

TOWN OF THETFORD
DEVELOPMENT REVIEW BOARD

MEETING MINUTES
April 9, 2024, HEARING

Act No. 78 (S.222). General provisions; public information; Open Meeting Law; temporary provisions an act relating to authorizing temporary Open Meeting Law procedures in response to COVID-19 This act provides temporary authority for public agencies to hold meetings through electronic means without designating or staffing a physical meeting location. A public agency that uses this temporary authority must use technology that allows the public to directly access the meeting by electronic means and by telephone. A municipal legislative body or school board that uses the temporary authority provided by this act must record its meetings held by electronic means. This act also permits a public body to extend the deadline for the posting of minutes, provided that the public agency has a staffing shortage due to COVID19. Finally, this act permits a public agency to post meeting notices and agendas in electronic locations. Effective Date: January 18, 2023

Members/Admin Present:

For Agenda #1-Tim Taylor (Chair), Angela McCanna (Vice Chair), Orin Pacht, Bill Bridges and Kelly Gardner (ZA).

Attendees/Applicants: Brian Ricker, David Goodrich (Selectboard DRB Liaison).

For Agenda #2-Tim Taylor (Chair), Angela McCanna (Vice Chair), Orin Pacht, Bill Bridges, and Kelly Gardner (ZA).

Attendees/Applicants: Nick Clark, Martie Betts, David Goodrich (Selectboard DRB Liaison).

For Agenda #1

- 1. Warned Hearing on Application (ZP23-47) consider by Brian Ricker for conditional use permit for a Contractors Yard located at 63 Cross Street, Village of Post Mills, Thetford, VT. This property is in the village residential district.**

6:00 Pm Public Site Visit at the property of 63 Cross Street, Village of Post Mills, Thetford.

7:00 PM:

The hearing is called to order by Mr. Taylor at 7:00Pm with Brian Ricker for a conditional use permit for a contractor's yard. This is in the village residential district. The parcel number is 0T0010.02 and the Tax Map Number: 20.20.55. This parcel consists of 1.3 acres per town map.

Mr. Taylor expresses that we had a site visit and Mr. Ricker has shown what was there, starting with vehicles all neatly put away and the area being clean. Mr. Taylor goes on to note that this is a conditional use permit and there are site plan review questions, but Mr. Taylor would like Mr. Ricker to describe a typical day for him.

Mr. Ricker begins his description in that he gets up Sunday nights, to pick up trash and put it in the compactor. Mr. Taylor asks what time the trash was picked up. Mr. Ricker states 1:30 Am to midnight and then it goes in the compactor around 6:00Am. Mr. Taylor remarks this is not bothering the neighbor as it has been worked out for years. Mr. Ricker states those hours make his ability to work easier as people are not out. Ms. McCanna asks if Mr. Ricker is using the compactor at night. Mr. Ricker says, no he doesn't start it but waits until the sun comes up. This varies during the time of the year. Mr. Taylor confirms that the times, depending on the year were not the same. Mr. Ricker states when he goes to check his dumpsters and leaves the yard that the compactor is not on.

Mr. Taylor confirms the compactor is done on Mondays and asks what happens to the compactor at that point. Mr. Ricker says it goes to Lebanon that day. Trash is only in the yard from four to five and a half hours depending on the route.

Mr. Ricker says he often picks up trash from 9:40ish to 10:30 on Mondays. Mr. Taylor asks what happens at other times of the week as the rubbish route itself is only on Mondays. Mr. Ricker says he takes dumpsters on different days, and they are trucked right to Lebanon. The time varies on this. Mr. Taylor asks what time the truck starts and is there a long warm-up period. Mr. Ricker says he tries not to have a long warm-up period. Wintertime is a little longer, but he has magnet heaters that speed up the process. Ms. McCanna asks if the compactor smashed the trash. Mr. Ricker confirms it does. She also confirms it starts at 6am and Mr. Ricker says yes.

Mr. Taylor asks if the compactor needs to be cleaned ever and Mr. Ricker said yes, it is cleaned once a week at the land fill. There is no odor as he hates the smell of garbage. Mr. Taylor says one of the things that we need to focus on is that you have an asset of value that may be able to be sold and we need to be careful about what may come next. Mr. Taylor asks what days the compactor leaves. Mr. Ricker says the compactor leaves on Wednesdays and that Thursday and Friday, Saturday, and Sunday there is nothing.

Mr. Taylor asks in between if he may take out another big piece of equipment. Mr. Ricker says yes but that is during the day. Mr. Taylor asks about the dumpsters stored in the corners of the yard. Mr. Ricker states there are possibly twelve. Mr. Taylor asks if they get cleaned and Mr. Ricker says yes there is a sprayer on the truck, and everything is cleaned once a week with water only. The dumpsters are not often there in the spring and the roll offs are gone for months. Mr. Taylor asks where the dumpsters were accessed, and Mr. Ricker stated the same driveways.

