

MILTON DEVELOPMENT REVIEW BOARD PUBLIC NOTICE OF MEETING & HEARINGS

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

Bruce Jenkins

Clayton Forgan

David Conley

Henry Bonges

AGENDA

1. Call to Order
2. Attendance
3. Agenda Review
4. Public Forum

The public may attend and be heard in accordance with Vermont's Open Meeting Law (1 V.S.A. 312).

5. Old Hearings/Business

None

6. New Hearings/Business

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

7. Other Business

7(A). Staff Update

8. Approval of Minutes

8(A). Sept 10, 2015

8(B). Sept 24, 2015

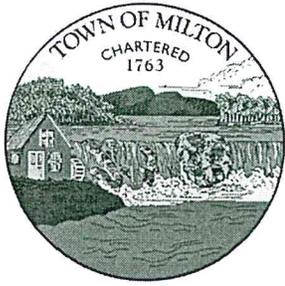
9. Possible Deliberative Session

Private session for deliberations on applications and written decisions in accordance with 1V.S.A. 312.

10. Adjournment

Jeffrey Castle, Town Planner

Filed in the Town Clerk's Office. Posted in the Municipal Building Lobby, Planning & Economic Development Department, Town's Facebook page, Town's DRB webpage, Middle Road Market, Milton Beverage, & Rene's Discount Beverage. E-mailed to the Regional Planning Commission, Burlington Free Press, Milton Independent, & LCATV.



TOWN OF MILTON
Planning & Economic Development Department
 43 Bombardier Road
 Milton, VT 05468-3205
 (802) 893-1186
 miltonvt.org

DEVELOPMENT REVIEW BOARD STAFF REPORT

Hearing Date: October 22, 2015	
Case No: 2015-27	
Application(s): Appeal of Zoning Administrator Decision	
Application Received: September 14, 2015	
Application Deemed Complete: September 17, 2015	
Staff Report Finalized: October 16, 2015	
Applicant(s): Southerly Side of Route 7, LLC c/o Ward & Babb 3069 Williston Road South Burlington, VT 05403 802-863-0307	Owner(s): Same
Engineer/License: None	Surveyor/License: None
E-911/Postal Address: 368 Route 7 South	
Tax Map, Parcel(s): 7, 14-1	
School Parcel Account Number(s) (SPAN): 13341	
Deed(s): Book 226, Page 53-4	
Existing Size: 18.56	
Zoning District(s): Checkerberry "M4"	
Comprehensive Plan Planning Area/Sub-Area: Town Core / Checkerberry	
Location: South of Route 7 at Southerberry Drive	

SUMMARY OF APPEAL

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

Comments: Jeffrey Castle, Town Planner, herein referred to as staff, has reviewed the application, materials and plans submitted and has the following comments.

Application: This matter comes before the Town of Milton Development Review Board (DRB) to appeal the decision of the Zoning Administrator to issue a violation.

Applicant(s): The application was submitted by William B. Towle on behalf of Southerly Side of US Route 7, LLC referred to hereafter as the "applicant" or "appellant".

Application Submission: The application form and associated exhibits were received by the Planning and Economic Development Department on September 14, 2015. The application and its associated materials are maintained by the Town in the application file and are available for public inspection

Application Completion: The application was deemed complete by staff on September 18, 2015.

Landowner(s): The property is owned by Southerly Side of US Route 7, LLC, a domestic limited liability company. The registered agent for this business is Ward & Babb, and the principal is William R. Sawyer Overview, Inc. William B. Towle is signatory to this application.

Project Consultant(s): William Towle of Ward & Babb Attorneys at Law

General Jurisdiction: Land development is subject to regulation by the Town of Milton pursuant to, but not limited to, the following: The Vermont Planning and Development Act (Act); The Town of Milton Zoning Regulations (ZR), effective January 5, 2015; the Town of Milton Interim Zoning Regulations (IZR) effective February 26, 2015; and The Town of Milton Subdivision Regulations (SR), effective June 28, 2010.

Specific Jurisdiction: ZR110 states, "No LAND DEVELOPMENT shall be undertaken or effected except in conformance with the applicable provisions of these Regulations. No land, building or other STRUCTURE shall be used for any purpose except as provided in these Regulations."

Appeals: ZR 1060 states, "Any interested PERSON may appeal any action or denial of action under these Regulations as provided in 24 V.S.A. § 4464 through § 4467. The Development Review Board shall act to approve or disapprove any appeal within forty-five (45) days after the close of the final public hearing. Failure to act within this time period shall be deemed approval and shall be effective on the 46th day.

Warning of Hearing: Public warning was issued by the Department of Planning and Economic Development for the hearing according to Vermont Statutes Annotated Chapter 24 §4464.

Site Visit: The DRB may schedule a site visit and recess the hearing to a subsequent meeting if on-site observation would better inform the DRB's decision.

Application Exhibits: The following exhibits were submitted with the application and attached to the Staff Report:

- Voluntary Compliance Letter dated July 30, 2015
- Notice of Violation Letter dated September 3, 2015
- Notice of Violation Letter dated September 10, 2015
- Letter from William B. Towle dated September 17, 2015
- Letter from William B. Towle dated September 23, 2015
- Letter from William B. Towle dated October 1, 2015

Staff Exhibits: The following exhibits from staff are attached to the Staff Report.

- Technical Advisory Committee (TAC) Police Review Sheet dated September 30, 2015;
- TAC Recreation Review Sheet dated September 30, 2015;

Background: The subject property has the following approvals and denials that Staff has found relevant to this appeal:

- Southerberry Phase I approved 6/27/2008: Construct a one-story 16,320 square foot retail building w/ associated warehouse space; a 1 ½ story, 3,900 square foot restaurant with 1,000 square feet of office space; a 1 ½ story, 3,900 square foot office building with additional 1,000 square feet of office space; an 80-unit, 3-story motel; and a 4-bay car wash.
 - Amendment I approved 1/22/2009: Changes to parking area, a second access off Southerberry Drive, reduction of the restaurant and office building footprints, change in square footage of retail and warehouse space.
 - Amendment II approved 4/8/2010: Removal of second floor of restaurant and second floor of office building, addition of 2 residential units on second floor of office building.
 - Amendment III approved 6/10/2010: Change of use of Building #1 into two separate retail units, and addition of 1,610 s.f. outdoor covered storage building.
 - Amendment IV approved 9/18/2010: Minor changes to the site landscaping.
 - Amendment V approved 1/13/2011: Change of use of building #3 changing 1,500 s.f. of office space to retail space.
 - Amendment VI approved 4/14/2011: Change of use of building #3, changing 1,500 s.f. of office space to 750 s.f. of bakery and 750 s.f. of storage.
 - Amendment VII approved 9/22/2011: Adding a 14' directory sign and relocating mailboxes and pull-off.
 - Amendment VIII approved 1/12/2012: Change of use of building #3, changing 1,500 s.f. of warehouse and bakery space to pizzeria.
 - Amendment XI approved 5/9/2013: Eliminate one carwash bay, the addition of curbing at the entrance of carwash, an ice machine, and three vacuum cleaners. Use of second story as office and bathroom space. Relocation of on parking space to the northwest corner of the carwash.
- Southerberry Phase II approved 9/24/2009: 34 residential townhome dwelling units with associated infrastructure.
- Southerberry Phase III approved/waivers denied 12/9/2010: Proposal to construct 52 residential townhome units with associated infrastructure.

