

**Town & Village of Waterbury
Development Review Board
Approved General Meeting Minutes
Date: December 16, 2015**

IN ATTENDANCE:

Board Members Present: Jeff Larkin, Chair; Dave Rogers; Martha Staskus; Mike Bard; Tom Kinley

Staff Present: Steve Lotspeich, Town Planner; Patti Spence, Secretary

The meeting convened at 6:30 pm.

6:30 p.m.

Application #76-15-T: Appeal of Zoning Permit #63-15-T, Todd Curtis, for the construction of a new single family residence at 416 Henry Hough Road, Waterbury, VT 05676 (Tax Map #14-125.000)..

See specific hearing minutes.

7:30 p.m.

Continuation of Application #33-15-V, Town of Waterbury, for a Zoning Permit, Site Plan Review, and Special Flood Hazard Area Overlay Zone permit to construct a picnic shelter at Dac Rowe Field, within the Special Flood Hazard Area, at 32 North Main Street, Waterbury, VT 05676 (Tax Map #19-238.000).

See specific hearing minutes.

APPROVAL OF PRIOR MINUTES:

MOTION:

Mike Bard moved and Dave Rogers seconded the motion to approve the general minutes of November 18, 2015.

Vote: Passed unanimously.

The meeting was adjourned at


_____, Chair

Date: 1.6.16

THESE MINUTES WERE APPROVED ON _____

NOTICE: This decision may be appealed to the Vermont Environmental Court by an interested person who participated in the proceeding(s) before the Development Review Board. An appeal must be taken within 30 days of the date of this decision, pursuant to 24 V.S.A. § 4471 and Rule 5(b) of the Vermont Rules for Environmental Court Proceedings.

Town & Village of Waterbury
Development Review Board
Approved Hearing Minutes & Decision, Appeal of Permit #76-15-T
Date: December 16, 2015

Attending

Board members: Jeff Larkin, Chair; Mike Bard, Martha Staskus, Mike Bard, Tom Kinley, Dave Rogers

Staff Present: Steve Lotspeich, Town Planner; Patti Spence, Secretary

HEARING:

An appeal of Zoning Permit Application #63-15-T, Todd Curtis, for a new single family residence at 416 Henry Hough Road, Waterbury, VT 05676.

Appeal Application #: 76-15-T
Appellants: John & Linda Wulff
675 Owls Head Mountain Road
Waterbury, VT 05676
Subject Property of Todd Curtis
Appeal Owner/ 416 Henry Hough Road
Address: Waterbury, VT 05676
Tax Map #: 14-125.000

Present and Sworn in:

Todd Curtis, permit holder
Dexter Lefavour, Engineer for the permit holder
John & Linda Wulff, Appellants
Liam Murphy, MSK, Representing Appellants
Mike Hedges, Resident

INTRODUCTION

On October 23, 2015, Zoning Permit Application # 63-15-T was issued to Todd Curtis for the construction of a single family residence. On November 5, 2015, an appeal of Application # 63-15-T was submitted by John & Linda Wulff (appellants). The bases for appeal are below.

EXHIBITS

- Exhibit A: Zoning Permit 63-15-T
- Exhibit B: Notice of Appeal regarding Application 63-15-T, dated November 5, 2015
- Exhibit C: ANR Atlas Map of Property
- Exhibit D: Waterbury GIS Map of Property
- Exhibit E: Survey Identifying Owls Head Mountain Road
- Exhibit F: Notice of Public Hearing, dated November 26, 2015
- Exhibit G: Letter to Adjoining landowners, dated November 25, 2015
- Exhibit H: Parcel Map of Curtis Property, from Town of Waterbury On-line Mapping System
- Exhibit I: Google map submission locating the existing structure and potential building envelop
- Exhibit J: Site maps, set of 3

Testimony:

