

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

In re: Kasia LLC

Hearing Application No.: drb#22-003

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 April 19, 2022. A copy of the Application is available at the Cornwall Town Clerk's Office.
3. On April 28, 2022, notice of a public hearing to be held on June 1, 2022, 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 in-person and virtually on June 1, 2022. The hearing was closed June 1, 2022. The DRB reviewed the Application under the *Town of Cornwall Zoning Regulations* ("CZR"), dated February 26, 2008.
6. Present at the hearing were the following members of the DRB:
 - Barbara Greenwood (DRB Chair)
 - Ellen Whelan-Wuest (Vice-Chair)
 - Shari Johnson
 - Douglas Black
 - Cheryl Cesario
7. At the outset of the hearing, the DRB Chair read aloud the Hearing Notice as published. The Chair also 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.
8. This is the second application brought by the Applicant seeking variances or waivers of some of the provisions of CZR §610 and §611. The Applicant's 2021 application was denied by the DRB in a decision dated July 13, 2021 (Application No. drb#21-003) (the "2021 Decision"), in part due to inaccuracies in the materials provided, without prejudice to the

Applicant's right to file a revised application. For the present Application, the Applicant has agreed that the DRB can treat the findings of fact in the 2021 Decision as being proven. Accordingly, for the present Application, the DRB takes judicial notice of its 2021 Decision, and adopts the findings of fact in the 2021 Decision.

II. EVIDENCE AND RELEVANT TESTIMONIES:

- **Exhibit 1**—Warning, posted in a timely fashion at the Town Hall, Town Garage, Town website, and on the property.
- **Exhibit 2**—Warning as published in the Addison Independent on April 28, 2022.
- **Exhibit 3**—Proof of service—Copies of certified mail receipts
- **Exhibit 4**—Application, filed on April 19, including “option 1” of an 8.5 x 11 revised map showing 10 parking spaces; copy of tax map; an illustration of the new gable front of the building; abutter list; Quitclaim deed; US DOJ ADA brief on restriping parking spaces; annual report for Kasia LLC filed 3/14/22 with Vt Secretary of State; amended State Water/Wastewater permit, related correspondence;
- **Exhibit 5**—Larger map filed April 28, 2022;
- **Exhibit 6**—Full size map dated May 9, 2022 prepared by Lincoln Applied Geology, filed May 10, 2022.

These Exhibits are all 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 1, 2022*).

Reference should also be had to the 2021 Decision for findings of fact and additional background information.

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.
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:
 - a. **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, 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.
 - b. **Current Status and Plans:** A well has been dug, and a State Wastewater permit obtained. The permit was designated for a reconstructed convenience store (*dba* Cornwall Country Store) having up to 4 employees and containing a deli with takeout service only, and no public restroom facilities. See WW-9-1787-1, as well as WW-9-1787-1R. On December 29, 2021 the permit's construction completion date was extended to December 1, 2022.

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. This was done in the spring of 2022, with plans to rebuild with the same footprint, moving the structure 20' further East, away from the road. As part of the septic system, a deli grease-trap (1,000 gallons) and septic tank (1,500 gallons) have been installed along the South side of the structure.

c. **Property.** The lot is 1.47 acres. The store location and setbacks are as shown on *Exhibit 6*.

4. Parking.

The variances and/or waivers sought by the Applicant all relate to parking:

- A waiver relating to the number of required of spaces. CZR§611(1)(a) would require approximately 16 parking spaces. The Applicant is proposing 10 parking spaces, which the Applicant says is sufficient for employees and the anticipated number of customers in a grab and go convenience store with no public bathrooms. Based on anecdotal evidence, including about the operations of the previous store, he anticipates no more than 4 customers at any one time, on average.
- A waiver or variance relating to screening. CZR§610(1) requires that non-residential parking lots be screened from public highway view. The Applicant is proposing no screening along Route 30, due to safety considerations. The Applicant contends that screening along Route 30 would create a safety hazard for traffic entering and leaving the property. He 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.
- A waiver or variance from location requirements. CZR§610(2) says that parking lots are not allowed in setback areas (side yard minimum is 15' in V1 district) and must be at least 50 feet from the lot line. Applicant is proposing to locate parking spaces 3' from the South boundary, and 42.8' (spaces in front of store), 26' (employee spaces on North side of store), and approximately 33' (spaces on West side of front parking lot) from the North boundary.

In this Application, the Applicant's proposed parking plan calls for a total of 10 parking spaces, located as shown on the "Site Plan with Proposed Parking Areas" marked as *Exhibit 6*. Six of the parking spaces, including a handicapped accessible parking space, are located along the front of the store. The five regular spaces measure 9' by 15'. The handicapped access space measures 12' by 15', with an adjacent aisle that appears to be 5' wide. It is located right by the store's front door. The Applicant maintains that 15'-long parking spaces are commonly accepted in commercial parking lots in Vermont. Two of the spaces, each 9' x 15', are located on the West side of the parking lot, parallel to Route 30. Two additional 9' x 15' spaces, designated for employee parking, are located on the North side of the store, in the area labelled "Additional Gravel Parking Area & Deliveries." The Applicant stated that most area deliveries occur around 6:30 a.m., so there should be no issues with the area being for both deliveries and employee parking. If necessary, the employee vehicles can be moved temporarily. There is also a proposed bicycle rack, located in the front parking area near the North boundary.

