

TOWN OF CORNWALL
2629 Route 30, Cornwall, VT 05753

Development Review Board
FINDINGS AND DECISION

In re: M. Hartley MacFadden Trust

Hearing Application No.: drb#22-002

I. INTRODUCTION AND PROCEDURAL HISTORY:

1. This proceeding involved review under the *Town of Cornwall Subdivision Regulations* (CSR) of an Application for Subdivision submitted by Ron LaRose, LaRose Surveys, originally on behalf of M. Hartley MacFadden. The application sought approval for the subdivision of a parcel at 625 Route 30 in Cornwall into three lots. After the parcel was conveyed by M. Hartley MacFadden to the M. Hartley MacFadden Trust, Rose Torrey Trustee, the application proceeded on behalf of the Trust.
2. The Preliminary Subdivision Application and supporting documents were received by the Development Review Board (DRB) on October 13, 2022. A copy of the Application is available at the Cornwall Town Clerk's Office.
3. A Sketch Plan Review was held before the DRB on May 4, 2022, and adjourned to June 1, 2022 at 7:00pm.
4. On October 13, 2022, notice of a public hearing to be held on November 2, 2022, for review of the Preliminary Subdivision Application, was published in the *Addison Independent*.
5. 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.
6. The Preliminary Subdivision Application was considered by the DRB at a public hearing held in-person and virtually on November 2, 2022. The hearing was adjourned to December 7, 2022. The DRB reviewed the Application under the *Town of Cornwall Subdivision Regulations* ("CSR") and the *Town of Cornwall Zoning Regulations* ("CZR") both dated February 26, 2008.
7. Present at the hearing were the following members of the DRB:
 - Barbara Greenwood (DRB Chair)
 - Ellen Whelan-Wuest (Vice-Chair)
 - Shari Johnson
 - Douglas Black
 - Joan Lynch, Alternate (*appointed for this hearing to replace Cheryl Cesario, who was absent*)
8. 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.

9. This Application was for approval to divide a 17.33-acre parcel at 625 Route 30 in Cornwall, into 3 lots—Lot 1, 8.88 acres with the MacFadden home, Lot 2, 4.31 acres on the E & W of Bardon Drive; Lot 3, 4.14 acres on the west of Bardon Drive.

II. EVIDENCE AND RELEVANT TESTIMONIES:

Exhibits. The following were received and marked as noted:

• Submitted for May 4 and June 1 Sketch Plan review:

- **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 M. Hartley MacFadden, dated April 8, 2022; provided by Roxanna Emilo, April 29, 2022.
- **Exhibit 7**—Copy of the CCC's preliminary comments, dated April 26, 2022.
- **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

• Submitted for November 2 and December 7 Preliminary Subdivision hearings:

- **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]
- **Exhibit 6**—*Materials filed October 6, 2022:*
 - 6A**—Index to DRB packet;
 - 6B**—September 30, 2022 letter from LaRose Surveys to Town of Cornwall, addressing provisions of §320 of the *Cornwall Subdivision Regulations*;
 - 6C**—August 11, 2022 letter from Stephen Revell of Lincoln Applied Geology, regarding water availability;
 - 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;
 - 6E**—Draft Easement and Road Maintenance Agreement between Rose Torrey,

Trustee of the M. Hartley MacFadden Trust and Michael P. Palmer and Gisela Palmer;

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;

6G, 6H, 6I—Draft deed descriptions for Lots 1, 2, and 3;

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.
- **Exhibit 9**—Email from Ron LaRose to Barbara Greenwood listing the materials submitted with the email, and status updates; dated November 21, 2022.
- **Exhibit 10**—Memorandum from Rose Torrey, Trustee of the M. Hartley MacFadden Trust, to Ron LaRose and the Cornwall DRB authorizing Ron LaRose and the DRB to proceed with this subdivision application hearing; dated November 5, 2022.
- **Exhibit 11**—Letter from Ron LaRose to the Cornwall DRB updating earlier discussion (*Exhibit 6B*) of the §320 subdivision requirements in the *Cornwall Subdivision Regulations*; dated November 21, 2022.
- **Exhibit 12**—Plat revised November 21, 2022 depicting proposed subdivision of lands of Rose Torrey, Trustee of the M. Hartley MacFadden Trust (“Preliminary Plat”).

