

**TOWN OF SWANTON
ZONING OFFICE**

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**PUBLIC HEARING
SWANTON DEVELOPMENT REVIEW BOARD**

Thursday, June 23, 2016

The Swanton Development Review Board held a Public Hearing on Thursday, June 23, 2016, at the Swanton Town Offices, 1 Academy Street, at 7:00 P.M.

Board Members Present:

Joel Clark

Lucie Hill

Amy Giroux

Gabriel Liegey

Spencer LaBarge

Yaasha Wheeler, Clerk

Darlene Marrier, Zoning Administrator

#DRB-15-2016 Christopher Guilmette

Christopher & Hannah Guilmette

#DRB-16-2016 David Passini

David Passini

#DRB-17-2016 Ellsworth Moore

Luke Willey

#DRB-18-2016 Edward Hemond

Dave Greenwood

#DRB-19-2016 Gary Langlois

Michael Heller

Shelley Robtoy

A. Call to Order

Mr. Clark called the meeting to order at 7:00 p.m.

B. Agenda Review

There were no additions or changes to the agenda. Mr. Clark introduced the board members and there were no conflicts of interest or any ex parte communications, with the exception that Mr. Clark had had some discussion with the Zoning Administrator briefly and the Town's legal counsel regarding Item 5 #DRB-19-2016 Gary Langlois. He drew the attendees' attention to the definition of interested persons.

He swore in the participants.

C. Meeting Topics:

1. #DRB-15-2016 Christopher Guilmette request for Variance from the setback requirements to construct a garage located at 88 Canada Street R5/Residential District, parcel ID #CN0088-0025.

Mr. Christopher Guilmette and Mrs. Ann Guilmette came forward. He explained that, where his driveway is now, his neighbor's house was six inches from the property line and snow was falling off her roof onto his equipment and structures, and into the driveway. Mrs. Guilmette considered this a safety hazard when she put her kids in the car. It also cost the Guilmettes money for repairs.

Mr. Guilmette was trying to alleviate the problem by moving his garage to the other side of the property. The garage would be 5 feet to the edge of the property line. He had talked to his neighbor on the side where he wanted to build the garage, and she said that the previous owner had originally had a garage on that side and moved it. The shed would be removed after the garage was built and extended about 5-6 feet from the driveway.

2. #DRB-16-2016 David Passini request for Variance from the setback requirements to construct a porch located at 49 Fourth Street in the R5/Residential District, parcel ID#FR0049-0029.

Mr. Passini had bought Lots 11 and 12 from the St. Francis subdivision, which included an easement. His trailer was at 40 feet from the annex and he had allowed 5 feet as a breezeway to get from the garage to the house. He was asking an additional 10 feet to build a front patio with a covered roof, about 25 feet from the annex. The right-of-way for his neighbors went over his property. The board took a look at the sketch and realized that he was actually well within the setback requirements from the front (40 feet). He just needed a permit through the Zoning Administrator and he did not need a variance.

3. #DRB-17-2016 Ellsworth Moore request for Site Plan Approval for a four lot sub-division located at 135 Bachand Road in the R3/Moderate Density Residential District, parcel ID#BA0135-0017.

Luke Willey from Ruggiano Engineering came forward, representing Mr. Ellsworth Moore. He showed the previously approved subdivision. Lot four was proposed as a PUD with six units (3 duplex units) but none of it was currently developed. They were currently proposing to subdivide Lot 4 into four lots, replacing the three duplex units for four single-family homes. It was a net decrease in the number of units, as well as the water/wastewater considerations. On the total plan, there would be seven lots. The lots ranged from 1.4 to 1.9 acres. As far as road frontage, Lot 4 was about 200 feet, Lot 6 was about 155 feet, Lot 7 was about 155 feet, and Lot 8 was over 155 feet. The minimum setback in the district was 150 feet.

4. #DRB-18-2016 Edward Hemond request for Site Plan Approval for a boundary line adjustment located at 17 & 19 Maple Grove Estates in the R3/Moderate Density Residential District, parcel ID#MG0100-0017.

Mr. David Greenwood came forward, representing Mr. Hemond. He showed that he was cutting a radius on one corner of a lot (for a possible cul-de-sac) and adding a wedge-shaped section in order to increase the road frontage on the lot, for a total addition of 0.1 acres to the lot and 0.1 from the neighboring lot.

5. #DRB-19-2016 Gary Langlois appeal of Letter of Violation located at 40 Maquam Shore Road in the SR/Shoreline Recreation District, parcel ID#MQ0040-0008.

