

Conditional Use and Variance Hearing  
Town of Greensboro  
Willey Beach  
November 5, 2014

*To consider a conditional use request by the Town of Greensboro for a recreational area and parking lot at the property on Wilson Street. They will also consider a variance request for the placement of boardwalks within the 150' setback from the lake.*

The application requires a review under the following sections of the Greensboro Zoning By-Law 2.3 Greensboro Village District; 2.7 Shoreland Protection District; 5.4 Conditional Use; 5.5 Variance; and 8.7B General Standards in the Shoreland Protection District. 3.6 Limitation on Municipal Bylaws will also be invoked.

**Warnings** were posted on October 14, 2014 at the Town Hall, the Greensboro Post Office, the Greensboro Bend Post Office, and Smith's and Willey's stores. It was also sent to the Town of Greensboro, applicant, and the following abutters and neighboring property owners, David & Margaret Altman, Gordon Stoner, Greensboro United Church of Christ, the Town of Hardwick, and Richard & Linda Ely on October 14, 2014. It was published in the Hardwick Gazette on Wednesday, October 15, 2014.

**Development Review Board members present:** MacNeil, Linda Romans, Nat Smith, Sean Thomson, Janet Travers, Jane Woodruff, Wayne Young, and Lee Wright, alternate.

**Others present:** Peter Romans, for the Town of Greensboro Willey Beach Park Committee, applicant; Joe & Susan Wood, June Cook from the Hardwick Gazette, and Kristen Leahy, zoning administrator

The following exhibits were submitted to the Development Review Board:

- #1 a copy of the email letter from abutters Richard and Linda Ely
- #2 a copy of the email letter from abutter Gordon Stoner
- #3 a map showing the Willey Beach Park proposal

These exhibits are available at the Greensboro Town Clerk's office or on the Town website:  
[www.greensborovt.org](http://www.greensborovt.org)

### **Summary of Discussion**

Ms. Woodruff began the hearing at 7:05 PM. She noted that the hearing was semi-judicial, explained the procedure for the hearing, and asked the clerk to swear in all those who wished to speak at the hearing. She stated that the Board received letters from two abutters and they would be entered into the record (see exhibits #1 and #2). Ms. Woodruff then asked Mr. Romans to describe what the Willey Beach Park Committee plans to do on the Wilson Street property. He began by stating that nothing has been done on the property for about 40 years. The Willey Park Committee was appointed to do this project so the area would be in compliance with Federal grant specifications. Mr. Romans then began to explain the project beginning from Wilson Street and on toward the lake. The Town Park Committee proposes to make a parking area the width of the property, roughly 51 feet, and about 35 feet from front to back so it would be big enough for people to turn around and not have to back into Wilson Street. There would be 5 spaces, one of them being a handicapped spot. The parking lot would be bounded by large rocks or cement barriers to delineate the area and prevent people from hitting the water shut off valve. The pre-approved sign would be in back of the parking area so it will not be a problem during snow plowing. There are also plans to put a bike rack just behind the parking area. The Town Park Committee also plans to put some trees and shrubbery on the sides of the grassy area behind the parking area to screen the park from the abutters' view and perhaps put a couple of picnic tables towards the back of that area. The only graveled area would be the parking lot. They plan to cover the rest of the area behind the parking lot (this is presently graveled) with topsoil and seed it; or the gravel could be removed before adding topsoil and seeding. From the parking and grassed area there is an existing path that meanders back to the lake through a meadow and a wooded area. (see exhibit #3 to trace the path) The meadow is wet and the committee is not planning to do anything there at the present time. The path continues into the woods, which the Town Park Committee would like to leave as is because they don't want to disturb its unique, natural state. They plan to cut down the dead and leaning trees which pose a danger, but do not plan to cut any live trees. There are many

wet areas on the path. The Town Park Committee proposes putting wood over the wet areas by laying it directly on the ground. The grassy area along the concrete retaining wall along the lake is planned as a picnic area as it is occasionally used now. A picnic table may be placed in that area. The existing lake path would be left as is. The Town Park Committee does not plan to do anything with the cracked, leaning retaining wall at the present time. Any repairs would be under the jurisdiction of the State.

