

Town of Hinesburg
Development Review Board
November 6, 2018
Approved December 4, 2018

Members Present: Dennis Place, Greg Waples, John Lyman, Ted Bloomhardt, Rolf Kielman; Sarah Murphy and Dick Jordan entered the meeting a few minutes late

Members Absent: Andy Greenberg (Alternate), and Jonathan Slason (Alternate)

Applicants: Sam Evanson, Rachel Smolker, Theora Ward, Marilyn Crimmins, John A. Driscoll, Joseph Flynn

Public Present: Brad Friesen, Rob Peeters

Also Present: Mitchel Cypes (Development Review Coordinator), Suzanne Mantegna (Zoning Administrator), and Kate Kelly (Recording Secretary)

Dennis P. called the meeting to order at 7:30 PM.

Agenda Changes: None.

Review minutes of the October 16, 2018 meeting:

Greg W. **made a motion to approve the minutes of October 16, 2018 as written.** Rolf K. **seconded the motion.** The Board **voted 4-0**; Rolf K. abstained.

Samuel Evanson: Appeal of a zoning violation – excessive tree clearing well beyond the conditions of the original subdivision approval for a ±3.51-acre property (Lot #5) on Evanson Road in the Rural Residential 1 Zoning District.

Mitchel C. mentioned that on Sat. Oct. 20, they had a site visit on the property; John L., Greg W., Sarah M., and Rolf K. from the Board, Sam Evanson (the Appellant), and Brad Friesen and Frank Twarog (neighbors), were in attendance. No minutes were taken. They viewed the site and got an understanding of property lines and building envelope. Dennis P. and Mitchel C. visited the site earlier today. Ted B. said he also visited the site by himself today. Mitchel C. pointed out that the DRB decision will be either to uphold the zoning violation, or to overturn the zoning violation.

Mitchel C. said they have received four new submissions. Two are from applicant, which includes a state report stating that currently there is no stormwater or erosion violations on the property and a publication from a State forester about invasive species. The other two submittals are letters of concern. All these submittals are available in Dropbox.

Greg W. said of site visit that they walked the perimeter of the building envelope, which was well-staked out and the additional area that we could access. Greg W. looked over the edge of the drop-off to look for trees that may have been cut; he didn't see any. Greg W. talked about the discussion area near the stream that had been cleared after the approval. There was a lot of grass that had been planted. There was a lot of scrub growth that was on property. Greg asked Sam E. what previously existed in that area.

Sam E. directed the Board to review pictures provided to them digitally. Sam E. would describe the area the pictures provided and which trees in the photos still exist and where.

Ted B. said it appeared that the lot was cleared from the building envelope all the way to the eastern property line and to the house next door.

Mitchel C. displayed historic photos of the lot from Google Earth. Rolf K. said he found that sequence of photos informative. Sam Evanson passed around photo from 2015. Suzanne M. pointed out the lot boundaries; Rolf K. compared the Evanson photo to Google Earth image.

Greg W. would like to get context from the Zoning Administrator.

Sam E. said trees on building site are worth money, and it doesn't make sense to cut trees.

Suzanne M. said she received contact from neighbor about noise. She visited and spoke with Sam E. She had no issue with noise or building to north. However, she saw there was no erosion control by the stream or anywhere else; there were a couple of trees, but this was not keeping with the decision of the forest management plan to have a healthy woodland, maturing, aesthetics, screening, etc.

Greg W. said there was scrub stuff around; he did not see evidence that mature healthy trees had been cut. Suzanne M. said it wasn't cut recently and that there was time to remove the stumps.

Ted B. said there had been trees cut, which was ok in driveway and building envelope. He pointed out that grass planting went outside building envelope. Grass planting is not part of any forest management plan because it doesn't allow forest to develop. Greg W. stated that clear-cutting huckleberry is not a violation. Ted B. responded by asking how does one maintain a forest, when one clear-cuts everything and plants grass? Greg W. said he did not see anything clear-cutting in the view shed. Suzanne M. stated that her concern was between the stream and the building envelope. Ted B. said he didn't think Sam E. decided to clear the area it just happened. Instead he first removed diseased trees, then the underbrush, then planted lawn, but did not recreate the forested area as required. Rolf K. said the area to the east of the building envelope, between envelope and stream was essentially clear-cut.

