

CASTLETON DEVELOPMENT REVIEW BOARD

December 20, 2022 – 7:00 PM

Castleton Fire Station Community Room

273 VT Route 30, Castleton, VT

Zoom Meeting Link:

https://us02web.zoom.us/rec/share/vZtSG79-DBqsFOo3_b6iPRgR_8Dima3qGJF88zSkhu2vG7epGkWcUCtqPqm-veCy.0VQlOgi6PqbvSL2c

Passcode: Jk@^\$9jH

Board Members Present: Laura Sargent, Michael Holden, Don Wood, Pat Keller

Others in attendance included: Jeff Biasuzzi, John Gillen, Katy Culpo, Mike Jones, Interim Zoning Administrator, Allison Harvey, Recording Secretary

In attendance via Zoom: None

Call Meeting to Order

Meeting was called to order by P. Keller at 7:07 pm.

Approve Agenda

M. Holden made a motion to approve the agenda as presented. D. Wood seconded.

All voted in favor of the motion. So voted.

Approval of Minutes of November 10, 2022

M. Holden made a motion to approve the minutes of November 10, 2022 as presented. L. Sargent seconded.

Page 1 – Motion for Agenda Approval, M. Holden made the motion, D. Wood seconded.

Page 2 – Motion to Enter Deliberative Session, should be added at the end that the board actually entered Deliberative Session at 7:35 due to the discussion after the motion was made.

Page 2 – Exit Deliberative Session, 8:40 should be added, and M. Holden made the motion and D. Wood seconded

Page 4 – 9:00 pm should be added before Enter Deliberative Session.

All voted in favor. So voted.

Continuation of hearing for Permit Application #8244 – Expansion of Non-conforming Structure with Conforming Use. Property Owner: Sheila McIntyre. Property located at 170 Prices Lane, Castleton, VT

P. Keller swore in anyone who may be giving testimony throughout the meeting this evening at this time.

J. Biasuzzi introduced himself to the board and stated he was the Castleton Zoning Administrator in the past and has been working in 6 other towns over the past ten years. He

has been asked to assist the Interim Zoning Administrator as a consultant to help with applications and procedures.

He further stated he has reviewed this application, and there has been a past application within the Town that concerned height, however it was an existing structure so would not really apply to this one for comparison. This application is also a challenge because it is an accessory dwelling structure, not a primary dwelling. There is a discrepancy of two feet with the height being 31 feet, which is two feet over the maximum allowed for an accessory dwelling. He believes Section 1208 of the Zoning Regulations provides for working with other aspects of the structure to consider. Another option would be to alter the height by 2 feet, change the pitch of the roof or do away with the basement access and measure from the main entrance level which would reduce the height to below the maximum required. L. Sargent asked about the building being living space, so is essentially not an accessory building. J. Biasuzzi explained there is a difference between an accessory building and an accessory dwelling. Each town is different, but J. Biasuzzi felt that in Section 1006 of the Regulations, they would need to find out the habitable living area of the primary residence, and that the accessory structure can be only 30% of the primary dwelling square footage. Discussion and review of the Regulations and what should be considered on this application.

M. Jones was sworn in at this time and stated that he has spoken to the applicant, and she did not commit either way to adjusting the structure or the height when they spoke and that she was going to speak with the architect. Board felt they did not have the accurate square footage of the proposed building or the existing primary residence, just a total square footage. The habitable square footage of the existing primary is needed, as it has not been provided during testimony. J. Biasuzzi expressed that the new building could possibly also be considered the principal, the existing principal become the accessory dwelling which would swap the classification, however number of bedrooms may not allow that as the accessory dwelling is supposed to be one bedroom and single story according to the Regulations. J. Biasuzzi felt the application is light on details, and the points being made are viable options, but there needs to be a number of square feet, what is going to be finished living space, the habitable accessory dwelling unit size, habitable primary unit size in square feet. He further suggested that the hearing be recessed, and these details and conversations need to be relayed to the applicant. There was also brief discussion on the wastewater permit and what can be approved. Review of the wastewater permit, which seems to appear that the new proposed dwelling will have one bedroom, as the primary house is being reduced to two bedrooms so one allotment can go into the new proposed accessory dwelling building.

