WOODSTOCK
VILLAGE DEVELOPMENT REVIEW BOARD
JULY 22, 2020
DELIBERATIONS JULY 29, 2020
ZOOM CONFERENCE CALL

MEETING MINUTES

MEMBERS PRESENT: Keri Cole, Randy Mayhew, Wendy Spector, Jane Soule
MEMBERS ABSENT: One Vacancy
OTHERS PRESENT: Neal Leitner, Wendy Marrinan Jim Sligar, Diana Sattelberger, Mimi Baird, Jennifer Raymond, Linda Smiddy, Nate Stearns, David Cooper, Roger & Debra Amato, Nick Ferro, Bill Corson, Dail Frates, Jordan Engel, Tom and Patty Hasson, Matt Powers, Paula and Tom Little, Phyllis Gerrish

I. OPENING OF MEETING

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

II. PUBLIC HEARING

I. CALL TO ORDER 7:30PM

II. PUBLIC HEARING

1. **V-3551-20;** Woodstock History Center, owner/applicant; 26 Elm Street; Parcel #20.52.32.; Zone: Comm/DR; To Add Driveway Between WHC & Dana Block Bldg. and 2 New Parking Spaces.

   The Woodstock History Center was represented by applicant Matt Powers of the Woodstock History Center. Matt introduced the proposed gravel driveway with two parallel parking spaces along the driveway to the board. The driveway will connect the existing driveway for the Woodstock History Center to the parking lot behind the Dana Block. The primary purpose of the driveway is to help improve the flow of delivery truck traffic that currently uses that driveway. The driveway is shared with the Prince and Pauper restaurant. Delivery trucks must back up from Elm Street to deliver. This has caused property damage in the past. Additionally, a recent fire on the back of the Dana Block had to be accessed by the Fire Department by driving over the grass and shrubs in the back of the block. This proposed driveway would give fire access to the back of the Dana Block. Matt Powers described the parking layout, which includes two 22' long by 9' wide parking stalls along the edge of the driveway. The driveway access point from the parking lot would displace one parking space, but that would be offset by

the additional two parking spaces. Matt Powers indicated that the spaces are used and will be used by tenants in the rental units in the Dana Block.

Matt Powers described potential future aesthetic improvements planned for the area between the History Center and the Prince and Pauper restaurant. Allowing for the proposed driveway will free up some space that could allow for a more pedestrian friendly walkway and garden improvements, improving aesthetics in that part of the Village.

Chair Soule asked Matt Powers if the driveway will be unpaved. He confirmed it will be unpaved, with a fabric base and hard-pack gravel on the surface.

A motion was made by Keri Cole to deliberate, it was seconded by Wendy Spector.

Testimony was voted closed.

Keri Cole motioned to approve the application as submitted. Wendy Spector seconded the motion.

Motion passed 3-0-1 Soule recused herself due to being on the board of the Woodstock History Center.

2. **V-3556-20;** Thomas & Paula Little, owner/applicant; 5 Mountain Avenue, Unit 4; Parcel #23.52.08.004; Zone: RLD/DR; To Replace Front Entry Door & Add Doors to Existing Shed**.**

   Applicant Paula Little introduced the application to the board. She proposes to replace the exterior storm door on her unit. The existing storm door is unsightly and does not close completely. The new storm door would be a simpler design that the outgoing storm door. It would have glass and screen which allows for the existing door to be more visible through the storm door. The applicant does not wish to replace the existing door that is original to the house. The frame of the proposed storm door is relatively small.

   The applicant then described the proposed carriage doors on the accessory carriage structure. The doors would be painted white to match the existing color of the structure. The planks used on the carriage doors will be wooden. The structure does not have doors on it now, which is why the applicant would like to install new doors. The proposed doors are not prefabricated.

   Testimony was voted closed.

   A motion was made by Kerri Cole to approve as submitted. The motion was seconded by Wendy Spector.

   Motion passed 4-0.

3. **V-3555-20;** Roger & Debra Amato, owner/applicant; 35 ½ River Street; Parcel #23.51.13.; Zone: RLD/DR; For Detached Apartment with 336 sq. ft. Addition.

Applicant Roger and Debra Amato introduced themselves and their application briefly. They also introduced their legal counsel, attorney David Cooper and turned it over to him.

