

Development Review Board
November 18, 2019
Town Office, New Haven, VT

DRB Member Present: Paul Audy, Kathy Barrett, Tom Fyles, Donald Johnston, Susan Smiley

DRB Alternate Present: Victor LaBerge

DRB Members Absent: Carol Charbonneau, Charlie Roy

Staff Present: Karen Gallott – Minute Taker; Aaron Brown – Zoning Administrator & Town Administrator

Guests: John Goetz, Bonnie Bashaw, Joseph Bashaw, Larry Rushford, Margaret Lattrell, Debra Brace, Mallory Brace, Sarah Boucher, Wyatt Vincent, Kendal Dunbar, Brad Bacher, Rodney Cyr, Shawn Freegard, Jen Munson, S. Davis, Roger Hamilton, Matt Ford, Iva Ford, Paul Bolduc, Ivy Naef, Paul Meacham, Steve Delphia, Judy Morse, Wendell Morse, Cody Haines, Jeremy Ouimette, Esq, Lonie Parker, Chrystal Parker, Allysha Devoid, Ralph Farnsworth, Norman LeBoeuf, Susan Schaefer, Kevin Brown, Esq, Rita Booska, John VanHoesen, Matt Prime

Barrett, Development Review Board (DRB) Chair, called the meeting to order at 6:30 PM at 1607 North Street, residence of Ruth Paraskevopoulos.

DRB members present: Kathy Barrett, Susan Smiley, Paul Audy, Victor LaBerge; and Aaron Brown Zoning Administrator. Also, in attendance was Ruth's daughter Claudia.

I. 2019-DRB-15-SK Sketch Plan Review for proposed two lot subdivision of Ruth Paraskevopoulos at 1607 North Street.

Ruth would like to subdivide 35 acres located at the corner of North Street and Plank Road.

DRB members discussed their findings at the town office location during the later part (**approximately 9:40 PM**) of the DRB meeting this evening. Concerns were voiced regarding the topography and wetlands on the area to be subdivided. Smiley would like to have a site visit during daylight hours. The Chair suggested that each DRB member should visit the property on their own before the next meeting on December 2, 2019, which at that time, the DRB should decide if this is a minor subdivision or if the subdivision is not feasible.

Barrett, Development Review Board (DRB) Chair, reconvened the meeting at 7:00PM, at the New Haven Town Office. Victor LaBerge will be a voting member tonight.

II. Adjustments to the Agenda – none

III. Visitors' Business – None

IV. Hearing #2019-DRB-14-SD Two lot subdivision for Ralph Farnsworth, 1079 North Street.

Donald Johnston recused himself as he is working for Ralph Farnsworth. This would be the final hearing on a minor subdivision.

Fyles made the motion to continue the hearing to DRB meeting on December 2, 2019, due to not having the final proposed plat.

Smiley seconded

Discussion – none

Vote: Yes – 5 (Audy, Barrett, Fyles, LaBerge, Smiley)

No – 0

Abstention – 1 (Johnston)

V. Continuation #2019-DRB-07-SP – Site Plan Amendment for Lonie Parker d/b/a Porky's Barbeque, 7404 Ethan Allen Highway.

The DRB Chair read the ground rules for this hearing. There are three items being asked in the site plan amendment that will be addressed:

- 1) Allow the portolet to remain onsite from May through October rather than removing it on the next business day after any event.
- 2) Ability to serve alcohol, other than beer or wine, in the pavilion.
- 3) Clarify the walls needed for the pavilion.

The applicant agreed that these three items were the only conditions asked for in the application.

Item #1

Lonie Parker and Jeremy Ouimette, Esq. presented.

- Parker said the wastewater permit was found by his engineer, but not given to the Zoning Administrator (ZA).
- The permit was for the building serving 3 meals per day and for 39 seats.
- The portolet is allowed by the State for 28 events/year exception by state for 28 events or less. Parker & Ouimette want to discuss with the DRB what constitutes an event?
- There is one portolet on site and is served by Dundon's weekly.
- Discussion on location of the portolet.
- DRB needs a copy of the wastewater permit and a state determination that the portolet is acceptable.

Kevin Brown, Esq- presented reasoning why a portolet is not acceptable with an onsite restaurant and food prep. Brown also presented a copy of the 1995 Water Supply and Wastewater disposal permit and specifically commented on item #3..."there shall be no expansion of the project or increase in occupancy beyond this basis of design without prior review and approval by the Wastewater Management Division." Brown indicated expansion of the project from 1995 needs approval by the State and that this has not happened yet. Also there is no control over who uses the portolet or the restaurant bathrooms.

The DRB requests a copy of written documentation and/or permit for use of a portolet from the State Wastewater Management indicating that a portolet is permitted on site before installing one in the spring of 2020.