Mr. Taylor begins to review the town zoning ordinance and asks if Mr. Ricker has ever thought about screening any of the yard and notes in the case of one neighbor, he would have to screen up to thirty feet long to not have them view it. He confirmed Mr. Ricker didn't need access to bicycles or pedestrians, outdoor storage and display. Mr. Taylor asks what kind of nighttime lighting was out back. Mr. Ricker states there is no lighting out back.

Mr. Taylor says the noise is somewhat regulated, but an arrangement has been worked out with the neighbors and due to the neighbors not coming to the hearing there are no objections. Mr. Taylor confirms that odor smoke and dust was touched on earlier. Mr. Taylor confirms that Mr. Ricker does have a state license and it is brought into evidence. This license is for solid waste Mr. Ricker says it is for household trash. Discussion was made of the other trash licenses that can be acquired through the states and Mr. Ricker has solid waste trash only.

An email from Bill Keegan is entered into the record stating they are abutters and are out of town but would like to let the DRB know they support Mr. Ricker's business. They have never had any issues.

Mr. Taylor states we have touched on odor and how quickly the trash comes and goes; we talked about how the compactor is washed, and dumpsters are washed. Mr. Taylor asks about vibration, and is a lot of vibration made? Mr. Ricker says no.

Mr. Taylor states we move from site plan review to standards behind a conditional use which talks about being engaged in community services. There can be no undue adverse effect on connected area effecting where the business is located. Mr. Taylor states specifically this would be more of an unusual operation for a village residential situation for that zone. Mr. Taylor goes on to read the bylaws and states this is often where you get into the situation of Act 250. He asks Mr. Ricker if he has plans to expand the business; Mr. Ricker says he does not.

Mr. Ricker states he goes into bad driveways and many companies will not and he does it with a small truck. Mr. Taylor says the renewable energy bylaw does not apply and asks if Mr. Ricker brings any hazardous substances or toxins to the yard. Mr. Ricker says he does not.

Mr. Taylor notes that Mr. Ricker likes to have the metal sorted out and set aside and it appears to be stored well. Mr. Taylor asks Ms. Gardner to embellish what was seen on the site. Ms. Gardner states everything was well covered and all dumpsters were piled up neatly and the area was clean.

Ms. McCanna asks how long he has been on that property; Mr. Ricker says the business has gone in different stages and it used to be noisier. He used to use an excavator to smash the garbage and stated past ways of compacting the garbage. Ms. McCanna asks how long he has had the white compactor truck. Mr. Ricker says 6 years, 1 month and 2 weeks.

Mr. Taylor states we should recess until May 14th and not close evidence until after writing up the minutes of what the conditions might be; Mr. Ricker can look it over and discuss it with the board. Mr. Taylor believes the conditions will be reflected out of the minutes. He suggests we all read the minutes and then go forward.

Mr. Taylor makes a motion to recess until May 14th.

All in favor 4/0.

Mr. Taylor states Mr. Ricker can feel good that there was not interested party attending so no neighbor can appeal the final decision. They will come back with conditions that Mr. Ricker may not like but he has a right to appeal. Mr. Ricker states he must work at night as there is no one around and no traffic.

For Agenda #2

6:30 Pm Public Site Visit at the property of 3998 Route 113, Thetford Center.

2. Warned Hearing on Application (ZP-24-08) consider by Nicholas Clark for a variance and creation of a deck located at 3998 Route 113, Thetford Center, VT. This property is in the village residential district.

This parcel is located at 3998 Route 113. This is in the rural residential district. The parcel number is 0V113C.24 and the tax map number is 06-02-74. This parcel consists of 1.12 acres per town tax map.

Mr. Nick Clark is invited to the table to discuss the proposal of a second story deck.

Mr. Taylor wants to state that they are not correct with a variance being needed and variances are almost impossible to get. Mr. Taylor states that Mr. Clark would not qualify for all five of the qualifications of a variance.

Mr. Taylor notes that he went back and read the ordinance again. Nonconforming structures maybe expanded in setback areas as a conditional use and if the addition cannot be “reasonably be located outside the setback area” and “the expansion in any setback be the least intrusive it can reasonably be”. Section 4.05 (B) 1 and 2.

Mr. Taylor asks Mr. Clark to discuss the project.

Mr. Clark says there are two fundamental issues he is trying to address with the deck. One is to mitigate the sinking of the historic part of the house by controlling water around the foundation. The second is to provide protection to the mini splits under the deck. The objective of the deck is to push surface water eight feet away from the foundation and to reduce the water around the foundation. The reason a deck makes sense is that it blends into the architecture. There are no other easier, affordable solutions to get the water away from the foundation.

