

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#23-001

I. INTRODUCTION AND PROCEDURAL HISTORY:

1. This proceeding involved review under the *Town of Cornwall Subdivision Regulations* (CSR) of an Application for Final Subdivision Approval submitted by Ron LaRose, LaRose Surveys, on behalf of Rose Torrey, Trustee of the M. Hartley MacFadden Trust. The DRB granted preliminary approval of the proposed subdivision in a decision dated January 13, 2023 (drb#22-002) ("Preliminary Decision").
2. The Application for Final Subdivision Approval and supporting documents were received by the Development Review Board (DRB) on February 3, 2023. A copy of the Application is available at the Cornwall Town Clerk's Office.
3. On February 9, 2023, notice of a public hearing to be held on March 1, 2023, for review of the Application for Final Subdivision Approval, 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 for Final Subdivision Approval was considered by the DRB at a public hearing held in-person and virtually on March 1, 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.
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
 - Joan Lynch, Alternate (appointed to replace Cheryl Cesario who was absent)
7. 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 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 east and west of Bardon Drive; Lot 3, 4.14 acres on the west of Bardon Drive.

II. EVIDENCE AND RELEVANT TESTIMONIES:

Exhibits. The Exhibits received into evidence during the sketch plan review meeting, the hearing on the application for preliminary subdivision approval, and the hearing on the application for final subdivision approval are listed in **Attachment A**. 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, and March 1, 2023*).

Only those testimonies relevant to the revised plat, "Plat Showing a Proposed Subdivision of Lands of Rose Torrey, Trustee of the M. Hartley MacFadden Trust," dated March 1, 2022 and revised 2/3/2023 ("**Final Plat**") (*Exhibit 24*), are noted.

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* on the Preliminary Subdivision hearings).
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.
 - 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 right of way ("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 of the lot is in the MDR District) with existing house, well, septic, and utility access (both above ground and underground) from Andrus Pitch;
 - Lot 2—4.31 acres, lying within the MDR District on both sides of Bardon Drive with frontage on Route 30; building envelope with proposed house site, septic, and well sites depicted on the Final Plat, as submitted to State for WW permit; proposed utility line to run from pole 9 at the 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 ±60% in the MDR District with remainder in the LDR District; building envelope with proposed house site, well and septic sites depicted on the Final Plat as submitted to State for WW permits; proposed utility line to run from pole 9, along east side and within the Bardon Drive ROW to Lot 2, then to a point along Bardon Drive where it will go under Bardon Drive crossing to Lot 3 on the west side of the road.
 - Lots 1 and 2 Building Envelopes—The building envelopes on Lots 1 and 2 have been adjusted as required by Condition #2 of the Preliminary Decision.
 - Bardon Drive Tree Trims and Turnaround—Fire Department's requested turnaround at the south end of Bardon Drive has been installed, and is marked on the Final Plat as required by Condition #2 of the Preliminary Decision.

- Lot access—The only permitted access for Lots 1, 2, and 3 is via Bardon Drive as depicted on the Final Plat.

d. Utilities, Easements.

- The ROW for Bardon Drive (50' wide), and that for Andrus Pitch are depicted on the Final Plat.
- The power line along Andrus Pitch and from there to the house on Lot 1 is depicted on the Final Plat as required by Condition #2 of the Preliminary Decision.
- Regarding utility easements to Lots 2 and 3: when GMP runs a new power line along Bardon Drive, it will have its own 25' ROW. 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 reflected in a note on the Final Plat.

- e. Road Maintenance Agreement.** Since the DRB's Preliminary Decision was issued, there have been discussions with the Palmers concerning the draft Easement and Road Maintenance Agreement, and the draft has been revised (see *Exhibit 29*). The Applicant anticipates that they and the Palmers will be able to reach an agreement, substantially in the form of *Exhibit 29*, in which the owners of Lots 1, 2, and 3 and of the Palmers' property will all pay their fair share of expenses related to the maintenance of Bardon Drive. The Applicant requested that the DRB approve the proposed subdivision with the condition that the final Easement and Road Maintenance Agreement be approved by Cornwall's counsel and signed by the parties prior to the conveyance of any of Lots 1, 2, and 3.

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 Rose Torrey, Trustee of the M. Hartley MacFadden Trust.
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 20*). 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).
3. **A letter from the Applicant's attorney** was provided to the Board certifying 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 (*Exhibit 22*). The certification is satisfactory to Cornwall's counsel.

4. **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.

5. **Interior Lots**

- **Interior Lot Dimensional Requirements**—Of the 3 lots, two 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.

