



# Village of Manchester, Vermont

## Minutes of the Special Hearing of the Development Review Board Held June 29, 2022 at 10:00am

**Members Present:** Chair Craig Powers, Tom Deck, Donald Brodie, Jack Morris, Dana McCloskey, Renee Waller

**Member(s) Absent:** Gordon McClellan

**Others Present:** Zoning Administrative Officer Curan VanDerWielen, President of the Board of Trustees Orland Campbell, Trustee Nina Mooney, Jay Sheldon, Elizabeth Boepple, Sue Flanagan, Joanne Van Heusen, Melinda Mull, Pete Mull, Rahel Aifley Berry, Andris Berry.

The meeting was held both in person at the old Bennington County Court House and via Zoom.

Chair Craig Powers called the meeting to order at 10:12am.

### Applications:

- 22-33Z** Elizabeth Boepple and Jay Sheldon for CWI Manchester Hotel LLC, owner of 27 Dillingham Avenue. The variance application regarded a change of use from that of an educational dormitory to an employee dormitory for employees of the Equinox Resort.

Chair Craig Powers began by apologizing for the late start to the meeting before introducing the application for a variance. Powers indicated that the DRB would be applying all criteria stated under Section 9.3 of the Village of Manchester Zoning Bylaws, as exactly written. Powers continued, stating that the DRB would address each criterion and require the applicant to respond to each subsection under Section 9.3, adding that the requirement to meet all criteria of Section 9.3 was indicated under statutory law and must all be met before the DRB could grant a variance. Powers then stated that there would be time after the applicant presented for public comment, and that such comments should be directed to the Board and not the applicant nor another member of the public. Powers also asked that members of the public to avoid speculative language, personal attacks, and to keep comments focused solely on the variance. Powers also indicated that copies of the agenda and the variance were available to everyone at a desk on the floor.

Powers then began to read Section 9.3 of the Zoning Bylaws, stopping at the end of Section 9.3a to allow the applicant to respond. Beth Boepple introduced herself as legal counsel for the Equinox Resort and then addressed Section 9.3a. Boepple began by stating that the zone the structure is located in has been designated as a residential zone, and that the size and shape of the structure qualifies it as conforming to that residential zone. Boepple then stated that she believed this criteria had been created by the Village and iterated that the use of Equinox's previously owned employee housing property, 43

Williams Street, remained consistent across both properties. Boepple continued, stating that per Section 9.3a, the condition requiring the variance had not been created by the applicant but by the arbitrariness of the Village. Boepple then stated that she and the Equinox believed they had met the requirements by virtue of longstanding and continuous use along with Burr and Burton Academy (BBA). Boepple added that this longstanding use had existed but that the Village's use of different criteria across applications had created a handicap which qualified them for Section 9.3a.

Powers asked if Jay Sheldon had anything he wished to add to Boepple's statement. Sheldon stated that he thought Boepple had covered most of his thoughts, only adding that the Resort was not asking for anything new, that it was something that the Resort had been doing for at least that last decade, and that the Resort had been maintaining the property the same way for those years previously without issue.

Sheldon having finished, Powers moved on to read Section 9.3b before asking the applicants to expand on this despite their having touched on pieces of this criterion during their answer for Section 9.3a. Boepple then stated that she believed she had addressed 9.3b as part of her answer for Section 9.3a. Boepple then stated that she believed to some extent that this case did act like a nonconforming use, and that the conditions or circumstances created by the use of 43 Williams should be grandfathered for 27 Dillingham Avenue as the use pre-existed at the time during which the Village considered the validity of the use of the latter.

Powers then read 9.3c and signaled to the applicants to respond. Boepple stated that the hardship imposed here were not in strict conformity with previous actions, that the restrictions were at odds with the historic use of 43 Williams Street and the entire Resort campus. Boepple reiterated that the condition was not created by the applicant, that the expectations of continuous use was not something called into question by the applicant but by the circumstances created by the Village. Overall, therefore, Boepple argued that the applicant satisfied the third criterion.

