

WEST WINDSOR DEVELOPMENT REVIEW BOARD

Draft Minutes

November 10, 2009

Present: Glenn Seward, Shannon Harrington, Genevieve Lemire, Hal Pyke, Martha Harrison, Vickie Nieduski, Lindsay D'Anna, Maggie Garrand, Phil & June Hathorn

Absent: Pete Ladd

1. Call to Order: Chair Glenn Seward called the meeting to order at 7:00 PM.
2. PUBLIC HEARING: Glenn opened the public hearing on application #2370 by Klaus & Patricia Lubbe for a variance of the stream setback requirement for a set of stairs 4' wide and approximately 160' long on the steep bank behind the house at 504 Brownsville-Hartland Road (parcel #6-5.1). The application is subject to review under Sections 2.3-2, 3.13, 3.14, and 6.8 of the West Windsor Zoning Regulations. Glenn asked the Board members if there has been any ex parte communication about either of the applications scheduled for hearing tonight. There hadn't been any. Glenn explained what an interested party is and said that interested parties need to sign in and participate in the hearing to protect their right to appeal. Glenn swore in all those planning to provide testimony in either hearing. Klaus explained that the slope behind his house, down to the stream, is very steep and wet and was formerly used as a dump so there is a lot of broken glass. Klaus said he and his family would like to be able to safely access the stream. Klaus said they also own property on the other side of the stream. Klaus said the stairs turned out to be much longer and closer to the water than he thought they would be. However, Klaus added that he doesn't think they could have done it differently and still had the stairs be a safe access to the stream. Klaus said he doesn't think it impacts anyone in their neighborhood because the stairs are in the middle of their property which extends on the other side of Beaver Brook. Klaus said he is a Biologist and he doesn't think the stairs impact the water quality of the brook. Glenn said section 2.3-2 outlines the district information on what's permitted and not permitted. Glenn said the original permit was for an accessory structure. No one had any comments. Glenn read portions of Section 3.13, which covers the protection of natural resources. No one had any comments. Glenn said Section 3.14 covers the 50' stream buffer which was encroached upon by 21'. Glenn said he thinks the environmental damage to the area would be worse if there were foot traffic down that bank. Glenn said he saw no impact on the area by the stairs. Shannon said she thought it was wise to incorporate the large tree into the landing area. Shannon asked if the area is in a mapped floodplain. Martha said no. Phil said he thinks the issue arose because we have been going back and looking at permits to see if they are being complied with. Phil said he thinks the staircase was well built but what was asked for was not built. Phil said there are two remedies: removal of the offending amount or fines. Phil said he doesn't find either remedy palatable but people ought to comply with what they applied for. Phil said he doesn't favor removal or fines, but if a donation of \$100 were made to either the Fire Department or the FAST Squad that would take care of the matter as far as he is concerned. John asked when the stairs were built. Klaus said about four years ago. Phil said last spring the Selectboard asked Martha to follow up on permits for which no certificate of compliance had been issued. Shannon asked how the application came to the DRB now. Phil said Martha has been going back through the records to see if people complied with what they applied for. Phil said if you're going to have zoning requirements, people ought to comply with them or they're useless. Shannon agreed. Genevieve agreed that fines are not palatable but if there are no repercussions for not complying with what you have applied for, what incentive do people have to meet the requirements. Klaus said they didn't do it on purpose. Phil said he understands that but they didn't come back to the board and explain their reasons for not complying. Klaus asked if the DRB has the authority to impose a fine. Phil said yes. Phil asked Martha what the fine would be. Martha said if you receive a notice of violation, you have seven days to correct the situation and then there is a \$50 per day fine. Phil asked if the

