

Town of Moretown Development Review Board
79 School Street, Moretown, Vermont 05660

Minutes of Hearings Held January 28, 2021
Including
Determination of the Appeal from Jack Barnes of Condition to Permit Issued
December 28, 2020

Because of the Covid-19 Pandemic this hearing was held by Zoom videoconference with the call-in link provided in the Published Warning and Notices mailed abutting landowners. Present for the Board were John Riley, Paula Woods, Erick Titrud, Jim O'Neill, and Craig Oshkello. Greg Nagurney joined the conference at approximately 6:40 PM. Participation in the hearings held was as noted below in the Minutes of each of the three hearings.

Application No. 21-02: Request of Jennifer Wilkesman for Conditional Use Permit to operate Beauty Salon at 329 U.S. Route 2, Suite 2, on Parcel 02-028.000

After introductions John Riley called the meeting to order at 6:32 PM. Jennifer Wilkesman participated as the Applicant.

In advance of the meeting the Board received the Zoning Permit Application, Development Review Board Application, and a handwritten sketch site plan depicting the 329 U.S. Route 2 property. At present there are two building structures on the parcel. On the westerly side is a building primarily occupied by Ted's Car Care which is an auto repair and servicing business. The rear portion is a separately walled space, 24 feet wide, and 40 feet in length which has been used as office space in the past. This is the space Ms. Wilkesman proposes to use for a beauty salon. On the easterly side is a separate building with Ray's Auto Body.

Ms. Wilkesman stated she has operated previously in the Village of Waterbury as a cosmetologist and an advantage of this location is adequate parking which has become challenging in the Village.

The salon will be set up with two chairs with separate sinks, and at times there will be two cosmetologists working. At times only one.

The entrance to the space is on the southerly side. Parking is at the entrance side and also to the rear. Under her lease arrangement Ms. Wilkinson will be entitled to six spaces and is responsible to create signage identifying her dedicated spaces.

This property receives municipal water through the Moretown-Duxbury Water District, with on site septic. The owner of the property, Ted Brunelle, indicated to Ms. Wilkesman his engineer advised no state wastewater permit would be required for her shop to connect into the existing septic.

Cosmetologists are a licensed profession and the State Board of Cosmetology licenses and approves salon's compliance with safety and hygiene regulations. The fit up of the space is designed to comply with those regulations.

In terms of signage, there is a previously approved free standing sign at the entrance that has space for inclusion of the Applicant's business sign.

The property is in the Commercial District and there was discussion as to how to characterize the salon for zoning purposes. Beauty salons, hairdressers, or barbers are not listed. This appears to be an oversight as beauty salons are common businesses in a commercial zone. The Board discussed whether Ms. Wilkesman's business could be considered under No. 20 "Professional/Business Office, or No. 24 "Retail Store". As indicated above, cosmetologists are a licensed profession under the regulation of the Vermont Secretary of State. Also, although cosmetologists primarily provide services to the public, they typically also offer for retail sale hair care and beauty products. The Board felt it appropriate to consider the proposed beauty salon as being a professional office with some elements of retail sales appropriate for conditional use approval under Table 2.2 at Page 7.

Erick moved to approve the application as presented. Jim seconded. After discussion the application was unanimously approved.

Application No. 20-45: Request of Michael McCarty for Sketch Review of Proposed Six Lot PUD on Parcel 01-045.001 on Cobb Hill Road

Present for this hearing was the Applicant, Michael McCarty together with his engineer, Brad Ruderman. Denise McCarty who owns the residence at 2003 Cobb Hill Road participated in the hearing. For the Board, Craig Oshkello was present for a substantial portion of the presentation. And as noted above, Greg Nagurney was also present for the hearing but participated on a device without a microphone.

John Riley began the hearing by noting the Town only recently adopted subdivision regulations. This was the first opportunity to conduct sketch plan review. In response to a question from Erick, it was clarified that under Section 6.2(D) the purpose of Sketch Plan Review is to acquaint the DRB with a proposed subdivision at an early stage in the design process. The Board may offer comments and recommendations at the meeting or within 30 days in writing. The comments are advisory; do not constitute an appealable decision or action of the Board; and are not binding on any subsequent Major Subdivision Review.

In advance of the hearing Board Members were mailed a 24” by 36” Plan of the potential subdivision. The current Plan shows 6 new residential lots ranging from 1.53 acres to 4.87 acres, and an “open space” lot which largely surrounds the residential lots of 15.38 acres.

The wetlands on the property were delineated by Gilman Briggs of Briggs Environmental in the summer of 2020. A 50 foot buffer zone mandated by Vermont Wetland Regulations from Class 2 wetlands, and the 75 foot buffer prescribed by the Moretown Zoning Ordinance, are depicted on the subdivision plan. According to Mr. Ruderman, Vermont wetland officials have reviewed the proposed residence locations on the portions of the Plan marked “Upland” and did not express significant concerns.

It will be necessary to obtain ANR approval for instances where driveways are depicted within the buffer zones, or even slightly encroaching on wetland areas.