Powers then read 9.3d and signaled to the applicants to respond. Boepple began by arguing that the use of 27 Dillingham Avenue as an employee housing arrangement would not impact the essential character of the neighborhood. Boepple stated that 43 Williams Street was used for years before in such a manner and that use by the Equinox Resort of 27 Dillingham in the manner proposed would not be at odds with that historically by BBA, adding that the proposed use would be similar in scope as multiple individuals living in the same house. Boepple continued, stating that the DRB needed to view the neighborhood as a whole instead of a handful of homes, as the proposed use was consistent with that prior of 43 Williams Street, and that no detrimental impact had or would be made. Boepple then stated that, as everyone knew, all properties within the Village center were compactly spaced and that although the location was within a residential area, that the impact from adjacent or nearby uses such as the Equinox Resort itself, the former library, and BBA, was typical of a Village center and similar to that of

the proposed use here. Boepple then stated that this reasoning qualified the applicants for this criterion.

Powers then read 9.3e and signaled to the applicants to respond. Boepple replied that the use proposed was consistent with that of the residential zoning present. Boepple stated that people would be living in the house as a residence and reiterated that the new property was the least problematic option for the Resort to house its employees in a manner consistent with that of 43 Williams Street. In essence, Boepple reiterated, the applicants were asking for what is least impactful which would meet their needs, thus satisfying this criterion.

Powers then read 9.3f, but stated that it could not apply to the applicant and thus was unanswerable. Powers too read 9.3g, but explained that no renewable energy questions were present thus was non-applicable to the conversation. Powers then indicated that the DRB had finished reading through Section 9.3, and indicated to the applicant that they could add any other information they wished at this point in time.

Boepple offered Sheldon the floor, but then quickly stated that while she understood Subsection 9.3f did not apply here that the applicants were willing to conform to any conditions made by the DRB should the variance be approved. Sheldon now spoke, stating that during the prior meeting on 1 June the applicants had spoken about the 253 year partnership and community contributions which the Resort had provided. Sheldon then referenced the many letters of support he had received from other community stakeholders. Sheldon continued, stating that the proposed use was not a change and that students with all sorts of majors and backgrounds working not only at the Equinox, but throughout the community, were staying at the property. Sheldon then stated that he understood there were concerns about traffic and noise, but only one car was on the property. Sheldon then stated that he had received a call at 9:55pm the Monday prior with a noise complaint which involved the Manchester Police, and that aside from that he had received notice of no other complaints and that Police involvement had been inappropriate. Sheldon then stated that he understood the impact if such instances were left uncontrolled, adding that he and other staff members were on-site frequently to provide direction. Sheldon reiterated that there was only one incident of excessive noise and had since sent a copy of the housing agreement to the Village Zoning Office and that a violation of that agreement would result in a separation of employment with the Resort and the revocation of their visa. Sheldon continued, stating that the Resort took these matters seriously and that the housing manager onsite would deal with incidents accordingly. Sheldon then stated that the Resort had been occupying the house for thirty days without any issues and that its impact on their business has been a good thing.

Boepple then asked Sheldon to elaborate on the employees being students and the terms of their visa program. Sheldon then stated that the employees in the house were J-1 Visa students as provided by the federal government, that they were contingent on a sponsor organization such as the Resort, and if they were separated from their employment then

they would have to leave the country. Boepple then stated that she wished to emphasize this because international students at BBA were once housed at 27 Dillingham, and that while their use and BBA's prior use had been framed as different, that they were actually very similar.

Powers thanked the applicants for their presentation and stated that he was now going to open the floor to public comment. Powers reiterated that comments had to address the DRB, to avoid speculation and personal attacks on the applicants, and asked for those speaking to state their name, address, and the portion of the variance they were referencing. Powers then formally opened the floor to public comment.

