

**Cornwall Development Review Board (DRB)
MINUTES • December 1, 2021 • 7:00–9:05 pm
Meeting & Hearing • Virtual via ZOOM**

MEMBERS PRESENT: Barbara Greenwood, Shari Johnson, David Anderson, Cheryl Cesario, Ellen Whelan-Wuest

ALTERNATES PRESENT: Joan Lynch

ATTENDEES: Gregor Kent, Jason Barnard, Katherine Branch; Mary Dodge (CCC); Don Burns (CCC)

1. **CALL TO ORDER:** at 7:00pm by Barbara Greenwood, DRB Chair
2. **ESTABLISHMENT OF QUORUM**—Established
3. **APPROVAL OF AGENDA**—Barbara requested to add the August and September Notices of Cancellation to the Minutes. David MOVED, Shari SECONDED, to approve the Agenda as amended. *Motion passed.*
4. **APPROVAL OF MINUTES:**
 - *August 4, September 1, November 3, 2021* (cancellations)—David MOVED, Shari SECONDED, to approve the **Minutes** as presented. *Motion passed.*
 - *October 6, 2021* (hearing)—Shari MOVED, Ellen SECONDED, to approve the **October 6 Minutes** as amended. *Motion passed.*
5. **PUBLIC MEETING ATTENDEE SIGN-IN:**
 - Barbara noted that she would be chairing the meeting, and David Anderson would be handling the Zoom aspects. She introduced the DRB members in attendance in addition to herself: David Anderson, Shari Johnson, Cheryl Cesario, Ellen Whelan-Wuest, Board Alternate, Joan Lynch, and Board Secretary, Robin Conway. Also present: Gregor Kent, Applicant; Jason Barnard, Applicant's Representative; Mary Dodge and Don Burns representing the Cornwall Conservation Commission, Katherine Branch. Don Burns was thanked for serving as the Board's representative at the Town Hall so that any person wishing to attend this meeting could do so from that location.
 - Barbara then indicated that sign-in of attendees was first up, and read the statutory explanation of who an Interested Person was and how it was relevant (24 V.S.A §4465(b) and §4471), then turned the Sign-ins over to David.
 - David asked for attendees' names and mailing addresses, then followed with the swearing-in for those planning to participate.
6. **HEARING: Northern Cross Conditional Use Waiver Application**
 - **Introduction & Housekeeping**—
 - This hearing is for approval of three setback waivers requested by Gregor Kent, on behalf of Northern Cross LLC, for Lot 6 on Samson Road. This waiver to be reviewed under the waiver criteria (§383) of the *Cornwall Zoning Regulations* (CZR).
 - Before commencing with the hearing several housekeeping measures were handled and the hearing procedure was explained: the Applicant will be asked to make the project presentation, followed by questions from the Board. Once Board questions are ended, there will be public comment, followed by a chance for the Applicant to respond, then any additional Board queries and a short Board conference to determine whether to close or adjourn the hearing to a specified date, time, and place. First the housekeeping:

1. Disclosure of Board conflicts of Interest, ex parte communications, site visits—

- Barbara and Shari visited the property on November 19, 2021, with Shari's husband. Additionally Barbara exchanged emails with Gregor Kent on November 10 regarding the staking of the house site.
- Cheryl noted that she had asked Gregor about using the farm stand on his property, adjacent to Rte. 125. No arrangements were made in that regard.
- Shari and David visited the site with Gary Barnett on November 17.

2. Exhibits—Materials submitted and accepted into evidence, marked as follows:

- **Exhibit 1**—Warning (as posted in a timely fashion at the Town Hall and Town Garage, on the Town website, and on the property).
- **Exhibit 2**—Proof of service—certified mail receipts for John & Abigail Quesnel, and Jean Morgan, dated November 18, 2021, and receipts for hand delivery to Gregor and Bronwen Kent (dated November 19, 2021) and to Jennifer L Wagner, Esq., Attorney for the estate of Michael P. Quesnel (dated November 23, 2021), together with a copy of the warning provided to abutters.
- **Exhibits 3**—Application as filed on October 7, 2021, consisting of:
 - 3A**—October 1, 2021 cover letter from Adam Whitcomb of Barnard & Gervais, LLC;
 - 3B**—Application form dated October 4, 2021;
 - 3C**—Project Narrative and Waiver Request;
 - 3D**—Warranty Deed from Michael P. Quesnel to Northern Cross LLC, dated June 24, 2021;
 - 3E**—Tax Map or part thereof showing parcel;
 - 3F**—List of Adjoining Property Owners;
 - 3G**—Large Site Plan Drawing No S-1, dated 10-1-2021;

[Note: The ZA found the application, as originally filed, to be incomplete.]

