

**CORNWALL DEVELOPMENT REVIEW BOARD (DRB)
MINUTES • November 2, 2022 • 7:00–9:15 pm
Meeting • In-Person (Town Hall) and Virtual via ZOOM**

MEMBERS PRESENT: Barbara Greenwood, Shari Johnson, Ellen Whelan-Wuest, Douglas Black

ALTERNATES PRESENT: Joan Lynch

GUESTS PRESENT: Ron LaRose (MacFadden Representative, LaRose Surveys, PC); Don Burns (Cornwall Conservation Committee); Adam Eckhardt, Ann & Peter Demong

- 1. CALL TO ORDER:** at 7:00pm by Barbara Greenwood, DRB Chair
- 2. ESTABLISHMENT OF QUORUM**—Established. Joan to sit in for Cheryl who was unable to attend the hearing.
- 3. APPROVAL OF AGENDA**—Shari MOVED, Ellen SECONDED, to approve the Agenda as amended. *Motion passed.*
- 4. APPROVAL OF MINUTES**
 - **June 1, 2022**—Douglas MOVED, Shari SECONDED, to approve the **June 1 Minutes** as amended. *Motion passed.*
 - **July–October, 2022**—Shari MOVED, Ellen SECONDED, to approve the pro forma Minutes of **July 6, August 3, September 7, and October 5 Minutes** for the cancelled meetings. *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. Barbara read the statutory definition of “Interested Person,” explaining its relevance to this hearing. 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; 25 West Street, Bristol VT 05443
 - **Don Burns**—Cornwall Conservation Committee; 2742 Rte 30, Cornwall, VT 05753
 - **Ann & Peter Demong**—27 Andrus Pitch, Cornwall, VT 05753—Interested Party
 - **Adam Eckhardt**—4002 Rte. 30, Cornwall, VT 05753—not an I.P.
- 6. MACFADDEN HEARING—Proposed subdivision of property at 625 VT Rte 30, Cornwall:**
 - A. Introduction**—After some housekeeping matters, the Applicant Ron LaRose would present the application, followed by Board questions, and an opportunity for the Applicant to respond. Following Board questions would be an opportunity for public comment, Applicant response, and a final opportunity for additional Board questions.
Barbara noted that the meeting would be conducted in an orderly manner and in accordance with the Board’s rules of procedure.
Barbara then explained the process and the things which may happen at this preliminary plan review meeting. This is a preliminary subdivision application brought by Ron LaRose of LaRose Surveys on behalf of property owner M. Hartley MacFadden to subdivide 17.33 acres located at 625 Vermont Route 30, in Cornwall, Vermont, into 3 lots. Lot 1, 8.88 acres, with the MacFadden home; Lot 2, 4.31 acres; Lot 3, 4.14 acres. The Cornwall Development Review Board classified this matter as a major subdivision on June 1, 2022.

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

- ***Conflicts of Interest, ex parte communications, or visits*** to the property—
 - Barbara and Shari visited the property on October 19th. They met Mike Palmer on the road, but did not discuss the substance of the application. Barbara returned for another visit on October 27.
 - Ellen, Douglas, and Joan reported no visits or other potential conflicts.
- ***MacFadden Exhibits***—Barbara read a list, for the record, of the following documents that had been filed to date and which have been marked as exhibits:
 - 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*, October 13, 2022
 - Exhibit 3***—Proof of service on abutting landowners—copies of letters which included a copy of the warning sent to the abutting landowners, and certified mail receipts for them.
 - Exhibit 4***—Application form, provided October 10, 2022
 - Exhibit 5***—Copy of May 12, 2022, letter from M. Hartley MacFadden authorizing LaRose Surveys, PC to represent her in this subdivision application [this was marked Exhibit 10 with the sketch plan review]

Additional materials filed October 6, 2022:

