

**Town of Hinesburg**  
**Development Review Board Meeting Minutes**  
**October 20, 2020**  
Approved November 3, 2020

**Members Present:** John Lyman, Dennis Place, Branden Martin (alternate), Ted Bloomhardt, Greg Waples, Sarah Murphy, Bryan Currier (alternate). Dick Jordan, Jonathan Slason.

**Members Absent:** none.

**DRB Staff:** Mitchel Cypes (Development Review Coordinator), Alex Weinhausen (Director of Planning & Zoning), Suzanne Mantegna (Zoning Administrator)

**Applicants:**

- Boyea Project – Will & Sophie Boyea (landowner); Jason Barnard (engineer)
- Hinesburg Center 2 Project – Brett Grabowski (developer); Michael Buscher (landscape architect); Nicholas Smith (engineer); Roger Dickinson (engineer)
- Hayden, HLG Excavating Appeal – Bradley Hayden (landowner), Liam Murphy (attorney)

**Public Present:** Carl Bohlen, Kyle Bostwick, Merrily Lovell, Maggie Gordon, Kate Kelly, Roger Kohn, Jennifer Chiodo, Vaneska Litz, Cyndi Labelle

*Since this was a remote meeting, it is possible there were others were in attendance, who did not speak nor make themselves known.*

Zoom participant counts (including one for VCAM): 31 at 8:06pm; 30 at 8:57pm

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

**Meeting Procedures:**

Mitch C. explained the meeting was being held remotely via Zoom due to the covid-19 state of emergency and the closure of the Town Office. He reviewed remote meeting protocols.

**Agenda Changes:**

None.

**October 6, 2020 Meeting Minutes:**

Mitch C. explained that due to a family emergency for our minute taker, the minutes of the October 6 meeting are not yet ready. A video recording of the meeting is available on the VT Community Access Media website.

**Boyea Subdivision Revision – Building Envelope Expansion:**

Applicant/landowner: Will & Sophie Boyea. Location: 1271 Leavensworth Road.

Jason Barnard (project engineer) explained that the applicant is requesting that the approved building envelope be expanded to the north and east of the existing home to accommodate a future horse barn. Jason B. addressed some of the issues identified in the staff report, including scale of the survey (a minor error), slope issues, stormwater control. Will Boyea explained that they ran into ledge when they built the house. They ended up with a lot of excess fill from the house construction. This fill was placed to the north of the building envelope, which effectively reduced the slope of this area. Will B. reviewed a series of photos

of the site in which the future barn footprint was identified with orange flagging, and the existing stormwater discharge (level spreader/berm) was identified with green flagging. Will B. noted that the photo with the view east to west shows that the area for the future barn is lower than the house site, but is relatively flat.

Dick J. asked about how stormwater was collected and discharged via the level spreader. Will B. clarified that the level spreader/berm receives runoff from the house rooftop via underground piping connected to the roof gutters and downspouts. Stormwater from the driveway to the house is not collected in this level spreader/berm area.

Jonathan S. clarified that the proposed building envelope expansion area was once steeper (as noted in the original subdivision decision), but was no longer as steep due to fill from the house construction. Will B. confirmed this.

While viewing the photo showing the west to east view, Dick J. asked where the proposed building envelope is in relation to the orange flagging of the future barn footprint. Jason B. said the envelope would extend approximately 15 feet beyond the flagging. Mitch C. asked if the building envelope would extend to the tree line on the north side. He noted that the steepest slopes (25%+) start at about the tree line. Jason B. said the proposed envelope would be close to, but not all the way to the tree line.

Jonathan S. said he is generally comfortable with the proposal, but feels more details are needed to confirm the proposed building envelope location. He also feels more information is needed, per the staff report, to confirm that the existing level spreader/berm is capable of handling increased stormwater runoff from improvements in the expanded envelope (i.e., barn, access drive). Dick J. said making the building envelope 10-15 feet larger than needed for the barn doesn't seem warranted. He understands the need for some flexibility beyond the anticipated barn footprint, but he doesn't want to allow for buildings to be constructed right up to the tree line and the steepest slopes.

Will B. said he would like some flexibility to move the future barn slightly to the south, east, or west from what is shown in the photos; however, he has no plans to move it north toward the tree line. Ted B. said he has no problem with the application as long as the envelope doesn't extend right up to the tree line. Jonathan S. proposed allowing the building envelope to extend a maximum of 10 feet from the barn footprint shown in the photos. Various Board members felt this was a reasonable compromise. Dennis P. felt the Board could approve the application with this clarification, and with confirmation that the stormwater system will accommodate the anticipated additional impervious surface in the expanded envelope. Dennis P. asked Will B. if was OK with such a building envelope. Will B. said this would be acceptable.