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 May 4, June 1, November 2, December 7, 2022*).

Only those testimonies and exhibits relevant to the plan revision(s) subject to deliberation of the application before the DRB are noted. Details of proposals prior to the last revision (November 21, 2022) which no longer are pertinent to the deliberative process are not included unless as specified.

1. **The property** is in the Town of Cornwall’s Medium and Low Density Residential zoning districts, as described on the Town of Cornwall Zoning Map on record at the Cornwall Town Clerk’s office and in §250 and §260 of the *Cornwall Zoning Regulations* (CZR).
2. **The parcel (ID #06-01-25)** is located on the East side of Route 30 and is further described in a warranty deed recorded in the Cornwall Land Records in Book 93 Page 103 (Exhibit 8).
3. **Project Description.** Ron LaRose on behalf of the M. Hartley MacFadden Trust, explained the proposed project for the property at 625 Route 30, Cornwall, Vermont:
 - a. **Property Owner, Project Representative**—Rose Torrey Trustee of the M. Hartley MacFadden Trust, represented by Ron LaRose, LaRose Surveys (*Exhibit 10*).
 - b. **Current Status and Plans:** A ±17.33-acre parcel at 625 Route 30, Cornwall, VT, proposed to be subdivided into 3 lots: Lot 1, 8.88 acres; Lot 2, 4.31 acres; Lot 3, 4.14 acres. A 50’-wide ROW for the private access road (Bardon Drive) runs from Route 30 to the Palmer property, at the south end of the parent parcel.

c. Proposed lots.

- **Lot 1**—8.88 acres, an interior lot on the east side of Bardon Drive, primarily within the LDR District (NW corner in the MDR District) with existing house, well, septic, and underground utility access from Andrus Pitch;
- **Lot 2**—4.31 acres, lying within the MDR District on both sides of Bardon Drive with frontage on Route 30; proposed house site, septic, and well sites depicted, to be submitted to State for WW permit; proposed utility line to run from pole 9 at north end of parent parcel, along east side and within the Bardon Drive ROW to Lot 2;
- **Lot 3**—4.14 acres, an interior lot on the west side of Bardon Drive, lying $\pm 60\%$ in the MDR District with remainder in the LDR District; building envelope with proposed house site, well and septic sites almost entirely within the MDR district; proposed utility line to run from pole 9 at south end of parent parcel, along east side and within the Bardon Drive ROW to a point along Bardon where it will go under Bardon Drive crossing to Lot 3 on the west side of the road.

d. Road Maintenance

- Road maintenance has been an ad hoc system since the Palmers moved there in 2000. For example: Ms. MacFadden paid for plowing from Route 30 to her house, the Palmers paid for plowing from MacFadden's to their house. Mike Palmer took care of mowing the sides of the drive.
- There is a draft agreement designed to bind the owners of Lots 1, 2, and 3, and the Palmers, (*Exhibit 6(E)*) that has been sent to the Palmers for review. No comments have been received from the Palmers, and while they participated in the sketch plan review, they did not participate in the hearings.

e. Warning Letters for Hearings

- Letters sent to abutters, or the abutters were contacted directly. 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.