Sarah Boucher- if there is no permit given for a portolet, would something in writing from the State attesting Porky's qualifies for the exemption be acceptable. DRB responded yes, but the State needs to confirm in writing.

Item #2

Previous permit (to Carol's Hungry Mind Diner) allows serving of beer and wine in the restaurant, alcohol was not permitted.

This condition did not change because Parker didn't ask for the change. No permit was issued to sell alcohol at the outdoor area. The only permit was to sell beer and wine.

Parker- the first permit for the tent site was for beer and wine for the whole restaurant. When Parker came back for the pavilion, he made a mistake and didn't put it in the request for liquor in the amendment to go from tent to a pavilion.

A permit was received for outdoor consumption in the pavilion, signed by the town clerk and approved by the state, Parker thought he was good to go.

Ouimette, Esq- this is something they want to change now that liquor is allowed in the restaurant, to be able to serve liquor in the pavilion.

John VanHoesen- the permit, that I saw that I think is being referenced from the Town Clerk, the permit refers to the hours from 11AM to 12PM. There was discussion that the permit has the hours listed at 11AM to 12 PM and a corrected version listed them as 11AM to 12AM. The DRB is unsure what hours the State signed off on, this being the other issue.

Item #3

DRB Chair mentioned that 8 minutes into the recording of the 4/1/2019 DRB meeting, Parker said the “pavilion will have 3 walls and noise projected toward the woods.” Tim Bouton asked if solid walls, and Parker said “yes, well North & South ends solid and other 2 will be curtains to be rolled up when we have live bands the east curtain will be down”. Parker doesn’t recall saying this.

Quimette Esq- recalls what he heard on the recording: Ms. Booska was concerned about noise, and there was discussion about enclosing the west side.

Quimette then mentioned:

- 27 minutes into the tape there is discussion of - some sort of wall on three sides and open to the east and Rte 7 side completely enclosed, which is how it was built.
- 48 minute mark - sound being projected to the east, just because sound can be heard does not mean it is over the 70 decibel limit.
- 1 hr and 15 minute mark - the roll down side need not be down when music is being played as long as they are observing the 70 decibel limit.
- 1 hr and 16 mark – as long as the 70 decibel limit is being observed the rolled sides need not be down.

DRB Chair mentioned there was a condition about the roll down sides and the decision mentioned as long as the decibel level was under 70 the east/west sides do not need to be rolled down.

Parker then described the current walls. The west wall (facing Rte 7) is enclosed with wood paneling. The wood paneling continues to about a third the width on both the North and South sides. The remaining 2/3's width of the North and South sides and the East side (except for approximately 20 feet on the east side) are covered with a heavy cloth type material (i.e. used in free stall barns) that is screwed down. The East side was done on Oct 12, 2019. The 20 foot opening will be enclosed for the winter.

- DRB asked why this 20 foot opening could not be enclosed in the summer.
- Parker asked, “why have a beautiful view and close it in?”
- DRB responded to be harmonious with the neighbors

Sarah Boucher: do you realize how hot in the summer with no air flow?

Wyatt Vincent: He said he goes to enjoy the view. During one of the later concerts he also traveled over to the dirt road (Leduc road) on the other side saw lights and heard zero music. He is planning an event there and the reason is so he can look out the window to the mountain views of Vermont where he grew up.

Iva Ford: hasn't it already been stated that it needed to be rolled down if decibel level were above 70?
DRB responded yes

Parker has a decibel meter and earlier in the season he showed the ZA the difference of decibels between a meter and cell phone.

Quimette indicated a cell phone reads 10 to 15 decibels higher than a meter. Parker mentioned they have never been above 65 decibels as he walked around the property line.

Parker- asked to have the tarp walls remain and to open them to enjoy the view and breeze as long as the noise is not over 70 decibels.

Chrystal Parker: this is not an issue of sound, but the permit we are talking about specifically says if it's not over 70 decibels we don't need to lower them the sides, so it does include sound. Lonie and I have no problem filling that in if it goes over 70, but we are not going over the 70, so if it states we can have that 1/3 and 2/3's cloth/tarp that shouldn't be a problem.

DRB - Part of the decision to be made will be what happens when the pavilion is being used again in the Spring 2020. The ZA will make measurements with sound measuring equipment that has been certified via documentation, at start up in the spring and will spot check on occasion.

There was discussion between the public and DRB regarding gathering decibel information and the certification of the sound measuring equipment.

VI. Continuation #2019-DRB-09-AP Appeal of Zoning Administrator's Notice of Violation to Porky's Barbeque, 7404 Ethan Allen Highway.

