

## **TOWN DEVELOPMENT REVIEW BOARD**

### **Draft Minutes**

**July 25, 2017**

**MEMBERS PRESENT:** Don Bourdon, Charles Wilson, Frederick Hunt, Kim French  
**MEMBERS ABSENT:** Ingrid Moulton Nichols  
**OTHERS PRESENT:** Douglas Audsley, James Zilian, Liz Huston, Jack Rossi, Richard Schulz, Barbara O'Connell, David Beilman, David Dana, 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 June 27, 2017 meeting were approved as submitted.

#### **III. PUBLIC HEARINGS:**

##### **A. Old Business:**

##### **1. T-4682-16 Meadow Ridge Farm, LLC**

Application is for Conditional Use & Conservation District Overlay Approval to relocate existing driveway with 1100 l.f. driveway within the Wetland Buffer. The property is located at 963 Grassy Lane and is zoned Residential 5 Acres / Conservation District.

The TDRB agreed to review both applications, T-4682-16 and T-4683-16, together as the driveway runs through the two abutting parcels which are owned by the same person. Two applications are required, one for each parcel.

The application has been continued, waiting for issuance of the State wetland permit.

##### **2. T-4683-16 Meadow Ridge Farm, LLC**

Application is for Conditional Use & Conservation District Overlay Approval to relocate existing driveway with 1100 l.f. driveway within the Wetland Buffer. The property is located at 857 Grassy Lane and is zoned Residential 5 Acres / Conservation District.

The TDRB agreed to review both applications, T-4682-16 and T-4683-16, together as the driveway runs through the two abutting parcels which are owned by the same person.

The application has been continued, waiting for issuance of the State wetland permit.

**B. New Business:**

**1. T-4758-17 Stacie and Keith Pearson**

The application is for Conditional Use & Conservation District Overlay Approval to replant riparian vegetation. The property is located on River Road and is zoned Residential 5 Acres / Conservation District.

The Town Planner briefed the TDRB on the status of the application.

At the July 19, 2017 Conservation Commission meeting, Ms. Pearson and her attorney, Mr. Facey, requested withdrawal of the application as they feel the proposed use of the property in question is agriculture. The 8.7 acre parcel is to be a hay field. The Town Zoning Regulations grant an exemption from the riparian regulations for agricultural uses.

The TDRB reviewed numerous photographs and maps of the 8.7 acre River Road parcel.

The Town Planner noted on June 12, 2017, trees had been cut within the 100' riparian buffer along the Ottauquechee River. The contractor was contacted and informed of the riparian buffer regulations. Returning to the site on July 12, 2017, all trees had been removed from a hillside stream that passes through the same parcel. The stream has a 50' riparian buffer on each side of the stream. Workmen, at the time, indicated the trees were removed to improve the view to the river. Road side trees were also removed at the same time.

The State has rules governing agricultural riparian buffers, "The Required Agricultural Practices Rule for the Agricultural Nonpoint Source Pollution Control Program" (RAPS) adopted in December 2016. These rules require a 25' vegetative buffer and retention of native vegetation along the banks of a water body.

The Town Planner has contacted the Department of Agriculture. They are sending a staff member to visit the site to make a determination on whether the property fits the State's agriculture definition. If determined to be an agricultural use, the individual will determine if the RAPS rules have been violated. If not an agricultural use, the property would have to meet the Town's riparian regulations.

The application was continued to the August 22, 2017 meeting pending a decision from the Department of Agriculture.

Mr. Audsley, an abutter on the south side of the river, was concerned with the tree removal and asked about the status of the application.

**2. T-4759-17 Zoe & James Zilian**

The application is for Conditional Use & Conservation District Overlay Approval to restore the river bank contours and replant the riparian vegetation. The property is

located at 1837 West Woodstock Road and is zoned Light Commercial / Conservation District.

Mr. Zilian, Mr. Schulz, contractor, and Mr. Rossi, landscape architect, presented the application.

