

WAITSFIELD DEVELOPMENT REVIEW BOARD
MEETING MINUTES
Tuesday, May 22, 2007

I. CALL TO ORDER: Brian Shupe, Chair, called the meeting to order at 7:55 p.m. at the Waitsfield Town Office.

MEMBERS PRESENT: Eleanor D'Aponte, Jamey Fidel, Gib Geiger, Jr., Michael Kingsbury. A quorum was present.

MEMBERS ABSENT: Mark Sinclair, Hallie Tamez.

STAFF PRESENT: David Jescavage, Planning & Zoning Administrator.

OTHERS PRESENT: Christopher Pierson, Robert Howard, Ted Joslin, Alice Olenick, Sheila Getzinger, Bill Elliott, Anthony Italiano, Mark Peal.

II. NEW BUSINESS (Discussion Phase)

A. CASE#2007-05-01-SUB: Christopher Pierson: Discussion Phase for a 2-lot subdivision of a 2.09 acre parcel into one 1.09 acre lot and one 1.0 acre lot at 871 Common Road (Parcel# 04012.100) in the Agricultural-Residential District. Two single family dwellings exist on the current lot. After subdivision, one single family dwelling will be on each lot. Mr. Pierson described the proposal. There is an unoccupied trailer on one side of the lot, and he wants to subdivide and put a house on that location. He provided a surveyor's plan showing the new lot line. Asked if he had a state wastewater permit, he said that everything is already existing, and he is only replacing the structure. There is a stone wall between the existing house and trailer, an existing pump, and a spring-fed intermittent stream. The septic system is adequate for a two-bedroom house and there is no need for added capacity.

The proposed house has a garage underneath the house. Eleanor D. noted the potential health hazards of exhaust gases and solvent storage underneath living space and spoke in favor of a detached garage. A detached garage would not meet setback standards, and variance standards are strict.

The proposal was determined to be a minor subdivision. The state should be consulted to clarify the current wastewater regulations. The septic system for the house was redone two years before the applicant bought it. He replaced the septic for the trailer about 10 years ago. The adjoining properties are all vacant lots, and no neighbors have raised any issues. The curb cut for the trailer should be examined to be sure a permit exists. A culvert was installed several years ago. The house will be set back 55 feet uphill from the pond. The house could be moved 20 feet more. It does not appear practical to consolidate driveways. There is water flow during rainstorms.

The likely condition will be to meet state approval for septic compliance, and the driveway and stream setback will be confirmed. A public hearing will be warned. The applicant intends to begin demolition of the trailer. There will be no group site visit.

Mike K. moved at 8:10 p.m. to include in the minutes that the proposal is classified as a minor subdivision, and that a hearing is scheduled for June 19. Gib G. seconded. There was no discussion. All members voted in favor.

B. CASE#2007-05-02-SUB: Phyllis Tucker Estate (Robert J. Howard, Executor):

Discussion Phase for a proposed 2-lot subdivision (or in the alternate, a boundary line adjustment) for Parcel#12001.000 located at 74 Old County Road in the Agricultural-Residential District. Lot 1 will be 1.0 +/- acres and contains a single family dwelling. Lot 2 will be 3.74 +/- acres.

Robert Howard was present as the applicant. Also present were Shiela Getzinger representing the buyer of one lot, Alice Olenick representing the buyer of the other lot, Ted Joslin, representing the estate, and Bill Elliott, listing agent.

Chronology

At issue is whether the proposal is a subdivision or a boundary line adjustment. When the smaller lot was developed, the formula prevailing at the time was used to calculate the acreage, and it was determined to be one acre. Zoning Bylaws have been revised since then so that lot size is calculated to exclude the portion of the lot within the right of way resulting in the lot being less than an acre. The two lots were purchased before the zoning change, and the applicant feels that there are vested rights and the now-nonconforming lots do not require a merger.

The current formula calculates the lot as 0.67 acre. The lot has a drilled well and existing inspected septic system. A backup septic has been determined. The adjoining lot has a designated septic system. If the parcel is regarded as merged, all that needs to happen is to move the lot line, involving 0.3 acre, and it doesn't affect either septic system.

There is an urgency in that the applicant now has prospective buyers for each lot. The applicant feels that the lot with the house should be regarded as one acre because it was regarded that way when it was developed. A deed from 1844 describes the lot as one acre already developed.

Zoning Bylaws language

Ms. Getzinger said that the small-lot language in the town zoning regulations is there only because it's required by state statute, and the statute requires specific language. Zoning Bylaws, Section 3.05 B says, "If such a lot is, or subsequently comes under common ownership with one or more contiguous lots, the lot shall be deemed merged . . ." The state statute does not say "is" and only says "subsequently". Subsequently, in this case, refers to after the adoption of a zoning ordinance including the language. The town's addition of "is" is not authorized by the enabling legislation and has the effect of making the ordinance retroactive.

