

**Village of North Bennington
Development Review Board Meeting
Tuesday, September 19, 2023
North Bennington Train Station**

DRB Members Present:, Tara Lowary, (DRB Chair), Kim Hall, (DRB Vice-Chair), Hugh Crowl, James, Williams and Nick Disorda

Zoning Administrator Present: Chris Damon

Others Present: Andrew Rodrijuez (MSK Engineering, Abigail Chaloux, (MSK Engineering), Mark Boudreau, Albert J Kolar, (Property Owner), Alisa Del Tufo, (Abutter), Joe Chirchirillo, (Abutter), Michelle Samour, (Abutter), Michael Stratton, (Abutter), Roger Clark, (Abutter), Leon Johnson, (Abutter), Jamaica Kinkaid, (Abutter), Steve Lenox, (Abutter), Michael Fernandez (Bennington County Conservation District) and Mary Rogers (Village of North Bennington).

Recorder: Heather N. Bullock

*** Denotes out of order agenda items**

1) Call Meeting to Order.

Ms. Lowary called the meeting to order at 7:00PM

2) Query for public comment; revise agenda if needed.

Ms. Lowary asked if everyone in attendance were there in regards to one of the agenda items and if not, what was their purpose in attending. Everyone indicated that they were there in regards to specific agenda items.

3) Review and approve previous minutes from the August 15, 2023 meeting.

Ms. Lowary asked DRB board members if there were any comments or concerns regarding the submitted meeting minutes from the August 15, 2023 minutes and if not, could someone make a motion,

Mr. Williams made a motion to approve the DRB Meeting Minutes from August 15, 2023

(Williams/Hall, Abstention: Hugh Crawl, Unanimous. No further discussion).

4) Village of North Bennington seeks to eliminate grade change between two fields and a change of contours to Welling Field.

The standards for review are governed by Section 3.13 (Conditional Use Regulations), Section 3.14 (Site Development Plan Application), 4.2.1 Conditional Uses Permitted in VR Districts 1. Municipal facilities and 12.6 Grading and Change of Contours.

Ms. Lowary read the above agenda item. Mr. Rodriguez, MSK Engineering, introduced himself and stated that he was representing the Village regarding the changes proposed at Welling Field. He stated that currently the field consisted of two mixed use surfaces. One being a full sized soccer field and the second a smaller youth field as well as a large baseball field. He cited VR 20 zoning laws 3.13 and 3.14, 4.2.1 and 12.6 and stated that the proposed project met the definitions as outlined in the Village bylaws. He cited section 3.1 and added that the project does not change the location or the character of the area.

Mr. Rodriguez stated that the project would not adversely affect water, storm surge or runoff, etc.. He referred to section 3.4 and referred to the site development plan. He stated that the plan was in accordance with section 12.6 of the bylaws regarding grading and contour changes and that the project was essentially lowering the middle of the site and that all runoff from the site would remain the same. Ms. Lowary asked what the pitch would be and Mr. Rodriguez responded that it would be 2% across the field.

Mr. Hall asked if erosion control was considered to which Mr. Rodriguez responded that it was a low risk site.

Ms. Lowary asked if there were any more questions. Mr. Lenox asked when the project would take place. Mr. Boudreau stated that as soon as all of the information was received that the project would go out to bid. He stated that the project would hopefully

begin no later than late summer, 2024. Mr. Lenox asked if there would be any disruption to sport activities that take place there to which Mr. Boudreau stated that it would not impact sporting events as the project would take place late summer/early Autumn of 2024.

Mr. Johnson asked if they were adding more parking and if parking would be an issue. Mr. Rodriguez stated that baseball and soccer did not take place at the same time and Mr. Boudreau stated that parking would not be an issue. Ms. Rogers queried if two soccer games were ever played at the same time. Mr. Boudreau stated that the smaller youth field could play a game at the same time but that it probably would not be an issue.

Ms. Rogers asked if there were to be any parking changes and would any paving take place. Mr. Boudreau stated that there would be no parking changes but that the current parking areas would be “cleaned up” a bit.