- **Exhibit 4**—Survey Plat signed by Timothy L. Short, showing “lands of Michael P. Quesnel Proposed Lots 4, 5 and 6”, dated October 7, 2002 and signed by the Cornwall Planning Commission November 20, 2002—this forms part of the application and was filed November 3, 2021.

[The ZA declared the application complete on November 4, 2021.]

- **Exhibits 5A**—Cornwall Conservation Commission's review of application, dated November 22, 2021, with attachments:
 - 5B**—Copy of Site Plan marking connectivity block;
 - 5C**—Landscape Map;
 - 5D**—Landscape Map – Parcels;
 - 5E**—Photo [of property] to South with Flags;
 - 5F**—Photo [of the property] View to West;
 - 5G**—Kent Landscape Priorities Overlay;
 - 5H**—Review Questions.
- **Exhibit 6**—Email from Gregor Kent, dated November 15, 2021, regarding stakeout plan for site, and attaching two documents, one showing the stakeout plan, and one showing the survey pins found.

• Applicant's Presentation—[Jason Barnard, Gregor Kent]

- The application is for waivers on three of the property's border lines to allow construction of a 3 bedroom house with attached garage. The waivers are needed due to the location and dimensions of the only flat site on the narrow, rectangular property. The parcel is an interior

3.81-acre lot on Samson Road, a private access road in a subdivided property approved by the Planning Commission in 2002. The setbacks for this MDR property are required to be 100 feet on all sides (being an interior lot).

- The building envelope is at the eastern end of the property, with the only flat spot lying within the east setback area. The remainder of the lot has many steep spots making siting for the house difficult.
- The lot is accessed by a private road (Samson Road) and a 50'-wide right of way (ROW) which passes through another lot owned by Northern Cross (Lot 5).
- The house is proposed to be a 2-story, 3-bedroom dwelling with the attached garage at the north end. The Site Plan (*Exhibit 3G*) shows a 20' x 80' house & garage with the long length having a north/south orientation and extending into the north and south setback areas. The house (and garage) would lie entirely within the east setback area.
- The following zoning provision and the Town Plan's Goal #3 are represented, in the Narrative, as being met:
 - §383—The proposed dwelling and garage will meet all five waiver criteria.
 - *Nature and The Environment, Goal #3*—The location of the improvements will meet the Goal's intent to "protect and enhance the rural, scenic character of Cornwall's landscape."
- A large area on the west end of the property has been clear cut.
- There are plans to develop trails through the property.

• **Board Questions**

• **Shari and David:**

- In the Town Plan, Goal 3 refers to protecting Cornwall's rural, scenic landscape, keeping the forested areas unfragmented. How does the clear-cutting enhance the forested area?
Gregor: *The primary goal, and value to the west, was in the views the cutting exposes. The area contained no valuable wood, leaving two options: fell the trees and leave them lying on the ground making passage nearly impossible for large animals and people, or cutting and leaving only brush and branches, equally messy. The cutting keeps the land accessible for trails.*
- The building envelope seems quite far from the ROW. How does this make easier use of the ROW and create less disturbance on the property? **Jason:** *The ROW was permitted by the PC and can not be changed. The house location is actually near the access road and has the shortest distance between the road and the house.*
- What about the utilities, which appear to be located in the center of the ROW? **Jason:** *The utility boxes will need to be worked around or moved.* **Gregor:** *The phone line is in the center of the ROW, but there should be enough width to have the drive go around. The phone company has been spoken with about moving the box.*
- What driveway standards will the drive be built to? **Jason:** *It will meet Cornwall's standards.*
- Has the Road Foreman or the Fire Department been spoken with? **Jason:** *Do they have any authority over private drives?*
- **Barbara** read from §620 Access Permit (CZR). **Jason:** *That does not apply in this instance as this drive does not intersect with a public road. It intersects with the private access road which then intersects Lemon Fair Road, a public road. The access road falls under the §620 provisions. The wording is fairly standard in regulations that address the issue. Not very much was written on the topic in the early 2000s, most fell back on State*

rules. These indicated a slope of 12% with up to 15% for short distances ($\pm 100'$). Driveways were set at 12' wide. These are what he plans to follow when constructing this driveway.