Both applications, T-4759-17 and T-4760-17, were reviewed together. The abutting parcels are owned by the same landowner with the same issue.

Mr. Zilian owns Farmhouse Pottery which operates out of the old bible bindery building which had been in business for more than 50 years.

Four TDRB members, Chair Bourdon, Mr. Hunt, Mr. Wilson and Ms. French visited the site just before tonight's meeting with the James Zilian, Dick Schulz, Jack Rossi and the Town Planner.

Numerous photographs, maps and a landscape plan were reviewed.

The TDRB read the CC recommendation to approve the landscape plan with two conditions: 1) to remove the construction debris and 2) to follow State ANR river bank scientists' advice.

Mr. Rossi submitted an amended landscaping plan that was changed to address the concerns expressed by the State river scientists per CC recommendation. The number of plants proposed remains the essentially the same but the species were changed due to soil conditions.

The Town Planner discovered the riparian buffer excavation on June 2, 2017. Over an acre of land was excavated with the vegetation removed. The lower area closest to the river was not touched.

The 100' riparian buffer extends from the river to the back wall of the building. This is also the area of the flood plain. The floodway is closer to the river. Soil and a new access to the lower section were added to the site.

In February 2017, a contour map of the site was created by Holden Engineering showing the existing contours before the excavation took place. The owners intend to remove all additional materials from the floodplain and floodway areas to restore the land to its original contours as depicted in the February 2017 site plan.

The intent of the excavation was to clean up the area and to possibly access the lower area near the river. A +/- 10' wide cow path runs parallel to the river. The bank directly behind the building is quite steep. A farmer owns land on both sides of the Zilian's property.

The regulations allow up to 5% of the riparian area to be used for footpaths. The existing

cow path exceeds the 5% threshold. Therefore, it appears additional paths would not be allowed.

The eastern portion of the site is more open and flattens out. The landscape plan would not place additional plants to this area.

Mr. Rossi described his base site plan. The stone wall running along the base of the bank measures 14' from the easternmost edge and 30' from the westernmost edge of the river. The area on the riverside of the wall was not disturbed. A cow path runs parallel to the stone wall. All land excavation and vegetation removal occurred above the stone wall toward the building.

There are numerous pieces of construction debris accumulated over the years under the prior ownership. The best solution would be to remove the debris. However, removing the debris would require additional excavation work and the potential loosening of the bank's soil structure.

The landscape plan was reviewed. Seven trees are proposed for the site: 1 Yellow Birch, 1 White Pine, 2 Quaking Aspen, and 3 Basswood. Hundreds of shrubs are planned for the site: 2 species of Dogwood, Chokecherry, Elderberry, and Arrowwood. A large area, mainly east of and behind the building, has numerous plants regrowing as the roots had not been removed during the excavation process. These are mainly Honeysuckle, with some Sumac and Ash as well.

The planting would occur later in the fall when the weather cools to assure plan survival.

The intent is to retain the cow path as an open area, possibly as a walking path. The path would not be planted. An access had been built down to the path area. This would provide access for the planting and would be removed to restore to original contours. Additional materials are not allowed to be placed in a floodplain or floodway and would be removed.

The TDRB reviewed Section 403 B. 1. Riparian and Section 405 Flood Hazard regulation with the applicant.

Due to the steep bank directly behind the building, a Letter of Map Amendment (LOMA) might be possible. A LOMA, once accepted by FEMA, could change the flood status of the property. The landowner would have to hire an engineer or land surveyor to do a flood analysis of the site and submit the required request to FEMA.

Testimony was voted close.

### **3. T-4760-17 Zoe & James Zilian**

Application is for Conditional Use & Conservation District Overlay Approval to restore the river bank contours and replant the riparian vegetation. The property is located at

1883 West Woodstock Road and is zoned Residential 5 Acres / Conservation District.

See T-4759-17 above.

**4. T-4761-17 200 Westerdale, LLC**

The application is for Non-Conforming Structure Review Approval to replace 4200 sq. ft. home with 2000 sq. ft. home and to replace 2000 sq. ft. home with 2000 sq. ft. home. The property is located at 200 Westerdale Road and is zoned Residential Five Acre.

