

TOWN OF CHESTER
DEVELOPMENT REVIEW BOARD

MINUTES

May 13, 2019

BOARD MEMBERS PRESENT: Carla Westine, Robert Greenfield, Gary Coger, Harry Goodell and Phil Perlah.

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

CITIZENS PRESENT: Addison Greenwood, Larry Semones, Nancy Eddy, Duane Fletcher, Adam Hubbard, Peter F. Brady, Jr., Gerald Gleason, Jeanette Gleason.

Call to Order

The meeting was called to order at 6:00 PM by Chair Carla Westine. She introduced the members of the Development Review Board and staff. She then read the agenda for the meeting. She confirmed that there had been site visits earlier that afternoon at 1412 Andover Road and 3254 Green Mountain Turnpike. She invited the audience to join in reciting the Pledge of Allegiance.

Agenda Item 1 Review Draft Minutes of March 28, 2019 meeting.

The minutes from March 28, 2019 were omitted from the DRB's packet. Carla Westine moved to table the item until the next meeting. Harry Goodell seconded the motion. A vote was taken and the motion passed.

Agenda Item 2 Citizen Comments.

There were no citizen comments.

Agenda Item 3 Waiver application (#531) from Addison Greenwood

Carla Westine asked if any Board member had had any ex parte communication on this hearing or wished to discuss a potential conflict of interest. None did.

Gerald Gleason and Addison Greenwood were sworn in to give testimony by Chair Carla Westine.

Carla Westine entered the documents submitted as evidence into the record. The first document was a Town of Chester Development Review Board Application for a Waiver. Carla Westine read the landowner's name, Addison Greenwood, address, 3254 Green Mountain Turnpike, and the property location, also 3254 Green Mountain Turnpike. The description of the project was given as Garage mudroom with possible mother-in-law apartment. Carla Westine read the reason for the waiver appeal as "Property was re-zoned after I purchased it and the setbacks became more restrictive." Michael Normyle had added a note "Bought house 9/18/2009". The Parcel ID number of the lot was 58-50-06. The application was signed by Michael Normyle and Addison Greenwood. Phil Perlah moved to accept the application as Exhibit A. Harry Goodell seconded the motion. A vote was taken and the motion passed.

The second document presented was a Town of Chester Notice of Public Hearing before the Development Review Board dated April 9, 2019. Carla Westine read the following items from

the notice: the property owner and applicant name is Addison Greenwood, the location is 3254 Green Mountain Turnpike, the district is Stone Village and the action requested is, "Allow for a new garage to be built three (3) feet within the front yard setback," The Notice is signed by Michael Normyle. Gary Coger moved to accept the Notice as Exhibit B. Harry Goodell seconded the motion. A vote was taken and the motion passed.

The third document presented was a narrative dated March 18, 2019 written by Addison Greenwood, giving the history of the property and the proposed addition, and a site plan and 3-D drawing of the site with the proposed addition. Carla Westine read the narrative aloud. Carla Westine noted that the only measurement missing on the drawings was the height of the addition's roof. She said at the site visit she heard Addison Greenwood say the peak of the addition's roof will not be taller than the 37-foot peak of existing house. Addison Greenwood agreed that was true. Harry Goodell moved to accept the narrative as Exhibit C. Gary Coger seconded the motion. A vote was taken and the motion passed.

The fourth document presented was a letter dated April 30, 2019 from Richard Cloud, Chester's Police Chief. Carla Westine read the letter aloud. In the letter, Chief Cloud said, in his opinion, traffic safety would not be affected by a potential visual encumbrance at the corner of Flamstead Road and Green Mountain Turnpike. Harry Goodell moved to accept the document as Exhibit D. Gary Coger seconded the motion. A vote was taken and the motion passed.

The fifth document presented was an e-mail exchange between Michael Normyle and Matt Wilson, Chester's Fire Chief, dated May 7, 2019. Carla Westine read the section from Matt Wilson aloud. In the exchange Matt Wilson said he had read the proposal and had no objection to it. He was on his way to Ohio and did not have enough time to produce the normal letter from his office confirming that. Harry Goodell moved to accept the permit as Exhibit E. Robert Greenfield seconded the motion. A vote was taken and the motion passed.

The sixth document presented was a copy of the narrative written by Addison Greenwood describing the project. At the bottom of the page, Road Commissioner Graham Kennedy had written, "I don't see a problem with this plan", dated it 4/17/19 and signed it. Harry Goodell moved to accept the permit as Exhibit F. Robert Greenfield seconded the motion. A vote was taken and the motion passed.

