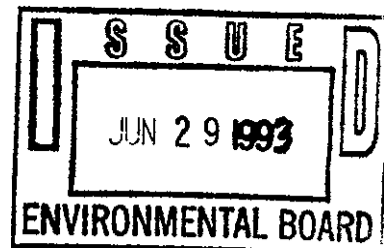


VERMONT ENVIRONMENTAL BOARD
10 V.S.A. Chapter 151



Re : Robert and Nancy Cioffi
Application #6F0370-2-EB

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

This decision pertains to a request for issuance of an amended land use permit allowing Robert and Nancy Cioffi (the Applicants) to develop two additional lots on land subject to Land Use Permit #6F0370 (the Permit). The Permit allows the Applicants to develop a 38-lot subdivision known as Hill Farm Estates, located in the Town of St. Albans. A 40-lot subdivision was proposed by the Applicants in the original application for the Permit, but development of the two lots at issue here was prohibited by the District #6 Commission because the Commission found that such development would cause an undue adverse effect on an historic site under 10 V.S.A. § 6086(a)(8) (Criterion 8 - historic sites). As is explained below, the Board concludes that, with the additional permit conditions stipulated and agreed to by the parties and the Applicants' son, Franklin J. Cioffi, the proposed project will comply with 10 V.S.A. § 6086(a)(8) with respect to historic sites.

I. SUMMARY OF PROCEEDINGS

On November 4, 1987, the District #6 Commission issued Land Use Permit #6F0370 (the Permit). The Permit concerned a request by the Applicants for approval of a 40-lot residential subdivision. The Permit authorized the Applicants to create a 38-lot residential subdivision and contained Permit Condition #16, which prohibited development of proposed Lots #16 and #17. This condition was issued pursuant to 10 V.S.A. § 6086(a)(8) (historic sites) "in order to preserve the integrity of [an] historic farmstead." The Permit was not appealed.

On October 31, 1988, the District #6 Commission issued Land Use Permit Amendment #6F0370-A, which authorized the Applicants to pay an impact fee based on the number of bedrooms per unit excluding the master bedroom to the Town of St. Albans to mitigate the impact caused from the subdivision on the educational facilities in the Town of St. Albans.

On November 7, 1991, the Applicants filed Amendment Application #6F0370-2 (the Amendment Application). The Amendment Application seeks to change Condition #16 of the Permit to allow the construction of single-family homes on Lots #16 and #17. On December 18, the District #6 Commission issued Findings of Fact, Conclusions of Law, and Order #6F0370-2, denying the Amendment Application.

(DOCKET #534)

On January 9, 1992, the Applicants filed an appeal with the Board. On February 18, Assistant Executive Officer Aaron Adler convened a prehearing conference in the Town of St. Albans Bay with the Applicants and the Vermont Division of Historic Preservation (the Division) participating. On March 12, the Assistant Executive Officer issued a prehearing conference report and order.

On April 8, 1992, the Board convened oral argument in this matter in Colchester, with the following parties participating:

The Applicants by William F. Rugg, Esq.
The Division by Kurt Janson, Esq.

The argument concerned a motion to dismiss on grounds of collateral estoppel filed by the Division on April 1. The Division contended that the condition regarding Lots #16 and #17 was conclusively determined in 1987 when the Permit was issued and that therefore the Amendment Application should be dismissed based on the doctrine of collateral estoppel. The Applicants contended that circumstances regarding the subdivision had changed since the issuance of the Permit and that denial of the Amendment Application placed an unnecessary and undue financial hardship on them and their son, Franklin J. Cioffi. The Board ruled that an evidentiary hearing would be held regarding the contention by the Applicants of changed circumstances, and that it would suspend ruling on the Division's motion to dismiss on grounds of collateral estoppel until after the evidentiary hearing.

On July 2, 1992, a Stipulation between the Applicants and the Division was filed with the Board. The Board deliberated concerning the Stipulation on July 15, 1992. On July 29, the Board issued a memorandum of decision regarding the Stipulation, concluding that the Stipulation was inadequate to support the issuance of a land use permit amendment and requiring the submission of an amended stipulation.

