

STATE OF VERMONT
SUPERIOR COURT - ENVIRONMENTAL DIVISION

NATURAL RESOURCES BOARD,)	
Petitioner)	Docket No.
)	
v.)	<u>ASSURANCE OF DISCONTINUANCE</u>
)	
APPLERIDGE DEVELOPMENT, LLC,)	
Respondent)	

VIOLATIONS

Failure to complete, operate, and maintain the Project in accordance with the Findings of Fact and Conclusions of Law, as well as Exhibit 42, in violation of Condition 2 of Land Use Permit 8B0573.

ASSURANCE OF DISCONTINUANCE

Pursuant to the provisions of 10 V.S.A. § 8007, the Natural Resources Board (Board) and Appleridge Development, LLC (Respondent) hereby enter into this Assurance of Discontinuance (Assurance or AOD), and stipulate and agree as follows:

STATEMENT OF FACTS AND DESCRIPTION OF VIOLATIONS

1. Respondent Appleridge Development, LLC developed a residential condominium project in Bennington, Vermont (Project) and is a current permittee for Land Use Permit #8B0573 (The Permit).
2. On September 27, 2005, the District 8 Environmental Commission issued the Land Use Permit to Appleridge Development, LLC, authorizing the Permittee to renovate the existing house into three condominium units; construct 12 new buildings ranging in size from two to five units for a total of 50 condominium units (53 units total onsite) with public sewer and water, located on 4.4 acres at 426 South Street, in Bennington (the "Project Tract").

Fencing:

3. Condition 2 of the Permit states:
 2. The project shall be completed, operated and maintained in accordance with: (a) Findings of Fact and Conclusions of Law #8B0573, (b) the plans and exhibits on file with the District Environmental Commission, and (c) the conditions of this permit.
4. Exhibit 42 shows "New Fence, 6' Stockade" on the common corner with the Heaton property.



5. An inspection by the Board on February 11, 2015, revealed that a section of the eastern end of the stockade fence had not been maintained in place.

Modification to an Historic Building:

6. Paragraph 18 of the Findings of Fact states, in relevant part:

18. The homestead at 426 South Street is an historic Greek Revival house, known as the G. W. Harmon Residence [also known as the Hawks house], constructed ca. 1850 and is listed on the State Register of Historic Places as a contributing building in the Bennington South Street Historic District. It is eligible for individual listing on the National Register of Historic Places. It will be converted into three units of housing, following the national Standards for Historic Renovation.

7. Exhibit 40 states, in relevant part:

As stated in our Act 250 Land Use Permit Application, we are planning interior renovations to transform the two-family into three townhouses/condominiums and any work will meet the Secretary of the Interiors Standards for Work on Historic Structures. It is likely that exterior work will consist of repairing rotted wood, cleaning, and painting.

8. Exhibit 6, under Criterion 8, Scenic Beauty, Historic Sites, and Natural Areas, (paragraph h), states:

This project sits outside of the town's historic district. However, the existing Hawks house will remain and be incorporated into the project. No changes are planned for the exterior of the building – all renovations shall be interior. Any work will meet the Secretary of the Interiors Standards for Work on Historic Structures.

9. An inspection by the Board on February 11, 2015, revealed that an external chimney of precast concrete blocks has been constructed on the north side of the G. W. Harmon residence, extending through the ground level side porch floor, penetrating the side porch roof, and continuing vertically through the structure's roof cornice. The Respondent informed the Board that the chimney had been completed on an emergency basis, and had been intended to be temporary in nature, as the original chimney had collapsed during the winter heating season, and venting of the furnace fumes had to be addressed for the safety of the existing tenants.