Sue Flanagan spoke first, identifying herself as the resident of 15 Dillingham Avenue. Flanagan stated that while she was going to speak to particular subsections of Section 9.3, she wished to clarify several items which she believed were speculative from the applicants. Flanagan then stated that their current use, as referenced by Sheldon, was already in violation of the Manchester Village Zoning Bylaws, and that she should not have to defend calling the police because they should not have been needed to be called at all. Flanagan continued, stating that she wished to respond to elements of subsections a, b, and e. Flanagan stated that she took issue with the applicants' use of 43 Williams Street as an example or justification for the variance, that the applicants no longer owned 43 Williams Street but instead were applying for a completely different property consisting of 27 Dillingham Avenue. Flanagan then argued that to speak as if 43 Williams Street ever was compliant with Village regulations was misleading, as no application was granted by the municipal government and they were already not operating in accordance to Village Bylaw. Flanagan continued, stating that she believed neighbors had suffered from the prior use of 43 Williams Street and that no facts had been given by the applicants to prove otherwise, although she conceded that she too did not have much documentation either. Flanagan continued, stating that as the application related to the essential changing of the neighborhood, that the existing use of the property by the Resort had already, in the past 30 days, affected the neighborhood, adding that she believed that an application for a use already determined to be in violation of the Bylaws should not be approved. Flanagan then stated that Dillingham Avenue was a residential street, and that while she understood the business's needs, that she had lived in a college dorm before and did not believe a dorm of older students should exist here. In a college dorm, Flanagan stated, students often desired to party and stay up late but that such a matter was completely separate from the high schoolers housed by BBA at 27 Dillingham. Flanagan then argued that this course of action was the most possible deviation from the existing regulations possible, adding that unlike the nearby library that this structure was built with the intention of being used as a residence originally in a residential area, not as a business, and that forcing such a use in a misappropriated spot was a hardship created by the business, not the circumstances. Flanagan added that while she could not come up with a better solution, that she believed the Resort was not even open to dialogue on the matter.

Flanagan then asked Powers directly if she could say anything which deviated from what Sheldon had stated previously, as Sheldon had spoken about matters outside that of the variance including incidents and policy violations, as she was trying to understand what the boundaries on public comments were. Powers stated that he believed the applicant was responding to the variance criteria. Flanagan stated that only some of the applicants' statements related to the variance criteria. Powers reiterated that the public needed to keep comments directed at the variance criteria too. Flanagan then stated that Sheldon had spoken about the building's current use. Powers said that he had in reference to the variance criteria. Powers continued, stating that a member of the public could say, for example, that the current use changes the character of the neighborhood for whichever reasons, that a member of the public could ostensibly say something if phrased this way.

Flanagan indicated that she understood Powers' point and then continued by stating that the current use of 27 Dillingham was not as a home, that she did not call the police at 3:15am when she went out to speak with several current residents to turn down the noise, because she was trying to be a good neighbor. Flanagan went on to state that good neighbors try to talk to each other instead of going to the police, but that she was told by these residents that they did not think they were making any unreasonable noise. Powers then stated that he believed she was saying that this was an example of a situation in which the current use has altered the character of the neighborhood. Flanagan indicated that she believed he was correct and that she had waited to call the police until 11pm because she understood the time cut-off for noise outdoors was that time in the Village. Powers stated that he understood her points.

Peter Mull now spoke, indicating that he was the resident at 139 Franklin Avenue. Mull began by stating that on June 16<sup>th</sup> through the evening he had experienced much noise emanating from 27 Dillingham Avenue, that a neighbor had videoed the noise but had not called the police and that when speaking to residents had been confronted in a hostile manner by them about the matter. Mull added that the residents had made no attempt to apologize for or change their behavior afterwards. Mull continued, stating that during the confrontation, his daughter had dragged him away with concerns for his safety and expressed concern for the safety of neighbors if the DRB approved the application. Mull added that while all the neighbors in the neighborhood introduced and knew one another, no one knew who lived in the 27 Dillingham house, only adding to safety concerns and further altering the character of the neighborhood. Mull then stated he believed public welfare was being reduced by such a use and that it being used in such a manner, in a neighborhood where young children lived was untenable.

Nina Mooney now spoke, indicated that she was the resident at 123 Franklin Avenue. Mooney stated that she too had heard considerable noise on the night of June 16<sup>th</sup>, adding that a considerable amount of bright light could be observed from the property and that such a development clearly was impacting the neighborhood. Moreover, Mooney added, she agreed with Mull that there were significant safety concerns, as

neighbors did not know who lived in the building and largely wanted those residing there to be there for the long haul, not as temporary residents. Mooney added that while very few complaints had been filed with the police, it did not mean that there weren't many noise violations which neighbors had been experiencing. Powers noted that any potential violations should be brought to the attention of the zoning administrative officer.

