

**Town of Middlebury
Development Review Board (DRB)
Town Office Large Conference Room
Minutes of August 12, 2019
Approved as presented October 28, 2019**

Members Present: Kevin Newton, Chair, Gary Baker, V. Chair, Rick Emilo, David Hamilton, Jason Larocque, and Anne Taylor

Members Absent: John MacIntyre

Staff Present: Jennifer Murray, Dave Wetmore

Others Present: Virginia Logan, Jason Barnard, Ann and Glenn Larrow, Shirley and John Carlson, Louri London, Andrea Murray, Kristen Brown, Rita Munroe, Robert Murray and Yvette Feig, Stacey and Todd Stone and Kathleen Wheatley (videographer)

MEETING AGENDA

1. Sketch plan application (file # 2019-25:167.000-SD) request by Virginia Logan for a proposed 2-lot subdivision of property located at 32 High Street. Pursuant to Section 561, the DRB will review the proposal for general compliance with Middlebury Zoning. Final plan/plat public hearing approval will be sought at a later date. The subdivision proposed is located in the High Density Residential District, parcel ID #025167.000.
2. Application (file #2019-25:161.000-CU) request by 29 Seminary Street, LLC for conditional use approval for an assisted living facility for up to six adults with special needs located at 29 Seminary Street. The 29 Seminary Street, LLC property is located in the High Density Residential District, parcel ID #025161.000

I. Call to Order

Kevin Newton, DRB Chair, called the meeting to order at 7:00 pm, reviewed the night's agenda, and asked if there were any non-agenda items/public communications. None expressed.

II. Approval of Minutes-

Motion by Gary Baker- moved to approve the minutes of 7/22/2019 as presented. Anne Taylor 2nds. No discussion. **Motion approved 5-yes, 0-no, Rick abstained**

III. DRB public hearings/meeting:

1. **Sketch plan application (file # 2019-25:167.000-SD) request by Virginia Logan for a proposed 2-lot subdivision of the property located at 32 High Street. Pursuant to Section 561, the DRB will review the proposal for general compliance with Middlebury Zoning. Final plan/plat public hearing approval will be sought at a later date. The subdivision proposed is located in the High Density Residential District, parcel ID #025167.000.**

Kevin Newton opened the hearing, read the warning and administered the oath to those present who intend to present testimony. Taking oath were Virginia Logan, Jason Barnard, Ann and Glenn Larrow, Shirley and John Carlson, Louri London and Staff.

Kevin- asked if there are any DRB conflicts of interest or ex-parte communication. None expressed.

Kevin- invited Virginia Logan (property owner) and Jason Barnard (consultant) to present their application.

Jason- The Logan property is a .52 acre parcel with a single family home located at 32 High Street in the High Density Residential (HDR) district. A boundary survey has been completed. Ms. Logan is proposing a 2-lot subdivision of her property resulting in 2 complying parcels of approximately .27

45 acres each. Her goal is to sell her existing home and build a new one for herself on lot #2. A contractor
46 has completed preliminary ledge probes to 10-ft. in the area of the proposed home. The garage for the
47 new home would be located below grade, under the new home. The new home on lot #2 would be
48 connected to Town water and sewer. Stormwater will sheet flow across the Logan property and
49 discharge to the High Street right-of-way. A catch basin is located near the intersection of High Street
50 and Stewart Lane.

51
52 Jason acknowledges that there are several obstacles to the development proposed on lot #2. They
53 include driveway compliance with access requirements, stormwater management concerns, retaining
54 wall construction to protect neighbor's property and structures on lot #2.

55
56 **DRB questions/comments-**

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58 Kevin- Will the development on lot #2 require modifications to the existing driveway? Modifications
59 will not be required until the turn onto lot #2 is made. How steep is the existing driveway? Jason
60 expressed that it is very close to the maximum grade of 10%. Jason commented that the driveway has
61 not been designed and cross sections would be developed prior to submitting final plat. Do the Larrows
62 have a deeded right-of-way for their driveway? Yes. Will driveway construction or long-term use
63 interfere with Larrows' use? Developing the turn to serve lot #2 will for interfere with Larrows' use for
64 a short time. Long term? More field work is required to determine that.

