

TOWN OF CHESTER
DEVELOPMENT REVIEW BOARD
MINUTES

February 24, 2020

BOARD MEMBERS PRESENT: Carla Westine, Harry Goodell, Larry Semones, and Phil Perlah.

STAFF PRESENT: Michael Normyle, Zoning Administrator, Cathy Hasbrouck, Recording Secretary.

CITIZENS PRESENT: Ed Marcus, Kristin Lathrop, Susan Speranza, Joyce Smith.

Call to Order

Carla Westine called the meeting to order at 6:00 PM upstairs at the Town Hall. She introduced the members of the Development Review Board and staff. She read the meeting agenda and explained the microphones that are used to record the official record of the meeting. She invited everyone to join her in the Pledge of Allegiance.

Agenda Item 1 Review draft minutes from the February 10, 2020 meeting.

Phil Perlah moved to accept the minutes from the February 10, 2020 meeting. Harry Goodell seconded the motion. There was no discussion. A vote was taken and the minutes were accepted as written.

Agenda Item 2 Citizen comments.

There were no citizen comments.

Agenda Item 3 Conditional Use application (#546) by Edward and Jill Marcus / Tourist Lodging.

Michael Normyle gave a short history of the project. He first heard from Ed Marcus in December, 2019. The application was begun on January 2, 2020 and was considered complete on January 21, 2020. The notice for the meeting was published on January 21, 2020. Notices were sent to the abutters on February 4, 2020.

Carla Westine asked if any Board members had any ex-parte communication to disclose or a conflict of interest. No one did. Carla Westine noted that Board member Gary Coger, who was not present at the hearing, had recused himself because he had business connections to parties involved in the hearing.

All citizens at the hearing including Susan Speranza, Kristin Lathrop, Ed Marcus and Joyce Smith were sworn in to give testimony.

Carla Westine entered the following documents into evidence.

The first document was an application for hearing before the Development Review Board. Carla Westine read the following items: the project number was 546, the date was January 2, 2020, the appellant name was Edward and Jill Marcus, the address was 902 Cummings Road. The application was for a conditional use, Tourist Lodging. The application was signed by Edward and Jill Marcus and Michael Normyle. Harry Goodell moved to accept the application as Exhibit

A. Phil Perlah seconded the motion. A vote was taken and the application was accepted as Exhibit A.

The second document was a Town of Chester Notice of Public Hearing before the Development Review Board dated January 21, 2020. It showed a site visit was scheduled at 4:30 PM on Monday, February 24 and a Public Hearing at 6:00 PM. The property owner and applicant were Edward and Jill Marcus, the location was 902 Cummings Road. The action requested was, "The appellants entered into an agreement with Vacasa, which rents on behalf of homeowners over 400 units in Vermont. The concept is short-term rentals all handled by Vacasa, who cleans the property before and after the renters depart. Vacasa is responsible for all management. Nothing is being done to the property. No renovations of any kind. It is as is/where is." The Notice was signed by Michael Normyle. A vote was taken and the Notice was accepted as Exhibit B.

The third document was a narrative and introductory letter from Edward Marcus to Michael Normyle and the Development Review Board. Carla Westine read the introductory letter and Ed Marcus read the narrative aloud. Ed Marcus added that he had heard from the Division of Fire and Safety, confirming they have his inspection request. He said Vacasa will be looking after the rental aspects of the property, arranging bookings and cleanings. Robert Rauch was in charge of maintenance. Harry Goodell moved to accept the letter and narrative as Exhibit C. Phil Perlah seconded the motion. A vote was taken and the letter and narrative were accepted as Exhibit C.

The fourth document was a copy of a Vermont Department of Public Safety, Division of Fire and Safety Change of Use or Ownership Inspection Request. The Physical 911 address was given as 902 Cummings Road Chester. Carla Westine noted that Ed Marcus indicated that the fee has been paid and that the Division of Fire and Safety has responded to his application. Harry Goodell moved to accept the change of use inspection request as Exhibit D. Phil Perlah seconded the motion. A vote was taken and the document was accepted as Exhibit D.

