

WEST WINDSOR DEVELOPMENT REVIEW BOARD

Minutes

July 14, 2009

Present: Glenn Seward, Shannon Harrington, Phil Arvidson, Pete Ladd, Genevieve Lemire, Martha Harrison, Tom Kenyon, Vickie Neiduski

Absent: Hal Pyke, John McNamara

1. Call to Order – At 7:00 PM, Development Review Board (DRB) Chair Glenn Seward called the meeting to order and opened the public hearing on application #2353 by Gary and Vickie Neiduski for a 34' variance of the side yard setback to construct a 16' x 20' x 10' shed roof attached to the existing garage at 305 Farm Road (parcel #9-39). The application is subject to review under Sections 2.3-3, 3.9 (B), and 6.8 of the West Windsor Zoning Regulations. Glenn asked if there were any conflicts of interest or ex parte communications by board members. There were none. Glenn read the definition of an interested party. Tom said he is an abutter. Glenn swore in Tom Kenyon and Vickie Neiduski. Vickie said she and her husband would like to put a shed roof over the outdoor pellet furnace which they installed last fall, mainly because of the snow. Vickie said they placed the furnace where it is to avoid snow falling off the roof onto it. Vickie said she has bad shoulders and lifting the tarps off the bags of pellets and then recovering them is a hardship for her. The DRB looked at Section 1.3 (A) and (B) of the zoning regulations. Tom asked if he could show the DRB where his property abuts the property of the applicant. Glenn said yes. Tom showed the DRB a map depicting his right-of-way in relation to the applicant's property. Genevieve asked if the stone wall is the property line. Tom said yes. Glenn said the distance between the stone wall and the proposed shed roof addition is 16'. Shannon asked Tom if the Warrens own it and he has a right-of-way over it. Tom said he has a deeded right-of-way. Shannon asked Tom if he currently uses the right-of-way as a driveway. Tom said no he only uses it if he wants to get wood or something like that. Tom said he checked with Martha and apparently there are no local regulations on wood furnaces. Glenn said that's correct, although there are some state standards. Vickie said they met the state standards which require a certain height chimney if there is another residence within a certain distance. Glenn said Section 1.3 (A) does not allow development until a permit has been issued. Glenn said the furnace has to be 200' from the nearest residence and his sense, from the site visit, is that the Warren house is further than that. Vickie said she thinks the state standards apply to wood furnaces, not pellet furnaces. Glenn agreed that the state regulations do not specifically address pellet stoves. Regarding Section 2.3-3, Glenn said the Neiduski property is in the Rural Residential district, where the setbacks are 30' from the front and 50' from the side and rear property lines. Vickie said they got a permit for the garage in 2001. Vickie said the people who built the house put it at a funny angle on the lot and they didn't have any control over that. Glenn read the conditions which non-conforming structures are subject to from Section 3.9(B). Phil said his understanding is that the structure as it stands is non-conforming, but is grandfathered. Glenn said yes. Glenn reviewed the Performance Standards in Section 3.12 and said that a pellet stove is different from a wood-fired furnace as far as emissions are concerned; it burns substantially cleaner. Vickie said there is no noise or noticeable vibration. Regarding lighting, Vickie said there is an existing vapor light outside the door and a battery powered light inside the furnace. Glenn asked about fire, explosion or other hazards. Vickie said no. Tom asked if the structure is just a roof or if it is going to have walls. Vickie said it will just have posts and a metal roof. Glenn asked if the project will generate any liquid or solid wastes. Vickie said no. Glenn asked how much waste the stove generates in a week. Vickie said she's not sure because she doesn't clean out the furnace, but they compost the ash and use it in their garden. Glenn read the first criterion for a variance and said obviously the siting of the house and the garage on the lot is the limiting factor here. Shannon asked when the garage was built. Vickie said 2001. Shannon asked if there is a permit for the garage. Vickie said

