

Cornwall Development Review Board (DRB)

Hearing Minutes • Cornwall Town Hall

October 4, 2017 • 7:00—9:28pm

MEMBERS PRESENT: Barbara Greenwood, Joe Severy, Annie Wilson, Gary Barnett; [Matt Bonner—recused]

ALTERNATES PRESENT: Shari Johnson Alt., [Cheryl Cesario Alt.—recused]

ALSO PRESENT: Benj Deppman, Mary Dodge, Jim Duclos, Jean Terwilliger, Katherine Branch, Liza Rheume, Denny Rheume, Bethany Menkart, Marc Lapin, John Berninghausen, Alice Berninghausen, Cheryl Cesario, Magna Dodge, Marge Drexler; Mike Pyle, Sue Johnson

- 1. CALL TO ORDER:** 7:00pm. Barbara, on Matt's recusal, assumed the Chair and opened the meeting.
- 2. QUORUM:** Established.
- 3. AGENDA:** Barbara MOVED / Joe SECONDED to correct the date of the Minutes to be approved from August 2 to September 6 and to approve the Agenda. *Motion passed* (5 in favor, 0 opposed, 2 recused.)
- 4 MINUTES: September 6, 2017**—Gary MOVED / Shari SECONDED to approve the Minutes of September 6 with one typo correction. *Motion passed* (5 in favor, 0 opposed, 2 recused).
- 5. West Street Properties HEARING Resumption—7:10pm**—Barbara resumed the hearing by noting that Matt Bonner, Board chair, had recused himself from the business at hand and would be appearing solely as the applicant. The recusal of Board Alternate, Cheryl Cesario, was also noted. Shari Johnson, Board Alternate, resumed her appointed role as a Board member for this hearing.

Barbara then explained the procedure for hearing the testimonies regarding the application before the Board, and assured all attending that the Hearing would be conducted in a fair and impartial manner.

Ex parte Communications—Barbara gave notice of her ex parte communications with Matt since the last hearing. She and Matt had exchanged two emails, dated September 15, plus an update dated October 4, regarding whether or not sale agreements had been reached with Rheumes or Cesarios since first hearing, which she read to those present and then entered into the record as *Exhibit J*. Board members were then asked to disclose any ex parte communications they may have had since the September hearing. Gary had spoken with Jean Terwilliger, Cheryl Cesario, Ben Woods, and Sue Johnson. None of the communications were judged to present any conflict.

Barbara reviewed the history of the proceedings to date. The application before the Board is for approval to modify a recorded Plat by adding a proposed new driveway. The approved Plat contemplated lots 3, 4, and 5 sharing a driveway. The proposed new drive will serve lots 4 and 5. This would result in an additional 300' of driveway. The initial warned hearing was held September 6 and was adjourned to this date, time, and place. At that hearing, the Board accepted into evidence the original application for the proposed drive modification and attendant documents, marking them as *Exhibits A–H*. Additional documents accepted were an updated list of property abutters and proof of notification by mail, marked as *Exhibit I*. The original 5-lot subdivision was approved by the CPC in 2015. *Section 282* of the subdivision regulations require any changes to a filed subdivision plat to come before the DRB.

Interested Persons—Barbara then read the statutory definition of “Interested Person,” inviting any who claimed that status to be sure they signed the sign-in sheet. Matt and those claiming Interested Person status were then duly sworn in.

- Board members officiating at the Hearing: Gary Barnett, Barbara Greenwood, Joe Severy, Annie Wilson, Shari Johnson
- The DRB reviewed the application under the *Town of Cornwall Subdivision Regulations*, dated February 26, 2008.
- *Article II, §282* of the *Regulations* requires any changes/amendments to a filed subdivision Plat be brought before the DRB.
- *Article II, §242* of the *Regulations* provides requirements for warning and holding a hearing.

Testimony

I Applicant

A. Matt recapped the proposed site plan dated in August, 2017, and which showed the change proposed for the driveway.

B. *Exhibits*—Exhibits reviewed:

Exhibit A—Hearing Application (drb#17-08-01), dated March 10, 2017

Exhibit B—Description of Proposed Driveway Update, August 2017

Exhibit C—Original Subdivision Approval, CPC, March 6, 2015

Exhibit D—Road Access Permit, Road Foreman, May 11, 2017

Exhibit E—Annotated map of approved subdivision showing proposed changes

Exhibit F—Statement of Conformance with Town Plan

Exhibit G—List of abutters noticed for hearing

Exhibit H—Full size plan showing proposed updates

Exhibit I—updated list of abutters and proof of mailed notifications

* *Exhibit J*—email correspondence between Matt Bonner and Barbara Greenwood, dated September 15, 2017, and October 4, 2017

* *Exhibit K*—full copy of the March 6, 2015, CPC decision

* *Exhibit L*—copy of warranty deed to Anna Rebecca Kinkead, owner of lot 3.