- Exhibit 6A***—Index to DRB packet;
- Exhibit 6B***—September 30, 2022 letter from LaRose Surveys to Town of Cornwall, addressing provisions of §320 of the *Cornwall Subdivision Regulations*;
- Exhibit 6C***—August 11, 2022 letter from Stephen Revell of Lincoln Applied Geology, regarding water availability;
- Exhibit 6D***—Email Correspondence from July and August 2022 between Dori Barton of Arrowwood Environmental and Zapata Courage of the Vermont Department of Environmental Conservation, confirming the absence of wetland resources in and adjacent to the property proposed to be subdivided;
- Exhibit 6E***—Draft Easement and Road Maintenance Agreement between Rose Torrey, Trustee of the M. Hartley MacFadden Trust and Michael P. Palmer and Gisela Palmer;
- Exhibit 6F***—September 19, 2022 letter from LaRose Surveys to Chief Dave Berno of the Cornwall Fire Department, with October 5, 2022 email from Ron LaRose to Dave Berno, and also October 5, 2022 email response from Dave Berno;
- Exhibit 6G, 6H, 6I***—Draft deed descriptions for Lots 1, 2, and 3;
- Exhibit 6J***—Draft plat showing proposed subdivision of lands of M. Hartley MacFadden, dated March 1, 2022, with a revision date May 11, 2022, (clarified that it was corrected after the June meeting with details from that date);
- Exhibit 7***—October 21, 2022 updated comments from the Cornwall Conservation Commission;
- Exhibit 8***—Deed, dated August 25, 2022; Property at 625 Rte. 30 deeded to Rose Torrey, Trustee, M. Hartley MacFadden Trust.
- ***Escrow***—Barbara stated for the record that, as required by the DRB at the sketch plan review meeting, a check from Rose Torrey, Trustee for Ms MacFadden, in the amount of \$2590.00 was received by the Town of Cornwall in August 2022. The check was deposited into the General Fund on August 29, 2022. \$2500 was the technical review fee that was required by the DRB. The technical review fee will be held in escrow and used for any

professional reviews or inspections required by the DRB. The \$90 was for payment of the hearing fee.

C. MacFadden Preliminary 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.
 - Concerns regarding the house sites for Lots 2 and 3 as expressed during the Sketch Plan meeting were addressed by moving the Lot 2 site out of the trees. The Lot 3 site really can't be moved due to the layout of the site and boundaries.
 - Concerns regarding water and wetlands were addressed by Steve Revell, Lincoln Applied Geology, who reviewed the proposed well site areas. The wetland issues were reviewed by Zapata Courage of the Department of Environmental Concerns and Dori Barton of Arrowood Environmental. Neither found there to be any wetlands on or adjacent to the MacFadden property.
 - Ron noted he had left two abutting owners (on the North side of Rte. 30) out of the mailing sent to abutters. He contacted those owners who ultimately confirmed they had no issues with the proposed subdivision.
 - The letter sent to the Palmers was returned, never having been picked up by them. Ron attempted several times to contact the Palmers but has yet to receive any response from them.
 - The Cornwall Fire Department indicated that there was a need to establish a turn-around on Bardon Drive, a "hammer-head" would work well to allow fire trucks to turn around. Some tree branches could also be removed along the road's sides for easier access. **Barbara:** *Berno told her that Fire Department's size for the "hammerhead" turn-around is 12' x 35'.*

