

Richmond Development Review Board  
 REGULAR Meeting  
 UNAPPROVED MINUTES FOR JULY 13, 2016 MEETING

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Members Present:	Ian Bender; Matthew Dyer; Roger Pedersen; David Sunshine (Chair)
Members Absent:	Alison Anand (Alternate)
Others Present:	Niels Rinehart, Zoning Administrator; Ruth Miller for MMCTV Comcast 15; Jacob LaBounty; Bruce and Cara LaBounty; Marcy Harding; Lynnette Clandon; Darcy Buret; and Dan Martin

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David Sunshine called the meeting to order at 7:00pm.

**Bruce and Cara LaBounty** – Application #16-055 for Conditional Use Approval and Site Plan Review by the DRB for the construction of an Accessory Dwelling on the property located at 2900 East Main Street (EM2900). The property is owned by Bruce and Cara LaBounty and lies within the Agricultural/Residential District.

Sunshine swore in Jacob LaBounty, Bruce and Cara LaBounty.

Ms. LaBounty introduced the proposed plans to construct an accessory dwelling for their son, Jacob LaBounty. The dwelling would cover 864 square feet and the existing single-family residence covers 2,256 square feet. The new proposed structure would be detached from the main residence.

Roger Pedersen asked for clarification that the LaBounty property was Lot 3 within an existing subdivision and if there were any restrictions in their covenant. Niels Rinehart summarized the Richmond Zoning Regulations governing the construction of an accessory dwelling, explaining that someone related to the property owner must be present on the lot, either in the main house or the accessory dwelling. Ms. LaBounty explained that they could subdivide the lot again if they chose to but that they had no plans to do so at this time. Pedersen clarified that unless the lot was subdivided, the LaBountys could not separately sell the new structure.

Sunshine said that the LaBountys will need to get an amendment to the existing wastewater permit. Ms. LaBounty said that they had met with an engineer but that they wanted to clear the new structure with the Board before going to the State. She asked if getting the wastewater amendment could be a condition to the Board’s approval of their application.

Ms. LaBounty explained that they were coming before the Board because the proposed structure would exceed the 30% size threshold permitted by the Richmond Zoning Regulations. She felt that they were unfairly hindered by the size of their single family dwelling and that the proposed structure at 38% would still be in keeping with the Town definition of an accessory dwelling as being subordinate to the main structure. She would like to ask the Town for a waiver so that they could build the proposed structure at 38% the size of the principal structure. Sunshine and Mr. LaBounty discussed the State statute concerning the permitted size threshold for an accessory structure, citing 24 V.S.A. Sect 4412(1)(E). Mr. LaBounty said that Underhill and Jericho permitted larger structures. Ms. LaBounty said that the reasoning behind the restriction to 30% is not provided but that the definitions in the RZR explains that the accessory structure must be clearly subordinate. Sunshine explained that the restrictions are to 30% and that he doesn’t know how or why other towns could exceed that number since the number was written in State statute. Niels Rinehart explained that the LaBountys had to come before the DRB since they were proposing to build a detached structure to serve as an accessory structure. Sunshine questioned whether the DRB can give a waiver on that restriction but said that he

1 didn't know the answer. Ms. LaBounty said that they are asking for a waiver and Mr. LaBounty said  
2 that it's odd that he could double the size of their present house for a duplex but not build an accessory  
3 structure larger than 30% of the principal dwelling. Sunshine agreed that it was somewhat  
4 discriminatory. Sunshine asked Rinehart if he could discuss the question of a waiver with VLCT.

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6 No questions were raised by the Board.

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8 Ms. LaBounty asked that if other towns have gone beyond 30%, then could the DRB approve the  
9 proposed size of 38% based on the fact that other towns have done so. She also suggested that the Board  
10 come out of deliberative session waiving the 30% restriction with the understanding that they are legally  
11 permitted to waive it.

12  
13 Matthew Dyer made the motion to close the hearing, Pedersen seconded and the motion passed 4-0.

14  
15 **Marcy Harding and Daniel Martin** – Application #16-043 for an Appeal of Zoning Application #16-  
16 040 for the construction of a Single Family Residence at 1630 Stage Road (SR1630). The property at  
17 1630 is owned by Darcy Buret and lies within the Agricultural/Residential District.

18  
19 Sunshine swore in Marcy Harding and Dan Martin.

20  
21 Sunshine explained that he has had a social relationship with Harding and Martin for several years and  
22 asked if anyone had a problem with him presiding over the hearing. Harding, Martin, Darcy Buret, as  
23 well the Board and Niels Rinehart said that they did not believe Sunshine needed to recuse himself.

