

Town of Plainfield
Development Review Board (DRB)
Minutes of Meeting held on June 11, 2014

Final Minutes Approved on: July 9, 2014

Present:

____x_____ Janice Walrafen, Chair

____x_____ Rob Bridges

____x_____ Neil Hogan

____x_____ Sarah Albert, Clerk

(Full DRB in attendance)

Also Present:

Karen Storey – Zoning Administrator (ZA)
Mary Lane – Administrative Assistant

Interested Persons for Hearings

Signed in for Geoff Wilson Appeal Hearing:

Tom Roetker, Terri Roetker, Rose Roetker, Bernie Chenette, Geoff Wilson, Ann Blaisdell, Dawna Maclaren, Kristie Farnham, Kyle Farnham, Jill Wilson, David Copping, Allan Farnham, Sandy Farnham, Tammy Farnham, Kevin Farnham, Gary Wilson.

Signed in for Second Wind LLC/Black Bear Biodiesel Remand Hearing:

David L. Grayck, Peter Young, Jim Jamele, Clair Dumas, Jon Anderson, Jim Malloy, Scott Emery, Scott Stewart, Jill Bessette.

6:48 P.M. Meeting Called to Order by Chair Walrafen.

(Interested Persons for the first hearing enter the room and sign in)

Agenda Item #1 – 6:49 P.M. Review/Approve Agenda and Review/Adopt Minutes of May 14, 2012 Meeting.

- DRB Member Bridges reminds everyone that the Unified Regulations need to be addressed. Chair Walrafen agrees and states she hopes they will be ready for Town Meeting in March 2015.
 - DRB Member Bridges suggests some grammatical changes to the minutes and makes a **Motion** to accept the minutes as amended. DRB Member Hogan seconds the motion and it passes unanimously.
 - DRB Members discuss the Unified Regulations until 7:00 P.M. when the hearing is to begin.

Agenda Item # 2 – 7:00 P.M. -- Hearing: Geoff Wilson Appeal of Zoning Administrator's Decision of ZPA 2014-07 Change of Use from Educational Institution to Single Family Dwelling at 786 Upper Road.

Chair Walrafen swears in all interested persons.

- Z.A. Storey provides an overview of her decision to issue a Change of Use Permit for the property at 786 Upper Rd. from an Educational Institution, (The Center School), to a Single Family Dwelling. She used Plainfield Zoning Regulations, Section 3.2: Non-Conforming Uses. Structures, Lots & Parcels, to determine the building is non-conforming; and Section 3.3: Existing Small Lots, to establish the property is an existing small lot. The property was owned by the Montessori School and was purchased by Tom Roetker so his daughter can live there while attending Goddard. They plan to turn the building into a 2-bedroom residence, with no change to the footprint. The septic system was clean slated in January of 2007. Using the State wastewater allocation guidelines, Bernard Chennette an Engineer hired by Mr. Roetker, determined a 20-student school could transition to a 2-bedroom residence. Mr. Roetker applied for and received a wastewater permit from the State of Vermont. On April 9, 2014 Z.A. Storey issued a Change of Use Permit, which was appealed on April 24, 2014 by Geoff Wilson citing non-conforming uses, Section 3.2, and the location of the septic system in proximity to his artesian well. Mr. Wilson met all criteria for notification of the appeal. During the May 14, 2014 DRB meeting, the Board Members concurred all criteria were met to issue a Change of Use Permit.

- Mr. Wilson states his concerns: Change of Use does not meet the criteria; Mr. Chennette's calculations of the distances are wrong; there have never been 20 students in the school; while the school is in use there are horrible odors; the students were only there some of the day, week, year a residence will be full time with more use of the wastewater system. He also states all of Mr. Chennette's information is based on assumptions.

- Mr. Chennette states he did a site visit with Dana Nagy, State of Vermont Wastewater Engineer, and they could see a 1000-gallon concrete septic tank, and observed no odors. He looked at Ed Fowler's records that showed yearly septic tank cleanings, and no reported odors. He spoke with Kristen Martin who worked at Montessori who told him there were 20 students at one time. He brought a map, and explained the distances, topography and ground water flow. Clean Slate was explained as a system not needing a permit, unless it failed. And by failed, it meant effluent was visible on the ground. He explained that Mr. Roetker still obtained a permit, but it was explained to him what he needs to do should the system fail. He also explained that the wastewater allocation guidelines actually allowed a 3-bedroom residence, but he wanted to be conservative and err on the side of safety since he had no good way to test the system.

