

**Town of Middlebury**  
**Development Review Board (DRB)**  
**Town Office Large Conference Room**  
**Minutes of November 5, 2018**  
**Approved 11/26/2018**

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**Members Present:** Kevin Newton, chair, Gary Baker, David Hamilton, Donald Keeler, John MacIntyre and Anne Taylor

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**Members Absent:** Rick Emilo

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**Staff Present:** Jennifer Murray, Dave Wetmore, Katherine Wheatley (videographer)

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**Others Present:** David Hohenschau, Tony Neri, Helmut Heitzker, Kevin and Garreth Parizo, Bernard Quesnel, Louis Quesnel, Steve Ingram, Peter DeGraff, David Curley, Benj Deppman, Sam Sharma, Kathleen Ramsay, John McLeod, Brent Rakowski, Kevin Ellicks, Mireya Sierra, Dula Rosario, Alex Carver, Glenn Andres, Meg Harris, Calder Birdsey, Emma McDonagh, Adam Romano, Andrey Zvonar, John Hanson, Ashley Cadwell, Michael Heinecken, Steve Alexander, Elise Shanbacker, Glen Goodwin, Natalie Peters, Margaret Carothers, Ceclia Dry, Michael Johnston, Wayne Hall, Farhad Khan

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## **I. MEETING AGENDA**

- a. Application (file #2018-21:001.010) request by David Hohenschau and Claire Tebbs for a side yard setback waiver pursuant to Section 724. Applicants propose to construct a 2-story addition to the back side of their existing non-conforming one-family dwelling. This property is located at 53 Seymour Street in the High Density Residential (HDR) zoning district, parcel ID# 21:001.010.
- b. Application (file #2018-28:176) request by GLR, LLC for a 2-lot subdivision and planned unit development approval pursuant to Section 550 and 560. The property is located at 55 Middle Road in the Village Residential Commercial (VRC) District, parcel ID# 028:176.000.
- c. Application ( file #2018-08:146)- The DRB will conduct a hearing pursuant to Sections 753 and 1090 to determine whether the Blue Spruce Motel structure destroyed by fire on July 13, 2017, has been abandoned and whether the lack of maintenance has given rise to the conditions outlined in Section 753. The property is located at 2428 Rte. 7 South in the Agricultural Rural (AR) District, parcel ID # 08:146.00
- d. Application (file #2018-21:001) request by Habitat for Humanity of Addison County for final conditional use and subdivision approval, pursuant to Sections 540 and 560, for two (2) separate residential units on one parcel, to be held as common land for the benefit of residents. Applicants also request a front setback waiver pursuant to Section 724. Previous to this hearing the Applicants received a Preliminary Determination from the DRB, dated June 7, 2018. The property is located at 51 Seymour Street in the High Density Residential (HDR) District, parcel ID# 021:001.000.

## **II. Call to Order**

The meeting start time was delayed slightly due to technical difficulties with the recording equipment. Kevin Newton, DRB Chair called the meeting to order at 7:20 pm and reviewed tonight's agenda for all present.

Public communications- Kevin asked if there were any non-agenda or public communications. None expressed.

## **III. Approval of Minutes-**

39 **Motion by John MacIntyre-** moved to approve the minutes of 9/24/2018 as presented, Anne  
40 2nds. No changes or discussion. **Motion passed 6-yes, 0-no.**

41 **Motion by Anne Taylor-** moved to approve the minutes of 10/22/2018 as presented, Gary  
42 2nds. No changes or discussion. **Motion passed 4-yes, 0-no, Kevin and Don abstained.**

43

44 **IV. DRB public hearings:**

45 **1. Application (file #2018-21:001.010) request by David Hohenschau and Claire Tebbs for a**  
46 **side yard setback waiver pursuant to Section 724. Applicants propose to construct a 2-**  
47 **story addition to the back side of their existing non-conforming one-family dwelling. This**  
48 **property is located at 53 Seymour Street in the HDR zoning district, parcel ID#**  
49 **21:001.010.**

50 Kevin Newton opened the hearing and read the warning and administered the Oath to those  
51 present who intend to submit testimony.

52 Kevin asked about conflicts of interest and ex-parte communication? Gary disclosed that he is a  
53 neighbor of the applicants on Seymour Street.