65
66 Dave H.- Observed that present grades approach 16%, and the turn on to lot #2 will be tight. Jason
67 agreed but noted that the information represented is based on the Town's parcel maps and a topo survey
68 will be completed as part of driveway design and house placement.

69
70 Jennifer- Is the placement of the house site fixed? No, it is still in the planning stages and could be
71 shifted.

72
73 Dave H.- Is the house located where you want it or is it there to make the grade less steep? It may be
74 moved forward and further south.

75
76 Dave W.- Reminded the DRB that this is not a hearing but rather a sketch plan meeting pursuant to
77 Middlebury Zoning. The goal of this meeting is to determine whether this is a major or minor
78 subdivision application and where the obstacles are to final subdivision approval. A major subdivision
79 involves extension of Town or private infrastructure, a minor subdivision does not.

80
81 **Public comment/questions**

82
83 Ann Larrow- she and her husband own the property adjacent to the Logan property on the north and
84 their driveway crosses the Logan property. Their concerns are:

- 85 1. Preservation of the maple tree near the property line. They are concerned that installing the
86 driveway and retaining walls will severely damage the trees' root structure.
- 87 2. Ledge blasting as it relates to damage to their home. The Larrows shared pictures with the DRB
88 that show foundation cracks likely from hydraulic water pressure.
- 89 3. Stormwater seepage along the foot of Chipman Hill is significant and development of lot #2 will
90 further exacerbate stormwater and drainage issues.
- 91 4. They acknowledge that drainage and stormwater issues are a problem for them and have recently
92 discussed stormwater improvements with the Dept. of Public Works. Tying into the Town's
93 stormwater system near Stewart Lane was cost prohibited. They have recently repaved their
94 driveway. The Larrows expressed concern about fire and rescue vehicles access on to lot #2.

95
96 Jason L. – summarized the evidence presented, that the location of stormwater infrastructure has not
97 been determined, nor whether the system will need to be extended to connect the Logan property.

99 Anne- is the shed important, can it be moved? Jason stated the shed is sound and it is not entirely
100 driving the lot line placement.

101
102 Shirley Carlson- they are concerned about visual impacts from their home on Chipman Heights and
103 asked applicant how large is the home being proposed? It will be a 3-bedroom 1-1/2 story home with
104 the garage underneath. Maximum height allowed by zoning is 35-ft.

105
106 Rick E.- asked if the chain link fence between Larrow and Logan is the boundary? Larrow stated they
107 believe it is the boundary.

108
109 Dave H.- could the hammerhead at the garage be oriented to south rather than north? Jason thought it
110 could.

111
112 Jennifer- felt it was important to share her opinion early in the process that much of the discussion she
113 heard tonight about potential problems with this proposed development seems to be tiptoeing around
114 the fact that building a house on a poorly drained hillside like this is not a good idea. There are a
115 number of problems associated with building on a steep slope that might not be fixed with an
116 engineering design, and she wishes that the zoning specifically discouraged building on steep slopes.

117
118 **Motion by Gary Baker-** I move to consider this a major 2-lot subdivision. Jason 2nds.

119
120 DRB asked how this classification would affect the review process. Dave W. explained a major
121 subdivision requires 2 warned hearings, preliminary and final. DRB acknowledges that there are
122 significant compliance concerns related to steepness of access, shared access, stormwater management,
123 drainage issues and development on the steep slope.
124 Motion approved 6-yes and 0-no.

125
126 Logan sketch plan meeting concluded at 7:50 PM.

127
128 **2. Application (file #2019-25:161.000-CU) request by 29 Seminary Street, LLC for**
129 **conditional use approval for an assisted living facility for up to six adults with special**
130 **needs located at 29 Seminary Street. The 29 Seminary Street, LLC property is located in**
131 **the High Density Residential District, parcel ID #025161.000.**

132 Kevin Newton opened the hearing, read the warning and administered the oath to those present who
133 intend to present testimony. Taking oath were Andrea Murray, Kristen Brown, Rita Munro, Robert
134 Murray and Yvette Feig, Stacey and Todd Stone and Staff.

