

A VIDEO RECORDING OF THE MEETING IN ITS ENTIRETY IS AVAILABLE THROUGH VERMONTCAM.ORG. THE WRITTEN MINUTES ARE A SYNOPSIS OF DISCUSSION AT THE MEETING. MOTIONS ARE AS STATED BY THE MOTION MAKER. MINUTES SUBJECT TO CORRECTION BY THE SHELBURNE DEVELOPMENT REVIEW BOARD. CHANGES, IF ANY, WILL BE RECORDED IN THE MINUTES OF THE NEXT MEETING OF THE BOARD.

**TOWN OF SHELBURNE
DEVELOPMENT REVIEW BOARD
MINUTES OF MEETING
March 6, 2019**

MEMBERS PRESENT: Jeff Pauza (Chair); Mark Sammut, John Day, David Hillman, Lauren Giannullo, Norm Blais, Doug Griswold.
STAFF PRESENT: Ravi Venkataraman, DRB Administrator; Dean Pierce, P&Z Director; Ed Adrian, Town Attorney.
OTHERS PRESENT: Anne Powell, Rick Bryant, Addie Hall, Adam Poetz, Michael Tamlyn, Celeste Burris, Nate Burris, Peter Raymond, Numair Nasir, Nehal Nasir, Brandon Blee, Dave Marshall, Normand J. Stanislas, Mark Saunders.

AGENDA:

1. Call to Order and Announcements
2. Public Comment
3. Approval of Minutes (2/20/19)
4. Disclosures/Potential Conflicts of Interest
5. Applications
 - Appeal, Judgement Order, 499 Beaver Creek Road, Nate Burris (A17-12)
 - Conditional Use\Site Plan, Expand Nonconforming Structure, 2689 Shelburne Road, NIMRAH, LLC (CU19-03\SP19-01)
 - Conditional Use\Site Plan, Parking and Circulation Changes, 359 Turtle Lane, Lake Champlain Waldorf School, Inc. (CU14-01R1\SP14-01R1)
 - Conditional Use\Site Plan, Expand Use, 3053 Shelburne Road, Novembris Properties, LLC (CU19-03\SP19-03)
 - Final Plan, Residential PUD, Five Lots, 300 Cheesefactory Lane, Peter Ewing (SUB18-01)
 - Preliminary Plan\Site Plan, Modify Conditions of Approval, 120 Graham Way (formally 6221 Shelburne Road), Shelburne Green, LLC (SUB13-02R3)
6. Other Business
7. Adjournment

1. CALL TO ORDER and ANNOUNCEMENTS

Chair Jeff Pauza called the meeting to order at 7 PM. There were no announcements.

2. PUBLIC COMMENTS

There were no comments from the public at this time.

3. MINUTES

February 20, 2019

Not yet available.

4. DISCLOSURES/POTENTIAL CONFLICTS OF INTEREST

- John Day and Jeff Pauza announced they will recuse themselves for the Shelburne Green application.

5. APPLICATIONS

The function of the Development Review Board as a quasi-judicial board and the hearing procedure were explained. Individuals to give testimony before the DRB were sworn in.

A17-12: Hearing on remand per Judgement Order issued by Superior Court Environmental Division addressing appeal of Assistant Zoning Enforcement Officer's denial of zoning permit for 499 Beaver Creek Road in the Residential District and Stormwater Overlay District by Nathanael Burris

Nate and Celeste Burris, appellant, and Ed Adrian, Town Attorney, appeared on behalf of the appeal.

Submittals:

- Memo from Dean Pierce to Nate Burris, dated 1/31/19, regarding copy of application and permit responding to DRB decision on motion to compel
- DRB decision on motion to compel by appellant

STAFF REPORT

Ravi Venkataraman noted the appeal was on the 12/19/18 DRB meeting agenda.

TESTIMONY

Nate Burris stated he grew up in Shelburne then moved to Boston and has returned and purchased a house with his wife in the Beaver Creek development.

Jeff Pauza asked if the town provided the records that were requested.

Nate Burris said the town provided a record and requested the following be admitted:

- Copies of permits related to structures in PUD periphery buffers in Shelburne
- Structures in the periphery buffer that do not have a permit.