- Was there any wording in the PC's 2002 subdivision decision regarding road standards?

Jason: Not sure, he has not read the decision.

- In regard to the clear cutting, about what percent was cleared? Is further cutting anticipated?

Jason: About 1.1 to 1.5 \pm acres of woods, out of the original 3.81-acre lot, remain. **Gregor:** No further cutting is planned. Along the east side of the property old barbed-wire fencing, old deer fencing, and rock piles from when the orchard to the east was cleared. Are all being removed. The rocks may find a use in construction of the drive. Trails are planned to pass through to the property Gregor owns south of Lot 6.

- The house measures 20' x 80' including the garage on the north end. Is there a way to change the north and south setbacks to something less than the 50' requested by the waiver? **Jason:** They tried, but it doesn't quite work.

- **Barbara:** On the S1 Site Plan (Exhibit 3G) and the Stake-out Drawing (Exhibit 6) the drawings show differing distances between the house location and the east boundary. One shows a 25' distance, the other a 57' distance. Where exactly is the house to be located? Also, the width of the 50' waiver runs the full length of the north and south property lines, but only the width of the house is needed. **Jason:** The house is actually to be 20' x 92'. The original size (20' x 80') is on the S1 drawing, which also shows the 57' distance to the east. The house/garage building is the only one for now, but there might be additional construction wanted in the future which could necessitate the width of the setback being wider than the house.

- Perhaps a BLA could be done to move the east boundary into Gregor's land to the east?

- Where is the house in relation to the east boundary? **Jason:** The Stake-out Plan is the most recent drawing and has the correct location, 25' from the east boundary. The south boundary setback would need to be about 37' rather than 50' to accommodate the additional 12' length of the house. The distance to the east boundary has been reset at 25' which is what they requested for a waiver on that side. The Stake-out Plan shows both the original and revised placements.

- **Barbara:** The Board would like to see a revised S1 Drawing with the house accurately sized and located.

• **Questions from other Board members:**

- **Joan:** What is the reason for having setbacks on the north and south less than the required 100', is it the grade changes or the drive location? **Jason:** Both actually, the drive location and the grades.

- Why is this considered to be a buildable lot? **Jason:** Because it has a wastewater permit, access, a flat location, and was created as a buildable lot by the 2002 subdivision decision of the PC.

- **Cheryl:** According to the Warranty Deed, Lot 5 might not be improvable or built on. As an undevelopable lot could it not be combined and sold with Lot 6? **Jason:** That language is just standard legalese, does not mean the lot can not be improved. **Gregor:** They just bought the lot and have no plans to sell it.

- **Barbara:** To clarify—the name of Northern Cross LLC has no comma on the Secretary of State's site. Is there no comma? **Gregor:** Correct, no comma.

- **Barbara:** The 50' ROW extends from Lot 6, through Lot 5, to Samson Road and continues with the Samson Road ROW to Lemon Fair Road? **Jason:** Yes. Lot 6 has an ROW through Lot 5, and a second ROW over Samson Road. Samson was created as a private road. This

drive is a second phase to give Lot 6 access to Lemon Fair Road.