* *Exhibit M*—Final Subdivision Plat [copy] dated May 14, 2014, revised March 20, 2015, signed by Holly Noordsy and Jim Duclos (CPC members), April 22, 2015, recorded as #261

* *Exhibit O*—Cornwall Conservation Committee recommendations

** *Exhibit N*—[held for excerpts from correspondence between Matt Bonner and potential purchaser of lots 4 and 5 *see II B 3, below*]

** *Exhibit P*—[held for letter of authorization from Kinkead [*see II B 2 below*]]

** *Exhibit Q*—[held for letter from Fire Chief]

* *marks new exhibits at this Hearing*

** *marks exhibit # held for document to be received*

D. The color-coded version of the old vs new drive layout was reviewed; the original portion of the drive from lot 3 to lot 4 is proposed to be replaced by a new 300-foot section on lot 4 from West Street to serve lots 4 and 5, leaving the drive to lot 3 as private rather than shared..

E. Matt noted that 90 acres of the original parcel had been conserved and was sold to the Cesarios, the house had been donated to the Fire Department for training, roughly 85% of the parent parcel of this subdivision has been conserved, the lots have no-build zones along their fronts, all efforts have been made to comply with and enhance land/wildlife preservation and conservation.

II. DRB Questions/Comments

- A. 1. **Gary**—what motivates this proposed change in drive layout? *Matt*—to be better able to satisfy potential purchasers' desire for private access.
2. **Gary** expressed concern that lot 3 had been sold without adherence to the CPC's decision condition that maintenance agreements be in place for shared drives. **Barbara** also concerned that Condition 4 of the 2015 CPC decision required a maintenance agreement regarding shared drives be included on deeds, but this was not done on the Kinkead deed. *Benj*—as *Matt*'s attorney, noted that Rebecca Kinkead had not wanted a shared drive and that he had spoken with her attorney, Eban Punderson, about this. As Ms Kinkead was not interested in a shared drive, the attorneys agreed to proceed with the closing, without a shared drive agreement. *Benj* acknowledged this was an oversight on the part of all. *Matt* said that, had the lot been sold as a shared-drive parcel, the condition requiring a maintenance agreement would certainly have been included, without a shared drive such an agreement was left out.
- It was noted that *Matt* had received a curb-cut permit for the proposed new drive in May, prior to the sale of lot 3, in preparation for proposed drive modification.
- B. 1. **Barbara** noted that the full March 6, 2015, CPC decision was available at this meeting and she would like to accept it into evidence and mark as *Exhibit K*. *Matt* concurred and identified the document. A portion of the decision had previously been marked as *Exhibit C*.
2. **Barbara**—as noted, the Kinkead deed (accepted and marked as *Exhibit L*) made no mention of a private drive, despite being so-noted on plat and plan She asked if Rebecca Kinkead had authorized *Matt* to proceed with this application which would affect her parcel (lot 3) as well, and asked for a letter from Kinkead authorizing *Matt* to proceed (to be accepted and marked as *Exhibit P* when received). *Matt* will contact her.
3. **Barbara**—Regarding the parcel at the base of lot 5 proposed for a BLA (currently grazed by the Cesarios), is there any plan to keep it open? *Matt*—the potential purchaser plans intends to extend the lease on a long-term basis to the Cesarios, *Matt* plans to cover the cost for the first 5 years. He read portions of a letter to the Board, from the potential purchaser acknowledging this, and will provide the Board with a copy of said excerpt. To be marked as *Exhibit N* when received.
4. **Barbara** noted that there seemed to be a discrepancy regarding dates in the lot 3 deed. Language in the deed —conveyed subject to “terms and conditions of the CPC decision dated November 4, 2014” and “to subsequent final approval, July 16, 2016”—what is the July 16, 2016, reference? *Matt* believed this to be related to the barn and land across the road.
5. **Barbara** requested that a copy of the final Plat (#216, Cornwall Land Records) dated May 14, 2014, updated in March of 2015, and signed by the CPC April 22, 2015, be marked as *Exhibit M*. *Matt* identified the document.
- C. 1. **Shari** asked about the status of the Rheaume and Cesario options. *Benj*—“to be conveyed” notation attached to boundary-line-adjustment parcels on the Plat, is not a legal obligation to sell, so sees no pertinence to this application.
- D. 1. **Gary** —Does the pending sale have any impact on the b-l-a parcel's on lots 4 and 5? Does the current pending sale include the 8 acres delineated by the “to-be conveyed” BLAs, is this a change to the approved subdivision? *Benj*—can not find anything in the decision obligating the owner—West Street Properties or other—to follow through with the boundary adjustments as noted. BLAs were always known as being only a possibility.
- E. 1. **Barbara** —question as to whether another approval would be required for the sale of lots 4 and 5 without the b-l-a's. *Benj*—in his opinion, any boundary adjustments would fall to the new owners of the lots, the sale to them would not need a zoning approval for inclusion of the adjustments. *Jim Duclos*—wondered if the b-l-a's would generate a 7 rather than 5 lot subdivision? **Barbara** noted that the Town's attorney was of the opinion that the buyer would