Although *Exhibit 6* indicates that the parking area in front of the store is gravel, the Applicant testified that it will be asphalt.

The property will be accessed by an existing 2-curb-cut drive on Route 30. The plan is to restrict traffic to entry via the South curb-cut and egress via the North, creating a one-way

traffic flow.

5. Additional Facts relevant to Requests for Variance and/or Waiver:

- Lot width along the front of the store is only approximately 107 feet. It would be impossible to accommodate any parking at all with 50' setbacks from both the North and the South boundaries.
- There are no places other than as shown on *Exhibit 6* to locate additional parking spaces. The topography (rise in land) and the well at the rear of the store preclude parking behind the store. Parts of the septic system (1,000g grease trap for deli, 1500g sewer tank) located on the South side of the building preclude traffic and parking on this side.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW:

Based on the Application, relevant testimony, and Exhibits, 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 1.47 acres more or less, formerly the site of the 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. **Parking and Traffic.** The plan for parking and traffic is as depicted in *Exhibit 6*.
 - There will be parking in front of the store (6 spaces including one that is handicapped accessible) and parallel to edge of Route 30 (2 spaces). The Applicant has gathered information from neighbors who patronized the earlier store, who reported an average of no more than four people at any one time in the business. There will also be a bicycle rack. The amount of expected bicycle traffic is unknown.
 - There will also be parking designated for employees in 2 spaces on North side of store. There is a delivery lane along North side of store. This parking and deliveries area will be gravel. The lane is narrow, and the Applicant relies on scheduling deliveries and moving parked vehicles as necessary to resolve any space conflicts.
 - The front parking area will be asphalt, thus enabling the parking spaces to be marked.
 - As shown on *Exhibit 6*, the proposed parking spaces will be 15' long. There is at least 25' between the handicapped accessible space in front of the store and the spaces parallel to Route 30. There is at least 35' between the other spaces in front of the store and the West end of the parking area.
 - The Applicant proposes that traffic will enter the parking area from the South curb-cut and exit from the North curb-cut, a one-way traffic flow.

- There was no testimony about how the delivery vehicles would enter the parking lot, but based on the configuration of the parking area at the front of the store and of the deliveries area to the North of the store, as depicted in *Exhibit 6*, the DRB concludes that it is possible that some delivery vehicles might need to enter via the North curb-cut.

5. Water and Septic:

- A drilled well is located at the rear (East) of the building and precludes parking there, as does the steep rise in the land.
 - A deli grease trap (1000 gallons) and a septic tank (1500 gallons) along the South side of the building preclude parking on the South side.
 - The State of Vermont has issued an amended septic permit for a country store/convenience store with a deli counter, up to 4 employees and no public restroom facilities, with the construction completion date extended to December 1, 2022.
6. The building was 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 re-establish a country store/convenience store of 2,500 square feet or less.
 7. The store hours would be 7:00AM to 7:00PM Monday–Saturday; 9:00AM–2:00PM Sunday. Lighting will be limited to storefront only during operating hours and will be night sky compliant. Signage will be 4’x4’ or less.
 8. The Applicant proposes to screen the parking and delivery areas on the North and South boundaries with fencing and/or evergreen plantings.

9. Dimensions:

- The parcel has 121’ of North/South frontage on Route 30. It narrows moving Eastward. At the front of the store *Exhibit 6* indicates a narrowed North/South width of ±107’. At the rear of the store the lot width is ±96’.
- The distances on *Exhibit 6* show 32.8’ from the North boundary to the store, 32’ for the store’s width, and ±42.8’ from the store to the South boundary.
- Both North and South boundaries have residential properties adjacent. The building will comply with the district’s 15’ setbacks North and South, but the 50’ setbacks required by §610(3) for the parking lot present a problem.
- The front of the store, as shown on *Exhibit 6*, is indicated as ±81.7’ from the center of Route 30, 35’ being the district minimum requirement.

B. CONCLUSIONS OF LAW

1. Authority – The DRB has the authority pursuant to State statute and the Town of Cornwall Zoning Regulations (CZR) §332(2) and (6) to hear and grant or deny requests for variances or waivers. The DRB has the authority under CZR §611(3) to reduce the number of parking spaces required under CZR § 611, and to permit alternate parking locations within the Cornwall Village District under CZR §394(1).
2. Number of Parking Spaces – Criteria for Review – The DRB concludes that the proposed number of parking spaces (10) is sufficient to meet the reasonable parking needs of employees, customers and other persons making use of the premises, and that given the size and configuration of the lot there is not sufficient space for the otherwise required 16 spaces.

