

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45

**Town of Waitsfield
DEVELOPMENT REVIEW BOARD
Meeting Minutes
Tuesday, May 27, 2008**

1. CALL TO ORDER: Brian Shupe, Chair, called the meeting to order at 7:40 p.m. at the Waitsfield Town Office.

MEMBERS PRESENT: Brian Shupe (Chair), Eleanor D'Aponte, Gib Geiger, Mike Kingsbury, Jamey Fidel, Mark Sinclair.

MEMBERS ABSENT: Hallie Tamez.

STAFF PRESENT: Vickie Trihy, Planning and Zoning Administrator.

APPLICANTS AND THEIR REPRESENTATIVES PRESENT: Gunner McCain representing the applicants.

INTERESTED PARTIES: David Olenick representing abutters David and Karen Wright; Janet Smith, abutter.

2. #SUB-07-05-03 (formerly SUB-07-05 and SD-06-06), Gordon & Kay Marcelle, Final Plan Review of a 3-lot subdivision. This application has been classified as a major subdivision based on the cumulative length of the road and driveways. The property is identified as Parcel #03028.000 at 1622 North Road in the (AR) Agricultural-Residential District (§2.07). The three lots will consist of Lot 1 - 7.9+/- acres; Lot 2 - 10.5+/- acres; and Lot 3 - 14.6+/- acres.

The purpose of this hearing was to determine if the conditions for preliminary plan approval of this project cited in the decision dated October 27th, 2007 have been met.

Brian S. began by reading aloud **condition #2** which calls for **establishment of a no-clearing zone** as part of the final approval. Mr. McCain acknowledged that applicants will work with the DRB to draft language that clarifies applicants' responsibilities and also maintains their ability to clear some trees for views. Mike K. asked for clarification re the proposed forested buffer between the subdivision and the Smiths' property. Mr. McCain said a 75 ft. buffer had been agreed upon and that had "somehow" become 100 ft, which was OK. Brian S. stated that the purpose of the 75 to 100 ft. buffer was not just to protect the Smiths but to preserve the forested nature of the slope. Mr. McCain again stated that this buffer would be incorporated into the final site plan. Brian S. commented that the board had not yet consulted with a forester regarding the language the DRB would require, but before deciding if the board should do so he would move on to the next item, which was related.

He read **condition #3** aloud, which required that with their final application the applicants **submit a forest and wildlife management plan** for maintaining the deer yard in lot #3. He stated that he had reviewed the plan submitted by the applicants prior to this meeting and it seemed to conform to the State of Vermont's guidelines. There was discussion of who would submit the management plan to the Vt. Dept. of Fish and Wildlife for approval. Jamey F. asked if the purpose of the updated plan was for enrollment in current use, Mr. McCain replied that the acreage did not qualify for current use, and the update was intended for this process [approval of the subdivision] only.

Brian S. asked for input from interested parties. Mr. Olenick stated that he had two concerns on behalf of abutters David and Karen Wright. First, to ensure that the subdivision did not

1 encroach on springs located on the Wrights' land. He said he was satisfied with Mr.
2 McCain's statement that all water sources were respected in this plan. The second concern
3 voiced by Mr. Olenick was a discrepancy in the older surveys regarding the lot line between
4 the Marcelle and Wright parcels. He accepted Mr. McCain's assurance that the plan would
5 use magnetic north as a reference. He also pointed out that there are physical property
6 markers on the ground that both parties agree to accept as valid. He and Mr. McCain agreed
7 that they would coordinate before the final Mylar is recorded.

8
9 Brian then went on to discuss **condition #1**, reminding everyone that they were all in
10 agreement that a discrepancy exists in how the ROW is shown on the map. He explained that
11 the DRB had agreed in the preliminary review to waive some of the strict road and driveway
12 requirements and allow a smaller access, but did want some of the grade issues to be
13 addressed. Of most concern was for the parties to reach an agreement on maintenance of the
14 portion of the road shared with the Smiths. Brian read condition #1 which called for the
15 applicants to **provide a quitclaim to the Smiths**, but in the event the Smiths refuse to sign,
16 to **provide documentation clarifying the location of the ROW and to provide**
17 **documentation of provisions for maintenance of the road.**

18
19 Brian went on to read **condition #4**, which required the applicants to **take further steps to**
20 **mitigate the steepness** of the grade. Mr. McCain stated that he didn't know much more than
21 what the applicants stated in their letter, that they had put a couple of loads of gravel in at the
22 bottom. Asked if this changed the grade, he said "not dramatically." Ms. Smith asked when
23 that work occurred, pointing out that there was snow on the ground until the end of April and
24 as far as she could tell that work could not have been done this year, which she said means
25 nothing has been done since the decision. She also wanted to know what was done to
26 improve drainage at the Y section of the driveway, which the applicants' letter stated was to
27 be done this spring. Mr. McCain said the letter was dated in March so it's possible that work
28 has yet to be done, and it was his impression that the addition of gravel had been done the
29 year before. Brian asked Ms. Smith if to her knowledge anything has been done to the road—
30 grading, gravel brought in—since the preliminary approval was granted, and she said no.
31 Mike K. said it was his understanding that Mr. McCain was going to oversee the
32 improvements to the road. Mr. McCain said no changes have been made to the plan since last
33 September, and his position since then has not changed concerning the lower portion of the
34 driveway where it crosses the Smiths' property: the drive goes straight up the hill in a narrow
35 ROW, and there isn't really anything that can be done to reduce the grade in the ROW that
36 exists. He said the plan does call for pull-offs above and below that section. Ms. Smith asked,
37 why then was one of the conditions to provide a revised plan for addressing this problem.
38 She stated that what she wants is to be sure that the drainage at the Y section will be
39 improved.