Development Review Board Case Number 2015-27 Staff Report
Appeal - Southerly Side of Route 7 South – October 22, 2015

- Reconsideration of waivers denied 2/24/2011: Reconsideration of Condition 6 of Phase III approval, requiring no zoning permit shall be issued for Phase III until a secondary access that loops back to a public road can be provided.
- Amendment IX denied 6/28/2012: Construction of emergency access to serve Phase III and waivers requested.
- Amendment X denied 11/14/2012: Construction of a secondary access through adjacent property.
- Amendment XII approved 7/25/2013: Split Phase III into Phase IIIA and Phase IIIB. Phase IIIA to consist of 14 new residential townhomes and Phase IIIB to consist of 38 residential townhomes.
- Amendment XIII denied 7/24/2013: Split Phase IIIB into Phase IIIB and Phase IIIC. Phase IIIB to consist of 30 residential town homes and Phase IIIC to consist of 8 residential townhomes.

Permitting: The subject property has the following Permits and Certificates of Occupancy that staff has found relevant to this appeal:

- 2009-65: Fill lot per DRB approval. Filed 4/24/09. No CO applied for or approved.
- 2009-199: 1 story restaurant. Filed 10/15/09. CO approved 6/22/10
- 2009-199A: Adding 15x5 entry to restaurant, rounded corners to building. Filed 6/7/2010. CO Approved 6/22/10
- 2009-200: 1 ½ story office building. Filed 10/15/09.
- 2009-200A: 1 ½ story office building, two 1-bedroom apartments on second floor. Filed 6/29/10. CO approved 9/28/10.
- 2010-189: 6-plex with garages, porches and decks. Filed 9/23/10. CO approved 3/15/11.
- 2011-11: 1,500 s.f. of retail place. Filed 2/11/11.
- 2011-70: 6-plex. Filed 5/19/11. CO approved 6/2/11
- 2011-71: 8-plex. Filed 5/13/11. CO approved 8/4/11
- 2011-72: 8-plex. Filed 5/19/11. CO approved 10/27/11
- 2012-15: 6x14 directory sign. Filed 2/15/2012. CO approved 12/5/13
- 2012-139: Temporary fill for Phase III. Filed 7/18/12. CO approved 12/5/13
- 2012-168: Carwash. Filed 8/22/2012. CO denied.
- 2012-168A: Carwash-revisions. Filed 5/24/2012. CO approved 12/5/13
- 2013-3: Temporary sign. Filed 1/8/13
- 2013-63: Carwash sign. Filed 5/13/13. CO approved 12/5/13
- 2013-105: Temporary sign, carwash. Filed 6/17/2013. CO approved 12/5/13.
- 2013-109: Phase III. Filed 6/17/2013. Withdrawn.
- 2013-140: Phase III Infrastructure. Filed 8/15/2015. CO approved 12/5/13
- 2013-149: Multi-family housing- Phase IIIA- 6-plex and 8-plex, construction of road for Phase IIIA. Filed 8/20/2013.
- 2013-149A: Amended – Phase IIIA 6-plex. Filed 10/22/2013. CO approved 12/12/2013
- 2013-149A: Amended – Phase IIIA 8-plex. Filed 10/22/2013. CO approved 1/28/2014
- 2014-14: Commercial alteration- change of use from retail to institutional establishment. Filed 2/18/14. CO approved 4/1/2014.

Disclosure: There may be other permits and certificates associated with this large development which staff did not locate within the time frame available.

Compliance: A site inspection for all phases at the Southerberry Planned Unit Development was performed on July 13, 2015 by Amanda Pitts, Zoning Administrator, in which all aspects of the site were inspected with exception of Public Infrastructure and Landscaping. The site inspection was based on final approved site plans for Phase I, marked final on 5/24/13; Phase II, marked final on 4/23/10; and Phase IIIA, marked final on 8/16/13.

A Voluntary Compliance Letter was sent on July 30, 2015 to the appellant. In the letter, the following items were identified as potential violations of the approved site plan, but are not indicative of all violations that may be present on the site:

“Phase I

- There is no outdoor seating area as indicated on the approved final plans.
- Final approved plans show Building #1 having three units, but Administrative Amendment approved on June 22, 2011 amended this to be only two units; retail and bakery.
- Curbed islands by carwash (west) is smaller than shown on the approved final plans.
- There is no divider/curbing between Building #1’s Loading Area and the parking area.
- There is no ice machine by carwash as shown on plans.
- **Lighting:** There are multiple discrepancies in the lighting that exists on site and the lighting shown on the plan. Specifically, the building mounted lighting differs greatly for Building #1, 2, 3, 4.
 - Building #1 – Missing light along Route 7 South, eight recessed lights under covered outdoor display area (plans only show two lights), missing light in front entrance and on the corner of Unit 1B.
 - Building #2 – Entrance has two recessed lights (plans show one), side of building has two lights (not shown on plans), lights along Southerberry side (not shown on plans).
 - Building #3 – No lighting on site by residential parking area, lights by entryways for residential units (not shown on plans).
 - Building #4 – One light on site on side facing Route 7 (no light shown on plans), three lights on back side of building (plans only show one light), motion detector light on other side of building (this is not an approved light fixture per ZR820).
- **Parking:** There are multiple discrepancies in the number of parking spaces that exist on site versus the approved site plan. The pavement needs a top coat (per Roger Hunt) and the parking spaces lines are very faded in most areas. Below are specific discrepancies:
 - Five spaces instead of six in front of Ace Hardware.
 - Seven spaces in front of Rowans instead of six
 - Striping for ADA space in front of Rowans is on the right side instead of left if facing the restaurant.
 - No striping exists between Building #2 and Building #3.
 - Fifteen spaces in front of Building #5 instead of sixteen. Two ADA spaces are on site, but not shown on the approved plans. (No parking spaces, sidewalks, landscaping, ect around Building #5 since it has not been constructed).
 - Eleven spaces on side of carwash instead of ten.
 - Employee parking space in back of carwash is not delineated. No parking spaces around the back and southern side of the carwash are delineated.
- **Signage:**
 - Grand opening sign for Rowan’s is not approved.

- One Way/Exit Only signs are not displayed on east side of carwash.
- Do Not Enter Sign is not displayed on east side of carwash.
- No signs indicating parking spaces by vacuum cleaner are to be used by carwash patrons only.

Phase II:

- There is no outdoor seating area as indicated on the approved final plans.
- There is no covered bus stop as indicated on approved final plans.
- There are no street signs for Green Street.
- The outdoor lighting does not match the approved final plans. Lighting exists at entryway, garage and in the back of the unit. The approved final plans to not show all lights.

Phase IIIA

- There are no streets signs for Green Street of Sterling Drive.
- The outdoor lighting does not match the approved final plans. Lighting exists at entryway, garage and in the back of the unit. The approved final plans do not show all lights.
- There is outdoor storage consisting of a box trailer, concrete blocks and various construction materials.”

After 30-days had passed with no action, a Notice of Violation was issued by the Zoning Administrator on September 3, 2015 and reissued on September 10, 2015 with minor alternations. The notice stated “The violations may be cured by obtaining an approved site plan amendment to reflect current conditions or by making the changes on site to match approved final plans.”

