

Cornwall Development Review Board (DRB)
MINUTES • December 4, 2019 • 7:00–9:30pm
Hearing • Cornwall Town Hall

MEMBERS PRESENT: Barbara Greenwood, Joe Severy, Shari Johnson, David Anderson,
Magna Dodge

ALTERNATES PRESENT: Gary Barnett

ATTENDEES: Nigel Cheetham, *Applicant*; Jason Barnard, *Applicant's Land Engineer*, Barnard & Gervais; **members of the public** (15)

1. CALL TO ORDER: 7:00pm. Barbara opened the meeting.

2. QUORUM: Established.

3. AGENDA: Magna MOVED/Shari SECONDED to approve the Agenda as presented.
Motion passed

4. MINUTES: Correction to **November 6** Minutes—"Board Comments, Barbara, Bullet 7": removed lowercase 'w' from "wWest". At 7:15, Board suspended Minutes discussion, to resume after the Hearing.

5. HEARING—U-Phoria Properties, LLC. Subdivision; Nigel Cheetham

- Barbara, having recused herself as a property abutter prior to the Sketch Plan Meeting July 9, turned the Hearing over to Vice-Chair Joe Severy. Joe opened the Hearing with Board introductions and a brief explanation that this is a hearing for a subdivision at 1787 Sperry Road. The proposed project is to divide that 17-acre lot into 3 smaller lots—Lot 1, a 7.76-acre parcel; Lot 2, a 4.76-acre parcel; and Lot 3, a 5.29-acre parcel. The Sketch Plan Meeting on this issue was held July 9, 2019, with the Applicant, Nigel Cheetham, conferenced in by phone from England. The subdivision was classified as Minor.
- Joe asked Board members to introduce themselves; read the hearing warning as published in the *Addison Independent*; gave a brief explanation of the hearing process for the evening; read the relevant portions of 24VSA §4465(b) describing the Interested Person status and noting that only those persons who were claiming that status and who participated in the hearing could appeal the Board's decision. David then administered the oath to those who planned to participate.
- **HOUSEKEEPING—Ex parte Communications, Conflicts of Interest, Visits to the Site**—Joe asked the Board to disclose any *ex parte* communications, conflicts, or site visits. None were forthcoming.
- **Exhibits**—*Exhibits A–F* were accepted into evidence on July 9 at the Sketch Plan Meeting. Joe entered the following into evidence for this Hearing and marked them as noted:
 - *Exhibit G*—Warning as published in the *Addison Independent*,
 - *Exhibit H*—Application and supporting documents, filed _
 - *Exhibit I*—Subdivision Survey Plat, PL-1, dated October 17, 2019
 - Four Design Drawings, dated October 30, 2019
 - S-1, Overall Subdivision Plan
 - S-2, Site Plans for all three lots
 - D-1, Lot 2 Wastewater System, Details and Notes

- *D-2, Lot 3 Wastewater System, Details and Notes*
- *Exhibit J—Set of Maps, dated November 5 and November 26, 2019.*
- *Exhibit K—Cornwall Conservation Committee Parcel Review; filed August 24, 2019.*
- *Exhibit L—List of Abutters and corresponding Post Office mailing receipts*
- **APPLICANTS' PRESENTATION**
 - **Nigel Cheetham** introduced himself, explained his project, and turned the presentation over to Jason Barnard, of Barnard & Gervais, who continued with the project's plan and explanation using a site plan of the property.
 - Lot 1, would consist of 7.76 acres with the existing house, drive, well, and septic.
 - Lot 2, would be 4.76 acres.
 - Lot 3, an interior lot of 5.29 acres, would require an access easement through Lot 1.
 - Lot 3 would utilize the Lot 1 existing house's secondary septic location, as secondaries are no longer required.
 - The Lot 2 septic system location is in the corner area, bordered by Sperry on the North and North Bingham on the west.
 - There are wetlands on the property(ies) which have been delineated and will have the requisite 50' buffers. There will be no overlapping of the water/wastewater areas.
 - The proposed subdivision meets all zoning setbacks, frontages, minimum lot sizes required by the *Cornwall Zoning Regulations*.
- **DRB QUESTIONS**
 - **Joe**: *Is there any letter or other documentation from Zapata Courage (Wetlands Ecologist) regarding the wetlands and buffers?* **Jason**: Yes, he will submit it to the Board.
 - **Shari**: *The flagging markers for the parcels, building envelopes, drives as requested at the July 9 meeting have never been set. Is this something that will be done soon?* **Jason**: Yes, not a problem. Will likely be done within a week or two.
 - **Shari**: *Has thought been given to the possibility of have a drive for Lot 1 off Sperry Road, possibly near the old iron gate?* **Jason**: Not yet. He noted it would mean a longer drive. **Nigel**: Also, headlights might be bothersome to property dwellers.
- **PUBLIC COMMENT**
 - **Mary (CCC)**: *Began by noting that the CCC had done its review in August and since then there have been several changes, though not judged as sufficient to require a second review. The CCC's main concerns center on the disruption the proposed project will cause to wildlife movement, particularly to those in the "core habitat" where they bear and raise young as well as forage for food. Movement patterns have been significantly impacted already by removal of other crossing options, especially by the use of deer fencing. This particular area provides linkage with areas to the south-west and additional cuts are viewed as likely to further damage the ability of wildlife to traverse the area. The CCC has offered two suggestions to aid the landowner(s) in mitigating the traverse issue: keep the majority of orchard trees, and keep/encourage/create the use of hedgerows.* **Jason**: Noted that there is considerable animal movement along the eastern side of the property and that the wetlands and buffers make a 200' – 250' wide swath providing a protected path through the property. **Nigel**: Blames road construction methods, and current types of culverts, for forcing animals to go up onto the road where they are subject to vehicular accidents.

