

TOWN OF CORNWALL
2629 Route 30, Cornwall, VT 05753
Development Review Board
FINDINGS AND DECISION

In re: Kasia LLC

Hearing Application No.: drb#21-003

I. INTRODUCTION AND PROCEDURAL HISTORY:

1. This proceeding involves review under the *Town of Cornwall Zoning Regulations (CZR)* of an Application for Variance or Waiver submitted by Cas Chlodnicki seeking approval for variances or waivers of some of the provisions of §610 and §611 of the *Zoning Regulations*.
2. The Application and supporting documents were received by the Development Review Board (DRB) on May 7 and 11, 2021. A copy of the Application is available at the Cornwall Town Clerk's Office.
3. On May 13, 2021, notice of a public hearing to be held on June 2, 2021, for review of the Application, was published in the *Addison Independent*.
4. Notice of a public hearing for review of the Application was posted at the following places:
 - a. The Town Clerk's Office.
 - b. The Town Garage
 - c. The Town website
 - d. The property in question
5. The Application was considered by the DRB at a public hearing held virtually on June 2, 2021. The hearing was closed June 2, 2021. The DRB reviewed the Application under the *Town of Cornwall Zoning Regulations*, dated February 26, 2008.
6. Present at the hearing(s) were the following members of the DRB:
 - Barbara Greenwood (DRB Chair)
 - David Anderson (Vice-Chair)
 - Shari Johnson
 - Ross Gregory
 - Cheryl Cesario (Alternate, assigned to fill vacant seat)
7. At the outset of the hearing, the DRB Chair read aloud the Hearing Notice as published. The Chair then read aloud the statutory definition of "interested person," and afforded those attendees wishing to claim status as an interested person an opportunity under 24 V.S.A. §4465(b) to sign in and to provide a USPS mailing address at which to receive materials. A record of the name and address of attendees and a record of their participation at the hearing is available at the Town Clerk's Office. Those persons wishing to participate were duly sworn in.

II. EVIDENCE AND RELEVANT TESTIMONIES:

During the hearing the following Exhibits were submitted to the DRB, accepted into evidence, and marked as shown:

- **Exhibit 1**—Warning (which was posted in a timely fashion at the Town Hall and Town Garage, on the Town website, and at the property);
- **Exhibit 2**—Tear sheet showing the Warning as published in the *Addison Independent*, May 13, 2021;
- **Exhibit 3**—Proof of service—Copies and original certified mail receipts, together with email exchange between Cas Chlodnicki and Barbara Greenwood confirming he sent a copy of the warning to each abutter, and also an email exchange between Cas Chlodnicki and Gale Synnott confirming that she and Tom Synnott received the notice of hearing;
- **Exhibit 4**—Application, filed electronically and declared complete by the ZA on May 7, with paper copies filed at the Town Hall May 11, 2021;
- **Exhibit 5**—Revised map, filed as part of Application;
- **Exhibit 6**—Cornwall Conservation Commission’s review of Application, dated May 27, 2021.

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 (Ref: *DRB Minutes June 2, 2021*). Only those testimonies relevant to the specific subject of the application before the DRB are shown below:

1. The property is in the Cornwall Village (V1) zoning district of Cornwall, as described on the Town of Cornwall Zoning Map on record at the Cornwall Town Clerk’s office and in §230 of the *Cornwall Zoning Regulations* (CZR). The minimum lot size is ½ acre, with a minimum frontage of 100 feet; a minimum lot depth of 200 feet; a front yard minimum setback of 35 feet, rear yard minimum setback of 25 feet, and side yard minimum setbacks of 15 feet.
2. The parcel (ID #08-03-82) is located on the East side of Route 30 and is further described in a quitclaim deed recorded in the Cornwall Land Records in Book 83 Page 463. The parcel had been operated as a general/convenience store on a continuing basis from roughly 1959 to the early 2000s. Kasia LLC bought the property in 2017, at which point it had ceased operation as a retail entity for several years.
3. **Cas Chlodnicki**, on behalf of Kasia LLC, explained the proposed project for the property at 2513 Route 30, Cornwall, Vermont, and the variances or waivers being requested:
 - **The history of the property** is that it has operated as a general/convenience store since 1959 when owned by Hugh Longey. The retail operation continued until the early 2000s, under several owners, when the store was closed. Kasia LLC purchased the property in 2017 with a plan to reopen a retail establishment along the lines of a country general store.
 - **Current Status and Plans**
 - When Kasia purchased the property, it had a redesigned septic system which had never been installed and for which the State-approved permit had expired. A new mound-type septic system was approved in December 2020. A new well has been dug and septic installation has begun. The permit, WW-9-1787-1, was designated for a convenience store having up to 4 employees with no public restroom facilities.
 - The existing structure (32' x 77', one-story) was found to need extensive foundation and structural repairs and the decision was made to raze it, salvaging what materials could be re-used, and to then rebuild with the same footprint, but move the structure 20' further