135
136 Kevin- asked if there are any DRB conflicts of interest or ex-parte communications. Jason Larocque
137 recused himself and sat with the public.

138
139 Kevin- invited Andrea Murray and Kristen Brown (owner/applicants) to introduce their application.

140
141 Andrea and Kristen- introduced their plan to develop the 29 Seminary Street property (known as
142 "Yellow House") with the intention of making it a home for up to 6 adults with special needs, which
143 includes their two children. The 29 Seminary Street property is located in the High Density Residential
144 district (HDR) presently developed with a 5-bedroom SFH and a detached 3-bedroom apartment. Each
145 residential unit (main house and carriage barn) is planned to have 3 residents with special needs living
146 together with a head of household and 1-2 additional support workers.

147
148 Andrea and Kristen are seeking TRC licensure as a Therapeutic Community Residence from the VT
149 Division of Health and Human Services. One requirement of the TRC application is evidence of
150 compliance with the Town's zoning. Licensure would allow up to 4 residents with special needs in each
151 residential unit. This summer, the main house and property have been undergoing upgrades to life
152 safety systems including sprinkler system, ADA access improvements, expanded parking on-site,

153 exterior lighting and new landscaping. Construction is anticipated to finish this week. The carriage barn
154 will be converted at a later date to a 5-bedroom residential unit. Presently, the barn is a 3-bedroom
155 residential unit on the second floor with an office and garage below.
156

157 Over the summer (six weeks), Yellow House operated a program for up to 10 individuals with the goal
158 of seeking out potential residents. This will be an ongoing process as they work toward full residency.
159

160 The residents receiving care do not drive. Yellow House owns a van to provide transportation when
161 necessary. 29 Seminary Street is located close to downtown and accessible to public transportation. The
162 impacts to the neighborhood will be similar to residential uses. Group homes are being phased out.
163 There are 2 group homes in Middlebury and only 11 in VT.
164

165 DRB questions/comments

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167 Dave H.- Where will trash/recycling be located? Currently located in the carriage barn. Once the
168 carriage barn is renovated a new area will be created.
169

170 Gary- expressed concern about parking and traffic related to the day programming. Will the day
171 program continue once individual residents are determined? Andrea explained the programming needs
172 to continue until they have full occupancy. The intent is to operate as a residence for 6 adults (3 per
173 dwelling unit) with special needs. Andrea's and Kristin's adult children will be living there. It is not a
174 school or business- it will be a structured and supportive home for them.
175

176 Gary-clarified that residency is limited by the TCR to 4 adults/unit but the applicant is proposing a
177 maximum of 3 adults/unit. If day programming was to extend to other special needs adults who are not
178 residents then there would likely be additional traffic and parking impacts for which amended CU
179 approval should be sought. Andrea agreed and expressed that there would never be more than 7-8
180 vehicles on site.
181

182 Dave W. acknowledged that the 3 parking spaces along Seminary Street have existed for many years,
183 they are typically considered on-street parking and should not be considered toward the required
184 parking count. Since there are 2 residential units proposed, the Regulations require four 9-ft by 20-ft
185 parking spaces- which are available near the carriage barn.
186

187 Jennifer- asked about the configuration of the main house and carriage barn? The main house has 5-
188 bedrooms, office, kitchen, living, dining and small den area. The carriage barn presently has a 3-
189 bedroom apartment, professional office space, garage and utility area. Once the carriage barn is
190 renovated it will include a small kitchen, living room and 5-bedrooms. The garage portion will likely be
191 discontinued and converted to living space. It is expected that residents will eat together in the main
192 house.
193

194 Andrea Murray- noted that the property is served by Town water and sewer and that the Town has
195 issued the allocation letter that allows them to amend their State water and wastewater permit.
196

197 Public comments/questions

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199 Rita Munro- She is excited about the use and noted that the TCR license will limit day use from non-
200 residents.
201

202 David Munro- Expressed that on-street parking is limited.
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204 Kristen Brown- explained that residents don't drive and that they have purchased a Sprinter van to
205 provide transportation for their residents. She expressed that traffic from Yellow House should be less
206 than the B&B that was operated previously.