Flanagan now spoke again, stating her belief that much of the conversation so far had been focused on neighbors and the residence itself, but that the appropriateness of its current use had not. Flanagan highlighted again that while she was friendly with the residents and believed them hardworking individuals, that they often walked through her yard and had created the many issues her neighbors had spoken to so far.

Joanne Van Hausen now spoke, indicating that she was the resident of 132 Franklin Avenue. Van Hausen began by stating that she believed the neighborhood had already been changed by the presence of the current use of 27 Dillingham Avenue. Van Hausen then stated she had experienced an increase of traffic with especially loud mufflers, that a lack of sidewalks had created additional pedestrian traffic, and that while the neighborhood had always historically been peaceful, that she believed it now to be no longer safe, much less unaffected.

Rahel Berry now spoke, indicating that she was a resident of 55 Dillingham Avenue. Mrs. Berry stated that she could speak to several of the points made by her neighbors, as she lived directly next door to 27 Dillingham. Mrs. Berry stated that she had children who lived with her and had been in frequent contact with VanDerWielen about various zoning and noise issues. Mrs. Berry also noted incidents of loud foul language which her children could hear and loud talking late at night which forced her to shut her windows. Mrs. Berry continued, stating that the trash issue had been a major concern of hers as it took three calls and five days to get Equinox staff to pick it up after having been strewn through the lawn and her lawn by a bear, adding too that she had informed VanDerWielen of the matter. Powers thanked Mrs. Berry for her statements.

Orland Campbell now spoke, indicating that he was the resident of 324 Prospect Street. Campbell clarified that he was not an abutter nor neighbor of the property, and that while being involved in government he meant to speak as a private citizen and not in an official capacity here. Campbell continued, stating that the variance regulations were very specific, noting that he believed the first of these criterion, Section 9.3a, had not been met by the applicant and that the physical circumstances had not been indicated clearly enough on the original application. Campbell continued to talk about Section 9.3d, adding that without a physical condition to warrant a variance there was no basis for the DRB to grant one. Campbell then stated that he was empathetic to the circumstances the hotel found itself in, noting that he recognized the safety and housing issues it currently faced but emphasizing that there was a clear law at play and that the DRB was required to consider this case a specific way. Campbell continued, stating that

if the variance were granted then it would be an injury to neighbors, and that while he recognized the circumstances of and would like to help the hotel, he did not believe hurting the neighbors in such a manner was a solution. Powers thanked Campbell for his remarks.

Andris Berry now spoke, indicating that he was a resident of 55 Dillingham. Mr. Berry began by stating that he did not believe that the Resort qualified for a variance as the Resort had created the situation requiring a variance, themselves. Mr. Berry supported his claim by indicating that fitting 14 individuals into a single family residence was unreasonable and that by stretching the zoning regulations so far, the applicant had created their own hardship. Mr. Berry echoed Campbell, stating that there being no physical limitations on the property, there appeared no hardship. Mr. Berry continued, stating that he believed some very nice people lived in the home at present but that the issue needed to be handled a different way, adding that he believed many neighbors wished to help where they could. Mr. Berry then stated that BBA minors were different from the adults now residing at 27 Dillingham, that his wife had called Equinox many times about an assortment of issues and was told that there was no one in particular in charge of the property, adding that there would need to be someone in charge if ran similar to a dormitory.