East, away from the road. This would increase the front setback to 75' which is thought to be the setback required by the State.

- There is roughly 15' of level space at the east end of the structure, then the topography rises. The hill is where the septic mound is being installed. The new well has been drilled in the area East of the structure. These installations prohibit moving the new structure further east than the 20' selected, and require cutting into the hill about 3' and leveling that area. Boulders or appropriate retaining wall structure will be placed along the cut side.
- As part of the septic system, a deli grease-trap (1,000 gallons) and septic tank (1,500 gallons) have been or will be installed along the South side of the structure.
- Chlodnicki believes that all structure and use details are regulated by the State by virtue of the wastewater permit conditions/regulations, and the Town *Zoning Regulations* regarding a construction permit. That permit has not yet been applied for as it depends on the approval of the DRB application.
- There has been no final design as yet of the new structure, nor a finalized business plan. Although the application seeks variances and/or waivers for a convenience store to be operated as the Cornwall Country Store, and the septic permit is for a reconstructed convenience store (*dba* Cornwall Country Store) containing a deli with takeout service only, the Applicant indicated that in the future there might be other suitable uses for the building, including shared rental office space with a shared kitchenette.
- **Requests for Variance and/or Waiver:**
 - For a store of this size, zoning provisions call for 16 parking spaces (9' x 20'), screened from view from the road (§610 (1)), and no closer than 50' to boundary lines (§610 (3)). Chlodnicki indicated the North boundary is about 60' from the store, the South boundary about 25' from the store. The property will be accessed by an existing 2-curb-cut drive on Route 30. The current plan is to restrict traffic to entry via the South curb-cut and egress via the North, creating a one-way traffic flow, with parking at the front of the store.
 - The Applicant requests a variance and/or a waiver of the following zoning regulations:
 - a) ***A reduction in number of parking spaces required by §611:*** The sixteen (16) spaces that would be required by the CZR (§611(1)(a)) is felt to be more than is necessary for the potential number of customers, particularly given that there are no public restroom facilities, so the store will be basically a grab-and-go venue.
 - **Applicant requests** a reduction in number of spaces from 16 to 6, one to be ADA compliant, under CZR §611(3). The proposed layout of the 6 parking spaces is shown on Exhibit 5.
 - b) ***A variance and/or waiver of the setback requirements of §610(3):*** Parking is to be at the front of the building (as shown in Exhibit 5), entered from the South curb-cut and exited via the North curb-cut; the lot width at this location is not sufficient to allow the 50' boundary setbacks specified in §610(3); there is no other appropriate parking lot placement to support the 6 spaces requested.
 - **Topography** negatively impacts parking lot placement to the East (rear) of the building. (§394(1)) There are septic and hill considerations to the East side.
 - **Front**—35' road center-line to structure required (§230(C)). Chlodnicki believes State requires a 75' setback from the center-line. Moving store 20' further from road brings front setback to 75'. This allows for driveway (one “lane” as traffic to

be one-way—entering from south, exiting from north), a parking lot 20' deep, and area for store access between parking and store front (Revised Map, Exhibit 5).

- **Sides**—15' required (§230 (C)). Lot's front width of 121' negatively impacts placement of the parking lot at 50' from the North/South boundary lines. (§610(3))
- **North** side has roughly 60' between boundary and the store, some of which is needed for delivery drive.
- **South** would have 15' from end of proposed parking area to boundary (This does not meet the 50'-from-boundary requirement for parking lots (§610(3)).
 - **Septic and lot width** combine to make parking lot placement on the South (side) of the building unfeasible. There are parts of the septic system (1,000g grease trap for deli, 1500g sewer tank) located on the South side of the building which would not be good to have heavy traffic over. Distance from building to South boundary: 25', per testimony.
- **Applicant requests** that the 50-foot setbacks as required by §610(3) be waived.

c) **A variance and/or waiver of the screening requirements of §610:** The Applicant contends that the requirements of §610 to hide or screen non-residential parking lots from public highway view would create a safety hazard for traffic entering and leaving the property. He proposes to provide screening (by means of evergreens or 6' tall wooden fence) sufficient to mitigate any visual &/or noise effects on North and South neighboring parcels, while avoiding visual impairment to traffic entering and leaving the store.

