

**Town of Castleton  
Development Review Board Meeting  
Minutes of August 6, 2013  
Town Offices**

**MEMBERS PRESENT:** George Pritchard, John Hale, Robert Day, Joseph Mark, Gordon Chader

**MEMBERS NOT PRESENT:**

**OTHERS PRESENT:** James Thomas, Interim Zoning Administrator; see attached listing

Meeting called the Public Hearing to order at 7:00 P.M by Chairman G. Prichard

**Organization of Board Members**

G. Chader nominated George Pritchard as Chairman. R. Day seconded. All voted in favor.

G. Chader nominated Robert Day as Vice Chairman. J. Mark seconded. All voted in favor.

J. Hale nominated Gordon Chader as Clerk. J. Mark seconded. All voted in favor.

**Applicant: Patch, Melvin & Darla , 91 Drake Road, Castleton - Request for waiver from front setback for construction of porch.**

Mr. & Mrs. Patch were sworn in by Chairman Pritchard.

J. Thomas explained that the front setback requirement is not met and the new construction will be 41 feet from the road right of way.

M. Patch stated that they plan to enlarge the existing porch so that it will be the same as the house which will be a total of 12'.

J. Thomas state that this addition will not make the building any more non-conforming than it already is since the structure is 30'from the road ROW.

G. Chader made a motion to close the Public Hearing. R. Day seconded. All voted in favor. So voted.

**Applicant: Resnick, Eric & Susan, 160 Spooner Point Rd., Castleton - Request for waiver for setback on a pre-existing small lot.**

Mr. & Mrs. Resnick were sworn in by Chairman Pritchard.

J. Thomas stated that this was a pre-existing small lot adding 7' x 16' deck plus stairs which will come within 20 feet from the property line. The setbacks required in this zone are 50 - 50 - 30 feet.

The board discussed Section 709 and its impact on the property. J. Thomas stated that if any expansion of this property were proposed in the future, then this expansion would be included.

R. Day made a motion to close the Public Hearing. G. Chader seconded. All voted in favor. So voted.

**Applicant: Town of Castleton, 556 Main Street, Castleton - Request for waiver for setback to the front and rear on a non-conforming structure on a pre-existing small lot.**

J. Thomas stated that there was a request for definition of Essential Services and whether it was for this property and asked that J. Hale recuse himself from this case. The reason being that since J. Hale made the motion at the Select Board meeting to discuss Essential Services and how it pertained to this particular permit. He continued by saying that he would felt that Mr. Hale had a conflict of interest on this issue.

J. Hale stated that he did not feel it would be a conflict of interest and would not recuse himself.

G. Pritchard swore all in attendance at the meeting.

J. Leamy commented that any board he was involved in if there was an appearance of a conflict of interest he would step down. He continued saying that to support the integrity of the board and the Zoning Administrator he felt that Mr. Hale recuse himself. He also pointed out that Mr. Hale also made several postings on Front Porch Forum in particular a recent posting "There are 2 very important points, our zoning ordinance does not prohibit the Town from adding the roofed front porch and the vault addition...the Town is an Essential Service .....exempt from Zoning Permits" and know he wants to sit in a quasi-judicial position.

G. Trudo stated that according to Title 2 Section 28 of the Vermont Constitution clearly stated that if an individual who is a member of a committee who makes a formal biased opinion before evidence is given the man can be disqualified from serving.

J. Thomas asked how the board attended to proceed, whether they will address the Essential Services first and if they deem it is an Essential Service, and then the zoning appeal is moot. The board decided to hear both issues at the same time. He continued by reading the motion made by Mr. Hale at the Select Board meeting.

The board continued discussion about conflict of interest and J. Mark read Article 2 and Article 4 from the Conflict of Interest policy.

C. Jacien stated that the permit is being brought before the DRB by the Select Board requesting the variances and requesting these variances be granted and the Town can ask for a continuance in this proceeding because this may be appealed.

J. Hale stated that he can sit & talk but if he were to recuse himself he would recuse himself from the vote during Deliberative Session. He continued by saying that he would not like to see this permit put off any longer.

J. Thomas stated that many years ago when he was on the DRB, the DRB's attorney was John Hanson and he informed the board that a recusal meant that one did not sit at the table, did not participate in the discussion, but were free to sit in the audience and be recognized as a member of the public. J. Thomas also stated that since John Hale is a select board member/appellant then he is part of the appeal of the Zoning Administrators decision.