2. Board Questions:

- **Shari and Ellen:**
 - **Septic Systems.** Would like Ron to add the Lot 1 septic system site to the map, as well as the wells for all 3 lots. A description of the system type for each lot is required under §320 (7). **Ron:** *The §320(7) was answered (**Exhibit 6B**), systems are all to be pressurized mound types. The system will all be on the site plans sent to the State for approval. Once approved they will be added to the subdivision's plat.*
 - **Building Envelopes.** Shari would like the the building envelopes for all 3 lots with the parcel setbacks shown on the plat (100' for all setbacks on Lots 1 and 3 as interior lots). The house sites are noted, but DRB needs to be able to see where any other structures (e.g. garages) could be situated on the parcels, so the building envelopes would be helpful. **Ron:** *The house sites as proposed will be on the plan sent to the State for approval, then added to the plat if approved. He will add the parcels' setbacks and building envelopes to each parcel.*
- **Barbara**—The front setbacks are measured from the centerline of Bardon Drive. The map shows the house site on Lot 3 with a front setback measured from the edge of the 50' ROW. If measured instead from the centerline, there would be an additional 25' available for the Lot 3 house site. Additionally, the Board might be willing to approve a waiver if such were to be requested (for example, a setback of 75' rather than 100'), allowing a bit more flexibility for Lot 3. Barbara also noted that she had no problem with removing more trees than the CCC had indicated was their preference. The trees were of a "plantation" type of planting. Barbara had been told by a forester at the Billings Farm

Museum that such plantings were not necessarily healthy, as all trees were planted at the same time, and maturing at the same time. A healthier tree lot has trees that mature at different times. **Ron:** *He will readjust the front setback on Lot 3 and consider the option of requesting a waiver. For the Lot 3 setbacks*

- **Shari, Ellen, Douglas, and Joan** all indicated they would be inclined to agree with a waiver request for the Lot 3 setbacks.

• **Shari and Ellen:**

- **Easements.** Are there easements on the lots, is there an easement for Andrus Pitch? Or for utilities? Are the utilities to be underground? §320 (12), *Subdivision Regulations*, requires a letter from an engineer describing and depicting existing and proposed utilities infrastructure including utility easements, **Ron:** *The main easement is the Bardon Drive ROW. He can add the portion of the Andrus Pitch ROW that is on the MacFadden property. The property boundary is the Andrus Pitch centerline. He will verify the utilities' location, they are assumed to be underground from Rte 30 to the Palmers.*
- The road maintenance agreement indicates new owners have no responsibilities for the road until a house has been built, until which time the Palmers pay the bulk of the maintenance. What is the Palmers' input on the agreement? **Ron:** *The Palmers have not responded to his inquiries nor offered any thoughts on the agreement.*
- **Barbara:** Perhaps the Palmers will weigh-in when they see the Board's concerns. The Board will confer with the Town Attorney on options for proceeding if no response is forthcoming from the Palmers. Her thoughts:
 - Owner obligations and responsibilities should begin when construction begins;
 - A percentage breakout of expense responsibilities would be a more fair allocation method (e.g. Lot 2 and 1 have use of lesser lengths of road than the Lot 3 owners or the Palmers, so being allocated a lesser percentage of expenses than the Lot 3 owners or Palmers might be more fair to them).
 - Branch cutting along the road would be better done sooner than later.

Ron: *He will propose the branch cutting be done sooner, and present the percentage allocations to the lawyers and let them sort out what to do.*

- **Barbara:** Regarding deeds—The deed submitted with the application had little or nothing to do with the state of the current parcel. They related to a deed to the Demongs, and other similar land transfers from an earlier time. The relevant deed is the one dated August 25, 2022 from MacFadden to Rose Torrey as Trustee of the MacFadden Trust. It appears from this deed that the technical owner of the parcel is no longer Hartley MacFadden, as named in the application and considered to be to this point in the proceedings, but is Rose Torrey the Trustee to whom the August deed transferred the property after the June DRB hearing/meeting. The title name will differ and the Board's decision must indicate the actual owner, therefore the Board requests a letter from Rose Torrey confirming that she is aware of this subdivision proposal and approves of Ron bringing it to the DRB as applicant on her behalf.