Ted B. moved to close the public hearing and direct staff to draft an approval with appropriate conditions for the Board to review. Dick J. seconded the motion. The motion passed 7-0, with all seven regular Board members participating.

### **Hinesburg Center 2 Subdivision, Preliminary Plat Review:**

*Continued from October 6 and September 15 meetings*

Applicant/landowner: Hinesburg Center LLC (aka Milot Real Estate; Brett Grabowski). Location: undeveloped parcel near Farmall Drive, west of Route 116, south of Patrick Brook, north of Creekside neighborhood.

Jonathan S. and John Lyman recused themselves from this review. Alternates Bryan C. and Branden M. are participating in this review.

Mike Buscher explained that since the October 6 meeting, the project team had met with Mitch Cypes to discuss the site elevation and grading issues. The project team is working on plan revisions to address these issues, and they would like to revisit these issues at a future meeting, once the revised plans are ready and Town staff has had a chance to review them. He picked up where the review left off at the October 6 meeting, starting with issue #10 from the October 2 staff report.

Issue #10 – Street Greenbelt Width, Snow Storage, Street Trees:

Mike B. presented a series of aerial photos from other communities showing areas with on-street parking and no greenbelt between the curb and the sidewalk – e.g., Carmichael Street in Essex, Bridge Street in Richmond, Zephyr Road in Williston, Farrell Street in South Burlington, Main Street in Vergennes, Five Corners in Essex. He said that this issue was raised by staff earlier this year regarding the Haystack Crossing project, and that his response for the HC2 project is essentially the same as the one he made for the Haystack Crossing project. He argued that having no greenbelt in areas with on-street parking is typical, and is a positive design element.

Greg W. asked where snow would be plowed, and cited snow storage issues he has seen in similar circumstances in Burlington. Mike B. said that snow plowing/removal will have to be modified to address areas that have no greenbelt for snow storage. He said this can and does work in other communities, including Burlington. He noted that the HC2 project typically includes 8-9 feet wide greenbelts in locations without on-street parking, and that the applicant is willing to eliminate some on-street parking near intersections to help address one of the issues identified in the staff report.

Ted B. asked for an explanation of the space allocated for street tree growth, particularly with regard to the staff comments about the distance between street trees and building faces. Mike B. clarified that the minimum space between building faces and the sidewalk is 13-15 feet in front of buildings C,E,F,G, and that street trees in these locations will be planted within three feet of the sidewalk. He said that the most important consideration is having proper soil volume and medium to allow for proper root growth. He said there should be enough room for a mature tree canopy, and if there isn't room, they could select smaller tree species. Dick J. said it looks like street trees are to be planted right next to the sidewalk. He asked if special structural soils are proposed to ensure the trees have an adequate growing medium. Mike B. said there will be enough soil volume, so that structural soils won't be necessary. He said the root growth in a 180-degree pattern away from the sidewalk will be sufficient.

Issue #11 – Community space near building C:

Mike B. described the future community space on the northeast side of building C in the master plan. The DRB's sketch plan decision (Order 1a) required improvements and clarification to this area to ensure the space allotted in the master plan was sufficient given that 34 apartments are proposed in building C. Mike B. explained the revised conceptual plans, which include space for gas grills and a gas fire pit. He indicated that the surface of this space would be some sort of aggregate vs. grass. Mitch C. asked how much seating would the space support. Mike B. said there would be space for 4-6 tables, which would provide seating for approximately 20 people.

Issue #12 (Low Impact Design) & #13 (Gravel Wetland):

Mike B. said they would address these issues at an upcoming meeting, once the revised engineering plans are ready.

Issue #14 – Affordable Housing Locations:

Brett G. said that he met with the Hinesburg Affordable Housing Committee and Alex Weinhausen to discuss this. He said they are still discussing options, and that follow up with the Champlain Housing Trust was underway. He said that Alex W. had just emailed him today to initiate a conversation with the Champlain Housing Trust. They will revisit this again after those discussions.

Issue #15 – Allocation and Phasing:

Mike B. said that the water/wastewater allocation approved by the Select Board for the project is slightly different from what is currently proposed. He noted that the original allocation was granted for eight three-bedroom units and 14 two-bedroom units (total of 22 dwelling units). He said the current proposal is still for 22 dwelling units, but will likely be comprised of nine three-bedroom units, 12 two-bedroom units, and one one-bedroom unit. Mike B. said they would like some flexibility, but that they will adhere to the overall allocation granted by the Select Board. He said if there was an issue, they might simply hold off on development of one of the single-family home lots until additional allocation is acquired. Brett G. said he would like flexibility as there may be some buyers that would like four-bedroom homes.