On September 18, 2015, Jacob Hemmerick (then Acting Zoning Administrator) met with White and Burke Real Estate Investment Advisors, Inc. on behalf of their client, Southerly Side of US Route 7 LLC. David White and Gail Henderson King of White and Burke were present at the meeting. Gordon Winters was also present. Actions to cure the violations were discussed and it was understood that the client wished to stay the appeal proceedings to allow time for the cures mentioned above.

Staff was supportive of the stay of proceedings, but discovered that -- since the appeal had been duly filed pursuant to 24 VSA 4465 -- the Town was obligated to schedule a hearing within 60 days of the filing of the notice of appeal pursuant to 24 VSA 4468. Staff notified the registered agent of our statutory obligation to schedule this hearing, as well as Staff's intention to recommend that the DRB continue the hearing in order to allow the applicant an opportunity to take all necessary actions to cure the violations. Shortly thereafter, however, staff received the letter of October 1, 2015 from the appellant's Registered Agent and Counsel which staff interpreted to mean that the client wished to proceed forward with the violation as normal.

The Violation was officially recorded in the Municipal Land Records on September 29, 2015.

APPEAL REVIEW

The application received on September 14, 2015 states the Zoning Regulation in question as: “Section 130 of the Town of Milton Zoning Regulations and violations outlined in the July 30, 2015 correspondence from the Zoning Administrator, Amanda Pitts.”

24 VSA 4466 states the following: A notice of appeal shall be in writing and shall include the name and address of the appellant, a brief description of the property with respect to which the appeal is taken, a reference to the regulatory provisions applicable to that appeal, the relief requested by the appellant, and the alleged grounds why the requested relief is believed proper under the circumstances. (Added 2003, No. 115 (Adj. Sess.), § 106. Staff informed White and Burke and the Ward and Babb of this legal obligation, and upon a request for clarification from staff, a letter from the applicant dated September 17, 2015 states:

This appeal is relevant to allegations by the Zoning Administrator related to Phase I, II, and IIIA approved plans for Parcel 14-1 per Tax Map 7 under section 130 of the Town of Milton Zoning Regulations and 24 V.S.A. § 449(a)(1). As grounds, the appellant states the discrepancies noted by the ZA do not change or expand the use under section 130(1) of the Town of Milton Zoning Regulations, or are trivial variations from the approved plans such that no violation exists and no site plan amendment or minor amendment is required. [emphasis added]

ZR130, Applicability of Zoning Permit & Exemptions Thereto

In accordance with Section 1000 of this Ordinance, no LAND DEVELOPMENT, excavation or construction shall be started on any land parcel or STRUCTURE and no EXPANSION, ALTERATION or change of USE shall be started within any existing STRUCTURE without a Zoning Permit issued by the Zoning Administrator.

No Zoning Permit is required for the following (with the exception of development in the Special Flood Hazard Area which is regulated in Appendix A):

- (1) Routine maintenance and repairs, and structural ALTERATIONS to an existing STRUCTURE which will not result in a change or EXPANSION of USE.

"Land development" is defined by ZR1110 as:

The division of a parcel into two or more parcels, the construction, reconstruction, conversion, structural ALTERATION, relocation or enlargement of any building or other STRUCTURE, or of any mining, excavation or landfill, and any change in the USE of any building or other STRUCTURE, or land, or extension of USE of land.

"Alterations" is defined by ZR1110 as:

Structural changes, rearrangement, change of location, or addition to a STRUCTURE other than repairs and modification in building equipment.

"Structure" is defined by ZR1110 as:

Anything constructed or erected, the use of which requires location on or within the ground or attachment to something having location on or within the ground. For the purposes of these regulations, MOBILE/MANUFACTURED HOMES shall be considered STRUCTURES. For the purposes of these regulations, a driveway, parking area, sidewalk or bicycle path, sign, bicycle rack, recreational vehicle, trailer or other vehicle on wheels not regularly used for the manufactured purpose, private septic system or well is not considered a structure. For the definition of STRUCTURE in the Special Flood Hazard Area, see Appendix A, Section X1.

"Expansion" is defined by ZR1110 as:

Any change to a STRUCTURE which results in any increase in the GROSS FLOOR AREA of the STRUCTURE. Any change to a USE which results in an increase in area devoted to a USE or an intensification of the USE.

"Use" is defined by ZR1110 as:

The specific purpose for which land or a building, or unit thereof, is designed, arranged, or intended; or for which it is or may be occupied or intended. The term "permitted USE" or its equivalent shall not be deemed to include any NON-CONFORMING USE.

Staff finds that the significant discrepancies from the site plan are not exempt from the issuance of a Zoning Permit according to ZR103(1).

Many of the discrepancies noted above refer to new development (such as the common area development of Phase I) -- for which permits appear never to have been applied for or approved. These violations do not constitute trivial modifications to *existing* structures.

Nevertheless, Staff holds that any alterations which have occurred to the existing, permitted structures post- Certification of Occupancy/Compliance (other than exempted replacement, repairs and equipment medications) do --in fact -- result in a change that would not be exempted by regulations or the conditions of a site plan approval. The exemption of ZR103(1) is not intended to effectually undermine the regulatory intent of Site Plan review, but rather to allow repairs and replacements in accordance with approvals, without having to go to the trouble of a permit. The scope of the variations on this site goes beyond the trivial and exceeds the scope of this exemption.

Most importantly, land development on the site in question has repeatedly been the subject of Site Plan review, and all changes to elements shown on the approved plan are subject to Site Plan review per the conditions of approval stated below.

Conditions of Site Plan Approval: The conditions of approval for "Phase I Final Plan and Site Plan Amendment XI" for Final Plans marked final 5/24/13, "Phase II Final Plan and Site Plan" for plans marked final 4/23/10, and "Phase III Final Plan Amendment XII" for plans marked final 8/16/13 all state:

A. This project shall be completed, operated, and maintained as set forth in the plans and exhibits as approved by the Development Review Board and on file in the Department of Planning and Economic Development, and in accordance with the conditions of this approval.

B. No changes, erasures, modifications, or revisions, other than those required by this decision, shall be made on the plans after approval unless revised plans are first submitted to the Department of Planning and Economic Development for approval.

Staff holds that the appellant has not fulfilled these conditions of DRB's approvals; the project has not been completed, operated and maintained as set forth in the plans and exhibits.

ZR170 Site Plan Review:

The following requirements and reviews shall be fulfilled by all applicants before a Zoning Permit is granted, unless specifically exempted in this Ordinance:

- (1) Sewage Disposal - Section 570
- (2) Roads and Drives - Section 590
- (3) Site Plan Review - Section 800

ZR170 requires Site Plan review prior to a Zoning Permit.

ZR800 Site Plan Review:

Site Plan approval, granted in accordance with this Section by the Milton Development Review Board, shall be required before a Zoning Permit is issued for any USE in any district with the exception of SINGLE FAMILY DWELLINGS, DUPLEXES, and TRIPLEX - OWNER OCCUPIED on single lots, ACCESSORY residential STRUCTURES, and all agricultural USES.

A Zoning Permit is required for a Mixed-Use PUD use, and this project is a Mixed-Use PUD. Site Plan approval, therefore, is required prior to a Zoning Permit.

