

**TOWN DEVELOPMENT REVIEW BOARD
MINUTES
April 26, 2016**

MEMBERS PRESENT: Don Bourdon, Charles Wilson, Kim French, Frederick Hunt
MEMBERS ABSENT: Ingrid Moulton Nichols
OTHERS PRESENT: Alice Gunderson, Charles Gunderson, Frank Hewitt, Josh Hardy, Brooke Dingleline, Lyman Shove, Peter Vollers, Mike Dunne, Kevin Calder, Richard Windish, Carol Wood, Chris Ambrose, Jane Soule, Therese Fullerton, Tina Tuckerman, Kimberly Barr, Corrine Barr, Wendy Higgins, Chris Higgins, Fred Barr, Jeff Holmes, Rob Wallace, Heather Simons, Alison Cioffi-Brown, James Brown, Dennis Barr, Todd Shove, Glenn Soule, Paul Kendall, James Johnson, Mark Anderson, Deborah Hawthorn, 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 February 23, 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 called and asked to continue the hearing to the next meeting.

3. T-4638-16 Neal Fox

Application is for Variance approval 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.

At the February 23, 2016 meeting, testimony was voted closed. Due to time limitations, deliberations were continued to this meeting.

During deliberations, the TDRB agreed there was no need for a variance. After reading Section 306 Residential Medium Density, Section D.1. which refers to minimum lot area, the TDRB agreed that there was no density requirement for a four unit residential dwelling. The section refers to density requirements for one, two and three unit dwellings, but nothing is stated for four or more dwelling units. The TDRB recommended that the Planning Commission resolve this issue immediately with an amendment to the Town Zoning Regulations.

B. New Business:

1. T-4641-16 NICA LLC

Application is for Conditional Use Approval to finish existing Villa to include five units with a total of nine bedrooms. The property is located at 1653 West Woodstock Road and is zoned Inn.

Mr. Gunderson, representing the owner, and Mr. Hewitt, contractor, presented the application.

The TDRB reviewed numerous elevations, floor plans, and a site plan.

The Act 250 approval granted on March 31, 2015 included the five unit nine bedroom Villa. The State Waste Water permit granted on January 21, 2015 also included the five unit nine bedroom Villa.

The Villa renovation was placed on hold with the February 6, 2014 issuance of zoning permit T-4472-13 to increase number of rooms to 40, increase parking spaces to 49, lighting and landscape changes.

Approval from the State Fire Marshall's office was required before resumption of work could occur at the Villa. Improvements to access, addition of an ADA bathroom and mechanical fire suppression device were required.

The access was improved during an earlier renovation that resulted in an enclosed stairway entry for all units.

An ADA accessible bathroom would be placed in the first floor unit.

Mechanical fire suppression system approved by the State Fire Marshall's office is being installed.

In addition, the applicant is requesting placement of down lit lighting fixtures that comply with Section 512 Exterior Lighting standards. Ten fixtures would be placed at exterior door locations; seven on the elevation facing the pond, one on the elevation facing the river and two located within the stairway on the elevation facing the MacDonald farm. There would be none on the elevation facing Route 4. The TDRB reviewed the cut sheet of the goose neck styled fixture. The bulb would not be seen.

Parking and associated landscaping for the Villa had been approved under the T-4472-13 application. There are 10 parking spaces located directly north of the building and 21 east of the building.

TDRB reviewed the Conditional Use and Exterior Lighting criteria with the applicant.

Testimony was voted closed.

2. T-4646-16 Lyman Shove/ Michael Dunne

Application is for reconsideration of application T-4612-15 to continue operation of wood shop and to add office to second floor. The property is located at 4979 South Road and is zoned Residential Low Density.

Chair Bourdon reviewed the request for reconsideration that had been granted at the November 24, 2015 TDRB meeting. Mr. Shove claimed that he had continued working after the date of the auction and that a letter listing activities at the wood shop had not been included in submittals to the TDRB.

Chair Bourdon also read the last portion the T-4612-15 decision signed on November 13, 2015 which concluded there was not enough evidence presented to allow continuance of the non-conforming use. More than a year had passed since the use had been considered active. Once a non-conforming use is discontinued for more than a year, the use no longer exists.

Chair Bourdon also noted the request is a two step process. First, the non-conforming status of the property needs to be confirmed. Once the non-conforming status is confirmed, the second part, to place a new business on-site would be discussed.

The April 19, 2016 letter from Attorney Windish, representing a number of immediate neighbors, had been sent to all TDRB members prior to the meeting. The letter states the request to reconsider was not warned, therefore abutters did not have an opportunity to testify.

