

**Town of Middlebury  
Development Review Board (DRB)  
Meeting/Hearing conducted online via Zoom  
Minutes of June 14, 2021**

**Approved June 28, 2021**

Members Present: David Hamilton, Chair, Gary Baker, Jason Larocque, John MacIntyre, Kevin Newton, Anne Taylor and Mark Wilch

Members Absent: Rick Emilo

Staff Present: Jennifer Murray, Dave Wetmore

Others Present: Beth and Steve Dow, Paul Ralston, Lisa Mitchell (THT), Bethanie and Billy Farrell, Leon Smith, Mike Reeves, Mika Barker-Hart (7:45), and Rose Lovshin (Rose Smith), Doug Anderson (7:15), Victoria DeWind (7:20)

**MEETING AGENDA**

1. Application (file #2021-09:044.000-SD) request by Stephen and Elizabeth Dow for final 2-lot subdivision approval of parcel # 009044.000. The applicants propose to subdivide a 6.96 acre lot (with existing barn structure) from their 209 acre property. The Dow property is located at 2840 Case Street in the Agricultural Rural (AR) and Forest (FOR) districts.
2. Application (file #2021-24:232.010 PUD amend) request by Town Hall Theater, Inc. for amended Planned Unit Development (PUD) and Conditional Use approval for the change of use proposed for the former “Park Diner” building. The applicants are seeking an amendment to the existing Town Hall Theater PUD to allow the short term use by “The Giving Fridge” a retail space and prepared meal pickup business. The 66 Merchants Row property is located in the Central Business District (CBD) on parcel #024232.010.
3. Continuation from May 24, 2021- Application (file #2021-05:114.200-CU) is a request by Jeremy and Elizabeth Parker for development in the Forest District (FOR).

**I. Call to Order-** David Hamilton, DRB Chair, called the meeting to order at 7:00 pm. David reviewed the agenda. Chat feature on Zoom is set to allow participants to chat with host only (Jennifer Murray).

**II. Approval of minutes-**

**Motion by Gary Baker-** Gary moved to approve the minutes of May 24, 2021 as presented, 2<sup>nd</sup> by Mark Wilch. No further discussion, **Motion to approve minutes passed, 6 yes, 0-no.** Jason as alternate was not in attendance for this vote.

**III. Dave Hamilton-** asked to amend agenda to consider Jeremy Parker’s request for continuance to June 28, 2021. DRB agreed by consensus to amend agenda- DRB alternate member, Jason Larocque is now in attendance.

1. **Continuation of hearing for Jeremy and Elisabeth Parker from May 24, 2021- application (file #2021-05:114.200-CU), Development in the Forest District.**

David Hamilton – re-opened the hearing from May 24, 2021 for the Parkers proposed development in the Forest District and asked Dave Wetmore to outline the status of the Parker application.

Dave Wetmore- briefly outlined that the Parkers had met with the Selectboard on June 8<sup>th</sup> and they are preparing a “work in the ROW” application for the curbcut and access onto Washington Street Ext. Once Bill Kernan, DPW Operations Director receives a complete application he will initiate his technical review with the input from emergency services and planning staff and will report his findings to the Selectboard for their endorsement.

**Motion by Kevin Newton-** Kevin moved to continue the Parker application review to June 28, 2021, Anne Taylor 2nds.

Discussion- Anne asked questions about the curbcut process and if the DRB will see an amended site plan for the realignment of the driveway. Dave W. expressed that surveyed engineered drawings were being prepared for the access/curbcut and DPW’s technical review. Once the curbcut has been approved then the Parkers would come back to continue the DRB review of the driveway and further development in the FOR district. No further discussion. **Motion to continue Parker hearing to June 28, 2021, passed 7-yes and 0-no.**

2. Application (file #2021-09:044.000-SD) request by Stephen and Elizabeth Dow for final 2-lot subdivision approval of parcel # 009044.000. The applicants propose to subdivide a 6.96 acre lot (with existing barn structure) from their 209 acre property. The Dow property is located at 2840 Case Street in the Agricultural Rural (AR) and Forest (FOR) districts.