ZR801.2 Minor Amendment Definition:

Minor amendments to Site Plans are defined as:

- (a) A modification of an approved Site Plan, which does not involve changes to curb cuts or traffic circulation patterns. Such modifications shall not result in an increase of more than 10% or 5,000 square feet in a buildings gross floor area or total lot coverage.
- (c) Minor exterior changes to a building's façade, such as a vestibule, awning, door or window change.
- (e) Exterior changes to a building which do not involve an increase in the total gross floor area of the building.

Staff finds that exterior changes not shown in the approved site plan, even minor changes to a building's facade and even those that do not result in an increase in the total gross floor area of a building require a minor site plan amendment. Further, changes to traffic circulation, parking, and curbing require a site plan amendment and review by the Development Review Board.

Technical Advisory Committee: The TAC members did not have comments on this application.

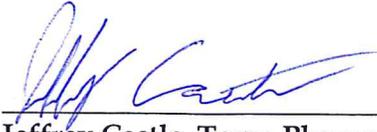
CONCLUDING REVIEW

Pursuant to 24VSA4464, THE QUESTION FOR THE DRB IN THIS MATTER IS WHETHER OR NOT TO GRANT THE RELIEF REQUESTED BY THE APPELLANT ON THE STATED GROUNDS AND REGULATORY PROVISION REFERENCED: THAT THE VIOLATIONS IDENTIFIED BY THE ZONING ADMINISTRATOR AND NOTED ABOVE ARE EXEMPT FROM SITE PLAN REVIEW AND ZONING PERMIT APPROVAL ACCORDING TO 130(1).

STAFF RECOMMENDATION

Planning Staff finds that the violations should be upheld and recommends that the DRB deny the Appeal of the Notice of Violation of the Zoning Administrator for the property is located at 368 Route 7 South; described as SPAN 13341, Tax Map 7, Parcel 14-1.

Respectfully Submitted:



Jeffrey Castle, Town Planner

ATTACHMENTS:

- Voluntary Compliance Letter dated July 30, 2015
- Notice of Violation Letter dated September 3, 2015
- Notice of Violation Letter dated September 10, 2015
- Letter from William B. Towle dated September 17, 2015
- Letter from William B. Towle dated September 23, 2015
- Letter from William B. Towle dated October 1, 2015
- Technical Advisory Committee (TAC) Police Review Sheet dated September 30, 2015;
- TAC Recreation Review Sheet dated September 30, 2015;

COPIES TO:

- Applicant(s)



TOWN OF MILTON, VERMONT 05468-3205

THE DEPARTMENT OF PLANNING AND ECONOMIC DEVELOPMENT
43 BOMBARDIER ROAD • 802-893-1186 • FAX: 893-1005

July 30, 2015

Southerly Side of Route 7 LLC
PO Box 69
Milton, VT 05468

I performed a site inspection for all phases at the Southerberry Planned Unit Development on July 13, 2015. I inspected all aspects of the site with the exception of Public Infrastructure and Landscaping. I performed the site inspections based on the following final approved site plans for each phase; Phase I marked final on 5/24/13, Phase II marked final on 4/23/10, and Phase IIIA marked final 8/16/13. The following items are potential violations of the approved site plan, but are not indicative of all violations that may be on the site. If the following items are not addressed or corrected within 30 days, a separate violation for each phase will be issued.

Phase I

- There is no outdoor seating area as indicated on the approved final plans.
- Final approved plans show Building #1 having three units, but the Administrative Amendment approved on June 22, 2011 amended this to be only two units; retail and bakery.
- Curbed island by carwash (west) is smaller than shown on the approved final plans.
- There is no divider/curbing between Building #1's Loading Area and the parking area.
- There is no ice machine by carwash as shown on plans.
- **Lighting:** There are multiple discrepancies in the lighting that exists on site and the lighting shown on the plan. Specifically, the building mounted lighting differs greatly for Building #1, 2, 3 & 4.
 - Building# 1 – Missing light along Route 7 South, eight recessed lights under covered outdoor display area (plans only show two lights), missing light in front entrance and on the corner of Unit 1B.
 - Building# 2 – Entrance has two recessed lights (plans show one), side of building has two lights (not shown on plans), lights along Southerberry side (not shown on plans)
 - Building # 3 – No lighting on site by residential parking area, lights by entryways for residential units (not shown on plans)
 - Building # 4 – One light on site on side facing Route 7 (no light shown on plans), three lights on back side of building (plans only show one light), motion detector light on other side of building (this is not an approved light fixture per ZR-820).

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Planning & Economic Development
Milton, Vermont

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- **Parking:** There are multiple discrepancies in the number of parking spaces that exist on site versus the approved site plan. The pavement needs a top coat (per Roger Hunt) and the parking spaces lines are very faded in most areas. Below are specific discrepancies:
 - Five spaces instead of six in front of Ace Hardware.
 - Seven spaces in front of Rowans instead of six.
 - Striping for ADA space in front of Rowans is on the right instead of left if facing the restaurant.
 - No striping exists between Building #2 and Building #3.
 - Fifteen spaces in front of Building #5 instead of sixteen. Two ADA spaces are on site, but not shown on the approved plans. (No parking spaces, sidewalks, landscaping, etc around Building #5 since it has not been constructed).
 - Eleven spaces on side of carwash instead of ten.
 - Employee parking space in back of carwash is not delineated. No parking spaces around the back and southern side of the carwash are delineated.
- **Signage:**
 - Grand opening sign for Rowan's is not approved.
 - One Way/ Exit Only signs are not displayed on east side of carwash.
 - Do Not Enter Sign is not displayed on east side of carwash.
 - No signs indicating parking spaces by vacuum cleaner are to be used by carwash patrons only.

Phase II

- There is no outdoor seating area as indicated on the approved final plans.
- There is no covered bus stop as indicated on the approved final plans.
- There are no street signs for Green Street.
- The outdoor lighting does not match the approved final plans. Lighting exists at entryway, garage and in the back of the unit. The approved final plans do not show all lights.

Phase IIIA

- There are no street signs for Green Street or Sterling Drive.
- The outdoor lighting does not match the approved final plans. Lighting exists at entryway, garage and in the back of the unit. The approved final plans do not show all lights.
- There is outdoor storage consisting of a box trailer, concrete blocks, and various construction materials.

If you have any questions, please contact the Department of Planning and Economic Development at 802-893-1186 or apitts@town.milton.vt.us

Sincerely, -


Amanda Pitts
Zoning Administrator

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Planning & Economic Development
Milton, Vermont

TOWN OF MILTON, VERMONT 05468-3205

PLANNING & ECONOMIC DEVELOPMENT OFFICE • 43 BOMBARDIER ROAD •
802-893-1186 • FAX: 893-1005

September 3, 2015

Southerly Side of US Route 7 LLC
PO Box 69
Milton, VT 05468

Notice of Violation

To Whom It May Concern:

It has come to my attention that the violation(s) in the attached letter exist at Southerberry Drive, Identified as Tax Map 7, Parcel 14-1:

This constitutes violations of the Final Plans for the Phase I marked final 5/24/13, Phase II marked final 4/23/10, and Phase IIIA marked final 8/16/13.

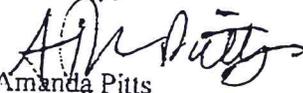
You have an opportunity to correct this violation within seven days (7) days from receipt of this certified letter 70156 0640 0007 0550 1720. The violations may be lifted by an approved site plan amendment to reflect current conditions and/or making the changes on site to match approved final plans.

