

**TOWN DEVELOPMENT REVIEW BOARD  
MINUTES  
February 23, 2016**

**MEMBERS PRESENT:** Don Bourdon, Charles Wilson, Kim French, Ingrid Moulton Nichols  
**MEMBERS ABSENT:** Frederick Hunt  
**OTHERS PRESENT:** Paul Maggi, Jan Maggi, Mary Wilson, Richard Wilson, Lois Lorimer, Bill Sullivan, Louis Russell, Carolyn Bernstein, Lawrence Bernstein, David Murphy, Kathleen Murphy, John Ditchcos, Karl Huck, Kevin Barry, Peter Vollers, Eddie English, Michael Brands

**I. CALL TO ORDER:**

Chair Bourdon called the meeting to order at 7:30 p.m.

**II. APPROVAL OF MINUTES:**

The minutes of the January 26, 2016 meeting were approved as submitted.

**III. PUBLIC HEARINGS:**

**A. Old Business:**

**1. T-4565-15 Pidlipchak**

Application is for Conditional Use Approval to reinstate Subdivision Permit T-4349-12 and to excavate within the Conservation Overlay District (wetland buffer). The property is located on 148 Iver Johnston Road and is zoned Residential Five Acres / Wetland Overlay.

Mr. Pidlipchak was not present.

The hearing was continued to allow the applicant time to have an updated site plan created, that would show the as-built topography.

**2. T-4623-15 Paul & Jan Maggi**

Application is for Conditional Use and Wetland Review approval to replace existing 1771 sq. ft. garage with 3400 sq. ft. garage and to change the driveway within Conservation Overlay Zone. The property is located at 938 South Road and is zoned Residential Five Acre / Wetland.

Mr. Maggi presented the application.

On January 26, 2016, after lengthy review, the TDRB requested detailed information from an engineer.

Mr. Maggi submitted a new site plan, a section drawing of driveway and garage and a detailed plan of the rain garden.

The TDRB's main concerns are with the slope, cut and fill, and stormwater retention

The new site plan shows the topo lines.

The new design achieves the desired swale at the junction with Rt. 106 and reduces the driveway slope from 14% to 10%.

A profile drawing was shown that cuts through the centerline of the driveway and the proposed garage. A good portion of the garage would be set into the hillside.

Four feet of material will be removed from the top of the driveway.

The average distance to wetlands from driveway edge is the same as current driveway. This is because the lower section of the driveway is relocated north before being placed closer to the wetlands at the top of the driveway.

The applicant sent his site plan to engineer, Pathways Consulting LLC, to design the rain garden.

Instead of a rain garden the engineer created a 50' long by 5' wide by 18" deep swale plan. The overall square footage was increased to 260 square feet from the originally proposed 160 square feet. The plan is detailed noting proposed materials and types of soils, and a list of plants specific to its purpose. The swale would have a stone entrance and outlet composed of 6" minus stone placed 12" deep.

The rain garden/swale is solely intended for the stormwater generated by the proposed garage. The stormwater would flow to the rain garden via an underground 4" PVC pipe.

The owner designed the parking lot and driveway surfaces to be equal to the existing impervious areas of the current garage, parking area and driveway. The edge of the driveway would be lined with stone to help handle stormwater needs.

Mr. Maggi felt the current proposal is over engineered.

Ms. Nichols questioned the placement of the wetland and how it was delineated. The wetland appears to be drawn by hand and not by an engineer. She also asked for confirmation of the comparison of before and after impervious areas.

Mr. Maggi showed his hand drawn maps and the method he used to make his calculations.

Testimony was voted closed.

During deliberations it was noted the engineer's rain garden is considerably larger than that originally proposed by the applicant. The TDRB noted concerns that the proposed realignment of the driveway and parking areas was not done by the engineer. The driveway is longer and is placed closer to the wetland at the steepest part of the driveway. The parking area appears to be larger than the current parking area as well. The TDRB noted the project requires a tremendous amount of excavation within the wetland buffer. Therefore, the TDRB reopened testimony to ask for engineered drawings that prove the amount of stormwater from the driveway and parking lot areas will not increase due to the proposed development within the 100' wetland buffer.

