

CASTLETON DEVELOPMENT REVIEW BOARD
October 25, 2022 – 7:00 PM
Castleton Fire Station Community Room
273 VT Route 30, Castleton, VT

Zoom Meeting Link:

https://us02web.zoom.us/rec/share/oI5VaSGeS03QUBdFQBCVpvnwynbS0G6FcoghG7h5p56J3ZUI-nE5X5H_V0bYjrK.QGWou6jDpYQw0NxX

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

Others in attendance included: See Attached List

In attendance via Zoom: Wayne Elliott, Bryan Currier, Merrill Bent, Allison Harvey, Recording Secretary

Call Meeting to Order

Meeting was called to order by P. Keller at 6:44 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 October 18, 2022

D. Wood made a motion to approve the minutes of October 18, 2022 as presented. M. Holden seconded.

Page 1 – D. Wood should be replaced with M. Holden on the motion to approve the minutes.

Page 2 – M. Holden made the motion to exit DS, LS seconded.

Adjourn time unknown.

All voted in favor. So voted.

P. Keller, problem with next meeting it is election day, proposed November 10 at 7:00 pm

ML Harris stated the board has not approved the minutes of September 20, 2022 and they are very incorrect, would need to go back to the audio to complete them properly. When Hale and Hale asked for reconsideration at the bottom paragraph, Mr. Holden said it was going to be just on those particular things, then Mr. Keller said no, it was going to all be open. Board members briefly discussed the approval of the September 20 minutes. P. Keller suggested they hold the approval until everyone could review them and make sure they are correct. ML Harris asked how they could hold them when it pertains to this meeting. Board members reviewed the minutes and discussed whether they should be revised. P. Keller stated that he recalls that he replied to K. Culpo's question of what is being reconsidered that the application would be reopened. L. Sargent explained that after their deliberative session that evening they made the determination that they would consider those three items, and that if there was something

within the findings of fact that they issued regarding their decision, someone could present something connected to that, but that they were not going to listen to everything all over again, only things that were requested be reconsidered or something within their original findings of fact. P. Keller stated that if someone has a new condition they want to speak to, that's ok. Further discussion on what should be added to the minutes, and a review of the vote, which is correct, 3 voted in favor, 2 voted against. J. Currie asked if anyone else had any one else that filed any rebuttal to the reconsideration besides Hale Resources. The Board stated they were not aware of any and asked if she had filed something they had not received yet. J. Currie stated no she had not, but P. Keller had replied to a question at the meeting prior that they had consulted with an attorney about the Findings of Fact and inquired whether they should be reconsidering all points of the Findings of Fact or just the ones requested be addressed in the Finding of Fact. P. Keller explained his previous statement. **L. Sargent made a motion to accept the September 20, 2022, minutes as amended. M. Holden seconded.** K. Culpo suggested that to go by the minutes, when they may not be accurate, it should be changed to reflect exactly what was stated. **All voted in favor. So voted.**

Reconsideration of Permit Application #8177 – Proposed Senior Housing Living Facility with Various Levels of Care as a Planned Unit Development under Title 24, VSA Section 4470(a)

P. Keller stated they would first take up the items that are asked to be reconsidered by Hale Associates, then they will open it up to the public comments that need to be addressed. P. Keller swore in those giving testimony.

Wayne Elliott present via Zoom addressed the sewer line that will be serving the property and addressed the condition and inspections of that line. It is his understanding that a grinder pump is proposed, which is not customary and is quite costly for the developer, he would recommend a sewer manhole with a screen or grate of some sort that would be the property owners' responsibility to keep it operable and maintaining. D. Forcier stated that this topic had been brought up during the original hearing, and now that it was included in their Findings of Fact, it has become an issue. Discussion on the 'muffin monster' being discussed at previous meetings, and it is agreeable to the developers to go along with W. Elliott's suggestion of a manhole with screening to address it. M. Holden questioned the wastewater plant capacity, W. Elliott stated there is plenty of capacity at the plant. Further discussion on the capacities, the plant is currently at 60%, and they have televised the lines in this area, and it was determined by that study the lines are in acceptable condition. D. Forcier questioned the Town's ability to inspect the manhole if it not on town property. M. Jones stated ordinarily there is an easement to the manholes, and they maintain them. B. Currier stated that the line from the manhole to the building is maintained by the property owner, and they would be willing to provide an easement to the Town for the manhole if that were what they would prefer. B. Currier also stated that water and wastewater are required to be State permitted. P. Keller asked what would be involved if the Town sewer line serving this property were to fail. M. Jones stated the cost of a line they just replaced today, which was not a large expense.

B. Currier stated they would like to address 36A of the Findings, the fact that it has unlimited liability in it could be a factor for funding for the project. He would propose that it have a \$10,000 or less bond or escrow agreement attached to it. Further discussion on the connection to the Town sewer and the inspection of that connection. Meredith Fabian of Suncrest Terrace, stated she has a great deal of background in the building industry stated she felt it is ridiculous for the developer to balk at the cost of the failure of the town line being born by the developer, as she is aware of the actual cost of these types of things, and for someone to say it would only be \$15,000 to repair is also ridiculous. Brenda Fleming stated that she also has construction knowledge, and she would agree that the low cost of repair mentioned is ridiculous. No one is saying a back up can't happen, but to require a large bond as being discussed is not what is done in other areas of the Town. D. Forcier stated he wanted to clarify that the bond being addressed includes water and sewer, as well as stating that the existing places referred to not being required to bond are older and most likely grandfathered. Merrill Bent stated with regard to the bond and responsibility of problems that may arise, that the bond does not operate as a cap on liability.