G. Kupferer stated he agreed with Mr. Thomas, as the member should recuse himself before any testimony is taken and it is the individuals decision so that there is no influence one way or another.

C. Jacien asked that on behalf of the applicants, he would request a continuance of the hearing until this matter straightened out.

J. Hale stated he would step off the board and become an audience member rather than delay the hearing.

T. Kearns stated he would like the board to consider the conflict of interest by the Acting Zoning Administrator who has made many statements against renovation of 556 Main Street and if fingers are being pointed at someone then he would like them pointed at Charles first.

J. Hale stated he would rather recuse himself than delay the process.

C. Jacien stated that this permit was reviewed by the former Zoning Administrator about a year ago and he concurred with my decision to deny the permit and the same opinion the J. Thomas has.

J. Thomas stated that he would like to address the Essential Services, he read the definition on page 48 of the Zoning Ordinance for the record. He continued by saying that if you look at the total definition, it is talking about water, power, etc. and if you look at it out of context say that public buildings fits, then there is no reason for the planning commission when it did it these bylaws, then Article 3 - Table of Uses includes Municipal Offices, Schools, etc., these would not have been included in the table.

Chairman Pritchard state that he has sworn in all in attendance.

G. Kupferer stated he represents John & Pamela Rehlen interested parties and he lives kiddy corner to the property so he is an interested party, is comments are made on behalf of John, Pam and himself. He disagrees with J. Thomas's analysis, looking at Section 1021 no permit is needed, so if it is Essential Services then Section 1021 would apply. He looked at Zoning Ordinances from the past and the same definition is in since 1987. Under Permitted Uses lists, if you list the government as permitted you would not need Essential Services, if it is not a permitted us in a district, then you can't put it there. He also read the section on Handicapped Accessibility.

J. Leamy stated that all construction by the Town including this building, construction of a roof over the Clerks area, the addition to Crystal Beach, state agencies, (fish & wildlife), and all of Castleton State College have gone through the Zoning process.

G. Trudo under the Table of Uses it does list Municipal Offices as a required permit. The town office is a non-conforming structure on a non-conforming lot with conforming use under Section 709. The ordinance states that in the event that there is conflicting statements within the regulations, then the strictest regulation would apply.

J. Thomas suggested that the board review Article 13 B. He felt that there was no doubt that the Essential Services belongs before the DRB.

J. Thomas went on to the next section of the permit process which was denied under Section 709, it is in Village Commercial (VC), is a pre-existing small lot of about .11 acre. Article 5 states coverage at about 20% maximum and this parcel is more than 50%, the setback are not met. Section 1207 Variances & Waivers, this property does not meet any of the criteria. Section 413 Water Source Protection states that building & paving not more than 25%.

C. Jacien stated that the handicapped ramp does extend into the front setback and a roof should have been installed but wasn't because of local opposition. As for the variances, the building was

existing the town did not create the hardship on the property. The town is trying to alleviate the water runoff from the building so that there is no issue with the Water Source Protection area.

G. Pritchard asked where the water runoff will go. C. Jacien stated he did not know how the runoff piping will work. The construction plans will be development in the future and they should address the runoff.

G. Kupferer stated that out back of the building you will see a cover over the door that measures 13' x 5'4" that should be included in the coverage of the lot, maybe if increasing the vault by that much would not change the coverage of the lot.

G. Pritchard asked if the overhang is included in the lot coverage. J. Thomas replied that he was not sure; the lot is about 4400 sq. ft. and in 2012 by D. Skidmore measured the building at 2400 sq. ft. and can't really be sure if the roofed section was included.

G. Trudo stated that in 1925 the Town bought a vault that is in the building from Henry L. Clark. The Town Attorney stated that the space around, above & below it was reserved and it was agreed to. In March 26, 1956 the Town bought from William & Norma Keen the building that the vault was in. The Town of Castleton offered the Castleton Historical their rights and a restrictive covenence.

E. O'Shea stated that even though the town government is essential it does not mean that the building is. We need a tax collector and the town is functioning without it being in that building. Services are water, sewer, electricity are essential and not the building.

G. Pritchard said he thought the permit is incomplete because of the square footage is missing and would like that information.

J. Thomas found the square footage in the Lister file: first floor at 2371, second floor at 2150, basement at 1300, unfinished attic at 860 and canopy is 52.

#### MOTION

R. Day made a motion to close the Public Hearing and enter Deliberative Session. G. Chader seconded. All voted in favor.

#### MOTION

G. Chader made a motion to Adjourn. B. Day seconded. So voted.