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Town of Stowe
Development Review Board
Meeting Minutes – November 1, 2022

A regular meeting of the Development Review Board was held on Tuesday, November 1, 2022, starting at approximately 5:00 pm. The meeting was held at the Stowe Town Office with remote participation using the “Zoom” application.

Members Present: Drew Clymer, Mary Black, Leigh Wasserman, Sarah Henshaw, Chris Walton, Tom Hand, Andrew Volansky.

Staff Present: Sarah McShane- Planning & Zoning Director

Others Present in Person: [See sign-in attendance sheet]

Approval of the Agenda – The public meeting was called to order at 5:01 P.M by Chair Clymer.

Project #: 6971 (cont. from 10/04/22)

Owner: Paul E. Percy Trustee/Percy Farm Trust

Tax Parcel #: 10-114.000

Location: Bouchard Rd/Brook Rd

Project: Increase area of AG-PUD by Adding Landmark Meadows; Amend Available Density Within AG-PUD

Zoning: RR2

Chair Clymer explained that there were five Board members eligible to participate in the meeting which means four members must vote in favor to approve the project. The Zoning Administrator confirmed the procedure.

At 5:06pm Chair Clymer swore in Paul Percy, Brittany Aube and Kristen Sharpless. The Zoning Administrator reviewed the written communications provided to staff prior to the meeting that the Board was given copies of.

Mr. Percy provided an update on the information the Board previously requested, he showed plans showing which land is undevelopable/conserved and what is developable. Chair Clymer stated there is an exception for the two cut outs for a future home site and a 10-acre barn site. Mr. Percy confirmed. Chair Clymer continued to ask for clarification regarding Lot 5. Mr. Percy stated there are no restrictions on Lot 5.

C. Walton requested clarification regarding the restricted uses noted on the warranty deed and Lot 5’s restriction of building. Mr. Percy confirmed that originally there was an agreement that there is no commercial development allowed on Lot 5. C. Walton stated the warranty deed states Lot 5 does not allow residential development. Mr. Percy stated the original deed had a 30-lot subdivision laid out on 40 acres of land at the northern end and Lot 5 under that project was proposed to be restricted to not allow commercial development; pre-Act 250. C. Walton redacted his concern as the restriction was clarified to be at a different location.

Chair Clymer requested clarification regarding if any other requests were made from the last meeting. Zoning Administrator stated the Board wanted to see what land Mr. Percy was proposing to be used for agriculture.

47
48 Chair Clymer requested testimony from interested parties.

49
50 B. Aube stated she submitted a memo on behalf of the Covered Bridge Condo Association
51 summarizing the historical decisions which includes five concerns. The first concern regards the
52 Stowe Club Test. She explained that since 1983 all of the land involved in the current application
53 showed the density was stripped and given to Lot 2 for the Covered Bridge development. In '83-'89
54 the Planning Commission made a clear effort to maintain Lot 1 and 5 in agricultural conservation.
55 For 40 years the property had a limited density of five units. Regarding Lot 5, in '98 the Planning
56 Commission took a different position and 'broke out' Lot 5 from the agricultural lands. The Planning
57 Commission distinguished Lot 5 from the agricultural lands and assigned it limited density. Even
58 though this was parched out it still only maintained the limited density which shows as part of the
59 conservation effort that this parcel was never intended for development. Historically Lot 1
60 consisted of what is now Lot 1,3 and 5. Historically they were all protected agricultural lands but
61 after '98 Lot 5 was broken out and given some density. She stated that she believes some of the
62 acreage and density shown on the submitted materials may be inaccurate. She explained her second
63 concern regarding the presented configuration goes against the purpose of the PRD as written in
64 the regulations. The Applicant is taking density away from Landmark Meadow and the UMR district
65 and transferring it to an RR5 district which has historically been limited and protected from
66 increased density. She reported that she believes the PRD standards are not being met and in
67 violation of everything the PRD regulations stands for. Her third concern requests the DRB require
68 the applicant to state the future proposed development, they would like clarification as to exactly
69 how and where those development rights will be used. Concern #4 involves the belief that this
70 should be a conditional use review under the regulations and should have to meet the standards set
71 forth which she believes it does not. Concern #5 questions what the options are with the TDRs and
72 whether or not those rights can be more in line with the zoning regulations.