24  
25 Rinehart discussed his decision to grant the building permit to Darcy Buret, explaining that the permit  
26 was for the construction of a single family dwelling at 1630 Stage Road. Rinehart explained that he had  
27 required Buret to hire a Vermont-certified engineer to produce a plan for the proposed construction.  
28 Buret contracted O'Leary and Burke and they produced a site plan for a driveway that would be within  
29 grade. Rinehart also asked for an erosion control plan and said that he spoke with Justin Willis about  
30 the septic design. He also spoke with Helen Carr at the Stormwater Division since the proposed  
31 driveway is on a particularly steep slope. Also, Rinehart explained that Buret received an access permit  
32 and but that she has since received a new access permit in which the access is moved about 30 feet up  
33 the road. Buret explained that they need to extend the access to create a longer driveway to meet the  
34 required 12% grade. Buret also said that the fire chief approved the driveway for access. Rinehart  
35 explained that he also asked that Buret hire a surveyor to shoot-in the boundaries to assure that the  
36 proposed construction did not run-in to abutters' land.

37  
38 Rinehart said he asked Buret to do more for her permit than he has asked of other property owners but  
39 that given the complexity of the project and the concerns raised by abutters, he wanted to make sure  
40 that everyone was adequately covered. Sunshine asked for clarification about the access and Rinehart  
41 said that what is shown on the project plans dating to May 20, 2016 illustrates what has been constructed  
42 and is now on the map. The new access permit will change the location of the access.

43  
44 Ian Bender asked about Rinehart's discussion with the VLCT concerning the appeal. Rinehart explained  
45 that Harding had raised the concern that the plans did not illustrate where the easement stood and that  
46 the 10,000 square foot building zone encompassed the logging road easement. Rinehart explained that  
47 he does not review easements since easements involve legal matters. If he did, then he could open the  
48 Town to legal action. In short, it's a civil matter. If a dispute arose over the easement, Harding and  
49 Martin would not come to the Town but rather go to court. Rinehart said that he confirmed this analysis  
50 with VLCT in a phone conversation. Pedersen asked for clarification as to what in Rinehart's decision  
51 was being appealed. Rinehart said that the issue that was being appealed was that his approval of the

1 permit did not account for the presence of the easement. The permit was granted because Buret had  
2 done everything they had been asked to do and were in compliance with the Town regulations. Rinehart  
3 explained that Harding and Buret discussed the matter between themselves resulting in the updated map  
4 with the text defining the easement and the diminished area for the possible construction of the house,  
5 so that the construction would not impact the easement.

6  
7 Harding handed out documents and explained why they had come before the DRB, explaining that they  
8 were not here to prevent Buret from building a house and that they are glad to welcome her to their  
9 neighborhood. Harding also said that the Buret property is challenging with steep slopes and rock  
10 outcrops. In 1980, their then neighbor asked for a right-of-way across their land in return for which  
11 they were granted access across his land. Both right-of-ways are restricted to logging purposes only.  
12 The Lusks purchased the land in 1988 and then subdivided their property into two lots in 1998. Buret  
13 bought Lot 2 in 2016 and Harding told her that they had a right-of-way to their plot. Harding saw the  
14 project plans on June 6, 2016 with the permit and saw that the proposed house site as approved  
15 overlapped with the existing right-of-way. In addition there was no notes on the map that discussed the  
16 existence of a right-of-way.

17  
18 Sunshine asked if Harding and Martin found the revised site plan acceptable and Harding said they did.  
19 Harding said she discussed the issue with Buret and that Buret acknowledged the Harding right-of-way  
20 and contacted her engineer to change the site plan to reflect the existence of the right-of-way. Harding  
21 said that she has asked for the addition of some labels to indicate where the right-of-way sits since there  
22 is nothing to tie-in the note with the plan. In addition, Harding said, Buret told her tonight that the  
23 wastewater and revised access permit are being finalized. In conclusion Harding said that they would  
24 like a new zoning permit supported by a revised site plan, assuming that the site plan contains what  
25 they were asking for.

26  
27 Buret said that she was concerned because each revision costs them money with their engineer but she  
28 said that they can have an arrow put on the drawing to answer Harding's questions.

29  
30 Pedersen asked if the permit could be appealed by anybody and Rinehart said that anything he does can  
31 be appealed by anybody. Pedersen said that presumably if the Board was to grant the appeal, then Buret  
32 would have to present Rinehart with a new permit application and a new site plan map. Sunshine and  
33 Pedersen said that the role of the Board is to rule on the appeal, not what happens as a result of that  
34 appeal. Pedersen asked if Harding and Martin had brought items before the Board that would allow the  
35 Board to appeal the granting of the permit. Sunshine said that the Board should review as to whether or  
36 not Rinehart was in compliance with 5.2.1(c)(i-vii) enabling him to grant the permit. Pedersen asked if  
37 the Board could say that if Rinehart had known about the easement over the logging road he would not  
38 have granted the permit and now that he knows of its existence can the Board not agree to the appeal  
39 on that basis. Sunshine disagreed and said that the criteria Rinehart is required to review do not include  
40 looking at deeds, covenants, and right-of-ways, and that those are civil matters. Pedersen asked, if  
41 Rinehart had known about it, would he still have been able to grant the permit and is that a valid reason  
42 to grant the appeal. Also, Pedersen stipulated that if the Board finds that Rinehart did everything he  
43 was supposed to do that then the argument presented by Harding and Martin would not be sufficient  
44 for the Board to grant the appeal.