1. The right-of-way serves 6 lots, which are noted on Exhibit E.
2. The originally filed application was not detailed enough for the appellants. The setbacks were also a concern of the appellants.
3. The appellants testified that the setback in the conservation zone is 100 feet and should be from the edge of the right-of-way for Owl's Head Rd. that serves the Wulff residence. The house should therefore be set back 125 feet from the centerline of the right-of-way.
4. The appellants are asking that the appeal be approved and if approved the permit would be revoked and Mr. Curtis would have to file a revised permit application for the house.
5. A new application with a site plan that shows the entire parcel and all the setbacks needs to be submitted since the permit under appeal was issued with missing information.
6. Exhibit H, a Parcel Map of Curtis Property, from Town of Waterbury On-line Mapping System, was added.
7. The existing use of the property is a single-family residential use of a garage. The structure is 65 feet from the end of the town right-of-way for Hough Rd. therefore the garage is a non-complying structure.
8. It is the permit holder's contention that a non-conforming use can continue, and the non-conforming use and the associated 65' setback should apply to a new and separate single-family residence.
9. Dexter Lefavour stated that the level of detail on the sketch plan was adequate for the purpose it was submitted for.
10. The appeal questions the presentation of the setbacks, which the permit holder feels met the requirements of the approved application.
11. The right-of-way deed provides a right-of-way for one property that has now been subdivided.

12. Regarding #11 above, the appellants testified that the right-of-way serves all lots within the subdivision of the original property.
13. There is no development approved above 1200 feet, although some of the property is above that elevation.
14. Steve Lotspeich stated that any new structure would have to meet the 100 foot setback to the edge of the right-of-way or a waiver would need to be requested.
15. The 6 lots served by the right-of-way are all conforming lots of over 10 acres.
16. The permit holder contends that there is no evidence of the 6 lots served by the identified right-of-way.

Testimony was closed at 7:33 pm.

PROJECT & APPEAL DESCRIPTION

1. Zoning Permit Application # 63-15-T approved a 1,500 sq. ft., 22' tall, single family residence at 416 Henry Hough Road, Waterbury, VT 05676 – Applicant – Todd Curtis.
2. Permit # 63-15-T was issued on October 23, 2015, with a 15 day appeal period running through November 7, 2015.
3. The appellants submitted their appeal of Zoning Permit # 63-15-T on November 5, 2015, within the required 15-day appeal timeframe, as required by Section 300(g).
4. The appeal (Exhibit B) is attached with this report.
5. The appeal lists the following reasons why Zoning Permit # 63-15-T should be denied.
 - a. Section 300(c) sets forth the requirements for the application. Applicant's sketch plan does not show
 - i. the dimensions of the lot to be built on.
 - ii. the location of property lines and the accurate location of Hough Road/Owls Head Mountain Road for purposes of showing setbacks.
 - iii. the location of all new construction/development, to wit: the location of the septic system or the isolation distances of the septic system or the well isolation distances for the new well or the location of any holding ponds required by applicable storm water permits.
 - iv. elevation contours of the property (it is believed that a portion of the Applicant's proposed construction lies at or above 1200 feet in elevation).
 - b. Section 401(b) and Section 504. The location of the residence to be constructed is too close to Hough Road/Owls Head Mountain Road.
 - c. Article X, the RHS Overlay District Rules. Upon information and belief, a portion of the property to be developed by the Applicant lies at or above 1,200 feet in elevation.
 - d. Appellants reserve the right to raise additional grounds for appeal as they discover additional facts about the proposed project.

6. The Waterbury Zoning Administrator's (ZA) response to the appellant's reasoning for denial of Permit # 63-15-T is as follows:
- a. The applicant (Todd Curtis) has agreed to furnish a new sketch plan that: (i) identifies lot dimensions; (ii) locates property lines and the accurate location of Hough Road/ Owls Head Mountain Road for purposes of showing setbacks; and (iii) locates all new construction/development, including the septic system or isolation distances of the septic system or the well isolation distances for the new well or the location of any holding ponds required by applicable storm water permits. The ZA is including an ANR Atlas Map (Exhibit C) and a Waterbury GIS Map (Exhibit D) which includes site contours. The originally proposed home site is less than 1,200 feet in elevation.
 - b. Section 401(b) states "Notwithstanding provisions for front yards elsewhere in these bylaws, on streets with less than 50-foot right-of-way, the front yard setback shall be measured from the centerline of the existing roadway and 25 feet shall be added to the front yard setback requirement."