73
74 The Zoning Administrator requested clarification as to what evidence is found that points to Lots
75 1,3 and 5 as being historically protected agricultural lands. B. Aube stated going back in time every
76 decision in the past the lots have been called out as agricultural and referred to Lot 1 as agricultural
77 and open space.

78
79 K. Sharpless stated the Stowe Land Trust is not taking a stance on the proposed project and is in
80 attendance to focus on the issue regarding Stowe Land Trusts legal interest in the Landmark
81 Meadow. She explained that in 1998 Stowe Land Trust purchased the 16-acre landmark meadow
82 parcel then sold it to Mr. Percy subject to warranty deed and restrictions. The easement specifically
83 reserves rights and their historic records show the TDR process was very new but the intent was to
84 retain the TDRs as Stowe Land Trust values those rights. She explained that taking a broader look
85 outside of VT and the legal advice they received points to the density rights and allocation being an
86 issue as they believe that in this case and Stowe Land Trust is the title owner of the density rights
87 for this parcel and it is solely up to Stowe Land Trust to decide if and how the density rights are
88 changed. If the DRB approves the transfer Stowe Land Trust would essentially lose those rights.

89
90 T. Hand asked for clarification of where those development rights are written down. K. Sharpless
91 stated that in the warranty deed the first page explicitly states the Stowe Land Trust holds those
92 rights. Stowe Land Trust is concerned by this decision setting precedent for not only Stowe but
93 other towns in Vermont.

94
95 Mr. Percy stated that the density has already been transferred from HT to the property a long time
96 ago when he first set the PRD up and the only reason all of the density was put up there was due to

97 bank requirements and was unrelated to agricultural land. He explained he gave the land trust all of
98 the development rights as part of the transaction, but he believes the Town should control density
99 and not the Land Trust buying and selling density. He reported that nothing is written regarding the
100 density rights, they would need to have written that in the deed. He explained that his position is
101 that there is no reason whatsoever that he cannot take the 16 acres that he cannot do anything with
102 or sell and allocated those density rights elsewhere within the PRD. He explained that he
103 understands that he can't build on the conserved lands, but the density should be able to be moved,
104 especially since there is nothing in writing that shows the Stowe Land Trust owns the density. He
105 reported that the town completely controls the TDR and there is no reason the Board should not
106 allow him to move density. He added that he has a lot of land in Town and is just trying to make it
107 all work. Mr. Percy explained he has no plans to develop as soon as the Board says yes. If the Board
108 would like to postpone until a full Board is available to participate, he is happy to wait.

109
110 At 5:44pm Mr. Percy requested continuance to date and time certain. Zoning Administrator stated
111 next available meeting is January 3rd, 2023.

112
113 At 5:47 pm the motion to continue to date and time certain of January 3rd, 2023 was made by T.
114 Hand. The motion was seconded by M. Black and unanimously approved.

115
116 **Project #: 7007**
117 **Owner: Alchemy Holding Stowe LLC**
118 **Tax Parcel #: 06-062.000**
119 **Location: 100 Cottage Club Rd**
120 **Project: Construct Bathroom Addition; Awning; Expand Patio**
121 **Zoning: MRV**

122
123 At 5:50pm Chair Clymer swore in four persons Tyler Mumley, Jen and John Kimmich, and Jillian
124 Bartolo.

125
126 T. Mumley provided a project overview which included a simple application, expanding the building
127 with an 8x13 bump-out for bathrooms, and a 30x60 covered awning area. He explained that it will
128 look and feel like an enclosed building with the ability to open on all sides with wrap around patio
129 area. It will be used year-round. There are no impacts to anything else on the property, no
130 landscaping or stormwater impacts. The area is already shielded and screened.

131
132 J. Kimmich added that the structure is proposed to be a post and beam structure with flat rubber
133 roof and vinyl roll down sides.