David Hamilton – opened the Dow hearing for subdivision.

David H.- administered oath to Beth Dow and Paul Ralston and asked if any DRB member had a conflict of interest. None was expressed.

David H.- invited Beth to introduce their subdivision request.

Beth Dow- expressed that she and Steve own the remainder of Steve’s family farm approx. 209 acres. Since owning the property they have created 2 subdivision of the property. The 1<sup>st</sup> was located in the Agricultural Rural (ARR) district that was again subdivided by the Kolls where the Church (Kingdom Hall) is located and 2 other homes. The 2<sup>nd</sup> parcel was for their daughter in the Forest (FOR) District. The Dow’s propose to subdivide off a 6+ acre parcel (lot #2) that is located along their north boundary. Lot #2 includes an old dairy barn. The lot would be accessed from Case Street via an existing driveway curbcut.

David H.- asks Staff to outline the issues. Dave Wetmore explained that there is one remaining development right in the AAR with the Dow property as outlined in the minutes for the Dow’s 1988 subdivision. Dave acknowledged that existing frontage along Case Street was not created by Steve or Beth and that the frontages should be honored as they were created at the time of the last subdivision. Further, Dave checked with Rick Oberkirch regarding wastewater deferral and was told that transferring property with a deferral is still acceptable. If the future owners of lot #2 require a potable water/wastewater (WW) permit then they will need to apply and comply with Rules at that time.

Paul Ralston- asked if he could speak to his plans for the property. Dave H. gave him the floor. Paul expressed that he was not aware of the development right that remains and suggests that the Dows keep that right with their remaining 2+ acres in the ARR, south of their home. Paul expressed that he has been looking for a flat piece of land that is suitable for agricultural use. Lot #2 offers great soils and a magnificent old barn that needs repairs and restoration. He has started a Low Profit, LLC that seeks to address food insecurity and affordable housing. Lot #2 will address the food insecurity piece, basically he plans only farm uses on lot #2, to grow food for the local food shelf and homeless shelter in Vergennes. His plans are to stabilize the barn over the next couple of years and ultimately seek to restore the barn. Over time the land around the barn will be placed back into productivity by controlling weeds and building soils. Paul expressed that the soils are very well suited to the type of agricultural use he plans. In the future he may wish to put up a green house and his plans are entirely centered on agricultural food production. If he is

required to obtain a WW permit in the future, he is confident that the soils will support that. For the time being he plans to just use a portable toilet. Water sources for crop irrigation have not yet been determined. Electricity still needs to be installed. A driveway access to the property exists and Paul will make any improvements required of him. The work on the Dow Pond dam by VTRANS is planned for next year and many trees are scheduled to be removed along the Case Street ROW which will improve sight lines.

Dave H.- opened questions/comments to DRB.

Anne Taylor- asks if a development right is not allowed on lot #2, would it be developable under the present Zoning? What happens after Paul is no longer using it? Jen clarified that the Regulations speak specifically about a homesite, and under the current regulations lot #2 could not be developed for a residential use if the homesite allocation was assigned elsewhere. Paul expressed that he understands that residential development of the lot would not be permissible, but his primary focus is on the agricultural use and is ok with that. He plans to donate to a non-profit when he is done with it, hopefully for continued agricultural use.

Dave H.-asked staff about future residential use? Future residential use would be dependent on the zoning regulations in effect at that time.

Dave H.- asked if there were additional DRB questions. None expressed. Dave observed that there are no interested persons attending. Dave asked the Board's pleasure?