10. The U.S. Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings state:

- a. 2. The historic character of a property will be retained and preserved. The removal of distinctive materials or alteration of features, spaces, and spatial relationships that characterize a property will be avoided.
 - b. 5. Distinctive materials, features, finishes and construction techniques or examples of craftsmanship that characterize a property will be preserved.
 - c. 9. New additions, exterior alterations, or related new construction will not destroy historic materials, features, and spatial relationships that characterize the property. The new work will be differentiated from the old and will be compatible with the historic materials, features, size, scale and proportion, and massing to protect the integrity of the property and its environment.
11. The Respondent's construction of an exterior precast concrete chimney, even if intended to be temporary, altered the structure's side porch and roof cornice, and modified spatial relationships, architectural character and aesthetics on the structure's north side. It altered the structure's north façade with a chimney in a location where a chimney never would have been constructed historically. It destroyed portions of the porch floor, porch roof, and roof cornice. Precast concrete block is not compatible with the historic materials.
12. Respondent failed to complete exterior alterations in accordance with the U.S. Secretary of the Interior's Standards for Rehabilitation. This constitutes a violation of Condition 2 of the Permit.

Failure to use wood clapboard and wood trim:

13. Paragraph 20 of the Findings of Fact states:

20. The exterior of the buildings will be wood clapboard and wood trim.

14. An inspection by the Board on February 11, 2015, revealed that the new buildings were covered with vinyl siding, trim and shutters.
15. Respondent failed to cover the exterior of the new buildings with wood clapboard and trim in accordance with Paragraph 20 of the Findings of Fact. This constitutes a violation of Condition 2 of the Permit.

AGREEMENT

16. Respondents shall comply with Land Use Permit 8B0573, as amended, except as provided herein.

17. No later than 60 days following the entry of this Assurance as an Order by the Superior Court, Environmental Division, the Respondents shall pay the following:
- a. pursuant to 10 V.S.A. Ch. 201, a civil penalty in the amount of **\$6,300.00**, for the violations noted herein, by good check made payable to the "State of Vermont."
 - b. pursuant to 10 V.S.A. §8010(e)(2), the amount of **\$1,100.55** to reimburse the Natural Resources Board for the costs of this enforcement action by good check made payable to the "State of Vermont."
 - c. the amount of **\$10.00** for the purpose of paying the recording fee for the filing of a notice of this Assurance in the Bennington land records, by good check made payable to the "Town of Bennington, Vermont."

18. All payments required by this Assurance shall be sent to:

Natural Resources Board
Dewey Building
1 National Life Drive
Montpelier, Vermont 05620-3201

19. Respondents shall not deduct, nor attempt to deduct, any payment made to the State pursuant to this Assurance from Respondents' reported income for tax purposes or attempt to obtain any other tax benefit from such payment
20. In lieu of complying with Paragraph 20 of the Findings of Fact ("The exterior of the buildings will be wood clapboard and wood trim"), Respondent shall pay to the Division for Historic Preservation (Recipient), the sum of \$27,500 for a Supplemental Environmental Project (SEP) (10 V.S.A. § 8007(b)(2)), which the Recipient shall use for the following purpose and subject to the following guidelines:
- a. To create the "Bennington Neighborhood Survey and Historic District Nomination." Within the following boundaries of this district, there are approximately 550 properties which need to be properly surveyed for their architectural and historic significance:
 - i. Eastern Boundary: Dewey Street (east side) and South Street (east side)
 - ii. Southern Boundary: Crescent Boulevard, including Pine Circle, Pine Circle East, and Margaret Lane;
 - iii. Weeks Street, including Putnam Street (both sides) to Observatory Street (both sides) to Jefferson Heights (west side)
 - iv. Western Boundary: South Street (west side south of Weeks Street) and Morgan Street (west side)