The DRB concludes that the requested waiver satisfies the review criteria in CZR §383:

- a. The waiver is for a use permitted as a by right use in the Cornwall Village Zoning District, that is, a retail store of less than or equal to 2500 square feet (CZR§230).
 - b. The waiver is in conformance with the Town Plan, which envisions a stronger village center and gives a general store as an exemplar (“Priority should be given to re-establishing businesses in the village like a general store, café, or pub that provide gathering places for Cornwall residents, promote community interaction and strengthen the [residents’] sense of community.”)
 - c. The waiver is designed to conform to the character of the land and is designed to reasonably limit the impact upon neighbors.
 - d. The planned fencing and/or plantings will limit the impact upon neighbors.
 - e. The waiver will allow for one handicapped accessible parking space, and the Applicant will be required to follow applicable fire safety and health regulations.
3. Location of Parking Spaces – Criteria for Review – The DRB concludes that the parking need not be located to the rear of the store, as site conditions (the steep rise of the land at the rear) do not allow for parking to be located behind the store (§394(1)). The DRB further concludes that given the size and configuration of the property, and the location of the deli grease trap and septic tank, there are no other suitable locations for parking. The DRB concludes that the requested waiver satisfies the review criteria in CZR §383, for the reasons outlined in Section III.B.2 above.
4. Screening from public highway view – Criteria for Review – The DRB concludes that the parking lot should not be required to be screened from public highway view, as placing screening along Route 30 would potentially create unsafe conditions. The DRB notes that the parking area at the Cornwall Town Hall, located just to the South along Route 30 and in the Cornwall Village District, is not screened from public highway view. The DRB concludes that the requested waiver satisfies the review criteria in CZR §383, for the reasons outlined in Section III.B.2 above.
5. Size of parking spaces – CZR §1000 requires that parking spaces be at least 20’ long and 9’ wide. The parking spaces depicted in *Exhibit 6* are only 15’ long and so do not comply with CZR §1000. Spaces striped at 20’ long would leave sufficient room for vehicles to back out of the spaces in front of the store and exit the parking area via the North curb-cut.

IV. DECISION:

Based upon these Findings of Fact and the Findings of Fact in the DRB’s July 13, 2021 decision in the Kasia LLC Application No. drb#21-003 (the 2021 Decision), the Conclusions of Law herein, and the evidence presented in the form of exhibits and testimony at the hearing, the Development Review Board hereby grants approval of the following waivers requested for the planned reconstructed convenience store in the Application (drb#22-003) submitted by Cas Chlodnicki on behalf of Kasia LLC, dated April 19, 2022, subject to the Conditions hereinafter set forth.

Specifically, the Board:

1. Grants a waiver of the requirement for one parking space for every 150 sq. ft. of retail/commercial floor area, set forth in CZR§611(1)(a), and instead approves ten (10)

parking spaces, of which one is to be handicapped accessible, for the planned reconstructed convenience store (dba Cornwall Country Store), with such parking spaces located more or less as depicted in the full size drawing entitled "Cornwall Country Store Property – Site Plan with Proposed Parking Areas", dated May 9, 2022 and marked as **Exhibit 6**.

2. Grants a waiver of the requirements that parking be located at the rear of the store (§394(1)), that it not be located in setback areas (§610(2)), and that it be located at least 50 feet from the lot line (§610(3)).
3. Grants a waiver of the requirement that non-residential parking lots shall be screened or hidden from public highway view (§610(1)).

CONDITIONS

1. The Applicant shall obtain all local and State permits required in connection with the construction and operation of the planned store.
2. The Applicant shall install fencing and/or evergreen plantings to screen the parking lot at the front of the store, and the parking and deliveries area on the North side of the store, from the neighboring properties to the North and South. Such screening should not extend all the way to Route 30 but instead should allow for adequate visibility for traffic entering and exiting the parking area, and should in any event comply with any applicable State highway requirements.
3. The Applicant shall install clear signage, as well as curbs, low shrubbery, and/or other physical obstacles so as to restrict customer and employee ingress to the parking area to the South curb-cut, and egress from the parking area to the North curb-cut, subject to any applicable State highway requirements. Delivery vehicles may be permitted to enter and exit via the North curb-cut.
4. The parking shall include handicapped accessible parking that complies with applicable ADA requirements.
5. All of the parking spaces, except for the two employee spaces located on the North side of the store, shall measure 20' in length and be striped accordingly.
6. Because under CZR §383 waivers can be granted only for by right uses, the waivers granted in this decision are limited to the use of the property as a retail convenience store of less than or equal to 2500 square feet.

Dated at Cornwall, Vermont, this 28th day of June, 2022.

Robert Greenwood
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*.