Carla Westine gave a short history of the project and the bylaw changes since 2014. She read aloud the waiver language from section 7.16 of the Bylaws:

B. Waivers for Zoning Dimensional Standards. As allowed under 24. V.S.A. 4414(8), a waiver of dimensional setbacks (front, rear and side yard requirements) from property lines may be granted by the Development Review Board for any existing building subject to the following provisions. Waiver requests are subject to the requirements and review procedures under Section 4.8 for Conditional Uses.

1. Applicability. Waivers of dimensional setbacks are limited to:

Here Carla Westine moved to the item which applies, vii:

vii. In the event a property was rezoned in the October 8, 2014 Unified Development Bylaws, the setbacks were made more restrictive and the property has not changed ownership since the incorporation of said Bylaws, the

Development Review Board may allow the encroachment of up to 10% of the setback dimension.

Carla Westine then turned to Section 2.6, the Stone Village District and read the Dimensional Standards for setbacks:

Minimum Front Yard Setback	40 ft.
Minimum Side Yard Setback	30 ft.
Minimum Rear Yard Setback	30 ft.
Maximum Lot Coverage	20%
Maximum Building Height	35 ft.

She and Phil Perlah then calculated the shortest front yard setback allowed by the waiver language as 36 feet. Given that the proposed placement of the garage was 37 feet from the Green Mountain Turnpike, Carla Westine concluded that the proposal meets the front setback requirements. Phil Perlah asked Michael Normyle what the zoning district for this parcel was before the 2014 change. Michael Normyle said that, in 2014, the parcel was in the R-20 district, with a 30-foot front setback.

Carla Westine asked Addison Greenwood how big the lot was. He said it was about 1.2 acres. She and Phil Perlah calculated the lot coverage with the addition of the garage to be well under the maximum coverage of 20%. Phil Perlah asked Addison Greenwood when he purchased the house. Addison Greenwood said he believed it was 2009. Michael Normyle confirmed the date, saying he had looked it up on the lister card.

Carla Westine said the application seems to meet the waiver language standard and the garage may be built. No Board members had any questions. Gerald Gleason, an abutter to the rear of the property spoke in favor of the project. There being no further questions, Harry Goodell moved to close the hearing. Gary Coger seconded the motion. A vote was taken and the hearing was closed. Carla Westine said a permit would be issued within 45 days. An informal poll of the Board members indicated that the proposal would be approved.

Agenda Item 4, Conditional Use application (#534) by Larry Semones and Nancy Eddy

Chair Carla Westine swore in Larry Semones, Duane Fletcher and Adam Hubbard to give testimony.

Carla Westine entered the documents submitted as evidence into the record. The first document was a Town of Chester Application for hearing before the Development Review Board. Carla Westine read the Appellant name, Larry Semones, the address, 286 Eddy Road, the location of the property, 1412 Andover Road, the parcel map number 09-01-32, the description of the project, "Modify conditional use permit issued 8/29/2013. Increase acreage, yardage, truck trips, store fuel." She noted the application is for a conditional use and the application was signed by Michael Normyle and Larry Semones on April 16, 2019. Harry Goodell moved to accept the application as Exhibit A. Gary Coger seconded the motion. A vote was taken and the motion passed.

The second exhibit presented was a Notice of Public Hearing dated April 16, 2019. Carla Westine read the following items: The site visit was schedule for 4:45 on Monday May 13, the property owners are Larry Semones and Nancy Eddy, the applicant is Larry Semones, the location is 1412 Andover Road, the district is R120 and the action requested is Modify current conditional use permit (issued 8/29/13) by increasing acreage, yardage, truck trips and to store fuel.” Harry Goodell moved to accept the Notice as Exhibit B. Gary Coger seconded the motion. A vote was taken and the Notice was accepted as Exhibit B.

The third exhibit presented was a narrative explaining the history of the project and the details of the requested amendments written by Larry Semones and dated April 30, 2019. Larry Semones read the narrative aloud. As he read it, he noticed an error in the document and corrected the annual yardage request to 75,000 cubic yards per year from 40,000 cubic yards per year. Harry Goodell moved to accept the narrative as Exhibit C. Robert Greenfield seconded the motion. A vote was taken and the narrative was accepted as Exhibit C.

The fourth exhibit presented was a large site plan prepared by Hubbard Land Design, dated 5/1/2019. It shows previous and proposed phases for the operation of the pit. Phil Perlah moved to accept the large site plan as Exhibit D. Robert Greenfield seconded the motion. A vote was taken and the site plan was accepted as Exhibit D.