- Mr. Wilson is asked if he has any information from an Engineer. He reports he could not be at the site visit, but his nephew who was, told him that Dana Nagy said they had genuine concerns, and did not know if this was a good idea, or met all the rules and regulations.

- The floor is opened for Interested Person's comments. Kristie Farnham and her mother speak to the odor issue. Tammy Farnham does not understand why she had to put in a new septic system when she added a bedroom, even though hers had not failed, and the Roetker's do not. Dawna Maclaren reports when she worked at the school 16 years ago there were 20 students. Also, she has no odor at her place, but the school is downwind from them.

- Mr Chennette explains that 20 students would be 420 gallons per day (GPD), which are also the state regulations for a 3-bedroom house. A 2-bedroom house uses 280 GPD. So actually in limiting this to a 2-bedroom house, they are using less allocation. Mr. Wilson and Ms. Farnham interrupt him to say he is using assumptions because there have never been 20 students.

- Mr. Roetker and Chair Walrafen inquire why Mr. Wilson or the neighbors have not asked for the septic system to be fixed if odors were present for 16 years, and if Mr. Wilson has tested his well. He states he has not because the students were not there full time, and since the septic had not failed, it could not be fixed. More discussion about what would need to be done if the septic system fails, with Ms. Farnham asking once more why she had to put in a new system.

- Z.A. Storey reminds the group the hearing is to determine if her issuance of the Change of Use Permit followed the Zoning Regulations, and the State issued the Wastewater Permit, not her. Ms. Farnham again asks why she

had to put in a septic system when she added a bedroom, but they are issued a Change of Use Permit, and a Wastewater Permit. DRB member Hogan explains capacity in more detail. Chair Walrafen stops any further discussion on this subject.

- Interested Person, Jill Wilson asks if the hearing is about an appeal based on Section 3.2 of Plainfield Zoning Regulation. Chair Walrafen offers an explanation of when and why the DRB was formed, and believes as a community board, it is important to hear all facts of the case, even when the Board has no jurisdiction over some of the problems. She believes an exchange of ideas between neighbors could produce an outcome that was not expected, and possibly form a solution.

- DRB Member Bridges reads out loud Section 3.2 at the Chair's request, and then Z.A. Storey summarizes her decision stating this is a non-conforming building on an existing small lot, and is going from a change of conforming use, to a different conforming use. This leads to an emotional discussion about existing small lots, and if this one was an exception because it is a school. Many people who did not sign in are talking. Chair Walrafen takes control of the meeting. Interested Person, Dave Copping suggests they get a report from Montessori to show there were not 20 students. He reports he has lived there for 34 years, and has never seen 20 students. . It is mentioned since there were never 20 students, a 2-bedroom home would be too large.

- Chair Walrafen asks if the septic were not an issue, would they object to someone living on the property; and what criteria would keep Ms. Roetker from moving in, since this is the reason for the appeal. Mr. Wilson responds they would not be able to meet all the criteria the rest of the neighbors do, because of the small lot. Z.A. Storey reiterates that she decided she could issue the permit, rather than bring it to the DRB, because the schoolhouse and the residence are conforming use.

- Chair Walrafen states she wants to turn the meeting over to the DRB Members to deliberate, but is met with questions about the permit being valid when it is appealed. She is continually interrupted with comments about ways they believe Ms. Roetker has violated the permit, however they are informed she is not in violation, according to the DRB Members understanding of what happens during the appeal process. She again asks to allow the DRB Members to deliberate on the actual reason for the hearing.

- DRB Member Bridges explains the DRB has the task to apply the regulations as published, and as the DRB members as a group understand them, and his opinion is Z.A. Storey proceeded in compliance with the regulations whether Mr. Wilson and his family and friends agree with them or not, and the wastewater rules are not the bailiwick of the DRB, we have heard their concerns, and it is his belief that ZA Storey operated within the regulations.

- Clerk Albert states when she first read the letter, she went back to the section on conforming because she had some questions. She reports when Z.A. Storey first brought her questions to the DRB, about if she could issue the permit

for a change of use permit from a school to a residence, the DRB members did not discuss the fact that it was a non-conforming lot, or that it was a non-conforming structure. However, after hearing Z.A. Storey's process of how she went through it, she agrees it is not a non-conforming use, and the change of use should not have come before the DRB. Plus, it is also an existing small lot, so the process Z.A. Storey followed is in compliance with the zoning regulations.