fine is \$50 per day since the time of the occurrence. Martha said no, the fines would start seven days after the notice of violation. Shannon pointed out that the DRB hasn't gone through the variance criteria yet. Glenn read the five criteria for a variance and the written responses to those criteria which Klaus provided with his application. Shannon said in order to grant a variance the DRB has to find that the application meets all five of the criteria and she's not sure if what was built represents the least deviation possible. Shannon wondered if the Lubbes could back off an additional 21' from the stream. Klaus said it is steep there and removing 21' would not make it safer. Shannon asked Klaus if it could have been built 50' from the stream. Klaus said it wouldn't make sense. Pete suggested considering the suggestion that we substitute a donation to the fire department for the fine and grant the variance. **Phil made a motion to grant the variance subject to a \$100 donation to either the FAST Squad or the Fire Department for the fact that the variance was not brought to the DRB's attention until substantially after the project was built. Glenn seconded the motion.** John said, from a legal standpoint, should it not be a fine by the town rather than a donation. Phil said he doesn't draw a distinction between the two. Phil said we are levying a fine but we're directing it to one of two good causes. Glenn said he supports that. Phil said he thinks what was built makes good sense and if Klaus had come in for a variance at the time the stairs were built he wouldn't have had a problem with it but he has a problem establishing the principle that our zoning doesn't matter and he thinks that's the principle being established if the DRB grants the variance with no penalty. **Glenn called for a vote on the motion, which passed unanimously.**

3. PUBLIC HEARING: Glenn opened the hearing on application #2371 by Dennis & Nancy Brown for a 2-lot subdivision of parcel #3-214 at 452 Route 44. Glenn reviewed the application requirements for sketch plan review. Shannon asked about waiver requests. Martha said the Browns requested that the DRB waive preliminary review. Shannon noted that the contours are not on the map. Martha said she provided the contours on a separate map. Martha said when the Planning Commission (PC) was drafting the regulations, she asked them if the contours would have to be on the survey or if they could be on a separate map. Martha said the PC's opinion was that they could be on a separate map. Glenn agreed that that was the intent of the PC. Glenn asked Martha if she is satisfied that the application is complete. Martha said yes. Glenn said the DRB should review the design requirements. Glenn said natural and cultural resources should be identified and outlined on the sketch plan. There was a lengthy discussion about the apparent presence of a class III wetland on the property and whether the wetland should be outlined on the sketch plan and/or delineated on the final plan. Phil suggested delineating a building envelope. Shannon said a surveyor is going to want to define it. Shannon said you can't put a pond, well, or septic system in a wetland. Glenn suggested having a qualified individual delineate the wetlands. Shannon and Phil agreed. Steve asked which area of the property the DRB is referring to as "wetlands" and where the lot line would be drawn. Glenn described the area and the location of the proposed lot line and invited Steve to look at the survey submitted. David Jaacks asked to see the survey also. Shannon talked about what's involved in wetland delineation and suggested that the Browns contact the Army Corps or the Agency of Natural Resources. Steve asked about the property's maximum development potential. Glenn said the property is in a one-acre district. Steve asked if there could be an additional 34 houses. Glenn said there are physical constraints which make that unlikely. Martha said someone could do a PUD on the 10-acre lot and cluster 10 houses on two acres and leave the other eight acres open. Phil suggested that wetland delineation might not be necessary if a building envelope is designated. Shannon disagreed. John said he doesn't see why the wetlands have to be delineated at this point; the delineation can be done when someone proposes to build on the property. Glenn said the subdivision regulations require the DRB to take a look at wetlands. Phil agreed with John. Glenn asked the DRB if they would be comfortable establishing a building envelope rather than having the wetlands delineated. Dennis asked if the DRB is suggesting a building envelope for a single house or clustered housing. Glenn said any construction would have to be within the building envelope. Phil asked why this comes