Ms. Del Tufo asked if any lighting would be installed to which Mr. Rodriguez replied that there would not be any lighting installed. Mr. Lenox asked where the funding for this project would be coming from to which Ms. Rogers replied that most of the funds were ARPA funds as well as some funding from the village. Mr. Boudreau stated that should there be any shortcomings in regards to finances that they would turn to Shaftsbury and/or Bennington.

No further discussion regarding agenda item 4.

5) 401 Honeysuckle Lane-Applicant seeks approval of a new application referred to the DRB to construct a large accessory structure (barn) as outlined in two previous permits, both of which have expired. The property is Zoned Village Residential 40 (VR40).

This review is subject to those provisions in Sections 4.1.9 of the Village’s Zoning Bylaws.

Ms. Lowary stated that due to the number of people in attendance on this agenda item and given past history of meetings regarding this subject, she requested that comments be limited to 2 minutes and not be redundant.

Mr. Kolar explained that he is again attempting to try and build a barn on his property and that the two prior permits had expired. He stated that he has submitted the proper site plan to the zoning administrator.

Ms. Del Tufo stated that they do not have a problem with Mr. Kolar building a barn on his property but she feels there are specifics that need to be clarified before he is allowed to do so. She referenced a treeline on the proposal which she said is not there and never had been there. She also requested clarification on the “possible” gravel driveway and whether or not that would be put in. She also wanted to state that she feels that the size of the proposed barn is too big. She stated it was 100 x 70 which is the same size as the Village School. She continued that she feels there are flaws in the site plan and that the building is too large. Ms. Del Tufo also stated that the original permit stated that he has to utilize Honeysuckle Lane which she feels is appropriate.

Ms. Lowary asked Mr. Kolar about the trees referenced by Ms. Del Tufo on the site plan to which Mr. Kolar confirmed that they were not there. Ms. Lowary also queried about a corner shed listed on the site plan to which Mr. Kolar confirmed that the shed will be moved to that location. Ms. Del Tufo stated that they never received notice regarding the shed. Mr. Damon stated that notification regarding the shed is not required. He added that the maximum height allowed is 30 feet.

Mr. Johnson stated that they own the property at the north corner of Mr. Kolar’s property and has continued concerns regarding the runoff of water from Mr. Kolar’s property onto his. He stated that he is concerned that the construction of the barn will cause an additional rush of water onto his property.

Ms. Lowary asked Mr. Kolar to show on the site plan where the gutters would be directing water from the proposed structure to which Mr. Kolar pointed to answer her query. He added that there is 300 feet of grass and field before it would reach Mr. Johnson’s property. Mr. Crowl asked for clarification that the barn would be on the south west part of the property.

Mr. Fernandez stated that he works for the Bennington County Conservation District. He stated that he did notice a possible substantial shift in water flow from Mr. Kolar’s property. He noted that ACT 250 documents state that if the structure was not used for agriculture it could be in violation of ACT 250. He stated that there is no record of agriculture being conducted on the site on record and that he feels that there are some ACT 250 issues that could be revisited here.

Mr. Fernandez continued that his study suggested significant hydrology issues and possible tree mortality on Leon Johnson’s property. He stated that wetlands restoration would not be entirely correct since both of the properties were considered in tandem.

Ms. Lowary asked if the foundation was in place for the proposed barn to which Mr. Kolar advised that it was.

Mr. Chirchirillo stated that he has a concern regarding the size of the building. He also stated that we have to remember the “trucking” issue from the past. He continued that the proposed building is huge and that we do not know what he is going to do with seven or eight thousand square feet. He stated that it puts abutters to Mr. Kolar’s property to become the police. He stated that he would like to hear Mr. Kolar’s explanation regarding the duration of the project. He queried that this was Mr. Kolar’s 3rd permit and stated that they have already endured this for two years. Mr. Chirchirillo stated that he has the foundation poured but that it looks as if this will be a ten year project.

