

Sperry Road Waiver Application Supplement

(1) The first thing we would like to further clarify in preparation for the next Board hearing are the environmental and conservation considerations supporting our request.

- First, we respectfully direct the Board's attention to the report submitted by the Cornwall Conservation Commission and the VCD map included with that report.
- The Commission expressed no objections to our request and specifically noted its view that environmental and conservation considerations require that the house be placed in the northeast corner of the lot, as we have done.
- A review of the VCD map the Commission appended to its report more clearly emphasizes the nature of our dilemma. If one excludes the pasture, the brook and adjacent wetlands, and the contiguous forest area deemed important by the state, we have about a quarter of our total acreage on which to develop a homesite.
- The section of "Lot 2" outside the shaded area on the VCD map appears to be roughly 4 acres. A large portion of that falls within the front yard setback, the side yard setback, and the area needed for the septic mound. The rest is dissected by a rock ledge, with two groundwater seeps south of our proposed house location.
- For example, according to the 2012 survey, our eastern boundary line totals just over 682 feet. When multiplied by the side yard setback, the buildable land is reduced by about 34,100 square feet, or just over $\frac{3}{4}$ of an acre. The front yard setback in the unshaded area reduces buildable land by another 30,000 or more square feet. Together, this totals around 1.5 of the roughly 4 buildable acres.
- The waiver we are requesting involves only about 624 square feet of this total.
- The waiver also substantially reduces the need to use fill to construct the house further to the west. Fill concerns us both for its potential negative effects on the quality of the house site and for the risk of environmental contamination that using offsite fill always presents.
- In addition to being of greater concern to our neighbors, placing the house further south on the lot would also require us to determine how the two groundwater seeps identified in the Dubois & King report would potentially affect our foundation and basement. It seems clear to us that they are best avoided.
- We also respectfully submit that situating the house and garage on the far east side of the property in this way also centers the various activities associated with a home further from the area of state conservation concern and thereby minimizes, as much as possible, our impact upon that area.

- (2) Regarding the potential impact of the waiver on our neighbors, during the last hearing, Lisa Calitri seemed to make it clear that her family prefers that we not place the house, garage, or a solar panel array any further south on our parcel. It appears that doing so would impact the views from their land and therefore its potential value. Given that the other abutting neighbor had no objections to our site plan (likely for similar reasons), and that our waiver request seems to create the least possible impact upon the Calitris – meaning no more than the house, for which no waiver is required – we respectfully submit that our proposal sufficiently limits the potential impact of the requested waiver on our neighbors, as required by Section 383. We also intend to plant additional trees along our eastern boundary line and are certainly open to other reasonable conditions on the grant of our waiver request.
- (3) Finally, it would be helpful if the Board could help us better understand the difference between a waiver and a variance given the language in Section 385 of the zoning bylaws, as well as that absence of that language from Sections 383 and 384.
- Under section 373 of the Cornwall zoning bylaws, a variance request is reviewed under criteria including “there is no possibility that the property can be developed in strict conformity with the bylaws and that therefore a variance is necessary to enable the reasonable use of the property” and that the variance requested is “the minimum that will afford relief and will represent the least deviation possible from the Town Plan” and zoning bylaws. Those are obviously high bars to meet, but we thought they applied only to variance applications and not to waiver applications given their absence from the waiver review criteria in Section 383.
 - Several questions from Board members last month seemed to suggest that they might be considering our waiver request under the variance standards, but they might also have stemmed from how the Board understands Section 385. The limitations it potentially imposes are not mentioned in the Section 383 review criteria or in the Section 384 decision-making process. Section 383 requires that the waiver be consistent with the Town Plan, but Section 385 suggests that a waiver might be given even it entails a deviation from the Town Plan. This inconsistency suggests a potential drafting error. Moreover, reading section 385 as broad, rigid, and mandatory would tend to collapse the distinction between a variance and a waiver.
 - We read the criteria governing waivers in Section 383 as being different and more flexible, requiring only that the waiver “accommodate” various matters prioritized in the bylaws, the Town Plan, and Section 4302. That understanding is supported by the description of the decision-making process in Section 384 as well. It would also seem quite difficult to strictly apply Section 385’s “minimization” requirements to the types of concerns accommodated by Section 383, such as land and energy conservation. We would therefore humbly suggest that Section 385 be read as discretionary, or at least much more flexibly than the variance requirements.

- (4) We appreciate the Board's role and the difficulty of this matter. And we recognize that the zoning bylaws, like most laws and regulations, do not provide crystal clear guidance. However, we humbly suggest that, while default rules like setbacks are an important part of the zoning bylaws, so too are the exceptions for which the bylaws provide. The exceptions support and advance other important values, such as land and energy conservation, and sustainable living – values that are also emphasized in the Town Plan. Perhaps mistakenly, we believed that variance requests are subjected to much higher scrutiny and approval standards because they are, in some way, inconsistent with the Town Plan *and* the zoning bylaws. Waiver requests appeared to have more flexible requirements because they must be consistent with the Town Plan. Section 385 seems in some ways inconsistent with, and at any rate difficult to apply to, the review criteria in Section 383.

We will be interested in learning how the Board understands these matters, and how we might accommodate those understandings. If the Board understands Section 385 to be broad, rigid, and mandatory despite the absence of its requirements from the review criteria in Section 383 and from decision-making process prescribed in Section 384, and that any waiver must “represent the minimum waiver that will afford relief,” it seems rather unclear how to apply that standard to the various conservation and topography concerns that we are dealing with. We respectfully submit that our waiver request reasonably balances these various concerns.

We also respectfully ask the Board to keep in mind that we purchased this land well aware of its environmental sensitivities and of the responsibilities we will have as its stewards. The documentation we have provided shows that we have carefully considered the environmental and conservation values embraced by Section 4302, the zoning bylaws, and the Town Plan at every step of our process. We will continue to do so. In fact, the primary reason we chose to retire in Vermont, and in Cornwall, is that we share these important values. (It certainly was not low taxes.) We reviewed the Cornwall Town reports and Town Plan before purchasing this land. We are willingly accepting tax burdens that we would not have elsewhere because of the values that Vermont's laws advance with the support of those tax dollars. It is these values: of environmental conservation, of energy conservation, of support for sustainable living and preserving agriculture, that are important to us as well, and that support our waiver request.

We hope the Board will agree that we have provided sufficient justification for the requested site dimension waiver and look forward to the opportunity to discuss these matters further.

Sincerely,

John Dehn and Ann Boeckman