Mr. Taylor says the basement was shown and we did see the sump pump pumping water; you could see on the neighbor’s property a “vernal pool”. Mr. Taylor asks if that typically stays like that through the spring? Mr. Clark says he has been there four springs, and it is there every year. It depends on the snow cover. There is a consistent high-water table in this area.

Mr. Taylor says when we went into the basement, we could see the concrete work that was done to try to support the foundation of the brick building. He asks if it is Mr. Clark’s intention with the splits is to get all utilities out of the basement. Will more peers be put under it, to fill the basement completely? Mr. Clark says the end game would be to move the utilities out of the basement and back fill it completely. He explains he would use fill and rocks.

Mr. Taylor says the back of the house is ten feet from the property line and the requirement is fifteen feet. The waiver requirement is the maximum is seven and a half feet so the waiver provision of the bylaw will not work. Mr. Clark continues to explain there would be a plastic membrane that hangs between the deck joist to direct water out away from the structure where it can be collected in a gutter system. Mr. Taylor asks if it would come down in the area where the pump was coming out. Mr. Nick says his plan was to bring it down in the same area as the sump pump outlet and then do additional drainage towards the culvert.

Mr. Taylor notes it would be helpful to have a sketch. Mr. Clark says he was quoted fifteen hundred dollars for a drawing, so he did not get a drawing it is a simple eight foot by thirty-eight-foot deck with five posts sitting on five concrete peers. Six by sixes with nine-foot spins, and two by six joist, composite decking. He has also found a cheap cable system and will also convert a window to a door.

Mr. Taylor asks about the neighbor and if Mr. Clark has a letter stating they were given notice or permission. Mr. Clark states he has had stumps ground on their property due to the stumps creating a berm that was channeling water towards the foundation. The neighbors didn’t have a problem. They are here two to four weeks a year and predominantly live in California. He does not have contact with them.

Mr. Clark continues by stating the hay field adjacent to him would remain unchanged. He understands the owners have no intention of developing. Mr. Taylor asks if Mr. Clark would be encroaching more on their property and increasing the nonconformity of the setback and states in this situation, in the past they have always received a letter from the neighbors. If granted tonight and the neighbors are upset, then the next step for the neighbors would be an appeal to the environmental court. Mr. Clark said he did not approach them because he has approached them in the past about water management and they were instantly supportive and there have never been any issues. In Mr. Clarks mind they will continue to be supportive.

Ms. Gardner (ZA) says she has sent out the certified letter to the address that we have on the town file but have not yet received the notification of delivery. Mr. Clark asks was it sent to their California address and Ms. Gardner says it was. Mr. Clark notes that they may have four houses. The children go to school in California.

Mr. Pacht states grinding stumps is different than a permanent structure.

Mr. Taylor continues the description that the home is ten feet from the property line so at eight feet in the corner, now you are two feet by the time the gutter is in and should be acknowledged by the neighbors. He also notes that it is clear the neighbors don't mind the water going on to the property. The other issue that he has we are relying on Mr. Clark's engineering and Mr. Taylor would like it backed up from a letter from an engineer stating this is a viable solution to the problem.

Mr. Taylor asks Ms. Betts if she has any input. Ms. Betts states she is on the other side of the house and the structure doesn't impact her. She would like to state that she has watched the house sit idle for several years deteriorating and then Mr. Clark moved in. She would like to voice that they have done nothing but wonderful things to the house, bringing improvement and have enhanced it. He honors the history of the house and the look of the village and is innovative with the housing shortage. Ms. Betts is showing support for Mr. Clark and states whatever he chooses to do will be done with the utmost care and in the way it should be done.

Mr. Taylor states after seeing the situation it seems reasonable what Mr. Clark would like to do. Mr. Taylor continues to note he questions whether excavation is an option and the use of a drain. Mr. Clark says there is also water from the roof that creates the problem. The water table generally is high.

Mr. Taylor states the fine line is even if this was approved today the neighbors will receive the letter in writing and they have 30 days to appeal the decision to the environmental court and Mr. Taylor knows Mr. Clark would rather not involve himself in this. Mr. Taylor says by getting the letter Mr. Clark is assured there will be no appeal. Mr. Taylor has stated that they would not go with the variance but rather with the setbacks of existing structures as noted in the bylaws and Mr. Taylor would feel stronger if he had an engineer with a letter supporting the structure.