Mr. Langlois and his legal counsel were not present, but the DRB did have the letter submitted by Murphy, Sullivan, and Kronk, dated May 26, 2016, as their testimony. Mr. Clark had been advised by the Town attorney that he did not need to recuse himself, as the letter requested, and Mr. Clark further felt that certain facts in the letter were inaccurate.

Mrs. Darlene Marrier, Zoning Administrator, stated that Amy Giroux, through the lister's office, had informed her that the neighboring landowner (Shelley Robtoy) had complained that Mr. Langlois had built a fence without a permit. The prior Zoning Administrator had known of this and not acted. Shelley Robtoy sent a letter on November 30, 2015, but Mrs. Marrier did not act immediately because she had a busy case load and was still transitioning into her position as the new Zoning Administrator. Mrs. Marrier sent a "friendly letter" on March 29, 2016, informing Mr. Langlois that he was in violation. The bylaws said that there needed to be 7 days notice for the violation, but that did not apply to the "friendly letter" that would precede a 7-days violation notice. Mr. Langlois' attorney was alleging that this letter was not received, and since it was not sent certified, there was no way to know if Mr. Langlois had received it.

On May 21, 2016, Mrs. Marrier conducted a site visit, measuring every pole and panel from end to end and top to bottom. She presented the measurements to the board, stating that she had measured from the ground to the top of the structure. The panels themselves are six feet tall, so unless they were flush with the ground, they exceeded six feet in height. Mrs. Marrier had visited the property four times on different occasions.

The road right-of-way was 66 feet, and it appeared that a portion of the fence extended into the right-of-way, judging from the survey pin on Mrs. Robtoy's neighboring lawn. There was nothing in the Langlois file that said that the prior Zoning Administrator wrote anything to affirm that a fence permit was not needed. The bylaws stated that structures need a permit, and fences were considered structures, although she felt that the requirement that "any accessory use or structure needs to meet setbacks" did not fit for a fence. Under fence definition, "a fence less than 6 feet does not need a permit, which does not extend into or obstruct public rights-of-way." This one did extend into the public right-of-way and was over six feet tall.

She believed that the last panel of the fence, which was very near lake, may also be in violation of the bylaws' floodplain building requirements.

Mrs. Marrier noted that the landowner, Mr. Langlois, alleged that he did not receive notification of the hearing, but the records of Ms. Wheeler, Swanton Town Administrative Assistant, affirmed that she had sent all the notifications for the hearing on June 7, 2016.

Mrs. Marrier said that caps and posts were all part of the fence; MSK alleging that those should be considered decorative elements like weathervanes and not part of the fence. She believed that the decorative tops were all considered part of the fence, and they were over six feet from the ground.

The statement "The Selectboard directed enforcement after the Zoning Administrator had decided that action was not needed" was false. At no time did Mrs. Marrier decide that action was not needed, nor was she directed by the Selectboard to send out the violation letter. She acted because she believed there truly was a violation.

Mr. Clark said that the DRB had allowed fences on property lines historically, and if you exceeded a district height restriction, you could apply for a Conditional Use permit. He had talked with his lawyer, who worked with Mr. Langlois' lawyer on this matter, and in the end, they could not come to a settlement.

Mr. Clark said that the Town had spent \$16,000 on Mr. Langlois' pergola case in Environmental Court. Mr. LaBarge thought that fences were supposed to be placed enough within the property boundaries to allow for maintenance of the other side. Mr. Langlois' fence was right on the line. Mrs. Marrier said she normally recommended that the fence be set back about the width of a regular push-mower or enough room to weed-whack. Mr. Liegey added that, even if the fence was two feet back from the line, if there was tension

with the neighbors, the neighbor might complain for setting foot on the property. He did not think you could follow the contour of the land within strict compliance on the bylaw.

Mr. Clark said that if there was a complaint by an adjacent property owner, the Zoning Administrator was required to look into the complaint and take appropriate action. Mr. Liegey asked if there was "leeway of a few inches" and Mr. Clark said that DRB was a quasi-judicial board, so they could make such judgments.

As the Road Commissioner, Mr. Clark didn't have an issue with the fence's extension into the right-of-way, since Maquam Shore Road included a lot of fences of similar distance and it did not impede any road maintenance.

Mr. Clark swore in Mrs. Robtoy, since she had not been present for the first swearing in. Mrs. Robtoy said that in the first week of May 2015, she had received a letter from Mr. Langlois' lawyer informing her of the proposed fence installation and stating that the fence did not need a permit. Mrs. Robtoy had emailed the previous Zoning Administrator, Mr. Ronald Kilburn, asking: Did Mr. Langlois obtain a permit for the fence? His reply: "Shelley, the answer to your question is no."