You are not entitled to an additional warning for a violation occurring after the seven (7) days. Failure to comply with this opportunity will result in the Town of Milton taking whatever actions necessary to remedy this situation, including but not limited to injunctive and/or penalty actions by the Town of Milton. Vermont State Statutes, Title 24, Chapter 117, Subsection 4451 provides for fines up to two hundred (\$200) dollars per day for each violation.

You have the right to appeal this decision of the Zoning Administrator to the Milton Development Review Board by filing an appeal with the secretary of the Board within fifteen (15) days from receipt of this certified letter. The Milton Development Review Board is your exclusive remedy in this matter.

If you have any questions, or if I may be of further assistance, please contact me at (802) 893-1186. All applications can be found online at www.miltonvt.org/.

Sincerely,


Amanda Pitts
Zoning Administrator

RECEIVED

SEP 14 2015

Planning & Economic Development
Milton, Vermont

1

TOWN OF MILTON, VERMONT 05468-3205

PLANNING & ECONOMIC DEVELOPMENT OFFICE • 43 BOMBARDIER ROAD •
802-893-1186 • FAX: 893-1005

September 10, 2015

Southerly Side of US Route 7 LLC
c/o Ward & Babb, Registered Agent
3069 Williston Road
South Burlington, VT 05403

Notice of Violation

To Whom It May Concern:

It has come to my attention that you have commenced land development on the property located at Southerberry Drive, without obtaining a zoning permit from the Town of Milton as required by Section 130 of the Town of Milton Zoning Regulations and 24 V.S.A. section 4449(a)(1). Specifically, you have initiated the violation(s) described in the attached letter at Southerberry Drive, Identified as Tax Map 7, Parcel 14-1, without a zoning permit.

The subject property does not comply with the Final Plans for the Phase I marked final 5/24/13, Phase II marked final 4/23/10, and Phase IIIA marked final 8/16/13.

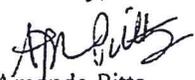
You have an opportunity to correct these violations within seven (7) days from the date of this certified letter 7015 0640 0007 0550 1744. The violations may be cured by obtaining an approved site plan amendment to reflect current conditions or by making the changes on site to match approved final plans.

You are not entitled to an additional warning if you repeat these violations after the seven (7) day notice period and within the next succeeding 12 months. If you do not accomplish the actions directed in this letter within seven (7) days of the date of this letter, the Town of Milton may pursue this matter in court. In such court proceedings, the Town of Milton may seek appropriate injunctive relief and fines of up to \$200 per day for each day that each violation continues beyond the seven (7) day period provided in this letter

You have the right to appeal this decision of the Zoning Administrator to the Milton Development Review Board by filing a written notice of appeal and the required fee with the secretary of the Board within fifteen (15) days from the date of this certified letter. Failure to file a timely appeal will render this notice of violation the final decision on the violations addressed in this notice.

If you have any questions, or if I may be of further assistance, please contact me at (802) 893-1186. All applications can be found online at www.miltonvt.org/.

Sincerely,


Amanda Pitts
Zoning Administrator

RECEIVED

SEP 14 2015

Planning & Economic Development
Milton, Vermont

WARD & BABB
ATTORNEYS-AT-LAW
A Trade Name for a Professional Corporation

EUGENE J. WARD, III
GUY L. BABB
WILLIAM B. TOWLE
CYNTHIA R. AMRHEIN (VT, NY)
AMBER L. THIBEAULT

REGISTERED LAW CLERKS:
HETHBA FATNASSI
CATHERINE M. COLT
DAVID R. WEIGEL

Sender's E-mail: fatnassi@wardandbabb.com

CLOSING COORDINATOR:
DEBRA DENNY

LEGAL ASSISTANTS:
TIFFANY R. PEZZIMENTI
ELAINE M. SARKISIAN

PARALEGAL:
JO RICHER

September 11, 2015

Town of Milton
Development Review Board
ATTN: Henry Bonges, Clerk
43 Bombardier Road
Milton, VT 05468

**RE: Appeal of Notice of Violation
Southerly Side of US Route 7, LLC**

Dear Mr. Bonges:

Please be advised that this office represents Southerly Side of US Route 7, LLC relative to the Notice of Violation issued by Amanda Pitts, Zoning Administrator on September 3, 2015 and reissued September 10, 2015. Enclosed please find Southerly Side of US Route 7, LLC's appeal of said Notice of Violation. Please accept this letter as our notice of appeal. Also enclosed please find our check number 12704, in the amount of \$259.00, which represents the \$150.00 Appeal Fee, \$75.00 Warning Fee, \$10.00 Recording Fee, and \$24.00 for abutters (\$2.00 each for 12 abutters).

Please contact this office if there is any issue with this Appeal. If we have the incorrect number of abutters, please notify me immediately and I will correct any error.

Sincerely,


William B. Towle

Encs.

H:\Sta_38\Client Docs\Sawyer William\Southerly Zoning Violations\General\150911 Letter to Dev. Review Board.wpd

USPS: 9114 9011 2308 6002 8554 09

cc: Amanda Pitts
Client

RECEIVED

SEP 14 2015

Planning & Economic Development
Milton, Vermont

WARD & BABB
ATTORNEYS-AT-LAW
A Trade Name for a Professional Corporation

EUGENE J. WARD, III
GUY L. BABB
WILLIAM B. TOWLE
CYNTHIA R. AMRHEIN (VT, NY)
AMBER L. THIBEAULT

REGISTERED LAW CLERKS:
HETHBA FATNASSI
CATHERINE M. COLT
DAVID R. WEIGEL

Sender's E-mail: towle@wardandbabb.com

CLOSING COORDINATOR:
DEBRA DENNY

LEGAL ASSISTANTS:
TIFFANY R. PEZZIMENTI
ELAINE M. SARKISIAN

PARALEGAL:
JO RICHER

September 23, 2015

Town of Milton
Development Review Board
ATTN: Henry Bonges, Clerk
43 Bombardier Road
Milton, VT 05468

**RE: Appeal of Notice of Violation
Southerly Side of US Route 7, LLC**

Dear Mr. Bonges:

I write regarding the pending appeal of Southerly Side of US Route 7, relative to the Notices of Violation issued by Amanda Pitts, Zoning Administrator, on September 3, 2015 and reissued September 10, 2015. According to correspondence received by this office from Town Planner, Jeff Castle, this matter is scheduled for a Hearing on October 22, 2015.

In light of the ongoing discussions occurring between our client and the town, we request a postponement of the October 22, 2015 Hearing to better afford the parties time to conduct further discussions. Please contact this office with any questions regarding this request.