Brett G. said that in reality, he has plenty of allocation given that actual usage will be far less than what he was required to get from the Select Board. He noted that water allocation for a three-bedroom home is approximately 400 gallons per day, but that actual usage is approximately 200 gallons per day or less. He plans to discuss this with the Select Board in the hopes of having greater flexibility within the overall allocation he has already been granted. He said that if additional allocation is needed, he will certainly apply for that with the Select Board. He noted that the Town has available capacity for additional allocation.

Issue #16 – Flood Hazard Review:

Mike B. said they would address this at an upcoming meeting, once the revised engineering plans are ready.

Issue #17 – Single-Family Residence Building Envelopes:

Mike B. and Brett G. said that showing a simple rectangular building envelope will not result in driveways that are too short because the Zoning Regulations require that garages be set back 10 feet from the main face of the house. They said this would allow adequate room to park a car in the driveway without interfering with the road. Alex W. noted that there won't be a requirement to build garages, and the home could utilize the entire building envelope, which would result in an inadequate driveway length. Brett G. said he could guarantee that each house would have a garage. Dick J. said the Board's interest is not whether or not there is a garage, but rather that the driveway be of an adequate length. Mitch C. suggested the driveway length be at least 20 feet to accommodate one car. It was noted that adjusting the building envelope could constrain the ability to vary the house and garage placement between lots. Alex W. and Brett G. both said that this could be addressed via a condition in any final approval.

Issue #18 (Bioretention Freeboard and Building D) & Issue #19 (Conveyance of 100-year storm):

Mike B. said they would address this at an upcoming meeting, once the revised engineering plans are ready.

Issue #20 – Density Bonuses:

Mike B. clarified that they will obtain one incentive point via small dwelling sizes, one incentive point via renewable energy, and one incentive point via a larger number of perpetually affordable dwellings than required. He said that instead of the required 10% of the base density (five homes), the project will create 10 affordable dwellings (20% of the base density).

Issue #21 – Lot Numbering (lot 52/53):

Nicholas S. said that they will research why one of the lots is numbered 52/53. He said that he thought it was related to numbering in the Hinesburg Center 1 project. They will address this at a future meeting.

Issue #22 – Association Documents, Lighting, Landscaping:

Alex W. suggested skipping this item given time constraints, and the fact that Town staff still needs to review this.

Dennis P. asked if there were any comments from the public. Kyle Bostwick said he has concerns about the proposed elevation of the HC2 project. He feels the current plans are a bad design for the new lot next to his because there is so much elevation change over a short distance. He is also concerned about flooding issues related to the project's proposed elevation. He said that he's happy to wait on the discussion of this issue until the applicant submits the revised plans. Nicholas S. said that the project team is working hard to address these issues, and that the new plans should help address these concerns.

After some discussion about scheduling, Dennis P. moved to continue the review to the November 17 meeting. Dick J. seconded the motion. The motion passed 7-0.

**Hayden, HLG Excavating Appeal:**

*Continued from the October 6 meeting*

Appellant/landowner: Bradley Hayden (owner/operator of HLG Excavating). Location: 1290 North Road.

Ted B. said he wasn't present for the October 6 meeting when this review began. Ted B. recused himself so that one of the two alternates could stay with the review. Both Bryan C. and Branden M. were at the October 6 meeting. Bryan C. recused himself so that Branden M. will be the alternate member participating in place of Ted B.

Liam Murphy (representing Bradley Hayden) noted that he had submitted another letter that was in the Board packet materials. He reviewed his position that the uses on the Hayden property are pre-existing, non-conforming uses that haven't changed significantly since the 1970's and 1980's. He cited the case of the Old Lantern in Charlotte, in which he said the courts ruled that pre-existing, non-conforming use could be continued, and could not be forced to comply with zoning regulations adopted after the use was established.

Greg W. asked Liam M. why the home residency was not an issue. Liam M. said this was detailed in the letter he submitted, and that the pre-existing, non-conforming use has nothing to do with any home occupation residency requirements adopted in 1996 when the Town created its contractor yard provisions.

