

Approved: \_\_\_\_\_, 2022

**CORNWALL DEVELOPMENT REVIEW BOARD (DRB)****MINUTES • June 1, 2022 • 7:00–9:05 pm****Meeting • In-Person (Town Hall) and Virtual via ZOOM****MEMBERS PRESENT:** Barbara Greenwood, Shari Johnson, Cheryl Cesario, Ellen Whelan-Wuest, Douglas Black**ALTERNATES PRESENT:** Joan Lynch**GUESTS PRESENT:** Ron LaRose (MacFadden Representative, LaRose Surveys, PC); Gisela & Mike Palmer; Mary Dodge (Cornwall Conservation Committee); Cas Chlodnicki (Kasia LLC); Steve Revell (Lincoln Applied Geology); Gail & Tom Synnott

- 1. CALL TO ORDER:** at 7:02pm by Barbara Greenwood, DRB Chair
- 2. ESTABLISHMENT OF QUORUM**—Established
- 3. APPROVAL OF AGENDA**—Proposed amendment: to add a Deliberative Session at the end of the agenda as #10, to use if needed. Shari MOVED, Barbara SECONDED, to approve the Agenda as amended. *Motion passed.*
- 4. APPROVAL OF MINUTES**
  - *May 4, 2022*—Shari MOVED, Douglas SECONDED, to approve the **May 4 Minutes** as amended. *Motion passed.*
- 5. MEETING SIGN-INS**—Attendees gave names and postal addresses at which they wish to receive any related information, all of which were recorded by the Board Secretary. When the sign-ins were finished, Ellen administered the oath to which those who planned to speak swore.
  - *Ron LaRose*—LaRose Surveys; named by Hartley MacFadden as her representative for this proceeding (*Exhibit 10*); PO Box 388, Bristol VT 05443
  - *Gisela and Michael Palmer*—627 Route 30, Cornwall, VT 05753
  - *Mary Dodge*—Cornwall Conservation Committee; 1712 Sperry Road, Cornwall, VT 05753
  - *Cas Chlodnicki*—812 Wooster Road, Cornwall, VT 05753
  - *Steve Revell*—Lincoln Applied Geology, Bristol, VT 05443
  - *Gail & Tom Synnott*—323 Peet Rd, Cornwall, VT 05753

**6. MCFADDEN SKETCH PLAN MEETING:**

**A. Introduction**—This is a continuation of a Sketch Plan Review for a parcel at 625 Route 30, Cornwall, owned by Hartley McFadden. Ms. MacFadden has submitted a revised application seeking to subdivide the parcel into 3 lots: Lot 1, 8.88 acres, with her home; Lot 2, 4.31 acres; Lot 3, 4.14 acres. A sketch plan meeting is an informal, unwarned agenda item at a regular DRB meeting. The purpose is to provide an opportunity for the applicant (or his/her representative) and Board to review the proposal, ask questions, and discuss the specific requirements of the subdivision regulations. The Board will use the information to determine whether the project will be a minor or a major subdivision.

Barbara explained the process and the things which may happen at this sketch plan review meeting:

- the Board will provide guidance about the need for further meetings and the advisability of proceeding
- the Board will classify the project as a major subdivision or as a minor subdivision
- the Board will specify the submission requirements for subsequent review
- the Board may make recommendations for changes
- the Board may require a technical review fee, in an escrow account, so as to require the applicant to bear the Town's costs for any professional reviews and inspections required in

connection with the subdivision. Any such expenses are to be borne by the applicant pursuant to 24 VSA 4440(d) and *Cornwall Subdivision Regulations* §233.

**B. Housekeeping**—Before opening discussion on the review, Barbara explained the housekeeping issues to be dealt with.

- **MacFadden Exhibits**—Barbara listed the following documents that have been filed to date and which have been marked as exhibits:

- **Submitted for May 4 DRB meeting:**

- **Exhibit 1**—Letter from Ronald L LaRose, dated April 4, 2022; filed April 7, 2022.
- **Exhibit 2**—8 × 11 copy of plat dated March 1, 2022; filed April 7, 2022.
- **Exhibit 3**—Tax map with list of adjacent landowners; filed April 7, 2022.
- **Exhibit 4**—Copy of business card of Roxanna Emilo; filed April 7, 2022.
- **Exhibit 5**—Full size copy of plat; filed at Chair's request, April 22, 2022.
- **Exhibit 6**—Copy of letter from Hartley MacFadden, dated April 8, 2022; provided by Roxanna Emilo, April 29, 2022. *Chair would like to have the original letter on file.*
- **Exhibit 7**—Copy of the CCC's preliminary comments, dated April 26, 2022.