6. **Final Plat and Plan.** The Final Plat (*Exhibit 24*) 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.
- **Lot 2**—A lot on a public road in the MDR district. The Final Plat depicts the front yard setback as 100', the side yard setbacks as 100', and the rear yard setback as 50', and shows the proposed sites for house, drive curb cut, well and septic.
- **Lot 3**—Interior lot with proposed sites for house, drive curb cut, well and septic; setbacks at 75' per the waiver granted by the Board in the Preliminary Decision.
- **Bardon Drive**—50' ROW depicted from Route 30 to Palmer property; centerline depicted marking boundary line between Lots 1 and 3; proposed drive cuts marked. All lots will be accessed via Bardon Drive.
- **Turnaround on Bardon Drive**—A turnaround at the south end of Bardon Drive has been installed, and is depicted on the Final Plat as required by Condition #2 of the Preliminary Decision.
- **Building Envelopes**—Depicted for all 3 parcels.
- **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. As part of the State Wastewater Permit packet, a septic replacement site for Lot 1 has been identified.
- **Utility Easements**—power line is depicted from Andrus Pitch to MacFadden house; easements to Lots 2 and 3 per Note on Final Plat (*Exhibit 24*).
- **Adjacent Properties and Improvements.**
 - **Andrus Pitch.** MacFadden parent parcel's east boundary line, at Andrus Pitch centerline, Andrus Pitch 50' ROW, power line to house on Lot 1; and Dunham property.
 - **Adjacent properties.** Dunham and Palmer to the south, Demong to the east, Francia and Wheeler/Hammerlind Trust to the west, Murowski & Pope and Blumenthal across Route 30 to the north.

7. Road Maintenance Agreement.

A revised draft of the Easement and Road Maintenance Agreement was filed with the Board. *Exhibit 29*. It provides for common access to Lots 1, 2, and 3, and to the Palmer property from Route 30, and for sharing the cost of all maintenance, improvements and other costs associated with the road. The percentages for each owner's share have yet to be determined.

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.
2. **Compliance with Zoning Regulations**—Subject to the DRB's previously granted waiver of the setback requirements for Lot 3, DRB concludes that the proposed subdivision as depicted in the Final Plat complies with the Town Plan and Zoning Regulations (CZR).
3. **Design Standards—CSR Article IV**—The DRB concludes that the proposed subdivision as described in the Application materials and depicted in the Final Plat satisfies the relevant Design Standards set forth in *Article IV*. For example: There are no wetlands. There are no deer wintering areas. There are no known threatened or endangered species on the property. 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, and so as to minimize impacts to natural resources. Utilities for Lots 2 and 3 will be located underground and placed along Bardon Drive.
4. **Road Access—Road Maintenance Agreement**—CZR §620(5) requires in part 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 Easement and Road Maintenance Agreement (*Exhibit 29*) attempts to do this, binding the owners of Lots 1, 2, and 3, and abutters Michael and Gisela Palmer. The Agreement has not yet been finalized. The DRB concludes that the above requirements of CZR§620(5) are substantially met by Exhibit 29 as the same has been amended and submitted to the DRB with the final application. The DRB shall condition subdivision approval on the approval of the final signed Easement and Road Maintenance Agreement by counsel for the Town of Cornwall prior to the transfer of any of Lots 1, 2, and 3.
5. **Bardon Drive**—CZR §620(5) also requires that driveways serving more than three properties (such as Bardon Drive in the proposed subdivision) shall be subject to approval by the Road Commissioner in accordance with town standards. The DRB shall condition subdivision approval on the Applicant's obtaining the Road Commissioner's approval.
6. **Satisfaction of Conditions**—The DRB concludes that with the filing of the certification by the Applicant's attorney (*Exhibit 22*), and Cornwall's counsel determination that it is satisfactory, the Applicant has satisfied Condition #4 of the Preliminary Decision.

IV. DECISION AND FINAL APPROVAL WITH CONDITIONS:

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 hearings, the Development Review Board hereby grants final approval of the proposed subdivision plan for Parcel #06-01-25 as requested in the Application (drb# 23-001) submitted by Ron LaRose on behalf of the Applicant Rose Torrey, Trustee of the M. Hartley MacFadden Trust (the "Final Plan"), and of the Final Plat (*Exhibit 24*).

The Board confirms its grant (in the Preliminary Decision) of a waiver of the setback requirements otherwise applicable to Lot 3 and approves 75' setbacks for all sides of the building envelope of Lot 3, as depicted in the Final Plat (*Exhibit 24*).