Lots 1 and 2, 3 and 4, and 5 and 6 have shared driveways. Initial soil testing indicates Lots 1 and 2 can each support an on site septic system for a four bedroom residence.

For Lots 3 and 4 a shared septic disposal area is contemplated sufficient that each residence have four bedrooms. At this point no soil investigation has been conducted for Lot 5 and 6 locations.

The overall parcel was surveyed a number of years ago before the adjacent 5.05 acre lot with residence was subdivided. It is believed the entire parcel consists of 30.6 acres measured to the center line of Cobb Hill Road. According to Mr. Ruderman, Zoning Administrator David Specht advised land subject to the town road right of way is not eligible to be counted for lot size purposes, resulting in the entire property being considered approximately 29.6 acres for zoning.

Cobb Hill Road transitions from a Class 3 Road, to Class 4, at the northerly side of the parcel. The driveway access for Lots 1 and 2 is designed to be at the transition point.

Mr. McCarty explained that although Class 4, the road is passable and in good shape. In exchange for allowing the Town to create a turnaround on his property a number of years ago the Town agreed to improve the Class 4 portion leading to Mr. McCarty's former residence on the other side of Cobb Hill Road, across from the southerly end of the proposed development parcel.

During the hearing Denise McCarty who today owns the 2003 Cobb Hill Road residence and acreage, stated the reason the Class 4 portion remains in passable condition is that with her own equipment she maintains the road, expending considerable work to do so.

Upon questioning, Mr. McCarty stated that for the subdivision he has not budgeted for improvements such as widening the road. Denise McCarty indicated it is quite narrow in places, and insufficient for cars to pass each other. Mr. Ruderman commented that pull offs could be constructed at a few locations, so that when vehicles encounter another, one can utilize the pull off for the other vehicle to pass.

At this point in time the proposed development has not been discussed with the Moretown Selectboard which has authority to grant approval for any work in the municipal way, as well as curb cuts at driveway locations. Some discussion has been had with the Town road foreman.

In terms of existing use, the road is used by parcels beyond the development location where camps are located, and by mountain bikers or off road vehicles traveling to the Stevens Brook side of Cobb Hill Road.

During the course of the hearing there was discussion whether the proposal qualifies as a Planned Unit Development. The entire parcel is located within the Preserve District. The Zoning Ordinance in Table 2.4 states it has the purposes of protecting significant forest resources and water supply watersheds at higher elevations, and to limit development in areas with steep slopes, shallow soils, unique or fragile resources, and poor access to town roads and community facilities and services.

To qualify one of the aspects of a development can be to cluster housing units to preserve open space areas. As laid out this particular development "clusters" only to the extent of having three shared driveways, and locating building envelopes and septic systems so as to avoid substantial wetlands on the parcel. On the other hand, there is an existing residential driveway at the far end of the Class 4 which is presently utilized as a year round residence. Also, the location is not far from the Route 2 and Route 100

intersection at the outskirts of Waterbury Village, and relatively near Crossett Brook Middle School, with existing residential housing nearby.

Towards the end of the hearing John asked the Applicant if they were agreeable to the Board discussing the application further in deliberative session and providing any additional feedback as a supplement to the Minutes. This was acceptable and appreciated by the Applicant.

At the conclusion of the third Hearing the Board entered a deliberative session with all Board members present except Craig Oshkello and David Russo who could not attend the meeting. The Board will issue a separate document providing additional feedback to the Applicant in supplement of that provided at the Hearing within 30 days as contemplated under Sketch Plan Review.

Application No. 20-44: Appeal of Jack Barnes from Condition of Permit Granted December 28, 2020

Jack Barnes participated in the Hearing. John Riley noted Zoning Administrator David Specht called the afternoon of the Hearing and advised due to unforeseen events he would be unable to participate.

Prior to the Board Hearing, Board members received a packet of material which included the Zoning Permit Application; the December 28 conditions imposed by the Zoning Administrator in issuing the permit; Plans depicting the accessory dwelling unit built over the garage with second floor exterior deck and first floor deck; a copy of Survey Plan depicting location of residence and floor plans dating from construction of the single family dwelling in 1984. The Board was also provided Mr. Barnes' appeal and supporting explanation dated January 3, 2021, including a print out of a December 15, 2020 email from David Specht; material relating to a 1992 zoning permit for a home office; and a Certificate of Service to abutters.

Included in the zoning packet was also a packet titled "Zoning Administrators Comments on Appeal" consisting of two pages, and twelve pages of attachments, which included email print outs, and a lister's card from 2011.

Early in the Hearing it was determined the Zoning Administrator comments and documents had not been provided to Mr. Barnes. It was also noted Greg Nagurney, who serves as an alternate, and does not normally receive the Board packet in the first instance, did not have many of the meeting materials.

During Jack Barnes' presentation, and as developed by some Board questioning, the basic facts of the Appeal were established.