- In addition to wildlife concerns, attendees' main issue centered on the aesthetics of the proposed mound system on the corner of Sperry and North Bingham.
- **J. Chapline:** Asked about the Lot 2 mound height and its distance from the roads. **Jason:** Height is roughly 3'- 4', the mound would be about 50' + from Sperry Road on the north, and 35' from North Bingham on the south end. **Nigel:** He has an informal agreement with neighboring property owners that they may clear the corner of obstructing brush and trees, to make it safer.
- **S. Liljestrand:** *She prefers the corner as it is; the pines will soften the impact of the mound.*
- **J. Pugh:** *Location of the Lot 2 mound is very unappealing aesthetically. Its addition to the corner will make a dangerous corner more so.*
- **B. Greenwood:** *A small portion of the corner is currently mowed by neighbors who do not mow as far back as as the mound's proposed location. She has a view of that area from her kitchen and garden. Clearing to that location will be very unappealing.*
- **Joe:** *Is the mound located within or outside the road Right-of-Way?* **Jason:** Partially within the ROW, partially outside it.
- **C. Grigg:** *Objected to establishing an eyesore in the middle of their neighborhood.*
- **S. Grigg:** *Feels mound height will be difficult to see over as one approaches.* **Gary** noted that, in fact, the mound height will be level with the road due to the topography of the area.
- **C. Grigg:** *Asked if there was a second opinion as to where the mound could be located.* **Jason:** The State (ie State's water/wastewater engineers who approved the plan, including the topology/geology aspects).
- **S. DeHaven:** *Name? Department?.* **Jason:** Eli Erwin, Dept. of Environmental Conservation.
- **B. Greenwood:** *Remarked that their well was not on the site plan, perhaps should be added.* **Jason:** It is outside the shield, so not necessary to show it.
- **B. Greenwood:** Submitted written comments from herself and from Bruce Byers who was unable to be at the hearing. Greenwood comments accepted into evidence and marked as Exhibit M; Byers comments also accepted and marked as Exhibit N. In her comments, she noted, among numerous items, the following:
 - *DRB must review not only dimensional standards but also design standards (Article IV), conservation, protection of natural, visual, historic assets, and being compatible with the Town Plan. This project does not comply with all design standards and is not fully compliant with the Plan.*
 - *The clearing required for the Lot 2 mound will be excessive and will have a huge negative impact on the neighborhood as well as wildlife.*
 - *The wetlands stand to suffer from septic -related issues and may need a State conditional use permit.*
 - *The applicant failed to notify abutters and provide the required 15-day notice. Her notice did not arrive until November 27, having been mailed November 25.*
 - *The bulk of her comments related to the provisions in the Town's Zoning Regulations and where the proposed project appeared to fail meeting the stated requirements.*