**B. New Business:**

**1. T-4636-16 Mary Wilson**

Application is for Conditional Use and Short Term Review approval to use property for a Short Term Rental. The property is located at 204 Willow Brook Road and is zoned Residential One Acre.

Mr. Windish, attorney, presented the application. Ms. Wilson was present.

The TDRB reviewed a floor plan, a site plan and the Short Term Rental form.

Ms. Wilson has been renting her home as a short term rental via the VRBO website. She received a letter from the Town noting a permit was required.

Mr. Windish reviewed the criteria of Section 525 Short Term Rental. The owner complies with all criteria. The home is not rented out more than ten times per year. All parking is on-site. The garbage service is maintained. The restrictions on use are posted within the home.

A covenant on the property restricts all commercial uses and allows only a single family residential use on the ten properties that were created on Willow Brook Road, the former Gerrish Circle. Mr. Windish noted covenant restrictions are not an issue for the TDRB.

Ms. Wilson stated the target client is for rental to families. She would never rent her property to teenagers for a spring break event. She is a full time resident. She noted there are other rental arrangements on Rose Hill, near her neighborhood.

Mr. Sullivan, an abutter, stated he is a member of the Rose Hill neighborhood and spoke of the covenant which restricts the use of the ten included properties to residential use only. The Rose Hill Acres Protective Covenant was drawn up in 1970 to last for a period of 50 years. Eight members of the neighborhood were present supporting Mr. Sullivan's opposition to the proposed use.

It was noted the protective covenant expires in 2020, four years from now.

Mr. Sullivan added the neighborliness of the area is very important to residents. There have been two drug-related robberies in the neighborhood in recent years. Allowing non residents in the neighborhood does not help make the neighborhood a safe place. The applicant would be living in

New York City when the home is rented and would not be present to take care of any issues should they arise. A two-page letter listing the neighbor's concerns was submitted.

Mr. Windish responded that the covenant has no bearing on the TDRB's decision.

Mr. Sullivan is concerned with the frequent transience of the proposed used.

Mr. Windish noted that via the Short Term Rental regulations, the Town does allow this type of activity.

It was noted that although there is no home owner's association, each of the included ten properties are bound by the Rose Hill Acres Protective Covenant.

Mr. Huck stated there is a means of addressing the covenant via the 10 lot owners. He questioned the sincerity of the applicant as she has been renting her home without a permit thus far.

Ms. Wilson was unaware a permit was required and submitted an application as soon as the Town sent a letter.

Mr. Ditchcos, an original purchaser, felt the short term rentals do not make for a good neighborhood. He state that it is a very tight neighborhood where everyone knows each other. This use will be a negative change to the neighborhood.

Ms. Bernstein, an abutter, asked why the neighbors weren't notified before hand.

When questioned about who would manage the property when she is absent, Ms. Wilson stated Dan Markham, a local resident, would be in charge.

The TDRB reviewed the Conditional Use and Short Term Rental criteria with the applicant.

Testimony was voted closed.

**2. T-4637-16 Stephen Halley & Kevin Barry**

Application is for Conditional Use Review approval to remove conditions #5, 6, & 7 from Zoning Permit T-4266-11. The property is located at 215 Westerdale Road and is zoned Business Service / Light Industrial.

Mr. Barry presented the application.

The TDRB reviewed a site plan, photographs and a letter from applicant.

A permit was issued in 2011 to convert an office space to an apartment on the west end of the building. Conditions were placed on the permit to prohibit parking in the 17' space located between the town road and the building.

The owner would like to remove the permit conditions so his tenant would be able to park directly in front of the building. There is a parking lot located approximately 30' to the west. It is not illuminated. The building has two apartments with direct access onto the town road. The east apartment was created many years ago and does not have the restriction of the west apartment.