There being no further public comments apparent, Mr. Powers opened the floor to the DRB for questions. Donald Brodie began by asking about the most recent noise incident referred to by Sheldon, to which Sheldon responded that he had just learned about it that morning. Renee Waller then apologized for having joined the meeting late before stating that despite the applicants' rationalization for their application, she did not believe such a use belonged in that neighborhood, adding that she believed that strongly. Tom Deck then spoke, stating that he was curious about the ages of the students residing in the home. Sheldon indicated that they were between 21-23 years of age. Deck then asked how long their typical stay was. Sheldon responded that a typical stay lasted between 3 and 3.5 months. Deck then asked if they were then seasonal workers. Sheldon stated that a rotation of student-workers came for the summer, and others for the fall. Jack Morris then spoke, stating that he held a similar view to Campbell insofar as he valued the hotel, believed it to be an excellent neighbor, but viewed the issue as needing a different solution. Morris continued, stating that the regulations of Section 9.3a, in his belief, had not been met by the applicant. Brodie now spoke again, stating that he thought the situation to be unfortunate but that he saw no other way out of it, adding that while he respected both the stances of members of the public and the applicant, he agreed with Morris and Campbell. Brodie added that while he was sympathetic to the Resort's circumstances, he believed the applicant had not met the criteria and that another solution would have to be arranged.

Powers now spoke, stating that he had read Section 9.3 over and over and listened to testimony from everyone present, but that he felt the applicant had not met all subsections of the variance requirements. Powers expressed that he felt it was

unfortunate but that variances were designed to be hard to obtain and did not feel this use qualified as such. Powers then stated that he was extremely sympathetic to the Resort regarding the circumstances, its employment difficulties, financial situation, and maintenance issues, indicating that he believed the Village needed to support the Resort where it could. Powers continued, stating that he remembered when the hotel was vacant in the 1970s and its effect on the Village then. Powers then stated that he lived in the same neighborhood in question on the application, and he also was sympathetic to neighbors as he would unequivocally not want such a use next to his home. Powers added once more that he did not believe all requirements of Section 9.3 had been met by the applicant, before asking for a motion to vote.

At this point, Sheldon then stated that he did not believe the proposed variance would change the character of the neighborhood, adding that the 43 Williams Street house had been used in that neighborhood for a decade without issue and that this application was not a new ask or request. Sheldon continued, asking how, if the same type of seasonal residents and permanent neighbors had been present for over a decade is the application a change at all? Sheldon reiterated that between both properties was the same purpose. Sheldon continued stating each property was being used in the exact same use in the exact same way, stating again that the 43 Williams Street property had been used for over a decade and that he did not understand a sudden change in feeling among the neighborhood. Powers responded, stating that in this instance the property at 27 Dillingham Avenue had to have a variance in order to operate in the manner proposed, indicating further that the DRB could not grandfather the use of a different property into a new property, especially if granted in a different time or under different circumstances. Sheldon then stated that this was not a change of the character of the neighborhood because the use was just moving down the street. Powers responded, stating that while believed such a perception to be valid, the DRB had to look at 27 Dillingham specifically and apply Section 9.3 accordingly. Powers added that if the criteria had not been met, then they cannot simply grandfather in the use of another property onto a new one simply because the prior existed before. Sheldon then told Powers that he could not look at it that way.

Waller now spoke, stating that while she understood what Sheldon was saying, the residents along Dillingham Avenue clearly felt that the increased traffic and parking were problems and would make them unhappy. Moreover, Waller suggested, the Equinox should look not at using residential properties for this purpose but perhaps those which exist and are located in a Business Zone. Deck then stated that when anyone came before the DRB, the Board reviews each application specifically and applies the rules present, adding that while he understood Sheldon's perspective, that this specific address and the attachments to the application were the question at hand. Powers then stated that he believed the proceeding needed to stay focused on what exactly the applicant was applying for, and that while Sheldon's question was valid, it did not address the circumstances of the application itself. Brodie then asked if BBA wished to use 43 Williams Street as a dormitory, if they would have to appear before the DRB.



Powers stated that a BBA dorm was covered as a conditional use in the zone. VanDerWielen added that BBA would still need to apply and go through a review by the DRB, but no variance would be required given the current phrasing of the Bylaws. Powers thanked VanDerWielen and asked if there were any motions.

There being no further questions, Brodie motioned to deny the permit application. Waller seconded the motion. The DRB then denied the permit application, unanimously.

**Public Comments:**

There being no further business before the Board, Powers closed the meeting at 11:09am.

The next regular meeting of the Development Review Board will be held on July 6<sup>th</sup>, 2022, at 10:00am.

Respectfully Submitted,  
Curan VanDerWielen, Zoning Administrative Officer