Sincerely,



William B. Towle

cc: Amanda Pitts, ZA
Jeff Castle, Town Planner

H:\Sta_38\Clerk Docs\Sawyer William\Southerly Zoning Violation\General\150923 Letter Requesting a Stay of Hearing.wpd

RECEIVED

SEP 28 2015

Planning & Economic Development
Milton, Vermont

WARD & BABB
ATTORNEYS-AT-LAW
A Trade Name for a Professional Corporation

EUGENE J. WARD, III
GUY L. BABB
WILLIAM B. TOWLE
CYNTHIA R. AMRHEIN (VT, NY)
AMBER L. THIBEAULT

REGISTERED LAW CLERKS:
HETHBA FATNASSI
CATHERINE M. COLT
DAVID R. WEIGEL

Sender's E-mail: towle@wardandbabb.com

CLOSING COORDINATOR:
DEBRA DENNY

LEGAL ASSISTANTS:
TIFFANY R. PEZZIMENTI
ELAINE M. SARKISIAN

PARALEGAL:
JO RICHER

October 1, 2015

Town of Milton
Development Review Board
ATTN: Henry Bonges, Clerk
43 Bombardier Road
Milton, VT 05468

**RE: Appeal of Notice of Violation
Southerly Side of US Route 7, LLC**

Dear Mr. Bonges:

Please be advised that this office represents Southerly Side of US Route 7, LLC relative to its appeal of the Notices of Violation issued by Amanda Pitts, Zoning Administrator, on September 3, 2015 and reissued September 10, 2015. According to correspondence received by this office from Town Planner, Jeff Castle, this matter is scheduled for a Hearing on October 22, 2015. In a letter dated September 23, 2015, this office requested that the Hearing be continued due to the ongoing discussions between our client and the Town. We were informed that the appeal would remain scheduled for October 22, 2015, but that in light of ongoing discussions and our request to continue the Hearing, the Development Review Board could continue the matter.

Please accept this correspondence as our client's withdrawal of the request to continue the October 22, 2015 Hearing. Our client now wishes to proceed with the Hearing as scheduled. Please contact me with any questions about this matter.

Sincerely,



William B. Towle

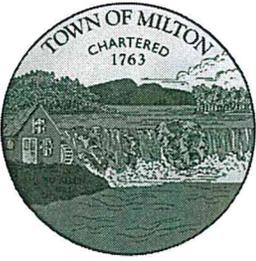
RECEIVED

OCT 06 2015

cc: Amanda Pitts, ZA
Jeff Castle, Town Planner

H:\Sta_38151001 Letter to DRB Proceed with Hearing.wpd

Planning & Economic Development
Milton, Vermont



TOWN OF MILTON
Planning & Economic Development Department
43 Bombardier Road
Milton, Vermont 05468-3205
802.893.1186
miltonvt.org

TECHNICAL ADVISORY COMMITTEE REVIEW SHEET

Development Review Board Meeting of Thursday, October 22, 2015

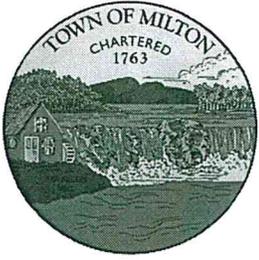
Date of Review: 09.30.15

Department: Police

TAC Member: BRET VAN NOORDT

Appeal from Decision of Zoning Administrator - Southerly Side of Route 7, LLC, Owner & Appellant.

NO COMMENTS or CONCERNS.



TOWN OF MILTON
Planning & Economic Development Department
43 Bombardier Road
Milton, Vermont 05468-3205
802.893.1186
miltonvt.org

TECHNICAL ADVISORY COMMITTEE REVIEW SHEET

Development Review Board Meeting of Thursday, October 22, 2015

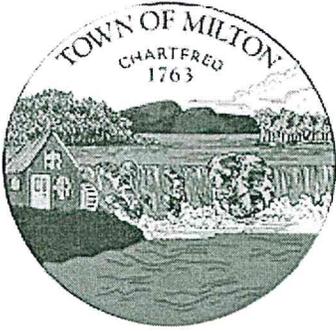
Date of Review: 9-30-15

Department: Recreation

TAC Member: Aym Buckeshead

Appeal from Decision of Zoning Administrator - Southerly Side of Route 7, LLC, Owner & Appellant.

No comments re: Recreation



DEVELOPMENT REVIEW BOARD MEETING MINUTES

Meeting Type: **Regular Meeting**
Date: **Thursday, September 10, 2015**
Time: **7:00 p.m.**
Place: **Fire Department Meeting 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 7:00 p.m.
3

4 **2. ATTENDANCE**

5 **Members Present:** Bruce Jenkins, Chair; Henry Bonges, Clerk; Clayton Forgan

6 **Members Absent:** David Conley, Vice-Chair

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

9 **3. AGENDA REVIEW**

10 There were no proposed changes to the Agenda.
11

12 **4. PUBLIC FORUM**

13 None.
14

15 **5. OLD HEARINGS/BUSINESS**

16 None.
17

18 **6. PUBLIC HEARINGS**

19 **6(A). Conditional Use Application - 69 McMullen Road - Robert & Shirley Paradise, Owners/Applicants.**

20 The Chair read the following summary to open the hearing:
21

22 The Applicants are requesting an after-the-fact Conditional Use approval from the Development
23 Review Board according to Sections 363 and 500 of the Town of Milton Zoning Regulations. The
24 proposal would add an accessory, agricultural use (to raise swine within an existing barn and pen) to
25 the existing principal, single family dwelling use. The proposed use has not been found to be an
26 Accepted Agricultural Practice exempt from local regulation according to Title 24 Vermont Statutes
27 Annotated, Chapter 117, Section 4413(d). The subject property is located at 69 McMullen Road,
28 described as SPAN #13147, Tax Map 29, Parcel 47-1. The property contains a total of 1.09 acres and is
29 located within the "Beaverbrook Residential" (R7) Zoning District, the Town Core Planning Area,
30 and the Eastern Transition Sub-Area.
31

32 The Chair administered the oath to Interested Persons. The Applicants represented themselves at the
33 hearing and are hereafter referred to as the Applicant(s).
34

35 Staff noted that Michael Boisjoli, a nearby property owner, submitted a written statement via email that was
36 provided to the DRB and added to the file. Jenkins replied that Boisjoli's statement would be read aloud during
37 the hearing.
38

39 In response to the following numbered items in the Staff Report:

40 1. The Applicant agreed to obtain any necessary Zoning Permits and associated Certificates of Compliance.

