

**TOWN OF WESTMINSTER
DEVELOPMENT REVIEW BOARD
August 7, 2023**

Members Present: Chris Potter (Chair), Tim Harty (Vice Chair), Oliver Brody,
Don Anderson & Ed Harty

Others Present: David Gorham; Thomas Amsden; Daniel Allen; Barbara Hodgkins;
Russell Hodgkins; George James III; Alisa Allbee Daigneault;
Andre Daigneault; David Dupuis; Lawrence Slason; Joe DiBernardo;
Buck Adams; Norman Beam; Elaine Judd; David Judd;
Alison Bigwood (Interim - ZA) & Kelley Thayer (Recording Clerk)

1. Call to Order: Chris Potter (Chair) called the meeting to order at 6:30 P.M.

2. Adjustments to Agenda: None

3. Acceptance of Minutes: Tim Harty made a motion to accept the minutes as presented from the July 10, 2023 meeting with Oliver Brody seconding it. Hearing no discussion, the Chair called for a vote and the motion passed 5-0.

4. Communications and Public Comment: None

5. New Business: (Discussion / Action):

Application # 23-49

Application # 23-49 Daniel Allen (Owner & Applicant) property located at 1554 Back Westminster Road. The Applicant is requesting a Variance to build a Carport 12' x 20' within 11' – 14' away from the fence abutting the highway. Application will be reviewed under **Section 311 Site Plan Review; Section 446 Residential District; and Section 313 Variances** of the adopted 2017 Zoning Bylaws.

Tim Harty began by reading the application. Tim asked Daniel Allen to give a brief description of his request. Daniel began by stating that he wanted to construct a 12' x 20' carport but needed a variance from the DRB because where the carport will be placed is only 11' – 14' away from the fence abutting the highway. Daniel said this was the only location it could go, otherwise it would be in the middle of the yard. Hearing nothing further, Tim closed this application #23-49 at 6:35pm.

Application # 23-45

Application # 23-45 **APPEAL** of Permit (Norman Beam/Buck Adams) issued for a Lot Line Adjustment at 99 Beakins Hill. This Appeal will be reviewed under **Section 217 Appeals; Section 311 Site Plan Review; Section 446 Residential District Zone;** of the adopted 2017 Zoning Bylaws.

Chris Potter recused himself from this application because he is an abutter to the applicant (Buck Adams). Don Anderson opened the Hearing reading the APPEAL application. The Board received two appeal letters from: Russell & Barbara Hodgkins & David and Elaine Judd. Don asked Russell Hodgkins if he would like to address the Board about his concerns. Russell Hodgkins began by asking the Board if they considered the application, legal & binding. He stated that there was no signature from the ZA when the permit was issued, and it was signed after the fact. Tim Harty answered; “yes they considered it legal and binding”. Russell Hodgkins felt that with the sale of this 1.4 acres with the Lot Line Adjustment from Norman & Elaine Beam to Buck Adams, that his right of way (R.O.W.) had also been sold along with it. Russell Hodgkins stated that according to the “Law of Easements and Right of Way in Vermont” that it says; “that a mutual agreement is needed for any changes, adjustments, or uses of a land recorded right of way”. Russell Hodgkins felt that this constituted a major change of use for the single created 20’ wide land recorded right of way. Russell Hodgkins stated that neither he or his wife have granted permission for this change. Larry Slason who was representing Norman & Elaine Beam and Buck Adams stated that he wrote most of the Bylaws for the Town of Westminster. Larry explained that a Boundary Line adjustment is adding acreage to one parcel of land and the remaining parcel conforms to the Bylaws. Larry Slason stated that in Section 215 D of the Westminster Zoning Bylaws it says that the Zoning Administrator can approve the permit for the Lot Line Adjustment once the acreage has been confirmed.