The fourth exhibit presented was an 11 x 17 version of the site plan dated 5/7/19. This version had red hash lines to indicate Phase E of the project and green cross hatching to mark the winter storage area. Phil Perlah moved to accept the smaller site plan as Exhibit E. Harry Goodell seconded the motion. A vote was taken and the small site plan was accepted as Exhibit E. Phil Perlah asked if there were any substantive differences between the two versions of the site plan. Adam Hubbard said only the colors of the cross-hatching had been changed.

The fifth exhibit is an e-mail chain between Larry Semones and Ari Rockland Miller dated from March 29, 2019 to April 5, 2019. It was forwarded to Michael Normyle on May 5, 2019. The chain discusses whether the Vermont Agency of Agriculture, Food and Markets will require mitigation as part of the reclamation process. Responding to Carla Westine’s questions, Larry Semones gave the history of the discussion having to do with preserving prime agricultural soil and not using terracing in the reclamation process. Harry Goodell move to accept the e-mail chain as Exhibit F. Gary Coger seconded the motion. A vote was taken and the e-mail chain was accepted as Exhibit F.

The sixth exhibit sent in the packet was the original permit (#452) for the gravel pit signed by four members of the Development Review Board and dated August 29, 2013. Carla Westine asked the Board and the Applicant if they wanted it entered as an exhibit in the current hearing. Harry Goodell spoke first and said he would like it entered in evidence. Phil Perlah moved to accept the permit as Exhibit G. Robert Greenfield seconded the motion. A vote was taken and the permit was accepted as Exhibit G.

The seventh exhibit presented was a letter dated May 13, 2019 from Chester Police Chief Richard Cloud to Chester Zoning Administrator Michael Normyle addressing the request from Larry Semones to amend the conditional use permit he has for the gravel pit. Chief Cloud said

that, in his opinion, safety will not be an issue if the permit is amended. Phil Perlah moved to accept the letter as Exhibit H. Harry Goodell seconded the motion. A vote was taken and the letter was accepted as Exhibit H.

Carla Westine began the discussion by looking at the list of requested amendments to the existing permit. She referred to Exhibit C, the narrative written by Larry Semones, which listed eight amendments. She noted that a gravel extraction permit has already been approved for the property. She said that during the site visit, the Board observed that Section B listed in the original permit was already closed due to less than desirable material in the ground. This area has also been reclaimed. It was observed at the site visit that Phase C has also been closed. The amendment requests the opening of an additional 16 acres.

Carla Westine asked if any Board members had any questions about this aspect of the change. Phil Perlah asked about reclamation. He said the Development Review Board had stood on a gravel area during the site visit which he thought was part of Phase C. Larry Semones confirmed that the area where the DRB stood was, indeed, Phase C, and the area had been left as gravel to allow truck traffic in the area to access the new sections to be opened.

Phil Perlah asked if the gravel surface is considered reclaimed. Larry Semones said that Section B, which has had top soil replaced and been graded and seeded and is now showing new grass has been reclaimed. He indicated another area, part of Phase C that has also had topsoil replaced and been graded and seeded and is in the process of being reclaimed. He said the gravel surface is not considered reclaimed.

Phil Perlah cited condition 9 of the existing permit, #442, which said, "The extraction area will be returned to hayfield upon completion of each phase and prior to the commencement of a new phase." He said this would not be accomplished while parts of Phase C were being left as gravel in order to extract from Phases E and F. Larry Semones acknowledged that this was true and compared planting grass to reclaim the area to painting oneself into a corner. The truck traffic would kill any grass that was planted. Phil Perlah said he understood this clearly and wanted to be sure the new amendments for the permit did not continue conditions that could not be practically met.

Phil Perlah asked Larry Semones about condition 19 on the original permit, which required a bond to be secured for each phase of the project, per the agreement with the Chester Selectboard. He asked whether the bond was a performance bond or an indemnity bond. Larry Semones said that when he went to the Town Hall to secure the bond, he was told that showing proof of insurance was sufficient. He said the bond requested was \$2,500.00.

Phil Perlah suggested that the conditions on the permit be amended to show proof of insurance was required and not a secured bond.

Michael Normyle said he had checked with Julie Hance, assistant to the Town Manager on this issue. She told him she did not find any reference to a bond in the paperwork for the last permit, though she acknowledged the condition was in the permit. She also did not find a bond for the project present in the town's records.