Mr. Clark asks to add a few points and went on to state that first he has a lot of confidence in both his neighbors. The Perrells' have always been kind and courteous with a favorable relationship. His second point is he only cares about saving a historic building that is about two hundred years old. He has spent eighteen thousand dollars on the concrete including paying an engineer. The materials for the deck alone are six thousand dollars and the estimate for a drawing is fifteen hundred dollars. Engineers state that water is the killer of structures and correcting is complicated. To get an engineer to come in to give an opinion at a reasonable cost is not going to happen. The deck is going to reduce the amount of water and allow for a long-time solution. He can pay an engineer thousands of dollars and get a list of solutions. All he is trying to do is save the building at a reasonable cost. He was told to file a variance and that is what he did.

Mr. Pacht asked if a deck was in the list of the solutions when the engineers did come and that would be good to see. Mr. Clark stated this was a verbal consultation. Mr. Clark goes on to note that when he bought the house and Brett Mellon did an energy inspection on it the basement was at eighty-six humidity and so he also created a vapor barrier and spray foam, and the humidity went down to forty-six percent. He has been reducing humidity to save the house.

Mr. Bridges says he cannot approve this without hearing from the neighboring property owners. Mr. Clark states they are hard to reach. Mr. Taylor asks the board if Mr. Clark is willing to gamble that the neighbors will be happy then why not approve the application. Mr. Pacht agrees with this.

Mr. Taylors states after what was viewed, he can't imagine the neighbors caring at all about the structure. Mr. Bridges says they should be able to put this on paper. Mr. Taylor states it's a possibility that they haven't received notice due to not signing the certified notification of receipt.

Mr. Clark states he is holding off the installation of the mini splits until he knows how they are going to be protected and it's preventing him from finishing a renovation on his house. Mr. Taylor agrees that the water tables are high. Mr. Clark states the home continues to sink.

Ms. McCanna states that she is more comfortable knowing that the neighbors are aware. Mr. Bridges says it's a perfectly reasonable request, but the neighbors should be informed if possible. Mr. Pacht states that the neighbors being supportive in the past makes him more comfortable. Discussion of the historic structure and the improvement is further discussed and the visual would be an improvement. Mr. Clark states he would paint the deck with a color most pleasurable to the eye.

Mr. Taylor says he would want to place one condition in the decision and that is the choices of paint would be compatible with the home and no bright paint. Ms. McKenna asks if we could be guaranteed the neighbors would receive the decision. Ms. Gardner states she can send the decision certified but cannot guarantee that they will sign it. Mr. Clark says he has an email for them but they often don't often answer.

Mr. Taylor reiterates the waiver does not apply for non-conforming buildings and then you go into the variance and this is specific to nonconforming structures. Ms. McCanna states she would like to see a letter from the neighbor. Ms. McCanna asked if they were the only neighbor that didn't respond. Ms. Gardner says yes, they are the only neighbor who didn't respond. The letters were mailed on March 21st. Ms. McCanna said in the past we have always had the neighbor's opinion. Mr. Clark says if he could contact them, he would, Ms. McCanna states that Mr. Clark has not reached out and she would like to see an attempt. Mr. Clark stated he understood they would be notified through certified mail and thought that would be enough.

Mr. Taylor goes onto note that it needs to be a majority vote. Mr. Pacht with draw the motion and a recess will be made. Ms. McCanna would like Mr. Clark to further try to contact the neighbors. Mr. Clark states this makes him wait another month.

Ms. Betts states there is every chance that the neighbors received the notice of the hearing and they just do not care. She also believes there is activity on the neighbor's property that has not been properly permitted so she is not sure how involved they are with the town or the bylaws and is curious if this can move forward with an exception that if they come forward. She cannot possibly understand how they would have an objection. Mr. Taylor states they would have had to sign the letter. Ms. Betts states that she is not a firm believer in how the postal system works in this situation.

Mr. Taylor says two members on the board are not in favor so he would like to see a recess until the March 23rd. Discussion of how to further attempt to reach them is made. The board confirms they are in favor of the structure, but it is encroaching on the neighbor's property.

The motion is to continue the hearing until April 23rd. All in favor 4/0

Administrative

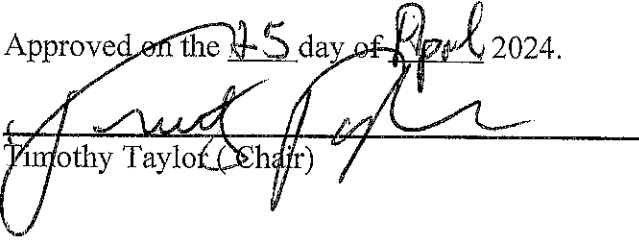
Minutes from prior hearing are reviewed and prior decisions were assigned.

Adjourn- 8:30pm

Please note: Hearings will be called in the order they appear above. If more than one hearing is scheduled and the applicant does not appear, the next applicant should be prepared to begin their hearing.

Respectfully submitted,
Kelly Gardner, Zoning Administrator

Approved on the 15 day of April 2024.



Timothy Taylor (Chair)