Attorney David Cooper, representing the applicants, stated he was asked to assist on this project. He initially thought it looked pretty simple and straight forward. He read that two dwellings were allowed on 20,000 square feet, and three dwellings on 40,000 square feet. He said that the applicants were not applying for three dwellings so that seemed to end the matter. He said that he became more aware of the potential issues after reading the memo written by an abutter, Mr. Sligar. In response, Mr. Cooper drafted a letter addressing the comments and points made by the abutters. He stated that Mr. Sligar's interpretation of the ordinance would effectively prohibit accessory dwellings on a 20,000 square foot lot. He stated that he understood Mr. Sligar's reasoning but it has lacks recognition of a Vermont state statute that was adopted a few years ago to encourage dwelling units in a town. He stated that 24 V.S.A. 4412 E an F applies since it specifically prohibits bylaws from excluding single story accessory dwellings. He pointed out a case decided in 2011 by the environmental court where the judge ruled that zoning regulations cannot be read to prohibit an accessory dwelling unit from being created in a structure separate from the primary single-family dwelling because that reading conflicts with the state statute 4412 1. E and F.

Randy Mayhew pointed out that he agrees it's quite clear that an accessory dwelling unit is mandatorily allowed for a single-family dwelling, yet the statute says owner-occupied single-family dwelling. He's not convinced that it is owner occupied.

Roger Amato replied to Randy Mayhew that their intent is to occupy 35 River Street because of the conditions under which we bought it and because of the needs of Mr. Maier, the potential tenant, we would love to be in there as soon as we could. He stated their goal is to move into the main house but we felt that there was an unusual circumstance and we offered him the use of the apartment and that we would rehab that to make it a little bit more amenable in terms of the space and we brought up an agreement that said until the time that that's done with some ultimate restrictions ultimately on the time that we would allow him to rent or stay in the main structure and then move in as soon as the apartment is available and finished back there. He stated that their intention is to move in as soon as they can.

Randy Mayhew mentioned that it is a catch 22 in a sense because the applicants want to improve the place for before they move into their house.

Wendy Spector replied that if the intent of the owner is to move into the main house as soon as renovations are finished, that intent should satisfy the owner-occupied requirement. She thinks of it as an intention to be owner occupied; not literally that you must live there before you can make any application. Otherwise when people are buying a new residence and they want to make any kind of alterations if they have an accessory dwelling unit and they want to make a change to it that they must move in house.

David Cooper informed the board of why they applied for a conditional use permit. They thought it was the more efficient approach given the circumstances to simply apply for a conditional use permit because it is essentially codifying what it has been used as for 20 years.

He added that the reason the reason why he brought up the state statue was simply to counter the argument made by Mr. Sligar which would in effect exclude accessory dwellings or detached apartments on lots 20,000 square feet in size. The statute prohibits zoning bylaws from doing this.

Wendy Spector stated that her interpretation of the bylaws is that you don't need to actually apply for a conditional use because there are only two dwelling units and you only have to apply for conditional use if it's more than two units.

Randy Mayhew replied that his reading of the rule is that it clearly requires a conditional use permit according to a section 304 D.1. and the fact that they are not living in the main house, so they do not get the preferential treatment provided under the state statute.

Keri Cole mentioned that her favorite thing about this board is that we're here to read zoning regulations and interpret them the best way we can. She said she looks at Section 304 Residential Low Density with a minimum lot area of 20,000 square feet per dwelling unit or two-family dwelling and we can interpret the intent of the zoning regulations.

Phyllis Gerrish asked if it matters if two families live on the property, or one family with an accessory unit. Chair Jane Soule replied that it does not matter if two families or one family live on the property. They do not regulate relationships.

Debra Amato stated that the definition of the detached separate apartment was an accessory structure that had living space in it and she recognized that it is not formally recognized as a dwelling, it's only been used that way.

Debra Amato pointed out that in Section 509, it states that no more than two dwelling units are allowed per lot so that every lot gets a main structure and allowed an accessory structure limited to 900 feet since it is subordinate to the main house. She stated that detached apartments are limited to 900 square feet or 33% of the living area of the primary structure, whichever is greater, so that implies that there is another structure against which you are measuring that detached apartment.