Carla Westine said that, in the past, an excavator would open a gravel pit, sell off the topsoil, mine the gravel for a period of time and leave the hole and the raw gravel in which no plant could grow. The bond requirement was an effort to prevent that going forward. Phil Perlah pointed out that condition 8 of the existing permit said “The topsoil from the extraction area will be stockpiled for use during the reclamation process.”

Phil Perlah asked about someone who had been at the hearing when it started but was no longer in the room. Larry Semones said he was an abutter who was informed of the hearing by the letter that the Zoning Administrator had sent to all abutters. The person had somehow thought that the hearing tonight involved solar panels and had driven in from Cape Cod to join the discussion. When he discovered the subject of the hearing was a gravel pit, he left the hearing.

Phil Perlah asked about evidence for noise levels. Carla Westine explained that noise would be addressed as part of other requested amendments in the list.

There being no further questions about amendment 1, expanding the area of extraction, Carla Westine considered amendment 2, “Abandon and reclaim portions of Phase B and C.” She said this had been addressed during the discussion of amendment 1 and the condition for reclaiming phases would be changed to allow part of Phase C to be used as a road and staging area.

Amendment 3, “Increase annual yardage shipped to 40,000 yds. from current 20,000” was considered. Carla Westine noted that the increase had been changed to 75,000 yards when the document was accepted as an exhibit. She asked Larry Semones whether since 2013, he had gotten anywhere near the 20,000 yards per year allowed by the original permit. Larry Semones said he thought they had gotten 2,500 yards per year.

Phil Perlah stated that the extraction cap for the project as listed in condition 6 of the original permit is 200,000 yards over a 20-year period. He wondered if the proposal of 75,000 yards per year was an attempt to extract the full 200,000 yards allowed by the original permit. Larry Semones said he had planned on extracting up to 75,000 yards per year until the resource was exhausted. Carla Westine said the existing permit caps the amount to be extracted at 200,000 yards. Larry Semones calculated the limit as 20 years times 20,000 yards per year, or 400,000 yards. Phil Perlah pointed out that condition 6 in the original permit capped the total output at 200,000 yards.

Adam Hubbard, the designer of the site plan, said he would like to eliminate the cap condition entirely. He said the presence of ground water is the practical limit. The excavation must remain 3 feet above the ground water level per state regulation. Carla Westine asked about the Act 250 permit limits. Larry Semones said he is asking to change the Act 250 permit so that it addresses the maximum yards extracted per year, and drops the total yardage for the site and how long the extraction operation may continue. Phil Perlah confirmed with Larry Semones that the current Act 250 permit did have a total yardage limit for the site and a limit on how long operations may continue.

Carla Westine addressed amendment 4, “Increase daily trips from 48/day to 96/day.” She noted that the Act 250 permit allows 96 trips/day and that the Chester Chief of Police sent a letter saying the number of trips would not affect safety. She also noted that the Chaves operation

appeared to be shutting down, which would reduce traffic in the area. Duane Fletcher pointed out that 96 trips a day was not the usual number of actually daily trips, but it served as a maximum that would allow periods of high demand to be met. He said, at the 96 trips per day level, 300,000 yards would be extracted in 6 months. He said 48 trips per day was closer to the average expected.

Carla Westine read amendment 5: "Increase crushing days from 10 in spring and 10 in fall to 50 days flexible over operating season." She noted that the proposed amended operating season is April 15 to December 15. Harry Goodell asked whether this meant a maximum of 50 continuous days? It was established that the Act 250 permit currently allows 10 days in the spring and 10 days in the fall. The applicant has applied for changes to the Act 250 permit. The crushing is done by a sub-contractor whose schedule is uncertain, thus the request for more days and more flexibility in scheduling those days. Duane Fletcher said when there is a question about the number of days and scheduling, the state would defer to the local DRB's plan. He thought the Act 250 permit would reflect the local DRB permit.

Carla Westine said that the noise bylaw has changed since the permit was issued in 2013. The bylaw now specifies the noise level at the boundary of a parcel. From 7:00 AM to 8:00 PM, noise is limited to 70 dB. Larry Semones said noise studies were done for the 2013 permit. Harry Goodell said noise studies for the amended permit would need to be done on the equipment currently being used. Carla Westine said it would be sufficient to get sound statistics from the manufacturer of the equipment currently being used and apply calculations to predict what the noise level will be at the property line. Adam Hubbard said they planned to have RSG revise the calculation using the specification for the new equipment.

Carla Westine asked about the intended work schedule. Duane Fletcher said they generally work Monday to Friday during daylight hours. They occasionally work Saturdays. Larry Semones said they would work whenever they are needed during emergencies like Tropical Storm Irene. Harry Goodell asked about the specific hours of work. Duane Fletcher said they work from 7:00 AM to 5:00 PM. Larry Semones said the current permit has those hours.