On February 10, 1993, an amended Stipulation between the Applicants and the Division, and joined by Franklin J. Cioffi, was filed with the Board (the Agreement). The Board deliberated concerning this matter on February 24, 1993. This matter is now ready for decision. To the extent any proposed findings of fact and conclusions of law are included below, they are granted; otherwise, they are denied.

II. ISSUE

Whether, pursuant to 10 V.S.A. § 6086(a)(8), the proposed project, as conditioned, will have an undue adverse effect on an historic site.

III. FINDINGS OF FACT

1. On November 4, 1987, the District #6 Environmental Commission issued Land Use Permit #6F0370 (the Permit) to Robert and Nancy Cioffi (the Applicants). The Permit authorized the creation of a 38 lot residential subdivision in the Town of St. Albans, Vermont, commonly known as the Hill Farm Estates Subdivision.
 2. Land Use Permit #6F0370 was conditioned on the elimination of originally proposed lots #16 and #17 from the proposed subdivision. The District Commission required the elimination of these lots in order to preserve open land adjacent to an historic farmhouse and barn complex (the Barn Complex) which is listed in the State Register of Historic Places. Lots #16 and #17 are the two lots closest to the historic buildings.
 3. Part of the Barn Complex is on a tract of land owned by Franklin J. Cioffi, son of the Applicants.
 4. The two open lots have value in helping to preserve the context of the Barn Complex. The open land of undeveloped lots #16 and #17 helps isolate and separate the Barn Complex from the residential subdivision, thereby aiding the interpretation and appreciation of the structure, utilitarian design, and agricultural heritage of the farm buildings as well as allowing the recognition and appreciation of the barns and house as an historic farm unit.
 5. The preservation of open land adjacent to the Barn Complex provides desirable flexibility for securing a future use for the Barn Complex. Securing a use for an historic structure is the best means to increase the likelihood of longterm preservation of the structure.
 6. When the two lots are developed the isolation and separation of the Barn Complex from the subdivision will be lost and it will be harder for the public to see and recognize the historic resource. The built environment in the vicinity of the Barn Complex will run together visually in an undifferentiated mass.
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7. Development of lots #16 and #17 also limits potential future uses of the Barn Complex because future uses such as commercial use might require minimum lot sizes for development, in particular to provide adequate parking space.
8. In current amendment application #6F0370-2 (the Amendment Application), the Applicants seek approval to develop lots #16 and #17.
9. The Division and the Applicants have reached an agreement (the Agreement) that allows the Applicants to develop lots #16 and #17 while effectively mitigating impacts on the Barn Complex. The Agreement has been joined by Franklin J. Cioffi, and he has indicated his agreement to be bound by the Agreement and Amended Land Use Permit #6F0370-2-EB. The Agreement consists of the following provisions:
 - a. The applicants will commit the net proceeds from the sale of lots #16 and #17, estimated at \$30,000 to \$35,000, for the repair and restoration of Barn #4 and the main barn, its roof, silos, and southwestern annex. The minimum amount to be expended for this repair and restoration will be \$30,000. The contractors' receipts for the repair and restoration will be submitted to the District #6 Environmental Coordinator as construction and repairs are done.
 - b. The St. Albans Historic Museum and Society will be allowed to use Barn #4 for the display of historic tools and implements. The Society will not be charged rent. However, the Society will be responsible for any interior renovations desired, heating costs, electric costs, maintenance, insurance (i.e., property, casualty and general liability), and property taxes. The Applicants will provide a small parking area at the rear of the main barn for Museum visitors.
 - c. Barn #4 and the surrounding land (as shown on an attached exhibit to the Agreement) will be deeded to the Applicants' son, Franklin J. Cioffi. The deed will require Franklin J. Cioffi to adhere to the provisions of this Agreement.
10. The use of Barn #4 by the St. Albans Historic Museum and Society for agricultural related exhibits will mitigate losses from development of lots #16 and #17. The opportunity for visitation and interpretation of the Barn Complex that this proposal offers will allow the public to recognize and appreciate the agricultural heritage of the farm and its buildings.

Although the ability to appreciate the resource at a distance will decrease, the opportunity to appreciate it close-up will significantly increase.