These approvals are subject to the Conditions hereinafter set forth.

CONDITIONS

1. Pursuant to CSR§280, a mylar of the final subdivision plat shall be recorded in the office of the Cornwall Town Clerk within one hundred and eighty (180) days of the date of this final plan approval, with the plat substantially the same as the Final Plat (*Exhibit 24*), but revised to change all references to "proposed building envelopes" to simply "building envelopes," and to change the reference to "proposed turnaround" to simply "turnaround."
2. The Final Plan and Final Plat are approved subject to all easements, private roads, lot locations, building envelopes, and other restrictions as noted on the Final Plat.
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*) substantially in the form of *Exhibit 29*. The Agreement shall rateably and equitably apportion among the owners of Lots 1, 2, and 3 (and the Palmers, if they choose to participate) 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. Prior to the commencement of any land development, construction, or sale of any of Lots 1, 2, and 3, a signed copy of such Agreement, as approved by Cornwall's counsel, shall be recorded in the Cornwall Land Records. Any subsequent amendment to such Agreement shall be signed and recorded in the Cornwall Land Records.
4. Prior to construction of any structure or driveways accessing Lots 2 and 3 from Bardon Drive, the Applicant shall obtain the approval of the Cornwall Road Commissioner as required by CZR §620(5) and any applicable town road standards.
5. Prior to the commencement of any land development, construction, or sale of any of Lots 1, 2, and 3, or the issuance of any building permit, Applicant shall provide to the Zoning Administrator copies of all necessary State Permits, including without limitation State Wastewater System & Potable Water Supply Permits, approving the project substantially as depicted in *Exhibits 27* and *28* and the Final Plat.
6. All deed conveyances shall be subject to the Easement and Road Maintenance Agreement.
7. Access to Lots 1, 2, and 3 shall not be permitted from Andrus Pitch as the same is identified on the Final Plat without first obtaining an amendment to this subdivision approval after public notice and hearing.
8. Lot 2 shall be considered a single ±4.31-acre 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.

9. Utilities (other than the existing above ground power line from Andrus Pitch onto Lot 1) shall be located underground within existing or proposed rights of way and run entirely underground to the building sites.

Dated at Cornwall, Vermont, this 16th day of March, 2023.

Andrew Greenwood
Chair, DRB

NOTICE: 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*.

ATTACHMENT A—EXHIBIT LIST

M. HARTLEY MACFADDEN TRUST SUBDIVISION APPLICATION

LIST OF EVIDENCE FILED

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”).

Submitted for the March 1, 2023 hearing on the application for final subdivision approval:

- **Exhibit 13**—Warning (which was posted in a timely fashion at the Town Hall and Town Garage, on the Town website, and on the property)
- **Exhibit 14**—Electronic Tear sheet with warning as published in the *Addison Independent*, February 9, 2023

Application materials filed February 3, 2023:

- **Exhibit 15**—Index to DRB packet
- **Exhibit 16**—Completed application form
- **Exhibit 17**—Letter from Rose Torrey dated November 5, 2022 authorizing Ron LaRose to proceed with this subdivision application
- **Exhibit 18**—February 3, 2023 narrative describing the 3-lot subdivision
- **Exhibit 19**—Tax Map depicting the property to be subdivided
- **Exhibit 20**—Warranty Deed from M. Hartley MacFadden to Rose Torrey, Trustee of the M. Hartley MacFadden Trust
- **Exhibit 21**—List of Abutting landowners
- **Exhibit 22**—February 2, 2023 letter from Benj Putnam to the DRB providing the certification required by Condition #4 of the DRB’s decision of January 13, 2023
- **Exhibit 23**—Draft Easement and Road Maintenance Agreement between Rose Torrey, Trustee and Michael P. Palmer and Gisela Palmer

- **Exhibit 24**—Plat Showing a Proposed Subdivision of lands of Rose Torrey, Trustee of the M. Hartley MacFadden Trust, dated March 1, 2022 and revised 2/3/2023 (“Final Plat”)
- **Exhibit 25**—February 3, 2023 Narrative on the Water and Wastewater Disposal Systems
- **Exhibit 26**—Landowner Signature Sheet submitted for Wastewater Permit
- **Exhibit 27 and 28**—Sheets 1 and 2 of the Wastewater design plans submitted for Wastewater Permit
- **Exhibit 29**—Revised Draft Easement and Road Maintenance Agreement between Rose Torrey, Trustee and Michael P. Palmer and Gisela Palmer