- 1) Use of pavilion without a Certificate of Occupancy (CO)
 - A CO is required to use the pavilion as stated in DW (Dave Wetmore's) letter accompanying the building permit.
 - Conditions of 2019 ZP-13 not met-all 4 sides of the pavilion need to be enclosed.
- 2) Serving liquor in pavilion
 - Have you discontinued serving liquor effective 8/23/19, the date of the Notice of Violation (NOV)
- 3) Events in excess of 8 per month.

Item #1

DRB Chair read aloud Dave Wetmore's letter of 5/1/19. The ZA must issue a Certificate of Occupancy before use or occupancy of any structure.

Ouimette Esq- Questioned if all items mentioned in the site plan needed to be completed before use of the pavilion and the issuance of a CO. Parker was planning on using revenue from the pavilion to build the bar area and then using revenue from that to construct the 30 x 30 structure. These items have not been done yet. A misunderstanding in the conversation between Parker and Wetmore.

Aaron Brown (ZA)-Wetmore confirmed with Brown via email and verbally that he (Wetmore) would never have said no CO was needed.

Ouimette Esq-Talked about getting a CO for the pavilion, Ouimette's impression at that time was confusion on which sidewalls were to be enclosed, Brown indicated at that time he couldn't do a CO because the North and South walls were still open.

Aaron Brown-ZA—there is a lack of proof that all state permits had been met, wastewater being the most important. Local permits are valid only if state permits are met.

The ZA is the only person to issue a CO. Brown stated he is required to literally interpret the Town zoning regulations. There is no evidence of valid wastewater requirements, Parker had not enclosed the North and South sides of building in a permanent fashion to meet intent of the DRB. The ZA's office has received numerous complaints on noise, and violations on the service of liquor were shown on Facebook (which have apparently stopped). The ZA was not comfortable issuing a CO without these issues resolved. And a CO is required to be issued prior to occupancy of use of the building.

Chrystal Parker-we are trying not to be in violation, they just need direction on what they need to do.

Roger Hamilton-ZA made a good point, getting the CO before doing anything else, liquor consumption as well as the potential noise shouldn't be a factor now going back, if there was a CO to begin with, not getting all the necessary permits and noise ordinance the NOV would have been issued after the CO, so if aware now of what they need to do now (regarding permits from the town & state [wastewater, liquor]), there is no reason not to be able to provide a CO. Then after the CO, when using the pavilion, other violations after the use would be looked at accordingly, correct?

Kevin Brown, Esq-concerning the Notice of Violation (NOV) are we moving on? Lighting was an issue that was not complied with. The 7/23/19 letter from the ZA mentions lighting.
DRB indicated lighting was not an issue the ZA pointed out in the NOV.
ZA indicated 7/23/19 letter was a warning letter and it did address lighting, but the NOV came out 1 month later

Item #2

DRB Chair indicated this will be discussed along with the application

Item #3

DRB would have to define an event.

ZA there is no definition of an event in the regulations. It is left up to the ZA's interpretation or based on a case-by-case basis. He has alerted the Planning Commission to define events in their ongoing updates to the regulations.

The ZA said he has defined events as followed but this is an area where clarification is needed:

- music events with band
- does not count restaurant specials
- a non-restaurant use would be counted as an event

Oumiette Esq-the original DRB-2018 08-SP application mentions events as: family movie nights, small weddings, bands, antique car, etc. but this is not all inclusive. Bands were included.

The DRB mentioned that the state under the wastewater regulations must have a definition of an event.

Iva Ford- when defining an event hope that an outdoor band with many people is not on the same level as a sip and paint. DRB cannot make the definition, this is up to the Planning Commission and the DRB must go by the definition set by the Planning Commission.

Roger Hamilton- an event should be defined. Shouldn't defining an event come before issuing a violation?

DRB doesn't have the authority to make that definition. Currently a definition for an event is not in the zoning bylaws

Roger Hamilton- therefore Porky's is not in violation of any event.

Kevin Brown Esq – the April site plan approval lists indoor events and hours provided, and the site plan application for the construction of the pavilion lists outdoor events May through October to 11 PM. Pavilion use and outdoor function is an event and the DRB limited the number of those events. The application was for construction of pavilion to be used for outdoor events. After November, becomes an indoor event limitation. Advertising a function is considered an event.

Discussion commenced on what constitutes an event.

DRB Chair read aloud letter from Fred Sargent dated 11/10/2019 addressed to the DRB.

Discussion commenced on the tone of the letter and how it didn't comply with the DRB Chair's rules as stated at the beginning of this hearing.