Ms. O'Connell and Mr. Beilman, architect, presented the application.

The TDRB reviewed site plans and renderings of the proposed structures.

The use is non-conforming. The eight-acre property has four residential units. Only two units are allowed per the five-acre designation. Two units are in a non-conforming structure directly on Westerdale Road. The structure does not meet the front setback. Two additional single unit buildings were demolished three weeks ago.

The owner wishes to reconstruct the two demolished structures, however in slightly different sites. The locations were selected to allow for a future zoning change. The structures would have the correct setbacks (25' side) for future lots if rezoned to Residential One Acre.

In the future, the owners would like to rezone the lower three acres to Residential One Acre and the upper five-acre parcel would retain its Residential Five Acre designation. The proposed change would require Planning Commission and Select board approval.

A community septic system for the four units was approved in 1991. The system has a nine-bedroom capacity which would serve all structures.

The O'Connells bought the property in February 2017.

The TDRB reviewed Section 707 Non-conforming uses with the applicant.

Testimony was voted close.

**5. T-4762-17 Michael and Melanie Harrington**

Application is for Conditional Use & Conservation District Overlay Approval to expand an existing pond. The property is located on 1425 John Darling Road and is zoned Residential 5 Acres / Conservation District.

Mr. Dana, engineer and pond builder, presented the application.

The CC reviewed a number of maps and renderings of the proposed pond expansion.

Raymond Lobdell, Wetland/Soil Scientist, went to the site and conducted a wetland delineation. The wetland is a side hill seep, Palustrine emergent persistent. A June 25, 2017-letter noted the wetlands are of relatively low value due to size of wetland, mineral soils, sloping nature and lack of vegetative interspersions or complexity.

The existing pond is fairly small. It was originally built 13 years ago. The owners desire a larger pond 100' x 60' to improve swimming, create a safer swim area, increase potential for fish, enhance aesthetics and fire protection.

The proposed pond would be five times larger than the current pond and would take up half the size of the wetland. The wetland would surround the pond on all sides. Access to the pond would be as current, from the nearby driveway.

The current pond has very steep slopes, making it a dangerous site. Access for animals would also be improved. The area east of the pond is quite steep with a continuous slope up the hill for about 600'. This creates a large natural recharge source for the pond and the wetland.

The dam would be constructed of the excavated soil. The current dam is not stable and needs work. The dam would be relocated slightly east away from the stream to improve its placement and safety.

The pond is well away from the nearby stream and would not impact the riparian buffer.

The site is remote. There are only two off-the-electrical-grid homes located on the Class IV road.

The TDRB read the Conservation Commission's recommendation to approve the application as presented.

The TDRB reviewed Section 403 B. 2. Wetlands and Section 810 Conditional Use with the applicant.

Testimony was voted closed.

#### **IV. OTHER BUSINESS:**

##### **A. Zoning Officer's Report**

The report was discussed.

##### **B. Riparian Buffer Violations**

The Town Planner informed the TDRB of two riparian buffer violations, both occurring within a week of one another. To help educate landowners and others of the riparian

buffer regulations, a letter with the regulations attached were sent to all loggers, excavators, Realtors, property managers, etc. An edited version of the letter was also sent to the Vermont Standard for publishing.