54 Dave Hohenschau introduced his setback waiver request. Specifically, he is requesting to build a 2 story  
55 addition on the back of his home at 53 Seymour Street. His existing home is non-conforming and sits  
56 almost on top of his southern boundary. The required side yard setback is 15-ft. The applicants are  
57 asking the DRB to reduce the setback to 8-9-ft. The addition will not add to the bedroom count and  
58 based on correspondence with Rick Oberkirch, State Permit Specialist, no wastewater permit is  
59 required. A portion of the upstairs addition will be children's living space. The property is located in  
60 the High Density Residential (HDR) District

61 DRB questions/comments- Why is the addition setback from the northern side of the house? Dave H.  
62 responded saying the small setback is to break up the expanse (wall and roofline) of the north side.

63 Staff comments- none expressed.

64 Public comment- Kevin Parizo expressed his full support for the waiver request.

65 **Motion by Anne Taylor-** I move that the Middlebury Development Review Board, having  
66 reviewed the application submitted and having heard and duly considered the testimony presented at  
67 the public hearing of November 5, 2018 **approve** this request for a setback waiver to construct the  
68 proposed addition to the Applicants one-family home no less than 8-ft. of the southern property line  
69 as shown on the site plan submitted and no less than 25-ft from the rear boundary, for parcel  
70 21:001.010 located at 53 Seymour Street. John MacIntyre 2nds. **Motion passed- 6-yes and 0-no.**

71

72 **2. Application (file #2018-28:176) request by GLR, LLC for a 2-lot subdivision and planned**  
73 **unit development approval pursuant to Section 550 and 560. The property is located at 55**  
74 **Middle Road in the Village Residential Commercial (VRC) District, parcel ID#**  
75 **028:176.000.**

76 Kevin Newton open the hearing, read the warning and administered the Oath to those present who  
77 intend to submit testimony.

78 Kevin asked about conflicts of interest and ex-parte communication? None disclosed.

79 Peter DeGraff begin by stating that the owners proposed to subdivide the GLR, LLC parcel  
80 located at the intersection of Middle Road and Rte. 7 South into two conforming lots.  
81 Additionally, the applicants are requesting setback waivers along Middle Road and Rte. 7  
82 which include (on Lot #2) a 25-ft minimum setback from the property line fronting on Rte. 7  
83 South and 15-ft. from property line fronting on Middle Road. The setback waivers are requested

84 due to the extreme narrowness of Lot #2. The subdivision proposal would also eliminate the curb  
85 cut onto Middle Road near the Rte. 7 South intersection and create an easement along the  
86 southern boundary of Lot #2 for access/parking for Lots #1 and #2 and possible future access to  
87 neighboring lots. The subject parcel is located in the VRC District. The existing building on the  
88 property (proposed Lot #1) is unoccupied. Once subdivided the owners plan to sell both lots.

89 DRB questions/comments- DRB noted the Regulations require a 30-ft easement minimum.  
90 Applicants understand and agreed to modify the plat. DRB discussed the benefits and draw backs  
91 of the waiver request.

92 Public comments- Tony Neri expressed concern for the One Dollar Market exiting traffic turning  
93 left onto Route 7 to travel northbound. Farhad Khan, owner of the One Dollar Market parcel,  
94 agreed and stated that eliminating that curb cut will be a lot of trouble for northbound traffic  
95 leaving his business. DRB asked if Farhad had a legal right to cross the subject parcel to access  
96 that curb cut. Benj Deppman stated that they did not have, and that access to use the GLR  
97 property for parking and ingress/egress is by consent only.

98 Dave Curley, representative for the commercial realtor JL Davis Realty, stated it is the owner's  
99 preference to keep the curb cut but want the subdivision approval and have proposed the  
100 subdivision in front of the DRB tonight with the curb cut eliminated.

101 Staff comments- Jen shared that VTrans, Chief Hanley and DPW all support the elimination of the  
102 Middle Road curb cut. The waiver further allows the buildings to be pulled forward similar to the  
103 new buildings north of this property with parking in back which is a requirement of Middlebury  
104 Zoning. The 30-ft easement would serve both lots 1 and 2 and may allow for a future parallel  
105 access road to be developed.

106 Kevin asked for final comments- none expressed

107 **Motion by Gary Baker-** I move that the DRB consider the testimony in deliberative session.  
108 Anne Taylor 2nds. Motion passed 6-yes, 0-no.

109

110 **3. Application ( file #2018-08:146)- The DRB will conduct a hearing pursuant to Sections**  
111 **753 and 1090 to determine whether the Blue Spruce Motel structure destroyed by fire on**  
112 **July 13, 2017, has been abandoned and whether the lack of maintenance has given rise to**  
113 **the conditions outlined in Section 753. The property is located at 2428 Rte. 7 South in the**  
114 **Agricultural Rural District, parcel ID # 08:146.00**

115 Kevin Newton opened the hearing and read the warning and administered the Oath to those  
116 present who intend to submit testimony.

