

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

Minutes and Decisions for Hearings Held October 21, 2021

Present for the Board was John Riley at the Town office. Also present via Zoom were, Greg Nagurney, James O'Neill, Paula Woods, David Russo, and Craig Oshkello. Participation in the hearings held was as noted below.

Application No. 21-35: Town of Moretown Request for Conditional Use Approval for the construction of stormwater retention ponds on Parcel 10-044.000 at 79 School Street in the Village Zoning District and Flood Hazard Overlay District (Continued from September 30).

John Riley called the meeting to order at 6:30 PM. Sitting for the Board were four of the five regular members and alternate Craig Oshkello as Greg Nagurney joined the meeting late. John Hoogenboom, a member of the Town Selectboard participated for the Town and was joined at the hearing by Town Clerk, Cherilyn Brown and for a period, Selectboard Member Rae Washburn. Howland Brown, an adjoining landowner participated via Zoom. Also appearing by Zoom was neighbor John Schultz; Pam DeAndrea of the Central Vermont Regional Planning Commission and Kerrie Garvey of Watershed Consulting.

Since the September hearing the Town provided a Design Report dated October 1, 2021 by Watershed Consulting that was submitted to Pam DeAndrea, Sr. Planner at the CVRPC. The Design Report provides detail about the Project and includes a design description; how the proposed system would operate; and required maintenance over time. Also provided was a link to the Project Plans; a scan of correspondence with ANR's Regional Flood Plain Manager Ned Swanberg; a state stormwater permit which approved work near Route 100B; and a scan of an older survey of the Town/School property and including a water line easement with St. Patrick's Church.

Kerrie Garvey and Pam DeAndrea answered questions about the proposed design and how the Project would operate. The design has four main water quality components. Three sand filters and one gravel wetland. Two linear sand filters are proposed in existing swales running along the sports fields to improve drainage and filtering of water in the areas of the recreational fields. A third is located on the southerly side of the elementary school. The most significant portion of the Project is the gravel wetland located to the north of the existing parking lot, west of the Town Office, and easterly of

St. Patrick's Church and the Howland Brown/Beki Auclair residence. John Schultz's property lies just to the north.

The design contemplates installation of 12 catch basins and a new underground 18" storm line beneath the existing parking lot which would route stormwater, with the gravel wetland including a "hydro-dynamic separator structure" for pretreatment of storm water, and then two gravel wetland treatment bays.

This new structure would discharge via an 18" pipe to the storm line along Route 100B.

The Watershed Consulting Design Report includes a Section and Appendix which describe required tasks to maintain the proper functioning of the system over time. These include that the gravel wetland area be inspected twice annually the first year and then annually thereafter. The system should be fully draining within a 24-48 hour period after rain events. And if not the outlet and underdrain be inspected and jetting may be needed to remove clogs.

Also, the vegetations covering the gravel wetland are to be inspected for dead and diseased plants with the vegetation cover being greater than 75% of the system, and reseeded and cared for as needed. There are separate recommended maintenance conditions for the pre-treatment structure, sand filters, and catch basins. Catch basin sumps should be inspected annually for sediment accumulation and if the sediment depth reaches certain levels, they be cleaned. A vactor truck may be needed for cleaning the sumps.

During the meeting there was again extended discussion of property boundaries including the line between the Howland Brown and Church property; the line between the Town and Church/Brown properties; and the property line between the Schultz and Town property.

The scan of a portion of a Survey provided by the Town is titled "Moretown School District, Land in and near Moretown Village including Benedict or Evans Farm". This Survey is dated 1959 and purports to depict the land owned by the School District and adjoining properties at that point in time.

John Schultz commented he was familiar with the Survey and based on deed descriptions did not believe it properly shows common boundary lines. Howland Brown mentioned that when he bought his property deeds in the chain of title described his common boundary line with St. Patrick's Church as being to the edge of the eaves of the Church.