The fifth document was a one-sided sheet describing Vacasa's services as a vacation rental agency. Carla Westine read the headings for 10 of the paragraphs and read the text of the paragraph headed, "a strong local presence" as follows, "We have a manager on call 24 hours per day, 7 days per week. In each of our local markets, we have a strong local team of reservationists, housekeepers, handymen and other service providers. If a problem arises, our on-call manager will work with these local providers to solve the issue." Harry Goodell moved to accept the sheet as Exhibit E. Phil Perlah seconded the motion. A vote was taken and the sheet was accepted as Exhibit E.

The sixth document was an e-mail exchange dated February 14, 2020 between Ashley Lesco, acting for Ed Marcus, Michael Normyle and Chester Fire Chief Matt Wilson, regarding the impact on the Fire Department due to the change of use at the Marcus property. Matt Wilson stated that he saw limited impact to the Chester Fire Department. Carla Westine read the e-mail messages aloud. Harry Goodell moved to accept the e-mail exchange as Exhibit F. Phil Perlah seconded the motion. A vote was taken and the e-mail exchange was accepted as Exhibit F.

The seventh document was a letter on Town of Chester stationery dated February 18, 2020 from Chief of Police Richard Cloud to the Development Review Board and Michael Normyle. The letter states that, in Chief Cloud's opinion, traffic safety and parking will not be an issue if the conditional use permit for short term rentals is granted. Harry Goodell moved to accept the letter as Exhibit G. Phil Perlah seconded the motion. A vote was taken and the letter was accepted as Exhibit G.

The eighth document presented was an e-mail from Pat and Cindy Farren to Michael Normyle, dated February 24, 2020, the day of the hearing. The Farrens live at 67 Jillie Lane and are abutters to the property. In the e-mail, they stated they have some concerns about possible issues from a vacation rental use, such as barking dogs, loud noises and parties. They requested the right to a subsequent appeal if their concerns about noise are not resolved at the hearing. Carla Westine read the e-mail aloud. Harry Goodell moved to accept the e-mail as Exhibit H. Phil Perlah seconded the motion. A vote was taken and the e-mail was accepted as Exhibit H.

Carla Westine then began a review of Section 4.8 of the Chester Unified Development Bylaws, Conditional Uses. She began by reading the purpose of the R-40 district on page 19 of the bylaws, “**A. Purpose:** To provide moderate-density residential neighborhoods with compatible commercial and civic uses that are consistent with the Chester Town Plan.” She then verified that Tourist Lodging is listed as conditional use number 18 for that zoning district. She read the definition of tourist lodging from Section 8 of the bylaws aloud, “Overnight accommodations provided to transients for compensation, including bed & breakfasts, boardinghouses, inns, hotels and other overnight accommodations.” She concluded that Ed Marcus’ description of his proposed business was, indeed, a tourist lodging and allowed in the district.

Carla Westine turned to Section 4.8, Conditional Use. She explained that she will read each criterium for the conditional use, the applicant will have a chance to respond and explain how the project meets the criterium in question. The Board members will then have a chance to ask questions. When those questions have been answered the audience members will have a chance to ask questions.

Carla Westine began by reading sections 4.8.A, B and C aloud.

4.8 CONDITIONAL USES

Specific conditional uses are permitted only by approval of the Development Review Board, providing that General standards, Specific Standards, Performance Standards and Special Criteria, as herein provided are met, and further provided that:

- A. The Development Review Board after public notice and public hearing determines that the proposed use will conform to such standards.
- B. In granting such conditional use, the Board may attach such additional reasonable conditions and safeguards as it may deem necessary to implement the purpose of the law and these Bylaws.
- C. The Development Review Board shall act to approve or disapprove any such requested conditional use within forty-five (45) days after the date of the final public hearing held under this Section, and failure to so act within such period shall be deemed approval.

1. General Standards

These general standards shall require that any conditional use proposed for any district created under these Bylaws shall not result in an undue adverse effect to:

a. The capacity of existing or planned community facilities;

Ed Marcus explained that the property has its own well and septic system so it will not be a burden to the municipal water or wastewater systems. He said he himself has never used the Fire Department and only asked the Police Department to look into hunters using his property without his permission. He said he is relying on the Vacasa staff to check the background of people who will be renting the property. He has a friend who has used Vacasa with good results in the past and doesn't expect problems with the tenants.

Carla Westine added that letters have been received from the Fire and Police chiefs responding positively to the proposed use.