into play now and not when someone comes into build. Shannon said all this stuff is in the rules. Martha read the following from Section 3.1 of the Subdivision Regulations, "On preliminary and/or final plans, natural and cultural resources shall be accurately located and drawn to scale." Martha added that the DRB also has the authority to waive any standards that they don't feel are applicable. Glenn said the DRB needs to decide what will ultimately be involved in the final approval so, whether there is a building envelope or the wetlands are delineated, that decision will carry forward. Genevieve noted that "proposed building envelopes, if applicable" are listed as one of the application requirements for final review. Shannon said that the regulations also require all these things to go on the mylar. Glenn reminded the DRB that they can waive any of the standards. Glenn said he thinks it would be worthwhile for the Browns to delineate the wetlands. Dennis said the area where he put the three stakes is the obvious building location. Glenn said it's his impression that the DRB would prefer to go with the building envelope than the wetland delineation. Nancy asked if, when they sell the property, they can specify what they'd like the buyer to do with it. Phil said they could put that in their contract of sale. Glenn agreed. Shannon said the Browns could place restrictive covenants on the property. The DRB agreed that they do not want the wetlands delineated but they do want a delineated building envelope on the high ground. There was some confusion about what is involved in the final review. Glenn said whoever buys the property will have to develop within the building envelope unless they delineate the wetlands. Shannon said a building permit is a permitted use and doesn't come to the DRB. Martha said once a building envelope is established she wouldn't be able to approve any development outside that envelope. Glenn said there needs to be a 50' buffer along all rivers and streams. Nancy asked, and Glenn explained, what "buffer" means. Glenn noted that there is floodplain on the property, but the proposed building area is not in the floodplain. Martha asked the DRB if they want the floodplain delineated on the final survey. Glenn said yes. The DRB agreed. Glenn asked the Browns about critical wildlife habitat and threatened or endangered species. Nancy noted an occasional moose sighting. Glenn asked Martha if we have any maps of agricultural soils. Referencing a "West Windsor Critical Areas" map with information from the Soil Conservation Service, Martha said there are soils with national agricultural significance on the Brown property. Glenn said for this type of permit he thinks it should just be noted that there are agricultural soils present since it is not a multi-unit subdivision. Shannon agreed that anything beyond a duplex would require review by the DRB. Phil said he thinks the Zoning Administrator can refer any application to the DRB. Martha said if an applicant wanted to build in an area where the zoning regulations would not allow building, the applicant would need a variance from the DRB. Shannon said the regulations require the preservation of significant blocks of prime agricultural soil as open space. Glenn suggested noting that the DRB recognizes that there are prime agricultural soils on the property but, since the building envelope is for a single-family dwelling, there will be minimal impact. Shannon asked if the application indicates that there will only be one house on the new lot. Dennis said he staked out a 40' x 70' area that would make a good house site but the building envelope should include the general area. Martha said you could overlay the floodplain map and the agricultural soils map and draw the building envelope outside those areas. Glenn suggested specifying that any development outside the building envelope would have to be reviewed again. Glenn said ridgelines, forestlands, historic resources and recreational trails are not a concern with this application. Glenn said he thinks Section 3.2 (Open Space) is geared towards a PUD rather than a 2-lot subdivision. Glenn said he thinks the building envelope concept addresses the issues raised in Section 3.3 (Construction Design). The DRB agreed that the application conforms to the requirements of Section 3.3-1 (Lot Layout). Regarding Section 3.2-2 (Roads), Glenn noted that the subdivision is adjacent to a state road. Glenn asked Dennis where he'd like the driveway to go if someone builds a house on the new lot. Dennis said he placed two stakes near the telephone pole and he thinks that would be the best place to put it, but there is an existing access for hay equipment down by the bridge. Glenn said the state will take a look at sight distances for whoever applies for access. Shannon asked if the