**V. DELIBERATIONS:**

**A. T-4682-16 Meadow Ridge Farm, LLC Continued**

**B. T-4683-16 Meadow Ridge Farm, LLC Continued**

**C. T-4758-17 Stacie and Keith Pearson Continued**

**D. T-4759-17 Zoe & James Zilian**

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

1. Mr. Zilian owns Farmhouse Pottery which operates out of the old bible bindery building which had been in business for more than 50 years.
2. Four TDRB members, Chair Bourdon, Mr. Hunt, Mr. Wilson and Ms. French visited the site just before tonight's meeting with the James Zilian, Dick Schulz, Jack Rossi and the Town Planner.
3. Numerous photographs, maps and a landscape plan were reviewed.
4. The TDRB read the CC recommendation to approve the landscape plan with two conditions: 1) to remove the construction debris and 2) to follow State ANR river bank scientist's advice.
5. Mr. Rossi submitted an amended landscaping plan that was changed to address the concerns expressed by the State river scientists per CC recommendation. The number of plants proposed remains the essentially the same but the species were changed due to soil conditions.
6. The 100' riparian buffer extends from the river to the back wall of the building. This is also the area of the flood plain. The floodway is closer to the river. Soil and a new access to the lower section were added to the site.
7. In February 2017, a contour map of the site was created by Holden Engineering showing the existing contours before the excavation took place. The owners intend to remove all additional materials from the floodplain and floodway areas to restore the land to its original contours as depicted in the February 2017 site plan.
8. The intent of the excavation was to clean up the area and to possibly access the lower area near the river. A +/- 10' wide cow path runs parallel to the river. The bank directly behind the building is quite steep. A farmer owns land on both sides of the Zilian's property.
9. The regulations allow up to 5% of the riparian area to be used for footpaths. The existing cow path exceeds the 5% threshold. Therefore, it appears additional paths would not be allowed.
10. The eastern portion of the site is more open and flattens out. The landscape plan would not place additional plants to this area.

11. The base site plan notes a stone wall running along the base of the bank measuring 14' from the easternmost edge and 30' from the westernmost edge of the river. The area on the riverside of the wall was not disturbed. A cow path runs parallel to the stone wall. All land excavation and vegetation removal occurred above the stone wall toward the building.
12. Numerous pieces of construction debris accumulated over the years under the prior ownership. The best solution would be to remove the debris. However, removing the debris would require additional excavation work and the potential loosening of the bank's soil structure.
13. The landscape plan was reviewed. Seven trees are proposed for the site: 1 Yellow Birch, 1 White Pine, 2 Quaking Aspen, and 3 Basswood. Hundreds of shrubs are planned for the site: 2 species of Dogwood, Chokecherry, Elderberry, and Arrowwood. A large area, mainly east of and behind the building, has numerous plants regrowing as the roots had not been removed during the excavation process. These are mainly Honeysuckle, with some Sumac and Ash as well.
14. The planting would occur later in the fall when the weather cools to assure plan survival.
15. The intent is to retain the cow path as an open area, possibly as a walking path. The path would not be planted. An access had been built down to the path area. This would provide access for the planting and would be removed to restore to original contours. Additional materials are not allowed to be placed in a floodplain or floodway and would be removed.
16. The TDRB reviewed Section 403 B. 1. Riparian and Section 405 Flood Hazard regulation with the applicant.

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

**The motion passed with a 4-0 vote.**

**E. T-4760-17 Zoe & James Zilian**

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

1. Mr. Zilian owns the neighboring parcel with Farmhouse Pottery located in the old bible bindery building.
2. Four TDRB members, Chair Bourdon, Mr. Hunt, Mr. Wilson and Ms. French visited the site just before tonight's meeting with the James Zilian, Dick Schulz, Jack Rossi and the Town Planner.
3. Numerous photographs, maps and a landscape plan were reviewed.
4. The TDRB read the CC recommendation to approve the landscape plan with two conditions: 1) to remove the construction debris and 2) to follow State ANR river bank scientists advice.
5. Mr. Rossi submitted an amended landscaping plan that was changed to address the concerns expressed by the State river scientists per CC recommendation. The number of plants proposed remains the essentially the same but the species were changed due to soil conditions.

