

WEST WINDSOR DEVELOPMENT REVIEW BOARD

Draft Minutes
March 13, 2012

Present: Hal Pyke, Genevieve Lemire, Barbara Truex, Bill Yates, Jim Yates, Paul Belaski, Tom Kenyon, Martha Harrison

1. Site Visit – The DRB met at the Yates Property (978 Route 44) at 6:30 PM in connection with the public hearing on application #2474.
2. Reconvene at Town Hall – At 7:00 PM, the DRB reconvened at the Town Hall.
3. Call to Order – In the absence of Chair Glenn Seward and Vice Chair Shannon Harrington, the DRB members elected Genevieve Lemire to serve as Acting Chair for the evening. Genevieve called the meeting to order at 7:00 PM.
4. Changes or additions to the agenda – None
5. Public Hearing – Genevieve opened the public hearing on application #2474 by William Yates for a variance of the dimensional standards of Section 2.3-1 and the provisions of Section 3.9(A) to allow the “ell” portion of the structure at 978 Route 44 (parcel #3-154) to be demolished and reconstructed, resulting in an increase in the degree of nonconformance. Section 3.14 also requires conditional use review for development in a stream buffer. Genevieve read the definition of an interested party and swore in Bill Yates, Jim Yates, Paul Belaski and Tom Kenyon. Tom noted that he is present as a member of the Selectboard to represent the town’s interests. Genevieve asked if any DRB members have a conflict of interest or have participated in ex parte communication. All DRB members said no. Paul Belaski, representing property owner Bill Yates, gave an overview of the application. Paul said the application, as submitted, was to remove the existing ell, given its poor condition, and rebuild it on the existing footprint. A secondary objective, Paul said, was to increase the pitch of the roof so it will shed snow. After meeting with Stream Alteration Engineer Todd Menees, Paul said, Bill has agreed to revise the application to decrease the size of the new ell by moving the north wall two feet further south, moving the east wall two feet further west, and locating the front wall either where it is or slightly closer to the well, after discussing proximity to the well with the state. Paul gave the DRB members a copy of the revised plan. Paul said the new ell will not exceed 23’3” in the east-west direction and 24’8” in the north-south direction. Paul said the ridge of the ell will be raised to match the ridge of the main structure and to increase the pitch of the roof. Paul said the existing volume is 14,920 cubic feet, and the new volume will be 14,818 cubic feet. Paul said the existing ridge height of the ell is 26’9” and the new ridge height of the ell will be 30’7”. Paul said the revised design decreases the degree of nonconformance both in proximity to the boundaries and in volume. Paul said the original design submitted, building on the existing footprint and raising the ridge, would have increased the degree of nonconformance. Genevieve asked if the existing volume includes the porch. Paul said yes. Bill said the stairway in the new structure will be in a heated space as opposed to an unheated space. Genevieve noted that the DRB is using the new zoning regulations, which became effective on February 8th. Genevieve asked if the new regulations were effective when application #2474 was submitted. Martha said the application was submitted on the effective date of the new regulations. The DRB reviewed Section 2.3-1. Paul noted that the property owner is not changing the use of the property; he is just looking for a variance of the dimensional standards. The DRB reviewed Section 3.6. Barbara asked about the reference to a lot “not less than 1/8 of an acre” and noted that the existing lot is less than 1/8 of an acre. Bill said the property consists of land on both sides of the road. Paul said the lot is a pre-existing nonconforming lot that was developed in accordance with statutes in effect at the time. Martha said, for zoning purposes, any lots that are divided by a road are separate lots. Barbara noted that, in this case, the “second lot” is used for the septic system. Martha said if this lot didn’t have a house on it, you couldn’t put a house on it because the lot would be too small; but it has a house on it already so technically this section doesn’t apply. The DRB reviewed Section 3.8. Paul said