**Motion by Gary Baker- I move** that the Middlebury Development Review Board, having reviewed the application submitted and having heard and duly considered the testimony presented at the public hearing of June 14, 2021, approve this 2-lot final subdivision of parcel # 009044.000 proposed by Stephen and Elizabeth Dow as outlined in the application, exhibits and testimony, subject to conditions and approval of the written decision and Final Plat signed by the DRB Chair. 2<sup>nd</sup> by John MacIntyre. Discussion-

Kevin- asked that the findings clearly state the frontage and that the DRB approves them because they were the frontages that already existed, not frontages created for this subdivision, and that the remaining development right will be retained by the Dow's. Mark asked that the findings state Paul Ralston's proposed agricultural use and that a residential use of lot #2 cannot be approved under the current zoning. Board agreed with all points. **Motion to approve the Dow subdivision- 7-yes and 0-no.**

3. Application (file #2021-24:232.010 PUD amend) request by Town Hall Theater, Inc. for amended Planned Unit Development (PUD) and Conditional Use approval for the change of use proposed for the former "Park Diner" building. The applicants are seeking an amendment to the existing Town Hall Theater PUD to allow the short term use by "The Giving Fridge" a retail space and prepared meal pickup business. The 66 Merchants Row property is located in the Central Business District (CBD) on parcel #024232.010.

David Hamilton – opened Town Hall Theater's (THT) amendment to PUD-

David H.- administered oath to Lisa Mitchell, THT Executive Director, Bethanie Farrell, Doug Anderson, and Billy Farrell (Bethany's husband) and asked if any DRB member had a conflict of interest. None was expressed.

David H.- invited Bethanie and Lisa to introduce their request.

Lisa- began by sharing that the PUD for THT was approved 2019, after acquiring the former Diner. They intended to use it for office, pop-up space and storage. The downtown bridge project coupled with the Pandemic has been hard on THT. The emergency order forced them to shut down which caused a financial hardship to them. Kubricky Construction asked to rent the former Diner for office space. Kubricky has now vacated the space. Inspired by efforts to revitalize Downtown such as "Kickstart" a recruiting effort in Middlebury to fill downtown business spaces, THT entered into a short term lease

with Bethany and her organization “Giving Fridge” to rent the Diner space. Lisa said that THT felt it was a compatible use, and a great business to be partnered with.

Bethany Farrell- presented the short history of “Giving Fridge”. Most recently they have operated out of a space on Merchants Row. The Giving Fridge is an L3C-low profit LLC and will do business as “Everything Nice”. Bethanie’s business provides up to 250 meals/week to homeless and food insecure families. The food is prepared by area restaurants and distributed to those in need. The business is supported by donations and the sales of plants, honey and other local items. Bethanie will also host workshop events focusing on agriculture, pollinators, nutrition and food insecurity. Workshop programming would be scheduled in the evenings and on weekends. Scheduling would ensure no conflict with THT programming and may involve other organizations as well. Bethanie proposes pop-up retail related to the mission of the Giving Fridge. Bethanie expressed that she feels her business fits well with THT’s existing PUD. Meal distribution has been on Sunday and Mondays. Large truck deliveries are not anticipated. Bethanie anticipates using a sandwich board to communicate activities. Raised bed planters are planned along the east side and front of building. There would be no food preparation onsite, just catered prepackaged food.

Dave H.- opened for DRB questions

Dave H.- asked if overflow parking can be accommodated in the law office parking lots along South Pleasant Street? Bethanie expressed that typically 1 workshop/event will held per week for between 15-25 people, eventually growing to 3-4 times/week. She plans to direct participants to park at the Mill Street public parking lot. Dave asked about the applicant’s narrative that suggests workshop attendance could be between 30-50 attendees? Bethanie stated this would be only occasionally. They may partner with the Middlebury Film Festival and end up with larger events in that way for example.

Anne Taylor- asked for clarification when the workshops would be held? Usually early evening, once people are out of work and on Sundays. Anne asked how many events does THT host annually? Lisa noted that prior to the Pandemic they were hosting 165 events/year. THT is rebuilding now and most events are schedule late week and weekends.