Smiley made the motion for the DRB to go into closed deliberative session

Fyles seconded

Discussion – none

Vote – Yes-5 (Audy, Barrett, Fyles, LaBerge, Smiley)

No – 1 (Johnston)

Abstention -0

Motion Carries

DRB went into closed deliberative session at 8:47 PM

DRB came out of closed deliberative session at 9:34 PM

Site Plan Amendment/Application

DRB Chair- based on Town Attorney's correspondence, the DRB cannot change the conditions of the original permit of 2019-DRB-02-SP. Listed below is the clarification what can be done:

- Allow the portolet to remain on site from May to October
 - Prior to bringing in a portolet in the spring of 2020, the applicant must have written evidence that the use of the portolet complies with State wastewater permits and present said evidence to the ZA. Once the State wastewater permit is obtained, go to the Dept of Health, show them the wastewater permit and the Dept of Health state whether it complies with their regulations. Because Porky's is dealing with food, compliance of the wastewater permit is also required by Dept of Health for food service.
- As long as Porky's has a current valid wine/beer and alcohol permit, the DRB will allow serving of wine/beer and alcohol in the pavilion.
- Clarifying Walls - as presented the DRB feels most of the east side has been enclosed since the Notice of Violation, this complies with the original application.

DRB is not changing the original application. The ZA will send a decision to the applicant after the DRB meeting on December 2, 2019.

Notice of Violation

- Use of a pavilion without a Certificate of Occupancy the DRB upholds the ZA decision. It is clear in Wetmore's letter the pavilion needed a Certificate of Occupancy. State permits were not provided to ZA Aaron Brown.
- Serving of liquor in the pavilion – was addressed above under clarification of the Site Plan Amendment/Application – taken care of – no violation.
- Events- in excess of eight (8) per month. The DRB's Findings & Decision did not define events but said there would be a maximum of eight (8) events per month from May through October – hours of operation for these events is extended to 11 PM. For November to April a maximum of eight (8) indoor events per month and the hours of operation for indoor events is extended to 11 PM.
 - DRB is not defining an event, but if it is after 9 PM it becomes an event. If it ends at 9PM it is not an event.

Further discussion regarding the enclosure of the pavilion walls. As it stands now, enclosure of the pavilion either by wood or permanent heavy-duty tarps has exceed what was defined. All but 20 feet on the east wall has been enclosed.

Ouimette Esq- North and South are closed off and the East is partially closed off, the rolling up/down only pertains to the East side, does not pertain to the North and South because that is what the permit says, and it cannot be change? Is this saying the North and South must be left down?

DRB as of tonight, the way the pavilion was built, it is in compliance.

Smiley made the motion to close hearing 2019-DRB-07-SP Site Plan Amendment for Loni Parker d/b/a Porky's Barbeque, 7404 Ethan Allen Highway.

Fyles seconded

Discussion – none

Vote: Yes – 6 (Audy, Barrett, Fyles, Johnston, LaBerge, Smiley)

No- 0

Abstention – 0

Motion carried

Fyles made the motion to close the hearing 2019-DRB-09-AP and close the hearing on the Notice of Violation appeal, as written on August 23, 2019 to Porky's Barbeque, 7404 Ethan Allen Highway.

Smiley seconded

Discussion - none

Vote: Yes – 6 (Audy, Barrett, Fyles, Johnston, LaBerge, Smiley)

No- 0

Abstention – 0

Motion carried

DRB Business

1. Review Minutes – October 7, 2019.

Gallott mentioned changes that were made on November 4, 2019 as per an email with Peter W. Lind. These changes are reflected in the final minutes presented tonight for DRB approval.

Johnston made the motion to approve the DRB minutes of October 7, 2019 as presented.

LaBerge seconded

Discussion – none

Yes – 6 (Audy, Barrett, Fyles, Johnston, LaBerge, Smiley)

No – 0

Abstention – 0

Motion Carries

2. Review and Sign Decisions

a) #2019-DRB-13-SD Two lot Subdivision of Donald Paul at 307 Otter Creek Highway.

Fyles made the motion to accept the Findings and Decision as presented.

Smiley seconded

Discussion – none

Yes – 6 (Audy, Barrett, Fyles, Johnston, LaBerge, Smiley)

No – 0

Abstention – 0

Motion Carries

3. Review decision compliance and/or sign final plats – none

4. Correspondence – none

5. New/Old Business – none

Fyles made the motion to adjourn

Audy seconded

Discussion –none

Yes – 6 (Audy, Barrett, Fyles, Johnston, LaBerge, Smiley)

No – 0

Abstention – 0

Motion Carries

The meeting was adjourned at 10:05 PM

Respectfully Submitted By

Karen Gallott



Kathy Barrett, Chair



Tom Fyles, Vice Chair



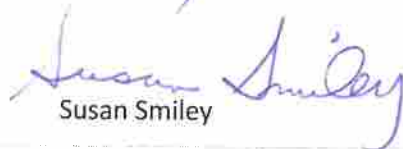
Donald Johnston, Clerk



Paul Audy



Victor LaBerge



Susan Smiley