f. Sketch Plan Concerns Addressed

- **Water concerns** were addressed by Steve Revell, Lincoln Applied Geology, who reviewed the proposed well site areas (*Exhibit 6(C)*).
- **Wetland issues** were reviewed by Zapata Courage of the Department of Environmental Conservation and Dori Barton of Arrowood Environmental. Neither found there to be any wetlands on or adjacent to the MacFadden property. (*Exhibit 6(D)*)
- **House sites, Building Envelopes.** There are two issues here: the house site and the building envelope. State concerns are with the house site; moving any site after the State issues its WW permit requires the permit to be amended. The DRB and Town concerns are with the building envelope; the house site is movable within the envelope; the septic and well sites do not need to be within the envelope.
- **Bardon Tree Trims and Turn-around.** Fire Department's requested turn-around (*Exhibit 6(F)*) at the south end of Bardon has been installed, size of the "hammerhead" turn-around is 12' x 35'. Also, tree branches have been trimmed along the road's sides for easier access.
- **Lot 2 access via Andrus Pitch.** The only permitted access for Lot 2 is via Bardon Drive as depicted on the map of November 21, 2022 (*Exhibit 12*).

g. Utilities, Easements

- The ROW for Bardon Drive (50' wide), and that for Andrus Pitch have been depicted on the Preliminary Plat (*Exhibit 12*).

- The power line along Andrus Pitch and from there to the MacFadden house has been depicted on the same map (*Exhibit 12*).
- Regarding utility easements to Lots 2 and 3: when GMP runs a new power line along Bardon, it will have its own 25' ROW and a new easement between GMP and the MacFadden Trust. The constructed power line will run from pole 9 along the east side of Bardon, then on the west after crossing under the road to Lot 3. Easement will be designated in the Lot deeds, and is noted on the Preliminary Plat (*Exhibit 12*) per GMP's Distribution Designer.

4. Board.

- Classified the project** as a Major Subdivision due to the number of interior lots—June 1, 2022
- Set escrow fee** for technical review expense at \$2,500. Any escrowed funds not used will be returned.—June 1, 2022
- CSR §320.** Set required documentation to be submitted—*June 1, 2022*:
 - ##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*
- Lot 3 Building Envelope.** Expressed concern for the size of the building envelope on Lot 3, felt it would benefit from a setback waiver request which the Board might be inclined to grant given the circumstances of the parcel—November 2, 2022.(CZR §501). It is a long, narrow lot with a building envelope that is well spaced from the MacFadden house on Lot 1 and the building envelope on Lot 2 so it feels appropriate for this house site to be closer to Bardon Drive in these limited circumstances.
 - Oral request by LaRose for 75' setbacks on all Lot 3 sides—November 2, 2022
- Regarding Owner cutting of Lot Trees:** Board not inclined to specify how owners should treat their trees. 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 pine and planted and would mature at the same time. A healthier forest has a variety of trees that mature at different times. The DRB hopes that owners of the three lots will be sensitive to wildlife habitat and travel, and maintenance of the woods on their property.
- Property Ownership.** Ownership of the MacFadden property has changed since the Sketch Plan reviews, per new deed of August 25, 2022 (*Exhibit 8*), ownership belongs to Rose Torrey, Trustee of the M. Hartley MacFadden Trust. The title name will therefore differ and the Board's decision must indicate the actual owner.—November 2, 2022.
- Road Maintenance Agreement.** If no response is forthcoming from the Palmers regarding the maintenance agreement (*Exhibit 6(E)*), the Board can condition any approval of the subdivision application on there being a road maintenance agreement that, while binding on the owners of Lots 1, 2, and 3, also leaves an option to amend should the Palmers elect to participate. The Agreement would have to be approved by the Town Attorney, and would be registered on title.

5. Public.

- General—The Demongs expressed concerns regarding access via Andrus Pitch and the prospect of the Lot 2 house site being moved closer to Andrus;
- Cornwall Conservation Commission—Concerns regarding location of building envelope Lot 3; cutting of Lot 3 trees and disruption to wildlife passage.