need approval. She will contact him and convey that Benj is open to speaking with him about this. Benj agreed

2. **Barbara**—The 2015 CPC decision required that the drives be engineered to VT State design standards, and an engineering plan had been presented for that purpose. Will the new section of drive follow those standards and have an engineering plan developed for it? **Matt**—The new owners will be responsible for building their drive, as Ms Kinkead is doing. He feels it should not be necessary for the new section of drive to be engineered as the majority of this new section is across relatively flat land having little more than a 3° grade, the upper section has followed the engineering plan previously developed. He noted that should the DRB approve the proposed modification and include such a requirement in its decision he will insert the requirement into the sales agreement in compliance.
4. **Barbara**—The 2015 decision also required a letter from the Fire Chief (noted as received in the CPC 2015 decision) asserting that there was sufficient access along the drives to allow emergency vehicles to turn around. Has a similar letter been requested for the proposed new driveway for lots 4 and 5? **Matt**—Because the section is so flat and the existing portion of the proposed drive has turn-around space, he has not requested additional confirmation from the Fire Chief, but he will do so (to be *Exhibit Q*).

III. Public Questions/Comments

- A. 1. **Marc Lapin** —Emphasized the CCC's role as advisor to the DRB, objected to being included as part of the “public.” The Conservation Committee's plan evaluation (*Exhibit O*) has 2 recommendations: (1) that the drive be engineered and (2) that plans for lots 4 and 5 be reconsidered at in their entirety. The CCC feels that if the BLA between lot 5 and the Cesarios has not occurred, perhaps the DRB should consider requiring that the lot 5 building envelope be moved. **Matt**—noted that building areas were placed in wooded areas not pasture areas and were approved for those areas. **Benj**—reminded that this application is for a drive not a restructuring of the entire plat. **Gary**—questioned whether the CCC had objections to the proposed drive? **Marc**—no objection at all. **Joe**—asked if the new drive would actually be better? **Marc**—not sure, it should adhere to “best management practices.”
- B. 1. **Mary Dodge**—The CCC's concern is about impeding wildlife in the Southeast corner of lot 5 should that area be selected for a house-site. A re-visiting might be in order. **Matt**—the lot 5 house site is located in a cleared area where there is no old growth forest, not the Southeast corner. The site was selected using the recommendations of the CCC.
- C. 1. **Jim Duclos** —this seems similar to a variance of a zoning regulation and suggested that the DRB review both this application and the original decision by the variance criteria of the regulations, he noted that there must be a valid reason for adding an additional 300'. **Benj**—disagreed with the variance comparison.
 2. **Jim**—questioned if buyer of 4 and 5 are planning to merge the lots or perhaps sell one off? Or that the building envelopes be combined and moved? **Benj**—there is no reason the purchaser(s) could not complete the planned b-l-a's; it was always known that the b-l-a's might not ever come about, or that they might, at some point in the future. **Matt**— the envelopes could not be combined and moved.
- E. 1. **Jean Terwilliger** —This may bring up an opportunity for review. The CPC had considerable leeway in considering views, open spaces, and so on when determining location of drives and building sites. If the purchase of lots 4 and 5 would eliminate a building site, it might be a trade-off for the additional 300' of the proposed drive.
- F. 1. **Cheryl Cesario**—to clarify the impression given that there had been no effort on their part to move forward with or maintain a purchase discussion, noted that their 90-acre purchase through the Vermont Land Trust had taken a year and a half to complete and until that was concluded, they were not in a position to move forward with a second purchase agreement.

She believes their purchase interest had been evinced through emails and conversations with Matt over the ensuing period.