yes. Phil asked if Vickie and Gary were the ones who put the garage in. Vickie said yes. Glenn read the second variance criterion. There was discussion about the placement of the stove. Shannon said the stove is a structure and asked when it went in. Vickie said the stove is not a structure, it's just a furnace. Shannon said it's a structure according to our definition. Vickie said the stove was installed last fall. Shannon asked Vickie if she got a permit for the stove. Vickie said no. Martha said the town does not require permits for stoves. Vickie said the people they bought it from did everything according to the Vermont state laws. Glenn read the third variance criterion. Shannon said Mother Nature doesn't create hardships; people create hardships. Phil said almost every application could be argued either way. Genevieve said if the stove had not been placed there, then a variance wouldn't be needed. Vickie said they can't drive over their septic system and in that case, they would have had to plow the entire backyard and go all the way around the house bringing pallets of pellets. Vickie said because of the way the roofs are, you have to be a certain distance from the roof or you get snow. Vickie said the septic is out in the back and the back of the house isn't 50' from the property line either and there's a lot more snow that falls there. Glenn read the fourth variance criterion. Tom said he thinks the Neiduskis should have gotten a zoning permit to place the furnace. Tom said he would like to see the shed enclosed so it looks like part of the existing structure. Tom said he also thinks the furnace should be at the back of the structure and the structure should extend out towards the applicants driveway. Vickie said she doesn't know if you are permitted to enclose the furnace, but maybe they could enclose the back wall. Glenn suggested screening. Tom said as long as it looks like the rest of the building. Vickie said she doesn't have a problem with putting something there. Tom asked if the furnace would be at the back of the structure. Vickie said it's near the back and they wouldn't need to extend the roof much past where the furnace is. Vickie said the storage would be between the furnace and the garage because the furnace had to be a certain number of feet from the garage. Phil asked how far behind the furnace toward the stone wall is the wall going to be. Tom asked how far the garage is from the lot line. Vickie said the corner of the garage is 16 feet from the line. Tom asked if the proposed shed comes any closer than the existing garage. Vickie said no because of the angle of the house and the angle of the property line, the shed roof won't be any closer to the property line than the corner of the garage. Tom said he doesn't object as long as the building does not go any closer to the line than it presently does and the back side is walled in. Tom said if the applicant could break it up with some screening that would be a plus. Tom said he does not want something that detracts from the aesthetic value of his property. Vickie asked if anything on their property detracts from the aesthetic value of Tom's property. Tom said not yet. Phil said he would like to see a written agreement between the two parties before the DRB approves the proposal. Phil noted that the requested variance is a significant reduction of the requirements of West Windsor's zoning. Shannon agreed. Vickie said it will be an inconvenience if she has to do all that extra work like she did last winter, but she can. Glenn asked if the DRB could issue a decision contingent upon an agreement between the parties. Phil said he would think so. Vickie said she would want her husband to sign it also. Phil said he would want a copy of the agreement to be in the town records. Phil said the parties could get a lawyer to draw something up if they want, but he doesn't think that's necessary. Phil said the reason to have an agreement is that property changes hands. Shannon said she thinks a more accurate drawing would also be helpful. Phil agreed that a scaled drawing would be a good idea. Phil said the agreement should be specific as to construction materials. Vickie asked Tom if she could call him at home. Tom said yes. Glenn read the fifth variance criterion. Vickie asked if the DRB wants the whole property drawn to scale. Glenn said no – just that area. Vickie asked if a drawing of the garage, the structure and the stone wall would be good. Glenn said yes. Phil said the drawing should include the furnace. **Phil made a motion to approve the variance subject to the submission, within a reasonable period, of a scaled drawing showing the location of the furnace, the structure over the furnace, the garage and the stone wall and, secondly, an agreement between the parties as to the shielding of the furnace by enclosing the back wall of the**

structure from view of the right-of-way over the stonewall, that would run with the land. Genevieve seconded the motion. Phil asked if the DRB should define a reasonable time. Glenn suggested that the drawing and the agreement be finished by next month's meeting. Tom and Vickie agreed. Martha noted that the DRB has 45 days to issue a written decision and there is a 30-day appeal period on the decision. **Glenn called for a vote on the motion, which passed unanimously.**