There was a detailed discussion on whether the graveled area behind the parking area would remain, be covered with topsoil and seeded or have the gravel removed, cover the area with topsoil, and seed it. It was suggested that if the gravel were removed, a four foot swath of gravel could be left as a path through the area.

Mr. Romans brought out the fact that he found, in talks with State authorities, that if the Town leaves the park as a natural area, it does not have to be made handicapped accessible. However, if something is built on the property, it needs to be handicapped accessible.

Ms. Leahy stated that according to the by-laws, the grassy area behind the retaining wall may remain, but if it reverts to bushes or trees, it cannot be returned to its present grassy state.

The hearing ended and the Board went into deliberative session at 7:40 pm. The Board came back into public session to announce their decision at 8:28 pm.

### **Findings of Fact:**

Based on the application, exhibits, and testimony, the Development Review Board makes the following findings:

#### **2.3 Greensboro Village District**

The part of the property closest to Wilson Street is in the Greensboro Village District. It is proposed to have an off-street parking area for about 5 cars in this area. The remainder of the property in the Village District will be grass.

#### **2.7 Shoreland Protection District**

The majority of the recreational area is in the Shoreland Protection District. There are existing paths through the meadow and wooded area and along the shore which have wet areas.

### **5.4 Conditional Uses**

#### **B) General standards**

The proposed conditional use will not have an adverse effect on:

1. the capacity of existing or planned community facilities.
2. the character of the area.
3. traffic in the vicinity.
4. by-laws and ordinances presently in effect.
5. the utilization of renewable energy resources.

#### **C) Specific Standards:**

1. The lot meets the minimum lot size for the Shoreland Protection District and the Greensboro Village District.
2. All setbacks are met for the Shoreland Protection District and the Greensboro Village District
3. Fencing and/or landscaping is required for screening from the abutting properties.
4. The sign has already been granted a variance.
5. There are no structures planned in the area at the present time.
6. The criteria in the Shoreland Protection District and the Greensboro Village District will be adhered to.
7. There will be no air pollution generated in this area. The Town should set policies for the area to control noise and other detrimental effects on the neighborhood.

## 5.5 Variances

1. The area is wet and needs to have protection against erosion caused by human travel.
2. Because of this wetness, mitigation measures must be taken to prevent erosion.
3. The unnecessary hardship has not been created by the applicant.
4. This recreational area is surrounded by residential properties.
5. The boardwalks do not represent the least deviation possible that will afford relief. There are other mitigation measures that can be taken to prevent erosion and are less invasive to the environment such as stepping stones or gravel.

## Decision and Conditions

Based upon these findings, and subject to the conditions set forth below, the Development Review Board voted unanimously to approve the conditional use application for the parking lot.

The proposed parking area will be large enough for cars to turn around so they don't have to back into Wilson Street. It will be an appropriate size for the proposed recreational area.

Based upon these findings, and subject to the conditions set forth below, the Development Review Board voted unanimously to deny the variance for the boardwalks within the 150 foot buffer zone of the lake.

Other erosion mitigation measures for pedestrian walkways, such as stepping stones or gravel, are available and encouraged within the 150 foot buffer zone.

### This approval is subject to the following conditions:

- Within a year the gravel that is not in the parking area must be removed, topsoil added and the area seeded. The Town of Greensboro may elect to leave a four foot wide gravel path down the middle of the present graveled area to access the walking path.
- The parking lot will be built up to grade standards.
- The parking lot will be large enough so that vehicles can turn around and not have to back into Wilson Street.
- Landscaping and/or fencing will be incorporated to mitigate the visual impact on the abutters.
- In addition there will be landscaping around the parking lot as described in the application to delineate the area from the abutting properties and to protect the water shut-off valve.

Signed:

  
\_\_\_\_\_, vice chair  
Nat Smith

date Nov. 7, 2014

  
\_\_\_\_\_, clerk  
Janet Travers

date 11-7-14

## NOTICE:

This decision may be appealed to the Vermont Environmental Court by an interested person who participated in the proceeding (in person or in writing) before the Development Review Board. Such appeal must be made within 30 days of the date of this decision, pursuant to 24 V.S.A. #4471 and Rule 5(b) of the Vermont Rules for Environmental Court Proceedings.