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- v. Northern Boundary: Elm Street and Union Street (both sides, excluding what is in Downtown Historic District)
- b. Properties in this area are predominantly single-family houses, some duplexes and commercial buildings. There are also High-style mansions and more modest mid-century. The properties in this area date in age from the 1850s to 1960s. There are approximately 550 buildings that will be surveyed and for which the nomination process for historic preservation will begin using funds from this SEP
- c. Recipient agrees to the following:
 - i. To maintain a current accounting of all monies received and expended in furtherance of the Project, to be made available to the Board upon request;
 - ii. To provide to the Board a final accounting of all receipts and expenditures in furtherance of the Project within thirty (30) days of the completion of the Project; and
 - iii. To provide to the Board, within thirty (30) days of the completion of the Project, a brief report of the Project, indicating that the funds have been expended in furtherance of the Project.
 - iv. SEP funds may be used only for the project outlined herein. If any funds remain unused after completion of the project, such funds may be used to fund other Division projects within the same Historic District.
- d. The sum (\$27,500) referred to in paragraph 20 of this Assurance shall be paid in accordance with the following schedule (there shall be no penalty for pre-payment):
 - i. First Installment: \$2,500 to be paid no later than 60 days following the entry of this Assurance as an Order by the Superior Court, Environmental Division.
 - ii. Second Installment: \$5,000 to be paid on or before December 30, 2016.
 - iii. Third Installment: \$10,000 to be paid on or before March 15, 2017.
 - iv. Fourth Installment: \$10,000 to be paid on or before June 15, 2017.

21. No later than ⁹⁰~~60~~ days following the entry of this Assurance as an Order by the Superior Court, Environmental Division, Respondents shall:

- a. maintain the stockade fence which has been installed on the common corner with the Heaton property in accordance with Exhibit 42;
- b. replace the old oil furnace with a direct vent gas furnace, or furnaces, which will be vented to the south side of the Hawks House;

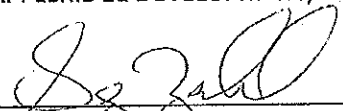
- c. remove the exterior precast concrete chimney from the historic structure, and restore the porch, siding and roof cornice to pre-disturbance conditions;
 - d. file photographs and a sworn certification with the Board and the Commission that the directives outlined above (a.- d.) have been completed.
22. The State of Vermont and the Natural Resources Board reserve continuing jurisdiction to ensure compliance with all statutes, rules, and regulations applicable to the facts and violations set forth herein above.
 23. Nothing in this Assurance shall be construed as having relieved, modified, waived or otherwise affected the Respondents' continuing obligation to comply with all other applicable state or local statutes, regulations or directives.
 24. This Assurance shall become effective only after it is signed by all parties and entered as an order of the Superior Court, Environmental pursuant to 10 V.S.A. § 8007(c). In the event that such order is vacated, the Assurance shall be null and void.
 25. Pursuant to 10 V.S.A. § 8007(d), the Respondents shall not be liable for additional civil or criminal penalties with respect to the specific facts described herein, provided that the Respondents fully comply with this Assurance.
 26. This Assurance sets forth the complete agreement of the parties, and it may be altered, amended, or otherwise modified only by subsequent written agreements signed by the parties hereto or their legal representatives and incorporated in an order issued by the Superior Court, Environmental Division.
 27. Violation of any provision of this Assurance, as this Assurance is entered as a judicial order pursuant to 10 V.S.A. § 8007(c), shall be deemed to be a violation of a judicial order and may result in the imposition of injunctive relief or penalties or both, including penalties set forth in 10 V.S.A. chapters 201 or 211 or both.
 28. This Assurance is subject to the provisions of 10 V.S.A. § 8007.

SIGNATURES

The provisions set forth in this Assurance of Discontinuance are hereby agreed to and accepted.

APPLERIDGE DEVELOPMENT, LLC

By:


George Verwill, Authorized Agent

BE IT REMEMBERED that on the 30th day of September, 2016, personally appeared George Yedink, signer of the foregoing written instrument who is known to me or who satisfactorily established his identity to me and acknowledged the same to be his free act and deed and the free act and deed of Appleridge Development, LLC.

Before me: [Signature]
Notary Public
Commission Expires: 2/10/19

The provisions set forth in this Assurance of Discontinuance are hereby agreed to and accepted.

DATED in Montpelier, Vermont, this 4 day of October, 2016.

NATURAL RESOURCES BOARD

By: [Signature]
Diane Snelling, Chair

DATED in Montpelier, Vermont, this 10 day of OCTOBER, 2016.

Division for Historic Preservation
(As to Paragraph 20(c)(1-4) only

By: [Signature]
Laura V. Trieschmann, State Historic Preservation
Officer