Board authority and constraints

David J. agreed that the verbatim language from the statute has to be "subsequently" only and not affect pre-existing common ownership. The town ordinance has to be interpreted literally, and he doesn't have the power to change it. The question is whether the Board has the power to determine that provision to be invalid. That requires a legal opinion. It may be that the ordinance would have to be amended. A speedy solution for this case would be a two-lot subdivision.

Ms. Getzinger felt that the purpose of a Development Review Board is to interpret, and it has the power to make that kind of decision.

Mr. Joslin observed that there are likely to be other developed lots under an acre that would now be considered deficient. He asked that the Board handle the application expeditiously because buyers are at hand and the proceeds will go to the Masonic Lodge and the Ambulance Service.

The Board may determine that the case is a lot line adjustment for the reasons cited by the applicant and can move forward with a review or waiver of a hearing. Or it may determine that the merger requirement triggers a two-lot subdivision.

Lot line adjustment

Mr. Joslin said that if it is a lot line adjustment, the applicant has submitted all the necessary information. There is an existing house, well, septic and septic backup design. The other lot has septic design and the application for state approval is pending. The movement of the lot line is within a swale area unuseable for other purposes by either lot. The new lot line only has the effect of giving more acreage to the smaller lot. It was noted that in the Town Plan, the Loop Road is appropriate for moderately high density residential development.

Ms. Getzinger suggested that the Board's decision is appealable at both ends. If the Board regards the town's small lot ordinance to be invalid, that could be appealed.

Subdivision

The application is for a subdivision, and the applicant is allowed to ask for a waiver of public hearing. The waiver waiting period is 15 days from the date it's published in the newspaper, and Mr. Joslin said that that time suits the applicant.

The larger lot has three tiers sloping down to Route 100. The house would be located on one of the higher tiers, away from Route 100, with the gravity-fed septic below. The access would be off Loop Road. The proposal doesn't appear to raise any environmental concerns. The map as presented does not have a building location defined for the larger lot. The building envelope would be defined by the setbacks.

A plat would need to be filed once the waiver notice period passed. If there is no request for a hearing, on the 16th day after the waiver notice first appeared in the paper, the permit could be approved. Conditions of approval could include language about building location, access off Loop Road, and other details on the plat. A specific building location would be part of the zoning permit process, and a permit amendment is possible. All the neighbors were notified of tonight's agenda. There was uncertainty about whether they would have to be notified again when the waiver notice is published. David J. will check it. If someone were to request a hearing, the Board would have to hold one and make a determination, and the determination would be appealable.

Brian S. said that a waiver of public hearing became a Planning Commission practice in Waitsfield for boundary line adjustments years ago. The DRB hasn't established a practice yet. Section 3.4 of the subdivision regulations says that all subdivisions must be recorded in the office of the town clerk within 90 days of the date of final plan approval, or the approval expires. Prior to recording, the plat must be signed by two authorized members of the commission. There is a

statute that says that before any plat is approved, a public hearing on the plat shall be held by the appropriate municipal panel after public notice. The Town Attorney will be consulted about it.

David J. asked whether the Chapter 117 amendments supercede the town's past practice. Neither section that applies gives the appropriate municipal panel the authority to waive a public hearing. Section 4454 says that a warned public hearing is required for conditional use review, variances, and administrative officer appeal, and final plat review for subdivision. There is no stated leeway to waive the hearing. There were occasions in the past when the Planning Commission had waived hearings for boundary adjustments, and landowners had title problems because their land hadn't been legally subdivided. The waiver of hearing notice was instituted to resolve that.

If a warning a public hearing could get published in this Thursday's paper, the hearing would be on June 12. If the approval was at that hearing, there could be notice of decision written and signed the next day. There would then be a 30-day appeal period.

David J. located enabling legislation in Title 24, § 4418 (2)(A). It says that subdivision bylaws may include a provision allowing the appropriate municipal panel to waive or modify, subject to appropriate conditions, the provisions of any or all improvements and requirements as in its judgement of the special circumstances of a particular plat or plats are not requisite in the interest of the public health, safety, and general welfare, or inappropriate because of the inadequacy or lack of connecting facilities adjacent or in proximity to the subdivision.

Mike K moved at 9:28 p.m. that the Board:

- waive the hearing requirement on a two-lot subdivision, and
- draft a decision that describes the location of the building envelope in the existing open area, with a gravity feed septic system, and with access from Loop Road, and
- require septic approval from the state for the 3.74-acre lot (reduced by 0.3 acre), and
- attempt to publish the legal notice of intention to waive the hearing requirement in this Thursday's paper.

Gib G. seconded. There was no discussion. All members voted in favor.

III. APPROVAL OF MINUTES

A correction was made to the minutes of May 8. Page 3, lines 25-26 should read, "The map has identified building envelopes, setbacks, easements, and everything needed for a subdivision application."

Mike K. moved to approve the minutes of the May 8 meeting as amended at 9:35 p.m. Eleanor D. seconded. There was no discussion. All members voted in favor.

IV. ADJOURNMENT

Mike K. moved to adjourn at 9:40 p.m. Gib G. seconded. There was no discussion. All members voted in favor.

The Board went into deliberative session.

Respectfully submitted,

Mark Peal
Minute Taker