117 Kevin asked about conflicts of interest and ex-parte communication? None expressed

118 Kevin asked Kathleen Ramsay to outline the Town's request of the DRB.

119 Kathleen Ramsay, acting as the Selectboard's agent, expressed that the Town has received  
120 numerous complaints regarding the condition of the Blue Spruce property destroyed by fire in  
121 July 2017. On August 28, 2018 the Middlebury Selectboard formerly moved as an interested  
122 party, to lodge a complaint asking the DRB to act pursuant to Section 753.II of the Zoning  
123 Regulations and determine that the Blue Spruce Motel property has been "abandoned".  
124 Specifically, the property has been unoccupied for over one year and inadequately maintained.  
125 Further, that the condition of the property is a threat to public health and safety, has an undue  
126 adverse impact on aesthetics of the neighborhood and surrounding area and on neighboring  
127 property values. Kathleen provided pictures of the property.

128 Sam Sharma- Mr. Sharma shared that he is a partner in the KANA Corporation and that they have  
129 plans to clean up the property beginning this month. The plan is to rebuild soon. DRB asked when  
130 they could expect the cleanup to be finished. Mr. Sharma thought 3 months would be plenty of  
131 time to complete cleanup. The DRB asked if he had contacted the State regarding environmental  
132 testing, i.e. asbestos and lead. Mr. Sharma replied that the State has not completed any testing yet,  
133 but he did not feel there would be any asbestos.

134 Bernard Quesnel- asked what can the property be used for once it is cleaned up? Can it be a motel  
135 again? Kevin stated that applicants need to talk with staff and make application for their proposal.  
136 That's the starting point.

137 Staff explained that the motel use is a non-conforming use in the Agricultural District and could  
138 have been re-established within 12 months with an administratively approved zoning permit.  
139 Between 12 months and 48 month the use can be re-established upon approval of the DRB. After  
140 48 months the use is deemed to have been discontinued and any future use will need to comply  
141 with the Regulations. This is the same information that was shared w/ Mr. Quesnel by Staff at the  
142 planning office some weeks prior to the hearing.

143 Kevin reminded those in attendance that this hearing is specifically about whether the property  
144 has been abandoned as defined in Middlebury Zoning. The Board is only considering the  
145 abandonment question before them.

146 DRB questions/comments-

147 Is it your intent to remove all burned materials from the site and level grade, starting in 30 days or  
148 less? Mr. Sharma replied yes. After that they hope to rebuild and will submit an application  
149 seeking DRB approval to resume motel use and plans for a new motel.

150 Has any environmental testing been completed? Mr. Sharma replied he is waiting for the State to  
151 conduct the tests. Staff stated that 3 months seems like an optimistic estimate- that it would likely  
152 take longer with environmental testing and abatement factored in.

153 Mr. Sharma stated that the 3 cabins in back were not seriously damaged and can be repaired. They  
154 have been unoccupied since the fire. DRB noted that their review is concentrating on the burned  
155 structures.

156 Public questions/comments- none expressed

157 Kevin asked for final comments- none expressed

158 **Motion by Don Keeler-** I move that the DRB consider the testimony in deliberative session. Gary  
159 Baker 2nds. Motion passed 6-yes, 0-no.

160

161 4. Application (file #2018-21:001) request by Habitat for Humanity of Addison County for final  
162 conditional use and subdivision approval, pursuant to Sections 540 and 560, for two (2)  
163 separate residential units on one parcel, with land to be held in common for the benefit of the  
164 residents. Applicants also request a front setback waiver pursuant to Section 724. Previous to  
165 this hearing the Applicants received a Preliminary Determination from the DRB, dated June 7,  
166 2018. The property is located at 51 Seymour Street in the High Density Residential district  
167 (HDR), parcel ID# 021:001.000.

168 Kevin Newton opened the hearing, read the warning and administered the Oath to those present  
169 who intend to submit testimony.

170 Kevin asked about conflicts of interest and ex-parte communication? Anne and Gary shared they  
171 had heard comments from neighbors regarding this project. John MacIntyre recused himself from

172 this hearing due to a conflict of interest because his business may become involved with the  
173 project. John sat with audience.

174 Ashley Cadwell- Expressed thanks to all parties for their assistance with this project, including  
175 Louis Colasanti, Otter Creek Engineering (OCE), John McLeod and Students, Middlebury  
176 College, and Town Staff.

