

**Town of Middlebury
Development Review Board (DRB)
Town Office Large Conference Room
Minutes of May 8, 2017
Approved as Amended on 5/22/2017**

Members Present: Kevin Newton, Gary Baker (Alt.), Rick Emilo, Don Keeler, John MacIntyre, David Hamilton, Anne Taylor, Scott Foster

Members Absent: None

Staff Present: Jennifer Murray, Victor Sinadinovski, Katherine Wheatley (videographer)

Others Present: Jennifer Bleich, Erik Bleich, Gail Rothman, Art Howard, Bill Brim, Bruce Cheever, Duncan Rollason, Michael McLaughlin, Stacy Jones

MEETING AGENDA

- An application by Erik and Jennifer Bleich for a Conditional Use review of a request for a rear setback waiver to construct a covered porch on the rear of their house. This property is located at 42 Woodland Park in the High Density Residential District.
- An application by Eric Highter for preliminary review of a subdivision application for a two-lot subdivision. This property is located at 494 South Munger Street in the Agricultural Rural District.
- An application by Turning Point Center for a preliminary review of a Conditional Use application to establish a recovery residence. The proposed location is the Grey Stone Motel located at 1395 Route 7 South in the Protected Highway District.

Kevin Newton called the meeting to order at 7:04 pm.

1. Minutes of 2/28/2017 and 4/10/2017

On a **Motion** by Don Keeler, seconded by Anne Taylor, the Development Review Board **voted to approve the minutes of 4/24/2017**. Motion passed 7-0.

2. Hearing for Bleich Setback Waiver

Kevin administered the oath to all present.

Erik and Jennifer Bleich presented their application for a setback waiver to construct a covered porch on the rear of their house. Mr. Bleich stated that the screen porch will be built over the existing porch, which is simply a concrete slab. The porch will be 22 ft. from the rear property line at one corner and 20 ft. from the rear property line at another corner. The applicants' property is in the High Density Residential zoning district, for which the rear setback is 25 feet. On the rear property line is a 6 ft. high fence, as well as several tall cedar trees. Don visited the site and affirmed that those trees and fence were there.

Kevin asked if the applicants were seeking a rear setback waiver of 5 ft. and the applicants said that was correct. Rick asked who owned the fence and cedar trees. Mr. Bleich said that their rear neighbors Dean and Alice George owned them and that the base of the cedar trees is where the approximate rear property line is located. David asked if the patio shown on the picture was the

44 approximate size of the new covered porch. Mrs. Bleich said that the new porch will extend about
45 1 ft. longer toward the property line than the current porch and that the tree near the porch in the
46 picture has been removed. Anne asked if the tree was removed because it would interfere with the
47 porch. Mrs. Bleich state that it was removed because they had previous problems with the tree and
48 that it was blocking one of the bedroom windows.

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50 On a **Motion** by Don Keeler:

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52 I move that the Middlebury Development Review Board, having reviewed the application
53 submitted and having heard and duly considered the testimony presented at the public hearing of
54 May 8, 2017, **approve** this conditional use request for a rear setback waiver of 5 feet to construct a
55 covered porch at 42 Woodland Park. Rick Emilo **seconded**. Motion **passed**, 7-0.

56 57 58 **3. Hearing for Highter Subdivision**

59 Kevin administered the oath to all present.

60 Eric Highter presented the application for a preliminary subdivision review for a two-lot
61 subdivision at 494 South Munger Street. Mr. Highter stated that his father and uncle own the
62 approximately 95-acre lot and that he would like to subdivide a 2-3 acre lot to build a single family
63 residence. Don asked Jennifer if the owners would be able to come back and subdivide more lots
64 for future development. Jennifer stated that she was not sure and would have to re-check the 1981
65 Town parcel maps to figure out how many developmental rights were remaining. Mr. Highter said
66 he was not aware that this would be the last remaining sub-dividable lot and it would be something
67 he would want to figure out. Don said it would be nice to know if this could be his final
68 subdivision. Anne said that even if the DRB approved the subdivision tonight, the applicant would
69 not have to proceed with the subdivision process if Staff determines that this is the last lot that can
70 be created. Jennifer said she could figure it out during the meeting.