Sam E. stated his belief that the requirements of stormwater regulations required him to plant a conservation mix within a certain number of hours of disturbing the soil. Sam E. said the whole area east of the lot 5 building envelope extending on to lot 6 was bitternut trees and they cut around 300 trees, most off lot 6, with some off lot 5 and some off lot 3. It cost him \$9700 plus value of the trees so it was not done to make money. Suzanne M. stated that in the decision, Order #5 required that all areas outside the building envelope are to be left in a natural state or managed for the goals of the forest management plan. The clearing to the east of the building envelope away from the driveway does not conform to Order #5. Dick J. pointed out significant clearing to south of building envelopes. Mitchel C. displayed the approved site plan for the subdivision. Rolf K. pointed out the extent of existing forest, the forest that was to remain regardless of quality and water course on the plan. Suzanne indicated that the stream was intermittent.

Dick J. said it was clear in the pictures that the lawn currently extends all the way down to stream. He discussed a previous visit seeing forested area. Dick J. said that looking at the plans and the 2009 aerial photos that the lot was forested. The plans show the intent was to only clear the building envelope and

the driveway. Dick J. said that he understands there may have been a good reason to remove trees in the area, but the intent was to allow the area to reforest itself, which was not allowed to happen.

Sam E. pointed out the legend in the corner of the plan is for existing significant trees; none were marked on lot 5. Ted B. pointed out that the condition doesn't state they should just keep significant trees, but rather keep the areas forested. Sam E. said the question was what was there before they started operation. He wanted to clear the sumac and buckthorn, which are invasive species, and to plant saplings and get a reasonable-looking woodland. He plans to put saplings and evergreens in, to buffer privacy to Friesens lot; perhaps berry bushes on south side (there is rubble there, small stones, some dirt over it). Rolf K. suggested a plan by a person who is knowledgeable for re-foresting the area with indigenous species would be a rational way to proceed. Ted B. pointed out that the solution isn't under discussion tonight.

Dennis P. opened the discussion to the public.

Peter Erb was the zoning administrator when this development was subdivided. It was a contentious development; they agreed that the houses would be placed with reasonable building envelopes for solar gain, and the rest of the area maintained with forested landscape. There was much discussion about maintaining the stream buffer, which Sam agreed to do. In the appeal of the subdivision approval, Environmental Court Judge Meredith Wright, in her decision, felt maintaining the buffer around the stream would allow wildlife use the buffer. The buffer is now gone, and there is a big gap in the wildlife corridor. 14 years of growing healthy forest (2004 to now) was not done. Peter E. said the Board should be thinking about what could have been there with good forest management and that the removal of the forest was done at Sam's discretion.

Brad Friesen said the neighbors are supportive; the stream only runs in the spring and they've cleared some invasive species from their lot.

Sam E. said he has read the decision by Meredith Wright several times, and doesn't remember any mention of a wildlife corridor.

Greg W. suggested the Board could continue until parties suggest a solution. Mitchel C. said if the Board upheld the Notice of Violation, it would go to the Selectboard, and they could delay enforcement to see if there could be a resolution.

Brad F. asked if you could uphold the appeal, then go into remediation with good will. Ted B. said we could.

Mitchel C. restated that the Board will only decide to uphold the Notice of Violation or overturn it.

Ted B. made a motion to close the public hearing and uphold the Zoning Administrator's Notice of Violation.

Sam E. asked if the Board assumed they had cut healthy trees outside the envelope. Sarah M. asked Sam E. if he was implying there was a continuum of re-foresting that wasn't yet complete; Greg W. said if it is planted in grass, he is likely done planting.

Rolf K. seconded the motion.

John L. said he said it is clear that things were cut. Ted B. clarified that there may have been good reasons why the trees were cut, but it is not reforested anymore. John L. wanted a clarification of what defines an area as forested. Ted B. responded that it is not grass.

Greg W. asked why the Board needed to say yes or no without findings of facts.

Dick J. asked about recourse for appeal (30 days?). There are other things we do that we don't do decisions for. Mitchel C. said he thought there should be a written decision. Dick J. asked about asking Town Attorney. Greg W. felt they should write just a brief decision.

