

APPROVED MINUTES

TOWN OF MARLBORO ~ DEVELOPMENT REVIEW BOARD

Tuesday, August 18, 2020, 7:00PM, by videoconference

In attendance:

<i>DRB:</i>	<i>Applicant:</i>	<i>Public:</i>
Steven John (Chair)	Joe Gorbecki	Robert Boyd
Jean Boardman (Vice Chair)	John McPherson (Realtor)	Robin Matathias
Gail MacArthur	Robert “Scott” Finucane	David Elliott
Brent Seabrook	Ron Bell (Bell Engineering)	Bob Elliott
John Nevins	Ben Joyce (Surveyor)	Tamara Purcell
	Jim McClammer (Env. Consult)	Richard Hawes
<i>Zoning Administrator:</i>		Donna Hawes
Mary Sargent	<i>Public:</i>	Spencer Alexander
	Mike Tuller (Town of Wilmington)	Caleb Alexander
<i>Recorder:</i>	Polly Moryl	Hollis Burbank-Hammarlund
Peter Barus	Kyle Oliver	Arne Hammarlund

Call to Order

The meeting was called to order at 7:04 PM.

It was noted that the videoconference would be recorded. Everyone introduced themselves.

Permit # 20-13 LD: Applicant: Joseph Gorbecki, 406 Pond Brook LLC, 173 Lake Ridge Road, Southbury, CT 06488;

Owner: John McKay, Marlboro Heights LLC, 110 Honey Brim Road, Vernon, VT 05354;

Location: Higley Hill Road, Marlboro, VT; Tax Map Numbers 02-00-53.11 & 02-00-55.11;

Proposal: Preliminary Site Plan Review for a Boundary Line Adjustment, to result in one (1) parcel with frontage on Higley Hill Road and one (1) parcel with access to Higley Hill Road by deeded right-of-way.

The Applicants and Interested Parties were duly sworn. Dr. John explained that the Decision is imposed upon the land owner; that the Hearing is recorded in the event that it is appealed by the Applicant.

Mr. McPherson described the map displayed on the videoconference screen and explained that the Applicant is seeking to create a 22-acre lot within the 64 acres.

The Chair invited abutters to speak. There was discussion of potential further subdivision. Dr. John explained that, depending on Town and State rules, this would be possible. There was discussion of ways this might be done. It was noted that there was an original driveway with deeded right-of-way; that there was no permit application for new buildings, only for a Boundary

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Line Adjustment. Ms. Moryl expressed concern about access to the properties from Marlboro Heights. Mr. McPherson explained the existing road and new access from Marlboro Heights Road.

Ms. Moryl discussed an unused road, and that the proposed drive was already installed. Dr. John clarified the concern that a driveway was already being constructed. Ms. Moryl noted that access next to the bank of mailboxes was not being used. Mr. Bell observed that the driveway did exist. Mr. McPherson asked why the map was inaccurate and noted that this would be known after the Conditional Use Permit process. Ms. Moryl explained that they intend to have a driveway agreement; and noted that heavy equipment was using the road, that it was not designed for that. Ms. Sargent noted a requirement to have a road agreement when subdividing; that this should also be required by the DRB. Ms. Moryl asked why the road was not shown accurately. There was discussion.

It was explained that the McKays had given the Olivers a right-of-way to use the driveway, but this was not reciprocated. Ms. Moryl noted never having been asked about a right-of-way. Ms. Purcell explained that years ago there had been reciprocal right-of-way between the Zelkins and McKay properties to cross a corner of a lot, but there was now a place for access to the McKay land.

Dr. John noted that this should be properly deeded. Mr. McPherson offered to clear that matter up before the next meeting.

Mr. Oliver noted that while not seeing this as a problem, he had been advised to be on the record about this. Dr. John explained that this was not the issue at hand, but allowed because it was important.

Dave Elliott was recognized and explained that the original road was on the Wilmington side of the mailbox, that it had been considered dangerously close to the corner, and that the original owners agreed on details not known, but that a location farther east gives more distance from the blind corner for safety.

There was a question regarding Variances; it was explained that the current application is only for a change of lot lines within the property.

Ms. Sargent explained that driveways of more than 500 feet required a turnaround, and a dead-end at more than 900 feet was prohibited, and asked whether the current proposal would include a loop or turnaround.