Secondly, the August 25 deed references easements and maintenance agreements, and the Board needs confirmation that there will not be conflicts between that deed and any new maintenance agreements. Once in receipt of a copy of the revised maintenance agreement the Board will pass it to the Town Attorney for review. **Ron:** *Yes, he will ask Ms. Torrey for a letter of confirmation that he is authorized to bring this application to the DRB on her behalf as well as Ms. MacFadden's.*

3. Public Questions/Comments, Applicant response:

- **Ann Demong**—Wondered if buyer of Lot 2 might want to access the parcel via Andrus Pitch rather than Bardon Drive. **Barbara**: No, the access will be off Bardon Drive as depicted on the plat.
- **Peter Demong**—The original subdivision was for 4 lots with an access road. If the current Lot 2 were to access from Andrus Pitch there might be a need for an attorney to review the possibility.
- **Ann Demong**—Will the Lot 2 owners be able to move the proposed house site closer to Andrus Pitch? **Ron**: *Once the State approves the site plan depicting the house site locations it is possible to relocate a house site anywhere within the building envelope or area as demarcated by the setbacks, but that might involve getting an amendment of the State's approval/permit for the relocation.*
- **Adam Eckhardt**—No questions
- **Don Burns**—Noted that the CCC's primary focus had been on wildlife paths/travel not on the health of the woodlands. The Fire Department's turn-around suggestion was as low-level as it could possibly be. He did, however, have several concerns:
 - What would happen, any protections, should the Lot 3 owner decide to clear-cut the forested area? **Ron**: *Thinks deed covenant could be added to put restrictions on forest cutting. The CCC could write owners a letter educating them about the value of wildlife travel and the selective cutting of trees for maintenance of a healthy forest.* **Barbara**: *She would not be in favor of tying the owners' hands regarding what they could or could not do regarding cutting trees. She sees an educational opportunity for the CCC, however, and encourages them to use it.* **Joan**: *Is a proponent of keeping as much vegetation intact as possible. Does not see the viability of clear-cutting.*
 - Branch cutting along Bardon is acceptable to him as long as done in a practical manner. Is maintenance of the woods a condition of approval? A 50' push-back of the woods is troublesome to him. **Barbara**: *The DRB can insert language in its decision relating to owners being sensitive to wildlife habitat and travel, and maintenance of the woods. If the CCC would like to submit some possible language to be used in this regard, the DRB might find it helpful.*
 - Owner can build a house anywhere within the building envelope? **Ron**: *Yes, but the State permit may need amending.*
- **Don Burns**—Questions the use of the language "no scenic view" regarding Lot 2 in the September 30 letter (**Exhibit 6B**). The CCC feels that Lot 2 has scenic views.

4. Board last questions or comments: None.

5. **Wrap Up**—Most of what is needed can be pulled together quite quickly. This hearing will resume on December 7 at 7:00pm via Zoom and in person at the Town Hall.

Business meeting Agenda resumed.

7. DISCUSSION

A. PC Update

- **Town Plan**—A hearing on the updated sections has been scheduled for January 18. After the hearing, the PC has to approve the document and pass it to the Selectboard for their review, hearing, and approval.
- **Zoning Regulations**
 - The DRB should keep a running list of provisions that could use attention.

- It might be useful to have a DRB member attend the PC meetings, perhaps on a rotational basis. Also, invite the PC to send one of their members to a DRB hearing.

B. Review of Subdivision Application— Short discussion on additions to the application (e.g. list of abutters names) that would make it clearer what materials the DRB expects to receive. Don MOVED, Joan SECONDED, to approve the changes as presented. *Motion passed.*

8. OTHER BUSINESS

- **Old**
 - Gregor Kent has withdrawn his waiver application (#21-005, November 2021).
 - Kasia decision sent to Kasia, Chlodnicki, Revell, Synott at the end of June.
- **New**—None

9. AVAILABILITY FOR NEXT MEETINGS

- *December 7, 2022*—Everyone present will be available.
- *January 4, 2023*—Everyone present will be available.

10. DELIBERATIVE SESSION—None

ADJOURNMENT—Ellen MOVED, Don SECONDED, that the meeting be adjourned. *Motion passed.*
Meeting adjourned at 9:15^{PM}.

Respectfully Submitted,
Robin Conway, DRB Secretary