

STATE OF VERMONT
ENVIRONMENTAL BOARD
10 V.S.A. CHAPTER 151

RE: Nancy E. Lang, Claude B. Gagne Findings of Fact and
and Brickyard Association Conclusions of Law
Brickyard Condominiums, Land Use Permit
Brickyard Road and Sugartree Lane Amendment #4C0255-2-EJ
Essex Junction, Vermont 05452

An appeal was filed on July 29, 1980 with the Environmental Board by Claude B. Gagne and Nancy E. Lang (the "applicants") from the District #4 Environmental Commission's Land Use Permit Amendment #4C0255-2 dated July 10, 1980. The amendment authorized the relocation of condominium and carport clusters and the relocation of the tennis courts, subject to six conditions. A pre-hearing conference was held on the appeal on August 21, 1980, Chairman Leonard U. Wilson presiding. At that pre-hearing the applicants raised two procedural issues and challenged the Findings of Fact and Conclusions of Law of the District Commission with respect to Criteria 1(D) and (E), 4 and 8. Specifically, the applicants took issue with Conditions #1, 2 and 3 of Land Use Permit Amendment #4C0255-2. A site visit was conducted by the Board on August 26, 1980.

On November 17, 1980, the hearing scheduled on this appeal was postponed indefinitely at the request of the parties:

A reconvened pre-hearing conference was held on the appeal on September 21, 1981, Chairman Leonard U. Wilson presiding. Parties present at the reconvened pre-hearing conference- were:

Applicants, Claude B. Gagne and Nancy E. Lang by
Carl H. Lisman, Esq.
Adjoining property owners, the Brickyard Association,
W. Owen Jenkins, Esq. and William Doble, President
of the Association.

At the reconvened pre-hearing conference it was determined that the two preliminary procedural issues raised by the applicants at the previous pre-hearing conference had been resolved and Criteria 1(D) and (E) were no longer in issue.- Therefore, the issues remaining on appeal are applicants' challenges to the Findings of Fact and Conclusions of Law of the District Commission regarding Criteria 4 (soil erosion) and 8 (landscaping).

As of October 8, 1981, the Brickyard Association (the "Association") withdrew as an active participant in the hearing process on this appeal. A request for a second site visit, made by the Association, was also withdrawn.

The Board convened a public hearing on this appeal on December 8, 1981 in South Burlington, Vermont. Parties present at the hearing were:

Carl H. Lisman, Esq., representing Applicants, Claude B. Gagne and Nancy E. Lang.

The issues on appeal concern Criterion 4 (soil erosion) and Criterion 8 (aesthetic impacts). The Board notes that the burden of proof with respect to Criterion 4 is on the applicant and with respect to Criterion 8 is on any party opposing the applicant "to show an unreasonable or adverse effect." See 10 V.S.A. §6088. The Board's Findings of Fact and Conclusions of Law, below, are based upon the record developed at the hearing and a site visit made on August 26, 1980.

FINDINGS OF FACT

1. The amendment application filed November 21, 1979 requested relocation of condominium and carport clusters, landscaping revisions and relocation of the tennis court at the so-called Brickyard Condominiums located on Sugartree Lane in Essex Junction, Vermont. Land Use Permit Amendment #4C0255-2 approved the as-built locations of the clusters of 51 units and carports and the tennis courts. However, the original permittees, Nancy Lang and Claude Gagne were required to submit a revised landscaping plan including 300 additional plantings and to comply with the original specifications and recommendations regarding topsoil, grading, seeding and mulching.
2. According to testimony submitted on behalf of the applicants, the Board finds that the original erosion control plans were geared to the construction phase of the development. All construction has been completed at the site and permanent seeding has taken place. Based upon a recent site visit, a representative of the applicants was able to determine that a drain had been installed behind so-called Building D, and that the bank behind Building D had been seeded and mulched and that all other banks on the site had stabilized.
3. The Board further finds that any erosion control problems apparent at the site inspection made by the Board on August 26, 1980 have been corrected.
4. The Board also finds that the absence of 300 additional plantings required by the District #4 Environmental Commission will not affect the integrity of the soil, control erosion or affect the aesthetic integrity of the site.
5. Criterion 4 (soil erosion): The site is not now experiencing problems of erosion and as no further construction

is proposed, the Board finds that as completed this project will "not cause unreasonable soil erosion or reduction in the capacity of the land to hold water so that a dangerous or unhealthy condition may result." 10 V.S.A. §6086(a)(4). Consequently, the Board will not require any additional topsoil, grading, seeding, mulching or plantings.

6. Criterion 8 (aesthetic impact): Based upon testimony, together with the site visit, the Board finds that the absence of the 300 plantings in question "will not have an undue adverse effect on the scenic or natural beauty of the area ...". 10 V.S.A. §6086(a)(8). No contrary information was submitted for the Board's consideration nor were any historic sites or rare and irreplaceable natural areas noted.

CONCLUSIONS OF Law

The Board concludes that the project as built and limited by the terms and conditions of the foregoing Findings of Fact and the permit amendment issued herewith, will not cause or result in a detriment to the public health, safety or general welfare under the criteria described in 10 V.S.A. §6086(a), and that, pursuant to such section, a permit amendment is therefore issued.

Jurisdiction over this permit shall be returned to the District #4 Environmental Commission.

Dated at Montpelier, Vermont this 31st day of December, 1981.

ENVIRONMENTAL BOARD

By Jan S. Eastman
Jan S. Eastman
Executive Officer

Members who participated
in this decision:
Leonard U. Wilson
Ferdinand Bongartz
Lawrence H. Bruce, Jr.
Dwight E. Burnham, Sr.
Melvin H. Carter