

TOWN OF SWANTON ZONING OFFICE
One Academy St., P.O. Box 711
Swanton, VT 05488-0711
Tel. (802) 868-3325
Fax. (802) 868-4957
Email: swanza@swantonvermont.org

02/26/15 PUBLIC HEARING
SWANTON DEVELOPMENT REVIEW BOARD

NOTE: The DRB's Regular Public Hearing scheduled for Thursday, February 19, 2015 was CANCELLED.

The Swanton Development Review Board held a Public Hearing on Thursday, February 26, 2015 at the Swanton Town Offices, 1 Academy Street, at 7:00 P.M.

Present:

Joel Clark
Lucie Hill
Spencer Labarge
Janette Hoague
Ronald Kilburn, Zoning Administrator
Yaasha Wheeler, Clerk

Present:

Richard Deso (#515-2014)
Brad Ruderman (#515-2014)
Chris Lester (CU#510)
Gary Langlois (#01-2015)
Michael Heller (#01-2015)
Liam Murphy (#01-2015)
Katelyn Ellermann (#01-2015)
Shawn Robtoy (#01-2015)
Lenore MacMillan (#03-2015)
Lyne St. Louis (#03-2015)

Mr. Clark called the hearing to order at 7:00 p.m. He asked if the board members had any ex parte communications or conflicts of interest. There were none from the other members; he stated that he had had some conversations regarding Item 3 (Langlois), and had talked to various people, including the Environmental Court attorney, the Town attorney, the Langlois' neighbors, and the Swanton Selectboard. He explained the process of the hearing,

directed the attendees' attention to the definition of interested persons, and swore in the participants.

- 1. #515-2014 Continuation of the revised Sketch Plan Approval Request of John T. Chase to create a nine (9) lot, seven-residential unit, Planned Unit Development (PUD) of an existing vacant 21 acre parcel on the West side of Route #105 (Sheldon Rd.) across from the intersection with Pond Road. R1 Agricultural/Residential District. Lots 1-7 are to be developed with single-family residences; Lot 8 is to be kept as "open space" owned in common by a Homeowner's Association; Lot 10 (revised) is to be kept undeveloped as a vacant lot. Applicant requests a reduction of setbacks for some lots. NOTE: The DRB will conduct a SITE VISIT at 09:00 AM on Saturday, February 14, on the West side of Route #105 (Sheldon Rd.) across from the intersection with Pond Road. All interested parties are invited to attend.**

Mr. Ruderman and Mr. Deso came forward to represent Mr. Chase. Mr. Ruderman stated that the applicant was still requesting the reduction of the setback from 50 feet to 20 feet, and the reduction of the perimeter setback from 100 feet to 30 feet, which was consistent with the adjacent PUD. Also, the lots would not have 200 feet of road frontage, which was consistent with PUD standards. Mr. Clark mentioned that he was "not a fan" of lot 2, in which the mound took up a great deal of the lot. He recommended making Lot 3 a full one-acre lot, and Lot 4 a one-acre lot, then adding a lot to the north. Mr. Ruderman noted that that would extend the road, resulting in more cost. Mr. Deso suggested that a driveway could extend from the cul-de-sac. Mr. Clark reminded that the fire chief should have a chance to review that idea, and give his opinion on it. Mr. Ruderman added that Mr. Ballard Austin might not be favorable to the idea of placing a lot directly behind his lot.

The DRB considered locations and expansions with Mr. Ruderman, and Mr. Clark summed up that it appeared that, by extending the cul-de-sac and adding a lot to the north, the 150 foot road frontage and the reduction of the setbacks would be acceptable.

- 2. CU#510 Conditional Use/Conversion Request of Chris Lester to convert a seasonal camp to year-round use, located at 71 Tilley Drive. R3 Moderate Density Residential District.**

Mr. Clark advised that, because the leach field remained from 1961, a licensed engineer/technician should review the septic and ensure that it was sufficient for year-round occupation. Mr. Lester stated that the septic worked well when he had many guests. The DRB agreed to extend the application for up to five months, pending an engineer's certification of the septic.

3. #01-2015 Appeal/Variance Request of Gary Langlois (after the fact) to construct a pergola on an existing patio which does not meet the side setback requirement of 15 ft. at 40 Maquam Shore Rd. SR Shoreland Recreation District.