45  
46 Pedersen asked if the changes to the site plans required issuing a new permit or, as suggested by  
47 Sunshine, tying the existing permit to a new plan. Pedersen said that if the Board cannot grant the appeal  
48 because they do not have to ability to do so then what alternative does the Board have? Sunshine  
49 suggested that if everyone was in agreement, the Board could dismiss the appeal with the condition that  
50 the Appellant and Landowner come to an agreement and Rinehart amends the permit, tying it to the

1 revised site plan. Pedersen said it's either a yes or no question, the Board has to decide whether Rinehart  
2 did anything wrong in granting the permit.

3  
4 Pedersen and Sunshine asked if Rinehart, Harding, and Buret could do something between themselves  
5 that would not need to involve the Board and then tie it to the new site plan. Rinehart said that there  
6 isn't anything for him to actually change on the permit form and asked for clarification as to what 'tie-  
7 in' meant. Harding said that the permit was signed using the old site plan and that there's nothing tying  
8 the permit to the revised site plan. Rinehart explained that if there are changes to a project, he gets the  
9 new site plan and files it with the file. There isn't anything to change on the actual permit and that if he  
10 had to write a new permit for every site plan change, then the applicant would be subject to another 15  
11 days of possible appeal and he would be writing out a lot more permits. Sunshine suggested that  
12 Harding and Martin withdraw the appeal with the understanding that Rinehart will accept a site plan  
13 signed-on by both Buret and Harding. Buret said that she did not want to be involved in a process in  
14 which her site plan required signatures of other people that are not property owners. Rinehart said that  
15 by proceeding as Sunshine suggested, the Town would be getting into the risks that the VLCT warned  
16 against, namely that they would be opening the Town to legal action. Harding said that they want to  
17 know that the revised site plan has been officially approved and Sunshine said that the Board doesn't  
18 have that authority and so he is trying to forge an agreement between the parties, although he knows  
19 the Board does not have the authority to enforce it.

20  
21 Pedersen said the DRB has no grounds to grant an appeal, assuming that Rinehart did all that he was  
22 required to. The Board cannot give Harding and Martin the assurance that the easement will be obeyed,  
23 only Buret can give Harding and Martin that assurance because it's a civil matter. Rinehart said that  
24 nothing has been done to make it a civil matter. Harding said that no, part of the logging road has been  
25 eliminated. Also, how would any other abutters have any way of knowing that changes have been made  
26 to the site plan. Rinehart read the portion of the deed on the revised site plan that defined the location  
27 of the easement and said that the language located the easement where it was located on the ground.  
28 Harding said that their lawyer disagreed with that interpretation and Rinehart said that that disagreement  
29 was precisely why the Town is not supposed to be involved with a civil matter and why it's settled in  
30 court.

31  
32 Matt Dyer said that at some point the homeowner has to follow what is on the site plan and if they  
33 amend it, then they are beholden to build according to the site plan. Harding asked if an amended permit  
34 is needed if they change the site plan and Sunshine said that is up to the Zoning Administrator. Rinehart  
35 said that Buret was not moving anything on the site plan but rather that they shrank the proposed  
36 building envelope. They moved the access and so they had received a new access permit. If, Rinehart  
37 conjectured, they were going to move the house location or change the driveway location, then a new  
38 permit would likely be needed. Therefore Rinehart did not think the project proposed by Buret would  
39 require a new permit.

40  
41 Buret said they have been doing everything correctly, following the regulations, and that they know  
42 Harding and Martin has a right-of-way and they have every intention of respecting it. In addition they  
43 do not want to be in a situation in which they need to get signatures for any revision to the site plan that  
44 might happen. Rinehart said that if Harding and Martin wanted to take the issue of the right-of-way  
45 further, then they would have to take it to court since it is a civil matter. Sunshine said that Harding and  
46 Martin could either withdraw the appeal or the Board could make a decision on the appeal and that  
47 Harding and Martin could settle their differences with Buret. He said that their differences are not with  
48 the Town since Rinehart followed the criteria as stated in the Richmond Zoning Regulations. It would  
49 be risky to have him review all the deeds and that whether or not Buret respects the right-of-way is a  
50 civil matter between the two parties.

1 Harding asked if the Board could review the appeal and find some way that the building permit reflected  
2 the right-of-way. Sunshine said that the Board can only judge whether Rinehart rightly or wrongly  
3 issued a building permit.

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5 Pedersen made the motion to move into deliberative session and Bender seconded the motion. The  
6 motion passed 4-0.

7  
8 **ADJOURN**

9  
10 Respectfully submitted by Niels Rinehart, Zoning Administrator/Staff to the DRB