The current tenant has young children which makes it difficult to unload kids and groceries.

At the time of the 2011 hearing, only one neighbor truly opposed the parking in the street.

Mr. Barry noted the Town Manager, Phil Swanson, does not have a problem with safety or transportation should one park in the proposed location. The Town's 25' right of way includes all land between the road and the building.

The 2011 opponent of parking in the town right of way has a grandfathered parking situation for their tenants in an apartment located across the road, just west and north of the applicant's building.

The TDRB asked about snow removal.

Mr. Barry noted that snow can be cleared for the parking space on the west end of the building in a similar manner to that of the east apartment. There have been no issues of the east tenant parking in the street.

Mr. Barry offered a compromise whereby only one parking space would be allowed for the west apartment. The second space would be in the specific parking lot.

The TDRB reviewed Conditional Use criteria with the applicant.

Testimony was voted close.

### **3. T-4638-16 Neal Fox**

Application is for a Variance to retain existing 4 unit apartment configuration notwithstanding the minimum lot size. The property is located at 1231 West Woodstock Road and is zoned Residential Medium Density.

Mr. Vollers, attorney, presented the application.

The TDRB reviewed the variance request.

In 2009, Mr. Fox sold an acre of his land to the Safford Commons affordable housing complex, retaining 30,370 square feet (sf).

In 1983, a permit was issued to establish one office space and three apartments on site.

In 1991, Mr. Fox converted the office space to a four apartment without a zoning permit. However, more than 15 years has passed. Per the 1997 Bianchi Court case, once a non-compliant use exists for more than 15 years without a letter of enforcement, the use becomes a legal use.

At the time of the 2009 subdivision permit, the Administrative Officer was unaware of the fourth apartment as there was no permit on record for its use. Therefore, the retained lot size of 30,370 sf was considered to be of a compliant size.

The calculation used for the past 27 years has been to multiply number of units times the density requirement, in this case  $4 \times 8000 \text{ sf} = 32,000 \text{ sf}$ . Thus, the retained land would be short by 1630 sf.

Mr. Vollers felt the regulations are confusing in that the Residential Medium District states: a single or double family home requires 8,000 sf, and a three family home requires 16,000 sf. There is no notation for a four unit or higher. He felt the four unit calculation should be 24,000 sf which is 16,000 sf for a three unit plus 8,000 sf for a single unit.

The Town Planner in discussing the issue with a surveyor, found that a court case determined the highway right of way should be included with one's property. In the Fox case, 25' of highway right of way multiplied times the 125.9.6 feet of frontage yields 3149 sf. Adding the 3149 sf to the 30,370 sf exceeds the 32,000 sf threshold of four units. A subdivision in Taftsville used the right of way acreage to qualify for approval.

Should the right of way acreage be used there would be no need for a variance.

Mr. Vollers felt the TDRB needs to make a decision to clarify the density calculation. The Town Plan repeats over and over again the need for affordable housing. His client's four units and rented at an affordable rate and therefore comply with the Town Plan's goal of furthering affordable housing.

Chair Bourdon agreed with Mr. Vollers that the language concerning the density calculation is not clear and should be rewritten.

The Town Planner stated the Planning Commission is currently rewriting the Town Zoning Regulations and he'll suggest a change in the calculation language.

The TDRB reviewed the Variance form with Mr. Vollers.

Testimony was voted close.

