



DEVELOPMENT REVIEW BOARD

MEETING MINUTES

Meeting Type: **Regular Meeting**
 Date: **Thursday, October 22, 2015**
 Time: **7:00 p.m.**
 Place: **Municipal Building Community Room**
 Address: **43 Bombardier Road, Milton, Vermont 05468-3205**
 Contact: **802.893.1186**
 Website: **miltonvt.org**

1 **1. CALL TO ORDER**

2 The Chair called the meeting to order at 7:05 p.m.

3

4 **2. ATTENDANCE**

5 **Members Present:** Bruce Jenkins, Chair; David Conley, Vice-Chair; Henry Bonges, Clerk; Clayton Forgan

6 **Members Absent:** None

7 **Staff Present:** Jeff Castle, Town Planner; Jacob Hemmerick, Acting Zoning Administrator and Planning
8 Director

9

10 **3. AGENDA REVIEW**

11 Staff stated there was a new Plat to be signed.

12

13 **4. PUBLIC FORUM**

14 None.

15

16 **5. OLD HEARINGS/BUSINESS**

17 None.

18

19 **6. NEW HEARINGS**

20 **6(A). Appeal from Decision of Zoning Administrator - Southerly Side of Route 7, LLC, Owner &**
21 **Appellant.**

22

23 The Chair read the following summary to open the hearing:

24

25 The Appellant is appealing a Notice of Violation dated September 3, 2015, and reissued September 10,
 26 2015, which states Appellant has not complied with the approved Southerberry PUD Site Plans for Phase
 27 I, Phase II and Phase IIIA, marked Final 5/24/13, 4/23/10 and 8/16/13, respectively. The Appellant
 28 maintains that the violations do not constitute a change or expansion of Use, per ZR§130(1). The subject
 29 property is located at 368 Route 7 South; described as SPAN# 13341, Tax Map 7, Parcel 14-1, contains
 30 18.56 acres, and is located within the "Checkerberry" (M4) Zoning District.

31

32 The Chair administered the Oath to Interested Persons. Representing the Owner & Appellant were William
 33 Towle, legal counsel and Registered Agent for Southerly Side of US Route 7, LLC; and William Sawyer, owner
 34 of Southerly Side of Route 7. They are hereafter referred to as "Applicant" and/or "Appellant."

35

36 The Zoning Administrator read a summary of the Violations that were noted in the "Notice of Violation" letters
 37 detailed above. These included lighting discrepancies, parking discrepancies, islands not installed according to
 38 the approved Site Plan, curbing not installed according to the approved Site Plan, amenities not installed as
 39 approved (for example, an ice machine, a covered bus stop), faded or missing parking lot striping, no top coat
 40 on the parking lot, unapproved signage, missing signage including directional road signs, and unapproved

1 outdoor storage. Staff explained that a Voluntary Compliance Letter was issued and 30 days passed with no
2 response from the Appellant. At that time the Zoning Administrator issued a Notice of Violation on September
3 3, 2015 and re-issued the Notice of Violation, with minor alterations, on September 10, 2015. Both Notices stated
4 the Violations could be cured by obtaining an approved Site Plan Amendment to reflect current conditions, or
5 by making on-site changes to match the currently approved Site Plan. On September 18, 2015, Acting Zoning
6 Administrator Jacob Hemmerick met with the Appellant's representatives, David White and Gail Henderson-
7 King of White & Burk Associates. Also present at the meeting was Gordon Winters. At this meeting it was
8 understood the Appellant wished to "stay" the Hearing and work cooperatively with the Town to resolve the
9 Violations in the meantime. Staff was supportive of this approach, but determined that they were obligated
10 under State Statute to schedule a Hearing within 60 days of the filing of the Appeal. Staff intended to
11 recommend that the DRB continue the Hearing to allow time for Staff to work with the Appellant toward a
12 solution, as the Appellant originally desired. However, shortly after informing the Appellant of the intended
13 approach, Staff received a letter from the Appellant's counsel which was interpreted to mean the Appellant
14 wished to proceed with the Appeal as normal. On September 29, 2015, the Violation was signed and recorded in
15 the Land Records by Acting Zoning Administrator Hemmerick.

16
17 William Towle, representing the Appellant, addressed the Board. The Appellant's position is that most - if not
18 all - of the noted Violations were covered by various Certificates of Occupancy (hereafter referred to as COs)
19 that were completed over the years by the Zoning Administrator (hereafter referred to as the ZA). Referencing
20 case law, the Appellant held that, when the ZA is performing an inspection for any given CO, anything plainly
21 visible during that site visit is effectively approved. Additionally, the Appellant feels that the Violations are so
22 trivial in nature that they do not constitute an expansion of Use, and felt that some were outright ridiculous. As
23 an example, the parking lot striping was referenced: although the number of spots in front of any given
24 building may not exactly match the approved Site Plan, all 166 shared parking spaces are on-site. The Appellant
25 feels that changes to the location of parking spots or striping do not constitute a material departure from the
26 Plan. In summary, the Appellant feels that the Violations consist of minor, inconsequential and non-substantive
27 disparities that were covered by previously approved COs.

28
29 The Appellant stated that he felt the Notice of Violation was retribution for taking a different case to
30 Environmental Court. He also commented on the absurdity and amount of time it would take to perform this
31 type of inspection. Staff stated that the Site Plan had come under close scrutiny due to complaints received from
32 the public. The Chair stated that the Town's Zoning Regulations address outdoor lighting and therefore the
33 Town has an obligation to uphold those regulations. The Chair asked if Staff has observed any new
34 construction or violations on the site. Staff could not attest to this. The Appellant stated that nothing has
35 changed since the applicable COs were issued.