Nate Burris read the list of properties with permitted structures in the buffer, 1998-2007. Ed Adrian objected to the testimony from Mr. Burris and referred the DRB to the Order and decision in January. The Order was regarding discovery. The town produced the records from March 17, 2009 in Beaver Creek. The DRB concluded that its interpretation of the court decision is the relevant records are after 3/17/09 in the Beaver Creek PUD and that is what the DRB should consider.

John Day said he read the DRB determination to use the Beaver Creek PUD record from 3/17/09 for permitted fences in the periphery buffer and not all PUDs in town. Celeste Burris said per the court opinion it was not specific to Beaver Creek, but that the bylaw applies to all PUDs in town. Nate Burris added in the DRB decision the town quotes a Reconsideration Order that clarifies reference to the bylaws, not Beaver Creek. The records submitted to the DRB are to meet the court requirement of a sufficient record showing that the town understood the bylaws.

Norm Blais asked if it is a widespread practice to ignore setbacks for fences in town. Nate Burris said that is what the records show. Norm Blais asked since 2007 how many times permitted fences have been built in the buffer. Nate Burris said the list citing 10 incidences was submitted to the DRB and the list is not exhaustive.

Ed Adrian objected to the evidence if an exhaustive search was not done. Exhibit A is an excerpt from the Nate Burris filing to the court. The appellant wanted to submit documents on fences in the periphery buffer and that was denied by the court. There are no documents being presented by the appellant that substantiate the appellant's position to the court.

Norm Blais asked the response to people in other PUDs being exempted from the setback requirement for fences. Ed Adrian said proof is needed that people are exempted. The town is relying on the DRB decision interpreting the court's decision. Nate Burris said in March 2009 a structure was in the buffer on Dorset Street and was noncompliant. The town decided as of 3/17/09 any structure within the PUD periphery buffer would be grandfathered. Celeste Burris said the town did not create a list of structures in buffers.

John Day asked if the town was trying to end the risk of exemptions prior to the 3/17/09 date to avoid an unenforceable bylaw. Dean Pierce said the intent of the change in the bylaws was an amendment intended to address structures in the buffer with or without permits. Nate Burris pointed out post-2009 (in 2011, 2012, 2014) there are still permits granted for structures in the buffer.

Jeff Pauza asked if there are any training programs for town administrators on what is or not allowed. Ed Adrian said there are no training programs. Some structures may have been in violation and are grandfathered. The issue is whether the DRB should consider these properties when it was decided they are irrelevant. The town's position is the properties are not relevant except the shed on the Burris property. Nate Burris said the zoning officer who denied their permit allowed another structure in the periphery buffer in 2018 at 125 Deer Run.

John Day summarized further discussion is needed on:

- The 2009 revision for structures
- Pertains to any structure or just fences
- Structures built pursuant to permits or by grandfathering or illegal construction

Doug Griswold asked about the enforcement and inspection process by the town. Nate Burris said the town responded to the Public Records Request and in the past 20 years there have been no enforcements.

Mark Sammut asked the appellant how a structure without a permit was determined. Nate Burris said he used Google Earth software from the town.

John Day asked if there is evidence the town had knowledge of structures without permits for enforcement purposes. Nate Burris said he used the town's software showing

structures without permits and the Assessor's Office has photos. Also, a town employee goes by Maeck Farm every day and sees the fence.

Norm Blais asked about the impact on the next applicant if a permit is granted to the appellant. Nate Burris said the town's response is relevant to the town's interpretation of the bylaws. Section 1980.6 addresses fences being excluded from setback so the exemption can be applied. The bylaw could be changed to be clear that the exemption does not apply to the periphery buffer and state that Section 1980.6.C does not apply to Section 1930.

John Day asked if there is evidence in the record that the town tried to resolve the inconsistency of enforcement of the bylaw. Ed Adrian said there is no proof the town has not been enforcing anything except this one structure.

Mark Sammut asked how the 2009 revision was memorialized. Dean Pierce said the date is put into the regulations when an amendment takes place. Staff can provide the actual revision that was adopted. The Selectboard adopts the zoning regulations.