Mr. Boyd discussed a narrow strip of the property, noting that it was the only frontage on Higley Hill Road originally, and that it was next to his front door.

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There was discussion. Ms. Moryl explained that last year a 900 sf cabin had been moved within 5 acres, and inquired where this project stood with zoning and permitting. It was explained that the Boundary Line Adjustment was the sole concern in the matter at hand. There was discussion of construction going on prematurely, and abutter concerns that proper procedures were not being followed.

Dr. John noted an allegation that John McKay had allowed another person to clear land on his property for building a house, without a Conditional Use Permit. Mr. McPherson explained that some construction was going on, but had been stopped.

Ms. Moryl advised the DRB to visit the site, also with regard to wetlands. Ms. Sargent noted that there had been a permit for the driveway, but that the driveway had been moved. The construction might have been allowed under the old permit.

Mr. Gorbecki explained that it had been decided to keep the road as straight as possible and not move it down through the Hollenbeck property as previously Permitted because it must maintain a 15% grade. Mr. Bell explained that part of the drive was per the original plan, but the top third was proposed to change.

Dr. John asked if this was done without a Permit. Mr. Bell explained that only the approved part was built; that there were a couple of cuts through the woods to get equipment in, but no fill or grading, except on the portion Permitted, and the house site Permitted, a clearing at the house site; that they had moved some equipment into the lot for test-pitting (septic); and did not want to propose that house site if it was all ledge; that a mini-excavator went in for test-pit.

The question was raised whether the drawing was accurate: the driveway not where it was shown. Mr. Bell explained that at Higley Hill Road it was on another property and that the line was depicting the drive as proposed.

Mr. McPherson explained that the Applicant was proposing three houses. Mr. Bell cited one existing house and one proposed. Ms. Sargent discussed approved housing sites in the original Subdivision and an approved additional house site, explained that this would still need an application for Conditional Use in the Wildlife Habitat Overlay District, and that this was not relevant to the present matter.

Dr. John asked, and received from Mr. Bell, confirmation that the only activity on the site was for a test-pit. Concerns were raised about integrity of the drawings. Dr. John noted that a DRB has capacity to enforce the Zoning Regulations.

The Chair invited further questions.

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Ms. Purcell inquired as to why she received a Hearing notification letter. Ms. Sargent noted that every land owner within 500 feet of the project is considered an abutter, and legally must be notified.

There was discussion; that the property could be developed in unanticipated ways; that the Zoning Administrator would notify abutters of any permitting changes; that land owners could change lot-lines within their property as long as the adjustment was approved by the DRB; that there were suspicions of covert intentions.

Ms. Moryl asked if the Applicant would discuss their intentions in the event that they purchased from Mr. McKay.

Mr. Gorbecki was recognized and explained that the intent was to buy the 14-acre piece and have the excavation work done; that the excavator (Mr. Finucane) then became interested in the area, and discussed the 64-acre part in the back, also available, so they struck a deal about the 22-acre parcel; that they did not intend to subdivide, this was not a chess move; that they simply wanted to build a home for each, and enjoy the area; that there were a number of logging trails from the existing drive that they opened to get to the home site for the view; and promised that the intention was only to build two home sites that were already permitted previous to the deal; that this was simply reconfiguring the 64-acre and 14.8-acre lots to make more sense, just between themselves; that there were no applications for more buildings, and the 64 acres contained the lot-line they wished to move; that nothing else was on the table.

Dr. John asked and received confirmation that Mr. Gorbecki was the buyer from Mr. McKay; and Mr. Finucane was buying the 64-acre piece.

Ms. Sargent noted three lots, each with an approved envelope, not a building permit; that the Subdivision came with house site and perk test established on each lot; that they were not yet Permitted to build; that there was perk and available septic; that only one house was built; that a third location was just to the north with one approved site, an empty lot.

It was noted that the 22 acre lot had to do with the Current Use program, Overlay District, that language in the Zoning Bylaw encourages land owners to put it in Timber Management. Ms. Sargent explained that the minimum lot size for Current Use is 25 acres, plus a 2-acre designated house site, so there must be at least 27 acres to qualify for the Current Use program. Dr. John observed that if it had some bearing on McKay's intentions, the DRB should not consider the Boundary Line Adjustment further, and should find out next month whether the McKays wanted to move it again. Mr. McPherson offered to look into that and update the DRB next month.

Further comment was invited.