Phil Perlah noted that the 2013 permit said additional lighting was not needed for the project. He said he saw a set of highway lights at the site visit. Larry Semones said the lights were attached to a generator that was used to run the fuel pump. He said the workers do not use the lights.

Carla Westine read the sixth requested amendment: "Increase winter storage from 1,000 yards to 20,000 yards." No one had any questions about the larger pile needed.

The seventh requested amendment was, "Allow season to begin April 15 vs. May 1 and end December 15 vs. December 1." Carla Westine noted that there have been times when the snow has held off until mid-December. No one on the Board had an issue with lengthening the season. Carla Westine said the Act 250 process would determine its potential effect on wildlife wintering areas.

The eighth requested amendment was "Place a 500-gallon diesel fuel tank on site". Carla Westine asked Larry Semones to describe the tank, its location and safety precautions. Larry

Semones said the tank was 5' 8" tall with double steel walls. It is placed on skids so it can be moved around the lot. It is designed for outdoor storage and has a lock. Phil Perlah asked if a state permit was needed. Larry Semones said he didn't think so. Michael Normyle said no permit was needed if the tank was 500 gallons or less.

Carla Westine asked if Larry Semones kept a spill kit on the premises. Larry Semones said he did. Phil Perlah asked how the tank was filled. Larry Semones said a truck like a home fuel oil truck visited the site to fill the tank. Adam Hubbard said a 500-gallon tank was standard practice in most gravel pits and it reduced the number of truck trips needed to fuel the machinery. Michael Normyle said that an abutter named John Orcutt called earlier to ask questions about the fuel tank. Larry Semones said John Orcutt lived in Anchorage, Alaska. Michael Normyle said he had told John Orcutt he would call him and give him details about the fuel storage tank after the meeting.

Phil Perlah asked if there was anything in the 2014 - 2017 bylaws that addressed extraction. Michael Normyle said the section on extraction was on page 35, Section 3.9. Phil Perlah asked if the bylaws previous to the 2014 bylaws addressed extraction. Michael Normyle said he wasn't certain of all the details, but most of the 2014 code was in the older bylaws.

Carla Westine said Section 3.9 was the source of the bond language and read the following, "A bond is posted with the Treasurer of the Town of Chester by the applicant in an amount approved by the Selectmen as sufficient to guarantee conformity with the provisions of this section." She said the section discussed reclamation. Harry Goodell said the bond language should remain in place so that the Selectboard had the option of requiring a bond if it saw fit. Larry Semones suggested that procedures for consulting the Selectboard and for establishing the bond should be created. Carla Westine said many of the conditions listed in Section 3.9.D are addressed by state Act 250 requirements.

Robert Greenfield pointed out Section 3.9.C.3, which said, "Any soil, sand or gravel operation in existence at the time of adoptions of these Bylaws shall not be subject to the provisions of this section except that such operation shall not extend beyond the then existing boundaries of the parcel of land until a permit has been issued." He thought this meant that the 2014 bylaw requirements would not apply to the land named in the 2013 permit, but would apply to the expanded 16 acres requested in the amended permit. Phil Perlah said the expansion requires the applicant to comply with the financial responsibility provision (the bonding) as described in the bylaw.

Carla Westine asked if there were any other comments or questions. Adam Hubbard said the demand for gravel is high and sources are scarce. He said there is a public good in this project to supply more gravel. It is costly to bring gravel from distant quarries. Michael Normyle asked about the Act 250 timeline. Adam Hubbard said they met with the district coordinator last week. Input on prime ag and Fish and Wildlife departments had been obtained. Adam Hubbard said after the application is received it is 30 to 60 days until a permit is issued. Some coordination between this gravel permit and the solar permit is needed. Larry Semones said that four of the seven commission members are new to their posts. The chair of the commission is new as well.

Carla Westine said the DRB hearing cannot be closed until the information on the crusher noise is received. Adam Hubbard said he would ask RSG for the sound study immediately. Michael Normyle said the next scheduled meeting of the DRB is June 10. If the information was available sooner than that a special meeting could be scheduled.

Carla Westine recessed the hearing until June 10, 2019.

Agenda Item 5, Confirm next meeting dates

The next meeting of the Development Review Board will be Monday June 10, 2019 at 6:00 PM.

Agenda Item 6, Deliberative session to review previous matters

The last item on the agenda was a deliberative session to discuss previous matters. The Board entered deliberative session and the meeting was adjourned at the end of it.