Mr. Windish spoke to the TDRB. There was no notice at the time of the request for reconsideration. The TDRB bylaws, which allowed the request for reconsideration, override the State Statute Chapter 117 Subsection 4470 (a) which states the request should go forward "without hearing".

Mr. Windish also feels Mr. Shove did not present new information that had been unavailable to the TDRB previous to the original hearing. The request appears to have been granted mainly due to the fact that an August 13, 2015 letter written by Mr. Shove had not been delivered to the TDRB. The information contained within the letter had been conveyed to the TDRB as spoken testimony at the original hearing. Request for reconsiderations should only be granted in exceptional cases. This was

not an exceptional case. Mr. Windish reserves the right to contest the results of the current rehearing.

Ms. Dingedine, attorney representing Mr. Shove, presented a rebuttal. She submitted rule 5 (I) of the Environmental Court which refers to remands for reconsideration and indicates an appeal may be made at any time. "(I) Remand for Reconsideration. At the request of the tribunal appealed from, the court, at any time prior to judgment, may remand the case to that tribunal for its reconsideration."

Ms. Dingedine noted the auction was not the final act of the business, work continued after the auction through mid October of 2014.

The Dunne application was filed on August 29, 2015.

Mr. Windish responded that the Environmental Court rules do not apply to this hearing. He restated that everything contained within the Shove letter had been presented to the board, there is no basis for a rehearing.

The TDRB adjourned to an executive session to discuss whether or not to continue with the rehearing based on testimony heard thus far. After the executive session, the TDRB unanimously agreed to continue with the rehearing. Should there be opposition to the rehearing, the opponents have the right to appeal at a later date.

Chair Bourdon restated the purpose of the rehearing. The TDRB will determine whether or not the non-conforming use had ceased less than a year before the application was made.

Ms. Dingedine asked to have Mr. Shove give a brief history of the property and his business.

Mr. Shove came forward and was sworn in by Chair Bourdon.

The building burned in 1929. It was rebuilt in 1939 as a place to knit sweaters for Dartmouth College. In 1946, Mr. Shove's father bought the property and set up his own woodworking shop. The main purpose was to do mill work.

Mr. Shove started working in the shop when he was eight years old in 1955. In 1973 he took over the business and changed it over to furniture making. He has a bachelor's degree in Fine Arts as a furniture designer. During the past two to three years he has slowed down somewhat. The machinery was sold off at auction in August of 2014. The machinery was sold as scrap metal, although the machines were still operational. After the auction, Mr. Shove worked right through the fall finishing furniture and doing odd jobs. Currently the shop is empty.

Mr. Vollers, an attorney representing Dunne and Calder Construction, asked Mr. Shove a few questions.

Mr. Shove responded that he is confident he worked in the wood shop up through October 2014.

Mr. Vollers noted the time of the sale of the equipment is muddying the waters. It makes it less clear as to when the actual use was discontinued.

Mr. Shove stated he refinished furniture through October 2014.

Ms. Dingledine asked about the date of the auction.

Mr. Shove stated the auction was in August of 2014.

The shop is now completely empty of equipment and tools.

In mid-November 2014, Mr. Shove left for a winter vacation and returned in April 2015.

Mr. Windish cross examined Mr. Shove.

Does Mr. Shove have actual proof of the auction date in August 2014?

Mr. Shove responded that, no he does not have proof.

Mr. Shove stated all equipment was sold in the August auction, however he did have tools he brought back and forth from his home.

Mr. Shove noted he has no receipts for worked performed after the auction date.

Ms. Dingledine asked Dennis Barr, locksmith and South Woodstock resident, to come forward. He was sworn in.

Mr. Barr stated he had arranged Mr. Shove's travel schedule. The date he left for his winter vacation was November 17, 2014.

Mr. Barr stated he took a number of projects to Mr. Shove's wood shop in the fall of 2014. The projects required a couple of hours of work. This was done after the auction but before November 2014. One project was the repair of a rocking chair.

Mr. Windish asked if any receipts or payment were made for this work.

Mr. Barr stated no, he as many residents of South Woodstock use a barter system. No money changed hands. Mr. Barr paid via his services as a locksmith.

Mr. Windish asked a number of witnesses to come forward.

At this point, Chair Bourdon asked all who wished to testify to swear-in, to tell the truth as they testified.

Mr. Ambrose, contractor and resident abutter to the north of the shop, came forward.