36
37 At this time, the Appellant began delving in to specific sections of the 100+ page document they'd presented.
38 Staff interjected that they would like time to review this document, as they had not been provided with the
39 information earlier. The Appellant had previously stated that the grounds for Appeal were based on Section
40 130(1) of the Zoning Regulations. The Staff Report had been prepared based on that information, not the
41 information that was being presented at the Hearing.

42
43 Bonges commented that Staff's request was understandable. Bonges further commented that he did not
44 understand why this couldn't be fixed with an amended Site Plan and that, while a lot of the discussion thus far
45 had focused on parking, he considered some of the other Violations much more important. For example,
46 signage and curbing could be safety issues.

47
48 Staff pointed out that much of the discussion focused on what a CO actually covers - a specific building or also
49 associated common areas such as shared parking? The Appellant stated COs cover anything "plainly visible"

1 on the project site during the CO inspection. In this case, all of the Violations are fairly close to - if not actually
2 upon - the buildings themselves and therefore clearly within plain view during the inspection. Discussion
3 touched upon each of the following:

- 4
- 5 • Missing ice machine: the Appellant stated that just because something is approved doesn't mean you
6 have to build it.
- 7 • Lighting near exterior doors: the Appellant stated this was State code. The Appellant also stated that
8 the motion-activated light noted as a Violation does not exist.
- 9 • Traffic and directional signs such as "One-way" and "Do Not Enter" signs: the Appellant stated they
10 were confusing people, but none-the-less they have been re-installed as of Monday, October 19, 2015.
- 11 • Missing bus stop: the Appellant stated that the school bus is now driving through the neighborhoods
12 and picking up students at their homes; thus the bus stop was not being used.
- 13 • The potential to use phasing and incremental benchmarks for future COs, to avoid this sort of situation.
- 14

15 Conley stated that he would like to see most of the items being discussed put on a Site Plan. Discussion ensued
16 about the importance of having an accurate Site Plan on file. The Appellant agreed but only to a certain extent;
17 he stated he did not wish to undergo a complete Site Plan Amendment, as it is too cumbersome, time
18 consuming, and would require further Act 250 review.

19

20 Pamela Moreau, attorney for Gordon Winters as well as Milton Ace Hardware LLC, asked to speak regarding
21 Building 1 (Ace Hardware). Moreau stated that no Notice of Violation had been received by her client Mr.
22 Winters, but because some of the lighting Violations were on Winters' building, she wanted to address them.
23 Moreau stated that Winters was in favor of submitting an amended Site Plan to reflect the as-built conditions.
24 Moreau also expressed concern that this may be an "all or nothing" scenario, meaning there was concern that
25 the Notice of Violation could not be released until every Violation had been cured. Moreau and Winters would
26 like to resolve the issues related to Winters' building and have those specific violations removed from the Notice
27 of Violation.

28

29 Staff recommended the DRB continue the Hearing to give Staff the time to review the presented evidence and
30 determine whether or not any given Violation is still valid. The Board expressed their desire to quickly reach a
31 resolution in the best interest of all involved parties.

32

33 The Appellant and the DRB agreed to submit Addendums to the Site Plan rather than submit an Amended Site
34 Plan application. Using lighting as an example, the intent is to have an as-built, "detail" illustration of the
35 lighting on any given building, rather than amending the entire Site Plan to show each light and its location.
36 The Addendums will show the as-built locations and design of the following:

- 37 • Handicapped parking spots
- 38 • Lighting
- 39

40 The Appellant and the DRB agreed that the following would be corrected:

- 41 • The missing road signage: it has either been reinstalled (in the case of the missing Do Not Enter sign) or
42 has been ordered and will be put in place (in the case of street signs).
- 43

44 The Appellant and the DRB agreed that the following were non-consequential:

- 45 • The bus stop, as it was not being used.
- 46 • The condition of the parking lot, as the Appellant states it will be repaved in the spring of 2016. Parking
47 layout and striping will likely remain the same as it is now.
- 48 • The construction trailer, as it is on wheels and Milton's Zoning Regulations allow for one
49 unregistered/uninspected vehicle per lot.

The Appellant and the DRB agreed that should the Hearing be continued, and if all requirements are met as agreed upon, and barring any Staff findings in their review of the newly submitted materials, the Appellant could reasonably expect to have the Violation dismissed, though Bonges noted there was no absolute guarantee to this. The timeframe was discussed and agreed upon.

MOTION by Conley to CONTINUE the Hearing to November 12, 2015. SECOND by Clayton. Unanimously APPROVED.

7. OTHER BUSINESS

Staff gave a brief Staff Update and recapped the status of several projects that are in progress, including an Interim Zoning Conditional Use application scheduled for a Selectboard Hearing on November 16, 2015. There was a brief discussion regarding whether or not Public Comments are accepted at the Selectboard Hearing.

8. MINUTES

8(A). Minutes of September 10, 2015

Motion by Bonges to APPROVE the Minutes of September 10, 2015 as written; SECOND by Conley. Unanimously APPROVED.

8(B). Minutes of September 24, 2015

Motion by Bonges to APPROVE the Minutes of September 24, 2015 as written; SECOND by Conley. Unanimously APPROVED.

9. PLATS SIGNED

9(A). Clark/Hastings Boundary Line Adjustment

The Chair signed the Final Plat for the Clark/Hastings Boundary Line Adjustment at 232 Cold Spring Road.

10. DELIBERATIVE SESSION

None.

11. ADJOURNED

MOTION by Bonges to adjourn at 8:46 p.m., SECOND by Conley. Unanimously APPROVED.

Minutes approved by the Commission this _____ day of _____, 2015.

Bruce Jenkins, Chair /kt

Filed with the Town Clerk this 27th day of October, 2015