- **Submitted for June 1 meeting:**

- **Exhibit 8**—Revised Plat, filed May 19, 2022
- **Exhibit 9**—Revised Application signed by Ms. MacFadden, dated May 19, 2022
- **Exhibit 10**—Letter authorizing Mr. LaRose to represent her on this application, signed by Ms. MacFadden, dated May 12, 2022
- **Exhibit 11**—Updated CCC comments, with the attached trail camera documentation of wildlife usage, dated May 26, 2022

**C. MacFadden Sketch Plan Review:**

**1. Applicant's Presentation**—Ron LaRose

- **Proposed Subdivision**—To divide the remaining 17+ acres into three Lots. Lot 1 to be retained, with the MacFadden home on it. The other 2 to be sold.
  - The septic systems for the 2 lots to be sold have been tentatively located by perc tests, and will have State permits applied for pending subdivision approval.
  - The revised lot bounds were determined after discussion with Ms. MacFadden after the initial May 4 Sketch Plan Review, per the comments, questions, and suggestions received during that meeting. Lots 3 and 4 in particular were the object of a number of concerns which this revised Sketch Plan attempts to resolve. Previous plan considerations included lot saleability, available house sites, and the results of the septic perc tests. House sites are tentative and based on proximity to tentative septic areas and the setback areas for interior lots as well as the district standards.
  - Boundaries showing the LDR and MDR boundaries, and all septic sites added to the map.
  - Lot 4 has been removed, its space absorbed by Lot 3.
  - Lot 3 has had all setbacks shown as 100', proposed house and septic sites shown, size and shape adjusted to 4.14 acres, all to the west of Bardon Road. [Board confirmed: 100' setback measured from center of Bardon Road allowing house site to be larger.]
  - Lot 2 size, shape, and house site remain as originally proposed, septic site added.
  - Lot 1 lies entirely to the east of Bardon Road, existing house, drive, and septic sites remain as they currently are, size has been increased to 8.88 acres.
  - A draft road maintenance agreement for Bardon Road, he has not had time to review it or talk to the Palmers yet. When done with his review, it will be reviewed by Ms. MacFadden and the Palmers. If they all approve, it will be finalized and signed by

them. New owners of Lots 2 and 3 will also be subject to the agreement. The Board will receive a copy of the draft prior to its finalization.

## 2. Board Questions:

- **Barbara**—We have a copy of the letter authorizing the LaRose firm to represent Ms. MacFadden at the DRB Hearings on this matter. **Ron** confirmed that the signature is that of Ms. MacFadden.
- **Shari and Ellen:**
  - Why is the Lot 2 septic located so far from the house? **Ron:** *The Lot 2 septic is located on Lot 1 because of bedrock and high water table. The distance is far, but not unusual. The Lot 1 deed will be amended with an easement for the Lot 2 septic added.*
  - Can a better location for the Lot 2 septic be found? **Ron:** location is dependent on soil types and conditions. In this case bedrock and water table dictated the Lot 1 location.
  - Would like to have setback measurements and septic site location on Lot 1 added to the map.
- **Barbara:** Any changes or additional questions regarding the Lot 3 changes?—None

