

TOWN OF CHESTER
DEVELOPMENT REVIEW BOARD
MINUTES

May 22, 2017

BOARD MEMBERS PRESENT: Carla Westine, Amy O'Neil, Phil Perlah and Ken Barrett.

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

OTHERS PRESENT: Randy Miles, Hugh Pennell, Nancy Pennell, Barre Pinske.

CALL TO ORDER

The meeting was called to order at 6:00 P.M. by Chair Carla Westine. She introduced the members of the Development Review Board and staff. DRB alternate Ken Barrett joined the board for the meeting, taking Don Robinson's unfilled position. Carla Westine stated that, earlier that afternoon, there had been a site visit 3630 Vermont Route 103 North at 5:00 PM. The board and audience members recited the Pledge of Allegiance. Carla Westine then read the meeting agenda.

Agenda Item 1 Review minutes from the May 8, 2017 meeting

The Board reviewed the minutes for the May 8, 2017 meeting. Carla Westine asked if anyone at the meeting had stated that the Vermont Cannoli business was strictly a takeout business and if Catherine Marino had testified that all baking would be done off site? These items were not noted in the minutes, but were part of the Findings and Conclusions Document. Carla also declined to accept the credit for saying the parking lot light at Vermont Cannoli was shielded. She said Harry Goodell had made that statement. Recording Secretary Cathy Hasbrouck said she did not recall any discussion about take out only and offered to listen to the recording again. The Board decided to postpone accepting the minutes until their June 12, 2017 meeting.

Agenda Item 2 Continuation of the Conditional Use Review for Front to Back Landscaping

Carla Westine reminded Randy Miles that he was still testifying under oath from the last meeting. Barre Pinske was sworn in to give testimony.

A few more exhibits were entered as evidence. The first exhibit was a letter from Randy Miles to the DRB Board and Zoning Administrator dated May 12, 2017. It was a narrative describing the measures Randy Miles was willing to take to meet the zoning bylaw noise requirement of 70 decibels and giving the hours he would want to operate the machine. Amy O'Neil moved to accept the document as Exhibit G. The motion was amended to accept the document as Exhibit H. Phil Perlah seconded the amended motion. A vote was taken and the motion passed.

The second exhibit was three pictures of the wood processing machine Randy Miles intends to

purchase for this project. Amy O'Neil stated that she wanted to be certain that accepting the pictures as evidence did not mean the permit would be issued for that specific make and model of machine. She did not feel it was right for the Development Review Board to condition a permit to a particular machine. If another machine was brought in, the permit would have to be amended. Randy Miles said he understood the issue was meeting the 70-dB noise requirement regardless of the particular machine being used and he fully intended to do so.

Phil Perlah asked if the muffler shown in the picture was the muffler he intended to install. Randy said it was not, it was the basic muffler that comes with the machine. Amy O'Neil moved to accept the document as Exhibit I. Phil Perlah seconded the motion. A vote was taken and the motion passed.

The third exhibit was an e-mail exchange between Patrick Davis and Randy Miles. Carla Westine asked Randy Miles about the text at the top of the page which said Page 1 of 3. She wanted to know if there were any other pages that should be part of the exhibit. Randy Miles said there were not. Amy O'Neil pointed out that Patrick Davis was not a sound engineer and the data was not the result of an engineer's work. Phil Perlah said that accepting the exhibit did not affect how much credibility it deserved. Phil Perlah moved to accept the e-mail exchange as Exhibit J. Amy O'Neil seconded the motion. A vote was taken and the motion passed.

The fourth exhibit was a printout of a web page titled Estimating Sound Levels With the Inverse Square Law Phil Perlah moved to accept the printout as Exhibit K. Amy O'Neil seconded the motion. A vote was taken and the motion passed.