John Day clarified the DRB should make a decision based on the evidence submitted only. Ed Adrian stated per the Rules of Procedure, Section 7.C, any materials provided by the appellant must be submitted one week prior to the scheduled meeting date or else this could be cause for continuation. The materials were submitted by the appellant only hours before the meeting. The town has the right to review the materials. Even if the appellant overcomes the relevancy argument and the procedural hurdle, each exhibit should be fleshed out to understand its relevance, what applies, and the meaning.

Doug Griswold requested the town provide a list of the buildings within the buffer that were enforced. John Day suggested looking at the Beaver Creek PUD, all PUDs after the 2009 date, and all PUDs for all dates.

DELIBERATION/DECISION

Appeal, Permit Denial, 499 Beaver Creek, Burris (A17-12)

MOTION by Mark Sammut, SECOND by Lauren Giannullo, to continue the appeal hearing for 499 Beaver Creek by Nate Burris until April 3, 2019. VOTING: unanimous (7-0); motion carried.

CU19-03: Conditional Use\Site Plan to expand a pre-existing nonconforming structure at 2689 Shelburne Road in the Mixed Use District and Stormwater Overlay District by NIMRAH, LLC

Nehal Nasir appeared on behalf of the application.

Submittals:

- Conditional Use Application, received 1/8/19
- Aerial Image of Subject Property, received 1/8/19
- Site Plans, received 1/8/19
- Town of Shelburne Staff Report, dated 2/20/19

STAFF REPORT

The DRB previously received a written staff report on the application, dated 2/20/19. Ravi Venkataraman explained the proposal is an expansion of a pre-existing, nonconforming structure. The property is a condominium ownership. Staff has no concerns with the expansion.

APPLICANT COMMENTS

Nehal Nasir submitted a hand-drawn rendering of the building and explained the plan to square off the building.

PUBLIC COMMENT

None.

DELIBERATION/DECISION

Conditional Use\Site Plan, Expand Nonconforming Structure, 2689 Shelburne Road, NIMRAH, LLC (CU19-03\SP19-01)

MOTION by Jeff Pauza, SECOND by Doug Griswold, to finalize the record and close the hearing for CU19-03\SP19-01, Conditional Use and Site Plan applications to expand an existing, nonconforming structure at 2689 Shelburne Road by NIMRAH, LLC. VOTING: unanimous (6-0)[Mark Sammut not present for vote]; motion carried.

MOTION by Jeff Pauza, SECOND by Doug Griswold, to direct staff to prepare a decision to indicate approval of Conditional Use application, CU19-03, and Site Plan, SP19-01, prepared by NIMRAH, LLC with the following conditions:

- 1. That the language in the proposal is in compliance with the ownership and pending proper legal opinion from the Town Attorney.**
- 2. A zoning permit is required prior to any land development pursuant to Section 2010.1**

VOTING: unanimous (6-0)[Mark Sammut not present for vote]; motion carried.

CU14-01R1\SP14-01R1: Conditional Use\Site Plan to change the internal circulation, increase parking, and modify stormwater management facilities at 359 Turtle Lane in the Residential District by Lake Champlain Waldorf School, Inc.

Adam Poetz with SE Group, Rick Bryant with Stantec, and Addie Hall with Waldorf School appeared on behalf of the application.

Submittals:

- General Application Form, received 1/31/19
- Conditional Use Review application, received 1/31/19
- Site Plan Review Application, received 1/31/19
- Project Review Sheet, received 1/31/19
- Vermont Department of Environmental Conservation Authorization to Discharge Stormwater Runoff, received 1/31/19

- Correspondence between Richard S. Bryant of Stantec Consulting and SE Group regarding parking and traffic, dated 12/11/18 and received 1/31/19
- Site Plan prepared by SE Group received 1/31/19
- Town of Shelburne Staff Report, dated 3/6/19

STAFF REPORT

The DRB received a written staff report on the application, dated 3/6/19. Ravi Venkataraman said the proposal is to change the layout of parking, add seven parking spaces, improve pedestrian circulation, modify landscaping on the site, and add accessory structures for school use to accommodate increased student enrollment from 200 to 257 students. The property is 21.1 acres with an existing school use.

APPLICANT COMMENTS

Adam Poetz reviewed the illustrative site plan and proposed improvements to enhance the campus at Waldorf School and environmental improvements and water quality. Addie Hall added the school is very excited to do this kind of planning. Mr. Poetz said The Nature Conservancy wrote a letter of support for the proposal. The letter will be submitted to the town.