Mr. Liam Murphy and Mr. Gary Langlois came forward. Mr. Murphy distributed pictures of the complete pergola, and referred to a letter from his office, dated February 24, 2015 (see Exhibit A), and summarized the pergola's history as follows: Mr. Langlois went to the Zoning Administrator, Mr. Ronald Kilburn, to ask if he needed a permit to build a pergola on an existing concrete patio/dock, and was told that he did not need a permit. On a separate occasion, he asked again if he needed a permit, and was told that a permit was not necessary. Mr. Langlois went to his neighbor Mr. Heller, and showed him the plans. Mr. Heller was agreeable to the plan at the time; however, once construction was underway, he objected. On the understanding that he did not need a permit, Mr. Langlois proceeded to build the pergola. In January, Mr. Kilburn sent a letter to Mr. Langlois, informing him that he did, in fact, need a permit to build, and advising him to fill out a permit application, which, upon its receipt, was then denied because the side setback was within 5 feet from the neighboring boundary line, and referred to the DRB as an appeal/variance application.

Mr. Langlois added that the patio had been built 27 years ago, and therefore was preexisting, and that the pergola did not extend beyond the patio/dock. Mr. Clark noted that the structure appeared quite close to the lake, yet the application did not include a request for a variance for the lake setback.

Mr. Murphy stated that, throughout the process, Mr. Langlois had relied on the guidance of the Zoning Administrator, and, because the project had not been appealed within the 15-day appeal period, it was therefore binding. Mr. Clark asked to know what evidence was given as to the Zoning Administrator's decision, and Mr. Murphy replied that the decision was oral; nothing was in writing. Mr. Langlois added that Mr. Kilburn had been informed of the pergola's distance from the neighboring property line and the lake, and had been shown a sketch of the proposed structure. Mr. Clark asked if Mr. Langlois was familiar with the bylaws; Mr. Langlois said he was not. Mr. Clark responded that anyone who intended to build a structure should familiarize himself with the bylaws that may apply to that structure. Mr. Murphy responded that it was reasonable to rely on the Zoning Administrator's information. Mr. Clark said that was a potential issue: Should the Zoning Administrator have interpreted the bylaws? It was, in fact, the DRB's job to interpret. He noted that the item currently before the board related to the appeal/variance request, not anything else.

Mr. Murphy asked to know the exact nature of Mr. Clark's ex parte communications, in order to be able to respond to the facts, and Mr. Clark replied that the only facts he took into consideration were those presented tonight with the application. He added that he found it "hard to believe that a seasoned Zoning Administrator" and an applicant with previous dealings with the DRB both believed that Mr. Langlois did not need a permit. His lawyer had advised him that he did not have a conflict of interest. Mr. Murphy questioned the Selectboard's authority to direct Mr. Kilburn to take action, and felt that there was,

indeed, a conflict of interest, since Mr. Clark was the Selectboard member who had made a motion to give such direction to Mr. Kilburn. Also, the Selectboard's discussion on the matter had taken place during executive session, without notifying Mr. Langlois or requesting his presence. Mr. Clark's involvement in the discussion suggested that Mr. Clark had already determined his decision in the matter. He asked Mr. Clark to recuse himself, or to put on record the exact nature of his ex parte communications, as he felt those communications "had to influence Mr. Clark's decision and it appears quite clear that he had made up his mind."

Mr. Clark refused to recuse himself, adding that the Zoning Administrator had been told to take corrective action, but could have chosen not to do so, because of his office's independent nature. Mr. Labarge said that he would like to see the facts on the appeal/variance.

Mr. Murphy reiterated that the pergola had been built on a pre-existing concrete dock that was within the side and lakeshore setbacks. Mrs. Hill asked to know the dock's distance from the mean water mark. Mr. Langlois responded that, currently, the water was at the foot of the cement, and Mr. Murphy added that during the summer, the water could be 25 feet from the dock. Mr. Clark asked to know the distance of the pergola from the southern boundary, and Mr. Langlois responded that the distance was 1 foot from Mr. Heller's line. Mr. Murphy again emphasized that the pergola did not extend beyond the existing footprint of the patio/dock. Mr. Langlois gave the dimensions as 18' by 20' and was 82 feet from the other side property line.

Mr. Clark asked if the applicant had considered the variance criteria under Section 9.4, and Mr. Murphy replied that, frankly, he did not believe that the pergola would meet the criteria. However, he felt that the real issue was the reliance on the Zoning Administrator's advice; if Mr. Langlois had been told initially to keep the structure back from the line by 5 feet, he would have done so.