Jane Soule told the board that she believes they are all talking the same kind of thing and thought they need to come to some kind of conclusion as to where they are as they're going to need to hear from other people who would like to speak. She added that they need to move on from this discussion about dwelling units and sizes. It's pretty straight forward the studio with the edition would be less than 900 square feet which meets the criteria and so let's go on and hear what other people have to say and then we can maybe make some kind of decision.

Roger Amato asked if they would like to go through the design review approval and criteria set out in Section 405.

Chair Jane Soule responded that they received and read the minutes from the Design Review meeting and it received a unanimous vote of approval from the board. She said the board understands what the Design Review recommends to the Village Development Review Board.

Chair Jane Soule opened the item up to public testimony.

Nate Stearn attorney at Hershenson, Carter, Scott, McGhee in White River Junction introduced himself. He is representing Jim Sligar and Diana Sattelberger, abutters at 16 Mountain Avenue. He responded to a number of things that have been said and propose some clarifications first of all with respect to the state statute because that was one of the first things that came up on one of the key pieces are actually two key pieces to that statute that we do not hear about was that there are some limitations on that statute. In addition to having to be an owner occupied single family dwelling he mentioned that the unit cannot exceed 30% of the total habitable floor area of the single family dwelling we haven't seen heard anything about the floor area of the primary dwelling at the at 35 River street so he thought that it is one key piece of information that would need to be provided.

He also mentioned item three of the state statute, which is applicable set back coverage, parking requirements and coverage must be met, which he thought is another way of saying density. Therefore, it is not an absolute that an accessory dwelling is allowed in every instance. He stated that the state statute clearly gives towns the ability to regulate them. He also noted that the zoning regulations make this super clear that this is not a two-family dwelling. He reasoned this by looking at Section 304, uses requiring an administrative permit versus uses requiring a conditional use permit. He believed that a two family dwelling is a single structure by definition, and there are numerous examples around Vermont where people have built two dwellings side by side that are not allowed as two separate one family dwellings unless there connected. He used an example in another town on Route 4 for two tiny homes that have been put in just down the road from Queens village they had to connect those two homes otherwise they wouldn't have been allowed the other piece. He added that the definition of an accessory structure is stated as a structure customarily incidental and subordinate to the principle building on such as garages and garden sheds, there are no examples in given in there of detached apartments or anything with living quarters in them.

He noted that a detached apartment is a special category that requires a conditional use permit specifically. So again we're back into the conditional use approval as far as density again we get into this question of you know dwelling unit 20,000 square feet per dwelling unit or two family dwelling what's the difference between a separate building with its own dwelling unit in it and a two family dwelling and again the two family dwelling is a single building with two dwelling units in the building makes a very big difference in terms of actual impact on the surrounding neighbourhood. How many structures are being used for residential uses on a single lot really goes to the conditional use approval.

He made a point that the board must find that it does not have an undue adverse impact on the character of the area, and as stated in Jim and Diana's letter, the impact on the character of the area the character of the area is defined by the specifically stated purpose of the zoning district which here is a district which is compatible with low density residential development the density is defined as by that minimum lot area. He thought that number of units that you can have on a lot being dependent on its size is essentially the definition of density.

Chair Jane Soule said that the board must go back to Section 710, Conditional Use and read through the criteria for approval. If the application meets the criteria, then our decision is made. She read through the criteria listed under Section 710.

Wendy reminded the board that Michael Brands always said that every lot was allowed two dwelling units but having gone through regulations the language is very sloppy.

Nick Ferro, an abutter to the property stated that there are nine homeowners in the immediate vicinity that want to see this project go forward. None of them consider it a threat to the character of the area. He thought it's getting more complicated than it really needs to be and nine homeowners are in support of the application. He said it's a very small footprint and it's right in my backyard and it's not a problem. He has lived there 7 years.

Wendy Marrinan asked that the board consider all the criteria under 710 on both pages of the zoning regulations. She also discussed the neighborhood and thought that the applicants could have reached out to their neighbors before making the application, in order to gather thoughts and ideas from their neighbors.

A discussion of the letter Mr. Cooper wrote addressing the concerns raised by Jim Sligar and Diana Sattelberger began. The board asked Attorney David Cooper to summarize his response. He summarized his letter to the board.

Randy Mayhew asked if anyone else would like to speak about the application before they close testimony.