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 Ron LaRose, LaRose Surveys. The owner of the property located at 625 Route 30, Cornwall is the M. Hartley MacFadden Trust, Rose Torrey Trustee. (*Exhibit 8*)
2. The subject property (ID#6-01-25) is located at 625 Route 30 in the Town of Cornwall and is further described in a warranty deed dated August 25, 2022 and recorded in the Cornwall Land Records in Volume 93 at Page 103 (Exhibit 8). The parcel consists of 17.33 acres more or less. The property is expressly subject to “permits, easements, rights of way, restrictive covenants, and road maintenance obligations” set forth in other instruments recorded in the Cornwall Land Records:
 - Quitclaim Deed dated 6/1/82 , Book 29, Page 222
 - Executrix Deed dated 6/8/82 Book 29, Page 227
 - Decree of Distribution dated 9/14/82, Book 29, Page 220
 - Warranty Deed dated 5/2/83, Book 29, Page 442
 - Executrix Deed dated 7/6/84, Book 30, Page 420
 - Warranty Deed dated 3/12/21, Book 90, Page 246
 - Warranty Deed dated 5/2/83, Book 29, Page 445 (50' wide ROW)
 - Easement Deed dated 10/15/08, Book 67, Page 373 (septic easement).

No evidence was provided to the Board to show that the proposed subdivision will not violate or interfere with any easements or other property rights of record belonging to abutting property owners or third parties.

3. The property lies in Cornwall’s Medium and Low Density Residential zoning districts, as described on the Town of Cornwall Zoning Map on record at the Cornwall Town Clerk’s office and in §§250 and 260 of the *Cornwall Zoning Regulations* (CZR). The minimum dimensional standards of the 2 districts within which the parent parcel lies are:
 - **LDR**—Minimum lot size is 4 acres, minimum front setback of 100 feet; rear yard minimum setback of 50 feet, and side yard minimum setbacks of 50 feet.
 - **MDR**—Minimum lot size is 2 acres, minimum front setback of 100 feet; rear yard minimum setback of 50 feet, and side yard minimum setbacks of 50 feet.
4. **Interior Lots**
 - **Interior Lot Dimensional Requirements**—Of the 3 lots, 2 are interior lots served by a private access road (Lots 1 and 3, Bardon Drive). Interior lots are required to have minimum setbacks on all sides, equal to the front setback as required by the district wherein they lie. Lots 1 and 3 lie in both the MDR and the LDR.
 - **Definitions of Subdivisions, CSR Article V**—Parcels containing 2 or more lots which do not have frontage on an existing public street must be reviewed as Major Subdivisions.
5. **Preliminary Plat and Plan.** The Preliminary Plat, *Exhibit 12* (November 21, 2022) depicts the following:
 - **Parent Parcel**
 - **Lot 1**—Interior lot with existing house, driveway, septic and well; 100' setbacks per interior lot regulations for LDR lots except south boundary setback is shown as 50'.

- **Lot 2**—A lot on a public road in the MDR district. Exhibit 12 depicts the front yard setback as 50', the side yard setbacks as 100', and the rear yard setback as 50'.
- **Lot 3**—Interior lot with proposed sites for house, drive curb cut, well and septic; setbacks at 75' per requested waiver of interior lot regulation's requirement of 100' for all setbacks.
- **Bardon Drive**—50' ROW depicted from Route 30 to Palmer property; centerline depicted marking boundary line between Lots 1 and 3; drive cuts marked.
- **Building Envelopes**—Depicted for all 3 parcels; Lot 3 setbacks at 75'.
- **District Boundary Line** between MDR and LDR depicted.
- **House Sites, Water and Septic Systems**—Depicted as proposed for Lots 2 and 3 according to DEC/ANR requirements for water/wastewater permits; Lot 1 depicts existing site locations.
- **Utility Easements**—power line is depicted from Andrus Pitch to MacFadden house; easements to Lots 2 & 3 per Note on survey (*Exhibit 12*) pursuant to Jonathan DiRodi, GMP Distribution Designer.
- **Adjacent Properties and Improvements.**
 - **Andrus Pitch.** MacFadden east boundary line, at Andrus Pitch centerline, Andrus Pitch 50' ROW, power line to MacFadden house; and Dunham property.
 - **Adjacent properties.** Dunham and Palmer to the south, Demong to the east, Francia and Wheeler/Hammerlind to the west, Murowski & Pope and Blumenthal across Route 30 to the north.