D. Wood made a motion to recess the hearing for Permit Application #8244. M. Holden seconded. All voted in favor. So voted. It was stated the Board needs more information and clarity is needed. **L. Sargent made a motion that the Zoning Consultant J. Biasuzzi can contact the applicant to review details that are needed. P. Keller seconded. All voted in favor. So voted.**

Permit Reissue Discussion: Donna Rose Ryan

J. Biasuzzi stated that this is an unusual matter as the property owner has gotten the necessary permits from the Town and the application was approved. They started the project within one year as required by the regulations and has removed the existing structure. Then covid hit and there has been a supply shortage for the materials and contractor backlogs, so she is not going to be able to start and finish by February 9, 2023, which is the two-year expiration date from the original permit decision. J. Biasuzzi stated it seems they should have to reapply and pay another fee, etc., but there is nothing in the regulations that says the board's decision expires, just the permit certificate. The applicant is hoping that the board will agree that the decision stands and they can attach the existing decision to a replacement permit. There are no changes to the proposal, just that it has expired. **L. Sargent made a motion that the Board issue a continuation of the Findings of Fact for this applicant that was issued 2/9/21 provided nothing changes on the plans. M. Holden seconded. All voted in favor. So voted.**

Other Miscellaneous and New Business

P. Keller stated there are attendants present at this meeting that have questions about the housing project on Sand Hill Road. J. Gillen stated the November 11, 2022 decision has been appealed and is his understanding it is going forward to the Environmental Court and may be heard within 4-6 weeks. Their group of citizens are curious what this board will do with regard to that appeal, and will they involve themselves as independents and have their attorney represent that stance at the Environmental Court. Who will pay for it if that happens and is it in the budget. J. Gillen further asked if it is the decision of this Board to defend their position or is that a decision that needs to be made by the Board of Selectmen, and where will the funds be coming from. P. Keller asked if J. Gillen's group are going to participate as interested parties. J. Gillen stated they are not clear on whether they would have to appear individually or as a group. P. Keller stated they had their Board attorney draft their Findings of Fact, and they will most likely confer with their board attorney to see what their standing should be. M. Jones stated in speaking with the Town attorney, once the appeal is filed and is in Court, the DRB is out of it once their decision is rendered and they no longer have any standing in the process, the matter is now taken up by the judge on its own merit. The judge has to look at the Town's bylaws, the Town can be an interested party, and any others who want to be involved as well, but the DRB has no position. It was felt that the Board of Selectmen would be an interested party, as the property is still owned by the Town. K. Culpo stated she has posed that question to the State's Attorney, if the Town should support the board decision or appear as an interested party to protect the Town, she is waiting for a response. J. Biasuzzi stated in his experience the Court will poll all interested parties, those who have participated in the hearings, and to become an interested party they would have to meet certain criteria. It would seem the Town would be an interested party even if they were not owners of the property as they are in this case. J. Biasuzzi further stated the Court will start with conferencing, trying to get the two parties to talk, then mediation and if there is no progress, then to the Court for trial. People can be asked for depositions and testimony at the trial level also. Further discussion was held on the procedure of the appeal. J. Gillen understands the Hale appeal, and if there is a position that needs to be defended, shouldn't there be the board's attorney there

to represent the Board. M. Jones stated he has been communicating with the town attorney and Merrill Bent, so they are all in the loop. J. Gillen doesn't want to see a big wig lawyer attacking the board's decision with no one there to defend this Board's position and he asked if they felt it would be proper for Merrill Bent to represent the citizen group if she was not present to represent this Board. The Board felt she should be asked that, not them. P. Keller is going to confer with Merrill Bent for confirmation of whether they are an interested party, K. Culpo and J. Gillen will come back to next meeting to see what he found out from that contact.

