

TOWN OF CORNWALL  
2629 Rte. 30, Cornwall, VT 05753

Development Review Board  
FINDINGS AND DECISION

In re: U-Phoria Property, LLC Subdivision

Hearing Application No.: drb#19-003

**I. INTRODUCTION AND PROCEDURAL HISTORY:**

1. This proceeding involves review of an application submitted by Nigel Cheetham for property owned by U-Phoria Property, LLC. The Applicant seeks to sub-divide a 17.81 parcel at 1787 Sperry Road in the Town of Cornwall into three parcels of 7.76 acres, 4.76 acres and 5.29 acres.
2. The initial application was prepared on May 5, 2019 and was received in the Cornwall Town Hall shortly thereafter. A revised application was received in the Town Hall on November 5, 2019. A copy of the application(s) and the plat are available at the Cornwall Town Clerk's Office.
3. On November 18, 2019 notice of public hearing on December 4, 2019 for review of the application was published in the *Addison Independent*.
4. On November 15, 2019 notice of public hearing for review of the application was posted at the following locations:
  - The Town Clerk's Office
  - The Town Garage
  - The Town Website
5. The DRB conducted a Sketch Plan Review on July 9, 2019, per §230 of the *Cornwall Subdivision Regulations (CSR)*, at which time the application was classified as a minor sub-division. The application was heard on December 4, 2019, February 5, 2020, and March 4, 2020.
6. Present at the hearings were DRB Members:
  - Joseph Severy (DRB Vice Chair and Chair of the hearing)
  - Magna Dodge
  - Sharon Johnson
  - David Anderson
7. At the outset of the hearing, the chair of the hearing(s) read aloud the Hearing Notice as published. Those persons wishing to participate were duly sworn-in. Present at the hearings were Nigel Cheetham (in person, on the telephone or via Skype) and Jason Barnard, the Applicant's Land Engineer (Vermont Licensed Designer #126179).

**II. EVIDENCE AND RELEVANT TESTIMONIES:**

During the course of the hearings the following exhibits were submitted to the DRB, accepted into evidence, and marked as shown:

- *Exhibit A*—Cover letter/narrative, dated July 9, 2019.
- *Exhibit B*—Application, dated July 9, 2019.
- *Exhibit C1*—Maps, 11" x 17."
- *Exhibit C2*—Maps, larger.
- *Exhibit D*—Abutters list.
- *Exhibit E*—Written testimony, Barbara Greenwood, dated July 9, 2019.
- *Exhibit F*—ANR soil maps and fact sheet.

- *Exhibit G*—Warning as published in the *Addison Independent*.
- *Exhibit H*—Application and supporting documents, filed.
- *Exhibit I*—Subdivision Survey Plat, PL-1, as prepared by Jason Barnard, Land Engineer and Vermont Licensed Designer (#126179), 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.
- *Exhibit M*—Receipts for certified mail to abutters for the hearing notifications; dated January 13, 2020.
- *Exhibit N*—Email to Joseph Severy from Nigel; dated January 21, 2020.
- *Exhibit O*—Updated Conservation Committee report; dated January 30, 2020.
- *Exhibit P*—Email to Joseph Severy from Jason Barnard; dated January 31, 2020.
- *Exhibit Q*—Email to Joseph Severy from Jason Barnard; dated February 7, 2020 forwarding response from Elias Erwin stating that the only permissible mound location on Lot 2 was the spot as listed on the State’s Wastewater Permit.
- *Exhibit R*—Email to Joseph Severy and Benjamin Marks from Nigel Cheetham; dated February 13, 2020.
- *Exhibit S*—Comments from Bruce K. Byers; filed December 4, 2019.
- *Exhibit T*—Comments from Barbara Greenwood; filed December 4, 2019.

These exhibits are available at the Town Clerk’s Office. Also at the Town Office are the Hearing Minutes with details of the full testimonies heard.

### III. FINDINGS OF FACT AND CONCLUSIONS OF LAW:

Based upon the Application, the Exhibits and the testimony presented at the public hearings held on this Application, the DRB hereby finds, concludes and orders as follows:

#### A. *FINDINGS OF FACT*

##### 1. *Applicant*

The Applicant is Nigel Cheetham, on behalf of U-Phoria Property, LLC, the owner of the property located at 1787 Sperry Road in the Town of Cornwall.

##### 2. *Parcel*

The property is located on the southwest corner of Sperry Road and North Bingham Street in the Town of Cornwall, and is further described in a warranty deed recorded in the Cornwall Land Records at Book 71, Page 412. The Parcel consists of 17.81 acres. The Applicant seeks to subdivide his property into three parcels: *Lot 1*—7.76 acres, *Lot 2*—4.76 acres, and *Lot 3*—5.29 acres.

##### 3. *Lot Layout*

- a. The property is located in the Low Density Residential (LDR) zoning district of Cornwall, as described on the Town of Cornwall Zoning Map on

record at the Cornwall Town Clerk's Office and in §260 of the Cornwall Zoning Regulations (CZR).