the existing dimensions are pre-existing nonconforming dimensions which the property owner is proposing to make more conforming. Genevieve read Section 3.9(A)(2) and asked if the waiver provision was in the old zoning regulations. Martha said no. Genevieve noted that Section 6.9 addresses waivers. Martha said Section 6.9 doesn't really apply in this situation. Martha said she thinks the DRB will have to assume that the term "waiver" carries its customary meaning in this context. Hal read the first sentence of Section 3.9(A)(3) and noted that the volume of the structure will be reduced. Tom said, given that the structure is historic and the owner is trying to preserve its aesthetic characteristics, he hopes the DRB will grant as much latitude as possible. Barbara said that the zoning regulations require the DRB to "take into consideration the ability of the applicant to use remaining features of the property such as foundation, water supply, sewage disposal system, underground utilities, etc." Bill said the sewage system is all set up, and approved by the state, but it has never been used. Genevieve asked Bill if he is going to leave the back wall of the foundation in place. Bill said yes. Paul said the new back wall will help support the existing back wall. Genevieve asked what kind of new foundation will be constructed. Paul said the new foundation will be poured concrete. Bill said the existing foundation is between 6' and 6 ½' deep. Barbara asked if the new foundation will need drains. Paul said he doesn't think so. Bill said there will be drains in the floor. Martha said the only structure that could meet all the property line and stream setbacks would be a triangle approximately 7' x 13' x 15'. Martha read the portion of Section 3.9(A)(2), which states that "The DRB may grant a waiver from this provision if a hardship would be created by rebuilding in strict conformance with the requirements of these bylaws." Paul said it would be impossible to rebuild in strict conformance with the bylaws. Barbara noted that the whole structure is nonconforming and that can't be fixed. The DRB reviewed Section 3.14. Bill said he has applied for a Stream Alteration Permit and has provided the town and abutting property owners with copies of the application. Martha noted receipt of an email from Todd Menees. Hal read Todd's email, dated March 7, 2012, into the record, "Martha, I appreciate your time on March 1, 2012 to review Bill Yates' project located at 978 Route 44 in Brownsville, VT. This project is a renovation of an existing building that lies beside an unnamed tributary to Mill Brook. The small stream flows against the laid-up-stone foundation on the existing northeast corner of the building. In very close proximity downstream is a dual-barrel culvert conveying this stream under Route 44, and the concrete wing walls of this culvert extend and connect to the laid-up-stone foundation on the existing northeast corner of the building. Bill Yates has retained the services of an architect Paul Belaski who has identified one option of rebuilding the northeast corner of the building in a location that will be offset from the existing foundation by several feet in the south and west directions. This option of offsetting the foundation will alleviate the situation of constant water action working against the foundation. This offset option is the preferred option from the standpoint of an approvable project application for a Stream Alteration Permit (SAP) because the building relocation will afford a lesser flow obstruction in flood situations. We discussed leaving the laid-up-stone foundation of the existing northeast corner of the building in-place to protect the new concrete foundation. This scenario would be approvable to both protect the new offset foundation and to protect the Town's concrete wing wall for the culvert crossing under Route 44. This project will require a Stream Alteration Permit and I have sent Bill an application by US Mail and attached a PDF copy for Paul Belaski. Thanks for asking Bill to contact the Rivers Program. Todd Menees, P.E., P.H., River Management Engineer, Watershed Management Division, Rivers Program, Rutland, VT." Genevieve asked how the state normally responds to a Stream Alteration Permit application. Martha said there is no normal right now. In this post-Irene period, Martha said, she is still getting hand written stream alteration permits. Paul said it will be a state permit with which the property owner will have to comply. Martha added that West Windsor's regulations require compliance with all state and federal requirements. Barbara said the Stream Alteration Permit is required because the building is in the stream buffer, which is nonexistent. The DRB reviewed Section 5.3. With regard to community services, Paul said the use will be "as is" and will decrease the demand on community services because the building volume will be less and it will be a safer building,

less likely to require emergency services. Regarding the character of the neighborhood, Paul said it will improve. Regarding traffic, Bill said there is more than enough parking on the adjacent lot, which the whole town uses. Regarding bylaws now in effect and the conditions of prior permits, Martha said there is a prior permit for an antique store associated with this property. Bill said there was an apartment above it. Martha offered to provide the DRB with a copy of the prior permit. Genevieve said if there's a permitted use, the town wouldn't have to reissue a permit for that use. Martha said this structure was most recently used as a real estate office with an apartment above it so if it is going to continue to have the same use, a new permit isn't necessary. Genevieve asked if the use could revert to an antique shop. Martha said she would think that the property could be used for something similar to a real estate office in terms of hours of operation, parking, etc. Martha said you wouldn't put a restaurant in there. Bill said there used to be a restaurant there when it was the Brownsville General Store. Martha said since it was a real estate office most recently, it would be a change of use to go from a real estate office to a restaurant. Hal said if the property owner wants to change the use, he can come back and inquire. Regarding renewable energy resources, Paul said the ell will not block sunlight from the neighboring property. The DRB reviewed the variance criteria in Section 6.8. Barbara said the property certainly has unique physical circumstances or conditions. Paul said you can't build anywhere else on the lot and the proposed reconstruction decreases the degree of nonconformance. Paul said there is no possibility that the property can be developed in strict conformity with the regulations. Paul said the hardship was not created by the appellant; the stream was there, the lot was there and the building was there. Hal noted that the character of the neighborhood will be improved. Paul said the variance will represent the minimum that will afford relief and will make the structure more conforming and more attractive, thereby enhancing the neighborhood and reinforcing the character of the village. **Genevieve moved to close the public hearing. Barbara moved to go into deliberative session. Hal seconded both motions, which passed unanimously.** Genevieve informed the applicant that the DRB will issue a written decision within 45 days.

6. Elect Officers/Adopt Rules of Procedure/Designate Regular Meeting Day & Time – Genevieve suggested deferring the election of officers, the adoption of rules of procedure, and the designation of a regular meeting day and time until all DRB members are present. Hal and Barbara agreed.
7. Other Business – None
8. Adjourn – **Genevieve moved to adjourn at 8:00 PM. Barbara seconded the motion, which passed unanimously.**

Respectfully submitted,

Martha Harrison