

**TOWN OF CASTLETON
DEVELOPMENT REVIEW BOARD MEETING
Minutes of February 14, 2017
Castleton Town Offices**

MEMBERS PRESENT: G. Chader, D. Wood, R. Day

MEMBERS NOT PRESENT: K. Israel, J. Mark

OTHERS PRESENT: Jeff Biasuzzi, Zoning Administrator (ZA), see attached list.

The meeting was called to order at 7:00pm by R. Day (Chairman)
All interested parties were sworn in by the Chairman.

NEW BUSINESS

APPLICANT- LEE LODGE #30, Todd Boutwell (Worshipful Master); AGENT(s) - Andrew Breting (restaurant operator) & Kevin Gecha (of McKernon Group, Inc). – APPLICATION #7923/DRB appeal #482 - 595 Main St., Castleton Village - REQUEST FOR CONDITIONAL USE APPROVAL FOR A PIZZERIA AND RESTAURANT, with delivery service.

J. Biasuzzi introduced the permit application, stating that it is submitted by Lee Lodge, as property owners. Andrew Breting (agent) has leased the entire first floor of the building. The Application is for only the west side of the vacant space, which would be renovated (per the application). There will be seating for 13 patrons and a maximum of 4 employees (1 employee being for delivery). They require 9 parking spaces and currently have 18 parking spaces available. The hours requested are for 12:00pm to 10:00pm Sunday thru Wednesday and 12:00pm to 2:00 am Thursday thru Saturday. There will be no alcohol served on premises and stated that the application has the same site plans as issued for previous occupant (aka "The Bakery").

S. Grey stated a concern about alcohol being served.

A. Breting replied that there were many rumors regarding this venture and stated that there would be no alcohol served. Continuing, his concern is about students having to drive into Rutland for food after an evening of drinking and that he is bringing late night food to Castleton and is something that is needed in Castleton. He will work with the Town of Castleton and the Board to come up with a solution that will work for all involved.

D. Folsom agreed that having food available to the University students late at night is a good thing. It will keep the students from having to drive into Rutland for something to eat after drinking and possible saving lives. He noted how nice it will be to be able to order food and just pick it up.

J. Rehlen commented that as a resident on Main Street he felt that 2:00 am was too late to stay open. Nearby resident G. Kupferer also relayed his concern about the late operating hours.

PAGE 2 – DRB Minutes - 2/14/17

M. Stein, also a resident on Main Street, noted that staying open till 12:00am was a good time, and agreed that it might help the students from driving into Rutland for food after drinking.

G. Chader noted the concerns of the public and asked if closing the restaurant at 12:00am but keep delivery till 2:00am was a possibility.

J. Biasuzzi informed the Board and public that Chief Mantello was also concerned about the 2:00am closing due to outside traffic and security related issues that could arise.

A. Breting stated he would have no outside seating and was not applying for a “Bring Your Own Bottle” (BYOB) permit. He could accept a change of hours for Thursday, Friday & Saturday; opening at 12:00pm and closing the restaurant to patrons at 12:00am; but continuing to provide (offsite only) food delivery to 2:00am.

G. Trudo addressed the Board regarding his experience regarding this permit and stated that he came to J. Biasuzzi in December and went thru the existing permit with him. The permit was for a restaurant where food was prepared, bought and consumed on and off premises. There would be no change in quantity of occupants or parking. Continuing he stated that he was told by J. Biasuzzi that no further permits were necessary, and had a green light to go. He then called T. Boutwell, who in turn, called A. Breting and told him the permit was good and A. Breting started construction on or around Jan. 1, 2017.

G. Trudo noted that he was the spokesperson for the permit process, and would have expected, if there was change, that he would have been contacted by the Zoning Administrator; and he was not contacted.

G. Trudo continued that at a DRB meeting on Jan. 17, 2017 under Public Comment, J. Biasuzzi brought this issue to the Board’s attention, mentioning the hours of operation and the fact that no liquor will be served. The Board was asked to compare the existing permit for “The Bakery” Café and determine if the existing permit would suffice, or if a change of use with a new application and a permit would be required.

J. Mark had expressed a concern about the increase in hours of operation planned by the new operation.

G. Trudo stated that there can never be alcohol served on Lee Lodge premises in Vermont per the Grand Master and noted that the permit for the Lee Lodge has is a blanket permit with no hours noted and continued that the DRB then went into Deliberative session permitting the Zoning Administrator to attend.

G. Trudo states that outside of the Town building, Board members D. Wood and J. Mark

PAGE 3- DRB Minutes - 2/14/17

approached A. Breting and T. Boutwell and told them that a decision was made and that they indeed needed a new permit. Continuing, he stated that on 1/24/17, a representative from McKernon Group went to the ZA, inquiring on this permit issue. He was informed that the late hours were considered by the DRB enough of a "change of use" to require an updated permit.

G. Trudo noted that the cost was \$1110.00. Mr. Trudo was then corrected by his Agent that the cost was actually \$555.00, which was confirmed by the ZA. G. Trudo stated his opinion that the permit the Lee Lodge holds is "golden" and the town should reimburse the \$555.00 to the McKernon Group Inc.

