

WEST WINDSOR DEVELOPMENT REVIEW BOARD

Draft Minutes
January 10, 2011

Present: Shannon Harrington, Hal Pyke, Genevieve Lemire, Barbara Truex, Klaus Lubbe, Sally Lubbe, Tom Kenyon, Nick & Felicity Knight, Cathy & Kelley Conley, Kit Waite, Martha Harrison

- 1) Call to Order – DRB Vice Chair Shannon Harrington called the meeting to order at 6:30 PM and read the public hearing notice for application #2471 by Felicity and Nicholas Knight. Shannon then read the hearing notice for reconsideration of application #2457 by Klaus Lubbe. Shannon asked the DRB members if there are any conflicts of interest or if there has been any ex parte communication with regard to either application. The members all said “no.” Shannon read the definition of an interested party. Those planning to offer testimony – the Knights, the Conleys, and Tom Kenyon – were sworn in by Shannon.
- 2) Changes or Additions – Minutes: December 13th
- 3) Public Hearing on application #2457: Klaus said District Wetland Ecologist Rebecca Chalmers visited his property and determined that the pond should be exempt. Rebecca’s decision is reflected in an email to Klaus dated December 1, 2011, which Klaus forwarded to the town and read at the hearing. **Hal moved to allow Mr. Lubbe a 30’ variance of the wetland setback to allow construction of a 12’ x 12’ gazebo at 504 Brownsville-Hartland Road (parcel #6-5.1) based on new evidence. Barbara seconded the motion, which passed unanimously.** Klaus wondered how many others in town are in a similar situation. **Genevieve made a motion to close the hearing on application #2457. Barbara seconded the motion, which passed unanimously.**
- 4) Public Hearing on application #2471: Felicity said they are negotiating to purchase the Orcutt property and would like to convert the 24’ x 24’ three-story barn into a residential structure, keeping the same footprint. Felicity said all the structures on the property are non-conforming. The barn is too close a wetland so a variance is needed to change the use from agricultural to residential. Felicity said the cottage will not be used as a primary dwelling but they would like to use it as an accessory dwelling, although it may not meet the current regulations. Felicity said they submitted a letter dated December 15, 2011 along with their application, which explains their plans for the property. Felicity said the Selectboard granted the highway access last night and agreed to allow the Knights to use the existing agricultural access temporarily during construction. Felicity said the new residential access will be about 30’ west of the existing agricultural access. Felicity pointed out the location on the map submitted with the application. Shannon said, according to Section 2.3-2 of the Zoning Regulations, the front setback is 30’ in the Secondary Growth district, and the side and rear setbacks are 50’. Shannon asked about the warning for the hearing, which states that the applicants would like to convert the cottage to an accessory dwelling or an accessory structure. Nick said their first choice would be to use the cottage as an accessory dwelling. Martha said she struggled with the wording for the warning because the situation is complicated, but you can’t have two primary dwellings on one lot so the warning had to indicate what would happen with the cottage. Shannon said it could be an accessory dwelling if it meets the 30% requirement. Felicity said that’s in question. Martha said the other moving part in all this is the new zoning regulations. Martha said the public hearing on the new regulations has been warned so they are temporarily in effect but they were not in effect when the Knights submitted their application. Martha said in order to approve the conversion of the barn to a primary residence, the DRB would have to simultaneously approve the cottage being something other than a primary residence. Shannon asked when someone last lived in the cottage. Nick said 18 months ago. Hal noted that the cottage is 18 square feet larger than allowed under the new zoning regulations. Shannon noted that the existing barn and cottage meet the property line setbacks. Barbara asked if the property has 300’ of frontage. Martha said yes. Regarding Section 3.2, Tom said initial highway access was approved by the Selectboard. Nick said they have to move the driveway up the road by the width of the driveway and put in a new culvert to