*Exhibit #1  
11/5/2014  
Admit*

**Subject:** Willey Park Recreation Space  
**From:** Ely, Richard (Retired Partner) (Richard.Ely@skadden.com)  
**To:** greensborovtzoning@yahoo.com;  
**Cc:** linda@elyfamily.co.uk; promans@myfairpoint.net; promans@greensborovt.org; nranzschleifer@gmail.com; mackin@pshift.com;  
**Date:** Tuesday, October 28, 2014 2:58 PM

Dear Kristen,

Linda and I wish to submit the following statement regarding the Willey Park Application to be considered by the DRB on November 5, 2014. I would be obliged if you would circulate it to the members of the DRB as you see fit (we are copying the remaining members of the Willey Beach Committee and would be happy to discuss directly with them any questions they have regarding this statement).

Generally, we support the proposed development of the property as shown in the Willey Beach II proposal number 2014-044. We believe, however, that the DRB should place the following specific restrictions on the use of the property in order to maintain the character of the village and minimise disruption to adjacent homeowners.

- The property should not be used for camping,
- The property should be closed for use from Dusk to Dawn,
- Use should be restricted to pedestrians (no motorized vehicles or trail bikes) within the area.

We also believe the DRB should place the following restrictions on the use of the property in order to maintain public safety.

- No open fires should be allowed,
- No grilling should be allowed to minimize the potential of fire, particularly in the wooded section of the shore. Alternatively, If grilling is permitted, we believe it should be limited to fixed raised grills in the shoreline picnic area (similar to those that already exist at the Town Beach), the Fire Department should be involved in the planning of this area, the area should be appropriately signposted and sand buckets (or some other sensible fire suppression device) should be provided to douse fires.

Regarding the section marked "Future" on the map submitted with the application, this area is adjacent to our property line. We request that the DRB require another hearing prior to any specific plans being implemented for this area, at which time we may request that appropriate screening be provided along our property line, depending on the nature of the proposed activity. If the DRB does not wish to require another hearing in the future, we request that a requirement for appropriate screening (e.g., arbor vitae or

hemlocks) be imposed by the DRB at this time. In any event, the northeast corner of this property (closest to the church) is quite marshy and any use of the area will have to accommodate this wetlands-type character.

Thanks for your attention to this. Please do not hesitate to contact us with any questions you may have regarding our views in this matter.

Kind regards,

Rick and Linda Ely

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The sender of this email is a retired partner of Skadden Arps and is not performing legal service on behalf of Skadden, Arps, Slate, Meagher & Flom LLP & Affiliates. Use by a retired partner of the skadden.com or probonolaw.com domain names is in his/her personal capacity and not on behalf of Skadden, Arps, Slate, Meagher & Flom LLP & Affiliates.

*Exhibit #2  
11/5/2014  
Admitted*

Delivered Via Email ([greensborovt zoning@yahoo.com](mailto:greensborovt zoning@yahoo.com))

Development Review Board  
P.O. Box 119  
Greensboro, VT

November 3, 2014

Re: Town of Greensboro Application for Conditional Use Permit/Variance  
Application Number 2014-044

Dear Development Review Board:

This letter is to provide comments to the Development Review Board (DRB) on the application of the Town of Greensboro for a conditional use permit and variance as set forth in the Town's application date October 9, 2014 (Application Number 2014-004). The DRB is scheduled to hold a hearing on this application on November 5, 2014. I will not be able to attend this hearing therefore this comment letter serves as my participation in this proceeding.

My comments primarily focus on the request for a conditional use permit to establish a parking lot on the Willey Recreational Area property, also known as the Willey Beach property. While I do not object to the establishment of a parking lot for use by those visiting the recreational area as set forth in the application, I do object to the Town's proposal that the remaining gravel area will be reseeded and landscaped without the prior removal of the existing gravel. I believe that as a condition for approval of the conditional use permit for the establishment of this parking lot the remaining gravel on the property must be removed.