On behalf of the Town, John Hoogenboom stated he did not believe there was a need for new survey work. Extensive effort went into updating tax maps some five years ago. Current plans are based upon boundaries as shown on the tax maps.

Ms. DeAndrea commented that it was her expectation that the terms of any State grant approval would be that the Town as Applicant have in place all required easements necessary to construct the system as designed.

The submitted email correspondence involving Ned Swanburg reflects Mr. Swanburg had no concerns from a flood plain perspective with the Project. It was not adding any fill or increasing any encroachment toward the river corridor of Doctors Brook or the Mad River.

John Riley moved to approve the Application as submitted on the condition that it be completed in accordance with the Design Report dated October 1, 2021 and associated Plans including that following completion the systems be operated and maintained consistent with the operation and maintenance plan beginning at page 5 of the Report and in Appendix D. The motion was seconded by Jim O'Neill. David Russo offered a proposed amendment to add a condition that the Town obtain all necessary easements from property owners necessary to proceed with the Project. The proposed additional condition was seconded and accepted by the Board which then proceeded to approve the motion for approval with the two conditions unanimously.

Application No. 21-34: Request of Samuel and Sarah Rosenberg for a Conditional Use Review for Change of Use from Single Family Dwelling with Accessory Apartment to Multi-Family Home in the Ag-Res District at 2318 Moretown Common Road

The meeting was called to order at approximately 8:05 p.m. Present via Zoom were the Rosenbergs together with Sarah's mother, Sybil Schlessinger. Also appearing for the Applicants were their contractor, Russ Bennett of Northland Construction.

Zoning Administrator David Specht provided a brief introduction. The Rosenberg property was previously permitted for an accessory dwelling unit. Under Ordinance Section 3.1 and related State law, accessory dwelling units are permitted uses where the unit does not exceed 1,050 square feet. When reviewing an application to renovate the existing apartment with an addition to the garage, the Zoning Administrator determined the second dwelling unit exceeds 1,050 square feet. Under the Zoning Ordinance (Table 2.3 at page 13) multi-family dwellings are allowed in the Agricultural-Residential District but are a conditional use. Therefore referral to the Development Review Board was required.

Mr. Bennett briefly outlined the proposed construction.

David Specht commented that in all respects the proposal meets setback and height requirements of the Ordinance. Ordinance parking requirements are set forth in Section 4.9 and Table 4.1 at page 55. Multi-family dwellings require 1.5 spaces per dwelling unit. The expanded garage/carport will have three spaces and there is additional exterior parking spaces present so the minimum three space requirement is met. Motion was made to approve the Application as submitted, duly seconded, and unanimously approved.

Application No. 21-41 Request of Amber DeVoss for Conditional Use Approval Requesting Setback Waiver to Raise Existing House Five Feet in Elevation at 1856 Jones Brook Road

The Applicant Amber DeVoss was present at the town office for this hearing. An adjoining landowner, Robin Campbell appeared via Zoom. David Specht began the hearing with an explanation of how he analyzed the Application and the reason for DRB Referral.

The involved structure at one time was a schoolhouse before converting to residential use. Ms. DeVoss recently purchased the property and submitted an application dated September 9 proposing to raise the structure four feet; install a pond; and install a deck. The Zoning Administrator referred the Application to the Development Review Board as the structure which predates zoning is some 62 feet from the centerline of Jones Brook Road, which is three feet less than the 65 foot minimum required under current zoning.

Ms. DeVoss explained that in constructing the improvements to the residential structure it became apparent that based on the existing water table it was necessary to raise the existing structure four feet based upon the recommendation of her contractor.

Adjoining property owner Donald Campbell voiced a number of concerns with the Application. He questioned whether the Project meets the criteria of Section 4.8(C) of the Ordinance which addresses alteration or additions to a non-conforming building or structure. Mr. Campbell also questioned whether the creation of a small pond as part of the project would violate setback requirements associated with wetland areas.