Sarah M. asked why the forest management plan wasn't enough; Suzanne M. replied the forest management plan for the subdivision stated that the purpose of the forest was preserving wildlife habitat, privacy screening, aesthetics and the development of a maturing mixed woodland. It also said that in the building envelope the most mature trees should be kept, which has been done. The lack of development of a mature mixed woodlands is the reason for the violation. What she saw was a couple of trees with grass and the area wasn't left to nature to regenerate itself.

The Board **voted 7-0 to uphold the Zoning Administrator's Notice of Violation.**

Marilyn Crimmins: Subdivision Revision to consolidate two parcels located at 181 O'Brien Meadows (west side of Route 116) in the Agricultural Zoning District.

Marilyn Crimmins and John Driscoll introduced themselves. They want to take lot 5 (all the open space) and combine it with lot 6. Marilyn had purchased lots 4, 5, and 6 for John and brothers. Lots 1-3 were sold. Brother Adam (lot 5) has decided they probably won't move here, so they would like to take it out of a building lot, but would maintain driveway to access barn.

Greg W. pointed out this would inhibit their chance to re-subdivide lots. They understood. Sarah M. asked about re-assigning densities.

John D. said it was a PRD (1.6 acres), and lot 5 would turn into open space.

Dennis P. opened to the public; there were no public comments.

The Applicants also presented an amendment to the homeowner's association documents, which has been signed.

Greg W. **made a motion to approve the draft decision as written.** Ted B. **seconded the motion.** The Board **voted 7-0.**

Adam Hergenrother, Theora Ward, and Rachel Smolker: Subdivision Revision to adjust boundary lines for properties located at 678, 680, and an adjacent undeveloped property on the south side of Sherman Hollow Road in the Rural Residential 2 Zoning District.

Joseph Flynn (O'Leary Burke), representing all three Applicants, introduced himself.

Greg W. asked what the point is of adding land to the two properties. Joseph F. replied that Ward and Smolker were interested in a boundary line adjustment, to add some space in the back of their properties because the Ward and Smolker residences were located towards the back of their properties.

Greg W. asked if Adam H. has legal access to Sherman Hollow Rd. Joseph Flynn replied that he does, though he also owns land that abuts this property that he could create an access. Joseph F. said that he has road frontage on Sherman Hollow Road for this property, but to create a driveway directly to Sherman Hollow Road would require development through a wetland.

Joseph F. said Adam H. bought 74 acres, and would like to add 5 acres to each Ward and Smolker.

Dick J. asked about what was on those parcels. Joseph Flynn replied that the area is wooded and hilly, and is not prime ag land, although it was cleared in the past.

Rob Peeters, who owns the triangular property north of Sherman Hollow Rd., asked if this has nothing to do with an access road at this point. Mitchel C. replied no, it is not part of this application. Hearing this, Rob P. said he had no concerns regarding this application.

Greg W. made a motion to close the public hearing and approve the draft decision as written. Dick J. seconded the motion. The Board voted 7-0.

News/Announcements/Correspondence:

Mitchel C. said he was expecting a site plan application for the next meeting, which was not submitted. No applications have come in for the November 20, 2018 meeting. The Paul and Morton Final Subdivision application will be at the meeting following that on December 4, 2018.

Greg W. made a motion to cancel the Nov. 20 meeting, and to adjourn tonight's meeting and go into deliberative session. Dick J. seconded the motion. The Board voted 7-0.

The Board adjourned to deliberative session at 8:40 PM.

Other Business: Decision Deliberations –

Jesse Paul & Sophia Morton: Sketch plan review for a 2-lot subdivision of a ±11.0-acre property located at 343 Partridge Hill Road. *Hearing closed on 10/2/18.* The application was approved as amended with a vote of 6-0. Jon S. provided his vote to approve prior to the meeting. Dennis P. and Rolf K. abstained.

Samantha Lednicky & Curtis Martin: Review of an application for development on a private right-of-way (ROW) for a 25-acre± property located at the south end of Fern Road. *Hearing closed on 10/2/18.* The application was approved as amended with a vote of 6-0. Jon S. provided his vote to approve prior to the meeting. Dennis P. and Rolf K. abstained.

John Linn: Conditional Use Review for the expansion of a non-conforming structure at 563 East Shore Road. *Hearing closed on 10/16/18.* The application was approved as written with a vote of 6-0, with Rolf K. abstaining.

The meeting adjourned at 9:10 PM.

Respectfully submitted,

Kate Kelly, Recording Secretary