Gary Baker- asked if THT still has an agreement with the Law offices on South Pleasant Street for parking? Yes, 5:00 and later.

Dave H.- will this parking arrangement be extended to Bethanie’s project, “Giving Fridge? Lisa responded yes, she is not concerned about conflicts and parking or they would not have entered into an agreement with Bethanie. Doug Anderson expressed that Bethanie should be able to use after hours and weekends.

Anne Taylor- Asked if THT checked with the owners of the parking lots on South Street to ask if they are okay with use of their lots as overflow parking for events related to a new use affiliated with Town Hall Theater? They had not.

Kevin Newton- asked for clarification. When are workshops scheduled? Bethanie responded that medically tailored workshops are scheduled on Monday evenings and attendees take food home with them for the week. How long do meal pickups take? Bethanie stated only a few minutes, but home delivery is more popular, which she provides.

Dave H.- asked about use of the alley and service entrance. Is this area available for deliveries. Yes, but THT has limited thier use of the alley. Mostly Bethanie or volunteers pickup the meals in their personal vehicles.

Dave H.- opened to Staff questions/comments

Jennifer Murray- is delivery and parking available in alley? Bethanie noted that typical deliveries are made by Bethanie or volunteers using their own personal vehicles. There are approx. 4 parking spaces at the end of the Alley between THT and diner space. Lisa acknowledged that the handicap spaces are located there for access to the THT through the Gallery. Giving Fridge (GF) will not be allowed these spaces.

Jennifer M.- outlined the vision/masterplan for the THT PUD as it was described in 2019. Has this vision changed? Lisa expressed that education is a key component of the GF mission and that aligns well with THT mission. How about community service and feeding the hungry, how does that fit into THT mission, citing the recent block parties and food truck use? How do these activities mesh with THT mission? Doug Anderson responded that THT has always been about community, citing that the farmers market was held at THT for 2 years, parties, weddings and funerals are hosted there as well. THT has served as a place for celebrations and it has never been just a performance center. THT seeks to serve the entire community. What about pop up retail? Will this become more of a focus for THT? Yes, if it serves the community. Lisa said that THT has always been about fostering partnerships that support the community.

Jennifer M.- outlined the purpose of a PUD from the Regulations.

Anne T.- Will the proposed uses for the diner space become part of the extended uses THT is allowed? Jennifer expressed that she is asking these questions to be able to describe the purpose for the Town Hall PUD that is comprehensive yet flexible, allowing us to determine what future amendments and proposed uses would require DRB or administrative review. Staff will be drafting the amended PUD decision and is looking to describe how these new uses relate to the original PUD masterplan and 2019 decision.

Bethanie- suggests that retail and classroom uses are an extension to the existing PUD masterplan. Jennifer responded that is why assuring there is sufficient parking available is important, especially as THT programming expands. Lisa restated that THT will extend their private off-street parking arrangements on South Pleasant Street to events hosted by the Giving Fridge.

Dave H. asks if there are any other comments/questions- no expressed.

**Motion by Anne Taylor-** I move to close the hearing and enter deliberative session to discuss the THT PUD amendment. Mark Wilch 2nds. Discussion- none. **Motion to close hearing and enter new link for deliberation passed 7-yes and 0-no. 8:14 PM.**

Regarding a couple of items from the application that are outside the DRB's jurisdiction- Jennifer let the Applicant know that use of any portion of the Town sidewalks or right of way (ex. for raised-bed container gardens) would require permission from the Town Manager's Office, which may include a work in the ROW permit. Use of the trash barrel would be at DPWs discretion.

**IV. Other Business-** none

**V. Adjournment**

**Motion by Gary Baker-** Gary moved the DRB to adjourn at 8:15 PM, 2nd by Mark Wilch. **Motion passed, 7-yes, 0-no.** Meeting adjourned at 8:15 PM.

DRB- entered new Zoom link to deliberate on the THT application.

Minutes Submitted by Dave Wetmore