satisfy the sight distance requirements. Hal asked if the Selectboard had a problem with having a second access. Tom said it was not discussed but he's sure they would not have a problem with it. Tom noted that the nonconforming garage is placed where it is because the septic system is under the cottage's front lawn. Tom asked if the garage is going to remain a garage. Nick said yes, he'd like to use the garage for storage. Martha noted that Section 3.2(B) says "No lot shall be served by more than one (1) residential access road or driveway unless otherwise permitted as a conditional use by the [DRB]..." There was discussion about what constitutes a change of use. Martha said the permitted and conditional uses are listed for each district so her interpretation is that, if you change from one permitted or conditional use to another, it's a change of use. In this case, Martha said, converting a single-family house to an accessory dwelling is a change of use. Barbara asked Tom if the Selectboard was okay with two curb cuts. Tom said the Highway Foreman did not register any objection. Tom said, in this case, two lots came under single ownership and were combined. Shannon asked if any of the existing structures were permitted or if they were pre-existing. Martha said single-family houses, agricultural uses and accessory dwellings are all permitted uses for the district but, in this situation, they are all nonconforming structures. Section 3.8 (A) says "There shall be one principal structure or use on a single lot...Any other use of the lot must be accessory to this principal use or structure." Shannon noted that the size of the cottage relative to the size of the barn exceeds 30%. There was discussion about the change in regulations with regard to accessory dwellings but the "old" regulations were in effect when the Knights submitted their application. Martha said if the cottage is converted to an accessory structure, there is nothing to prevent the Knights from applying to convert it to an accessory dwelling in the future. Felicity noted that the cottage is nonconforming because it is too close to the creek, which is why they would prefer to change it to an accessory dwelling so they have the option of keeping it residential and don't have to take the chance of converting it to an accessory structure and not being allowed to convert it back to a residential structure. Martha said there is a better chance of it being approved as an accessory dwelling under the new regulations. Shannon agreed that it is too far off from the 30%. Felicity said they are just trying to keep their options open. Shannon asked when the two parcels were merged. Martha said when the owner of the small lot purchased the larger lot, they automatically merged. Shannon noted that, since the merged lot totals 9 acres, it can't be subdivided. Martha noted that it could be subdivided if the owners purchased another acre from one of their neighbors. Shannon read Section 3.9(B)(1). Felicity offered floor plans to the DRB. Martha said converting a barn to a house goes beyond "normal repair and maintenance" in her opinion. Shannon agreed. Genevieve asked if Section 3.9(C)(2) would apply in this situation. Martha said all the existing uses – a single-family home, a barn and a garage – are allowed in the district so they are not "nonconforming uses." With regard to Section 3.13, Nick said he and Felicity have spoken with Rebecca Chalmers and she said it's fine as long as they don't build any closer to the wetlands. Shannon noted that Section 3.13 requires conditional use review. Section 3.14 requires a 50' buffer from wetlands and streams. Nick said when the barn was built the wetland was a pond; then the dam broke and took out the road. No one ever repaired the dam, Nick said, so now it's a wetland. Nick wondered if it is a "manmade" wetland and would be considered exempt. Shannon said she doesn't think they're going to get that one taken off the wetland map. Cathy Conley said the Knights' septic design puts part of the Conley's property in the isolation zone so they won't be able to put a well there. Cathy asked how that would affect them if they were to sell their land; is it something they have to disclose to potential buyers. Nick and Felicity provided a large copy of the map showing their septic plans. Kelly Conley asked if there will be a covenant or easement on their land. Shannon said that is a legal question. Kelley said the system designer, Darryl Calkins, sent them a letter saying there would be "an adverse impact" on their land and to attend the public hearing. Kelley asked how adverse the impact is. Shannon said she is familiar with isolation distances for well but she hasn't seen them for leach fields. Kelley asked if the leach field will impact the stream. Shannon said a septic system only has to be 50' from a stream. Shannon asked the applicants if they have received their wastewater and potable water supply permit. Nick said it's being