The next document, a web page showing the Extech sound meter, model G3991644, was set aside. The meter shown was the one used to measure sound from the Woodbine wood processor tested by Randy Miles and Patrick Davis. Randy Miles intended the document more as information than as testimony. The next exhibit, a page from a brochure showing Woodbine processors, was also set aside. Phil Perlah said he agreed with Amy O'Neil that the permit should not be issued for a specific make and model of wood processor.

The fifth exhibit is a revised site plan of the property at the corner of VT route 103 and Sylvan Road. Shrubs and flowers planted along Sylvan Road were drawn in. Amy O'Neil moved to accept the revised site plan as Exhibit L. Phil Perlah seconded the motion. A vote was taken and the motion passed.

The board then discussed the remaining issue of noise (Performance Standard 4.9.A of the 2017 Chester Unified Development Bylaws) for the application. Below is a summary of the points in the discussion.

In Exhibit H, the narrative submitted at the meeting, Randy Miles outlined his plan for complying with the noise ordinance. If granted a permit, he would bring the wood processor to his property, set it up and run it. If the level exceeded the noise limit, he would install an after-market muffler called a silencer. If the noise was still too loud, he would put a sound-insulated cage around the engine. If the noise continued to be too loud, he would erect a building around the processor. If the noise still exceeded the limits, he would shut down and remove the

processor. At the hearing, he affirmed his solemn intent to execute the plan outlined in the narrative and his confidence that he would be able to meet the noise requirement. He also affirmed his understanding that, if he could not meet the noise standard, he must stop using the processor. He said he was willing to do so.

He confirmed the hours he planned to operate the machine, which he listed in his narrative: 9:00 AM to 6:00 PM Monday through Friday and 9:00 AM to 1:00 PM on Saturday. He said that he does not expect to be cutting wood every day. His business is open about six months of the year and is busy from April to July selling landscaping materials. He testified he would be using the wood processor primarily in the quieter part of the year, from July until he closed in the fall. He did not expect to be using the wood processor every day during that period, but he was reluctant to limit the hours because he wanted to be able to take advantage of opportunities that may present themselves.

Randy Miles also testified that, when he purchased the property, the lister's card showed the zone as industrial commercial, and that the area has a long history of industrial commercial uses such as a gravel pit, logging and a general store.

He stated that there is no sure way to predict how much noise a machine will make at a specific site. The only way to be certain of the noise level is to install and run the machine in place. In response to Amy O'Neil's suggestion that he hire an engineer to do sound modelling, he said he did not feel it would be helpful. He felt the sound modelling results would be different from the actual machine and actual installation and therefore would serve no purpose.

Members of the Development Review Board discussed the following issues.

The property in question is in the R-40 district. The purpose of the district as written in the 2017 Chester Unified Development Bylaws is, "To provide moderate-density residential neighborhoods with compatible commercial and civic uses that are consistent with the Chester Town Plan."

The property is not a large lot of many acres. The proposed placement of the wood processor is 60 feet from one boundary and 140 feet from Sylvan Road. The proposed use, wood processor, is an industrial-type use, allowed as a conditional use in the district. The board agreed that wood processing is not a compatible use for a residential district and the use must be screened from other properties in the area.

There are very few immediate neighbors. The board noted that no abutters attended the hearing. The only residence visible from the lot is an apartment on the second floor of the building on the northwest corner of Vermont Route 103 and Sylvan Road. The board agreed that disturbing even one neighbor with excessive noise was not acceptable.

The board noted that the requested hours of operation were 9:00 AM to 6:00 PM Monday to Friday and 9:00 AM to 1:00 PM on Saturday). They also noted that Randy Miles testified that wood processing would mainly be done outside of his busy season, which runs from April to July. Amy O'Neil proposed that the hours be limited to 9:00 AM – 5:00 PM Monday to Friday

and possibly not at all on Saturday. Carla Westine noted that many families have Saturday gatherings in warm weather, when the wood processing is likely to be done.