134
135 Chair Clymer began the standard review at 5:54pm

136
137 Chair Clymer requested clarification regarding if the applicants propose any outdoor lighting. The
138 Zoning Administrator pointed out interior lighting vs. exterior lighting is shown on plans along with
139 cut sheets. J. Bartolo provided an overview of light placements. Discussion regarding lighting and
140 amount of lighting per square feet.

141
142 At 6:06pm the motion was made by C. Walton to direct the Zoning Administrator to draft findings of
143 fact approving the project as presented. The motion was seconded by M. Black and unanimously
144 approved.

145
146

147 **Project #: 6996**
148 **Owner: Kyle Maxwell Properties**
149 **Tax Parcel #: 07-312.010**
150 **Location: 45 Central Dr**
151 **Project: Amend 6562; Remove Cupola and Roof Dormers, Simplify Entry, Relocation of Septic**
152 **and Pump**
153 **Zoning: RR/SHOD**

154
155 At 6:07pm Chair Clymer swore in Ernie Ruskey, John Grenier, and Eric Gershman, Project
156 Contractor, and Sarah Reed who was in attendance to listen to the hearing.

157
158 E. Ruskey provided a project update and overview. The project was previously approved and the
159 Applicant is returning with modifications to the project. He explained the proposed modifications
160 which include reduction of architectural features, relocation of septic tanks, removal of retaining
161 wall and utilizing existing ledge, and simplifying the entry. He explained they are proposing to
162 eliminate the cupola and roof dormers, a simplified entryway, they are keeping all of the fascia and
163 trim as well as faux barn doors. He reported that the modifications are more in character with the
164 neighborhood and historic nature.

165
166 Chair Clymer requested clarification regarding the process of approval for this project. The Zoning
167 Administrator stated the HPC has provided recommended approval and Ernie Ruskey has provided
168 the site updates that the DRB is reviewing.

169
170 C. Walton questioned the floor plan presented versus the original submittal. The Zoning
171 Administrator confirmed the floor plan has changed and provided an overview of the original
172 approval and conditions. E. Gershman stated their intention is to return on January 3rd with an
173 updated floor plan. The Zoning Administrator explained that it would need to be a separate
174 application at a later date, the Board's decision would need to condition that the proposed floor
175 plan is not approved and would have to remain as originally approved under the previous approved
176 floor plan.

177
178 Chair Clymer requested clarification regarding if the drive thru window was removed originally.
179 The Zoning Administrator stated the window is allowed to stay but it cannot be utilized as a drive
180 thru. The Applicant confirmed that under the previous application the drive thru use was not
181 allowed.

182
183 At 6:16pm C. Walton made the motion to direct the Zoning Administrator to draft findings of fact
184 approving the project as presented with condition that the floor plans are omitted from the
185 approval and the previously approved floor plans be utilized as well as any other conditions
186 previously set still be maintained. The motion was seconded by S. Henshaw and was approved by
187 all members except for T.Hand who opposed the motion.

188
189 **Project #: 7018**
190 **Owner: David Bailey**
191 **Tax Parcel #: 03-077.000**
192 **Location: 2878 Waterbury Rd**
193 **Project: Change of Use from Single-Family Dwelling to Office; Nonconforming Use Review**
194 **Zoning: RR2**

195

196 Chair Clymer stated the applicant requested a continuance to January 3rd, 2023. The Zoning
197 Administrator stated the project should be continued to the January 17th meeting.

198
199 At 6:20pm a motion was made by T. Hand to continue the meeting to January 17th, 2023. The
200 motion was seconded by M. Black and unanimously approved.

201
202 **Other Business:**

203
204 At 6:22pm a motion to approve the minutes from 10/18/22 was made by S. Henshaw and seconded
205 by M. Black. The motion passed, 5-0-1 with T.Hand recusing.

206
207 At 6:23pm the motion to adjourn the meeting was made by C. Walton and seconded by D. Clymer.
208 The motion passed unanimously.

209
210 The meeting adjourned and the DRB entered deliberative session.

211
212 Respectfully Submitted,
213 Layne Darfler

214