11. Preservation of historic resources ultimately depends on active use and maintenance. By providing an opportunity for public visitation and interpretation of the Barn Complex, the Agreement provides for an active and compatible use of one of the barns. It therefore also enhances its potential for preservation. Additionally, now that a compatible use with only minimum parking needs has been secured, the need to maintain space for future, parking is diminished.
12. The Agreement also provides for necessary maintenance of Barn #4 and the main barn, its roof, silos and southwestern annex. If left unchecked, deterioration will lead to destruction of historic resources. The Agreement provides for a minimum \$30,000 investment to perform necessary maintenance to avoid destructive deterioration of the resource.
13. The proposed permit amendment, as modified by the provisions of this Agreement, is sufficiently different from the Applicants' 1987 proposal to develop lots #16 and #17 that it is not precluded by the doctrine of collateral estoppel.

IV. CONCLUSIONS OF LAW

10 V.S.A. § 6086(a)(8) requires that before granting a permit, the Board or district commission must find that a subdivision or development "will not have an undue adverse effect on the scenic or natural beauty of the area, aesthetics, historic sites or rare and irreplaceable natural areas."

Based on the findings of fact, the Board concludes that development of lots #16 and #17 will have an adverse effect on the historic buildings. However, the Board also concludes that the compromise reached by the Division and the Applicant will allow the development of the two lots while providing benefits and protections for the farm buildings. Such benefits and protections will mitigate the adverse effect of development on the historic resource to the extent that the adverse effect to the resource is not undue.

The loss of agricultural context for the farm buildings is partially mitigated by new opportunities for public visitation and interpretation of the Barn Complex. The loss of flexibility for securing a future use for the farm buildings is partially mitigated by the present opportunity of a use of the Barn Complex compatible

with its original purpose. Finally, repair and restoration of the Barn Complex by the Cioffis is an additional mitigating factor against adverse impacts to the historic resource.

In order to assure that the mitigation provided by the repair and restoration of the Barn Complex takes place in a prompt manner, the Board will require that the Applicants commence repair and restoration work on the Barn Complex within a reasonable time after the sale of one of the two lots, but in any event work shall be commenced no later than June 1, 1994, and such work shall be completed by October 1, 1994. Further, in order to assure that the moneys earmarked for Barn Complex repair and restoration are in fact expended for such repair and restoration, the Board will specify that expenditures must be reasonably related to the repair and restoration work. In addition, to ensure the available funds are not wasted on excessive expenditures, the Board will specify that expenditures in furtherance of repair and restoration must be reasonable in light of prevailing market conditions.

The Board understands that the intent of the Stipulation is that the measures taken in mitigation of the development of the two lots are to be permanent. Accordingly, in order to assure that the Barn Complex is maintained for museum purposes, and to assure access thereto by the public, the Board will require that the Applicants allow the St. Albans Historic Museum and Society to use the Barn Complex in perpetuity for museum purposes, in order to provide opportunities for public visitation and interpretation of the Barn Complex. In addition, with respect to "Barn #4" and the land to be deeded to Franklin J. Cioffi, the Board will also require that such deed require Franklin J. Cioffi and his successors and assigns to adhere to the provisions of the Stipulation and the conditions of the Permit.

The Board understands that it is including permit conditions not contemplated in the Stipulation. If any party seeks to be heard concerning these additional conditions, a motion to alter the decision may be filed with the Board under Board Rule 31(A) within 30 days of the date this decision is issued.

Accordingly, based upon the Agreement between the Division and the Applicants, and as limited by the terms and conditions of the Permit and the Findings of Fact and Conclusions of Law, the Board concludes that the development of lots #16 and #17 meets the requirements of 10 V.S.A. § 6086(a)(S).

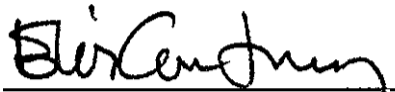
Robert and Nancy Cioffi
Findings of Fact, Conclusions of Law, and Order
Application #6F0370-2-EB
Page 7

v. ORDER

Land Use Permit Amendment #6F0370-2-EB is hereby issued. Jurisdiction of this matter is returned to the District #6 Environmental Commission.

Dated at Montpelier, Vermont this 29th day of June, 1993.

ENVIRONMENTAL BOARD



Elizabeth Courtney, Chair
Ferdinand Bongartz
Terry Ehrich
Lixi Fortna
Samuel Lloyd
Steve E. Wright

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