David Hillman commented on the addition of 57 students and 14 staff members, but only seven parking spaces. Also, traffic was observed for one day and VTrans data for the intersection was from 2012 compiled in June and July. Rick Bryant said Stantec has been back to the site for other reasons, but only counted cars for one day. The magnitude of the impact is fairly modest (less than 1% of what is there is being added). The school peak traffic is lower than what is happening at 5 PM.

PUBLIC COMMENT

None.

DELIBERATION/DECISION

Conditional Use\Site Plan, Parking and Circulation Changes, 359 Turtle Lane, Lake Champlain Waldorf School, Inc. (CU14-01R1\SP14-01R1)

MOTION by Jeff Pauza, SECOND by Doug Griswold, to finalize the record and close the hearing for CU14-01R1\SP14-01R1, Conditional Use and Site Plan applications for parking and circulation changes at 359 Turtle Lane by Lake Champlain Waldorf School. VOTING: unanimous (7-0); motion carried.

MOTION by Jeff Pauza, SECOND by John Day, to direct staff to prepare a decision indicating approval of CU14-01R1\SP14-01R1, Conditional Use and Site Plan applications for 359 Turtle Lane prepared by SE Group on behalf of Lake Champlain Waldorf School, Inc. with the following conditions:

1. A zoning permit is required prior to any land development pursuant to Section 2010.1.
2. The applicant must provide a two year performance bond or other form of security to ensure the landscaping is installed as proposed pursuant to the Shelburne Zoning Bylaws, Section 1900.5.

VOTING: unanimous (7-0); motion carried.

CU19-04\SP19-03: Conditional Use\Site Plan to expand an existing use at 3053 Shelburne Road in the Mixed Use District and Stormwater Overlay District by Novembris Properties, LLC (Shelburne Veterinary)

Liam Bisson appeared on behalf of the application.

Submittals:

- Conditional Use Review Application, received 2/8/19
- Site Plan Review Application, received 2/8/19
- Shelburne Veterinary Hospital Current and Proposed Plans, received 2/8/19
- Town of Shelburne Staff Report, dated 3/6/19

STAFF REPORT

The DRB received a written staff report on the application, dated 3/6/19. Ravi Venkataraman said the proposal is to add 750 s.f. to the building, repave the existing parking, and add two bike spaces. There are no issues with the addition. Landscaping must be done.

APPLICANT COMMENTS

Liam Bisson explained the proposal to add about 700 s.f. to the building within the existing footprint so the business can grow.

PUBLIC COMMENT

Michael Tamlyn, neighbor, asked to be notified if there are any plans to cut trees at the back of the property or decrease the thickness of the existing screening. Mr. Tamlyn asked if windows will be installed in the addition at the back of the building. Mr. Bisson said there are no plans to cut down any trees or install windows that would impact Mr. Tamlyn's property.

DELIBERATION/DECISION

Conditional Use\Site Plan, Expand Use, 3053 Shelburne Road, Novembris Properties, LLC (CU19-04\SP19-03)

MOTION by Mark Sammut, SECOND by John Day, to finalize the record and close the hearing for CU19-04 and SP19-03, applications to expand the previously approved conditional use and modify the site plan prepared by Novembris Properties, LLC for 3053 Shelburne Road, and direct staff to prepare a decision indicating approval with the condition a zoning permit is required prior to any land development pursuant to Section 2010.1. VOTING: unanimous (7-0); motion carried.

SUB18-01: Final Plan for a proposed five lot Residential Planned Unit Development (PUD) at 300 Cheesefactory Lane in the Rural District, Conservation District, Floodplain and Watercourse Overlay District by Peter Ewing

Peter Ewing appeared on behalf of the application.