Mr. Damon stated that the permit would begin March 1, 2024 and run through September 1, 2025, a total of 18 months. Mr. Kolar stated that it would be done at that time.

Mr. Chirchirillo stated that it does not seem possible that he would be able to complete the project in that time frame given that so far he has worked maybe five hours per week on it..

Mr. Stratton stated that he is an abutter who lives on Matteson Road. He asked if he was correct in understanding that the building would be 30 feet high and 8,000 plus square feet. Mr. Damon corrected that it would be 27 feet high.

Ms. Kinkaid queried if the barn was going to be used for agriculture and was zoned VR 40. Mr. Crowl corrected that the building was not being proposed for agricultural use but instead was listed as an “accessory building”. Ms. Kinkaid asked what that meant. Mr. Kolar explained that he would be using it to store personal items, excavators, tools, hobby interests, etc.. Ms. Lowary reiterated that it would be for the storage of Mr. Kolar’s things.

Ms. Kinkaid asked regarding the “coming and going” of these items and whether or not that would be a problem for neighbors. Ms. Lowary stated that as long as the stuff was not being used for a business it was okay. She stated that if he began renting equipment that could be considered a business. She stated that she has a barn and stores her tractor inside, but she could not speak to what the Kolars would be storing. Ms. Kinkaid stated that the DRB doesn’t realize what they do. She continued that she is on the side of Mr. Kolar but that he has not been very forthcoming. She again

discussed her concerns regarding the size of the building and that she felt that the DRB had not looked into it.

Mr. Lenox asked if there was a size limit within VR-40 Districts to which Mr Damon replied that there was not a limit for an accessory building but that there is a limit on the size of buildings in regards to the percentage of footprint they take up on a person's property.

Mr. Clark asked if the exterior of the barn would be sided in wood or metal. He stated that the proposed structure is six times the size of his house and that if the exterior is metal, everyone will see it.

Mr. Kolar advised that the exterior would be "barn red" and made of metal siding. Numerous questions were asked again regarding what Mr. Kolar would be keeping in the barn. He again reiterated that it would be to store equipment, tools, hobbies, etc..

Ms. Kinkaid asked the DRB what would happen if they found out that Mr. Kolar was running a business out of there. Mr. Damon stated that the same thing would happen as what happened when he was running a trucking business off of his property and that he would be cited for the violation.

Mr. Lenox asked what could be done after the structure was built. Mr. Damon replied that as per his previous statement, Mr. Kolar would be found in violation but that we cannot control what he stores in his building.

Mr. Lenox stated that he believes it is a reasonable concern due to past meetings where he felt Mr. Kolar had not been very forthcoming. He stated that he just wants to make sure that the timeline and proposal are appropriate. He added that materials are expensive and that he wants to make sure that we are all not here again in a year from now if the project has not been completed.

Mr. Johnson stated that he does not think everyone understands that everything Mr. Kolar does runs right into his property. He queried what recourse he has. He added that he is not laying down for this and will take it to the next step.

Ms. Lowary asked for confirmation of the location of the doors to which Mr. Kolar explained the position on the site map. Ms. Lowary asked for additional information regarding the "proposed gravel driveway" to which Mr. Kolar explained that it has always been the plan to put in a gravel driveway as reflected on the site plan.

Mr. Stratton asked what the threshold is that would need to be crossed if he were to sell equipment on his property. Mr. Stratton also referred to Mr. Johnson's concerns regarding runoff and stated that he has also seen water on his property in places where it had not previously been seen. He showed Ms. Lowary where his property was in relationship to Mr. Kolar's property. Ms. Lowary noted the position and said that sadly "wet" seems to be the new normal.

Mr. Fernandez read from the ACT 250 database regarding the amount of runoff per square footage of roof area and stated that ignoring ACT 250 concerns could cause significant damage to adjacent properties for activities other than farming. He stated the size of the barn seemed incredibly convoluted and rushed. He added that there was a jurisdictional opinion issued related to the driveway onto the property and at one time there was a relation to a possible farming operation being considered.