Mr. Ambrose felt the auction took place in May of 2014. One of his employees bought a scaffolding from Mr. Shove at the auction. At the time, Mr. Ambrose was working on Ms. Hathorn's house

which is located directly across the road from the wood shop. The Hathorn project ended in June 2014.

It was noted that Bob Arbuckle was the auctioneer.

Ms. Wood, neighbor across the road and north of the wood shop testified.

She stated Mr. Shove has been an amazing neighbor for the past 17 years. His use of the wood shop has been diminishing over the years. He leaves for 4 months of the year during the winter period.

She has not witnessed any activity at the wood shop for the past three years.

Ms. Dingleline crossed examined Mr. Ambrose.

Mr. Ambrose stated that although he did drop in on the auction, he did not buy anything and therefore had no receipt or other evidence as to actual date of the auction.

Ms. Dingleline noted in the minutes of the September 22 & October 5, 2015 hearing, Mr. Hayes stated the auction had been held 14 months before the hearing date. At the hearing, Mr. Ambrose was present and did not correct Mr. Hayes.

Mr. Ambrose stated he did not correct attorney Hayes at the hearing, as he assumed Mr. Hayes was referring to the May 2015 date.

No other person presented evidence at the September 2015 hearing concerning the actual auction date.

During the four years Mr. Ambrose has lived in South Woodstock, he never noted significant activity at Mr. Shove's wood shop. He felt it to be a very quaint business with minimal use associated with it. Had the business been more robust and noisier he would have been concerned.

Mr. Vollers had the Town Planner read the minutes of October 5, 2015, paragraph 10, where Mr. Hayes stated 14 months prior to the hearing date the auction had occurred. Mr. Hayes' testimony indicates the auction took place in August 2014.

Mr. Windish, per Mr. Shove's testimony, reiterated that the use has been very minimal with no confirmation of commercial activity after the auction. The business was in a state of winding down, with a testified stop date of mid November 2014.

Ms. Dingleline suggested contacting Mr. Arbuckle to find the exact date of the auction. The auction date is one of the keys to confirming the termination of use. Due to conflicting testimony there is no agreement as to when the business was no longer viable.

Ms. Dingleline asked for a continuance to present more evidence on the auction and to prepare a legal memo on the issue.

The Town Planner stated the next TDRB hearing is scheduled for May 24th.

The TDRB asked that both parties submit their findings at least a week in advance of the May 24th meeting. This will allow sufficient time for the TDRB to read and digest the material.

After discussion, the TDRB agreed to continue testimony to the May 24th meeting.

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-4638-16 Neal Fox Clarified

D. T-4641-16 NICA LLC

After discussion, the following findings of fact were established:

1. The TDRB reviewed numerous elevations, floor plans, and a site plan.
2. The Act 250 approval granted on March 31, 2015 included the five unit nine bedroom Villa.
3. The State Waste Water permit granted on January 21, 2015 also included the five unit nine bedroom Villa.
4. The Villa renovation was placed on hold with the February 6, 2014 issuance of zoning permit T-4472-13 to increase number of rooms to 40, increase parking spaces to 49, lighting and landscape changes.
5. Approval from the State Fire Marshall's office was required before resumption of work could occur at the Villa. Improvements to access, addition of an ADA bathroom and mechanical fire suppression device were required.
6. The access was improved during an earlier renovation that resulted in an enclosed stairway entry for all units.
7. The ADA accessible bathroom would be placed in the first floor unit.
8. Mechanical fire suppression system approved by the State Fire Marshall's office is being installed.
9. In addition, the applicant is requesting placement of down lit lighting fixtures that comply with Section 512 Exterior Lighting standards. Ten fixtures would be placed. None would be placed on the elevation facing Route 4. The TDRB reviewed the cut sheet of the goose neck styled fixture whereby the LED bulb would be hidden from view.
10. Parking and associated landscaping for the Villa had been approved under the T-4472-13

application. There are ten parking spaces located north of the building and 21 spaces located east of the building.

11. TDRB reviewed the Conditional Use and Exterior Lighting criteria with the applicant.

After further discussion, Mr. Hunt moved with a second by Mr. Wilson to approve the application with the following condition:

1. The five rooms within the Villa are approved as hotel suites and not as long term rental units.

The motion passed with a 4-0 vote.

E. T-4638-16 Lyman Shove/Michael Dunne Continued

VI. NEXT MEETING:

The next TDRB meeting is scheduled for May 24, 2016.

VII. ADJOURNMENT:

The TDRB adjourned at 9:20 pm.

Respectfully submitted,

Michael E. Brands, AICP
Town Planner