6. Road Maintenance Agreement.

- There is a proposed maintenance agreement draft (*Exhibit 6(E)*) that has been submitted to the Board. The Palmers have not yet responded to the draft agreement.

B. CONCLUSIONS OF LAW

1. **Authority**—The DRB has the authority pursuant to State statute and *Town of Cornwall Subdivision Regulations (CSR)* to hear and approve or deny subdivision applications and to waive certain provisions (§151), and the *Town of Cornwall Zoning Regulations (CZR)* §332(6) to hear and grant or deny requests for setback waivers.
2. **Setback Waiver—CZR Criteria for Review**—The DRB concludes that the requested setback waiver for Lot 3 satisfies the applicable review criteria in *CZR* §383:
 - a. The waiver is for a by-right use permitted in the Cornwall MDR and LDR Zoning Districts.
 - b. The waiver is in conformance with the Town Plan.
 - c. The waiver is designed to conform to the character of the land and is designed to reasonably limit the impact upon neighbors.
3. **Waivers and Variances—CSR Criteria for Review**—The DRB concludes that the requested setback waiver for Lot 3 satisfies the review criteria in *CSR* §151, given the narrowness of Lot 3 and the distance of the building envelope from the existing house on Lot 1 and the building envelope on Lot 2.
4. **Compliance with Zoning Regulations** – The DRB concludes that with two exceptions, and subject to the setback waiver granted above, the proposed subdivision as depicted in the Preliminary Plat (Exhibit 12) complies with the Town Plan and Zoning Regulations (CZR). The exceptions are (1) that the front yard setback shown for Lot 2 is, at 50', not compliant

with the MDR requirement that the distance from the building envelope to the center of Route 30 be 100' (see CZR §§ 250 and 1000 [definitions of front yard setback and street]); and (2) that the 50' setback of the Lot 1 building envelope from the Palmer property to the south is not compliant with the requirement that all setbacks for interior lots in the LDR be 100' (see CZR §§ 260 and 501).

5. **Design Standards—CSR Article IV**—The DRB concludes that the proposed subdivision as described in the Application materials and depicted in the Preliminary Plat (Exhibit 12) satisfies the relevant Design Standards set forth in Article IV. For example: There are no wetlands. The Applicant has demonstrated that an adequate supply of water exists for the subdivision and will not interfere with existing water supplies. There is no suggestion that the proposed subdivision will create highway congestion or unsafe road conditions. The Fire Department has confirmed that subject to tree trimming and the installation of a turnaround drive – both of which have already occurred – they will have sufficient access for response vehicles. The Applicant has considered topography, existing features, and natural resources and located the building envelopes, as much as possible, on open land so that few of the trees in the existing forest will have to be cut down. Utilities will be located underground and placed along Bardon Drive.
6. **Road Access – Road Maintenance Agreement** – The DRB notes that CSR § 620(5) requires that driveways serving more than one property shall only be permitted when the interests of each owner are protected by a written agreement or deed providing for private joint maintenance of the common driveway. The proposed draft road maintenance agreement (Exhibit 6E) attempts to do this, binding the owners of Lots 1, 2, and 3, and also abutters Michael and Gisela Palmer. Unfortunately, the Palmers have not provided any comments on the proposed draft. The DRB concludes that the requirements of CSR § 620(5) can potentially be met by a road maintenance agreement binding the owners of Lots 1, 2, and 3, and providing for later amendment should the Palmers wish to become a party to the agreement.
7. **Not Final Approval** – This preliminary approval does not constitute approval of the subdivision plan or plat. CSR §246. Prior to final approval, the DRB may require further or additional changes to the subdivision or require that approval be made subject to further or different conditions.