As the DBR is undoubtedly aware, the placement of the gravel on the property occurred last year under unclear circumstances. As made clear by the Select Board meetings in August and September 2014, and the August 17, 2014, letter to the Select Board from Ed O'Leary, the Vermont Administrator of the federal Land and Water Conservation Fund, the gravel was placed on the property for the purpose of establishing a parking lot for the Town of Greensboro.

Zoning Administrator Kristen Leahy reviewed the Town's placement of the gravel on the property for the purpose of establishing a parking lot and determined it was a violation of the Greensboro Zoning By-laws. In her August 28, 2014, email to the Select Board Ms. Leahy held that the placement of gravel on the property for use as a parking lot was development of the land, must receive a zoning permit, and that a parking lot is not a use permitted in the Greensboro Village District, and thus the Town must apply for a conditional use permit.

The Town has now submitted the application for a conditional use permit for a small parking lot along Wilson Street using a very small portion of the gravel-covered area. Rather than remove the large area of remaining gravel, which it

placed on the property in violation of the Zoning By-Laws, the Town proposes to simply cover up the gravel by reseeding the area. A violation of the Zoning By-Laws cannot be corrected by covering up the area. While it is not a perfect analogy, this would be tantamount to a person building a very large deck in violation of zoning requirements and not seeking a zoning permit. Then seeking a zoning permit to keep and use a much smaller deck while proposing to cover up and not use the rest of the larger deck.

I urge, and perhaps the DRB is required, to take action to require the Town to abrogate its original zoning violation by removing the gravel. It should do so by conditioning its approval of the Town's application for a small parking lot along Wilson Street on the Town's removal of the gravel and then the reseeding of the area so that the property is returned to its condition prior to the zoning violation.

The Town may argue that reseeding the area over the gravel corrects its violation. But it does not. The gravel would remain for possible use in the future. Moreover, there is no guarantee that reseeding over gravel (or soil first placed over the gravel which perhaps the Town will do but that is not stated in its application) would result in long-term healthy grass. If the grass does not continue to grow, that area once again will be available for use as a parking lot and may present stormwater run-off issues that will need to be addressed.

Finally, the failure of the DRB to require the removal of the gravel sets a precedent that others will cite to argue that actions taken in violation of the Zoning By-Laws, because the action was taken before first obtaining a zoning permit, do not need to be fully abrogated, opening up the door to potentially weakening the authority of the DRB and the Zoning Administrator.

As a neighbor across the street to this property (96 Wilson Street), I support the recreational plan developed by the Town for this property, including the establishment of a small parking lot along Wilson Street for the use of the recreational area. While I have a few very minor issues with certain design aspects of the plan (its use should be limited from dawn to dusk), what I do object to, and cannot fathom, is that the Town would be allowed to leave in place, even if it attempts to cover it up, the gravel it placed on the property in violation of the Zoning By-Laws.

Finally, I have a comment on the content of the sign proposed to be installed on the Willey Recreational Area property. The proposed sign states that this area is the "Willey Beach." Having such a sign indicates explicitly that there is a beach, open to the public, for swimming and launching small boats. This is very misleading. There is no beach in this area and launching a canoe or kayak is nearly impossible given the rocky terrain of the shore. The misleading nature of the sign takes on greater importance since, I believe, there is no sign (or at least a sign that is anywhere as noticeable as the proposed sign) anywhere in the Town identifying the actual public beach. Also, the fact that the sign has already been made and it will

cost money to change does not justify the Town putting up a sign that will mislead the public. If the sign said the Willey Boat Ramp or the Willey Hotel, those signs, or any other highly misleading sign, would not be allowed simply because of the cost to the Town to correct the sign.

I urge the DRB to condition approval of the conditional use permit and the variance (if needed to place the sign within the 50 foot set back from the center of Wilson Street) on the removal of word "beach" from the sign. At a minimum, the DRB should strongly request that the Town make the necessary changes to the sign so the Town does not mislead the public.

Thank you for your consideration of these comments.

Sincerely yours,

Gordon Stoner  
807 Dale Drive  
Silver Spring, MD 20910  
(Phone: 301-565-9559)

cc: Kristen Leahy, Zoning Administrator

Phase 1 Proposal for Willey Beach Park:

*Exhibit # 3*  
*11/5/2014*  
*Admitted*