DRB just needs to have frontage and the applicant gets the permit for the access. Glenn said yes. Regarding Section 3.3-3, Glenn noted there are no Class 3 or Class 4 town highways intersecting the proposed subdivision. Regarding Section 3.3-4, Glenn said stormwater management and erosion control would be the responsibility of whoever builds there. Regarding Section 3.3-5, Glenn said it's safe to assume that the subdivision will not "generate traffic that exceeds the existing capacity of adjacent...roads." Glenn said, in his opinion, the pedestrian improvements mentioned in Section 3.3-6 would not be required. Glenn asked the DRB if they would like to require that the utilities be placed underground. Phil said he thinks that would be a reasonable requirement. Shannon asked Dennis if he has applied for a state subdivision permit. Dennis said no, he wants to get the local permit first. Shannon said the state didn't used to require permits for lots larger than 10 acres, but now they do. Dennis said they would have to set at least one pole before putting the utilities underground because the power goes from his barn over toward Steve Bodley's place. Glenn said wherever they set a pole, the utility company is going to want access with a truck. Glenn suggested that the approval specify that any utilities on Parcel #2 will be underground. Shannon said that seems reasonable. Phil said he thinks the approval should specify that the DRB favors underground utilities and if someone can show that the economics are unfavorable, he'd be willing to listen. Glenn said Section 3.4-3 would not apply since the proposal is for a 2-lot subdivision. Glenn said a wastewater permit will be required by the state from the person that builds the house. Shannon said you need a permit to build or subdivide. Martha said local regulations require the applicant to comply with state regulations. Glenn said the DRB doesn't need to see a wastewater design; all the DRB needs to see is the state permit. Steve asked if that requirement could be circumvented by attaching to the sewer line. Glenn said he believes it could. Phil said the state still has to approve that. Glenn said he thinks Section 3.4-4 (Energy Conservation), 3.4-5 (Construction Mitigation) and 3.5 (Municipal, Governmental & Educational Services) don't apply in this situation. Regarding Section 3.6 (Town Plan & Existing Regulations), Glenn suggested that Dennis and Nancy get a note from the Planning Commission. Glenn said we can either close the sketch plan hearing or come up with a decision. Glenn said he thinks the DRB can come up with a sketch plan approval contingent upon: (a) a building envelope being identified, (b) the flood area being identified, and (c) a statement that the DRB favors underground utilities. Phil said he thought the floodplain would be identified at the next stage. Glenn said the DRB can make it a requirement for the final review. Shannon asked if the contours and the agricultural soils should be identified on the final plan. Dennis said his intention is to get the information so he can sell it to someone else and let them worry about the problems. Glenn explained that the Browns still have to come before the DRB one more time for review and approval of the final plan with all the requirements listed in Appendix D. Nancy asked for a copy of Appendix D. Martha said some of the requirements listed in Appendix D are not applicable. Glenn said he'd like to go through the requirements and determine which ones are applicable. Nancy asked the DRB to cross of the stuff they don't have to worry about. Phil said he thinks Dennis intends to sell the new lot to someone else and let them worry about final approval. Glenn said it's a requirement for subdivisions to go through the final review and approval. **Pete moved the approval of the sketch plan. Shannon seconded the motion. Glenn amended the motion to include the requirement that the building envelope, floodplain, and underground utilities be in the final plan, in addition to the requirements of Appendix D.** Genevieve noted that the building envelope requirement is already listed in Appendix D. Martha commented that much of Appendix D is not applicable. Glenn said the DRB wants to make sure that the building envelope, flood area, agricultural soils and underground utilities are on the final plan. David asked if there was no designated building site, would the same level of discussion be necessary. David said if someone has 100 acres and wants to divide it into 10-acre lots, it might be difficult for them to articulate where the proposed house sites and underground utilities would be. David said there's a well on the Brown's property that is associated with his property and he doesn't know where that well is located. David wondered if he should ask to have that well drawn on the plan. Glenn said