Section 504 requires 100-foot building setbacks from front, side and rear property lines (Conservation Zoning District).

The Owls Head Mountain Road ROW is 50-feet wide (Exhibit E), and as a result, Section 401(b) does not necessarily apply. However, the definition of "Setback" is of interest here. "Setback", as defined in Article XIII – Definitions, is "The distance between the nearest portion of a building on a lot and a street line or a property line or the boundary of a right-of-way for a driveway that provides access to more than five dwelling units or more than five lots." It is the definition of "Setback" that is going to require Mr. Todd's proposed residence to be located at least 100-feet from the Owls Head Mountain Road ROW.

In initially reviewing Application 63-15-T, the ZA relied on the Waterbury Tax Map and online Waterbury GIS Map to determine the number of lots that Owls Head Mountain Road served. Those two resources identified that the ROW served no more than 5 lots. This would normally result in there being a 0' setback to the ROW. However, after this appeal was submitted, a survey of the lands involved revealed that there are an additional 3 lots, and thus a total of more than 5 overall lots, that Owls Head Mountain Road serves which, as a result, would require a 100-foot setback from the edge of the ROW.

As a result of this finding, Mr. Curtis is planning on relocating his future home to be at least 100-feet from the edge of Owls Head Mountain Road ROW, or at least

125-feet from the centerline. As of the time of this report, no revised site plan has been submitted.

- c. Article X, the Ridgeline, Hillside, Steep Slope Overlay District Rules, require that all development occurring above 1,200 feet in elevation be subject to Development Review Board review. According to Exhibits C & D, the original location of the home is below 1,200 feet in elevation. Now, with Mr. Curtis proposing to relocate his future residence, the development will be even lower in elevation.
7. In discussing this matter with Mr. Curtis, the ZA understands that he now intends to relocate the location of his new home to a distance of at least 100-feet from the edge of Owls Head Mountain Road, as well as 100-feet from all other property/ROW lines.
8. As of the time of writing this report, an updated site plan has not been submitted.
9. The ZA understands that Mr. Curtis may, at the time of the public appeal hearing, submit a revised site plan and other documentation for Application # 63-15-T in an attempt to satisfy the DRB and the appellants, OR, Mr. Curtis may wish to either withdraw Application # 63-15-T or accept DRB denial of Application # 63-15-T, and re-submit a new application for review.

Finding of Fact

1. There are 6 lots accessed by the right-of-way across the Curtis property, as shown on Exhibit E. Therefore the setback is to the "street line" or the edge of the right-of-way.
2. Based upon finding #1 the setback requirements were not met for a permit to be issued.

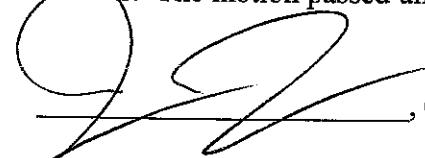
Conclusion

Based upon these findings the Waterbury Development Review Board upholds the appeal of Zoning Permit Application #63-15-T, Todd Curtis, for a new single family residence at 416 Henry Hough Road, Waterbury, VT 05676, therefore the permit is revoked.

Motion

On behalf of the Waterbury Development Review Board, Tom Kinley moved and Mike Bard seconded the motion to uphold the appeal of permit #63-15-T, to Todd Curtis, and revoke the permit.

VOTE: The motion passed unanimously.


_____, Chair

Date: 1-6-16

THESE MINUTES WERE APPROVED ON 1-6-16

NOTICE: This decision may be appealed to the Vermont Environmental Court by an interested person who participated in the proceeding(s) before the Development Review Board. An appeal must be taken within 30 days of the date of this decision, pursuant to 24 V.S.A. § 4471 and Rule 5(b) of the Vermont Rules for Environmental Court Proceedings.