Ms. Lowary asked if he had an ACT 250 permit to which Mr. Kolar stated that they had considered farming at one time but that neighbors turned him into ACT 250 so he did not pursue it.

Ms. Del Tufo said that she is confused as to whether or not the properties of Mr. Kolar and his in laws are considered two or one property.

Mr. Fernandez stated that there is documentation that Mr. Kolar was told to cease all work regarding "Pine Owl Farms" /melon farming. Mr. Kolar confirmed that they had planned on moving forward to farming melons but stopped due to all of the issues with neighbors.

Ms. Samour asked the DRB how the decision for approval is completed. She queried if they issued an acceptance, denial or acceptance with recommendations. Ms. Lowary stated that they could respond with any of those decisions. Ms. Samour asked if the DRB would be allowed to suggest a smaller housing unit to store his equipment to which Ms. Lowary stated that she was not sure and would need to look into that further.

Ms. Del Tufo stated that she felt all of this was very complicated and that she had no idea about the farm or whether Mr. Kolar's property was considered one or two if you counted his inlaw property. She continued that she felt extremely confused and blind-sided and that if Mr. Kolar builds that they would be open to a hundred problems.

Mr. Chirchirillo stated that Ms. Lowary's farm had been a farm for a long time but Mr. Kolar's had not. He further stated that what Mr. Kolar uses for his business is also used for his personal use and have been problems for adjoining property owners. He stated

that Mr. Kolar had a chicken farm and they do not know what he will do next which is why we are all here and frustrated.

Ms. Kinkaid stated that she feels very let down by the board, especially “him” (pointing to the zoning administrator). She stated that the board is not protective and that they do not alert the community to what is going on. She stated that so many things are being revealed.

Ms. Lowary stated that she has a vested interest in what happens in our community and how things go and that the Planning Commission was currently in the process of revising the bylaws. However, she stated, the DRB is constrained by current laws and that the DRB only has so much power.

Mr. Clark stated that storms and water are going to continue to worsen in the future and that needs to be considered.

Mr. Fernandez stated that the town can ask for an ACT 250 review. Mr. Damon and Ms. Lowary both stated that the board can also ask. Mr. Fernandez continued that the conservation district also has power, VS 1031 status. Mr. Fernandez provided a case number for Mr. Kolar’s judicial opinion:

JO 8-275

which he stated can be found on the ACT 250 database where all documentation from his last 250 review would be.

He clarified the web link for that as:

[ANRweb.vt.gov\ANR\250](https://anrweb.vt.gov/ANR/250)

**** NOTE-shortcut link verified by meeting recorder at:

<https://anrweb.vt.gov/ANR/Act250/Details.aspx?Num=JO%208-275>

Mr. Fernandez stated that he would love to see a farm on Mr. Kolar’s property and that he is there to assist Mr. Kolar with resources should Mr. Kolar decide he would like assistance. He added that he does have very serious concerns regarding the environmental impact of the proposed project.

Mr. Chirchirillo stated that there are six different property owners in attendance who had come to these meetings a total of eight times. He stated that the basic problem is that Mr. Kolar moved in and remade these properties, cut down hundreds of trees and showed no goodwill. He continued that it is not personal, but that we are trying to protect our property and ourselves and no one from the DRB has walked on the properties for our perspective. He added that he was talking about a complete

re-making of this area. He stated that he would not be allowed to get away with this in other areas such as Burlington and that we need to keep this community a nice place.

Ms. Lowary asked if there were any more questions or comments and asked for a motion to close the open session and enter into a deliberative session.

Mr. Hall made a motion to close the DRB open meeting and enter into a deliberative session. (Hall/Disorda/Unanimous)

6) Adjournment:

This hearing is warned in accordance with Section 4464 of the Vermont Planning and Development Act (24 V.S.A Chapter 117). Please be advised that participation in this proceeding is a prerequisite for the right to take any subsequent appeal. All Village Zoning Bylaws may be viewed at www.villagenorthbennington.org.

Ms. Lowary closed the open meeting at 8:15PM