71 Don asked which owner of the property the applicant was representing and Mr. Highter stated that
72 he was representing both his father and uncle. Don asked if both agreed to the two-lot subdivision
73 and Mr. Highter said yes. Anne iterated that this was a preliminary review and they do not have to
74 come back before the DRB if they choose not to continue with their application. Jennifer suggested
75 the DRB should proceed with discussing the merits of the application and that she would weigh in
76 later when she finds the answer to that question.

77 Rick asked where the driveway would be located. Mr. Highter said that it would be at the crest of
78 the hill. He has placed two stakes at that location that are approximately 40 feet apart and that spot
79 has already been approved by Dan Werner (Town of Middlebury Public Works Planning Director).
80 He said it was the best possible place to put the driveway to be able to see in both directions as you
81 are pulling out. Anne asked if the house would be just a little further north than the driveway and
82 Mr. Highter said that was correct. John stated that the maps show that a water line runs through the
83 property but that the applicant is planning on drilling a well. John asked if this was because he
84 cannot hook onto Town water despite the maps showing it is available. Mr. Highter said that the
85 water line is currently tapped out. His father was the last tap right and he is sure that the neighbors
86 would agree that the size of the line could not handle another home on it.

87 Rick asked if the pond on the property would be included in the small lot that the applicant wants
88 to subdivide. The applicant said yes. Don asked who controlled the easement for the mound septic
89 system on Lot #2. Mr. Highter said that it belongs to his father's 10-acre lot to the north and will
90 be located on his father's lot. Rick said he noticed that some trees had been recently cut and asked
91 if the applicant was planning on cutting more trees. Mr. Highter stated that many of the trees
92 already cut had been damaged by strong winds. Some more trees will be cut where the house is

93 being built. He said that some of the current trees will remain, but because the lot is ledge, a lot of
94 filling and grading is needed. He will cut a majority of the trees and then plant new ones where it
95 makes sense. Anne said that presumably he would have more detailed plans to submit when he
96 brings in the application for a final review.

97 Kevin asked about the total acreage of all of his father's land. Mr. Highter said it was about 106
98 acres and that he subdivided out approximately 10 acres to build a house. Kevin said that if it was
99 106 acres, then the maximum number of home sites can be 6. Jennifer indicated that they have 4
100 lots left.

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102 On a **Motion** by Anne Taylor:

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104 I move that the Middlebury Development Review Board, having reviewed the application
105 submitted and having heard and duly considered the testimony presented at the public hearing of
106 May 8, 2017, approve this request for preliminary subdivision approval to create a 2 acre lot at 494
107 South Munger Street, subject to the recommendations in the Sketch Plan determination dated May
108 8, 2017. John MacIntyre **seconded**. Motion **passed**, 7-0.
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110 **4. Hearing for Turning Point**

111 Kevin administered the oath to all present.

112 Bill Brim presented the application for a preliminary conditional use review to establish a recovery
113 residence at the Grey Stone Motel. Mr. Brim state that people in Addison County recovering from
114 addiction or substance abuse do not have a safe place to recover from their addiction and move
115 forward with their lives. This facility would be for men only, and in the future Turning Point
116 would eventually like to establish something similar for women. Turning Point works with the
117 National Alliance for Recovery Residences (NARR), which has national guidelines to follow
118 regarding recovery residences. Vermont has no state certified oversight over such recovery
119 residences, which means Turning Point cannot get a certificate from them. The Grey Stone
120 property became available and would be a great spot for such a recovery residence because it has
121 updated bathrooms and is a short distance from basic needs, such as the bus stop and state offices.
122 An individual would be in the recovery residence program for 4-6 months. There would be on-site
123 recovery coaches as well as administrative oversight. There are people who would be willing to
124 fund the purchase the building, but he cannot ask them for money unless he knows it would be
125 possible to operate from the building.

126 Kevin said that the DRB appreciates what Mr. Brim and Turning Point is doing and believes it is
127 something that the community needs, but the DRB needs to see if such a use fits into the Zoning
128 Regulations. Don mentioned that Middlebury needs a detox center as well. Mr. Brim said that he
129 talks about this issue with Chief Hanley on a regular basis but took it out of the application
130 because Staff thought it would be too hard to approve right away. Anne asked how such a recovery
131 residence fits the definition of a group home. Mr. Brim said that it will contain fewer than 8 people
132 in a communal living space. Anne asked what major life activity does drug addiction limit. Mr.
133 Brim said that it makes it very difficult to find jobs. Kevin said that there is nothing in the table of
134 uses for the Protected Highway District (PHD) that would allow a group home as a use. Jennifer
135 said Section 739 provides an exception.

