

**TOWN OF KILLINGTON
DEVELOPMENT REVIEW BOARD
Meeting of December 9, 2021**

PRESENT: Ken Wonsor, Chair
Jessica Ralston*
Roger Rivera*
Jon Wysocki*

START: 6:30 p.m.
END: 8:30 p.m.

Chuck Claffey, Interim Zoning Administrator
Lucrecia Wonsor, Recording Secretary

GUESTS: Kevin Brown, Esq*; James Findlay-Shirras*; Jim Haff*; Jerry Hall;
Charlie Holland; Hans Huessy, Esq.*; Brian Lane-Karnas*; Ely Kirschner*;
Nina Kleaveland*; Zachary Sheinberg*; Whit Montgomery*

*via *Zoom* Video Conferencing

1. **Open Meeting**

Ken Wonsor, Chair opened the meeting at 6:30 pm.

2. **Approval of Agenda**

Rivera moved to approve the Agenda as may be amended. Wysocki seconded. Wonsor added “Citizens Input” as Item #3. Rivera added “Executive Session” as Item #4. Vote on Agenda as amended. All in Favor.

3. **Citizen Input** – None.

4. **Executive Session**

Rivera moved to enter into Executive Session at 6:35 pm to confer with DRB Attorney, Kevin Brown. Wysocki seconded. All in Favor.

The DRB moved out of Executive Session at 6:50 pm.

5. **McGovern Appeal of Administrative Decision concerning 426 Roaring Brook Road**

Chair, Ken Wonsor, reviewed the Rules of Procedure, opened the hearing at 6:53 pm and read the warning. Robert T. McGovern is appealing his Zoning Regulation fine for the property located at 426 Roaring Brook Road for violating the Town’s Short Term Rental Zoning Regulation’s Article IV, Section 407. He asked if there were any interested parties present in the room or on the video conferencing. There were none.

Interim Zoning Administrator, Chuck Claffey submitted into evidence: i) The 2020/2021 Short-Term Rental Registration Application submitted by Mr. McGovern for the 426 Roaring Brook Road property. In the application Mr. McGovern indicates a total of six (6) occupants as the “Maximum number of approved bedrooms x 2 occupants per bedroom” and took advantage of the “Option to add two additional occupants” for a total of eight (8) approved occupants.

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ii) The advertisement posted as of October 20, 2021 listing five (5) bedrooms, sleeping eight (8). The number of bedrooms is higher than what is indicated on the STR Registration and higher than the permitted number of bedrooms per the septic's designed capacity. iii) A number of documents from the Town's Zoning file on this property substantiating that this property is a three (3) bedroom, single family dwelling and the septic was built to support no more than a three (3) bedroom house. There are no Zoning Permits or Certificates of Occupancy in this file to expand the septic capacity and add bedrooms, therefore, this dwelling remains permitted as a three (3) bedroom, single family dwelling only. iv) A letter to Mr. McGovern dated August 18, 2020 prior to the Short Term Rental Registration Regulation going into effect advising him how this new regulation will affect his properties and how he will be allowed to advertise them. v) A timeline of communications with Mr. Govern regarding his violation. Claffey advised that he has been in contact with Mr. Govern numerous times since September 12, 2021 via email where he: i) informed him that his Ad was in violation; ii) provided a deadline to cure the violation; and iii) advised him of the consequences for not coming into compliance. A Certified letter was sent to Mr. McGovern on October 5th, which was confirmed received on October 13th indicating that fines would begin to be assessed on October 20th if the ads were not brought into compliance. Mr. McGovern responded by providing a list of properties he thought were improperly advertising. Claffey reviewed the list and found that none of the properties were listed as non-complying by the Town's Short Term Rental ad compliance monitoring software. He then cross checked the ads against the Town's zoning files and all were in compliance. Mr. McGovern refused to bring his Ad into compliance and on October 22nd, Claffey notified him via email and US Mail that fines would begin accruing as of October 20th. Mr. McGovern formally appealed the fine on October 26th.

