

TOWN OF HIGHGATE

Development Review Board

July 16, 2015 @ 6pm

Approved Minutes

NOTE: All actions taken are unanimous unless otherwise stated.

I. CALL TO ORDER

The meeting was called to order by chairman, Rick Trombley at 6:00pm.

Present at this meeting:

- **DRB members:** Rick Trombley, Chairman; Woody Rouse; Tim Reynolds; Julie Rice; *absent* – Scott Martin
- **Staff:** Wendi Dusablon- Planning & Zoning Clerk; Heidi Britch-Valenta – Zoning Administrator
- **Public / Other:** Andy Leduc; Rick Leduc; Bev Danyow; Dave Danyow; Angel Gingras; Lisa Shelkrot – Langrock, Sperry & Wool LLP; Taylor O'Connell – Ruggiano Engineering; Luke Willey – Ruggiano Engineering

II. PUBLIC HEARINGS

- **Todd & Angel Gingras**

Boundary Line Adjustment @ 7405 VT Route 78
Predominantly in the Medium Density Residential District with a very small portion in the Protected District

Angel Gingras was present for this hearing. Rick Trombley asked if any member of the DRB had to recuse themselves – no – and then Rick swore Mrs. Gingras in. Everyone is familiar with the property and proposal, based on the information provided in their packets prior to this meeting. The BLA change will rectify the fact that the current property lines are actually not compatible with the location of the mobile home for setbacks. It will involve a right of way to their other property and change the sizes of the other two lots. One lot will go from 1 acre to 2 acres, the other lot will go from 4 acres down to 2 acres and the additional acre will go with their other property. Heidi asked about the easement and if it is used to access the back property. Angel said the easement was put there years ago for their kids to walk to the bus stop. It does not lead to anyone else's property. Heidi also had questions about the isolation areas and septic systems. There were no adjoining property owners present tonight, but one did stop in last week with questions, but no concerns. Woody asked about the existing garage and which property that would go with. There were no other questions from the board. Motion by Rick Trombley to close the hearing @ 6:08pm. Motion was seconded by Tim Reynolds – **APPROVED.** The board has 45 days to make a decision and Mr. & Mrs. Gingras will receive a letter in the mail. If they are not happy with the decision, Rick Trombley explained they have the right to appeal to environmental court.

- **Andy Leduc Construction**

Variance Application @ 835 VT Route 78
Regarding section #6.7(8) Excavation & Stockpiling Setback
Industrial / Commercial District

Rick Trombley swore everyone in that will be testifying. No members of the board needed to recuse themselves. Present were; Luke Willey (Ruggiano Eng.), Taylor O'Connell (Ruggiano Eng.), Lisa Shelkrot (Langrock, Sperry & Wool), Andy Leduc and Rick Leduc. Luke had an easel presentation, which went with the maps provided to the board in their packets. They are here tonight requesting a variance for a reduction in the setback for 835 VT