136 Kevin pointed out that the residence would need to be operated under State licensing and that there
137 are no State certified or licensed programs for such as use. Kevin noted that Section 739 requires
138 the Town to classify a group home as a single-family home. Anne said that the DRB has to
139 consider whether they can allow such a use in a district that doesn't not allow a single-family
140 house. She would not see a problem with this application if Grey Stone Motel was a 10-bedroom

141 house because it would have been already grandfathered in as a single family home and the use
142 wouldn't change, but that this is not the case. Jenifer referred the DRB to 24 V.S.A. Section 4412
143 on group homes and said the DRB might want to figure out what "shall be considered by right to
144 constitute a permitted single-family residential use" means. Anne said this means that a group
145 home qualifies as a single-family residence, which are not allowed in all districts in Middlebury.

146 Don mentioned that Middlebury needs a detox center. Anne asked if there would be management
147 on premises 24 hours per day. Mr. Brim said there would be a recovery coach present at all times.
148 Don said that the Blue Spruce Motel has frequent visitors placed there by the Department of
149 Corrections who are on house arrest or are wearing bracelets. Anne asked why that was relevant.
150 Don said that a motel is already being used in a similar manner to what the applicant is proposing.

151 Rick stated that even with NARR certification, there is no guarantee that the State of Vermont will
152 recognize or license the program. Rick mentioned that some citizens voiced concern that the
153 property would come off the tax list if Turning Point were to establish it as a recovery residence.
154 Mr. Brim agreed but emphasized that a recovery residence will help the community. Ann stated
155 that the main issue is whether this recovery residences constitutes as a group home, and if it does,
156 whether it can be located anywhere by-right, or located only where single-family homes are
157 allowed in Middlebury's regulations.

158 Kevin opened up the discussion for comments from the public. Art Howard, the President of the
159 Board of Directors of Turning Point of Addison County, said that the individuals being housed at
160 the Blue Spruce Motel are funded by Section 8. Mr. Howard stated that addiction is a mental issue
161 that impacts major life activities. Mr. Brim stated that if this property is not doable, he will find
162 another spot. Don mentioned that having a detox center is an important part of the puzzle for
163 Middlebury.

164 At 8:03 pm, Anne Taylor made a motion to enter deliberative session to discuss the testimony and
165 regulations. Rick Emilo **seconded** the motion. Motion **passed**, 7-0.

166 The DRB exited deliberative session at 9:21 pm. Kevin stated that it was the consensus of the
167 DRB, without legal counsel, that this application would not be allowed under the state exemption
168 for a group home. If the applicant wanted to continue the application, the DRB would require it to
169 be a Planned Unit Development (PUD) and would need to meet several elements that go along
170 with a PUD. Mr. Brim said he wouldn't do it because he was tired of chasing down the DRB to do
171 something like this. Anne said that it's not that this recovery residence is not a group home, but
172 that no residences are allowed in this area, but that the DRB came up with a different approach the
173 applicant might want to look into. Mr. Brim said he's not going to continue with this or going
174 down another avenue. Don said that the DRB supports the project but that the other avenue may be
175 easier for everyone.

176 Don suggested that Mr. Brim talks with Jennifer tomorrow to see how he can move forward.
177 Jennifer said that group homes are allowed where single family homes are allowed, but that
178 Middlebury Zoning Regulations do not allow single family homes in the PHD. Jennifer said that
179 going down the PUD route gives the DRB the authority to allow uses in a district where they
180 normally are not allowed. Mr. Brim said he understands that and will talk to Jennifer tomorrow to
181 figure something out. Mr. Brim does not know for how long this property will be on sale.

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183 5. Other Business

184 Jennifer asked the DRB if they were content with making the Farmers' Market permit good for
185 two years, which would give the zoning administrator an opportunity to review the Farmers'
186 Market parking and pedestrian situation. Don said that he thinks that it would be better to limit the
187 permit to one-year and the DRB agreed.

188 **6. Adjournment:**

189 On a **Motion** by David Hamilton, seconded by Rick Emilo, the DRB **voted to adjourn**. Motion
190 passed, 7-0.

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192 Meeting adjourned at 9:35 pm.

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194 Minutes Submitted by Victor Sinadinovski

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