Town & Village of Waterbury
Development Review Board
Approved Hearing Minutes, #33-15-V
Date: November 18, 2015
CONTINUED: December 16, 2015

IN ATTENDANCE 12/16/15:

Board Members Present: Jeff Larkin, Chair; Dave Rogers; Martha Staskus; Mike Bard; Tom Kinley

Staff Present: Steve Lotspeich, Town Planner; Patti Spence, Secretary

Application for a Zoning Permit, Site Plan Review and a Special Flood Hazard Area (SFHA) Overlay District Permit to construct a picnic shelter at Dac Rowe Field, in the Village Residential (VR) Zoning District.

Permit Application #: 33-15-V
Applicant: Bill Woodruff
Property Owner: Town of Waterbury
Tax Map #: 19-238.000
Location of Project: 32 North Main Street, Waterbury, VT

INTRODUCTION

The applicant seeks to construct a picnic pavilion shelter at Dac Rowe Field. The location of the shelter is within the 100-year floodplain.

Present and sworn in:

Bill Woodruff, Town of Waterbury

Everett Coffey, Adjoining Landowner

Will Bucossi, Adjoining Landowner

Additional Attendees 12/16/15:

Craig Van Tuinen, Adjoining Landowner

Carol Van Tuinen, Adjoining Landowner

Ryan Geary, Adjoining Landowner

Lacey Smith, Adjoining Landowner

EXHIBITS

- Exhibit A: Application # 33-15-V
- Exhibit B: NFIP FIRMette of property
- Exhibit C: Letter to Rebecca Pfeiffer, Asst. NFIP Coordinator, dated October 27, 2015
- Exhibit D: ANR Atlas maps of property
- Exhibit E: Notice of Public Hearing, dated October 29, 2015
- Exhibit F: Letter to Adjoining landowners, dated October 27, 2015
- Exhibit G: Letter from Alec Tuscany, Town/Village Engineer, dated November 12, 2015
- Exhibit H: Email exchange with State of VT Parks & Recreation
- Exhibit I: 1977 Land Use Permit for Dac Rowe Field
- Exhibit J: Letter from Chad Ummel, Recreation Department, letter
- Exhibit K: Rules for Dac Rowe ballfield, Fields & Facilities Reservation Policies
- Exhibit L: Letter from Craig and Carol Van Tuinen, Winooski Street residents
- Exhibit M: Concerns and options, resident Will Bucossi

TESTIMONY

1. The outlets will be above the floodplain.
2. The posts will be 6' x 6' but the material has not been decided, but they will be pressured treated and resistant to flood damage.
3. Winooski Street residents raised concerns about the noise and revelry that may occur with use of this shelter.
4. The Town took a risk by already laying the slab. There are other options for locating the shelter that are further from the Winooski Street residents.
5. A concern with an ACT 250 jurisdiction on this property was raised.
6. No new structure can go in the floodway.
7. The shelter is an effort to have a picnic area at the fields and a place to get out of inclement weather. Waterbury's other recreation fields have shelters. The Waterbury Recreation committee recommended a shelter there. The Town poured the slab thinking all the requirements were met.
8. Picnic tables, or any floatable accessories, would have to be anchored.
9. Other locations were discussed but none would meet all the criteria.
10. Screening around the shelter is an option for a noise barrier.
11. The shelter would have no electricity and no lighting.

The meeting was continued to December 16, 2015 at 7:30 p.m.

CONTINUED TESTIMONY:

12. Open pavilions was determined by Parks & Recreation to be acceptable use at Dac Rowe field.
13. The picnic pavilion would require an amendment to the Act 250 permit.

14. Chad Ummel contributed a letter from the Recreation Department, Exhibit J.
15. Neighbors are concerned about the enforcement of policies after hours.
16. The larger group events cause the most concern.
17. One neighbor expressed a concern about the structure inviting more of the revelry drawing closer to the residences on Winooski Street.
18. There is a concern that enforcement for the fields is currently limited due to lack of police hours in Town in the evening - adding a shelter draws another thing to enforce.
19. Everett Coffey presented that the deed for Dac Rowe Field prohibits building structures at the property.
20. Bill Woodruff reviewed the property after the last meeting and could not find another suitable location.
21. One resident offered that another location for the shelter would be acceptable to him. Or consider several locations for picnic tables, but not sheltered and spread out on the property.
22. A resident expressed concern with vagrants using the shelter to sleep under.
23. The slab is located at the base of a hill that is often used for sledding.
24. The applicant will consider use of a timer on the night lights.

