

**CASTLETON DEVELOPMENT REVIEW BOARD
November 10, 2022 – 7:00 PM
Castleton Fire Station Community Room
273 VT Route 30, Castleton, VT**

Zoom Meeting Link:

https://us02web.zoom.us/rec/share/IEhZRlqR4m0kHbj13oYc9oiDryboIIFSO3GmK4axvP8AEJbmbAE90H1cyeqc1igt._HgOQ_HiUU1p5IIa

Board Members Present: Michael Holden, Don Wood

Others in attendance included: See Attached List

In attendance via Zoom: Pat Keller, Laura Sargent, Dan Forcier, Merrill Bent, Katy Culpo, Laura DesJardin, Zak Hale, Mark Teetor, Allison Harvey, Recording Secretary

Call Meeting to Order

Meeting was called to order by P. Keller at 7:00 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 25, 2022

D. Wood made a motion to approve the minutes of October 25, 2022 as presented. M. Holden seconded.

Page 4 – D. Wood questioned the comment made by K. Culpo in the fourth paragraph, sixth line that begins with The second point. He is tired of hearing of this conflict of interest that keeps popping up, and he does not know what people are worried about. P. Keller stated he recalls that it was brought up by K. Culpo in testimony during the hearing and is on paper as part of the record. D. Wood stated he still doesn't know who is saying there is a conflict or what the conflict is. P. Keller stated he feels that the members of the board have been made aware of the policy on conflict of interest, and no members of the board have recused themselves from the hearing. M. Holden found a copy of what was presented and discussed at a meeting regarding what the conflict-of-interest policy means. D. wood stated there appears to be accusations of there being a conflict for the Board members, and he is sick and tired of hearing about it, and he again still does not know who or what the issue is. P. Keller stated all board members, maybe with the exception of L. Sargent, has studied the conflict-of-interest policy the town has, have looked at it and had help interpreting it with the board's lawyer. L. Sargent stated she had reviewed that policy.

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

P. Keller swore in S. McIntyre at this time. This is a continuation of the original hearing. P. Keller stated there is a height concern for the additional/secondary structure. Everyone was referred to Page 31 or possibly Page 34 (depending on which version of the regulations) of the regulations that height for additional structures should be at a maximum of 29 feet. The request for the height of the new secondary building is 31 feet. D. Forcier stated they wanted to have a walk out basement which puts the structure a few feet past the height, but if they eliminated the walk out basement and measured from the front door, it would be under the maximum height. The roof had a steep roof pitch for snow and ice down to the lake. L. Sargent stated they had no problems with it, it was the struggle they had with the height. D. Forcier further explained all other permits and approvals are in place, has been designed, this is the only hold up to the project. M. Holden addressed it with the Planning Commission, and they felt they would be able to grant a waiver, but it was not clear where that is found in the regulations. There is a section of granting waivers and variances, but not clear if this particular issue is addressed. Z. Hale suggested the board to look at Section 1206, B and #2 of the regulations. D. Forcier felt they should also look at Section #1207. P. Keller suggested perhaps if they are not going to take any further testimony, they should address this in deliberative session. M. Bent stated that in Section #1207, all criteria needs to be met, is a statutory regulation.

7:27 pm - D. Wood made a motion to enter Deliberative Session to address Permit

Application #8244. M. Holden seconded. S. McIntyre stated that the last meeting she was at for this permit, she felt the neighboring properties had been addressed, and the roof line of the new structure echoes the roof of the one behind it. They had also hoped to get the demolition of the existing structure that is being replaced done before any neighbor's return, they have had to ask contractors to hold off at this point because of the delay in this permit, they have lost a lot of time. M. bent stated the board would still have to issue a written decision, particularly to neighbors if there are any neighbors that have made an appearance or made comments with regard to this permit application before anything can be started. S. McIntyre stated she understood that. M. Holden stated no one has come to this board while this application was reviewed, and it was believed it would still have to be 15 days after written decision before anything can be started. **All voted in favor. So voted. Should be noted due to the discussion, board did not enter Deliberative Session until 7:35 pm.**

8:40 pm – Exit Deliberative Session

M. Holden made a motion to exit deliberative session. D. Wood seconded. All voted in favor. So voted.

L. Sargent made a motion to give the applicant time to modify the plans to conform to the by-laws on Permit Application #8244. M. Holden seconded. P. Keller, L. Sargent, D. Wood, D. Forcier voted in favor. M. Holden voted against. So voted. S. McIntyre questioned why that action was taken. L. Sargent stated they cannot find in the regulations anywhere that they can change or vary the height of the additional building, and this gives the applicant time to revise the plan and keep the maximum height to within the regulations, which is 29 feet, and she

would not have to come back before this board for approval, the Zoning Administrator would be able to approve it.