As part of Ms. DeVoss' Application, she submitted a site plan which depicts modifications for the existing residence. There is a four foot by four foot entryway shown on the northerly side of the residence and a new 12 x 8 foot deck on the southwesterly side. The new pond designed to collect groundwater and water flowing

from the hillside west of the residence is shown to be approximately 30 feet from the existing residential structure.

In response to a question from Jim O’Neill, Ms. DeVoss clarified that with respect to the existing residence the elevation in height did not involve any alteration to the existing structure itself. It simply involved the raising of the structure and placing fill beneath to raise it in height.

Based upon the information submitted, the Board voted to close the evidence given the time constraints of this evening’s meeting. The Board agreed to move on to the next scheduled hearing, and later engage in a deliberative session to determine the merits of the subject Application.

Following the conclusion of the hearings on October 21, the DRB held a deliberative session to briefly discuss this matter, and the subsequent matter, and then held a further deliberative session Monday, October 25 at 7:00 p.m.

Based on the discussions held thereunder, the Board makes the following findings and conclusions with respect to this Application:

Decision

1. The present proposal which primarily involves lifting the existing residential structure four feet and placement of fill beneath does not constitute an “alteration” of the existing structure that violates Section 4.8(C) of the Ordinance. Section 4.8(C) limits alterations that exceed in aggregate cost 35% a for residential property. This element of the Application which appears to involve much of the contractor cost does not represent an “alteration” of the existing structure. Similarly, the expenses associated with construction of the septic system, much of which lies on an adjoining parcel, does not represent an alteration of the structure.

Section 4.8(A)(2) allows that a non-conforming structure which is devoted to a conforming use may be reconstructed, structurally altered, restored or repaired, in whole or in part, with the provision that the degree of the non-conformance shall not be increased. In this case the existing residence is being improved to accommodate residential use without any work in the 62 foot setback area between the front of the residence and the middle of the travelled way of Jones Brook Road. The Board concludes that this is a permissible improvement of the residence allowed by Section 4.8 of the Ordinance.

The creation of the small new pond for the collection of groundwater and any water travelling off the hillside presents a novel question under the Ordinance. The subject parcel is approximately 0.3 acres. Section 3.12 of the Ordinance addresses ponds which are allowed as an accessory use. If involving impoundment of water through the creation of an embankment, berm or other structure exceeds natural grade a pond requires conditional use approval. From the testimony presented it appears no berm or embankment is involved in this particular pond. It is merely a mechanism to collect surface and groundwater to minimize impacts on the residential structure. As this is a new feature and not a pre-existing wetland area, the Board concludes it does not violate minimum setback requirements for streams or wetlands.

Application No. 21-36A for Construction of a Duplex in the Commercial Zoning District. Appeal of Justin Lamson from the Determination of the Zoning Administrator that the Application was Deemed Approved Because it was not Acted on until 32 Days After Receipt of the Application. Property is Located at 111 Sherman Drive

Present at the Town Office for this Application were Justin Lamson (Appellant) and Dan and Lola Noyes on behalf of Applicant Noyes Properties, LLC. Also present at the Town Office was adjoining property owner Josh Sherman, and via Zoom was neighbors Craig Camman and Erin Longchamp.

David Specht provided an introduction to the proceeding. Noyes Properties, LLC submitted an Application for a two family residential structure on 4.89 acres which was received August 13, 2021. David noted that he failed to review or consider the Application until September 14, 2021. By then the 30-day period to act on the Application had passed. By the Ordinance, and State statute, failure to act within 30 days results in a deemed approval. Accordingly, the Zoning Administrator acted to approve the Application on September 14, 2021, and directed Notice of the Permit Approval be placed in public view.

Justin Lamson is an adjoining property owner that upon seeing the posted notice contacted the Town. Mr. Lamson timely appealed the approval, and the matter is before the Development Review Board as an appeal of the Zoning Administrator's Decision.

During the hearing evidence was presented that the property presently owned by Noyes Properties, LLC consists of two lots of a seven lot subdivision. Sherman Drive is a private road off Route 2 in North Moretown near Waterbury Village. Josh Sherman explained his father created the subdivision, and Josh's residence is at the upper end of the private road.