Testimony was closed at 8:23 p.m.

FINDINGS OF FACT

1. *The 22 acre Town park property, addressed as 32 North Main Street, lies within the Village Residential Zoning District. The park contains 4 softball fields, 1 soccer field, and a community garden.*
2. *The park is bordered by the Winooski River along its western boundary, Thatcher Brook along its northern boundary and North Main Street along its eastern boundary. Several residences and the future Waterbury Library and Municipal Offices border the park's southern boundary.*
3. *The VR Zoning District requires a minimum lot size of 20,000 sq ft for non-residential uses, a maximum height allowance of 35', a maximum lot coverage allowance of 25%, and setbacks of: front 40', side 25', and rear 50'.*
4. *Both the property and the proposed picnic shelter comply with the VR Zoning District regulations.*
5. *The proposed shelter is 1,040 sq ft in size, will be 18' in height, and will more than adequately be setback from property lines.*
6. *The property lies within the Special Flood Hazard Area Overlay District. According to the NFIP FIRM map, panel 209 (Exhibit B), the property has a floodplain designation of Zone AE, with a base flood elevation (BFE) of 423' above sea level.*
7. *Small accessory structures larger than 200 square feet in size are required to obtain DRB approval.*

8. *The proposed shelter will be placed on an on-grade concrete slab. It will not have any walls that would negatively impact flood waters. The roof of the shelter will be supported by twelve 6"x6" posts.*
9. *In a letter dated November 12, 2015 (Exhibit G), Alec Tuscany, Town/Village Engineer, certifies that the proposal will not increase the base flood elevation more than 0.25 feet, as required by Waterbury Zoning Regulations Section 606(a)(4).*
10. *As required by Section 607(b), on October 27, 2015, notification was sent to Rebecca Pfeiffer, State National Flood Insurance Program (NFIP) Coordinator at the Vermont Agency of Natural Resources. (Exhibit C)*
11. *Comments from Ms. Pfeiffer have not yet been received.*
12. *There is not sufficient evidence that the elevation of the height of the building to the height of the land is not higher than the height of the land.*
13. *There is no evidence presented as to how the night lights can be controlled to be turned off at a specific time.*
14. *Excerpts from Site Plan Review and Special Flood Hazard Area apply.*

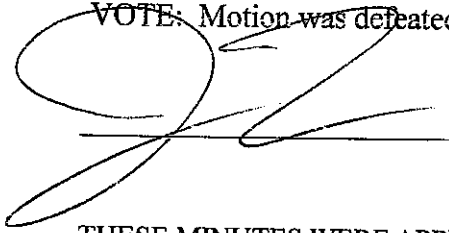
Conclusion

Based upon these findings the Waterbury Development Review Board concludes that application #33-15-V, Town of Waterbury/Bill Woodruff, for a Zoning Permit, Site Plan Review and a Special Flood Hazard Area (SFHA) Overlay District Permit to construct a picnic shelter at Dac Rowe Field, 32 North Main Street, Waterbury, VT 05676 (tax map ID #19-238.000) in the Village Residential (VR) Zoning District does not meet the standards in section 301, (3) (D) and (F).

Motion

On behalf of the Waterbury Development Review Board Tom Kinley moved and Mike Bard seconded to approve application 33-15-V

VOTE: Motion was defeated 4 to 1.

 , Chair

Date: 1-6-15

THESE MINUTES WERE APPROVED ON 1-6-15

NOTICE: *This decision may be appealed to the Vermont Environmental Court by an interested person who participated in the proceeding(s) before the Development Review Board. An appeal must be taken within 30 days of the date of this decision, pursuant to 24 V.S.A. § 4471 and Rule 5(b) of the Vermont Rules for Environmental Court Proceedings.*