IV. DECISION AND PRELIMINARY APPROVAL:

Based upon the Findings of Fact and 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 preliminary approval of the proposed subdivision for Parcel #06-01-25 as requested in the Application (drb#22-002) dated October 10, 2022, submitted by Ron LaRose, LaRose Surveys, on behalf of the M. Hartley MacFadden Trust, Rose Torrey Trustee and as depicted in the Preliminary Plat (Exhibit 12).

Additionally, the Board grants a waiver of the setback requirements otherwise applicable to Lot 3 and approves setbacks for all sides of the building envelope of 75', as depicted in the Preliminary Plat (Exhibit 12).

These approvals are subject to the Conditions hereinafter set forth.

CONDITIONS

1. The Applicant shall, pursuant to CSR §245, submit 3 copies of the Preliminary Plat to the Town Clerk's Office for signature by the Chair of the DRB with the following signature block attached:

This Preliminary Plat received preliminary approval by the Cornwall Development Review Board on January 13, 2023, subject to all terms and conditions as stated in its Decision of January 13, 2023, a copy of which is attached and incorporated by reference. This does not constitute final subdivision approval.

Cornwall DRB

BY: _____

Its Chair and Duly Authorized Agent

2. Pursuant to CSR §247, within 6 months of this approval, the Applicant shall submit 10 copies of an application for approval of a Final Subdivision Plan and Final Plat with the plat substantially the same as the Preliminary Plat filed as *Exhibit 12*, but revised (a) to adjust the building envelope for Lot 1 so that all the setbacks are 100', (b) to adjust the building envelope for Lot 2 so that the setback from the center line of Route 30 is 100', (c) to reflect the turnaround for emergency vehicles, and (d) to reflect the easement for the power line running from Andrus Pitch across Lot 1.
3. This approval is conditioned upon final review and approval by Cornwall's counsel of the form and content of a written Easement and Road Maintenance Agreement (Agreement) providing for a common access, curb cut to VT Route 30, and utilities to Lots 1, 2, and 3 as proposed using the 50' ROW along Bardon Drive as the same is depicted on the Preliminary Plat. The Agreement shall ratably and equitably apportion among Lots 1, 2, and 3 the obligations to maintain Bardon Drive within the subdivision and to share in the costs of all maintenance, improvements, and other costs associated with the travelled surface, any common utilities and appurtenant surface drainage systems. The Agreement should permit amendment in the future. A copy of a draft Agreement should be filed with the application for final subdivision approval. (The DRB notes that it is open to the Applicant to file the draft Agreement with the DRB Chair before filing the application for final subdivision approval, in order to expedite counsel's review.)
4. This approval is subject to certification by the Applicant's counsel satisfactory to Cornwall's counsel that the Subdivision as proposed by the Applicant will not violate or interfere with any easement(s) or other property rights of record belonging to abutting property owners or third parties. (*See* Findings of Fact, Para. III.A.2.) The certification should be filed as part of the application for final subdivision approval. (The DRB notes that it is open to the Applicant to file a copy of the certification with the DRB Chair before filing the application for final subdivision approval, in order to expedite counsel's review.)

5. Access to Lots 1, 2 and 3 shall not be permitted from Andrus Pitch as the same is identified on the Preliminary Plat without first obtaining an amendment to this subdivision approval after public notice and hearing.
6. Lot 2 shall be considered a single 4.31 +/- developable lot and the property located on either side of Bardon Drive shall be considered for land use purposes as merged notwithstanding any change in the status of Bardon Drive as a private or public road.

Dated at Cornwall, Vermont, this 13th day of January, 2023.



Chair, DRB

NOTICE: This decision does not constitute final subdivision approval of the proposed subdivision by the Applicant and is subject to further review and revision upon submission of an application for final subdivision approval. This decision may be subject to appeal before 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*.