- G. 1. Katherine Branch —in her opinion, the 300' change to the drive is completely at odds with the original plan as approved in 2015. The DRB should consider the precedent it would set if this change, contrary to the whole decision of the CPC, were to be approved. Benj— this application is not seeking to move envelopes, boundary lines, or anything thing else indicative of an overall altering if the original agreement (decision). It is only to adjust a driveway.
- H. 1. Alice Berninghausen —Was shocked at the extent/magnitude of the lot 3 driveway when she drove up. Her own drive is not as extensive as this and suffers from erosion, she fears the proposed new driveway will be even worse. Also, she has concerns regarding traffic on West Street which is generally quite fast and occasions many near-misses.
- I. 1. John Berninghausen —had concerns with the 2 shared drives, not happy with the 3 allowed, a 4th drive is not something he wishes to see. He believes the potential sale to the Rheaumes and Cesarios in 2015 was a significant factor in the CPC's approval. Further, he believes it was incorrect for lot 3 to be sold with a private drive when it was shown as a shared drive on the recorded Plat. Jim D—he agrees the potential sales were a factor in the CPC discussions, but were not made part of the decision [a potential, not a fact].
- J. 1. Barbara—Queried as to whether it might be a good idea to have the Road Foreman attend the next meeting and speak to the DRB about the visibility from the bottom of the proposed driveway. She feels it does not have sufficient view to the north side without serious straining by the driver to see oncoming traffic. Wonders about the possibility of clearing for a better view. Benj— good idea
- K. 1. Bethany—commented on West Street traffic; surprised at location of curb-cut, it has an abrupt entrance onto West Street; was told by men cutting trees that it was for a driveway. Matt—to clarify, he hired them to clear a path so that there was access in order to view the site(s). She presented a map, saying it showed that major alterations are being considered: a change from 5 house sites to 4, conveyances not honored, drives reconfigured, septic sites moved. She asked why Matt had not brought up these changes.1. Gary—Noted that Bethany was using the wrong map, that there are no septic changes indicated on the proper map.
- Barbara interrupted Bethany's comments noting that the Board had another party on the Agenda scheduled for 8:00. The Board is not closing this hearing but adjourning it for reconvening at a later date. Gary moved to adjourn the Hearing to November 1, 7:00pm, at the Town Hall. Shari seconded. the Board voted to adjourn, 5 in favor, 0 opposed. Barbara emphasized that the hearing and testimony were not closed, and then adjourned the West Street Properties Hearing to November 1 at 7:00pm at the Town Hall.

Barbara turned the Chair over to Matt.

6. PYLE SUBDIVISION: SKETCH PLAN MEETING

- Matt called the informal discussion to order at 9:05. Board members present: Matt Bonner, Barbara Greenwood, Joe Severy, Annie Wilson, Gary Barnett)
- The following exhibits were marked as noted:
 - Exhibit A*—the application-specific
 - Exhibit B*—the site plan
 - Exhibit C*—the cover letter.
- Mike Pyle—the property had been purchased for tenant housing. He wishes to sell a subdivided lot in order to raise money for other projects. This is his only development project, he has not

developed any parcels in Cornwall within the past 5 years. He plans to retain lot 1 and the original house.

- Barbara—Lot 2 fronts on Route 30? *Mike*—yes, it surrounds Lot 1. The South portion provides access. Even though the property lies along Route 74, it is not a safe place for a drive access.
- Barbara noted that for the hearing, a survey with setbacks, boundary footages, utilities locations, proposed house/well/septic sites and distances, all to be marked on the survey. The existing measurements for lot 1 should also be noted. It would be helpful if he could mark on the ground, the locations of drive and house-site. Also, he will need a State curb-cut permit.
- Gary MOVED, Barbara SECONDED, that Mike Pyle's subdivision be classified as a Minor Subdivision. ***Motion passed*** (5 in favor, 0 opposed)
- Matt advised Mike to review §320 and §340 1–4, plus 6 and 7, of the Subdivision regulations and follow the directions found there when assembling his application.
- Matt concluded the discussion at 9:20.

7. OTHER BUSINESS

- Matt had contacted VLCT about training specifically in regard to the Open meeting law. November 2 seems the most likely date. He will confirm with VLCT.

NEXT MEETING: November 1 at 7:00pm, Town Hall—all members present expect to be in attendance.

ADJOURNMENT—Gary MOVED, Shari SECONDED, to adjourn at 9:28PM. ***Motion passed*** (6 in favor, 0 opposed, 1 absent)

Respectfully Submitted,
Robin Conway, DRB Secretary

Matt Bonner, Chair, Cornwall Development Review Board

Barbara Greenwood, Vice-Chair, Cornwall Development Review Board