6. The 100' riparian buffer extends from the river to the middle of the slope in line with the neighboring building. This is also the area of the flood plain. The floodway is closer to the river. This section has been restored to its original contours and has been planted with conservation mix to hold the soil.
7. The intent of the excavation was to clean up the area and to possibly access the lower area near the river. A +/- 10' wide cow path runs parallel to the river. The bank directly behind the building is quite steep. A farmer owns land on both sides of the Zilian's property.
8. The regulations allow up to 5% of the riparian area to be used for footpaths. The existing cow path exceeds the 5% threshold. Therefore, it appears additional paths would not be allowed.
9. Mr. Rossi described his base site plan. The stone wall running along the base of the bank measures 14' from the easternmost edge and 30' from the westernmost edge of the river. The area on the riverside of the wall was not disturbed. A cow path runs parallel to the stone wall. All land excavation and vegetation removal occurred above the stone wall toward the building.
10. The landscape plan for both Zilian parcels was reviewed. Seven trees are proposed for the site: 1 Yellow Birch, 1 White Pine, 2 Quaking Aspen, and 3 Basswood. Hundreds of shrubs are planned for the site: 2 species of Dogwood, Chokecherry, Elderberry, and Arrowwood.
11. The planting would occur later in the fall when the weather cools to assure plan survival.
12. The TDRB reviewed Section 403 B. 1. Riparian and Section 405 Flood Hazard regulation with the applicant.

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

**The motion passed with a 4-0 vote.**

**F. T-4761-17 200 Westerdale, LLC**

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

1. The TDRB reviewed site plans and renderings of the proposed structures.
2. The use is non-conforming. The eight-acre property has four residential units. Only two units are allowed per the five-acre designation. Two units are in a non-conforming structure directly on Westerdale Road. The structure does not meet the front setback. Two additional single unit buildings were demolished three weeks ago.
3. The owner wishes to reconstruct the two demolished structures, however in slightly different sites. The locations were selected to allow for a future zoning change. The structures would have the correct setbacks (25' side) for future lots if rezoned to Residential One Acre.
4. In the future, the owners would like to rezone the lower three acres to Residential One Acre and the upper five-acre parcel would retain its Residential Five Acre

- designation. The proposed change would require Planning Commission and Select board approval.
5. A community septic system for the four units was approved in 1991. The system has a nine-bedroom capacity which would serve all structures.
  6. The O'Connells bought the property in February 2017.
  7. The TDRB reviewed Section 707 Non-conforming uses with the applicant.

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

**The motion passed with a 4-0 vote.**

**G. T-4762-17 Michael and Melanie Harrington**

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

1. The CC reviewed a number of maps and renderings of the proposed pond expansion.
2. Raymond Lobdell, Wetland/Soil Scientist, went to the site and conducted a wetland delineation. The wetland is a side hill seep, Palustrine emergent persistent. A June 25, 2017-letter noted the wetlands are of relatively low value due to size of wetland, mineral soils, sloping nature and lack of vegetative interspersions or complexity.
3. The existing pond is fairly small. It was originally built 13 years ago. The owners desire a larger pond 100' x 60' to improve swimming, create a safer swim area, increase potential for fish, enhance aesthetics and fire protection.
4. The proposed pond would be five times larger than the current pond and would take up half the size of the wetland. The wetland would surround the pond on all sides. Access to the pond would be as current, from the nearby driveway.
5. The current pond has very steep slopes making it a dangerous site. Access for animals would also be improved. The area east of the pond is quite steep with a continuous slope up the hill for about 600'. This creates a large natural recharge source for the pond and the wetland.
6. The dam would be constructed of the excavated soil. The current dam is not stable and needs work. The dam would be relocated slightly east away from the stream to improve its placement and safety.
7. The pond is well away from the nearby stream and would not impact the riparian buffer.
8. The TDRB read the Conservation Commission's recommendation to approve the application as presented.
9. The TDRB reviewed Section 403 B. 2. Wetlands and Section 810 Conditional Use with the applicant.

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

**The motion was approved with a 4-0 vote.**

**VI. NEXT MEETING:**

The next TDRB meeting is scheduled for August 22, 2017.

**VII. ADJOURNMENT:**

The TDRB adjourned at 9:00 p.m.

Respectfully submitted,

Michael E. Brands, AICP  
Town Planner