- DRB Member Hogan states what Member Bridges said is correct, and the reason for the hearing, is so the DRB members can interpret the rules to the best of their knowledge; and when looking at the paperwork, he believes what the Z.A. did was appropriate. He questions what is supposed to happen next? He states the issue of the wastewater system is out of the control of the DRB. So, if the DRB accepts the permit, then the next step would be to take it up with the State. Chair Walrafen asks if everyone agrees that is the next step? Z.A. Storey states there is an appeal process on the permit they can follow that explains how to appeal the wastewater permit.

- Interested Person, Kyle Farnham asks for a timeline of when the Change of Use Permit was granted in relation to the Realtor's involvement. Z.A. Storey answers it was during the process. Z.A. Storey answers a number of questions from Ms. Farnham about the septic permit, and change of use. Mr. Wilson is concerned about having to disclose the septic system problems if he decides to sell his house. DRB Member Hogan explains that should not happen, and asks if Mr. Wilson plans to appeal to the Environmental Court. He responds, "absolutely", and wants the DRB members to do a site visit so all his concerns will be put into perspective.

- Because the next hearing is scheduled to start, Chair Walrafen asks for a motion to continue the hearing with a site visit to the July meeting. Discussion ensues if a site visit will reveal anything they do not already know. However, Chair Walrafen believes it is important to honor the request of the appellant who has concerns about the ruling, and thinks the case should not be closed too fast to allow for further investigation. DRB Member Hogan makes a **motion** to continue the hearing to July and to hold a site visit before the meeting. Chair Walrafen calls for a second. No one seconds, so she seconds.

- Clerk Albert states that Rose Roetker has had her hand up, and would like to give her time to speak. Ms. Roetker asks what she can do, since she has nowhere to live. Mr. Roetker takes some time to explain in detail the process he followed to make sure everything he did to purchase the property followed the rules. He tells Mr. Wilson that he also has a large investment in this property, and he hopes they can live together as neighbors with no problems. He states again he will replace or fix the septic system if there are any problems with it.

- Chair Walrafen reminds the Board Members, of the motion on the floor to continue the hearing with site visit to July. She asks Mr. Wilson if this works for him, and he affirms. Mrs. Terri Roetker says this is not good for them, because their daughter needs a place to live. DRB Member Bridges states another month will not change the reason for the hearing, and even if they

measure the land during a site visit, it will not make any difference, so his vote is against the motion. Clerk Albert reports she is also against this motion.

- Chair Walrafen states since Clerk Albert also said she will not vote for a continuance, there is not a motion that would stand. Since that motion was a tie, the DRB needs to move forward with another motion. She reads the language of the appeal so member Bridges can form a motion. He then **moves** to approve that the actions taken by Z.A. Karen Storey on behalf of the Town of Plainfield and the DRB stand. Clerk Albert seconds. Chair Walrafen asks for discussion on the motion. Clerk Albert reports that the only issues on the table are the decision of the Z.A., and the septic system. Member Hogan reiterates it is important to follow the wishes of the community, but the issue that is on the table is the Z.A. decision, so he abides by that. Chair Walrafen states she would like to make sure the neighbors have a forum where they can come and discuss their issues and come to a solution, which she hoped would be this meeting. But the septic appears to be the larger concern. Also, Mr. Roetker affirms he will address any problems with the septic system, should any be found. She continues that she did not hear any concerns about a person living on the property. So she hopes this issue is resolved, but if not they will have to take it up with the State, as that would be the legal recourse. She calls the question and the motion to uphold the Zoning Administrator's decision of Change of Use from Educational Institution to Single Family Dwelling at 786 Upper Road passes unanimously. She states that if there is a further appeal, that will need to go before the Environmental Court.

- Tammy Farnham asks for instructions on how to appeal the decision. Z. A. Storey tells her that information is on the Decision that will be mailed to everyone who signed in. Chair Walrafen informs Ms. Roetker she can live at the property, unless the Environmental Court rules against the DRB's decision, and then she will have to move out. Ms. Farnham wants to know which member of the DRB to alert when there is an odor. She is told to call the State. Ms. Farnham then asks if she should call the Town Clerk, and is told to call the State, as the Town Clerk also has no purview over septic systems. Chair Walrafen informs her that the DRB listened to their concerns but has no authority over septic systems, and for that they need to appeal to the State.

DRB members take a break while the Interested Persons for the Wilson hearing leave, and the Interested Persons for the Black Bear Biodiesel Remand Hearing arrive and sign in.

