

NORWICH DEVELOPMENT REVIEW BOARD
HEARING MINUTES
April 3, 2014
Tracy Hall Meeting Room

Public Hearing:

#5APP14 – An appeal by Ann and Dean Seibert, et al, of the decision of the Norwich Zoning Administrator to issue Zoning Permit #4BAD14 to Norah Geraghty, Landowner, for an addition on Lot 20-132.000, at 383 Main Street and a Response Memorandum of Zoning Administrator.

Members Participating: John Lawe (chair), Nancy Dean, Stanley Teeter, Ernie Ciccotelli, Folger Tuggle, Arline Rotman, John Carroll

Alternates: Don McCabe

Substitute Clerk: Preston Bristow, Zoning Administrator for Barnard, Braintree, Chelsea and Pomfret, Vermont (substituting for Phil Dechert)

Appellants: Dean Seibert (spokesperson), Ann Seibert, Colleen Barr, Paul Bozuwa, Terry Appleby, Mary Ryan, Christopher Weinmann, Jennifer Roby, and Gwendolyn Thompson

Landowners: Norah Geraghty, Ciaran Geraghty, Nathan Stearns of Hershenson, Carter, Scott and McGee, P.C., and Andrew Garthwaite of Haynes & Garthwaite Architects

Appellee: Town of Norwich represented by Zoning Administrator Phil Dechert

Others: Tom Porter, Nancy Hoggson, Peter Brink, Rachael Nagel, Nancy Osgood, Susan Brink, Cheryl Herrmann, Deborah Williams, Andy Williams, Jack Candon, Todd Thompson, Fran Niles, Glennis Gold, Barbara Roby, David Roby, Alison May, Brooks Macmillen, Carolyn Nolan, Stuart Richards, Lizann Peyton, Neil Fulton

Chair John Lawe opened the hearing at 7:30 PM. No members of the DRB disclosed a conflict of interest. John Lawe disclosed a brief and non-substantive ex parte conversation with Dean Seibert prior to the filing of the appeal. All persons intending to offer testimony were sworn in. The DRB did not recognize any interested persons in addition to the Appellants, the Landowners, and the Appellee.

The following documents were provided at the outset of the hearing:

Submitted by Zoning Administrator (Appellee)

- ZA-1 Wastewater Disposal System Design Plan for Norah Geraghty prepared by Pathways Consulting, LLC dated 9/12.
- ZA-2 Permit #5ACC12, Driveway Access Permit application, 9/26/12.
- ZA-3 Permit #60BHOC12, Zoning Permit for 3-bedroom Bed & Breakfast and Catering, 10/31/12.
- ZA-4 Permit #61BAP12, Zoning Permit for additional dwelling unit, 10/31/12.
- ZA-5 Permit #5ACC12, Driveway Access Permit with conditions, 11/7/12.
- ZA-6 Permit #4BAD14, Zoning Permit to replace porch with new sunroom and second floor addition with plan entitled “The Partridge House Renovations and Additions” by Haynes and Garthwaite Architects, 1/29/14.
- ZA-7 Memo from Partridge House abutters requesting information from zoning administrator, 2/3/14.

- ZA-8 Parking Plan, sheet DD-1, by Haynes and Garthwaite Architects, 2/5/14.
- ZA-9 Email to zoning administrator from Gwendolyn Thompson entitled "parking," 2/6/14.
- ZA-10 Letter to zoning administrator from Jennifer Roby regarding curb cut, driveway and parking, 2/7/14.
- ZA-11 Email from zoning administrator to abutters with copies of all permits and plans provided in a Dropbox folder, 2/7/14.
- ZA-12 Response by zoning administrator to 2/3/14 memo from abutters requesting information (exhibit ZA-6), 2/7/14.
- ZA-13 Email from zoning administrator to Dean Seibert, 2/12/14, and memo from zoning administrator to abutters, 2/14/14, regarding late fee payment for appeal.
- ZA-14 Documentation of abutter payment of appeal fee, 2/26/14.
- ZA-15 Zoning Administrator's Chronological History, dated 4/1/14.

Submitted by Appealing Abutters (Appellants)

- APL-1 a & b Appeal of Permit #4BAD14 by abutters in two letters, APL-1a and APL-1b, 2/12/14.
- APL-2 Appeal of zoning administrator's opinion of 2/7/14 (exhibit ZA-12) that a second driveway and associated parking spaces does not require a permit, 2/12/14.
- APL-3 Response by Dean Seibert to zoning administrator memo of 2/14/14 regarding late fee payment for appeal (exhibit ZA-14), 2/17/14.
- APL-4 Reply Letter to Applicant/Landowner's Motion to Dismiss Appeals, 3/28/14.

Submitted by Applicants Ciaran Geraghty and Norah Geraghty (Landowner)

- APP-1 a & b Cover letter (APP-1a) and Motion to Dismiss Appeal (APP-1b) by Norah Geraghty through her attorney Nathan Stearns of Hershenson, Carter Scott and McGee, 3/12/14.