Mr. Heller came forward and quoted from a series of email communications (see Exhibit B), in which he claimed the following: Mr. Langlois spoke to him on Friday, August 22, 2014, informing him of the intention to build and asking permission to do so, providing a diagram of the proposed pergola. Mr. Heller said he would return an answer after discussing it with his family. The family decided that the plan would not be appropriate and would obstruct part of their lake view. Since Mr. Heller went out of state shortly thereafter, his wife Rona contacted Mr. Langlois by email on Monday, August 25, 2014, to express the family's opposition to the project as proposed. Mr. Heller followed up in person as soon as he could, and reiterated that he was against the project, since it was so close to the property line and the lakeshore. He stated: "I specifically told him that I would not give him [Mr. Langlois] my permission, and that if I could stop him, I would." Mr. Langlois said that he had "checked it out" and that he would build anyway. Mr. Heller tried to contact Mr. Kilburn to see if the project was, indeed, acceptable, emailing the Zoning Administrator "a number of times" and eventually meeting with him in person. Mr. Kilburn "was not very clear on what the rules were that would apply to this situation as he had indicated that he was not then aware of

their project.” Mr. Kilburn offered to visit the property and indicated no knowledge of any restriction on the building of such a structure. When Mr. Heller asked if he could build a similar structure with the same kind of distances and location, Mr. Kilburn allegedly responded, “Since I let Mr. Langlois do it, I suppose I would have to let you do it.” Mr. Heller had measured one side of the pergola; he measured it as 21 feet on that side, with a height of 15 feet.

Mr. Heller then presented before-and-after pictures of his lake view and the pergola, noting that the pergola did, indeed, significantly obstruct his view on one side, since it was “huge.” He added that Mr. Langlois had built several other outdoor patio/seating areas in addition to the pergola.

Mr. Clark asked if Mr. Heller was advised of his ability to appeal the project, and Mr. Heller said that he was not, and that Mr. Kilburn, upon hearing of the pergola from Mr. Heller, appeared to have no knowledge of the project.

Mr. Murphy asked Mr. Kilburn to speak. Mr. Kilburn stated that Mr. Langlois had asked if he needed a permit and, after Mr. Kilburn had considered, he had replied that no permit was necessary. He had visited the property on several occasions for other reasons. He did not recall seeing a sketch, but was not saying that he didn’t see it. He did not see the structure until Mr. Heller brought it to his attention. His decision was based on the pre-existing nature of the patio/dock.

Mr. Murhpy asked if he was aware of the location and the intent to build, prior to construction. Mr. Kilburn said he was. Mr. Murphy asked if Mr. Kilburn, as Mr. Heller had alleged, was not aware that the structure would be built. Mr. Kilburn responded that he had told Mr. Heller that he was not aware that the pergola had been constructed.

Mr. Clark asked if a copy of the sketch provided to Mr. Kilburn was available. Mr. Langlois replied that he had not known the sketch would be needed, and that it had probably been thrown away. Mr. Murphy asked if the hearing would be closed or continued, and Mr. Clark replied that if the DRB needed more information to make a decision, the matter would be continued.

4. #03-2015 Appeal/Variance Request of Lyne St. Louis to construct a two-story addition on her residence with a living room on the second floor above an existing garage, which does not meet the side setback requirement of 30 ft. at 242 Hog Island Rd. R3 Residential District.

Mrs. St. Louis presented a picture of the existing house and stated that she would like to expand the existing garage. This would place the closest angle of the garage would be at 10 feet from the neighboring boundary. She planned to build a living room above the garage. She used the property seasonally, though it was approved for year-round use. Mr. Labarge asked if the intent was to widen the driveway and Mrs. St. Louis responded that the driveway would widen from a one-car driveway to a two-car driveway. The number of

bedrooms would not increase. She had spoken to the next-door neighbor, as well as the neighbor across the street, and neither had any objections.

Mr. Kilburn mentioned a hedge that had been installed on Mrs. St. Louis' side of the line, and she informed the board that she had planted a cedar hedge within three feet of the line, closer to her house, and the cedars would remain, leaving 7 feet between the new garage and the cedar hedge.