Roger Kohn (representing several aggrieved neighbors) countered that the pre-existing, non-conforming use was an owner-occupied home occupation, and that this effectively ended when the property ceased to be owner-occupied. He referred to the letter he submitted to the Board since the last meeting, in which he detailed the Zoning Regulation provisions governing pre-existing, non-conforming uses, and the statutory power given to towns to regulate such uses. He reiterated his points from the prior meeting that the use of the property isn't the same now as it was previously. He showed aerial photos displayed at the last meeting, pointing out the site changes that have taken place in the last couple of years.

Jonathan S. asked if there was a threshold for how much expansion of a pre-existing, non-conforming use is allowed. Roger K. read from section 5.10.1 of the Zoning Regulations, which says that, "Any external evidence of such use shall not be increased by any means whatsoever without conditional use approval of the Development Review Board, and only if the Board finds that the proposed use is no more nonconforming than the previous use and conforms to the standards of Section 5.12 of these regulations." Roger K. said there is clearly external evidence that the use has increased – both from the aerial photo evidence, and from the fact that his clients had no issues with the use prior to January of this year.

Greg W. asked for clarification on input received from Town counsel. He said that he doesn't see any opinion from Town counsel in the application materials. Suzanne Mantegna explained that Town counsel (Brian Monaghan) was consulted prior to issuance of the formal notice of violation. She said there was a conference call with herself, Alex W., Renae Marshall (Town Administrator), and Brian Monaghan to discuss what the scope of the formal notice of violation should be. Suzanne M. said she drafted the notice, sent it to

Brian Monaghan for review, and made revisions based on his input. Greg W. asked if Town counsel had the benefit of input from both attorneys (Liam M. and Roger K.). Suzanne M. confirmed that Town counsel did have letters/opinions from both attorneys – i.e., essentially the same correspondence the Board received, with the exception of the letters submitted since the October 6 meeting.

Greg W. and Dick J. both said that they would like to receive advice from Town counsel on the legal questions raised by both attorneys.

Alex W. pointed out that Suzanne sent Bradley Hayden a pre-notice of violation earlier in the year, which covered items that were not included in the formal notice of violation, based in part on discussions with Brian Monaghan. Alex W. noted that the formal notice of violation focuses on three issues: lack of owner-occupancy; noise levels; removal of trees along the north property line.

There was discussion about scheduling for the continuation of this hearing. Mitch C. and Alex W. said it will take time to reach out to Town Counsel, receive feedback, and allow an opportunity for the parties to review this ahead of the next meeting. Roger K. said that he had previously reached out to Liam M. in the hopes of finding compromise and reaching some sort of agreement. He said Liam M. didn't take him up on the offer.

Liam M. reiterated that the property has had the same use over time. He noted that Bradley Hayden has made attempts recently to tidy up the property to try to address concerns neighbors have expressed about the how the site looks. He said that Bradley H. is trying to be respectful to the concerns his neighbors have raised.

Dick J. noted that the definition of a contractor yard focuses on storage of equipment and materials for use in off-site construction. He asked if he was correct in assuming that processing of materials is not part of the definition. Suzanne M. confirmed that processing of materials is not part of the contractor yard definition. Alex W. clarified that the formal notice of violation does address noise, but does not address the processing of materials. This is because the Town lost the ability to pursue enforcement on this front due to the 15-year statute of limitations. He said that a notice of violation for screening materials in the front yard was issued in 2002; however, the records don't clearly indicate whether and how this was resolved. The appellant has provided evidence that said front yard screening continued shortly after 2002. Enforcement on this front is no longer possible, since the Town didn't pursue the violation further, and since it has been 15 years.

Dennis P. suggested using a different attorney for a fresh pair of eyes – i.e., not Brian Monaghan who helped draft the notice of violation. Greg W. said he is fine with using Brian Monaghan or a different attorney. He said we've used attorneys at Stitzel, Page, and Fletcher in the past, and he has much respect for their experience. Both Roger K. and Liam M. said they were fine with whomever the Board chose to use. Liam M. said he looks forward to seeing another perspective on the interesting legal questions being debated. Mitch C. and Alex W. explained that requests for legal services go through the Town Administrator's office, so we can't be sure of which attorney or firm will be utilized.

Dennis P. moved to continue the hearing to the December 1 meeting. Dick J. seconded the motion. The motion passed 7-0. Dick J. noted that if more time is needed for the legal review, the Board can issue another continuance at the December 1 meeting.

#### **News/Announcements/Correspondence:**

Mitch C. noted that two subdivision sketch plan applications are scheduled for the next meeting on November 3.

Dennis P. adjourned the meeting at 9:52pm.