Susan Speranza asked if there would be restrictions on the number of people allowed on the property. Kristin Lathrop, representing Vacasa said the guests were limited to the number of beds available. Ed Marcus said there were four bedrooms available to the guests. Carla Westine verified that each room had one bed that was big enough for two people. Susan Speranza was concerned that a renter might stage a concert or some other event that would be noisy and disruptive. Carla Westine said the issue of noise will be covered as part of the performance standards and Susan Speranza's concerns would be addressed then. Ed Marcus said his family has had as many as 8 or 9 members staying at the property on occasion and noise was not a problem.

b. The character of the area affected, as defined by the purpose or purposes of the zoning district within which the project is located;

Carla Westine re-read the purpose of the R-40 district, "To provide moderate-density residential neighborhoods with compatible commercial and civic uses that are consistent with the Chester Town Plan." Ed Marcus said this use would not affect the character of the area at all, if managed properly. He noted that there were many such facilities on Main Street in Chester now. He said if Vacasa fails to find guests who will be quiet and respectful, he will stop using their services.

Kristin Lathrop said Vacasa did not allow the guests to have an event at the facility. It is similar to the limits of an Air B&B or a hotel room. Guests are present to bike, ski and hike. Vacasa has a rule that requires quiet after 10:00 PM. Carla Westine asked Kristin if there is a rule against events in the contract. Kristin said the contract forbid events and other activities such as smoking on the property, pets, unless there were appropriate facilities for them, and required the guests to observe any other regulations that applied such as Homeowner Association rules in condominiums.

Susan Speranza noted that Ed Marcus had said there were many such facilities along Main Street in Chester now. She said Cummings Road was not Main Street. It was a dirt road with a dead end. She said she was concerned about the amount of traffic the guests would bring. Carla Westine said traffic would also be covered during the hearing and asked to set that issue aside for the

moment. She acknowledged that Susan indicated the area is primarily residential.

Ed Marcus said that when his family was using the property more extensively, they often came in four or five different vehicles and there was never a problem with traffic. Kristin Lathrop said Vacasa never allows more than four vehicles on a property at one time. She said it was possible to put a lower limit in the listing if that was important. Carla Westine said the Police Chief said in his letter that traffic safety was not an issue.

Susan Speranza recalled that there had been a problem with ATV's on Cummings Road. She asked if Vacasa allowed ATV's. Kristin Lathrop asked if there were ATV trails in the area. Carla Westine said people driving their ATV's on Cummings Road would be a police matter. Kristin Lathrop said the property was not listed as ATV-friendly.

c. Traffic on roads and highways in the vicinity;

Carla Westine recapped the information obtained so far, saying that the Police Chief sent a letter indicating he did not expect traffic safety to be a problem. A neighbor has expressed concern about an increase in traffic. The applicant said he has had 4 to 6 cars at the property in the past. She said that at the site visit she noted this is the second house on the right along Cummings Road from the junction with Route 11. It is not as if guests will be driving past every house on the road to get to the property. She said that if there is any increase in traffic, it would be noticed by the residents of the first house on the right.

Phil Perlah asked how far Cummings Road continued after this house at 902 before it hits the dead end. Ed Marcus thought it was one-half to three-quarters of a mile.

There were no further comments from the audience.

Harry Goodell asked Joyce Smith where she lived on Cummings Road. She said she was the last house before the dead end.

d. Bylaws and ordinances then in effect; and,

Carla Westine said the use is available in the R-40 district and the project met the definition of Tourist Lodging. She noted that no development is proposed, no change to the footprint of the building so the dimensional standards are not involved.

e. Utilization of renewable energy resources.

Ed Marcus said no renewable resources will be utilized.