40
41 She also asked who would be the watchdog for these issues once development gets
42 underway. Brian [**or Jamey—had trouble distinguishing voice here**] pointed out that the
43 applicants did submit an erosion and sedimentation plan and the DRB did review the design
44 for the other driveways and were satisfied with it. He said it does look like we need to hear
45 from Gordy to clarify what's been done and we did say as part of the decision that we want
46 to see a new plan for dealing with this issue. Mr. McCain said that the work that has been or
47 may be done would not significantly affect the elevations shown on the current plans. He

1 mentioned that the Marcelles will be required to file a state permit for the earthwork, and
2 said the DRB may want to impose some level of inspection and reporting at specified
3 times. **[Recording got a bit fuzzy for a while here, I couldn't hear everything clearly.]**
4 Brian **[or Jamey]** said the intent of the condition was for the applicant to explore what could
5 be done to mitigate the steep grade, and reflect that in a revised plan. Mr. McCain responded
6 that the narrow ROW prevents anything other than a little bit of widening and adding the
7 pull-offs.

8
9 Ms. Smith asked if the plan allowed for utility ROW. Some discussion ensued and it was
10 determined that on the bottom of page 1 on the original deed and in the existing deed the
11 utility ROW was fairly dealt with. **[But Brian (?) then said we might have to come back to**
12 **this.]**

13
14 Brian observed that the Marcelles had submitted two deeds, one of which clarified the
15 location of the ROW, the other relieved the Smiths of any obligation to pay for road
16 maintenance. Neither has been signed or recorded. He asked if it was the position of the
17 Marcelles now that there will be no quitclaim deed, and the ROW, although it's not shown in
18 the location of the road, is a mistake and the applicants do have the 25 ft. ROW that the road
19 lies within and that this is adequate to deal with maintenance over time? Mr. McCain replied
20 that they have previously submitted clarification of the 25 ft. road ROW issue via the letter
21 from Sheila Getzinger which explains that the ROW is over the road and there was a mistake
22 in one of the description that describes the ROW and that in her opinion it clearly is over the
23 existing driveway and the ROW does exist. He said the existing deed does have language
24 relative to maintenance of the road.

25
26 Mr. McCain stated he has not been involved in the discussion between the Marcelles and the
27 Smiths, and asked Ms. Smith to relate what has transpired between them. She said that at the
28 time she received the quitclaim deeds she had been occupied with family matters and was
29 only reminded that she had them when she saw Kay Marcelle recently. She said "I guess
30 we'll go with that," **[then it sounds like "I guess we'll get to sign it, but I don't think gthe**
31 **Marcelles have signed it either." I think the recorder fell over here.]** Brian asked "Is your
32 main concern with drainage in your driveway?" Ms. Smith answered, "Yes, that and what's
33 going to happen to that little section right there" and that she was hoping to see a revised plan
34 for that condition. Brian asked her if the potential improvements are made, recognizing that
35 there may not be many options as Mr. McCain has testified, would she be willing to sign the
36 deeds? She answered, "yes, probably."

37
38 Brian asked if anyone had questions for Mr. McCain or Ms. Smith. Mike K. asked if the plan
39 would be changed concerning the ROW. Mr. McCain replied that the final survey will show
40 the ROW up the driveway as it is supposed to be shown. He added that if the quitclaim deeds
41 were executed it could show those changes as well. **[Janet spoke here again about the**
42 **Marcelles' written statement that they planned drainage improvements, but I could not**
43 **hear her properly.]** Mike K. said that approval would be based on Mr. McCain's
44 representation of the work to be done, and Brian responded that we asked him to go further
45 because of testimony from the Smiths that the drainage was a problem and we had concerns
46 about the grade. He stated that it would be good to have the plat showing the ROW not
47 shooting off to the south. Mr. McCain said the final survey will correct that. Jamey asked if it