P. Keller referred to the model facility, and if the room sizes of this proposal are similar. It was stated that they were. P. Keller also questioned the memory care piece. Policies for Chestnut Place were presented, and it was stated that there are State licensing requirements that apply. Also an explanation of the difference between memory care, assisted living, and nursing homes, as well as the State classified levels of care. Independent, assisted and memory care are the three levels they are proposing to offer. Discussion on whether the memory care section would be able to be filled immediately based on the State licensing and what level of care they will be provided as residents of that section. ML Harris questioned the income limit guidelines and how it works as far as being asked to leave the facility or if can remain a resident if unable to pay. P. Keller felt that was not a part of the application process, they are addressing permitting. Z. Hale stated that he wanted to state that there is a common misperception of the percentages of income that determines eligibility to reside in the facility. It is a good point being made but does not relate to this permitting process.

In further addressing item #14, B. Currier addressed how the unit applies to the Zoning Regulations and PUDs and definitions of multifamily units and nursing homes and how the independent and assisted living sections of the project fits within the PUD requirements. Further discussion on memory care unit and the communal cooking/cafeteria area and how it can be accessed by residents. This proposal is not an institutional setting like a nursing home, it is a residential atmosphere. Required to have at least 225 square feet of the community space for the memory care but can go over that amount. Walter Fabian questioned the ability of memory care residents to use a kitchen. Discussion led to nursing home care versus independent living/memory care. L. McKay stated as the acting chair of the Planning commission, in their review of the zoning regulations, they feel this development fits within the PUD definition. Julian Smith addressed the cost and how the regulations were changed that this would fit within a residential area. L. DesJardins asked about the Town Zoning definitions of nursing home and independent living and how they compare to the State definitions, and

which supersedes. F. Johnson, a member of the Planning Commission, and they have discussed that and made the decision that State definitions take precedence. K. Culpo also addressed the Town and State requirements and how affects the Town process. J. Currie stated she was Chair of the Planning Commission for four years, and they applied for grant with RRPC to help them with rewriting the regulations. There is a lot of guidance in rewrites with RRPC and as well as legal assistance and it's what the job is of RRPC.

Brenda Fleming stated the residents are volunteers, just as the members of the local boards are, and the residents don't have the legal world to navigate definitions. She does not agree that RRPC takes precedence over the Town, otherwise would not need to require two hearings to make changes. Definitions can be interpreted differently, and there are State Statutes as well that need to be considered at times.

Z. Hale again reiterated to the Board that they are a residential setting, not an institutional like a nursing home. J. Smith addressed the services provided in memory care section, and how it is justified as residential. P. Keller stated he feels the nursing home concept has changed since it was 40-50 years ago, which is possibly what is driving the State definitions as well. L. McKay asked that everyone present review the seven-page document the Hale's provided, she feels it will be clearer for everyone as to why it is not considered a nursing home.

K. Culpo has four pieces of new evidence to present, and specifically Conclusion 11, 12, 15 and Condition 48 and presented a PowerPoint presentation of new information. K. Culpo asked that the board review the timeline and source documents she is providing with their legal council to determine if the procedures are accurate. The first item of new evidence relates to property values. B. Fleming reviewed the history of her property, and how it has been documented that property values have declined due to the proposal being on file with the Town. The second point is relating to conflict of interest of DRB members. K. Culpo reviewed the list of documentation relating to conflict of interest that has been distributed to various board members since the inception of this permit application. The next point is regarding the 46 signatures of residents in the direct area that has objections listed. K. Culpo then reviewed the Findings of Fact, Conclusions of Law and what is included in Conclusion 11, 12, 15 and 25 and Condition 48, as well as a video of the subject property, neighboring property, the model project in Berlin, VT and the challenge they are presenting that this will affect the rural character of the town and Sand Hill Road. K. Culpo also addressed the recent changes made to the Zoning Regulations and how it appears the changes were made to help this project fit into the regulations for approval. K. Culpo stated the DRB is not a zoning board, zoning regulations are not the board's only consideration in approving or disapproving permits before them, the DRB is to considering farming, residence and town plan, the whole big picture. In fact they can say no, this project doesn't fit out town, zoning or it doesn't belong here

9:09 pm – Enter Deliberative Session

D. Forcier made a motion to enter Deliberative Session for Permit #8177. D. Wood seconded. All voted in favor. So voted.

D. Wood made a motion to continue Deliberative Session on Application for Permit #8177 until the November 10, 2022 meeting at 7:00 pm at which time a written decision can be expected. L. Sargent seconded. All voted in favor. So voted.

11:02 p.m. – Adjourn

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

Respectfully Submitted
Allison Harvey, Recording Secretary

F E M I N A L