Route 78 from 150' down to 50'. The project has some history, which we are all aware of. They were here a year ago requesting a conditional use with a waiver of that setback. Tonight, they are back to request a variance for that. The parcel is approximately 5 acres, and the proposal that Andy has put together is for extraction in three phases. The phases will be done in one acre increments from east to west, reclaiming and refilling as he goes. Based on calculations, there would be 15 trucks per day for 180 days, which equates to about 2 years to extract the entire pit and reclaim it. Tim asked how many loads would be involved in all 3 phases – 2,700 trucks per year x 2 years = 5,400 loads in all. Once extraction is underway, the 15 trucks per day will end up being two-way traffic, reclaiming as they go, as a truck goes out, one comes back with fill to reclaim. The sand here is good mound sand which is in high demand and very difficult to get. This is a very valuable piece of land with valuable material. The plans provided details of each phase as they go. In terms of the variance itself, they will proactively address what was brought up a year ago regarding the variance and the appropriateness of it. The wording in our regulations state that a variance is for a building. However, there does seem to be some precedence for a variance being used at other pits in the area. Tim asked for clarification on this, and if it was in Highgate. Heidi asked for clarification on “pits” (plural) and who they were. There is evidence of a reduction in setback being given to other pits, and it is not clear as to whether those were grandfathered or when they were given. Luke used the Many / Ferland decision in 2008 as an example of a variance of setback that was granted. Luke provided the decision letter in the Highgate land records, Book 148 Page 933, recorded on February 20, 2008. Lisa Shelkrot added that while there is a question about whether the variance section applies here, it's a case of prior precedence, noting that in the past the variance has applied to setbacks, so it should apply here as well. They have addressed the 5 criteria for the variance in the application, which the board has seen. Tim asked for clarification on the boundary lines of the property and asked if any extraction had taken place on adjoining properties. Luke isn't sure. Rick and Andy Leduc said no, not while they have owned it, but Jedware could have. The Leduc's have owned this property since November 2011 and have never been outside of their boundaries. There is only one stake on the property up by the main road. Andy noted that some of the sand that was piled is over the boundary, but Andy was not aware of it until Sam Ruggiano told him. Andy further noted that it was the border patrol that put it there. Luke added that there may be some stockpiling over the line, but no extraction of material by the current owners. Mr. & Mrs. Danyow were present to listen and observe, but did not have any questions. Rick Trombley stated, for the record, the 5 criteria for a variance;

- A. Purpose.** *An applicant may apply for a variance from the provisions of these regulations from the DRB for any structure. Application will be made on a form provided by the Town of Highgate. Renewable energy structures are reviewed under separate criteria than general structures.*
- B. Applicability.** *The Zoning Administrator may not issue a permit requiring a variance from the requirements of these bylaws until the DRB has approved such application. Requests for Variances are subject to Section 9.3, Public Hearings.*
- C. Standards.** *In accordance with the Act [§4469], the DRB may grant a variance from the provisions of the Bylaws for a structure only if all five facts listed below are found, and the findings are specified in its written decision.*
 - 1. That there are unique physical circumstance or conditions, including irregularity, narrowness, or shallowness of lot size or shape, or exceptional topography or other physical conditions, peculiar to the property, and that unnecessary hardship is due to these conditions, and not the circumstances or conditions generally created by the provisions of the Bylaw in the neighborhood or district in which the property is located.*
 - 2. That because of such physical circumstance or conditions, there is no possibility that the property can be developed in strict conformity with the provisions of the Bylaw, and that the authorization for a variance is therefore necessary to enable the reasonable use of the property.*
 - 3. That unnecessary hardship has not been created by the appellant.*
 - 4. That the variance, if authorized, will not alter the essential character of the neighborhood or district in which the property is located, substantially or permanently impair the appropriate use or development of adjacent property, reduce access to renewable energy resources, or be detrimental to the public welfare.*
 - 5. That the variance, if authorized, will represent the minimum variance that will afford relief and will represent the least deviation possible from the Bylaw and from the Plan.*
- D. Flood Hazard Overlay.** *Variances for structures located in the Flood Hazard Overlay District shall only be granted as outlined in Article 8.*

E. Renewable Energy Structures. Where a variance is requested for a structure that is primarily a renewable energy resource structure, in accordance with the Act, the DRB may grant such variance only if all of the following facts are found in the affirmative and specified in its written decision:

1. That it is unusually difficult or unduly expensive for the appellant to build a suitable renewable energy resource structure in conformance with this Bylaw;
2. That the hardship was not created by the appellant;
3. That the variance, if authorized, will not alter the essential character of the neighborhood or district in which the property is located, substantially or permanently impair the appropriate use or development of adjacent property, reduce access to renewable energy resources, nor be detrimental to the public welfare; and
4. That the variance, if authorized, will represent the minimum variance that will afford relief and will represent the least deviation possible from the Bylaw and from the Municipal Plan.

In making a decision in favor of the applicant for a variance, the DRB may attach conditions that are necessary to implement the Act and/or the Municipal Plan. In no case shall the DRB grant a variance for a use that is not permitted or conditionally permitted within the zoning district.