Attorney Nathan Stearns was asked to present Landowner Norah Geraghty's Motion to Dismiss Appeal (exhibit APP-1b). With regard to Zoning Permit 4BAD14, Attorney Stearns stated that the permit was issued on January 29, 2014 and that an appeal must be filed within 15 days, that is, by February 13, 2014. Appellants filed an appeal on February 12, 2014 but did not submit the required filing fee until February 17, 2014. Under 24 V.S.A. §4440(c), the payment of a filing fee shall be a condition to the validity of the filing. Therefore, the Appellants' appeal was not validly filed before the statutory 15 day deadline and the DRB should dismiss the appeal. With regard to the Appellants' appeal of the zoning administrator's February 7, 2014 letter (exhibit ZA-12), Attorney Stearns stated that although 24 V.S.A. §4465(a) provides that an interested person may appeal any decision or act taken by the zoning administrator, the zoning administrator's letter of February 7, 2014 was a response to a request for information and does not constitute an appealable "decision or act" under the statute. As this appeal is of an access driveway permit, Attorney Stearns further noted that 19 V.S.A. §1111 delegates authority for access permits to the Selectboard, that access permits are not in the purview of the zoning administrator or DRB, and therefore an access driveway permit is not appealable in this forum.

Dean Seibert for the Appellants was given an opportunity to respond. Mr. Seibert responded that when it was identified that the Landowners were exceeding their 2012 permit, Zoning Permit

4BAD14 was issued but the double fee for development commenced before a zoning permit had been approved was not paid. How was that different than their late payment of an appeal fee? Mr. Seibert stated that the appeal was hand-delivered to the town clerk and that there was no mention of a filing fee in the zoning regulations or by the town clerk. Furthermore, in the zoning administrator's email to him of February 12, 2014 (exhibit ZA-13) and his follow-up call to the zoning administrator, Mr. Seibert stated there was no mention of a deadline for receiving an appeal fee. Mr. Seibert stated that he and his wife went to Maine, were informed in a phone call from a neighbor that the appeal may be in jeopardy, and returned a day early to submit the \$260 appeal fee on February 17, 2104.

A question from the DRB asked if the check was accepted and deposited by the town. Mr. Seibert responded that the check was not returned and that it had been deposited.

Attorney Jack Candon was recognized, and he stated that he has talked with some of the Appellants and wished to suggest a two-part response to the Landowners' Motion. First, 24 V.S.A. §4440(c) states that a town "may" set fees, and Norwich has adopted fees, but in no place does Norwich require a concurrent payment of that fee, and there is therefore a legal basis to suggest the filing was timely. Second, Title 19 of Vermont Statutes with regard to Highways is not applicable to this instance, and the inaction of a zoning administrator, by determining that no permit is necessary, should itself be subject to appeal, and the zoning administrator's letter of February 7, 2014 (exhibit ZA-12) provides the opportunity for that appeal.

Attorney Stearns for the Landowner was given an opportunity to respond. Attorney Stearns answered Attorney Candon's point that while 24 V.S.A. §4440(c) uses "may" as an invitation to towns to adopt fees, once towns do adopt fees, the requirement that payment of those fees "shall" be a condition of the validity of the filing comes into effect. Attorney Stearns went on to state that the permits for the curb cut, the residential addition, and the change of use were issued a year and a half ago, and the Appellants are seeking an end-run to force site plan review for these activities which are permitted uses and do not require site plan review.

In response to a question from the DRB, Attorney Candon stated that approval of the curb cut was not a part of Appellants' appeal of Permit #4BAD14. Attorney Candon went on to say that Appellants' contention in their second appeal is that the second access is more than a curb cut and is in fact a new access to two or more units that requires site plan review.

The motion was made, seconded and unanimously adopted to suspend the hearing while the DRB deliberated on the issues raised. The DRB will return with further direction before 9:30 PM. The hearing was suspended at 8:10 PM and DRB members accompanied by Preston Bristow left to deliberate in a private room.

The DRB returned from deliberation at 9:25 PM. Chair John Lawe stated that it was the consensus of the DRB to take no action on the Motion to Dismiss Appeal at this time. The DRB requests that the Appellants and Landowners each:

1. Provide a memorandum clarifying the relationship of the Vermont Statutes relative to the Norwich Zoning Ordinance with regard to the validity of the appeal process and payment of the filing fee.
2. Provide a memorandum on the effect of non-payment of the “twice regular fee” for “permits for development commenced before application submitted and approved” on the status of that permit.

The Appellants and Landowners are asked to include any references to V.S.A. or case law that they believe is relevant, and to deliver their responses to the DRB c/o Norwich Planning Office by 4:30 PM on Tuesday, April 8, 2014.

The DRB announced that this hearing will be recessed to a site visit on Thursday, April 10, 2014 at 4:00 PM to be followed by a reconvened hearing on Thursday, April 10, 2014 at 7:30 PM at Tracy Hall. The purpose of the site visit will be to view the property and no testimony will be taken during the site visit.

The DRB also stated that while this matter is under appeal the Landowners proceed with any construction at their own risk.

Mr. Seibert stated that he will be out of the country on April 10, 2014 and asked if the DRB would consider another date to reconvene the hearing. The DRB responded that they wished to move this matter along expeditiously and suggested that another spokesperson be found to represent the Appellants.

Mr. Seibert asked about the Appellants’ appeal of the zoning administrator’s opinion that a second driveway and associated parking spaces does not require a permit. The DRB responded that that appeal will be addressed in more detail as the hearing progresses.

The hearing was recessed at 9:35 PM to a site visit on Thursday, April 10, 2014 at 4:00 PM at the Partridge House at 383 Main Street, Norwich, Vermont to be followed by a reconvened hearing on Thursday, April 10, 2014 at 7:30 PM at Tracy Hall at 300 Main Street, Norwich, Vermont.

Preston Bristow, Substitute Clerk

APPROVED 5/15/14