve the minutes of December 8, 2009 as written. Genevieve seconded the motion, which passed unanimously.**
6. Adjourn – **Glenn made a motion to adjourn at 8:15 PM. Shannon seconded the motion, which passed unanimously.**

Respectfully submitted,

Martha Harrison