A proposal of John Casella was presented to the board by J. Biasuzzi. Mr. Casella has contacted the zoning office and J. Biasuzzi told him that typically this would be an application but may not be significant enough to go that route and he wanted to get the opinion of the Board. This is an existing conditional use under Section 1208. The proposal is to enclose an existing 7'x5' deck to put a small bathroom on the first floor and expand the bedroom upstairs on the second floor. There is no change in the footprint of the building or increase in the size or capacity of the dwelling. J. Biasuzzi further that this is not considered a problem to enclose the deck and can be issued as a permitted use and wouldn't need the DRB to hold a hearing, so he is asking if there is an objection to that or if they wanted to hold a hearing for an open deck to enclosed portion of structure, which is a permitted use. The Board saw no issue with this being approved as proposed without a hearing. P. Keller questioned the lot coverage and if it was increasing coverage or if it already exists and felt it was a further encroachment on the setbacks. Further discussion on the proposal, whether the existing deck being covered or uncovered changed whether it should be issued by the Zoning Administrator or heard by the Board.

J. Biasuzzi explained his capacity as consulting the Town on zoning and making recommendations to the Interim Zoning Administrator as to how the proposals pertain to the rules. That said, they have also gotten a request for a lean-to shelter off an existing barn, which is in the 100-year flood plain and river corridor. Normally they become additional use, and it has been reviewed, but there are exemptions to having to go before the Board for Conditional Use in a flood plain or corridor and J. Biasuzzi has contacted the State, and the person he spoke to thinks it meets the exemptions, but J. Biasuzzi is waiting to hear a decision on that for certain. The only concern is anchoring of the structure in the flood plain, and it is only a 380 square feet addition.

Discussion held on when the next meeting will be, M. Jones stated they have two more possible applications coming in. J. Biasuzzi stated they have a commercial building with physical therapy office, and they are looking for an addition of 200-300 square foot open space addition for an exercise room. J. Biasuzzi asked if it wasn't already an existing conditional use, and was a permitted use, does the Board want to have a public hearing on a permitted extension of that conditional use. Will be a conforming addition and meet setbacks and doesn't affect parking either. Brief discussion on the parking of this location, and that they are parking on the front lawn, which is technically a zoning violation. J. Biasuzzi stated in the past the Town has issued parking tickets to vehicles parked on front lawns. It was felt the Board may want to have a hearing on this proposal.

There is also a conforming permitted use for a detached 600 square foot garage at an approved business location that has all State and local permits. J. Biasuzzi stated the application conforms to the Zoning Regulations but may have to go before Act 250.

J. Biasuzzi also stated they have a proposal from the complex down the street, the 3 dental/medical buildings, they all detached, are all about 20 feet apart from each other. It has been investigated in the past by the property owner to subdivide the property, however the setback is 15 feet for the zone they are in, and the setbacks cannot be met if subdivided. Currently, they are looking for a variance to expand the dental office. This is not coming up really soon, but they are trying to figure out how they can get around the setbacks and make it work. The land that all 3 buildings are on is one piece, the buildings are owned by different parties.

M. Jones stated they have gotten a complaint about a fence and its height from abutting neighbors. Deed covenants say the fence must be 4 feet or less in height, but a neighbor is stating it is not on the property line plus it is too high according to the deed covenants. It was stated this is not really a town issue, more neighbors against neighbors, or possibly a zoning violation.

Next meeting will be January 17, 2022

Deliberative Session: Permit Application #8244

This was not needed, as Permit Application #8244 has been recessed to next meeting.

8:45 p.m. – Adjourn

M. Holden made a motion to adjourn the meeting. L. Sargent seconded. All voted in favor of the motion. So voted.

Respectfully Submitted

Allison Harvey, Recording Secretary

Transcribed from Zoom Recording