Diana Sattelberger and Jim Sligar spoke. They thanked the board and the attendees for their comments. Diana Sattelberger seconded the comments made by Wendy Marrinan. Diana mentioned that people in the neighborhood will reach out to each other before even painting their houses and we look forward to

that being the way of life as we go forward by everyone again. She mentioned that they have all spent a very large amount of time thinking about the issues. She thought everyone should give these matters very careful consideration, it's complicated, we wish things were simple, but they just aren't.

Linda Smiddy spoke to the idea that there is enough complication here to allow the board to postpone their deliberations and digest the information.

Randy Mayhew agreed with Linda Smiddy's idea and asked the board if they would like to recess and deliberate later. After discussion of legal proceedings and Vermont Open Meeting Law, the board decided they could recess and deliberate a week later, which would give the board time to read through the state statute and digest the information received during open testimony and adjourn the meeting after deliberations.

A motion was made by Keri Cole to place the meeting into recess until deliberations on Wednesday, July 29th, 2020 at 3:00PM. The motion was seconded by Randy Mayhew.

Motion passed 4-0.

Open testimony adjourned at 10:00 pm

4. **V-3557-20;** Frost Mills Nominee Trust, owner; Ellaway Property Services, agent; 4 Benson Place; Parcel #20.52.04.; Zone: RHD/DR; To Install Tesla Car Charger. ***< Deemed a Minor Application by Design Review>***

III. OTHER BUSINESS

1. **Zoning Officer's Report**

IV. DELIBERATIONS

1. **V-3551-20**

FINDINGS OF FACT

The application is for a gravel driveway with two parallel parking spaces along the driveway to the board.

The driveway will connect the existing driveway for the Woodstock History Center to the parking lot behind the Dana Block.

The primary purpose of the driveway is to help improve the flow of delivery truck traffic that currently uses that driveway. The driveway is shared with the Prince and Pauper restaurant.

Delivery trucks must back up from Elm Street to deliver. This has caused property damage in the past.

The proposed driveway would give fire access to the back of the Dana Block. Matt Powers described the parking layout, which includes two 22' long by 9' wide parking stalls along the edge of the driveway.

The driveway access point from the parking lot would displace one parking space, but that would be offset by the additional two parking spaces.

The 2 parking spaces will be used by tenants in the rental units in the Dana Block.

Keri Cole motioned to approve the application as submitted. Wendy Spector seconded the motion.

The proposal meets the criteria for approval as per Section 405.G.

Motion passed 3-0-1 Soule recused herself due to being on the board of the Woodstock History Center.

2. V-3555-20

The board opened deliberations on V-3555-20 on July 29th, 2020 at 3:00 PM during a public deliberation session. The board voted to move deliberations on the item to this date at the regularly scheduled meeting on July 22nd, 2020.

Chair Soule opened deliberations and stated that they had received lots of testimony and lots of letters.

Board member Randy Mayhew began the deliberations. He stated that he agreed with the letter representing Jim Sligar and Diana Sattelberger. He thought the argument made was cogent.

He also noted that the letter from David Cooper cited VSA 24 Section 4412, which permits an accessory dwelling unit that is appurtenant to the main residence.

He mentioned that the word appurtenant can be used to describe the accessory dwelling unit.

He cited the case mentioned in the legal letter from attorney David Cooper that permitted an accessory dwelling unit per VSA Section 4412.

He summarized that he cannot get around the clean wording of State Statute VSA 24 Section 4412, and that is his finding.

Wendy Spector mentioned she was looking at the intent of the zoning regulations. She stated that the conditional use permit is not necessary, that it is a

redundant thing to do and that the applicants wanted to apply anyway just to underscore and confirm their right to have an accessory dwelling unit.

Keri Cole replied that the issue comes from the Village Zoning Regulations, that are ambiguous.

Wendy Spector responded that if you look at every single part of the sections of the code independently, it's ambiguous, but if you look at the whole code and seeing how each section relates to each other, it is not ambiguous.

Keri Cole stated that her discussion with the Planning Commission about the intent of the zoning regulation allows for two dwelling units.

She noted that it is a right of property owners in residential districts to have up to two-dwelling units per lot and that no bylaw shall have the effect of infringing upon that right granted under the State Statute.

Chair Soule stated that if the property owners intend to occupy the main house on the property, then the owner-occupied requirement of VSA 24 Section 4412 is satisfied.