According to the Application, the subject land lies within the Commercial District. In this District a single family residence is a permitted use, while a multi-family residence is a conditional use. As noted by David Specht, he should have referred the matter to the Development Review Board within the 30 days but had failed to do so. Under the circumstances he believed he had no choice other than to approve the Application submitted under a “deemed approval” provision of the Ordinance and State statute.

Mr. Lamson explained that he had seen the approval for a single family residence in spring 2021 and was not concerned. He is concerned that this is now a two family structure application which he believes will result in renters rather than single family ownership.

Dan Noyes acknowledged applying for and receiving the approval for a single family residence on one of the two lots he acquired. Based on site conditions (the parcels include a former gravel pit and topography which has steep grades) he concluded that the best and most efficient use of the two parcels was for a single two unit residential structure. Thus he amended his initial Application and submitted the current one dated August 11 and submitted August 13.

Mr. Lamson and Mr. Sherman provided evidence that existing Sherman Drive is narrow at points. Lamson is a contractor and trucks and heavy equipment associated with his business travel the road. Josh Sherman in the past has had a business involving trucks and believes he may again have trucks travelling the roadway in the future.

Erin Longchamp participated in the hearing and owns a residence on the road. She did not express concerns with the Application.

There was evidence that Dan and Lola Noyes’ daughter lives in a residence off the road which is separately owned by Mr. Noyes, or the Limited Liability Company.

The DRB took the matter under advisement, voting to close the evidence, and engage in a deliberative session prior to rendering a decision on the appeal.

Decision

Following the conclusion of the hearing on October 21, the DRB engaged in a brief deliberative session, and then held a further deliberative session October 25, 2021 and reached the following findings and conclusions:

1. Noyes Properties, LLC filed an application for a two family residential structure on 4.89 acres which is dated August 11, 2021 and was acknowledged as received by the Moretown Zoning Administrator August 13, 2021. As noted in the Zoning Permit Application, the associated permit fee was received and based the evidence presented at the October 21 hearing Mr. Specht accepted the Application as complete on August 13.

2. The Zoning Administrator did not act on the Application to either approve it, or refer it to the Development Review Board until September 14, 2021.

3. Even if the day of submittal is not counted, resulting in 17 days being counted in August, and 13 days being counted in September, the Zoning Administrator did not act on the Application for more than 30 days.

4. Section 6.2(C)(2) provides that the Zoning Administrator shall within 30 days of submission of a complete Application either issue or deny a zoning permit in writing, or refer the application to the Development Review Board and/or state for consideration in accordance with the Act (referencing Section 4449 and 4465). The Section goes on to provide that if the Zoning Administrator fails to act within 30 days of receiving a completed Application a permit shall be deemed issued on the 31st day in accordance with (Section 4448 and 4489).

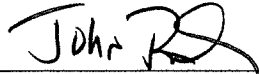
5. It is unfortunate the Application was deemed approved in that as part of conditional use review the Development Review Board would otherwise be able to consider the input of other residents of Sherman Drive with respect to the merits of the Application. As outlined at the hearing, these would have included whether upgrades or modifications to Sherman Drive could be required, and whether the new construction would increase flows of stormwater or cause other impacts.

6. That being said, given the Sherman subdivision consists of seven lots and the current application is to construct a single, two unit residence on two of the lots, it would not appear that the impacts are any greater than those contemplated at the time property owners purchased or acquired their parcels in this subdivision. However, the Board is unable to address the merits of the proposal in that the Application as submitted was not acted upon within the 30 day period. The Ordinance, and related State law is quite clear, that the Zoning Administrator must act within 30 days of submission of a completed application. This did not occur here and the required result is deemed approval.

Dated this 9th day of November, 2021.

Respectfully submitted

Moretown Development Review Board

A handwritten signature in black ink, appearing to read "John Riley", written over a horizontal line.

By John Riley, Acting Clerk