Hans Huessy, Attorney for Mr. McGovern, stated that there is no evidence of violation. The property is approved, registered and advertised for maximum occupancy of 8 persons and there is no evidence that there has ever been more than 8 people in the rental. There is nothing in the Zoning Regulations that states the property owner cannot list the actual number of bedrooms in a dwelling. Mr. Huessy stated that it is a fact that this property has 8 rooms that are bedrooms (Mr. Huessy later amended that statement saying the property contains 5 bedrooms). The fact that the wastewater system may only be approved for three (3) is why his client is only able to rent it for 8 person occupancy. The Ad specifically says that the maximum occupancy is 8 persons. Advertising 5 bedrooms is not to suggest that the property can be rented to 10 people only that if there are some single renters that do not want to share a room, they can have their own room. He maintained that his client is well aware that he cannot rent for more than 8 people and there is no evidence that he has rented to more than 8 people and, therefore, this violation should be rescinded.

Wonsor opened the floor for questions. Wonsor asked how did the dwelling go from 3 bedrooms to 5 bedrooms without there being any permit or subsequent Certificate of Occupancy to expand the septic and the dwelling from 3 to 5 bedrooms? Mr. Huessy maintained that his client is aware that he has an approved 3 bedroom septic. The Short Term Rental Regulations only says an owner cannot rent a property for more than the maximum occupancy and his client has not rented for more than the maximum occupancy. Wonsor asked how Mr. McGovern is assuring that there are no more than 8 occupants staying at the property? Mr. Huessy responded he is doing so by listing the maximum occupancy of 8 persons in his advertisement. Wysocki asked if the advertised bedroom count would be in violation of the State regulations since it is

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higher than the approved bedroom count on the septic permit. Claffey indicated that it would, however, that is not the violation that was issued and appealed.

There being no further questions, Wonsor moved that the Development Review Board close the hearing and schedule Deliberative Session for January 6, 2022 at 6:30pm. Wysocki seconded. All in Favor.

6. PUD and Site Plan Review for Application #21-058 – Lanyard Hotel Project

Chair, Ken Wonsor, opened the Public Hearing at 7:19 pm on Application #21-058 by Lanyard, A Shared Stay Inc. for Planned Unit Development (PUD) and Site Plan Review (SPR) Approval for the Lanyard Hotel Project consisting of completion and conversion of an existing building into a 72 room hotel located at 201 Nanak Way.

Nina Kleaveland, Co-Founder and CEO of Lanyard, A Shared Stay Inc. advised that Lanyard was founded as a modern Hostel experience bringing the best of what people like about hostels in Europe but adding branding and consistency to elevate and modernize the experience. The project will consist of 72 rooms, some private and some shared, each with an on-suite bath, a common area and a canteen that will serve food to both guest and the public.

Brian Lane-Karnas, DeWolfe Engineering, advised that the project involves completion of an existing building shell, including drives and parking, concrete sidewalks, stormwater infrastructure and treatment and associated utilities.

The DRB moved into review of **Section 510 – Site Plan Approval:**

Criterion #1 – Exemptions from Site Plan Approval Requirement: This project is not exempt from Site Plan Approval.

Criterion #2 – Site Plan Approval Regulatory Requirements & Process:

- A. DRB has the authority to review and approve, approve with conditions, or deny this application.
- B. The property consists of one parcel with one owner.
- C. The DRB conducted Site Plan Review this evening.
- D. The hearing has been appropriately warned.
- E. The DRB is holding one hearing.
- F. The DRB shall issue a decision within 45 days of the adjournment of this hearing.
- G. The DRB can grant Site Plan Approval for a period up to six (6) years.
- H. PUD approval is being sought concurrently.