Randy Mayhew said that he thinks a condition should be made that the property is owner-occupied. He pointed out that the state statute expressly mentions garden sheds and garages.

He stated that people want accessory dwelling units over their garage, and a garage does not have to be attached to the main house.

He stated the proposed application would meet the definition of appurtenant in this case. He did note that the distance between the main house and the accessory dwelling unit is greater than normal in the village.

Chair Soule responded that it is a rather large and unique lot.

Keri Cole read the state statute 24 V.S.A. 4412 1.E. out loud for the record.

Notwithstanding any existing bylaw, the following land development provisions shall apply in every municipality:

(E) Except for flood hazard and fluvial erosion area bylaws adopted pursuant to section 4424 of this title, no bylaw shall have the effect of excluding as a permitted use one accessory dwelling unit that is located within or appurtenant to an owner-occupied single-family dwelling. An accessory dwelling unit means an efficiency or one-bedroom apartment that is clearly subordinate to a single-family dwelling, and has facilities and provisions for independent living, including sleeping, food preparation, and sanitation, provided there is compliance with all the following:

(i) The property has sufficient wastewater capacity.

(ii) The unit does not exceed 30 percent of the total habitable floor area of the single-family dwelling.

(iii) Applicable setback, coverage, and parking requirements specified in the bylaws are met.

(F) Nothing in subdivision (1)(E) of this section shall be construed to prohibit:

(i) a bylaw that is less restrictive of accessory dwelling units;

(ii) a bylaw that requires conditional use review for one or more of the following that is involved in creation of an accessory dwelling unit:

(I) a new accessory structure;

(II) an increase in the height or floor area of the existing dwelling; or

(III) an increase in the dimensions of the parking areas.

Randy Mayhew asked the board if they would like to move on to doing an analysis of the conditional use criteria per Section 710.

Randy Mayhew mentioned that the applicant's response to his question regarding their intent to occupy the main house made him feel comfortable that they do intent to live there full-time once the renovations are complete. Therefore, the structure in question would be an accessory dwelling unit.

He stated that even if an accessory dwelling unit requires conditional use analysis, that it does not unduly adversely affect the character of the neighborhood.

He thought there is enough benefit for the applicant in this one instance that it does not unduly adversely affect the character of the neighborhood.

He stressed the word "unduly" in the regulations. He did say that he can see adverse effect, but he cannot see that it would unduly affect the character of the neighborhood. So therefore, it would meet the conditional use criteria.

Keri Cole stated that the application would not unduly affect the character of the neighborhood since it has been used as an accessory dwelling unit for the past 20 years.

Wendy Spector agreed with Keri Cole and thought it might even improve the character since it would improve the look of the structure by refreshing it and cleaning it up.

Chair Soule asked for a motion.

Randy Mayhew made a motion to approve the application altered to be for an accessory dwelling unit under 24 V.S.A. Section 4412 1.(E), and find that it

meets all criteria under Section 710: Conditional Use in the Village Zoning Regulations and that the VDRB adopts the recommendation made by the Design Review Board under Section 405: Design Review. He also added a condition that the main residence shall be owner occupied.

Wendy Spector seconded the motion.

Motion passed 4-0.

3. **V-3556-20**

Application is to Replace Front Entry Door & Add Doors to Existing Shed**.**

The proposed front porch repair received Design Review approval per Section 405.B.1.d.

It would have glass and screen which allows for the existing door to be more visible through the storm door.

The applicant does not wish to replace the existing door that is original to the house.

The proposed carriage doors would be painted white to match the existing color of the structure. The planks used on the carriage doors will be wooden. The structure does not have doors on it now.

As the doors are a new exterior alteration to an existing structure in the Design Review District, Section 405.B.1.d. requires approval from the VDRB.

The proposal meets the criteria for approval as per Section 405.G.

A motion was made by Keri Cole to approve as submitted. The motion was seconded by Wendy Spector.

Motion passed 4-0.

4. **V-3557-20 <*Deemed a Minor Application by Design Review*>**

V. OPEN DISCUSSION

VI. APPROVAL OF MINUTES Minutes of July 8, 2020 approved as submitted

VII. NEXT MEETING August 12, 2020

VIII. ADJOURNMENT

Motion to adjourn made by Keri Cole, it was seconded by Randy Mayhew. Meeting adjourned at **3:30PM on July 29th, 2020.**