processed. Martha said she received a copy of the letter from the state saying that they have received the application and have 30 days to review it. Kelley asked if the Selectboard has a problem with the isolation zone being in the road. Shannon said the Selectboard probably just looked at the curb cut. Shannon said the state is in control of water and sewer and suggested that Kelley call the state. Kelley said he understands that they won't be able to put a well in the isolation zone and that's okay with them but what if they sell the property. Hal said the restriction would still apply. Felicity said Darryl Calkins told her and Nick that there is a new law requiring property owners to inform their neighbors if their septic system has any impact on their neighbors' property. Martha said neighboring property owner Peter MacEwen called her with the same question and had been planning to submit some comments but decided not to. Barbara asked about the required distances. Shannon said a well that is downhill from a leach field has to be 200' away; 100' if it's uphill. Shannon said Section 3.18 requires that applicants obtain a state wastewater and potable water supply permit before beginning construction but, other than that, the town has no jurisdiction. Shannon said Section 4.1 allows one-bedroom accessory dwellings and asked the Knights how many bedrooms there are in the cottage. Felicity said there are two bedrooms. Shannon said under the current rules, it could only have one bedroom and not exceed 30% of the total habitable floor area of the single-family home. Felicity said they would like to add on to the converted barn eventually, so the accessory dwelling might meet the 30% requirement in the future. Barbara asked if the DRB could approve the accessory dwelling on the condition that it meets the requirements of the new regulations. Martha said the DRB has to evaluate the application based on the regulations that are in effect at the time the application is submitted. Martha explained that, if the DRB approves the conversion of the barn to a single-family home and the conversion of the cottage to an accessory structure, the Knights can wait for the appeal period on the decision to run and then, if the new regulations are adopted, they can apply to convert the accessory structure to an accessory dwelling. Felicity said the application may not get approved. Martha said that's possible; the Knights would have to come back to the DRB and request another variance and might have to figure out how to get rid of 18 square feet. Shannon said they could request a variance for the additional 18 feet. Martha noted that the new regulations allow accessory dwellings to have two bedrooms. Martha said the septic could be an issue for the accessory dwelling as well. Felicity said it is functioning at the moment as far as she knows. Shannon suggested talking to the state engineers about it; they're very helpful and they don't charge anything. Section 4.2 requires accessory structures to conform to district setback requirements. Shannon noted that the cottage meets the property line setback requirements but not the stream setback requirements. Shannon noted that the Knights have applied for a 34' variance of the stream setback requirement. Regarding Section 5.3, Shannon said the conditional use review is for converting the agricultural access to a residential access, which would result in two residential accesses on one lot. Shannon read the five conditional use criteria. Everyone agreed that the first criterion does not apply. Everyone also agreed that the conversion of the access will not have a negative impact on the neighborhood. With regard to the third criterion, the impact on traffic, Tom said the new residential access will have a positive impact because the sight distances will be better. With regard to the fourth criterion, the DRB agreed that the applicant has obtained highway access approval and, therefore, the access would not have an adverse impact on bylaws now in effect. The DRB also agreed that the access will not interfere with the use of renewable energy resources. Shannon said there are five criteria for approving a variance. Barbara suggested considering the stream buffer variance and the wetland buffer variance separately. The DRB agreed to consider the wetland variance first. Shannon read the first variance criterion. Shannon noted that the applicants did not create the wetland. Barbara noted that the barn was built on the hill. Shannon read the second criterion. Hal said the structure that's in place was approved at one time. Shannon said there is an existing possible use of the property without authorizing this conversion. Felicity said she thinks the topographical features, including the slopes and the wetlands, would make it challenging for someone to build a new structure on the property. Shannon read the third criterion. The DRB agreed that the applicant did not create

the unnecessary hardship. Shannon read the fourth criterion. Felicity said she thinks the conversion will improve the character of the neighborhood. Shannon read the fifth criterion. Felicity said they are not asking to increase the footprint; they just want to work with what's there. The DRB then reviewed the variance criteria with regard to the 34' stream variance. Shannon read the first criterion and noted that the applicants aren't responsible for the stream or the distance between the stream and the cottage. Shannon read the second criterion. Felicity said the cottage could not conform because of the proximity of the stream and the property boundary. Nick said they would just like to use the cottage the way it is. Martha said if you moved the cottage 50' from the stream, it would then be too close to the property line. Shannon read the third criterion. The DRB agreed that the applicants did not create the hardship. Shannon read the fourth criterion. The DRB agreed that the variance would not alter the character of the neighborhood. Barbara asked the Conleys if they can see the Orcutt property from their place. The Conleys said no. Shannon read the fifth criterion. Shannon noted that it's an existing residence and the applicants are not planning to add on to it or move it. There were no other comments or questions. Shannon noted the email from Rebecca Chalmers. **Genevieve moved to close the hearing and enter deliberative session. Barbara seconded the motion, which passed unanimously.**

- 5) Minutes – December 13th: **Barbara made a motion to approve the minutes of December 13th as written. Hal seconded the motion, which passed unanimously.**
- 6) Adjourn – **Hal made a motion to adjourn at 8:15 PM. Barbara seconded the motion, which passed unanimously.**

Respectfully submitted,

Martha Harrison