177 Brent Rakowski (OCE), civil engineer for the Habitat project began by describing water and  
178 wastewater connections. They have discussed sewer and water projects needs with DPW and  
179 confirmed that the Town has the capacity to serve the 2 homes proposed. A State potable water  
180 and wastewater permit will be required. A new gravel drive is proposed along the south boundary  
181 that will provide access to both homes and parking for 2 vehicles/home as shown on site plan.  
182 Electric and telephone will be buried.

183 Stormwater management- Brent described stormwater management plans. A State stormwater  
184 permit will not be required. Stormwater from the property flows from the North to the South. The  
185 plans design builds in a little more stormwater capacity on the Habitat site. This is not a pond, but  
186 rather a broader area designed to collect stormwater runoff and direct it southerly to a 12 inch  
187 culvert and into a stone lined outfall area. Mr. Rakowski noted the area is underlain by clay and  
188 water will infiltrate very little. The stoned outfall area is designed to slow down runoff before  
189 continuing south toward Lucas Lane. The design helps to capture and direct stormwater runoff  
190 from the north as much as possible and does not restrict flow. Stormwater runoff from roofs will  
191 fall onto a stone lined drip edge and disperse toward the center of the lot.

192 John McLeod introduced several students from his Middlebury College, who explained the  
193 project in more detail. The students used models and renderings to help the board visualize the  
194 final design-

195 By purchasing a portion of the Colasanti property in the rear, the lot size has been increased to  
196 meet the minimum lot area requirement of 10,000 sq. ft. per unit for this zoning district. A  
197 Zoning Permit for the boundary adjustment was administratively approved, #2018-097.

198 Emma McDonough- expressed that the driveway will be located along the south boundary and  
199 increased to 14-ft. wide as requested by Dave Shaw, Fire Chief. Additionally, two 9-ft. by 20-ft.  
200 parking spaces have been built into the site plan for each home.

201 Calder Birdsey- Building A has been brought forward to create a similar frontline as other homes  
202 along the Seymour Street. Moving the home toward the Street necessitates the request for the  
203 setback waiver.

204 The architectural design of the homes incorporate conventional gable end overhangs, minimum 4  
205 inch eave overhangs, and window and door trim similar to neighboring homes. The minimal eave  
206 overhang results in a design that eliminates ice damming problems. These home are very high  
207 performance. The design is meant to be consistent with the VT Vernacular providing a fresh,  
208 clean appearance. The homes will not have eave gutters. Gable end window and door trim will be  
209 sit proud of the siding materials. Side walls will be a metal standing seam material. Gable ends  
210 wall materials will be horizontal cedar shiplap siding.

211 DRB questions/comments-

212 Who will own the land/maintain stormwater infrastructure? Ashley Cadwell responded that the  
213 property will held as common land for the benefit of the both homeowners. It will be typical of a  
214 condo ownership. Habitat will hold the mortgage and will make sure stormwater infrastructure is  
215 maintained and functioning.

216 Is there stormwater infrastructure along Seymour Street that these homes could be connected to?  
217 Brent Rakowski responded that there are swales, but there are no catch basins along Seymour  
218 Street to tie into.

219

220 Public comments-

221 Dave Hohenschau- Thanked Habitat for their cooperation. Mr. Hohenschau acknowledges that  
222 stormwater through this area naturally travels from north to south. He expressed that currently  
223 there is no ponding of water on his property and that he wished to state an opinion for the record  
224 that any future ponding of water on his property would be as a result of this project. Brent  
225 Rakowski affirmed that this project shouldn't impact stormwater ponding on Mr. Hohenschau's  
226 ponding. He feels a 12-inch culvert is adequately sized and it is set 6 inches lower than the  
227 surrounding elevations. This would eliminate any ponding. John MacLeod expressed that they  
228 can't control what happens on property they don't control, and suggests that existing conditions  
229 should be well documented in the event that the building addition proposed by Mr. Hohenschau  
230 alter drainage or any of Mr. Rakowski's assumptions.

231 In regard to the pump station for building B, what happens during a power interruption? Alex  
232 Carver, builder, responded that the pump station has lots of storage capacity and could also be  
233 pumped by a septic service if the power is off for an extended period of time. The system is sealed  
234 and should not surface. The maintenance of the pump station will be the responsibility of the  
235 Homeowners Association.