Criterion #3 – Information that must be contained in a Site Plan Approval application:

- A. The application contains the name, address, and signature of the applicant.
- B. The application contains the name, address, and signature of the landowner of record.
- C. Notice was given to all adjoining property owners.
- D. Applicant submitted a scale map with the date it was prepared and a true north arrow.
- E. A survey showing existing features, contours, structures, utility easements, etc. was provided.

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F. A detailed Site Plan and building elevation drawings showing the required features was provided with the application.

G. Not applicable. There are no one- or two-family dwellings proposed.

H. Applicant is not requesting any waivers or modifications.

I. This project will be completed in one phase with an anticipated start in February, 2022 and completion by November, 2022.

J. Applicant is requesting a single property PUD approval for a Hotel/Lodge with more than 24 guests in the Business District. The Site Plan shows the location and size of proposed signs and sufficient detail to demonstrate the interrelationship of the subject property to the PUD and adjoining uses.

K. The entire project is located within the Business District and meets the requirements of that district in Section 240.

Criterion #4 – Mix of Commercial and Residential Uses: Not applicable. There are no residential uses proposed as part of the project.

Criterion #5 – Water, Sewer and Utilities: The project is connected to an existing electrical service from Green Mountain Power and existing sewer service to the Alpine Pipeline through an existing privately-owned pump station. Applicant has provided an ability to serve letter from GMP and has requested one from the Alpine Pipeline. The existing pump station was designed and constructed to serve the arts campus building that was previously planned but never constructed and has sufficient capacity to serve peak sewage flows from the project. Water service will be from the existing privately-owned water system on the adjacent Hillside Inn property. Applicant has provided a report from Waite-Heindel Environmental Management showing that no interference with existing water wells in the project area will result from the proposed increase in demand on the existing well serving the project water system.

Criterion #6 – Vehicular and Pedestrian Circulation: Vehicular circulation through the project site is provided by a series of 24 foot wide drives and aisles to allow for two-way circulation, with the parking areas surrounding the building. There is one turnaround provided at the end of the parking area to the north of the building and two loading areas are provided with turning space outside of the parking areas. Pedestrians will cross the parking areas to access the sidewalks provided at the north and south of the building and a designated crossing area is provided from the most southerly parking area to the building. There is also a loading area in front of the main entrance for hotel guests to load or unload luggage. An existing gravel pedestrian path to the adjacent Hillside Inn will be maintained as part of the project. Applicant does not expect significant pedestrian traffic from Killington Road to the project.

Criterion #7 – Landscaping and Screening: Landscape Architect, James Findlay-Shirras reviewed the detailed Landscape Plan. Applicant will maintain the existing woodland edge as much as possible removing only invasive plants and limiting clearing to areas around the building where trees have grown over time and to allow access to the loading dock. The goal of the landscape plan is to create a simplified, low maintenance, regenerative birch glade woodland planting.

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Criterion #8 – Roadways and Parking: The project is currently accessed by a shared private road, Nanak Way. Parking will be located adjacent to the existing building shell. The roadway system and parking for the proposed hotel are integrated with surrounding existing development.

A. The project will not generate unreasonable congestion or unsafe conditions on the adjacent roadway network.

B. Since the project consists of a mix of private and shared rooms with a restaurant that will also be open to the public, Applicant used the parking calculations for hotel rooms and dormitory rooms under Section 432 and the shared use analysis under Section 432.7 to calculate parking space requirements. The project includes 55 hotel rooms, 17 dormitory rooms (with capacity for 102 guests) and a 2,372 sq. ft. restaurant. Applicant anticipates that the restaurant patrons will be mostly hotel guests particularly since general public food service will be limited to coffee and pastries in the morning and beverages and bar snacks in the evening. Based on their calculations a total of 124 parking spaces would be required. Applicant is requesting a deferment of 32 parking spaces and to that end provided a parking plan showing 92 parking spaces with 32 future parking spaces all 10'x20' in size.