## 3. Public Questions/Comments:

- **Mary Dodge (CCC)**—The CCC review for the May meeting has been updated for this revised plan meeting. The proposed reduction of lots will likely benefit wildlife by reducing the impacts of the forest loss and having the majority of the forest area now contained in Lot 1. It is hoped that with the reduced number of lots the forest areas will be maintained.
- **Gisela Palmer**—The Lot 3 septic site appears to require a lot of clearing, can it be moved to an open field location? **Ron:** *Soils and well isolation zones dictate septic site locations.* **Shari:** Is a mound system being recommended for Lot 3? **Ron:** *They do not recommend any particular system, the soils dictate.*
- **Gisela:** Would like clarification about the Regulations' requirement regarding setbacks. **Barbara:** *Lot 2 is on a public road and is in the MDR district. The front setback is 100', sides and rear are 50'. Lot 3 is an interior lot lacking frontage on a public road and is in the LDR district. The LDR has the same front yard setback as the MDR, but because of its interior lot location, Lot 3 must have the same setbacks on all sides with distance of all determined by the front setback. Setbacks are measured from the center of the adjacent road.*
- **Gisela:** Will the road maintenance agreement be provided to them? **Barbara:** *Yes. It will also be reviewed by the DRB and the Town Attorney.*

## 4. Board last questions or comments:

- Board wondered if a septic test pit could be placed on the north end of Lot 3? **Ron:** *Will look into it, but may be too close to the Lot 2 and the Wheeler septic isolation distances.*
- Board asked why house sites for Lots 2 and 3 were “proposed”. **Ron:** *The sites are dependent on the septic sites which are also “proposed” until approved by the State. The site locations will be as shown on the plan when submitted to the State for final septic approval. If the new owner(s) wants to change the site, they can apply for a water/wastewater permit amendment from the State.* **Barbara** noted that the building envelope can not be relocated, but the building site within the envelope can be. Building envelopes should be shown on the plat.

5. **Classification**—**Barbara:** Technically, in this case there may not be an alternative to determining this project as anything other than a major subdivision because two of the lots are interior lots.

6. **Fees**—Barbara explained the possibility of requiring additional money for the technical review escrow account if expenses so warrant. Any escrowed funds not used will be returned.
7. **Wrap**—Board noted that because of the 2 lots with no public road frontage, the decision regarding major or minor status was moot since *CSR* provisions required this to be reviewed as Major. Barbara noted that the Town Attorney advised against waiving the Final Plan application and second hearing.
- Filing deadline for the hearing (Preliminary Plan) is 6 months from the close of this meeting. Applicant reminded that due to the once-a-week publication of the *Addison Independent* and time needed for ZA to review all documents to determine if the application is complete, the application should be submitted earlier than the deadline of 25 days prior to the desired hearing date.
  - The Board enumerated a list of items from §320 (*CSR, Major Subdivision—Preliminary Plan*) to be included with the formal subdivision application:
    - Nine (possibly 10) copies of all documents to be filed, check with the Town Clerk or Barbara before filing.
    - #1 Application for subdivision signed by the applicant, with fees.
    - The Board set the technical review fee at \$2,500, to be included with the application as a separate check made out to the Town of Cornwall. The funds to be held in escrow to cover the Town’s professional expenses.
    - ##2, 5, 8, 9, 10 (a) & (b), 11 (b) (d) (e) (f) (g) (h) & (i), & 13—Waived
    - ##3, 4, 6, 7, 10 (c), 11 (a) (c) & (j), 12, 14—Submit
    - Of particular note:
      - **#6:** make sure the report satisfies §420—that it shows an adequate supply of water exists and new wells won’t interfere with existing water supplies. Include language indicating that the system complies with the State regulations.
      - **#11 (j):** Documents governing ROW and maintenance obligations and Draft Deed that covers all covenants, along with how Applicant proposes to make it binding on owners of all Lots.

## 7. KASIA HEARING: Request for Conditional Use approval of Variance/Waiver

- A. Introduction**—This hearing is for approval of a Waiver and/or Variance application brought by Cas Chlodnicki on behalf of Kasia LLC. Kasia seeks a waiver and/or variance of the requirements set forth in §610 and §611 of the *Cornwall Zoning Regulations* relating to parking (including the number of parking spaces, the location of the parking lot, and screening) as they might apply to the Cornwall Country Store property located at 2513 Route 30, Cornwall, Vermont.
- B. Housekeeping**—Before opening the hearing on the application, Barbara explained the housekeeping issues to be dealt with.
- **Sign ins; Interested Person status**—Sign-ins noted earlier, no new persons are in attendance. Barbara read the pertinent sections of 24 VSA 4465(b) related to Interested Persons, and explained that pursuant to 24 VSA 4471, only an interested person who has participated in this proceeding may make an appeal of any decision issued in this proceeding:
    - “(3) A person owning or occupying property...
      - i. in the immediate neighborhood of a property that is the subject of any decision or act taken under this chapter
      - ii. (AND) who can demonstrate a physical or environmental impact on the person’s interest under the criteria reviewed
      - iii. (AND) who alleges that the decision or act, if confirmed, will not be in accord

*with the policies, purposes, or terms of the plan or bylaw of that municipality.”*

She then asked if any attendees claimed Interested Person status. The Synnotts did so.