G. Trudo quoted the Vermont Open Meeting Law, "No resolution, rule, regulation or appointment of formal action can be considered binding except as taken in or made in an open meeting. (Sec. 312A)"

G. Trudo continued that there is nothing in the minutes that the decision was made. Yet, a decision was made and a permit was requested. The Zoning Administrator didn't make the decision because he came to the Board to ask if the new restaurant needed a permit. Deliberation in a quasi judicial proceeding means that you weigh the evidence, exam it and discuss it. You discuss a reason for and against whatever, but expressively includes the taking of evidence and the arguments of the parties. Title 24, Sec. 44-48 "Appointment and Powers of Administrative Officers" clearly states that administration officer may hold any other office in the municipality other than membership in the Board of Adjustment or the DRB, and that to do so is in violation of the Vermont Open Meeting Law. G. Trudo felt that the hearing taking place now is illegal. The reason it was done because there was a concern about the hours of operation; making him get a new permit and rendering a decision in favor of the applicant. This panel, being a DRB, may attach additional reasonable conditions, on other words, you can regulate his hours.

G. Trudo requested that the DRB make a motion to reimburse the \$555.00 to the McKernon Group and that the permit (for "The Bakery") issued to Lee Lodge is a valid permit. The Lee Lodge property has room for 18 parking places, 1 handicap accessible for the Café. A reasonable solution would have been to just ask A. Breting to reduce his hours without going through all of this process.

R. Day asked for any other comments. He then requested a Motion to close the Hearing.

MOTION: _____ made a Motion to close the Hearing to testimony, _____ seconded; all approved and Motion passed.

OTHER BUSINESS/CORRESPONDENCE

J. Biasuzzi stated that Mr. Gilbert requested that the Board review his information and give him guidance in how to subdivide his pre-zoning, non-conforming property.

PAGE 4 - DRB Minutes - 2/14/17

W. Gilbert explained to the Board that he has a property on/near Lake Bomoseen; he did not know the exact address of the property. He has owned the property for 20 years. There are two houses on the one lot. He would like to create two lots with one house on each lot. He informed the Board that only one of the lots will be conforming. He asked for guidance before there would be a formal hearing. He would like to sell one of the houses. He states that zoning has caused his dilemma as they were built pre- zoning. He would like to keep the driveway where it is now.

D. Wood stated that he would be creating one conforming lot and one non-conforming lot.

J. Biasuzzi stated that that the parcel is in the R-40 zone, and stated that it may require a variance, as it can't conform to today's zoning regulations.

G. Chader noted that this might be a legal question.

J. Biasuzzi brought up Section 204 E of the Zoning regulations, which addresses more than one principal building on a parcel.

W. Gilbert again asked the Board for guidance for the easiest way to make this happen.

R. Day noted that the Board had to follow the Town of Castleton's zoning regulation.

J. Biasuzzi preferred time to study information from VLTC and will confer with the Town Attorney.

W. Gilbert asked who the Town Attorney was now.

J. Biasuzzi responded that the Town now engages the services of several attorneys. J. Biasuzzi also recommended Mr. Gilbert discuss this with his Attorney.

W. Gilbert asked J. Biasuzzi if he needed to apply for a variance and if he could apply for a property line adjustment.

J. Biasuzzi replied that a property line adjustment requires having to start with two lots, and end up with two lots. The subject parcel appears to be one parcel.

W. Gilbert concluded with a request for guidance on this matter, and was concerned about paying a big application fee.

J. Biasuzzi then addressed the Board regarding an application from the Fellowship Bible Church to add a 36' X 50' addition to the existing structure. The ZA stated they have not yet paid the

Page 5 – DRB Minutes – 2/14/17

application fee. The Zoning Ordinance identifies the request as a Permitted Use with Site Review.

The Board agreed to schedule a Site Review for Tuesday 3/7/17 @ 6:00 pm, at 1308 VT Rt. 30 north, followed by a regular DRB meeting; starting at 6:30+/- pm on the same date, and convening at Town Offices, 1655 US Rt.4A.

MINUTES FOR APPROVAL- JANUARY 17, 2017

MOTION: G. Chader made a motion to approve the minutes from January 17, 2017. Seconded by D. Wood. All in favor. Motion Carried.

DELIBERATIVE SESSION

MOTION: C. Chader made a motion to enter into Deliberative Session. Seconded by D. Wood. All in favor. Motion Carried.

MOTION: D. Wood made a motion to exit Deliberative Session. Seconded by G. Chader. All in favor. Motion Carried.

The Zoning Administrator was instructed to issue a Conditional Use Permit (#7923/DRB# 482) with the final DRB decision attached. This decision is to amend the application as to the hours of operation. On Sundays thru Wednesdays, restaurant and delivery hours are to be 12:00pm through 10:00 pm. On Thursdays, Fridays, and Saturdays the restaurant hours are to be 12:00pm; closing to patrons and pick up service by 12:00am. Off-site delivery service is permitted on Thursday thru Sunday morning until 2:00am.

MOTION: D. Wood made a motion to adjourn the meeting. Seconded by G. Chader. All in favor, Motion Carried and meeting adjourned at 8:45pm.

Respectfully

V. Waldron

Date of Approval