- And the house site stakes represent the house at the originally proposed size of 20' x 80'?
Jason: *The house site has been revised, but the 12' addition to the south is not shown.*
- Regarding §385, the Board is required to “ensure [emphasis added] that the waiver represents the least deviation possible” from the dimensional requirement(s). Barbara suggested they [Kent, Barnard] consider adjusting the building envelope to accommodate the least amount of deviation from the 100' setback needed.
- The plan is just to build the house/garage, but not to sell the property? **Gregor:** *Yes.*
- Can the cut date of the trees be clarified? About 1 acre of trees are left. At the west end?
Gregor: *They were cut the last week of October.*
- The trees were cleared right to the south boundary? **Gregor:** *Yes, pretty near, not completely to the line.*
- The area where the clear-cutting was done has pretty steep slopes. There is concern about erosion during heavy rains. What plans are there for erosion control and for replanting the cleared area with hard woods? **Gregor:** *The cut trees were predominantly ash, poplar, soft woods. They plan to replant putting in some hard wood trees, but have no specific plans at this time as to where the new trees will go. They are not worried about erosion. There is no run-off from the orchard and they do not expect any from this property, they will deal with erosion if it happens.* **Jason:** *During construction, silt fences will be used and the other requirements in the State's Erosion Control Handbook will be followed.*
- The Narrative mentions there will be tree cover between the new site and neighbors, but Barbara failed to notice if there were trees down toward the bottom of the ROW on the left side as you go down toward Samson Road. Are there, in fact, trees left to act as screening? **Gregor:** *Definitely.*
- The Narrative mentions “clustered improvements.” What are they, and where? **Jason:** *Originally when the subdivision was created all houses were meant to be clustered nearer to Samson Road along the east side. The Lot 6 house site is located fairly close to where the access comes into the lot, so the drive, the house, the garage (the improvements) are all clustered at the east end, near the road.*

• **Public Comments**

- **Mary:** Site visit on November 16. The Conservation Commission's review indicated several negative impacts on the habitat connectivity options shown on the CCC's maps (*Exhibits 5c–5d*). The maps are from the Agency of Natural Resources Natural Resource Atlas. The map with the BioFinder overlay shows the area with the high priority issues. It shows the forest running from Weybridge, through the property, down to the Ledges. It is a significant wildlife corridor. The potential positive impact of moving the house site further to the east is overshadowed by negative impact of the clear-cut area which has made a narrow passage even narrower. The clear-cutting, done after the CCC's original Review, is likely to dramatically reduce connectivity options even further and increase negative impacts on the wildlife north/south corridor. **Gregor:** *Agrees that it will take a while for the formerly wooded area to regrow, but feels they are making improvements by removing the old fencing and not adding any new fences. Leaving the trees standing would have been ideal from a conservation view point, but from a land value view would have rendered the property almost worthless.* **Mary:** The regrowth will help soften the impact, but there remains an impact nonetheless. The wildlife using that corridor will be pushed to a narrower passage way.
- **Don:** Noted that it is the State, not the town, initiatives exerting control over wildlife,

habitat, and forested areas. The State has become very concerned with forest integrity. Over time the forests have become fragmented. The State's initiatives regarding these issues is to help towns create greater awareness among their residents.

- **Katherine:** She is concerned about the effect of the clear-cut on wildlife, thinks it would be worthwhile to review the 2002 PC decision for any forest considerations. She has found strong land and forest preservation concerns in the PC decisions of 2009, 2014, and the Foote Farm and Beaver Brook decisions.

- **Board last opportunity**

- **Shari:** Concerned about erosion now that trees are gone. **Jason:** *The stumps are still there and will remain in place, the root systems will hold the soil. Only stumps in the building area will be removed.*

- **Board Conference**—Board agreed that they needed additional information regarding several items of concern. After discussion with the Applicant, a deadline for receipt of the additional materials was set for December 15.

The requested materials to include: a revised copy of the Site Plan showing accurate house and garage location and dimensions; a reduction to the waiver requests; proposal for mitigation of the clear-cutting effects (trees—types, numbers). The hearing was adjourned at 8:55 pm, to be resumed on January 5 at 7:00pm via Zoom, or in person at the Town Hall.

The Board resumed its business meeting and proceeded with the Agenda.

7. AVAILABILITY FOR NEXT MEETINGS—

- **January 5, 2022**—All but Joan expect to be available.
- **February 2, 2022**—All expect to be available, with the possible exception of Shari.

8. OTHER BUSINESS—

- **Old**—None
- **New**—Regarding the Open Meeting Law requiring an in-person attendance option for public meetings. This has the potential for exposing the DRB and other attendees to the possibility of contracting COVID from unmasked attendees. The SB has the topic of a possible mask mandate on their next agenda.

9. DELIBERATIVE SESSION—None

ADJOURNMENT—Meeting adjourned at 9:05pm.

Respectfully Submitted,
Robin Conway, DRB Secretary