### **Recording of the hearing announced.**

**C. Hearing Opened**—Barbara opened the hearing on the Kasia LLC application at 8:00<sup>PM</sup>. She explained that this is the second application brought by Cas Chlodnicki seeking waivers or variances relating to parking. He brought an almost identical application last year. The DRB issued its decision on July 13, 2021. The DRB concluded that the requested waivers/variances had the potential to satisfy the review criteria, but found that the six parking spaces requested were not sufficient for customers and employees. There were inaccuracies in the map provided, as well. The DRB found it was impossible to determine how many parking spaces could be located at the store. As a result, the DRB denied the application, without prejudice to the Applicant’s right to file a revised application. This he has now done.

**Conduct of the Proceedings**—The Applicant has agreed that in this new hearing, the DRB can treat the findings of fact from the July 13, 2021 decision as being proven. The DRB will be able to take judicial notice of the earlier decision and adopt the earlier findings of fact. Thus the focus of this hearing will be entirely on the issues relating to parking.

- Barbara then noted the parking regulations from which the Applicant seeks waivers or variances:
  - A waiver relating to the number of spaces: §611 would require approximately 16 parking spaces, and applicant is proposing 10;
  - A waiver or variance relating to screening: §610 requires that parking lot be screened from public highway view;
  - A waiver or variance from parking lot location requirements: §610 says that parking lots are not allowed in setback areas (side yard is 15’ in this Village district) and must be at least 50 feet from the lot line.
- After the housekeeping, the Applicant will present any new or changed facts, most importantly his new proposal for 10 parking spaces, laid out as shown in the full size map (*Exhibit 6*). There will be Board questions, followed by questions/comments from the public. The Applicant will have an opportunity to respond to all. The Board will then confer to determine to either close the hearing or adjourn it to a later specified date and time.

### **D. Board Conflicts of Interest, Ex Parte Conversations, Site Visitations**

- Douglas visited today.
- Barbara visited in May of 2021 and again a couple of months ago.

**E. Exhibits**—The following documents have been filed as part of the application as well as some additional materials.

- **Exhibit 1**—Warning (which was posted in a timely fashion at the Town Hall and Town Garage, on the Town website, and on the property.);
- **Exhibit 2**—Warning published in the *Addison Independent*, April 28, 2022;
- **Exhibit 3**—Proof of service on abutting landowners—copies of certified mail receipts;
- **Exhibit 4**—Application, filed April 19, 2022 (includes application form; State wastewater permit, related correspondence; annual report for Kasia LLC filed 3/14/22 with Vt Secretary of State; December, 2021 drawing of gable end of Cornwall Country Store; “option 1” of map showing 10 parking spaces; tax map; list of abutters; Quitclaim deed; USDOJ ADA compliance brief on restriping parking spaces);
- **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

**F. Applicant Presentation**—Cas, Steve Revell

- **Two main concerns identified from the original application**—Employee parking and ADA spaces. Two employee parking places will be on the North side parallel to the store and the delivery drive. The parking immediately in front of the store will have an ADA van-accessible spot with the specified access aisle to the store, and five additional spots. Two parking spots will be placed on the west side of the parking lot, parallel to Route 30.
- **Requirements**—The ADA van spot will be 12' x 15', the employee and customer spots will be 9' x 15' (§1000 indicates a minimum size of 9' x 20').
  - CZR requires that the store, at under 2,500 square feet, have 16 parking spaces. This will not work for the size of the lot so a Waiver is requested.
  - CZR requires that there be no parking in the set-back areas (15' from the North or South boundary lines). Cas seeks a Variance to allow a 3' set-back on the South property line.
  - CZR requires a parking lot to be at least 50' from a boundary line. Again, the size of the lot prevents rigid adherence to the requirement and a Variance is requested.
- The footprint of the store has been moved 20' to the East to provide as large a parking lot as possible within the confines of the lot boundaries.
- The flat area on the south of the store, though it appears flat and a good spot for parking, cannot support the weight of vehicles and traffic as the grease traps and effluent tanks are below.
- The revised plan meets the requirements of §373 *Variances*, particularly with regard to the following:
  - No hardship is being created.
  - The store creates a reasonable use of the property.
  - The character of the neighborhood will not be altered
- Steve noted that the revised plan shows the best approach to returning the property to active use. The State Water/Wastewater Permit has been amended to extend the septic construction date to December 1, 2022.