“215 Zoning Permit Procedure

D. Authority of Zoning Administrator to Issue Zoning Permits

- 1. The Zoning Administrator is authorized to issue the following zoning permits for land development without further approval by the DRB:***
 - a. Construction of one or two family dwellings, provided that such construction and access to the property is in conformance with the provisions of these Bylaws,***
 - b. Additions, reconstructions and improvements to one or two family dwellings, provided that such construction is in conformance with these Bylaws,***
 - c. Signs that conform with the Sign Ordinance***
 - d. Residential accessory uses of 150 square feet in area or greater;***
 - e. Lot/boundary line adjustments that do not result in the creation of new lots or non-conformities. A Zoning Administrator’s approval of a boundary line adjustment will expire 180 days after the approval, unless a plat or property deed description is given to the Zoning Administrator for his or her signature prior to being filed or recorded in the Town Clerk’s office,***
 - f. Handicap accessibility and emergency access waivers. (Except for projects done in the Historic Preservation Overlay District),***
 - g. Accessory dwelling units as defined by 24 V.S.A. 4412.***
 - h. Change of use to a permitted use within an existing building where such change of use does not require additional parking”.***

Norman Beam asked Larry Slason to explain the ROW in question. Larry said that the deed between Russell & Barbara Hodgkins and Norman & Elaine Beam states that there is a 20’ wide easement shared between Hodgkins & Beam to be used in common with their Heirs & Assigns.

Larry stated that each party can share the easement with whomever they choose. There was no transfer of title. Andre Daigneault was concerned that there was a conflict of interest happening since Larry Slason is the Town of Westminster Legal Counsel and is representing Norman & Elaine Beam and Buck Adams. Larry Slason stated that he has also been legal counsel for Norman & Elaine Beam and Buck Adams in the past and emailed the Town to recuse himself and suggested that the Town contact Fisher & Fisher for independent counsel. Chris Potter was concerned that there was only a 45' easement into Buck Adams property and our Bylaws state that it needs to be 50'. Chris said this can be found in Section 441E:

“441 General Standards and Definitions:

E. Frontage:

- 1. In accordance with the Act, no land development may be permitted on lots that do not have either frontage on a public road or public waters. With the approval of the DRB, access to such a road or waters can be achieved by a permanent easement or right-of-way, unless otherwise indicated for an individual Zoning District at least fifty (50) feet in width and capable of being traversed by a motor vehicle.***
- 2. The Subdivision of land constitutes development as defined in these Bylaws and therefore must have the required frontage or secure the approval of the DRB for access by permanent easement or right-of-way.***
- 3. The lot frontage requirement for the District shall serve as the lot width requirement for non-frontage lots.”***

Larry Slason stated that for logging purposes he didn't need a 50' easement and that it was a different set of rules for logging. He said the DRB would have no authority at this point in time if Buck Adams chose to log his land. Chris Potter stated for the record that he does not approve of this, there was nothing in the Bylaws stating these different logging rules. Larry Slason stated that the only issue at hand was whether the ZA properly issued the permit for the Lot Line Adjustment and other issues should be addressed when Buck Adams requests a permit for a specific purpose. Hearing nothing further, Don Anderson closed this application #23-45 at 7:19 pm.

6. Unfinished Business: None

7. Other Business (Discussion / Action): David Gorham and Thomas Amsden approached the DRB to see if would be possible to get a variance to do a Lot Line Adjustment with .50 acres. The current acreage in question was 1.5 acres which is a non-conforming lot.

8. Date of Next Meeting: **Monday, September 11, 2023**

DELIBERATIVE SESSION: After coming out of Deliberative Session, Tim Harty made a motion to **approve** application #23-49 for a variance to construct a carport, with no conditions. Oliver Brody seconded and the motion passed 5-0.

After coming out of Deliberative Session, Don Anderson made a motion to **deny the appeal** for Application # 23-45 Lot Line Adjustment, upholding the original decision approving the application. Tim Harty seconded the motion and vote was held which passed 4-0-1 (Chris Potter recused himself). The Board also reviewed the Conflict-of-Interest Policy dated 03/22/2023 and came to the conclusion that there was NO conflict of interest in this case.

After discussing in Deliberative Session the other business. The Board felt that the only way David Gorham and Thomas Amsden could make their situation work, would be to have David sell Thomas an acre of land to make his lot conforming and then do the lot line adjustment. The Board could not authorize this as is because it was already a non-conforming lot.

9. Adjournment: Ed Harty made a motion to adjourn at 8:04 PM with Tim Harty seconding. The motion passed 4-0-1 and the meeting was declared over by the Vice Chair, Tim Harty.

Signature of Clerk

Date

Prepared by Kelley Thayer

(Note: These are unapproved minutes. Corrections, if necessary, will be found in the minutes of the next DRB meeting.)