Submittals:

- Sketch Plan Application, received 4/16/18
- Vermont Wetland General Permit, received 4/16/18
- Project Review Sheet, received 4/16/18
- Existing Conditions Site Plan (Sheet C1-03)
- Overall Wastewater Site Plan (Sheet C3-01)
- Staff Report prepared for the 5/2/18 DRB meeting
- Cover letter, received 8/24/18
- Site Plan Review Application, received 7/3/18
- Preliminary Plan Review Application, received 7/3/18
- Amendment to Purchase and Sale Agreement, dated 5/25/18 and received 7/13/18
- Wastewater System and Potable Water Supply Permit, received 7/5/18
- Department head comments as required by Shelburne Subdivision Regulations, Section 600(28)
- Site Plan (Sheet C2-01), received 7/13/18
- Staff report prepared for the 9/19/18 DRB meeting
- Cover letter, received 1/27/19
- Final Plan Application, received 2/4/19
- Grant of Development Rights, Conservation Restrictions, and Public Access Easements, received 1/22/19
- Bylaws of the Ewing Farm Homeowners Association, received 1/27/19
- Draft of Declaration of Covenants, Restrictions and Conditions Ewing Farm Subdivision, received 2/14/19
- Comments from City of South Burlington Assistant Stormwater Superintendent, David Wheeler, received 2/12/19
- Correspondence between staff and Joe Bartlett of Fitzgerald Environmental Associates, LLC, received 2/28/19
- Second Amendment to Purchase and Sale Agreement between the Ewing Farm Trust
- Site Plans
- Town of Shelburne Staff Report, dated 3/6/19

STAFF REPORT

The DRB received a written staff report on the application, dated 3/6/19. Ravi Venkataraman briefly reviewed the proposal for the 101.56 acre property with three sections: Section A will be the residential PUD with three lots, Section B will be 48.3 acres of open space held by The Nature Conservancy with 38.6 acres in Shelburne, and Section C will be 45 acres held by Vermont Land Trust. The access road to the three residential lots will be from South Burlington. The lots will have private water and sewer. The lot layout is clustered and consistent with Section 1930.3.C and the town's comprehensive plan. The Town Attorney must review all legal documents. The decision is effective when both final plats for the PUD are filed in South Burlington land records. A copy of the state storm water permit must be submitted as well as the homeowners association bylaws on maintenance of the storm water system for the PUD.

APPLICANT COMMENTS

Peter Ewing confirmed the plat for the Ewing Farm with the greenery and the final survey by Civil Engineering Associates have been received by the DRB. The history of the Ewing Farm and the relationship with The Nature Conservancy and Vermont Land Trust was reviewed. The farm is surrounded by conserved land. Fitzgerald Environmental Associates was hired to handle storm water. The road layout was changed slightly to better accommodate storm water management. DRB approval is needed in order to close on the property with The Nature Conservancy.

PUBLIC COMMENT

Mark Saunders, neighbor to the west of the property, asked about the hardwood trees to be planted along the access road. Peter Ewing said he worked with the USDA to create open land meadow bird habitat and did not want to plant the trees there. The town said trees need to be planted. Ravi Venkataraman explained per the subdivision regulations the developer must plant trees. The trees can be planted with the issuance of the last Certificate of Occupancy for the houses. Peter Ewing said there will be swales and retention basins for storm water that will take precedence. The lots will be owned by family members so the landscaping and storm water will be done right. Mark Sammut mentioned having a two year landscaping bond pursuant to Section 1900.5 to ensure trees are replanted as necessary.

Mark Saunders asked if the houses need a sprinkler system with the fire pond for fire and storm water. Mark Sammut said Shelburne does not require single family houses to have sprinkler systems. Peter Ewing said according to the Deputy Fire Chief, John Goodrich, there needs to be a fire pond. South Burlington requires a sprinkler system in the houses, but not a fire pond.

Mark Saunders asked if the site plan can expire or must be completed within five years. Ravi Venkataraman said as long as the conditions of approval and the site plan are followed there is no problem. Once the first zoning permit is issued the plan is set.

DELIBERATION/DECISION

Final Plan, Residential PUD, Five Lots, 300 Cheesefactory Lane, Ewing (SUB18-01)

MOTION by John Day, SECOND by Mark Sammut, to finalize the record and close the hearing for SUB18-01 for a Residential PUD with five lots at 300 Cheesefactory Lane by Peter Ewing, and to direct staff to prepare a decision to indicate approval of the Final Plan with the following conditions:

- 1. Mylars of Drawing Number P1 (“Partitioning of Ewing Family Trust”) prepared by Civil Engineering Associates, Inc. and Sheet 2 (“Subdivision Plat of a portion of lands owned by the Ewing Family Farm Trust”) prepared by Kitteridge Land Surveying, PLLC must be recorded simultaneously within 180 days of the signed approval of the decision pursuant to Shelburne Subdivision Regulations, Section 1050.**
- 2. The Findings of Fact and Notice of Decision for Final Plan SUB18-01 must be recorded within 180 days of the signed approval of the decision pursuant to Shelburne Subdivision Regulations, Section 1050.**

3. A zoning permit is required prior to any land development pursuant to Shelburne Zoning Bylaws, Section 2010.1 and Shelburne Subdivision Regulations, Section 1120.
 4. Prior to the issuance of any zoning permit the developer, their engineer, their contractor, Shelburne Water Quality Superintendent and/or designee, and Shelburne Planning and Zoning staff shall conduct a pre-construction meeting that would also inform the developer and parties associated with the developer the rules and notifications concerning inspections in all phases of construction pursuant to Shelburne Subdivision Regulations, Section 740.
 5. Pursuant to Section 730 the applicant is required to notify the Town Manager when the construction of the required improvements shall begin so the town can inspect during the construction process in order to assure satisfactory completion of improvements or stipulations required by the Development Review Board.
 6. Upon completion of the required work the engineer providing construction observations and inspections for the work shall certify to the town in writing that the work was completed in accordance with the approved plans pursuant to Shelburne Subdivision Regulations, Section 1140.
 7. Prior to commencing development the developer is responsible for informing the Town Manger's Office of the name of the contractor who will be responsible for onsite installation, observations, and inspections for the erosion prevention and sediment control work as specified in Section 1145 of the Shelburne Subdivision Regulations.
 8. All legal documents including homeowner association bylaws, covenants, and restrictions as well as legal mechanisms that would dedicate land as open space must be reviewed by the Town Attorney prior to the issuance of a zoning permit pursuant to the Shelburne Zoning Bylaws, Section 1930.3.C and the Shelburne Subdivision Regulations, Section 610(11).
 9. The applicant must provide a copy of the State Stormwater Permit for the project prior to the issuance of a zoning permit pursuant to the Shelburne Subdivision Regulations, Section 970.
 10. The approval decision is contingent upon Final Plan approval of #SD-18-17 by the City of South Burlington Development Review Board and will only take effect if and when the Mylar is recorded in the City of South Burlington for the aforementioned Final Plan application pursuant to Shelburne Subdivision Regulations, Section 920.
 11. A two year landscaping bond shall be required pursuant to Section 1900.5.
- VOTING: unanimous (7-0); motion carried.**

SUB13-02R3: Preliminary Plan\Site Plan Review to substantially modify previous conditions of approval at 120 Graham Way in the Commerce and Industry South District and Stormwater Overlay District by Shelburne Green, LLC

Dave Marshall with CEA, Peter Raymond, legal counsel, and Norm Stanislas appeared on behalf of the application. Jeff Pauza and John Day recused themselves. Mark Sammut facilitated the meeting.

Submittals:

- Staff Memo on the application , dated 2/28/19

STAFF REPORT

The DRB received a staff memo on the application, dated 2/28/19. Ravi Venkataraman noted the following:

- Comments from the Fire Chief and Rescue Chief were received 2/28/19.
- Clark Hinsdale submitted a letter regarding his attendance at the previous meeting and correction to an item from the previous meeting.
- Laval Thibodeau and Lynn McDonald, 134 Covington Lane, submitted a letter received 2/4/19 regarding the Shelburne Green expansion plan.
- Ian and Margery Rutherford, 132 Covington Lane, submitted a letter received 2/4/19 regarding the Shelburne Green expansion plan.
- A letter from Shelburne Green to Anne Powell, dated 2/6/19, was submitted regarding the agreement with The Gables Area Association.
- The change to the outdoor lighting plan for wall lighting complies with the zoning regulations, Section 1975.
- The DRB can revisit the role of the town comprehensive plan in the DRB decision.

Doug Griswold asked why the café is allowed in the zone. Ravi Venkataraman explained the café is in the original decision. A restaurant is a conditional use within 200' of the Shelburne Road right-of-way and food service is an accessory use to the PUD. Doug Griswold asked if the public will be allowed in the café space. Ravi Venkataraman said the applicant indicated this will be so. The staff reports on the application over the past six months explain accessory and subsidiary uses.