Rick Trombley also read aloud for the record the responses provided in advance of this meeting, by the applicant;

Andy Leduc – Extraction Site
VT Route 78
Highgate, Vermont

Project 14077
June 2015

The Applicant, Andy Leduc of Andy Leduc Construction, is proposing a variance to Section 6.7(8) Excavation and Stockpiling Setback. The applicant proposes an excavation and stockpiling setback of 50' from any property line in place of the required 150' setback. The project includes sand extraction in three phases and is located on a +/- 5.01 acre lot, in the Industrial / Commercial district, at 835 VT Route 78 in Highgate, Vermont.

This project applies to the five criteria listed in Section 3.6 (c) Variance Review:

- 1) Unique physical circumstances peculiar to the property and resulting unnecessary hardship; The project site is approximately 225' wide. The excavation and stockpiling setback of 150' from the property lines would not allow for any excavation within the site. An unnecessary hardship exists due to the narrowness of the lot shape. This is not a general problem with the Bylaw, but rather a problem that is specified to this lot, because of its unusually narrow dimensions.
- 2)
- 3) The need for the variance in order to enable reasonable use of the property; The setbacks required by section 6.7(8) exceed the entire width of the property; As a result, there is no possibility that property can be developed in strict conformity with the bylaw. The proposed project would conform to a 50' setback, which represents a 100' adjustment to the existing rules of section 6.7(8). The authorization for a variance is therefore necessary to enable the proposed use of the property. The excavation and stockpiling use that is proposed here is by far the most appropriate of use of this lot at present, given its location and zoning. It is located in the Industrial / Commercial district, and its abutters are all commercial and industrial enterprises, with the exception of Kevin Fournier, who has written in support of the variance, and Kathleen Chevalier, who has taken no position on the matter.

Note that while Section 3.6 (c) regarding Variance Review speaks specifically to the placement of "structures," it is nevertheless an appropriate mechanism for consideration of reducing the setbacks for an excavation use. An excavation use, such as is proposed here, is less intrusive than a structure would be; it is both temporary by its terms, as opposed to a structure which is approved permanently, and it is time-limited in that the use only occurs during specified hours. The greater power to grant a variance of a setback for a structure necessarily includes the lesser power to grant a variance of a setback for a temporary use.

- 4) An unnecessary hardship has not been created by the applicant. The lot was purchased as is in November of 2011.
- 5) If a variance was authorized, the project would not alter the essential character of the neighborhood or district in which it is located. The site is located in the Industrial / Commercial district and the proposed use is permitted within this district. A majority of adjoining properties are commercial uses. The proposed use of this site will not affect the adjoining properties negatively. Please see the attached correspondence from Kevin Fournier, and adjoiner who resides next to the subject property. There is a proposed reclamation plan for the site which would restore the site for possible future use / development. The proposed variance would not reduce access to renewable energy resources or be detrimental to the public welfare.
- 6) The proposed variance represents the minimum relief to the project site for the proposed extraction and represents the least deviation possible from the bylaw. It still leaves 50 foot setbacks on each side, which leaves 125 feet for development in the center. Moreover, the excavation activity on the site will be temporary, and will be

