

**Fairlee Development Review Board  
August 11, 2009**

**7:07 PM Meeting called to order.**

Board members present: David Fracht (Chair), Ray Coffin & Peter Berger.  
Also Present: Tracy Thurston, ZA, and Richard & Jessie Hall, Don & Mary Davenport and John Adams.

Minutes from July 14 & 28 DRB meeting presented.

**MOTION: (PB) To accept minutes from the July 14, 2009 meeting as amended.**

**SECOND: (RC) > no discussion > VOTE: unanimous (3-0).**

**MOTION: (PB) To accept minutes from the July 28, 2009 meeting.**

**SECOND: (RC) > no discussion > VOTE: unanimous (3-0).**

**7:15 PM Minor Subdivision Application # 09-SUB-6 (Richard and Jessie Hall)**

Richard and Jessie Hall are proposing to divide their 3.8 acre lot as follows: Lot 1: .671 acres, Lot 2: .998 acres with existing acres and Lot 3: 2.131 acres with shop. The property is located at 698 US Route 5S and is further identified as Tax Parcel # 8-3-18.

Jessie Hall explained that they were waiting on the surveyor and asked for a continuance to the next DRB meeting on August 25, 2009. The Chair, David Fracht granted the continuance.

**7:16 PM Discussion of Violation and Enforcement Issues**

Peter Berger led the discussion by referring to Chapter 5 of the Zoning Administrator Handbook.

ZA, Tracy Thurston made copies of Chapter 5 for board members and interested parties.

David Fracht presented a template from the State for Subdivision Review Findings and Decision to employ in making a draft decision on the John Adams proposed subdivision. Subdivision Review Findings and Decision forms will henceforth be implemented.

John Adams asked the board for the status of his subdivision and was informed that the board would review and make decisions during deliberative session after this meeting was adjourned. Mr. Adams said it had been since May and he was still waiting for a decision. Peter Berger said the subdivision had been amended with corrections and reiterated that the board would provide a decision after deliberation.

Tracy Thurston passed out copies of Chapter 5 Enforcement from the Zoning Administrator Handbook.

State statutes cover zoning violations with enforcement for compliance. ZA Thurston said the \$100 fine per day does not need to be in the town zoning regulations as it is in State regulations. Thurston used the Davenport barrier condition, as an example of a condition that was vaguely written and said enforcing the conditions later on is very hard to do. She added what is clearly written now can be better enforced in the future.

Chair Fracht referred to the Grambling subdivision on Maurice Roberts Memorial Highway requiring 20 ft buffers between lots as being well written and asked Thurston what she was doing for enforcement of new and old landowners. Peter Berger interjected in the discussion about the Jesseman property “across the street.” Thurston was under the impression that the Selectboard would not pursue it any further and hence has not continued any action on the current state of the violation.

David Fracht read Enforcement Authorizations on page 25 of the ZA Handbook. It states: If a selectboard refuses to authorize and enforcement action the ZA is placed in the very difficult situation of being unable to perform a required function of the position. In such a situation the ZA has the following options:

1. The ZA can defer to the decision of the selectboard and not act.
2. The Za can attempt to convince the selectboard to change its mind by asking them to get their attorney’s advice about the legality of non-action.
3. The ZA can bring a suit in court to force the selectboard to spend the money; however the ZA would have to pay for the suit personally.
4. The ZA can attempt to enforce the violation without expending funds. A civil violation can be issued and defended in the Judicial Bureau without an attorney if the town has chosen this option.
5. The ZA can resign.

Don Davenport asked the board to “help me with my so called violations in easy words.” David Fracht said he hadn’t read the site plan review for the store but had looked at the trees and shrubbery. Davenport asked why there is a rumor going around that he was going to be fined \$100 a day. Fracht said they were investigating the whole concept of violations and he was mentioned in way of example. Fracht further said he was sorry if the rumor mill had got started and was glad Davenport had come in. Berger said they would apologize if needed and Davenport said he was not here for an apology but for clarification of the situation. He further stated that out of respect, if you have an issue, not to go nosing around looking for a violation. Fracht responded that it had been brought up as a possible violation that the DRB was looking into and believed Peter Berger had done the same (viewed the possible violation). Don Davenport said that if you need to look at my property you can call me.

Berger said he felt this situation was being blown out of proportion. Ray Coffin reminded Mr. Davenport that the Wing’s store is a public business. Berger said the rumor that the DRB was going to initiate fines in a certain amount against the Wing’s property was not

fact. The discussion then took place regarding an apology from the Board to Mr. Davenport who was reacting to false information provided to him.

Ray Coffin then brought up the fact that the (DRB) had been working in conjunction with the Planning Commission on a rewrite of the Town Zoning Regulations.

Fracht said that he'd met with planning members prior to this meeting and had made good progress.

Mary Davenport informed the board that they'd spent a fair amount of time and money and if there are any weak points she'd done all she was going to do, especially looking over there (Colby block).

Tracy Thurston read the original condition regarding screening for Don & Mary Davenport's store. 60 feet of buffer was required.

Berger suggested that the board send a letter to the Select Board requesting a decision from them on how to deal with violations and enforcement in the future. He further thought the minutes for the July 20 SB meeting would reflect his discussion with that Board in regards to dealing with future enforcement issues. Would the SB support the ZA in all future enforcement matters. The entire Jesserman file should be included with the letter. Thurston said the letters and responses and Enforcement Authorization 1-5 should be included and would make copies.

**MOTION: (RC) To adjourn > SECOND: (PB)**  
Adjourned 8:14 PM

Respectively submitted

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Irene Wheeler

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David Fracht, Chair