Chair Carla Westine noted the lack of precedent for an application such as this one, where the noise standard is key to granting a permit. The bylaws only give a box listing the decibel levels of some commonly encountered noises as guidance on how to measure noise. The bylaws do not address what level of expertise the person measuring the sound had to have before the board could accept information about decibel readings. It could not be said that the decibel information presented at the hearing was taken by credentialed or disinterested third parties. The people who took the readings were the applicant, Randy Miles and the salesperson, Patrick Davis. The meter used belonged to the municipality of Northampton, MA, which was a neutral party.

Amy O'Neil suggested that the applicant consider hiring an engineer to perform sound modelling on the machine and the lot. Sound modelling would take into account the size and horsepower of the engine and the topography of the lot. It would predict the decibel levels at all property lines. She said it was a commonly used and accepted practice in the construction and industrial trades.

Amy O'Neil pointed to the long and divisive discussion the community had before the recent changes to the bylaws were enacted. She felt it was particularly important for the board to show consideration and discretion in allowing such an incompatible use in a residential district. The other board members agreed.

Carla Westine expressed the board's desire to avoid issuing a permit that is likely to end up in Environmental Court because of problems with noise. She also wanted to avoid accepting a plan of action where shutting down the wood processor was the only possible final solution.

The board invited Randy Miles to submit more test data or research and he said he did not want to introduce any new evidence or testimony. He asked that members of the board be polled as to their current opinion on the matter and that the hearing be closed.

The members gave their opinions as follows:

Ken Barrett was not sure how he would vote. He wanted to consider what conditions could be put in place.

Amy O'Neil said she would deny the permit for lack of information that would assure the limit of 70 decibels is not exceeded.

Carla Westine was not sure the 70-decibel limit could be met. Her approval would include strong conditions and the specific mention of the possibility that the wood processor may have to be removed if it cannot meet the noise requirement.

Phil Perlah was inclined to agree with Carla. He wanted to take time to consider conditions that could minimize the risk of having the case go to the Environmental Court.

Again, Carla Westine asked if Randy Miles wanted to recess the hearing and gather more data. Randy Miles did not want to gather more data.

Phil Perlah moved to close the hearing. Ken Barrett seconded the motion. A vote was taken and the motion passed. The hearing was closed.

Agenda Item 3 Continuation of the Foley Final Plat Review

Michael Normyle stated that Mr. Foley was encountering delays in his effort to obtain permits from the state for his subdivision. Amy O'Neil moved to recess the hearing until June 12, 2017. Phil Perlah seconded the motion. A vote was taken and the motion passed.

Agenda Item 4 Conditional Use Review #500, Hugh and Nancy Pennell

Chair Carla Westine opened the public hearing for Conditional Use Permit #500 from Hugh and Nancy Pennell. Ten exhibits had been presented as evidence. The first document was a Town of Chester Development Review Board Notice of Public hearing dated April 25, 2017. The property owners and applicants are Hugh and Nancy Pennell. The location is 3630 Vermont Route 103 North. It is signed by Zoning Administrator Michael Normyle. Amy O'Neil moved to accept the document as Exhibit A. Phil Perlah seconded the motion. A vote was taken and the motion passed.

The second document presented was a Town of Chester application for hearing before the Development Review Board dated March 17, 2017. The appellants and landowners are Hugh and Nancy Pennell. The type of application is a Conditional Use approval. The location of the property is 3630 Route 103. The notice is signed by Michael Normyle, Zoning Administrator and Hugh Pennell. Amy O'Neil moved to accept the document as Exhibit B. Phil Perlah seconded the motion. A vote was taken and the motion passed.

The third document was a letter to Michael Normyle, Chester Zoning Administrator from Hugh and Nancy Pennell dated March 16, 2017, stating that they are seeking a Conditional Use Permit for mixed use, residential and retail at 3630 Route 103 in Chester, the old Gassetts store. Nancy Pennell read the letter to the board. Amy O'Neil moved to accept the narrative as Exhibit C. Phil Perlah seconded the motion. A vote was taken and the motion passed.