C. Two delivery areas are proposed on the site—one to the east and one on the northwest corner of the building. Both areas will be screened by clumps of balsam fir trees and the easterly loading area will also be screened by a retaining wall.

D. Not Applicable.

Criterion #9 – Impacts on Town Services and Municipal Facilities: Applicant has received a completed Municipal Impact Questionnaire from the Killington Town Manager indicating that the Town has capacity to provide municipal services to the project.

Criterion #10 – Additional Conditions: The DRB did not impose any additional conditions at this time, but reserved the right to do so prior to Site Plan Review approval.

Criterion #11 – Performance Bond Requirement: Not applicable

Criterion #12 – Setback Waivers: No Setback waivers have been requested.

Criterion #13 – Public Transportation Requirement: Applicant plans to coordinate with the Marble Valley Regional Transit District to add a stop on the Rutland/Killington Route at the property.

Criterion #14 – Compliance: Applicant is aware of their obligations under this criterion.

Prior to moving on to PUD Review, the floor was open for questions/comments. Rivera requested that an ability to serve letter from Gary Roth, Killington Fire and Rescue Chief be submitted to the Board directly as part of this application.

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There being no further questions, the DRB moved into review of **Section 505 – Planned Unit Development Approval:**

Criterion #1 – PUD Regulatory Requirements & Process:

- A. DRB has the authority to review and approve, approve with conditions, or deny this application.
- B. The project complies with Section 240.8 Uses in PUD.
- C. The property consists of one parcel with one owner.
- D. The DRB conducted PUD review this evening.
- E. The hearing has been adequately warned.
- F. Applicant has requested concurrent review of PUD and Site Plan approval.
- G. Applicant is not requesting any modifications to the zoning bylaws.
- H. Applicant is not requesting any conditional uses.
- I. The DRB is holding one hearing.
- J. The applicant proposes to complete the project in 1 phase. No future development is anticipated or proposed at this time.
- K. The DRB shall issue a decision within 45 days of the adjournment of this hearing.
- L. This application is not an amendment.
- M. Applicant has been informed of their obligation to obtain a zoning permit in compliance with Sections 510 and 610 of the Zoning Bylaws.

Criterion #2 – Information that must be contained in a PUD application:

- A. The application contains the name, address, and signature of the applicant.
- B. The application contains the name, address, and signature of the landowner of record.
- C. Notice was given to all adjoining property owners.
- D. Applicant submitted a scale map with the date it was prepared and a true north arrow and showing existing roads, structures, and open space.
- E. A location map showing the relationship of the proposed PUD to adjacent properties was provided.
- F. Applicant provided both maps and narrative explaining the project.
- G. The project is located in the Business District and complies with permitted uses in the district within a PUD per Section 240. Because the project is accessed exclusively through a right of way along the private road, Nanak Way, Applicant has assumed that the 100' side and rear setback applies to all property lines.
- H. Applicant is not requesting any waivers.
- I. The project consists of 1 phase, currently anticipated to begin in February, 2022 and be complete by November, 2022.
- J. Applicant has provided the Town copies of all relevant materials.

Criterion #3 – DRB may require additional information: Applicant is aware that the DRB may require from the Applicant additional information to determine compliance with the applicable requirements and uses set forth in Section 240 for the Business Zoning District in which the subject land is located.

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Criterion #4 – Conformance of PUD with Town Plan and Bylaws: The project is designed to conform with relevant Town Zoning Bylaws.

Criterion #5 – Conditional Uses: There are no conditional uses requested.

Criterion #6 – Crossing of District boundaries: The project does not cross zoning district boundary lines.

Criterion #7 – Minimum Lot Area requirements: This 6.37 acre project property meets and exceeds the minimum lot area requirement for a PUD of 5 acres.

Criterion #8 – Concentration of Density: The project density (expressed as lot coverage for a commercial development) meets the requirements of Section 240. Total proposed impervious cover on the property is 1.83 acres or 28.7% of the 6.37 acre property. Therefore, the 40% maximum coverage is met.