- 1 2. The Applicant agreed that the DRB may attach additional conditions and safeguards as it deems
2 necessary.
- 3 3. Discussion began regarding ZR850.7 and the Gross Floor Area involved. Staff and the Applicant
4 confirmed the dimensions of the pig pen as 1,024 square feet. Because the principal structure is listed as
5 3,536 square feet on the Assessor's Lister Card, the Applicant is in violation of this regulation. The
6 Applicant confirmed that he would have to make the pen smaller to meet this requirement and agreed to
7 this condition.
- 8 4. This numbered item pertained to noxious or offensive odor, dust, noise, smoke, gas, fumes and hazards
9 to public health and safety. Therefore Jenkins read aloud the statement submitted by Michael Boisjoli of
10 29 Birch Lane, as it contains complaints relating to these conditions. Boisjoli vehemently opposes the
11 proposed conditional use and asked that his statement be read aloud, as he was unable to attend the
12 hearing. This statement is kept on file in the Conditional Use application file in the Office of Planning &
13 Economic Development. Staff interjected that there were a couple of statements in Boisjoli's statement
14 they would like to correct: first, the Zoning Administrator has taken action and issued a Violation that
15 has been recorded in the land records. Second, in regard to an after-the-fact permit, the Fee Schedule
16 explicitly states if a formal violation notice has been issued, a violation penalty of two times the normal
17 fee will be charged. Jenkins inquired if the Applicant had received any direct complaints from neighbors
18 and the Applicant replied no. The Applicants were only made aware of the issue when they received a
19 Voluntary Compliance Letter from the Town. Furthermore, the only person that has been out to view
20 the site was David Trombley from the VT Department of Agriculture, due to Boisjoli's complaint.
21 Jenkins asked about the odor. The Applicant advised that they noticed an odor for a brief time this past
22 spring after days of heavy rain, and they were unable to immediately address it. As soon as was
23 practicable, it was cleaned up. Jenkins asked how often the pen is cleaned; the Applicants replied that
24 cleaning and application of sand and hay is done on a daily basis. Jenkins inquired as to the number of
25 animals the Applicants are keeping; the Applicants confirmed there are four pigs and eleven chickens.
- 26 5. Jenkins read the following from the Staff Report, "If approved, the Conditional Use approval shall expire
27 one year from the date of issue (unless extended by the Zoning Administrator)." Silence followed, at
28 which time Jenkins asked if anyone had any comments. At this time neighbors of the Applicants began
29 to address the DRB. The following neighbors spoke: Leslie Butler of 25 Birch Lane, Robin Perry of 4
30 Hummingbird Lane Unit 101, Laura Putnam of 4 Hummingbird Lane Unit 102, Ismet and Jennifer
31 Hasanovich of 12 Hummingbird Lane Unit 102, Chris Gillespie of 8 Hummingbird Lane Unit 101 and
32 Tom McCoy of 25 Birch Lane. All expressed nearly identical concerns and commented that the odor is
33 constant, foul, and especially bad in the morning; they cannot use their property, yards and pools; they
34 cannot have windows open; there is an extreme amount of green flies in the area and in their homes; and
35 there is a loud banging noise from the pen door slamming shut, a sound similar to a gunshot and
36 occurring at a rate of 5-6 times per minute. Those unaware that there were pigs in the area thought they
37 had septic problems because the smell was so bad, and one neighbor actually contacted the natural gas
38 company, thinking that perhaps there was a gas leak. McCoy of 25 Birch Lane stated the Zoning
39 Administrator had, in fact, visited the site and Staff clarified that the Zoning Administrator had observed
40 the site from an adjoining property in response to the complaints that had been received, in order to be
41 able to issue a Voluntary Compliance Letter. McCoy also pointed out that pigs carry diseases such as
42 MRSA, e. coli and parasitic worms. McCoy is concerned about the spread of disease especially to
43 children, particularly when runoff occurs after a rainstorm, for example. The DRB considered a site visit.
44 The Applicant, Staff and the DRB agreed on the next day, September 11, 2015 at 4 p.m. to perform a site
45 visit.

47 General discussion then ensued between the neighbors and the DRB, with the neighbors being upset that the
48 pigs could even *potentially* be allowed. Several of the neighbors commenting are new homeowners and stated
49 that they thought they were purchasing a home in a residential neighborhood, not next to a pig farm. The

1 neighbors were generally upset with the proceedings and that this is an after the fact permit, which they felt
2 should not be allowed. The neighbors asked about a variety of hypothetical situations, which the DRB did not
3 feel they could answer without further information; thus the need for a site visit. The slaughtering of the pigs
4 was brought up and Jenkins stated they were not there to discuss that, only to discuss the Conditional Use
5 application. The neighbors were generally frustrated with some commenting that a decision had already been
6 made and that they had wasted their time attending the hearing.
7

8 MOTION by Forgan to postpone a decision and continue the hearing on September 24, 2015. SECOND by
9 Bonges. Unanimously APPROVED.
10

11 7. OTHER BUSINESS

12 7(A). Staff Update

13 Staff gave a brief Staff Update on Planning and Economic Development Department activities. Work
14 continues on the Municipal Planning Grant, as well as wetland permitting. Staff has been very busy with
15 follow up on larger projects and applications. The Planning Commission is moving forward in terms of
16 policy goals. Questions were asked and answered.

17 7(B). Capital Improvement Plan Recommendations

18 Staff asked that if the DRB had any items that they thought should be included in the Capital Improvement
19 Plan. Jenkins stated he would like to see more sidewalk connections occurring in the center of Town.
20

21 8. MINUTES

22 MOTION by Bonges to approve the Minutes of August 27, 2015 as presented, SECOND by Forgan.
23 Unanimously APPROVED.
24

25 9. DELIBERATIVE SESSION

26 MOTION by Clayton to enter Deliberative session at 7:59 p.m., SECOND by Bonges. Unanimously
27 APPROVED.
28

29 Decision(s) Signed:

30 9(A). Minor Conventional Subdivision Sketch Plan & Variance -- 947- 951 US Route 7 South -- General 31 Stannard House Committee /Miller Realty Group LLP (APPROVED)

32 Bruce Jenkins, Chair yea/nay/abstain/absent/recusal
33 Dave Conley, Vice-Chair: yea/nay/abstain/absent/recusal
34 Henry Bonges, Clerk: yea/nay/abstain/absent/recusal
35 Clayton Forgan: yea/nay/abstain/absent/recusal.
36

37 9(B). Boundary Line Adjustment- Cold Spring Road 171 & 232 - Robert & Carolyn Clark and Molly M. 38 Hastings Revocable Trust c/o Brent & Molly Hastings (APPROVED)

39 Bruce Jenkins, Chair yea/nay/abstain/absent/recusal
40 Dave Conley, Vice-Chair: yea/nay/abstain/absent/recusal
41 Henry Bonges, Clerk: yea/nay/abstain/absent/recusal
42 Clayton Forgan: yea/nay/abstain/absent/recusal.
43

44 9(C). Site Plan Amendment II Application - 121 Gonyeau Road - NG Advantage /Clean Energy 45 (APPROVED)

46 Bruce Jenkins, Chair yea/nay/abstain/absent/recusal
47 Dave Conley, Vice-Chair: yea/nay/abstain/absent/recusal
48 Henry Bonges, Clerk: yea/nay/abstain/absent/recusal
49 Clayton Forgan: yea/nay/abstain/absent/recusal.
50

1 MOTION by Bonges to exit Deliberative session at 8:11 p.m., SECOND by Forgan. Unanimously
2 APPROVED.

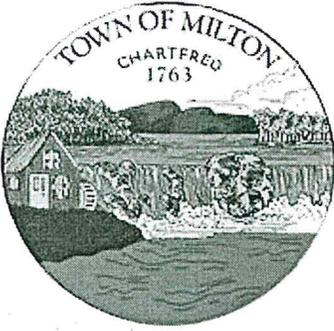
3
4 **10. ADJOURNED**

5 MOTION by Bonges to adjourn 8:12 p.m., SECOND by Forgan. Unanimously APPROVED.

6
7 **Minutes approved by the Commission this _____ day of _____, 2015.**

8
9
10 _____
11 **Bruce Jenkins, Vice-Chair & Acting Chair** /kt

12
13 **Filed with the Town Clerk this _____ day of _____, 2015**



DEVELOPMENT REVIEW BOARD MEETING MINUTES

Meeting Type: Regular Meeting
Date: Thursday, September 24, 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 7:02 p.m.
3

4 **2. ATTENDANCE**

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

6 **Members Absent:** Clayton Forgan

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

9 **3. AGENDA REVIEW**

10 None.
11

12 **4. PUBLIC FORUM**

13 None.
14

15 **5. OLD HEARINGS/BUSINESS**

16
17 *The following Hearing was continued from 9/10/2015 in order to conduct a site visit on 9/11/2015:*
18