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Mr. Boyd thanked Mr. Gorbecki for sharing his intentions even though it was not required. Mr. Joyce, Surveyor, noted good information for field work at the site, hoped to be complete by next meeting.

Dr. John explained that it was for Mr. Gorbecki to decide whether to have another meeting, that it was incumbent on the Applicant to make the road issue clear, and to obtain proper permits in the proper sequence, advise interested parties, and take pains to follow the procedures and timeline honestly; and to take care to respect the Regulations in effect for Marlboro and the State of Vermont; to understand the gravity of the position in which the Board is placed by casual disregard of these regulations.

Ms. Sargent noted that this Hearing was warned as Preliminary, not Final, a chance to look at the drawings; that the next Hearing for this Boundary Line Adjustment will be warned as a Final Hearing; that this is was complete as a Preliminary Hearing. The Chair noted no Decision on this issue at this time.

The DRB took a brief recess at 8:30 p.m.

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In attendance:

DRB:

Steven John (Chair)

Jean Boardman (Vice Chair)

Gail MacArthur

Brent Seabrook

John Nevins

Applicants:

Hollis Burbank-Hammarlund

Arne Hammarlund

Zoning Administrator:

Mary Sargent

Recorder:

Peter Barus

Call to Order

The meeting was called to order at 8:40PM

The videoconference was recorded.

Everyone introduced themselves.

The Applicants were duly sworn. No Interested Parties attended.

Permit # 20-14 CU: Owners: Hollis Burbank-Hammarlund & Arne Hammarlund, PO Box 449, Marlboro, VT 05344-0449;

Location: 2280 Ames Hill Road, Marlboro, VT; Tax Map Number 08-02-24;

Proposal: Conditional Use; Site Plan Review for construction of a storage shed located within the Wildlife Habitat Overlay District, on a parcel with existing single-family home, garage and two (2) small accessory structures.

Ms. Burbank-Hammarlund was recognized and described a proposed 22 by 22 foot shed to park tractor, snow blower, etc. within the Wildlife Habitat Overlay District, near an existing garage on privately-owned 102 acres; and noted that this was the former Robert Engel property, a Land Conservation property; that the shed would be within the development envelope; that the provision says within 500 feet of the road, but that would mean building in the middle of the woods.

The Applicants had provided a Letter of Permission from the Vermont Land Trust.

There was consensus that this was a complete Application.

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Ms. Burbank-Hammarlund explained that this would ordinarily be a normal zoning situation, but was coming before the Board because of the proposed location; and that she had worked for Windham Regional Commission, then as an Environmental Consultant from 1987 to 2005; and had prepared the Environmental Consultant's Report personally; that the proposed shed would be 1,100 feet from any wetland and would not be near vernal pools or bear habitat, deer yards, rare and uncommon species, etc. on any of the relevant maps; that three or four trees would be cut.

Questions were invited.

Mr. Seabrook asked about legality of the Environmental Consultant also being the Applicant, noting that it was unconventional and possibly illegal. Ms. Sargent noted that the Report can be written by the State, the Town, or a consultant approved by the DRB; that it was up to the Board to decide whether Ms. Burbank-Hammarlund had the credentials and found the Report credible. There was discussion.

It was noted by the Chair that the DRB could make the decision provided by the Regulations; that if there were concerns about a property owner having a vested interest, then the Regulations should include a requirement to that effect; and that the DRB decide in Deliberative Session whether the report was acceptable, and then following that decision rule on the merits of the case; that any member of the Board could request an Deliberative Session re: Hammarlund's Report or the question could be discussed in public session.

Ms. Boardman moved to enter Deliberative Session. Second by Mr. Seabrook. All in Favor.

It was noted that not all had read the Report.

The board entered Deliberative Session at 9:04 PM, and returned at 9:15PM by unanimous consent.

Mr. Seabrook moved to approve the Conditional Use Application for construction for a new shed. Second by Mr. Nevins. All in Favor.

There was discussion of expected new Applications. The next meeting will be September 15, 2020.

Adjournment

Mr. Seabrook moved to Adjourn. Second by Mr. Nevins. All in Favor.
The meeting was Adjourned at 9:21PM.

Respectfully submitted, August 22, 2020, Peter Barus, Admin. Asst.

Reviewed and edited by Steven John, DRB Chair

Reviewed and amended, Sept. 15, 2020, by Mary Sargent, Zoning Administrator