[The minimum lot size in the LDR is 4.0 acres with a minimum frontage of 300 feet, depth of 300 feet, front yard setback of 100 feet, and side and rear yard setbacks of 50 feet (CZR §260).]

All these requirements are met in connection with each of the proposed lots, as depicted on the Three Lot Subdivision Survey Plat dated 10-17-2019, marked as *Exhibit I*, prepared by Bernard & Gervais, LLC.

- b. The Applicant seeks to subdivide his property into three parcels:
  - Lot 1—7.76 acres, Lot 2—4.76 acres, and Lot 3—5.29 acres.
  - Lot 1 contains a single-family residence.
  - Lot 2 and Lot 3 would provide two additional homes.

#### 4. **Character of Land.**

The project land located within the proposed building envelopes is suitable for development in terms of its physical characteristics. Excluding the wetland area, the soils are firm, moderately drained, and relatively flat.

- a. Wetlands. The location of Class II wetlands in the portion of the Parcel proposed to be developed are shown on the application site plans for Lots 2 and 3. The wetlands were delineated by Brad Wheeler of Wheeler Environmental Services LLC in October 2019. Zapata Courage, Vermont District Wetland Ecologist, conducted a site visit on October 23, 2019 and concurred with the delineation. These wetlands are subject to Vermont Wetland Rules, including a 50-foot buffer around the wetlands. No land development will occur within these identified wetlands.
- b. The North Bingham culvert flow onto the property was a reason why the subdivision's parcel boundaries were laid out as they had been. The flow had been taken into account by the ecologists.
- c. The 150-foot distance between the culvert and the wetland area in conjunction with the fan-flow discharge (rather than a channelized discharge) provides natural treatment for whatever effluent is discharged through the culvert before it reaches the wetland areas.
- d. There are no rivers or streams near the portion of the Parcel proposed to be developed. There are no floodplains on the Parcel.
- e. The Applicant has given due regard to the wetlands.

#### 5. **Water Supply**

- a. Lot 2 and Lot 3 will each have individual on-site drilled wells.

#### 6. **Wastewater**

Wastewater will be treated and disposed of in accordance with all provisions of the Vermont Agency of Natural Resources Wastewater System and Potable Water Supply Permit #WW-9-0876-1. Lot 2 and Lot 3 will each be served by separate site-specific **Innovative/Alternative** wastewater treatment units and mound-type systems each with a design flow of 420 gallons of wastewater per day. The wastewater disposal system which serves the residence on Lot 3 (5.29+/- acres) is located on adjacent lands identified as Lot 1 (7.76+/- acres). The land deeds that establish and transfer ownership of these parcels shall contain a legal easement which grants the purchaser(s) and any future owner(s) the right to enter upon these properties for the construction, repair,

maintenance and other such reasonable purposes as may arise regarding the wastewater disposal system. In accordance with the provisions of this Permit (#WW-9-0876-1) failure to properly execute this easement renders this permit null and void for any lot conveyed without proper easement.

Where the mound systems must cross the delineated areas, directional drilling under the wetlands and the 50-foot buffers on either side will be used rather than a pipe across.

**7. Roads and Traffic**

Lots 2 and 3 will be accessed by gravel drives off of North Bingham Street.

**8. Wildlife**

The proposed subdivision is not located within a core habitat block as they are listed in The State of Vermont ANR Natural Resource Atlas nor is it a deer wintering area. *The Cornwall Town Plan, 2013-2017*, does not list any rare species and communities or forest blocks in the area of the proposed subdivision.

**B. CONCLUSIONS OF LAW:**

- 1. Authority:** The DRB has authority pursuant to State Statute and the Town's *Zoning Regulations* (§331) to hear and approve or deny subdivision and related applications.
- 2. Application:** The Applicant has submitted a complete Application for a minor subdivision pursuant to *Article II* of the CSR for consideration by the DRB.
- 3. Criteria for Review:** The DRB concludes that approval of this minor subdivision will not negatively impact the review criteria stipulated in the CSR (*Article IV Design Standards*) in any major fashion.

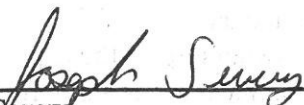
**IV. DECISION:**

Based on these Findings, Conclusions of Law, and the evidence presented in the form of exhibits and testimony at the hearings, the Development Review Board hereby grants approval for the proposed three lot minor subdivision as described in the Application (drb#19-003) submitted by Nigel Cheetham/U-Phoria Property LLC received on November 5, 2019. The Final Plat shall be filed within 180 days of this decision pursuant to *Cornwall Subdivision Regulations* §280.

The approval by the DRB shall expire 180 days from the date of this decision unless the approved Final Plat is duly signed by the members of the DRB and recorded in the Cornwall land records in the office of the Town Clerk.

Dated at Cornwall, Vermont, this 09 day of March, 2020

NOTICE: This decision may be appealed to the Vermont Environmental Court by an interested person who participated in the proceeding(s) before the Development Review Board. Such appeal must be taken within 30 days of this decision, pursuant to 24 V.S.A. §4471 and Rule 5(b) of the *Vermont Rules for Environmental Court Proceedings*.

  
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Joseph Severy (Chair of Hearing)