The fourth exhibit presented was a letter from Police Chief Richard Cloud to Michael Normyle, Zoning Administrator dated May 4, 2017. The letter stated that traffic safety would not be affected by this proposed use. Amy O'Neil moved to accept the letter as Exhibit D. Phil Perlah seconded the motion. A vote was taken and the motion passed.

A Construction Permit Letter from the Vermont Department of Public Safety was presented but was not taken as evidence because it was not pertinent to the conditional uses.

The fifth exhibit presented was an 11 x 17 site plan titled Project Gassetts and dated May 17, 2017. The drawing did not have a scale on it. It was drawn using a computer and shows feet and millimeters as measurements for each line drawn. Carla Westine discussed whether the Pennells have changed the footprint of the building and whether the distances to the boundaries have been changed. Hugh Pennell testified that he had not changed the footprint. Amy O'Neil moved to accept this as Exhibit E. Ken Barrett seconded the motion. A vote was taken and the motion passed.

The sixth exhibit presented was a smaller site plan of the property and rendering of the second-floor floor plan. It is titled First Floor Plan and Parking Plan. Amy O'Neil moved to accept the site plan as Exhibit F. Phil Perlah seconded the motion. Phil Perlah then asked Hugh Pennell whether the second-floor apartment was going to have two or three bedrooms. He explained that the narrative said the second-floor apartment would have two bedrooms and the smaller site plan

document showed a three-bedroom apartment. Hugh Pennell said it should be a three-bedroom apartment. Nancy Pennell agreed to modify the letter, which had been accepted as Exhibit C. A vote to accept the document as Exhibit F was taken and the motion passed.

The seventh exhibit presented was a copy of the Chester Tax Map showing the property in question. Amy O'Neil move to accept the map as Exhibit G. Phil Perlah seconded the motion. A vote was taken and the motion passed.

The eighth document presented was a Fire Inspection Results form from the Vermont Department of Public Safety. The document is dated June 1, 2016 and gives Reconstruction – First Floor Retail Space as the Project Description. Carla Westine read the Violations and Notes at the bottom of the sheet. Amy O'Neil move to accept the document as Exhibit H. Phil Perlah seconded the motion. A vote was taken and the motion passed.

The last document presented was a second Fire Inspection Results form from the Vermont Department of Public Safety. It is also dated June 1, 2016. The Project Description is Reconstruction – 1st floor apartment. Carla Westine read the Violations and Notes at the bottom of the sheet. Amy O'Neil move to accept the document as Exhibit I. Phil Perlah seconded the motion. A vote was taken and the motion passed.

Hugh and Nancy Pennell were sworn in to give testimony in this matter.

The application was then evaluated against the General, Specific and Performance Standards in the Chester Unified Development Bylaws.

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;

Hugh Pennell said the structure is an existing structure and will not have any more impact on the town than it did formerly. Amy O'Neil asked about a letter from the Chester Fire Chief. Michael Normyle said the Fire Chief had recently been contacted and a letter was coming.

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

Hugh Pennell said there is a stone mason across Route 103 and residences on their side of the road. Nancy Pennell said there are several cars in the yard of the property next door. Down the road is a goat who lives on top of a car. Closer to the intersection with Route 10 is a gas station that was renovated into a residence and an old school which has also been renovated into a residence. Hugh Pennell said the property was originally built as a store in 1850. It continued to be operated as a store until a few years ago. The last owner worked across the street as a mason and the property was foreclosed on. Amy O'Neil noted that the property is in the Residential-Commercial zone and mixed use is a conditional use in that zone.

- c. Traffic on roads and highways in the vicinity;

Hugh Pennell said 8,500 cars pass the building daily. The road is highly traveled and he didn't expect the store would have much impact on that. Carla Westine

asked about the old road directly in front of the store. Hugh Pennell said they were working with the state to determine who owned the road. They did not plan any new curb cuts on Route 103.