Criterion #9 – Location of PUD in more than on Zoning District: Not applicable. The entire project is located in the Business District

Criterion #10 – Setback Requirements: Not applicable. The existing building meets the setback requirements for the Business District.

Criterion #11 – Mixed Uses: Hotel/Lodge and Restaurant & Lounge are permitted uses within a PUD in the Business District.

Criterion #12 – Vehicular and Pedestrian Circulation: Vehicular circulation through the project site is provided by a series of 24 foot wide drives and aisles to allow for two-way circulation, with the parking areas surrounding the building. There is one turnaround provided at the end of the parking area to the north of the building and two loading areas are provided with turning space outside of the parking areas. Pedestrians will cross the parking areas to access the sidewalks provided at the north and south of the building and a designated crossing area is provided from the most southerly parking area to the building. There is also a loading area in front of the main entrance for hotel guests to load or unload luggage. An existing gravel pedestrian path to the adjacent Hillside Inn will be maintained as part of the project. Applicant does not expect significant pedestrian traffic from Killington Road to the project. Applicant plans to coordinate with the Marble Valley Regional Transit District to add a stop on the Rutland/Killington Route at the property.

Criterion #13 – Collector Roadway System: No primary collector roadway is proposed. The project is located in the Business District; therefore, Section 456 does not apply.

Criterion #14 – Water, Wastewater, and Other Utilities: The project is connected to an existing electrical service from Green Mountain Power and existing sewer service to the Alpine Pipeline through an existing privately-owned pump station. Applicant has provided an ability to serve letter from GMP and has requested one from the Alpine Pipeline. The existing pump station was designed and constructed to serve the arts campus building that was previously

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planned but never constructed and has sufficient capacity to serve peak sewage flows from the project. Water service will be from the existing privately-owned water system on the adjacent Hillside Inn property. Applicant has provided a report from Waite-Heindel Environmental Management showing that no interference with existing water wells in the project area will result from the proposed increase in demand on the existing well serving the project water system.

Criterion #15 – Height, Parking, and Signage Requirements:

A. Height – The existing building is 34’ to the roof level on the north façade (which is one story taller than the south façade with a walk-out basement on the north side of the building) and 52’-7” to the highest roof peak. The building height is below the maximum building height within a PUD in the Business District. Fire and emergency vehicle access is provided on three sides of the building in the proposed parking areas, drives and the stone dust flex area on the north side of the building. Emergency vehicle access was reviewed on site with Chief Gary Roth of Killington Fire and Rescue and no objections to the access at the site visit were raised.

B. Parking – Since the project consists of a mix of private and shared rooms with a restaurant that will also be open to the public, Applicant used the parking calculations for hotel rooms and dormitory rooms under Section 432 and the shared use analysis under Section 432.7. The project includes 55 hotel rooms, 17 dormitory rooms (with capacity for 102 guests) and a 2,372 sq. ft. restaurant. Applicant anticipates that the restaurant patrons will be mostly hotel guests particularly since general public food service will be limited to coffee and pastries in the morning and beverages and bar snacks in the evening. Based on their calculations a total of 124 parking spaces would be required. Applicant is requesting a deferment of 32 parking spaces and to that end provided a parking plan showing 92 parking spaces with 32 future parking spaces all 10’x20’ in size.