2. Brownsville Garage – Tom noted that the Town is an abutter of the garage. Glenn asked Martha if she has had any contact with the new tenant. Martha said she had a brief conversation with the new tenant who wanted to know what permits are in place for the property. Martha said she explained that there is a permit in place for used car sales and, as an accessory use, a permit to service cars. Martha said her opinion is that if someone just wants to service cars and is not selling them, that person would have to go before the DRB. Martha said she called the Vermont League of Cities and Towns and the person she spoke with agreed with her. Martha noted that there were problems with the number of cars on the lot and she had spoken with and written to the previous tenant about the problem. Glenn suggested sending the landowner a letter, with a copy to the new tenant, letting him know that if he just wants to service cars a review will have to be done, but if he wants to sell and service cars, the existing permits stand. Martha said the new tenant said he is going to stop in and look at the existing permits. Phil asked if we really want to force him to sell cars. Shannon said because “auto service station” is a conditional use in the village, he wouldn't have to sell cars; he'd just have to come in and ask for conditional use approval to service cars. Genevieve agreed. Glenn said he'll probably just put a couple cars out for sale. Martha said she thinks he would have to be a licensed dealer. Phil asked Martha to check on that. Pete said he thinks it would be in the town's best interest not to have cars sold there. Phil agreed. Phil said he asked Matt Birmingham to look at the permits and call the property owner to make him aware of what is and is not permitted. Phil said the board has gotten a lot of flack for ever permitting the used car lot in the first place and he would like the town to go on record that we're going to be very strict in enforcing the regulations. Glenn agreed. Tom said the board also retained jurisdiction over aesthetics, which is quite broad. Phil mentioned a particular vehicle that wasn't for sale, which sat on the lot for a long time. Tom said isn't “storage of vehicles” a separate use. Phil said he doesn't think that is a permitted use. Shannon said it would be a conditional use anyway; none of it is permitted; it's all conditional. Phil suggested that Glenn and Martha draft a letter to be sent on behalf of the board emphasizing the specifics of our permit requirements and stating that we expect strict compliance. Shannon noted that the list of conditional uses only includes auto service, not auto sales. Shannon asked if an applicant can ask for other things with conditional uses. Shannon said if he wants to sell cars, can he do that given the way our current zoning regulations are written. Martha said it's already permitted for selling cars under the “retail sales” use. Tom said he has heard more complaints about that property than any other property in town. Phil agreed. Genevieve said the DRB is talking about warning the new tenant about things that the previous tenant did; it sounds like we're giving someone a hard time about doing something before they even come in. Genevieve said she would assume that once the new tenant knows the rules there would be some expectation that he would follow them. Phil said he thinks the DRB should make the new tenant aware that there is a history here and, because of that history, the regulations will be strictly enforced. Tom said the property still has the same owner and the owner is the one who is responsible. Phil suggested that Glenn and Martha run their draft letter by Matt. Tom said he believes that there were some violations pending, which were dropped because the previous tenant was moving out. Martha said an official notice of violation had not been issued, just a cautionary letter advising the owner and the tenant to clean up their act. **Phil made a motion to authorize Glenn and Martha to draft a letter to the owner of the former auto sales and repair property advising him of the existing permits and the town's intention to strictly enforce the conditions of those permits, and to**

have the draft letter reviewed by the town attorney. Shannon seconded the motion, which passed unanimously.

3. Minutes: April 14, 2009 – **Phil made a motion to approve the minutes of April 14, 2009 as written. Genevieve seconded the motion. Because Shannon and Pete were not present at the April 14th meeting, they could not vote and there were not enough DRB members present for the motion to pass. June 29, 2009 – Phil made a motion to approve the minutes of June 29, 2009 as written. Genevieve seconded the motion. Because Shannon and Pete were not present at the June 29th meeting, they could not vote and there were not enough DRB members present for the motion to pass.**
4. Adjourn – **The DRB adjourned by consensus at 8:00 PM.**

Respectfully submitted,

Martha Harrison