2. Specific Standards

Specific standards will include consideration with respect to:

a. Minimum lot size;

Ed Marcus said the lot is about 10 acres.

b. Distance from adjacent or nearby uses;

Harry Goodell estimated the closest neighbor is about one-quarter mile away. Carla Westine asked Ed Marcus whether the neighboring properties were residences. Ed Marcus said they were residences as far as he knew.

c. Minimum off-street parking and loading facilities;

Carla Westine said that, at the site visit, 7 cars were parked in the driveway. Ed Marcus said there were also three parking spaces available in the barn. Kristin Lathrop said that Vacasa will not allow more than four cars at any property it manages. Larry Semones asked if that was part of the Vacasa contract. Kristin Lathrop said it was. Carla Westine concluded that there was plenty of off-street parking available.

d. Landscaping and fencing;

Carla Westine said that the Board observed many old apple trees at the site which could have been there since the farm was started in the 1800's. She noted a fenced area for pets. Ed Marcus said his family had always had 2 – 4 dogs. Kristin Lathrop said Vacasa encourages people to travel with their dogs, but with no other type of pet. There is a limit on how many dogs may be brought and there can be a weight limit for dogs.

e. Design and location of structures and service area;

Carla Westine asked how waste is handled. Ed Marcus said currently waste is put in a covered bin in the garage and Bob Rausch removes it and disposes of it. Kristin Lathrop said Vacasa had a similar procedure.

f. Size, location and design of signs;

Carla Westine asked Ed Marcus if he intended to put up any other sign beyond the sign that is already present in the front yard. Ed Marcus said he did not. Kristin Lathrop said the sign was adequate to mark the property for guests and Vacasa would not request an additional sign.

g. Performance Standards under Section 4.9 and,

h. Other such factors as these Bylaws may include.

3. Special Criteria

The following Special Criteria shall be considered by the Development Review Board when considering an application for a conditional use permit in the (VC) Village Center, (SV) Stone Village, (R-C) Residential-Commercial, Districts:

Carla Westine noted that the Special Criteria did not apply to the R-40 district. She then read Section 4.9.A Noise. She pointed out the example of noise in the table that illustrated the level of noise permitted at night, normal conversation. She noted that the 60-decibel requirement would exclude anything like a concert at night. The 70-decibel limit during the day was equivalent to TV audio or the human voice, again precluding the possibility of a concert.

4.9 PERFORMANCE STANDARDS

In accordance with §4414(5) of the Act, the following standards must be met and maintained by all uses in all districts that are subject to a permit under these Bylaws.

A. Noise: noise volume shall be limited to the specified decibel levels listed below measured at the property line. (The sidebar is shown only as a reference to illustrate the decibel levels of typical activities.) Noise levels or frequencies which are not customary in the district or neighborhood or which represent a repeated disturbance to others shall not be permitted. Limited exceptions are allowed for incidental and customary activities, such as the occasional use of lawn mowers and snow blowers for regular property maintenance.

1. Noise shall not exceed 60 dB between 8:00 PM. and 7:00 AM;
2. Noise shall not exceed 70 dB during the day between 7:00 AM and 8:00 PM.

Ed Marcus said he doesn't anticipate a problem with noise.

If the guests are rowdy then Vacasa has failed to vet them properly. He said Vacasa predicted that the property would be rented 110 – 120 days per year. He said it was difficult to hear noise from any of the properties around the house, so he assumed it would be difficult for people on those properties to hear noise from his.

Kristin Lathrop said Vacasa does not encourage or allow parties. The limits placed on cars reinforces that ban. Vacasa guests are usually interested in outdoor activity during the day and are usually resting at night. She said there was no issue with noise at the other Vacasa residential properties in the area.

Phil Perlah asked if the contract provides for a quiet time after 10:00 PM. Kristin Lathrop said it did and the contract could be altered to reflect the noise limit in the Chester bylaws if that is wanted. Phil verified that 10:00 PM is a standard practice. There were no further questions from the audience.

B. Air Pollution: no use shall create emissions, such as dust, fly ash, fumes, vapors, gases and other forms of air pollution, which:

1. Constitute a nuisance to other landowners, businesses or residents;

<p>Decibel (dB) Levels:</p> <p>10 dB = normal breathing</p> <p>30 dB = soft whisper</p> <p>40 dB = quiet residential area, library</p> <p>60 dB = normal conversation</p> <p>70 dB = TV audio, human voice at 10 feet</p> <p>80 dB = doorbell, machine tools, car at 10 feet</p> <p>90 dB = lawn mower, tractor, blender</p> <p>100 dB = snowmobile, factory machinery,</p> <p>110 dB = leaf blower, power saw, nightclub band</p> <p>120 dB = chain saw, rock concert, pain threshold</p>
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2. Endanger or adversely affect public health, safety or welfare;
3. Cause damage to property or vegetation; or,
4. Are offensive or uncharacteristic of the area.