the DRB has to consider each application on its own merits and the topographical features of this lot make the DRB interested in building envelopes. Glenn said the DRB has a lot of flexibility. Phil said the question is this: Is there any good reason why this land should not be split into the two pieces proposed? Phil said his answer is no, but for the next stage, you're going to need this, this and this. Genevieve said they're also going to have to get a subdivision permit from the state even though they have no plans to build a house. Shannon said typically people subdivide with an intention to build. David said he believes there was an application to subdivide the property that he just bought into 3 or 4 lots so he's trying to educate himself. Martha noted that Gary Hillard, the former owner of David's property, withdrew his subdivision application. Glenn reread the motion. Pete said he just wants to approve the sketch plan. Genevieve said before they come in for final approval, they're going to have to have all that. Genevieve said the underground utilities are the only requirement that is not already listed in Appendix D. Phil said he has no problem approving the sketch plan as submitted because the question of underground utilities gets into more detail than we have to get into tonight. Shannon said approving the sketch plan as submitted was the original motion. Shannon said she wants to make sure that the Browns understand that even if the DRB approves the sketch plan, when the Browns come back for final approval, there are additional requirements. Nancy asked if they have to have final approval before the land is sold. Glenn said the DRB will approve the sketch plan and then schedule the final plan review and give the Browns a list of what they need to bring in for the final review. Dennis asked if they're going to have to have the permit from the state prior to final review. Glenn said no. Martha said people who are applying for a zoning permit to build can get their local permit before they get their state permit but they can't start construction until they have the state permit also, but she thinks the DRB wouldn't want to approve a final plat until the state wastewater permit has been issued. Phil said he wouldn't want to grant final approval without the state permit unless the approval was granted subject to the applicant getting the state permit. Nancy asked if the subdivision permit from the state is one of the requirements for final local approval. Phil said yes. Glenn said it doesn't say that anywhere in the subdivision regulations. Shannon said you can't subdivide without a state permit. Nancy asked the DRB to let them know who they need to get in touch with. Shannon said she thinks the DRB could approve the mylar with a contingency regarding the state permit. Glenn agreed that final local approval should be contingent on state approval. Martha read Section 2.3-1(E) regarding Action on Sketch Plan which just requires a written determination including the granting or denial of any requested waivers and recommendations for changes in subsequent submissions. Martha said it doesn't appear that the DRB needs a motion to approve the sketch plan, but they do need a motion to grant or deny the waiver of the preliminary review, and they need to decide what the Browns need to bring back for the final review. **Genevieve made a motion to waive preliminary review. Phil seconded the motion, which passed unanimously.** The DRB went through Appendix D and crossed out the requirements that are not applicable in this situation. Regarding "existing covenants and/or deed restrictions," Glenn said if there is anything mentioned in Dennis's deed about the well that serves David Jaacks property, it should be noted. Phil said any restrictions should be noted. Dennis said the well is on Parcel #1, which is not for sale. Phil said then it's not an issue. **Phil made a motion to approve the sketch plan and advise the applicant that the items that have not been crossed off the list of requirements in Appendix D will be required for final review and that the DRB has waived preliminary review. Shannon seconded the motion, which passed unanimously.** Nancy asked if there is a time limit on applying for final approval. Genevieve said within six months. Glenn said when the Browns are comfortable that they have all the required information, the DRB will schedule final review. Dennis asked where he gets the mylar survey map. Glenn said that's something that Bob Farnsworth would do.

4. Discuss possible alternate DRB members – Glenn said the three people that were on everybody's list of potential alternates are Jane Hoisington, Bruce Sahler and Liz Weber. Glenn said, if the DRB agrees, he will contact them and ask them if they are interested.

5. Minutes: September 22, 2009 – **Shannon made a motion to approve the minutes of September 22, 2009 as modified to clarify the “additional change” referred to in item #3. Phil seconded the motion, which passed with Glenn and Genevieve abstaining.**
6. Other Business - None
7. Adjourn – **John made a motion to adjourn at 9:15 PM. Genevieve seconded the motion, which passed unanimously.**

Respectfully submitted,

Martha Harrison