Agenda Item #3 – 8:20 P.M. – Hearing: Remand from the Superior Court, Environmental Division, of Second Wind LLC/Black Bear Biodiesel SP & CU, Docket No. 151-11-13 Vtec, pursuant to V.R.E.C.P. 5(i), to hear the application by Second Wind LLC and Black Bear Biodiesel for modification of the October 9, 2013 Town of Plainfield Development Review Board decision “Application for Commercial Site Plan Review & Conditional Use Review for Light Industry: Distribution of Biodiesel Fuel and Food Trucks” approving the conditional use permit for a retail commercial business consisting of a distribution center for biodiesel and up to four mobile food units by Second Wind LLC and Black Bear Biodiesel (BBB), and approved zoning permit application 2013-17 at 252 High Street.

Chair Walrafen swears in all Interested Persons.

- Chair Walrafen reads a paragraph taken from the “Notice of Public Hearing”, that explains the reason for the hearing: “The approved project is only for the sale of B100 biodiesel, without prejudice to a future application for the sale of biodiesel blends, including that such application shall not be subject to the “flexibility versus finality” permit amendment standards and analysis, including as that analysis has been set forth by the Vermont Supreme Court in *In re Appeal of Hildebrand*, 2007 VT 5, 181 Vt. 568.”. DRB member Bridges states it in layman’s terms, “The initial application said they would sell B100, and our discussion was about B100, but the final Decision did not use those words, and by specifying B100, it does not prohibit BBB from applying to sell biodiesel blends in the future. James Jamele, Attorney for the Town of Plainfield, who has been asked by the Select Board to oversee this hearing, agrees this is a correct interpretation.

- Jon Anderson who represents R.L. Vallee, states that BBB applied for the pure form, B100 and that is what needs to be on the permit, unless they return to the DRB asking to sell another kind of biodiesel, or other items. Mr. Anderson states he agrees to the language of the paragraph in the “Notice of Public Hearing”. Peter Young of Second Wind, and Jim Malloy of BBB concur.

- Chair Walrafen explains that while number 5 in the Findings, states that BBB can sell B100 and have food carts, in the Decision it is called biodiesel, it also says any changes will have to come before the DRB.

- Mr. Anderson states their concern was the DRB would interpret this as a store, but anything other than the B100 constitutes a Change of Use. Chair

Walrafen reads from the Decision what would constitute a Change of Use. Mr. Malloy states he is clear about this.

- DRB member Hogan and Z.A. Storey, discuss with Mr. Anderson, their observation that the language he refers to in the letter written in September, that seems to use the same or similar wording as what is in the Decision. Mr. Anderson states the Vermont Supreme Court said only what is included as specific conditions to the permit is enforceable, not what was said in a hearing. So the Findings do not limit them to B100, so they want a specific condition to the permit limiting them to B100.

- Mr. Jamele interjects that at this point, the DRB needs to understand that the attorneys for both sides have reached an agreement, and the specific language to be used is the paragraph in the "Notice of Public Hearing", and is to be included as a 5th Condition. The attorneys both agree, and there are no further comments.

- DRB Member Hogan makes a **motion** to add to the Decisions, under Decision and Conditions, a fifth (5th) Condition, the following paragraph: "The approved project is only for the sale of B100 biodiesel, without prejudice to a future application for the sale of biodiesel blends, including that such application shall not be subject to the "flexibility versus finality" permit amendment standards and analysis, including as that analysis has been set forth by the Vermont Supreme Court in *In re Appeal of Hildebrand*, 2007 VT 5, 181 Vt. 568.". DRB Member Bridges seconds the motion.

- Chair Walrafen asks Mr. Jamele if this will be considered a new Decision since it is being changed, and if it can be appealed. Mr. Jamele does not believe it can, unless an objection is put on record from this hearing. Mr. Anderson adds that no one can appeal unless they have signed into this meeting, and "R.L. Vallee has no intentions of appealing as long as the language agreed upon in the motion is used."

- Mr. Young affirms that BBB is satisfied with the decision.

- Chair Walrafen asks for a vote, and the motion passes unanimously.

Agenda Item #4 – 8:40 P.M. – Continued Discussion of the Unified Regulations.

- DRB member Bridges goes through the items he has flagged for discussion. The members discuss these and decide if they want to leave them, or ask Irene Nagle to change them. For one of the items, Clerk Albert is going to investigate how other towns have approached it. One of the items describes the responsibilities of the DRB, and the members discuss what it would entail if they become "on record". No decisions or motions are made. They will send the corrections/suggestions to Irene, and then the regulations will go to the Planning Commission.

Meeting Adjourned at 9:15 P.M.

- DRB member Bridges makes a **motion** to adjourn. DRB member Hogan seconds the motion, and it passes unanimously.

Respectively Submitted,

Mary Lane, Administrative Assistant