236 Kevin Parizo- Owns the property north of Mr. Hohenschau, and attributes drainage problems in  
237 the area to an unmaintained and partially removed ditch located to the west on the Colasanti  
238 property- did Mr. Rakowski evaluate that? Mr. Rakowski explained that their objective was to  
239 manage the stormwater generated from the Habitat property and document that the Habitat project  
240 will not change stormwater flows. They can't control or fix the problems that are located off the  
241 Habitat property.

242 Natalie Peters- Expressed that the Design Advisory Committee (DAC) had looked at Habitat's  
243 original design plans and wanted to be on the record that the original designs were well-done and  
244 strongly supported by the DAC.

245 **Motion by Anne Taylor-** I move that the DRB consider the testimony in deliberative session.  
246 Dave Hamilton 2nds. Motion passed 5-yes, 0-no.

247

248 8:45 PM- DRB entered deliberative session to discuss applications.

249

250 9:50 PM- **Motion by Gary Baker-** I move that the DRB exit deliberative session. John MacIntyre  
251 2nds. Motion passed 6-yes, 0-no.

252

253 **Board decisions on the following applications**

254 **2. Application (file #2018-28:176) request by GLR, LLC for a 2-lot subdivision and planned**  
255 **unit development approval pursuant to Section 550 and 560. The property is located at 55**  
256 **Middle Road in the Village Residential Commercial (VRC) District, parcel ID#**  
257 **028:176.000.**

258 **Motion to approve by Anne Taylor-** I move that the Middlebury Development Review Board,  
259 having reviewed the application submitted and having heard and duly considered the testimony  
260 presented at the public hearing of November 5, 2018, approve this request for 2-lot Subdivision and

261 setback waivers for a Planned Unit Development at parcel 28:176 located at 55 Middle Road North,  
262 subject to the requirement that the final survey show the easement as 30-ft. David Hamilton 2nds.  
263 **Motion passed 6-yes, 0-no.**  
264

265 **3. Application ( file #2018-08:146)- The DRB will conduct a hearing pursuant to Sections**  
266 **753 and 1090 to determine whether the Blue Spruce Motel structure destroyed by fire on**  
267 **July 13, 2017, has been abandoned and whether the lack of maintenance has given rise to**  
268 **the conditions outlined in Section 753. The property is located at 2428 Rte. 7 South in the**  
269 **Agricultural Rural District, parcel ID # 08:146.00**

270 **Motion by David Hamilton-** I move that the Middlebury Development Review Board, having  
271 reviewed the complaint submitted and having heard and duly considered the testimony presented at the  
272 public hearing of November 5, 2018 determines that the Blue Spruce Motel located at 2428 Rte. 7  
273 South on parcel #08:146 **has been ABANDONED and Inadequately Maintained** as provided for in  
274 Section 753II. And further, we order the owners of the Blue Spruce Motel property to remove all fire  
275 damaged materials, and cover over or fill any excavation or basement to normal grade and secure the  
276 remainder of the structures at the expense of the owners. Gary Baker 2nds. **Motion passed 6-yes and**  
277 **0-no.**  
278

279 **4. Application (file #2018-21:001) request by Habitat for Humanity of Addison County for**  
280 **final conditional use and subdivision approval, pursuant to Sections 540 and 560, for two**  
281 **(2) separate residential units on one parcel, with land to be held in common for the**  
282 **benefit of the residents. Applicants also request a front setback waiver pursuant to**  
283 **Section 724. Previous to this hearing the Applicants received a Preliminary**  
284 **Determination from the DRB, dated June 7, 2018. The property is located at 51 Seymour**  
285 **Street in the High Density Residential district (HDR), parcel ID# 021:001.000.**

286 **Motion to approve by David Hamilton-** I move that the Middlebury Development Review Board,  
287 having reviewed the application submitted and having heard and duly considered the testimony  
288 presented at the public hearing of November 5, 2018 **approve** this request for front setback waiver,  
289 subdivision and historic review of two homes to be constructed as shown on the application and site  
290 plan submitted, for parcel 21:001 located at 51 Seymour Street. Anne Taylor 2nds. **Motion passed**  
291 **5-yes, 0-no, John MacIntyre abstained.**  
292

293 **Other business**

294 Next meeting is 11/26/2018. Rick will not be available.  
295

296 **1. Adjournment**

297 **Motion by Gary Baker-** moved the DRB to adjourn at 10:00 PM, 2<sup>nd</sup> by Dave Hamilton. **Motion**  
298 **passed, 6-yes -0-no.**

299 Meeting adjourned at 7:10 PM

300  
301 Minutes Submitted by Dave Wetmore