**IV. OTHER BUSINESS:**

**A. Zoning Officer's Report**

**V. DELIBERATIONS:**

**A. T-4578-15 Pidlipchak Continued**

**B. T-4623-15 Paul & Jan Maggi Continued**

**C. T-4636-16 Mary Wilson**

**After discussion, the following findings of fact were established:**

1. The TDRB reviewed a floor plan, a site plan and the Short Term Rental form.
2. Ms. Wilson has been renting her home as a Short term rental via the VRBO website. She received a letter from the Town noting a permit was required.
3. Mr. Windish, attorney, reviewed the criteria of Section 525 Short Term Rental. The owner complies with all criteria. The home is not rented out more than ten times per year. All parking is on site. The garbage service is maintained. The restrictions on use are posted within the home.
2. Ms. Wilson stated that the target client is for renting to families. She would never rent her property to teenagers for a spring break event. She is a full time resident. She noted there are other rental arrangements on Rose Hill, near her neighborhood.
3. Mr. Sullivan, an abutter, stated he is a member of the Rose Hill neighborhood and spoke of the covenant which restricts the use of the ten included properties to residential use only. The Rose Hill Acres Protective Covenant was drawn up in 1970 to last for a period of 50 years. Eight members of the neighborhood were present supporting Mr. Sullivan's opposition to the proposed use.
4. Mr. Sullivan added the neighborliness of the area is very important to residents. There have been two drug-related robberies in the neighborhood in recent years. Allowing non residents in the neighborhood does not help make the neighborhood a safe place. The applicant would be living in New York City when the home is rented and would not be present to take care of any issues should they arise. A two-page letter listing the neighbor's concerns was submitted.
5. Mr. Windish responded that the covenant has no bearing on the TDRB's decision.
6. The neighbors are concerned with the frequent transience of the proposed used and the potential negative impact on the character of the neighborhood.
7. Ms. Wilson added Dan Markham, a local resident, as the property manager.
8. The TDRB reviewed the Conditional Use and Short Term Rental criteria with the applicant.

**After further discussion, Ms. French moved with a second by Ms. Nichols to approve the application as presented.**

**The motion passed with a 3-1 vote. (Mr. Wilson voted against.)**

**D. T-4637-16 Halley / Barry**

**After discussion, the following findings of fact were established:**

1. The TDRB reviewed a site plan, photographs and a letter from applicant.
2. A permit was issued in 2011 to convert an office space to an apartment on the west end of the building. Conditions were placed on the permit to prohibit parking in the 17' space located between the town road and the building.
3. The owner would like to remove the permit conditions so his tenant would be able to park directly in front of the building. There is a three car parking lot located approximately 40' to the west. It is not illuminated. The building has two apartments with direct access onto the town road. The east apartment was created many years ago and does not have the restriction of the west apartment.

4. The current tenant has young children which makes it difficult to unload kids and groceries.
5. At the time of the 2011 hearing, only one neighbor truly opposed the parking in the street.
6. Mr. Barry noted the Town Manager, Phil Swanson, does not have a problem with safety or transportation should one park in the proposed location. The Town's 25' right of way includes all land between the road and the building.
7. The 2011 opponent of parking in the town right of way has a grandfathered parking situation for their tenants in an apartment located across the road, just west and north of the applicant's building.
8. The TDRB asked about snow removal.
9. Mr. Barry noted that snow can be cleared for the parking space on the west end of the building in a similar manner to that of the east apartment. There have been no issues of the east tenant parking in the street.
10. Mr. Barry offered a compromise whereby only one parking space would be allowed for the west apartment. The second space would be in the specific parking lot.
11. The TDRB reviewed Conditional Use criteria with the applicant.

**After further discussion, Mr. Bourdon moved with a second by Ms. French to approve the application with the following condition:**

1. Conditions of T-4266-11 shall be changed as follows: #5. Parking along the side of the building is limited to one car only, #6 The owner shall place 2 - two square foot signs stating "parking is restricted to one car", and #7 shall remain as is.

**The motion passed with a 3-0-1 vote. (Ms. Nichols abstained.)**

E. T-4638-16 Neal Fox Deliberations Continued

**VI. NEXT MEETING:**

Due to the fact that a number of members will not be present for the scheduled March 22, 2016 the next TDRB meeting will be April 26, 2016.

**VII. ADJOURNMENT:**

The TDRB adjourned at 10:10 pm.

Respectfully submitted,

Michael E. Brands, AICP  
Town Planner