1 was the Marcelles' position that they don't need the quitclaim deeds exchanged to represent
2 the ROW in a way that is consistent with the subdivision regs. Mr. McCain said that is their
3 position, based on the previously submitted letter from Sheila Getzinger. Ms. Smith said
4 "and they[the Marcelles] wrote 'attached is the original deed dated 6/30/80.'"[**not sure I**
5 **heard that correctly**] Brian asked her if it was her understanding all along that the ROW did
6 follow the road. [**couldn't hear her reply properly, or follow the remarks that several**
7 **people made then.**] Brian observed that "it sounds like you're close to working it out." He
8 suggested we recess to another hearing so we can hear from the Marcelles about the work
9 done on the road and any other ideas for improving drainage and allow the two parties to
10 work out the deeds if they can. Mark S. said Ms. Smith could bring specific
11 recommendations for performance standards to the next hearing. Brian and Mr. McCain
12 pointed out that the quitclaim deeds would make that unnecessary. Mark S. said that asking
13 for such requirements could be part of the Smiths' negotiations regarding signing the deeds.
14 Mr. McCain stated his belief that the understanding between the two parties is that the deeds
15 would serve to relieve the Smiths of any responsibility for maintenance, but in doing so also
16 removes their right to have a say in the realities of that maintenance. Ms. Smith added "how
17 it affects our driveway." She said that's what she wants to ask Gordy Marcelle about. Brian
18 said this [**site plan?**] does show a culvert immediately uphill from her driveway diverting
19 water away from the driveway. Mr. McCain explained that at one point they did have a plan
20 for work that would have reconfigured the Smiths' driveway involving significant earthwork,
21 but the Smiths and Marcelles didn't agree to it and he was not involved in their discussion
22 after he produced the plan.

23
24 Brian said if we go to another hearing it would give us an opportunity to prepare some draft language
25 for the no-cut condition—either do it or ask Vickie to get someone to submit something—a forestry
26 or landscape architect—to bring to that hearing for discussion. It would also give the two parties
27 some time to clarify any work that is going to happen in that area relating to drainage and grade, and
28 work out the deeds. Mike K. asked for clarification regarding a proposed 50' ROW versus the actual
29 25' ROW. Brian answered that the decision was to allow the larger ROW. Ms. Smith stated she
30 believes Elwin Neill gave the Marcelles a 50' ROW. Brian said what the plan shows is an existing
31 25' and a proposed 50' ROW. Mr. McCain explained that they have not completed the work on that
32 portion of the property, and it's possible they could turn up something that shows a larger ROW.
33 Brian stated the DRB's expectation is that there will be a 50' ROW, and Mr. McCain said that is his
34 as well.

35
36 Brian said that before the next meeting we will send the forest management plan on to Jens.[**vt**
37 **check**] Jamey asked what provisions will be in place to ensure the forest management plan is
38 followed by new owner of lot 3 once the property no longer remains in current use. He went on to
39 state his concern that the plan submitted is based on current use, which means it will only be
40 applicable to that deer wintering range for ten years. Mr. McCain answered that "we would have no
41 objection" to including in the DRB's conditions language that would have to be part of the deed to
42 that parcel. Jamey said that would require updating the submitted plan and maybe changing the
43 wording in the plan from "maintain this plan" to language that requires periodic updating by a
44 forester or [**missed a word**] biologist.

45
46 Brian asked about what was slated for upcoming meetings, Vickie answered she had no new
47 applications for the board to review at this time. It was decided that the next meeting would be on
48 June 24th, and that meanwhile the DRB may look for some feedback for the management plan and put
49 some conditions together related to that, and look for some guidance about the cutting area around the
50 lower lot, and get clarification from the Marcelles about any work that's been done or is

1 contemplated around the Smiths' driveway and on the road regarding drainage and gradient and
2 whether that will prompts any changes to the plan, and whether the deeds can be resolved with the
3 Smiths. Mr. McCain reviewed who would do what before the next meeting: he and applicants are
4 responsible for [couldn't hear] the lower portion of the lot from Neill, and providing information
5 about work done on the lower portion of the road and determining whether it necessitates changes to
6 the plan, and working out the deeds; DRB will get feedback on the wildlife plan from Dept. of Fish
7 and Wildlife and language regarding the cutting area on the lower portion of lot 1.

8
9 Motion to recess was made and seconded, meeting was recessed to 7:30 on June 24th.

10

11 **3. APPROVAL OF MINUTES postponed.**

12 Minutes from May 13th meeting were unavailable and will be submitted for approval
13 before the next meeting.

14 **4. PRESENTATION BY STEVE STITZEL** concerning various legal topics.

15 **5. ANNUAL ORGANIZATIONAL MEETING**

16 Brian suggested the board should review of the board's rules of procedure relevant to Mr.
17 Stitzel's discussion of reopening hearings at a future meeting.

18 He asked if anyone was interested in replacing him as chair, as his original intent was to
19 fill this position for a year, and that year has elapsed. No one volunteered, and Mark and
20 Jamey expressed their admiration for the job Brian has done. There was discussion of the
21 pros and cons of imposing time limits on hearings.

22 Mark nominated Brian Shupe as DRB chair and Gib Geiger as vice chair. Eleanor
23 seconded. All members voted in favor.

24 **5. ADJOURNMENT**

25 Move to close at 10:25 was seconded, all members voted in favor.

26 .

27 Respectfully submitted,

28 Vickie Trihy