APPLICANT COMMENTS

Dave Marshall reviewed the traffic circulation pattern in Shelburne Green South, noting the applicant accepts all the recommendations from the Fire Chief and Rescue Chief. There is 30' of pavement width for turning movements. Regarding the café, the DRB has spent much time on what is accessory versus a full-fledged restaurant, and what is proposed is not a restaurant, but an accessory use in support of the PUD.

Mark Sammut asked about lighting. Dave Marshall said the applicant is not proposing security lighting, but will have motion detection lighting at levels that make the most sense in a reflective sense.

Norm Blais asked if the hours of operation are expanding or the size of the operation is changing. Dave Marshall said there is no change in the size of the proposal. The 12 hour band of hours of operation are being changed to 10 AM to 10 PM with food service ceasing at 9 PM.

Doug Griswold asked if the existing operation on Shelburne Road will be relocated to the new building. Dave Marshall said he is not sure of the plan.

David Hillman recalled the Hinsdale testimony showed a restaurant can be located within 200' of Route 7 and asked if the café could be located within the 200'. Ravi Venkataraman said the PUD buffer on the periphery does not allow structures. According to the map provided by Mr. Hinsdale there is space for a restaurant. Norm Blais noted the applicant's position is the café is not a restaurant. David Hillman mentioned compliance with Section 1210.12. Ravi Venkataraman explained an accessory use must be incidental and subordinate to the primary use on the property. The accessory use should not stand alone from the PUD. Norm Blais said this should have been taken into consideration by staff when the PUD application was submitted. David Hillman said the accessory use supports the growing business of Fiddlehead. If the brewery were not there it is likely there would not be a café so the use is accessory.

Norm Stanislas said an agreement has successfully been completed with The Gables Homeowners Association. A copy of the agreement was submitted into evidence. The agreement specifies the current plan for the project as of the date of the agreement and when submitted before the DRB. Norm Blais asked if interested parties other than The Gables Homeowner Association (i.e. individual residents) can appeal the decision with the agreement in effect. Mr. Stanislas said yes.

PUBLIC COMMENT

Anne Powell said The Gables Homeowners Association worked long and hard on the agreement with Shelburne Green. Per the agreement the plan before the DRB cannot be appealed by The Gables Homeowners Association, but changes or other plans can be appealed. Also, individual unit owners have the right to appeal on their own.

There was mention of concerts. Ravi Venkataraman pointed out concerts are not allowed in the PUD. Anne Powell said The Gables Homeowners Association is aware concerts are not in the purview of the DRB, but wanted this in the agreement for oversight. Dave Marshall said special events can be enabled by the Selectboard. Any such events would be special and limited in number, and may exceed the performance standards. Peter Raymond said their interpretation of the zoning regulations is approval is needed from the town for any special events, not for the use or structure. There may be up to four special events held by the applicant. Mark Sammut said legal counsel and the town can work out the matter.

Ian Rutherford, The Gables, said he would not have purchased his unit if he knew what was going on with Shelburne Green, and he is not happy with the agreement. The position of the restaurant does not abide with the town's rules. The restaurant is not a café or canteen for the employees. It is a restaurant. An industrial park is not a nice quiet, comfortable place for a restaurant. The town has rules in place, but basically is getting a beer hall for the brewery. Changing the rules for the convenience of the brewery is not right and is overstepping the rules.

DELIBERATION/DECISION

Preliminary Plan/Site Plan, Modify Conditions of Approval, 120 Graham Way, Shelburne Green, LLC (SUB13-02R3)

MOTION by Mark Sammut, SECOND by Norm Blais, to close the hearing on SUB13-02R3, application by Shelburne Green, LLC to modify conditions of approval for 120 Graham Way, and the DRB will deliberate the application. VOTING: unanimous (5-0); motion carried.

Jeff Pauza and John Day returned to the DRB. Jeff Pauza resumed facilitation of the meeting.

6. OTHER BUSINESS/CORRESPONDENCE

None.

7. ADJOURNMENT and/or DELIBERATIVE SESSION

MOTION by Mark Sammut, SECOND by John Day, to adjourn the meeting. VOTING: unanimous (7-0); motion carried.

The meeting was adjourned at 9:32 PM.

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