- **Applicant requests** that the screening requirements of §610(1) be waived. He also proposes to install screening along North and South boundaries to be set back from the road edge, due to safety considerations for traffic entering and exiting driveway.

4. **Barbara**—How many employee spaces could go on the North side or rear of the building?
Cas: *Probably 2 to 4 spaces. Also need to keep space for delivery truck.*

5. **Barbara**—Please clarify plans for the proposed fencing: How far back? Where begin?

Cas: *The fencing or screening would be as required by the Regulations, but wants to start several feet from the road to avoid blocking visibility when exiting and entering. Will go at least to where parking ends on both North and South boundaries, maybe 25' to 30' (i.e. in line with front of the store), though probably the length of the store on the North to mitigate delivery driveway issues. The primary purpose is to hide the parking from neighboring properties. Plans to work with neighbors to see that concerns are met.*

6. **Barbara:** Read an excerpt, sent by Gary Barnett, ZA, from a VPIC article regarding their thoughts on municipal parking: "... Municipalities, at minimum, should consider reducing or allowing exceptions under commonly accepted standards to avoid excessive parking and basic design standards, to ensure that parking does not dominate the local landscape. ..."
Gary noted that he did not see any problem with a reduction in parking spaces.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW:

Based on the Application, relevant testimony, and Exhibits above, the DRB finds the following:

A. FINDINGS OF FACT:

1. The Applicant is Cas Chlodnicki. The owner of the property located at 2513 Route 30 in the Town of Cornwall is Kasia LLC.
2. The subject property is located at 2513 Route 30 in the Town of Cornwall and is further described in a warranty deed recorded in the Cornwall Land Records in Volume 83 at Page 282 and in a quitclaim deed recorded in the Cornwall Land Records in Volume 83 at Page 463. The parcel consists of 1.40 acres more or less with a structure on it, the former Cornwall Country Store.
3. The property is located in the Cornwall Village zoning district as described on the Town of Cornwall Zoning Map on record at the Cornwall Town Clerk's Office and in §230 of the *Regulations*.
The minimum lot size in the Cornwall Village is ½ acre with a minimum frontage of 100 feet, lot depth of 200 feet, front yard setback minimum of 35 feet, side yard minimum of 15 feet and rear yard minimum of 25 feet.
4. The drawing of the proposed parking area in Exhibit 5 shows six parking spaces in front of the store, one of which will be handicapped parking (stated to measure 11'x12'), with the others measuring 20'x9')
5. The Applicant indicated he could find an additional 2–4 spaces on the North side of the store and/or at the rear of the store to be used for employee parking and/or delivery trucks.
6. The front of the store is about 51' from Route 30, and the front corners are about 60' from the North boundary and about 25' from the South boundary. The Applicant wants to relocate the store about 20' to the East to increase the front setback to 75'.
7. Traffic would enter the parking area from the South curb cut and exit from the North curb cut, a one-way traffic flow.
8. At the East end of the present structure there is about 15' of level land before it rises gradually to the newly installed septic mound. By moving the structure 20' to the East there is little room for additional parking at the rear of the building.
9. There is also a new drilled well located at the East of the building which would preclude parking there.
10. A deli grease trap (1000 gallons) and a septic tank (1500 gallons) have been or will be installed along the South side of the building, both precluding parking on the South side.
11. The building has operated as a general store/convenience store since 1959 and was closed in the early 2000s. Kasia LLC purchased the property in 2017 and plans to open a country store/convenience store of 2,500 square feet or less.
12. The State of Vermont has issued a septic permit for a country store/convenience store with a deli counter, up to 4 employees and no public restroom facilities.
13. The store hours would be 7:00AM to 7:00PM Monday–Saturday; 9:00AM–2:00PM Sunday.
14. The Applicant proposes to screen the parking area on the North and South boundaries with either fencing or plantings.