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Robert Murray- Their property is located off of High Street across Seminary and they are concerned about light trespass from vehicles parking in the carriage barn parking area. Andrea explained that landscaping will start soon and that she will meet with Mr. Murray and try to address his concern.

Stacey Stone- expressed that Andrea and Kristen are addressing a need. She believes that the residents will be very respectful of the neighbors and that they bring a lot to the community, through random acts of kindness.

David H.- will this remain a LLC or a 501C.3. At this point it will remain a LLC.

Gary- suggested that the DRB needs to determine whether this use meets the definition of an assisted living facility. Should be discussed in deliberative session.

Kevin- asked if the Board or others had additional questions. None expressed. Kevin asked for motion to close hearing.

Motion by Gary Baker- I move to close the public hearing for 29 Seminary Street LLC and enter deliberative session to discuss application. Anne. 2nds. Motion approved 5-yes, 0-no- 8:30 PM

Motion by Gary Baker- I move to exit deliberative session. 2nd by David H. Motion approved 5-yes and 0-no.

Motion by David Hamilton- 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 August 12, 2019, approve this conditional use for an assisted living facility for adults with special needs as presented in the application by the Andrea Murray dba 29 Seminary Street, LLC located at 29 Seminary Street, parcel # 025161.000, subject to conditions outlined by the DRB during deliberative session. Anne Taylor 2nds. Motion approved 5-yes and 0-no.

IV. Other business-

1. No meeting on August 26, 2019

2. On-street parking discussion- Staff wanted to share with the DRB that on-street parking waivers have been granted for many years for businesses in the downtown improvement district and the VRC district. Staff discussed evidence to support findings that there is adequate parking on-street to support downtown businesses. Members observed that most businesses on Main Street do not have off-street parking associated with their property and hesitate allowing parking to limit business growth in downtown area. Jennifer suggested that there are some scenarios where they may want to deny an application based on the shortage of available parking, and provided a couple of examples of proposals that could place an undue burden on available on-street and municipal lot parking if they were to simply purchase spaces to meet all their needs. She noted that for a large developer, a fee of \$250/space is not much. David H. notes there are places in Downtown Burlington that have no requirements for off-street parking, but acknowledges that they do also have parking structures. DRB asked whether the parking study done a few years ago has value? DRB suggested that parking requirements outlined in the Zoning should be compared with ITE parking recommendations.

3. DRB Rules of Procedure discussion- Dave noted that he had contacted Garrett Baxter at VLCT regarding whether the applicant/appellant should have to be present to represent their application. Garrett stated that it is his opinion that it is “certainly in the best interests of the applicant/appellant or their representative to appear at their hearing to argue their case and that their failure to do so, or to appear to only answer some, but not all questions posed, would severely reduce their chances of success. If an applicant/appellant or their representative doesn’t

260 provide sufficient relevant and reliable evidence for the DRB to rule in its favor then the DRB
261 has no alternative but to deny the application/appeal”. Dave noted that DRB Rules of Procedure
262 (ROP) section IV.F. does address the circumstances when an applicant fails to appear. DRB
263 members felt that it is still confusing as the ROP’s also permits the applicant to be represented
264 by an “agent or attorney”. Dave felt that Garrett’s concluding comment provides guidance for
265 the DRB- “If an applicant/appellant or their representative doesn’t provide sufficient relevant
266 and reliable evidence for the DRB to rule in its favor then the DRB has no alternative but to
267 deny the application/appeal”. Dave will continue to seek out how the ROP’s could be amended
268 to address DRB concerns.

269 **3. Adjournment**

270 **Motion by Rick Emilo-** moved the DRB to adjourn at 9:40 PM, 2nd by Jason. **Motion passed, 6-yes -**
271 **0-no.** Meeting adjourned at 9:40 PM

272 Minutes Submitted by Dave Wetmore