**G. Board Questions/Comments**

- **Cheryl**—Will the location of the two employee spots be a problem for delivery vehicles? **Cas:** *The need for employees to move their vehicles may arise, but should not pose a significant problem. Ideally, deliveries will be scheduled for early morning hours prior to opening.*
- **Douglas**—Given the width of the delivery lane, he questions the effect of a schedule on dynamic issues like parking. **Cas:** *He has noted that the majority of deliveries in Middlebury are before 6:30 am. He prefers to deal with it according to the plan rather than having to move into the north set-back area.*
- **Shari**—Is there sufficient space to the back of the store for a truck turn-around? **Cas:** *He does not feel that will be necessary and could present a problem with the natural down-hill water flow, septic system, etc.*
- **Joan**—Expressed concern about the size of the parking spots, noting that she would have difficulty backing her 18' truck out of a front spot. **Steve:** *Noted that the spaces are sized as used in many commercial lots, comprise the bulk of ACT 250 and other reviews where parking spots are indicated. The space between the west end of the store-front spots and the west end of the parking lot/parallel spots is 26'.*

- **Cas** noted that he plans on a wood fence or wood fence plus evergreens to provide screening between the parking lot and neighbors. He feels bringing screening to the edge of Route 30 would present a danger to traffic entering/leaving the lot. He plans to check with VAOT since the lot fronts on a State highway.
- **Barbara**—Why does he feel that 10 spaces will be sufficient to meet the needs of customers and employees? **Cas**: *The parcel size dictates the lot size and he has anecdotal evidence from residents who were patrons of the previous store indicating that, generally, there would be 4 or 5 customers at a time in the store.* **Ellen**: Noted that as a “grab & go” store, turnover would likely be fairly rapid.
- **Barbara**—What will he do about marking the spots? **Cas**: *The front lot will be asphalt so the spots can be identified with paint.*
- **Barbara**—What is the time-frame for the reconstruction plan? **Cas**: *He would like to get started as soon as possible.*
- **Barbara**—The bike rack will provide additional “parking.” How much bicycle traffic does he expect? **Cas**: *Hard to say, but there may be traffic from the school as the kids head to the Library/Town Hall. Also, people are more motivated than pre-pandemic to be outdoors and doing things like bicycling. He hopes there will also develop some foot-travel customers.*

#### H. Public Questions/Comments

- **Gail & Tom Synnott**—Expressed appreciation for the Board’s thoroughness and Cas’s care and efforts to encompass residents’ feelings, concerns, and suggestion regarding the re-establishment of the Country Store.

#### I. Further Board, Public, or Applicant Input

- **Cas** expressed his appreciation for the support he has received from the community. He noted it will be challenging to meet expectations while making a ‘go’ of the business, but has hopes for expanding foot-traffic.

**J. Wrap**—Barbara closed the hearing at 8:51<sup>PM</sup>, explaining that the Board would issue its decision within 45 days.

**Business meeting Agenda resumed.**

**8. OTHER BUSINESS**—none

**9. AVAILABILITY FOR NEXT MEETINGS**

- **July 6, 2022**—Ellen and Douglas away.
- **August 3 2022**—Barbara away, Ellen to Chair.

**10. DELIBERATIVE SESSION**—Board held a short deliberative session on the Kasia application.

**ADJOURNMENT**—Shari MOVED, Ellen SECONDED, that the meeting be closed. **Motion passed.**

Meeting adjourned at 9:05<sup>PM</sup>.

Respectfully Submitted,  
Robin Conway, DRB Secretary