Rick Trombley asked about the distance equipment can go to a property line, Heidi read aloud from the regulations; #6.7(9) *No power activated sorting machinery or equipment shall be located within three hundred feet of any street or other property line, and all such machinery shall be equipped with satisfactory dust control devices.* Lisa reads it as sorting machinery or sorting equipment. Heidi asked them to speak to condition #2, why the applicant can't develop this property in another use that is compliant. Lisa said they have tried to do that in their narrative. This is the most appropriate type of development given the nature of the area and other development in the area. Sand extraction is the highest and best use of the property. Luke said that in addition to that, keep in mind we are talking about a very temporary time frame of 2 years for this to occur and be completely reclaimed, which it would then be developed for any other use at that time. Tim asked, when they backfill, will that sand that goes back in make the land unstable? No, the Leduc's will be putting in fine sand and it will settle. Tim also asked how far down a house basement goes – 6', so if the Leduc's dig down 20' and in a couple of years houses go in there, would their foundations move? No, the Leduc's don't believe that would happen. Woody asked where they will stockpile the sand that is pulled out. On their lot on Route 207 and it will be mixed there also. There won't be any extra loads, what they pull out will be trucked in. The Leduc's agree to place money in escrow to guarantee it will be reclaimed. The Leduc's have tried to talk to the town before, but the Leduc's feel that the town was listening to Raymond (Many). Rick Trombley asked the Leduc's, if approved, when would they plan to start moving sand. Lisa noted this is still stuck in environmental court, if they are successful in court with the conditional use and they had the variance, they could start. Depending on the season, they may have to wait until spring. Lisa also clarified that if they are successful in court, the court will set the terms including hours and days of operation, because the court would be the one issuing the permit. If they demand mediation, the board could work with the applicant. Lisa added that there is nothing to stop the board from negotiating now, and if the board wanted to enter into a process through counsel (or not), they would be happy to do that. The choices are to wait for the court to issue a decision or to engage in a collaborative process. Rick Trombley would like more details, many of which were indicated on the plans C1 – C5. Hours of operation would be Monday through Friday 8am-4pm, closed on national holidays. Andy Leduc is also proposing Saturdays from 8am-noon because that is when their other pit in Highgate is open. Tim asked about blacktop, Rick Leduc said that the state is in charge of that. The road cut is done and the state determines how far needs to be paved and how wide. If the board wanted to impose further conditions to pave further in to control dust they are within their rights to do so. None of it is currently paved. Rick Trombley asked about trees going in, Rick Leduc said those would go in prior to them starting, Rick Trombley asked how big the trees would be. Sam Ruggiano proposed a size, but it is not indicated on the plans. Heidi asked when they received the curb cut. It was approved last year by the state prior to coming to the board for the conditional use. The driveway has been there and they applied for use. The use that was applied for was commercial use to extract sand, per Rick Leduc. Heidi asked Luke to go over the details more from exhibit C3. Once the material goes in, it will be seeded and mulched and will be grass covered as soon as it has been filled in and leveled off. Jute matting is a method of mulching using a straw matt which is rolled out over newly seeded ground to prevent the seed from washing away. Rick Trombley asked to clarify – there will be 4" of top soil, seed and then the matting rolled out – Rick Leduc said this was correct. Tim asked for clarification, when the project is complete, will the road be left there? No, only the entrance will be left and the remainder will be seeded. Andy noted they may also use hay on steep slopes. Rick Trombley recessed the hearing @ 7:03pm. Tim asked the Leduc's if the board decides a site visit is necessary, will that be a problem to schedule? The Leduc's said no problem at all, just schedule a time. Tim wanted to put that out there as an option.

III. APPROVAL OF MINUTES

Motion by Rick Trombley to approve the minutes from June 11, 2015 as written. Motion was seconded by Woody Rouse & Tim Reynolds – **APPROVED.**

IV. OTHER BUSINESS

- Decision letter for review – Mills
None of the board members saw any issues with the decision letter for William G. Mills & Susan L. Mills, file # DRB-003-15. Rick Trombley signed it and Wendi will get this in the mail to Mr. & Mrs. Mills tomorrow.
- There is an update on the septic system for Daniel Brosseau in the DRB packets, as an FYI.

V. UPCOMING EVENTS

July 21 6pm Planning Comm. Mtg. – VCDP planning grant public hearing
 July 23 7pm Selectboard Mtg. – 2nd Town Plan update hearing
 July 28 6pm VT Gas – public info session @ Highgate Elem.
 Aug 6 7pm Selectboard Mtg.

VI. DELIBERATIVE SESSION

Motion by Rick Trombley to enter into deliberative session @ 7:11pm. Motion was seconded by Tim Reynolds – **APPROVED.**
 Motion by Tim Reynolds to exit deliberative session @ 7:32pm. Motion was seconded by Woody Rouse – **APPROVED.**

VII. ADJOURNMENT

Motion by Rick Trombley to adjourn the meeting @ 7:34pm. Motion was seconded by Tim Reynolds – **APPROVED.**

Minutes respectfully submitted by:

_____, Planning & Zoning Clerk
 Wendi Dusablon _____ Date _____

Minutes approved by:

_____, DRB, Chair
 Richard Trombley _____ Date _____