Jack and Pam Barnes obtained a permit and built a single family residence consisting of three floors and approximately 2900 feet of living space in 1984. At the time of construction full kitchens were included on both the first and second floor, and there was construction a bedroom, bathroom, and living room type space on the first floor.

At the time, and at no time since, have the Barnes considered the first floor space an accessory dwelling unit. At times guests or relatives would visit and stay downstairs for a week, or more at a time. But the first floor was never treated as a separate and distinct dwelling unit. For a period the first floor housed the location for a home office associated with Mr. Barnes' business. And in connection therewith he obtained conditional use approval as reflected by Zoning Board Minutes and a Permit from 1992 submitted in support of the appeal.

In determining whether the subject property was eligible to have the newly created living space over the garage approved an accessory dwelling unit, David Specht considered the first floor space, which has many of the characteristics of an accessory dwelling unit, to be a de facto separate dwelling unit. In communications with Mr. Barnes, he initially stated the kitchen appliances would need to be removed before the new garage ADU could be approved. Later, he advised it would be sufficient if the existing door at the top of the stairway leading from the first floor to the second floor be removed.

During his presentation Mr. Barnes expressed substantial upset and concern with the imposed condition. Maintenance of the door is important to separate his dog from that of his mother-in-law for reasons that are extensively explained in the email correspondence and appeal materials. Jack also pointed out the door diminishes the free flow of air, allowing the different spaces to be maintained at different temperatures, and promoting energy efficiency.

During his presentation Mr. Barnes emphasized to the Board that there are two elements to his appeal. Both Condition 2 which imposed the door removal requirement, and a second request protesting that the portion of his application which was initially dated December 2, contained additional language from December 15, which the Zoning Administrator requires. This language states that the Barnes' were removing the first floor accessory apartment. Mr. Barnes stated he agreed to include the language as it was the only way to obtain the necessary zoning approval. However, he disagrees with the statement, as he and Pam have never considered their three story residence other than as a single family dwelling.

The Board held a procedural discussion with the Applicant towards the end of the Hearing. Because Mr. Barnes was not provided a Zoning Administrator's Comments and supporting materials in advance he had not had an opportunity to review so as to provide any response for the Hearing. In addition, Greg Nagurney who was sitting on the Application had not been provided any of the materials. It was presented to the Applicant that the Board would go into deliberative session to discuss the merits of the issues before it. It was agreed that if the Board determined it could grant the appeal and agree the Condition 2 should be removed, that it would be unnecessary to hold a further hearing to receive any feedback from the Appellant as to the additional material provided the Board. On the other hand, if the Board could not reach a decision favorable to Appellant, it would conduct a further hearing at which a response could be provided. Mr. Barnes was agreeable to this procedure.

The Board then closed the evidentiary portion of the meeting. Jack departed, and the Board entered deliberative session. The following is a decision of the Board as to the merits of the Appeal following the deliberative session.

Decision

The Board grants Mr. Barnes' appeal as removal of the door is not required to maintain the Barnes' residence status as a single family dwelling under Moretown zoning.

Under Ordinance Section 3.1 an accessory dwelling unit can be permitted either within, detached, or attached to a single family dwelling. The Ordinance set forth the criteria for establishing such a unit. But under the undisputed facts, the Barnes never sought zoning approval for the first floor of their residence to be permitted as an accessory dwelling unit. As presented in the submission of written materials, and the presentation on January 28, the Barnes family has always considered the first floor as part of their single family residential dwelling. The fact that Pam's elderly mother currently resides on the first floor, and it has facilities sufficient for independent living, does not by itself convert the space to a separate dwelling unit.

The photos which accompanied the appeal depict only an ordinary door common in many residences separating the upper from lower floor of living space. As confirmed by Mr. Barnes, there is no lock or bolt on the door by which a person coming from the first floor could not enter the second floor, or vice versa.

For this reason, the Board concludes that the condition is unnecessary to maintain the Barnes' single family dwelling status under Moretown zoning.

During the hearing Mr. Barnes brought to the Board's attention that his appeal letter raised a second issue, namely that he wished to challenge the Zoning Administrator's requirement that his filed application state he was removing the first floor space, as an accessory apartment from the lower level of the residence. The Board believes it cannot alter a document that was previously submitted and is a public record. Notwithstanding, Mr. Barnes concerns on this question are set forth in his appeal letter dated January 3, 2021, and his concerns and position are set forth in these other documents are acknowledged and a matter of the public record.


During the January 28 hearing, there was discussion and consideration of Jack Barnes submittal of a Town Zoning Board form seeking relief from zoning enforcement. It is the Board's conclusion that as no zoning enforcement proceeding has actually been initiated, and no present claim of any zoning violation exists, that the request is moot.

In conclusion, it was unanimous decision of the members participating to grant the appeal, and remove Condition 2 from the Permit for the accessory dwelling unit and deck space applicable to the garage portion of the property.

Dated this 8th day of February, 2021.

Respectfully submitted

Moretown Development Review Board

A handwritten signature in black ink that reads "John Riley". The signature is written in a cursive style with a horizontal line underneath it.

By John Riley, Acting Clerk