19 **5(A). Conditional Use Application - 69 McMullen Road - Robert & Shirley Paradise, Owners/Applicants.**
20

21 The Chair read the following summary to open the hearing:
22

23 The Applicants are requesting an after-the-fact Conditional Use approval from the Development
24 Review Board according to Sections 363 and 500 of the Town of Milton Zoning Regulations. The
25 proposal would add an accessory, agricultural use (to raise swine within an existing barn and pen) to
26 the existing principal, single family dwelling use. The proposed use has not been found to be an
27 Accepted Agricultural Practice exempt from local regulation according to Title 24 Vermont Statutes
28 Annotated, Chapter 117, Section 4413(d). The subject property is located at 69 McMullen Road,
29 described as SPAN #13147, Tax Map 29, Parcel 47-1. The property contains a total of 1.09 acres and is
30 located within the "Beaverbrook Residential" (R7) Zoning District, the Town Core Planning Area,
31 and the Eastern Transition Sub-Area.
32

33 The Chair explained that the hearing was continued to conduct a site visit. The Chair administered the oath
34 to Interested Persons. The Applicants represented themselves at the hearing and are hereafter referred to as
35 the Applicant(s).
36

37 Bonges remarked that the site visit was helpful; noting that he did hear the loud banging noise coming from
38 the feeder that many neighbors had previously complained of and acknowledging that the noise could be
39 disturbing. He noted the number of flies was not excessive, that the odor was not terrible, and that overall it
40 seemed to be a good operation. Conley agreed with Bonges, stating that everything was well-kept and in its

1 place. Conley acknowledged it could be different on any given day and could have been cleaned up in
2 anticipation of the site visit. He noted some flies in the area and stated the chickens seem to be doing a good
3 job keeping flies at bay. Conley could not attest to the smell on other days as wind direction and weather
4 conditions could make it more or less offensive on any given day.
5

6 Jenkins agreed, adding he took a drive by the property to try to see if the odor was noticeable from afar
7 under different wind and weather conditions. He also noted the compost pile was well-contained, and
8 asked if Staff had anything to add. Castle agreed with the observations stated thus far; Hemmerick stated
9 that he noticed some standing water for wallowing that he didn't see as necessary, explaining that the wet
10 conditions could add to the smell and nuisance insects. Conley asked the Applicants if a wallow was
11 necessary. The Applicant replied that they tried sawdust instead and the pigs seem just as happy to roll
12 around in the sawdust as they were with the mud. Bonges advised that in his experience a wallow is not
13 necessary.
14

15 Conley inquired about the slamming feed bin door. The Applicant replied that they have removed the door
16 and added a roof instead, solving the problem. A neighbor (unidentified) asked why she was still hearing a
17 banging noise; the exact same noise she's been hearing all summer.
18

19 Neighbor Tom McCoy pointed out that if notice was given to him that the DRB was coming to his house, his
20 house would be clean. Other neighbors concurred. Jenkins stated they were not going to argue that point.
21 McCoy reiterated his frustration that the Applicants had prior notice of a site visit. Other unidentified
22 neighbors also expressed their frustration, several speaking at the same time and stating the Applicants had
23 a full day to clean. There was some terse exchange over the validity of observations made at a site visit when
24 notice is given in advance; Jenkins advised again that they were not going to argue that point and stated that
25 the Hearing would be conducted in a civil manner -- adding that if attendees could not be civil they would
26 be asked to leave.
27

28 Jenkins called upon Michael Boisjoli, an adjoining property owner who has expressed opposition to the
29 proposal. Boisjoli began with comments on after-the-fact permitting, a phrase he cannot find anywhere in
30 Milton's Zoning language. Boisjoli stated that in his opinion, if he built a garage and subsequently applied for a
31 permit, he would then have to tear down that garage. He stated ignorance of the law is not an excuse for
32 breaking it. He advised that nowhere in Milton's Zoning Regulations is there a regulation allowing after-the-
33 fact permitting. He felt that the Applicants should have been made to stop the Violation and apply for
34 Conditional Use approval; he did not understand why the Applicants were allowed to continue in the meantime
35 without approval. Boisjoli then commented on the useable space and the amount of manure that pigs produce,
36 expressing concern that the manure could leach in to the sandy ground and possibly contaminate the water of 6
37 neighbors who have wells. He also expressed concern over the precedent that could be set.
38

39 In response to agriculture being defined as a conditional use in the subject zoning district, Jenkins advised that
40 the DRB does not write the Regulations and the neighbors should may always present their [legislative]
41 concerns to the Planning Commission. At that, an unidentified neighbor spoke out, stating that although they
42 don't write the law, the DRB should follow the law. Jenkins tried explaining that the Applicant has a right to
43 request a Hearing, but was interrupted.
44

45 Neighbor Robin Perry quoted the Zoning Regulations as stating Conditional Use must be pre-approved by the
46 DRB. To clarify, Staff interjected that a Notice of Violation had been issued and recorded, and that this is a
47 normal process to attempt to cure the Violation; he explained that if the DRB does not grant conditional use
48 approval the Town may pursue enforcement. Perry stated she had a few other questions to ask and a letter from
49 residents of Hummingbird Lane to submit. Perry's main concern was the slaughtering of the animals. She

1 quoted the Zoning Regulations' definition of slaughterhouse and said they were not permitted in their district.
2 Jenkins stated the Applicants were not operating a slaughterhouse and Perry questioned that statement, asking
3 how the slaughtering of 4 pigs and many chickens does not constitute a slaughterhouse. In summary, Perry
4 finds this aspect particularly offensive and objectionable.
5

6 Chris Gillespie acknowledged that the DRB did conduct a site visit, but pointed out that all of the neighbors
7 were present at the hearing for a reason. They've all had similar comments about the odor and flies, and these
8 concerns should be taken in to account when the DRB makes its decision. The Chair acknowledged all
9 comments and said that these would be taken into consideration during deliberation.
10

11 The Chair closed the hearing at 7:25 p.m.
12

13 **6. NEW HEARINGS**

14 None
15

16 **7. OTHER BUSINESS**

17 Staff gave a brief Staff Update on Planning and Economic Development Department and Planning
18 Commission activities, and recapped the status of several projects that are in progress. Bonges asked if 6
19 p.m. would be a better time for the DRB to meet and discussion ensued. The DRB decided to keep their
20 meetings at 7 p.m.
21

22 **8. MINUTES**

23 The Minutes of September 10, 2015 were tabled by unanimous consent.
24

25 **9. DELIBERATIVE SESSION**

26 MOTION by Conley to enter Deliberative session at 7:30 p.m., SECOND by Bonges. Unanimously
27 APPROVED.
28

29 MOTION by Conley to exit Deliberative session at 8:25 p.m., SECOND by Bonges. Unanimously
30 APPROVED.
31

32 **10. ADJOURNED**

33 MOTION by Conley to adjourn at 8:26 p.m., SECOND by Bonges. Unanimously APPROVED.
34
35

1 Minutes approved by the Commission this _____ day of _____, 2015.
2
3

4 _____
5 Bruce Jenkins, Chair /kt
6

7 Filed with the Town Clerk this _____ day of _____, 2015