S. McIntyre stated she was stunned with this decision, the last time they came with the architect, the reason for the additional height limit of the building was very valid in the regulations. She has seen places go up on the lake that blocks everyone's view, and that is the last thing they would want to do. This is not blocking anyone's views, and it is echoing the pitch of the roof of the garage that they built 2-3 years ago that Jonas approved. The whole architectural design is based on matching the existing building and this seems like a technicality. L. Sargent stated she understands where S. McIntyre is coming from and understands that she feels the proposal does not affect anyone around her, but the laws they follow are for the complete town, so if they couldn't allow someone in town to do that, they can't allow someone else to do it. If the ordinances change in the future for variances it may be different. Even her architect stated during the last meeting that he missed the fact that it was supposed to be 29 feet for an accessory building, primary residence is a different set of regulations. M. Bent stated as the Town attorney that this board is bound to apply the town's ordinances as written and there are few provisions that they can make a variance to. The board has concluded that the project as proposed does not meet the criteria, and there are no provisions that they can go to for a variance in this instance. She further stated that the board feels this will save the applicant a step by not having written decision done, having to appeal it and adding to the process. This will allow her to make changes and get an approval and get to the construction phase more quickly. The permit could also be denied, and an appeal filed which would be a much longer process for the applicant.

S. McIntyre stated this is a totally different meeting than what she expected. She felt from the last meeting that the regulations were murky and that the board was not certain they had the ability to grant a waiver, that it was going to go to the Planning commission to be figured out and if they couldn't figure it out, the regulations were to be rewritten and they might not know until January if they could get approval. Maybe Jonas could have been able to figure it out, but this is not a simple thing, it will be thousands and thousands of dollars to have this redesigned. She thought tonight is the same as the last time she was here. She feels like she has been blindsided, common sense would say that there are no encroachments on anyone and what they are trying to do is preserve the oldest house on the lake. They have tried to stay within all of the regulations and have been as open and up front as possible. M. Holden stated her architect stated at the last meeting that he missed the 29 foot requirement, which is not the control of this board. There is no way this board can give her the variance for the two feet. S. McIntyre stated Jonas approved the garage and he stated just a few days before he passed away that he may have missed the height of the garage when approving that permit. M. Bent if that is the case, so be it, but it doesn't allow for this to be approved or not based on that previous permit approval. D. Wood stated while looking at the garage plans that S. McIntyre had on hand that there is no third floor on the garage as it is with this new proposal. The new proposal has walk out on the basement level, the garage did not. D. Wood stated the permit is not denied, it is being held. S. McIntyre can either say she is not changing the plan, it will be

denied and can be appealed. Or she can redraw the plans to conform to the regulations and it would be approved. M. Bent suggested maybe continuing this hearing until the next meeting, and S. McIntyre could come back for the next meeting to let them know what she decided to do. S. McIntyre stated she misunderstood what was going to happen this evening, and she cannot make a decision on what she wants to do this evening. **L. Sargent made a motion to continue Permit #8244 until next regularly scheduled meeting of the DRB of November 22 2022.** M. Bent stated this is not to reargue, is to determine if the permit will be resubmitted at 29 feet of height or have the DRB deny it and it can be appealed by the applicant. S. McIntyre asked who can be called if there are any other questions that need to be asked before the next meeting. Board stated that the building is either going to be 29 feet in height or the application will be denied as presented and it can be appealed by the applicant. S. McIntyre asked how to appeal, D. Wood stated you appeal to the Environmental Court. M. Bent suggested contacting an attorney as to what the procedure would be for an appeal. **M. Holden seconded the motion. All voted in favor. So voted.**

Continuation of Deliberative Session for 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)

9:40 pm - Enter Deliberative Session

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

9:32 pm - Exit Deliberative Session

D. Wood made a motion to exit Deliberative Session. M. Holden seconded. All voted in favor. So voted.

P. Keller stated they have made a decision on the Senior Living Facility and have approved an amended Findings of Fact, Conclusions of Law and Decision. The document has been voted on and approved and they will get it up on the website as soon as they can get it up there. Modification to the earlier version and a number of items were addressed. Tomorrow is a holiday, so it will most likely be Monday.

NEW BUSINESS

Next meeting will be November 22, 2022.

9:37 p.m. – Adjourn

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

Respectfully Submitted

Allison Harvey, Recording Secretary

Transcribed from Zoom Recording