C. Signage – Three signs are proposed for the project—an entry sign at the intersection of Killington Road and Nanak Way, a monument sign at the entry to the parking area and a building mounted sign adjacent to the main entrance on the south building façade. The signs will be internally illuminated such that only the letters are illuminated during dark hours. The proposed hotel is an independently operated business from the existing Hillside Inn. Therefore, the entry sign at Killington Road is proposed to be separate from the existing Hillside Inn sign on the north side of Nanak Way. Applicant is requesting a variance from the DRB for an off-premise sign. Applicant believes that the criteria for granting a variance has been met – i) there are unique physical circumstances that necessitate a variance in that the property does not have frontage on a public road, is only accessed by the 50’ right of way known as Nanak Way and is not visible from the road; ii) there is no possibility of strict conformance with the Town’s Zoning Regulations and off-premise signs are prohibited in Section 440.12; iii) the unnecessary hardship was not created by the appellant – the applicant is purchasing a property that was previously subdivided by others; iv) the variance will not alter the character of the neighborhood or be detrimental to public welfare; and v) it represents the minimal variance needed to reasonably develop the property.

Criterion #16 – Unique Natural Features: Unique natural features identified in Section III.A. of the Town Plan that exist on the site include Class II wetlands and an unnamed tributary of Kent Brook. Undisturbed buffers will be maintained to these features as shown on the site plans. There is a small amount of disturbance within the 50’ wetland buffer for the improvement of existing gravel drive and parking areas. The applicant has obtained a Wetland Permit from

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the State for these disturbances. A 50' undisturbed buffer will be maintained to the top of bank of the unnamed tributary with the exception of the outlet of the stormwater treatment basin.

Criterion #17 – Open Space Requirement: A 14,000 sq.ft. area (5% of the project property area) of open space is designated on the site plans at the northeast corner of the property. This area will preserve the Class II Wetland and forested areas between the existing building and Route 4. Effectively, the entire wetland and buffer area will be preserved as open space due to State law protecting the wetland and buffer from disturbance. No public access is proposed for this area. The undeveloped area of the project property will be available for hotel guests to access for low-impact recreation (walking, snowshoeing, cross-country skiing, etc.)

Criterion #18 – Additional Considerations: The DRB did not impose any additional conditions at this time, but reserved the right to do so prior to PUD Approval.

Criterion #19 – Length of PUD Approval: Once this PUD is approved it will not expire.

Criterion #20 – Previous PUD Approvals: Not applicable.

The floor was opened to questions. There was further discussion regarding parking. Jim Haff suggested Applicant attend the Planning Commission meeting scheduled for January 5, 2022 at 7:00 pm. The Commission will be reviewing and discussing current parking requirements for restaurants in particular and input from the Applicant could be helpful to the Planning Commission. Jim also suggested: i) that the Applicant obtain a written agreement with the owner of the Hillside Inn to maintain Nanak Way clear for guest and emergency vehicle access and to make sure the Hillside Inn guests do not overflow into Lanyard's parking; and ii) that the Applicant contact Police Chief, Whit Montgomery, to review the project and obtain an ability to serve letter from him as well. Police Chief Montgomery joined the meeting shortly after this suggestion was made. He asked for time to review the presentation in order to formulate his questions and comments. Jim further suggested Applicant contact Lisa Davis Lewis, Killington Town Planner to see if they can make a presentation to the Planning Commission on January 5th and if that is possible reach out to Chief Montgomery to attend as well. The Board inquired as to the status of the Applicant's Act 250 Permit. Mr. Brian Lane-Karnas advised that Act 250 had requested some further information on a couple of items which have been submitted. They anticipate receiving Minor Status Approval from Act 250 in the next few weeks.

Wysocki moved to recess the hearing to January 20, 2022 at 6:30 pm. Rivera seconded. All in Favor.

7. **Deliberative Session**

Deliberative Session regarding McGovern Appeal scheduled for January 6, 2022 at 6:30pm.

8. **Adjourn**

Wonsor moved to adjourn the meeting at 8:30 pm. Rivera seconded. All in Favor.

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The next meeting of the Development Review Board is scheduled for January 6, 2022 at 6:30 pm at the Sherburne Memorial Library and via Zoom.

Respectfully submitted,

Lucrecia Wonsor

Lucrecia Wonsor
Recording Secretary

NOTE: These minutes have not been approved by the Development Review Board and are, therefore, subject to change.