- d. Bylaws and ordinances then in effect;

Amy O'Neil had pointed out that the applied-for mixed use was a conditional use in the Residential Commercial Zoning district. Carla Westine noted that the Pennells had testified that the building is an existing building and they will not be changing the footprint. The Pennells have removed the side porch and will be replacing it. All the changes are grandfathered because the foot print is not changing.

- e. Utilization of renewable energy resources.

Nancy Pennell said they did not plan to use any renewable resources.

2. Specific Standards

Specific standards will include consideration with respect to:

- a. Minimum lot size;

Carla Westine noted that this is an existing lot of 1.4 acres.

- b. Distance from adjacent or nearby uses;

Hugh Pennell referred the board to Exhibit E, which shows the distance to the property line. The houses on either side are very close to the property line and the distance to them would be the same as the distance to the lines. The stone mason across Route 103 is about 150 feet away. The Grange building also on the other side of Route 103 is even further away.

- c. Minimum off-street parking and loading facilities;

Carla Westine inventoried the parking needs as follows: The two apartments require two spaces each. These four spaces are shown in the site plan on the north side of the building. Hugh Pennell testified that the retail space had 1300 square feet which Carla Westine said would require four parking spaces. Amy O'Neil said she saw 8 spaces for retail in the site plan on the south side of the building.

- d. Landscaping and fencing;

Hugh Pennell said he thought they would install fencing to separate the property from the property to the right, and perhaps a fence in the back of the property. Amy O'Neil asked if the board should condition a fence. Nancy Pennell said she would like not to be bound to using a fence. Carla Westine said they could use plantings to screen the house. Nancy Pennell agreed to erect some kind of screening between the building and the house to the right of the building.

- e. Design and location of structures and service area;

The Pennells testified that they plan to build a handicapped access ramp as part of the porches. They will also be building a shield to keep the dumpster out of sight. Amy O'Neil asked about the road in front of the building. The Pennells confirmed that they did not know who owned it. Amy asked if two cars could pass each other. Hugh Pennell said they

could. Hugh Pennell said deliveries would be made using that road and the curb cuts that belong to it on Route 103.

f. Size, location and design of signs;

The Pennells do not have a design for the sign yet. They may not be able to have a free-standing sign in front of the building, depending on the status of the road. They will consult with the Zoning Administrator and apply for a sign permit.

g. Performance Standards under Section 4.9 are discussed below

h. Other such factors as these Bylaws may include.

Section 4.9 Performance Standards

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 p.m. and 7 a.m.;
2. Noise shall not exceed 70 dB during the day between 7 a.m. and 8:00 p.m.

One of the intended use is a retail store and the Pennells do not expect the store to be noisy. The second use is residential and no loud noise is expected there either.

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;
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.

No air pollution is expected from the store or the residences.

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.

Exhibit E, the site plan, shows 12 lights on the porch and a pair of post lights at the end of the handicapped ramp. The Pennells said the lights will be downward facing and shielded.

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.

When asked how the building was heated, Hugh Pennell said it used propane and there was an underground propane tank on the property. The building has a new heating system. He did not foresee any safety hazards.

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.

Hugh Pennell testified that he would not be creating any electronic disturbances.

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.

As acknowledged in D. Safety Hazards, there is an underground propane tank on the property.

The planned hours of operation are Sunday – Thursday 9:00 AM to 5:00 PM and Friday and Saturday 9:00 AM – 9:00 PM. These were stated in Exhibit C, the letter describing the business.

Michael Normyle said a Project Review sheet was coming from the state. Jackie Carr, the person who handles Project Review sheets is on an extended vacation. It was decided to recess the hearing until June 12 to accept the letter from the Fire Department.

Phil Perlah asked if the Pennells would be operating the store themselves. They said they would.

At this point the hearing was recessed until June 12, 2017.

Agenda Item 5 Comments from Citizens

There were no citizens present to comment.

Agenda Item 5 Deliberative session on previous matters

The board went into deliberative session and the meeting was closed.