Outdoor wood-fired boilers are exempt from this provision.

Ed Marcus said the house had a wood burning fireplace, but there were no other sources of air pollution.

C. Glare, Light or Reflection: illumination from lighting fixtures or other light sources shall be shielded or of such low intensity as not to cause undue glare, reflected glare, sky glow or a nuisance to traffic or abutting properties. Lights used to illuminate parking areas and drives shall be so arranged and designed as to deflect light downward and away from adjacent residential areas and public highways. Lights shall be of a "down shield luminaire" type where the light source is not visible from any public highway or from adjacent properties. Only fixtures which are shielded to not expose a light source, and which do not allow light to "flood" the property, are permitted to be attached to buildings. Searchlights are not permitted. The Development Review Board may require a lighting plan under conditional use or planned unit development review procedures.

Carla Westine said the property is not being changed. She reminded the applicant that any new lighting should be downward facing and not spill onto anyone else's property or up into the sky.

D. Safety Hazards: Fire, explosive and similar safety hazards which would substantially increase the risk to an abutting property, or which would place an unreasonable burden on the Fire Department, shall be prohibited.

Kristin Lathrop said the property does not have an outdoor fire pit.

E. Electromagnetic disturbances: any electromagnetic disturbances or electronic emissions or signals which will repeatedly and substantially interfere with the reception of radio, television, or other electronic signals, or which are otherwise detrimental to the public health, safety and welfare, beyond the property lines of the property on which it is located, except as specifically licensed and regulated through the Federal Communications Commission.

Both Ed Marcus and Kristin Lathrop said there was no sources of electromagnetic disturbance on the property.

F. Underground Storage Tanks, Ground/Surface Water Pollution: No use shall result in burying or seepage into the ground of material which endangers the health, comfort, safety or welfare of any person, or which has a tendency to cause injury or damage to property, plants or animals. Commercial, industrial or institutional facilities having underground fuel storage shall maintain all tanks and related equipment with leak detection and spill control systems incorporating the best available safety practices and technology, consistent with government and industry standards.

Carla Westine said, in view of the fact that no changes are planned to the property, it was unlikely any underground tanks were involved. Phil Perlah asked how the property was heated. Ed Marcus said it had oil heat with a tank in the basement.

The criteria being all reviewed, Carla Westine asked Ed Marcus if he had anything else he wanted to say. Ed Marcus said he and his wife felt it was unreasonable to have the property unoccupied so much. He didn't want to do anything unpleasant, but he hoped Vacasa would do a good job selecting families to rent the property. He and his wife regarded this as an experiment.

Susan Speranza asked if she could have a telephone number to call if she had a complaint. Kristin Lathrop said she will provide the neighbors with the phone number of the local Vacasa office. The office is in Ludlow. Larry Semones said that if he were a neighbor and there was a problem with noise on the property or some other emergency, he would call the police immediately and let them take care of the situation and make the call to Vacasa. Kristin Lathrop said Vacasa could evict guests if they were too loud.

Phil Perlah asked if Vacasa managed any other properties in Chester. Kristin Lathrop said this was their first property in Chester. He asked how many properties they managed in Ludlow. Kristin said they had signed on over 100 properties in the Ludlow area.

Carla Westine said she thought there were about 2 dozen properties advertised under Air BnB in Chester. Phil Perlah said it appeared that Vacasa was different than Air BnB in that it seemed to be much more hands on and managed their clients more carefully.

Harry Goodell moved to close the hearing. Larry Semones seconded the motion. A vote was taken and the hearing was closed. An informal poll of the board indicated that the application will be approved. Kristin Lathrop said Vacasa required a test of the smoke and carbon monoxide alarms every six months.

Carla Westine explained the procedure for writing the Findings and Conclusions to the applicant. She thanked Ed Marcus for getting the required permits and contacting the state division of Fire and Safety.

Agenda Item 4 Set the next meeting date

Michael Normyle said there will be two hearings on Monday March 9, 2020. One for a tourist lodging on Green Mountain Turnpike and one for the former TD BankNorth building which will be converted to a dentist office.

Agenda Item 5 Deliberative Session

At this point the meeting went into deliberative session and was adjourned at the end of it.