- **Shari:** *Is there any other possible location for the Lot 2 septic?* **Jason:** He will ask, but does not think any other location will be State approved. **Nigel:** He feels safety should be more important than the height/location of the mound.
- **B. Greenwood:** *Could trees be planted on 2 sides of the mound, to screen it, in a manner that would not decrease the line-of-sight at the corner more than it now is?* **Jason:** Yes
- **F. DeHaven:** *Are all orchard trees and trees along North Bingham subject to removal?* **Jason:** No. The building envelopes are the target of clearing actions.
- **F. DeHaven:** *What price on the lots?* **Nigel:** Undetermined.
- **S. DeHaven:** *Is Zapata's wetland report available?* **Jason:** He will submit it to the Board. **Board:** It will be in the file.
- **J. Betz:** *Who is responsible for infrastructure construction?* **Jason:** Lot owner.
- **J. Betz:** *Will landowner(s) be bound by anything coming out of this meeting? Who ensures the construction is done the right way?* **Jason:** Landowner(s) will be bound to do things the 'right way' because he is the one who 'signs off' on the infrastructure, ensuring it meets the State permit requirements.
- **C. Grigg:** *This is a case of the Tail (mound) Wagging The Dog. No one in the neighborhood wants the mound system to be where it is proposed. He objects to the idea that despite, their objections, there is no alternative site location. The alternative is that the developer has to re-do the plan. If the Selectboard [sic] determines the mound is unacceptable, then the mound has to go elsewhere, and the plan needs to be re-done as a 2-Lot subdivision rather than a 3-Lot subdivision.*
- **J. Duclos:** *Expressed concern with what he felt was a tone to many comments that seemed to erode landowner rights to do with their property what they would, subject to compliance with municipal and State regulations. Cheetham has the right to do as he wishes with his land as long as he complies with applicable regulations. He feels the development will not have nearly as negative an impact on wildlife as the existing agricultural fencing at 7' height. The ag fencing never came before the Town for review because it is exempt from municipal authority, there was never an opportunity to object to it. If the neighbors do not want the mound, perhaps they could consider banding together to purchase that Lot and keep it as they want it. He finds it upsetting to think that, in order to satisfy neighbors' wishes, a landowner could lose all rights to do as he wishes with own property.*
- **J. Chapline:** *Felt Duclos is wrong. It is ridiculous for him to say it is illegitimate for neighbors to be expressing their views on the topic at issue.*
- **J. Duclos:** *He intended only to give an opinion in opposition to the prevailing opinions expressed, he did not mean to give the impression that others should not express their own views. It is up to the DRB to decide the issue.*
- **B. Greenwood:** *Felt some of Duclos' comments were reflecting on her own comments which, she noted, were based on the Town's zoning provisions not merely opinion. The DRB must take zoning provisions on design, such as those in Article IV, into consideration in their decision.*
- **Magna:** *The mound in question is located in the "most acceptable" location—is there any other location for the mound that, though not the most acceptable, would still be approvable?* **Jason:** In his opinion, No. He is willing to ask, but warned that a "yes" response is unlikely.

- *No further Public questions or comments.*

• **FINAL BOARD QUESTIONS/APPLICANT COMMENTS—**

- No additional Board comments or questions.
- **HEARING ADJOURNED—**At 8:30 Joe adjourned the hearing to Wednesday, February 5, 2020, at 7:00 p.m. at the Cornwall Town Hall. Board discussed items they wanted Applicant to do or submit: Zapata's wetlands email; flagging on property marking boundaries, drives, building envelopes; Eli Erwin's contact info; possible alternate site option for the corner lot's septic system.

4. MINUTES: *Continued from 7:15*

- **November 6, 2019—** Magna **MOVED**/David **SECONDED** to approve the **Minutes of November 6** as corrected. ***Motion passed.*** Discussion about how to close the loop post hearings. Board decided it would add an “Old Business” section to the Minutes under which any notes on previous hearings could be included.

6. CORRESPONDENCE: None

7. OLD BUSINESS: Gill Decision written, signed, mailed to Applicant and sign-ins.

8. OTHER BUSINESS:

- Short discussion on members for 2020. There are alternate positions available. Board will pursue possibilities.

9. UPCOMING MEETINGS—

- **January 9, 2020** (re-scheduled regular meeting): All expect to be available.
- **February 5, 2020:** All expect to be available.

10. DELIBERATIVE SESSION: *None.*

NEXT MEETING: January 9, 2020, at 7:00 pm, Town Hall

ADJOURNMENT—Meeting adjourned at 9:30p.m.

Respectfully Submitted,
Robin Conway, DRB Secretary