In October 2015, another letter from Mr. Langlois' lawyer informed her that Mr. Langlois would be adding on two panels toward the lake. At that point, Mrs. Robtoy sent out a letter to the new Zoning Administrator with her concerns that the fence needed a permit and was too high. Mrs. Marrier replied in March 2016, stating that the structure would indeed require permit. In May 2016, another 40-50 feet of fence was added, from the middle of property up to the road. At no time had she been told by the Zoning Administrator that no action would be taken or that a permit was not needed.

She would like to see Mr. Langlois get a permit "like everyone else," the fence lowered to the required height (she personally did not care if the posts exceeded the height slightly), and the fence removed from the right-of-way. She felt that the rules should apply equally to everyone, and feared that not enforcing them would encourage further violation. She explained some of the history of the fence's installation and how it impacted her property (cutting of tree roots, disturbing her lawn, changing location of the shrubs, etc.).

Mr. Heller said that "we've been using lawyers throughout," adding that Mr. Langlois and those involved knew the rules and regulations and had lost sight of them because he was historically "able to get away with things." There was no respect for the rules of the Town.

Mrs. Robtoy presented copies of email and mail correspondence relating to the case.

Mr. Heller asked if a hedge was equivalent to a fence and held to the same height requirements. The board was uncertain as to whether this constituted a fence, since hedges were not specifically defined in the bylaws. Mrs. Hill said she would take the matter to the Planning Commission.

The board felt that simply mulching the bottom of the fence to raise the elevation so that the fence would not be in excess of 6 feet above the grade was not sufficient. Mr. Heller added that the fence should not exceed 6 feet on the neighbor's side, as well as the landowner's side.

Mrs. Marrier reminded the board that the current hearing was to determine whether or not the DRB would uphold her notice of violation to Mr. Langlois. If so, then the board could consider asking Mr. Langlois to apply for a Conditional Use or take any other kind of action.

6. Set Next DRB Meeting Date

The DRB set the next meeting date for July 21, 2016 at 7 p.m. with a site visit to the Langlois property at 6:15 p.m.

7. Any Other Necessary Business

None.

8. Minutes

Mrs. Hill made a motion, seconded Mr. Liegey, to approve the DRB minutes of May 26, 2016. Motion carried.

9. Deliberative Session

Mr. Liegey made a motion, seconded by Mrs. Giroux, to go into deliberative session at 8:42 p.m.

Mr. Liegey made a motion, seconded by Mrs. Giroux, to exit deliberative session at 9:05 p.m.

Mrs. Giroux made a motion, seconded by Mrs. Hill, to CONTINUE #DRB-15-2016 Christopher Guilmette request for Variance from the setback requirements to construct a garage located at 88 Canada Street R5/Residential District, parcel ID #CN0088-0025. The board would like to see a plan that proposed more than 5 feet for setback and other alternative locations. Motion carried.

Mr. Clark stated that Mr. Passini did not need the following variance: #DRB-16-2016 David Passini request for Variance from the setback requirements to construct a porch located at 49 Fourth Street in the R5/Residential District, parcel ID#FR0049-0029. This project met the district setbacks and Mr. Passini could simply apply for a building permit.

Mr. Labarge made a motion, seconded by Mr. Liegey, to approve as presented #DRB-17-2016 Ellsworth Moore request for Site Plan Approval for a four lot sub-division located at 135 Bachand Road in the R3/Moderate Density Residential District, parcel ID#BA0135-

0017. Discussion: Mr. Clark amended that this item was approved as both sketch and final. The board unanimously approved the amendment. Motion carried.

Mrs. Hill made a motion, seconded by Mr. Liegey, to approve as presented #DRB-18-2016 Edward Hemond request for Site Plan Approval for a boundary line adjustment located at 17 & 19 Maple Grove Estates in the R3/Moderate Density Residential District, parcel ID#MG0100-0017. Motion carried.

Mrs. Giroux made a motion, seconded by Mr. Liegey, to continue #DRB-19-2016 Gary Langlois appeal of Letter of Violation located at 40 Maquam Shore Road in the SR/Shoreline Recreation District, parcel ID#MQ0040-0008. This item will be continued for a site visit on July 21, 2016, at 6:15 p.m. Motion carried.

D. Adjournment

Mr. Liegey made a motion, seconded by Mr. Labarge, to adjourn at 9:07 p.m. Motion carried.

Joel Clark

Lucie Hill

Gabriel Liegey

Spencer LaBarge

Amy Giroux