15. The Cornwall Conservation Commission indicated (Exhibit 6) that it had no objections to the project.
16. The DRB finds that there are omissions and errors in the Revised Map (Exhibit 5), with the result that there is not enough room for the six parking spaces as drawn.
 - First, if one adds up the setback from the north boundary (60'), the parking as drawn (54'), and the setback of the parking from the south boundary (15'), the total is 129'. The width of the lot at Route 30 is 121', but based on the Applicant's testimony, the width of the lot at the front of the store may only be 117' (60' from Northern boundary + 32' width of storefront + 25' to Southern boundary).
 - Second, the six parking spaces as drawn are each 9' in width, but it is likely that the width of a handicapped parking space (said to be included in the six spaces) together with its required access aisle is more than 9', meaning that the proposed parking lot will be wider than 54'.
 - Third, the Applicant's Revised Map (Exhibit 5) states the dimensions of the handicapped parking space to be 11'x12', without citing authority; the DRB believes that applicable ADA requirements may require a wider space.
 - Fourth, it is not possible to determine from the Revised Map (Exhibit 5) how many parking spaces could be located beside the store to the North and behind the store to the East.
17. The DRB finds that there is not room for 16 parking spaces. It also finds that, given that 4 employees could be at the store at any one time, a total of 6 spaces for customers and employees would not provide sufficient parking.

B. CONCLUSIONS OF LAW

1. Authority—The DRB has the authority pursuant to the State Statute and the *Town of Cornwall Zoning Regulations §332(6)* to hear, approve or deny requests for Variances made under §370 and for Waivers made under §380. The DRB has authority to impose conditions, safeguards, and alterations related to parking spaces, parking lot screening, and parking lot location per §394(1) and §611(3) of the *Zoning Regulations*.
2. Criteria for Review—The DRB concludes that waivers from the requirement for approximately 16 parking spaces and from the requirement that parking be at least 50' from the lot line have the potential to satisfy all of the standards listed in §383 of the *Town of Cornwall Zoning Regulations*, and that the requested Variance or Waiver from the requirement for screening from the public highway has the potential to satisfy all of the standards listed in §373. However, the inaccuracies and omissions in the Revised Map presented (Exhibit 5) make it impossible to determine the exact number of parking spaces that can be located in front of the store, or to the North and East sides.

Accordingly, the DRB is unable to conclude that such Variances/Waivers would, in fact, satisfy the standards.

IV. DECISION:

Based upon these Findings of Fact, Conclusions of Law, and the evidence presented in the

form of Exhibits and testimony at the hearing, the Development Review Board hereby **denies approval** of the application for variances and/or waivers relating to parking for the planned reconstructed convenience store in the Application (#drb21-003) submitted by Cas Chlodnicki on behalf of Kasia LLC, dated May 7, 2021.

This decision is without prejudice to the Applicant's right to file a revised application seeking variances and/or waivers relating to parking for the planned reconstructed convenience store.

Any such application should provide for a reasonable number of parking spaces for customers and employees, and must include:

1. A scaled map, showing proposed structure locations and land use areas; driveways, traffic circulation, parking, and loading spaces; pedestrian walks; landscaping plans including site grading and screening.

The map shall show setbacks of the proposed store location from the center of Route 30 and from the edge of Route 30, setbacks of the proposed store location from the Northern and Southern boundaries, both, at the front, in the middle, and at the rear of the store.

The map shall show the location and dimensions of the drive on the North side of the building for delivery vehicles.

The map shall show the location of the store's front door.

It shall show the exact location and dimensions of all proposed parking spaces, including of a handicapped parking space (including any required access aisle) that satisfies applicable dimensional and location requirements.

It shall show the location and dimensions of the walkway between the parking in front of the store and the store.

2. A copy of the applicable requirements for handicapped parking.
3. Evidence that the business status of Kasia LLC has been reinstated. (The Vermont Department of State website currently lists its business status as "terminated.")

The filing fee for any such revised application shall be waived, provided that a complete application is filed within 12 months of the date of this decision.

Dated at Cornwall, Vermont, this 13th day of JULY, 2021.

David L. Davidson

VICE CHAIR, DRB

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 the date of this decision, pursuant to 24 V.S.A. 4471 and Rule 5(b) of the *Vermont Rules for Environmental Court Proceedings*.