Lenore MacMillan, who lived at 246 Hog Island Road, stated that she had concerns relating to the "pattern of use of the property." She was afraid that, given the lack of space on her own lot, Mrs. St. Louis would utilize the space of the private right-of-way, which was deeded to lots 46 and above as an access to the waterfront. She alleged that Mrs. St. Louis clear-cut the embankment along the waterfront in order to install a boat ramp and routinely let guests park boats and RVs on the neighboring lot. Her concern was that Mrs. St. Louis would allow the construction workers to park on the lot, strip it of its vegetation, and cause damage, and felt that the lot was not Mrs. St. Louis' space to use for personal projects. She added that, in a construction project she herself had undertaken a few years ago, the DRB had required her to rope off the access to the private right-of-way in order to prevent it from being used by the construction workers. She referred to an email dated October 28, 2014 (see Exhibit C), in which Mrs. St. Louis said that the people on Arrowhead had given her permission to use the lot, and if she did something that they did not like, they would let her know, not Mrs. MacMillan.

She also asked if there was any noise ordinance regulating the times when power equipment could be used; it was determined that Swanton had no such ordinance.

Mrs. MacMillan asked to know what recourse was available to her if her concerns were not addressed. Mr. Clark replied that, without a homeowner's association, the matters would have to be addressed in civil court.

Mrs. St. Louis stated that she would respect any rules the DRB asked her to follow, adding that Mrs. MacMillan had yelled at her three times and told her "Don't do this with the right-of-way." Mrs. St. Louis had informed her that it was not Mrs. MacMillan's place to tell her what to do.

5. Public Comment

Mrs. MacMillan asked to know what recourse was available if the board rendered guidelines on an applicant and those conditions were not followed. Mr. Clark said that a complaint should be made to the Zoning Administrator, and, if the applicant failed to abide by the conditions, the Town would "take other steps." Mrs. MacMillan asked if clearance was required to put in a cement boundary marker; Mr. Clark said no clearance was needed except perhaps a digging permit. He reminded her to steer questions regarding permitting to Mr. Kilburn. She asked to whom she should direct questions relating to violations of environmental law, and Mr. Clark suggested starting with the Agency of Natural Resources in Essex.

6. Any Other Necessary Business

The DRB agreed to hold the next hearing on April 9, 2015.

Mr. Labarge made a motion, seconded by Mrs. Hoague, to enter deliberative session at 8:52 p.m. Motion carried.

Mrs. Hill made a motion, seconded by Mr. Labarge, to exit deliberative session at 9:56 p.m. Motion carried.

MOTION: Mrs. Hill made a motion, seconded by Mrs. Hoague, to APPROVE #515-2014 Continuation of the revised Sketch Plan Approval Request of John T. Chase to create a nine (9) lot, seven-residential unit, Planned Unit Development (PUD). The sketch plan was approved with the following CONDITIONS:

1. The cul-de-sac shall be relocated closer to the neighboring Austin property.
2. Lot 2 shall be divided with lots 1 and 3 and the new Lot 7 shall be added next to the old Lot 7, as mentioned in the meeting.
3. Ruth Drive shall be paved up to the new road, and the new road shall also be paved prior to the sale of any lots.

Motion carried.

MOTION: Mr. Labarge made a motion, seconded by Mrs. Hoague, to CONTINUE CU#510 Conditional Use/Conversion Request of Chris Lester to convert a seasonal camp to year-round use, until the applicant has had the septic reviewed and approved by a licensed technician/engineer for year-round use. The application shall be continued for up to 5 months pending this certification. Motion carried.

MOTION: Mr. Labarge made a motion, seconded by Mrs. Hill, to CONTINUE #01-2015 Appeal/Variance Request of Gary Langlois (after the fact) to construct a pergola on an existing patio which does not meet the side setback requirement of 15 ft. at 40 Maquam Shore Rd. The application was continued in order to conduct a site visit at 6 p.m. on April 9, 2015, which would review the pergola's setback from the lake; and to get a legal review of the letter from Murphy, Sullivan, and Kronk, dated February 24, 2015. Motion carried.

MOTION: Mrs. Hoague made a motion, seconded by Mr. Labarge, to CONTINUE #03-2015 Appeal/Variance Request of Lyne St. Louis to construct a two-story addition on her residence with a living room on the second floor above an existing garage, which does not meet the side setback requirement of 30 ft. The application was continued in order to conduct a site visit on April 9, 2015, at 5:30 p.m. Motion carried.

Mrs. Hill made a motion, seconded by Mrs. Hoague, to approve the DRB minutes of January 22, 2015 as printed. Motion carried.

Mr. Labarge made a motion, seconded by Mrs. Hill, to adjourn at 10:05 p.m. Motion carried.

Respectfully Submitted,

Yaasha Wheeler, DRB Clerk

Joel Clark

Lucie Hill

Spencer Labarge

Janette Hoague