

TOWN OF WARREN
DEVELOPMENT REVIEW BOARD
FINDINGS OF FACT & NOTICE OF DECISION
SUBDIVISION REVIEW
#2007-01-SD NEWCOMB

Danforth and Elizabeth Newcomb are requesting subdivision approval for the 84+/- acres that they own located off of Main Street and extending up to Fuller Hill Road. Five lots ranging in size from 8+/- acres to 16+/- acres on approx 50 +/- acres will be accessed off of Fuller Hill Road and offered for sale as building lots for single-family dwellings. Off of Main Street will be four lots, one with the existing house and garage owned by the applicants and tow additional lots, one for each of their two sons. The ninth lot consists of approx. .8 acre located on the east side of Fuller Hill Road which the Newcomb's intend to deed over to Robert and Sandra Grant as a lot line adjustment.

A duly warned hearing was held on Wednesday January 17, 2007 and followed by three subsequent hearings held on Wednesday February 21, 2007, Wednesday May 23, 2007 and Wednesday June 20, 2007. A site visit was also conducted on Saturday February 17, 2007.

January 17, 2007: Members attending: Peter Monte, David Markolf, Lenord Robinson, Virginia Roth and Bob Kaufmann. Others in attendance: Alec Newcomb, Don Swain, Susan Hemmeter, Mike Krongel, Erin Post, Margo Wade, Jason Lisai, Bob Ackland, Ron Zschaler, Miron Malboeuf and Ruth Robbins.

February 21, 2007: Members attending: David Markolf, Peter Monte, Lenord Robinson, Virginia Roth and Bob Kaufmann. Others in attendance: Jen Moffroid, Megan Moffroid, Alec Newcomb, Damon Reed, Don Swain, Erin Post, Robin Bennett, Keith Streeter, Miron Malboeuf and Ruth Robbins.

May 23, 2007: Members attending: Peter Monte, David Markolf, Chris Behn, Virginia Roth and Lenord Robinson. Others in attendance: Dave Olenick, Alice Olenick, Mark Bannon, Bruce Fowler, Dick King, Erin Post, Margo Wade, Susan Hemmeter, Don Swain, Alec Newcomb, John Pollack, Miron Malboeuf and Ruth Robbins.

June 20, 2007: Members attending: David Markolf, Chris Behn, Bob Kaufmann, Virginia Roth, Lenord Robinson and Peter Monte. Others in attendance: Bill Nedde, Bill Maclay, Kathy Beyer, Dave Olenick, Erin Post, William Senning, Susan Hemmeter, Alec Newcomb, Don Swain, Charlie Snow, Jim Caffrey, Miron Malboeuf and Ruth Robbins.

February 17, 2007 – Site visit: Members in attendance: Mr. Monte, Mrs. Roth, and Mr. Markolf. Others also at the site visit: Mr. Malboeuf, Mr. Swain and Mr. Newcomb.

Findings of Fact & Conclusions of Law:

- 1- The applicant submitted a completed application, project narrative along with a list of abutters and proof of mailing.
- 2- The following documents were also submitted for this application:
 - Sketch Plan prepared by Landplan, Inc. dated 11/14/07
 - Revised Sketch Plan with possible additional density on lower lots rec'd 2/16/07
 - Preliminary Site Plans dated 2/15/07 prepared by Landplan, Inc.
 - Road Profiles
 - Erosion Prevention & Sediment Control Plan dated 2/19/07

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- Erosion Control Specifications
 - Letter from David H. Hirth, wildlife biologist dated 3/28/07.
 - Copy of Warren Conservation Committee minutes of 2/6/07 meeting
 - Letter to DRB from Warren Conservation Commission dated 4/3/07
 - Amended application reducing the requested number of lots to seven (7) received 6/20/07.
 - Road Profile – Lots 6 & 7 dated 5/15/07
 - Draft of Vanishing Brook Subdivision Protective Covenants and Restrictions dated 5/16/07
 - Map(s) of the abutting neighbor, Babic, showing where their spring box is located
 - Copy of Road Access Permits #2007-06-RC & #2007-07-RC
 - Letter from the Warren Fire Department dated July 1, 2007.
- 3- There is a road cut permit from 1987 for access off of Fuller Hill for the proposed five lots, however a new Road Access permit will be requested as they will be altering the entrance ever so slightly.
- 4- There will be a combination of both individual wastewater systems as well as a common system and all homes are being asked for permitting for 5 bedrooms.
- 5- This parcel is not part of the Town wastewater system.
- 6- In a meeting with the Warren Fire Dept. they asked for either a fire pond or for the homes to be required to have sprinkler systems.
- 7- When the Newcombs acquired the land from the Snows that there were two stipulations in the deed: one for the accommodation of the trailer being allowed to remain for one year, (it encroaches on the property line) and two, a provision for an easement for the septic system that serves both the trailer and Marion Snow's house that is partially on the Newcomb parcel.
- 8- Discussion took place about the three proposed lots (#'s 6, 7 & 8) of approx. 11 acres each off of Main Street and their proximity to Warren Village where the density is much higher. It was questioned whether the topography would allow for higher density and noted that if higher density was possible that it would be more in keeping with the Town Plan and relate better to the village. The Board could not tell the family how to develop their land, but could ask to do so in such a way as to not preclude a higher density years down the road after they had moved on.
- 9- For lots 1 through 5 there would be approx. 900 to 1,000 feet of new road and a stream crossing. Since the drainage area for this stream is less than one square mile no stream alteration permit is required. The State guidelines however call for *the culvert to be as follows: wide as the maximum width of the stream with the maximum flow of water, flat as possible to accommodate wildlife, and buried into the stream bed to allow for the minimum amount of water.*
- 10- The building envelopes on lots #1 through #5 were in "odd" shapes in order to avoid any 15% grade.
- 11- Lots 1 and 2 will have their own in ground wastewater systems and the plan is to have a common system located on lot 2 for the remaining lots #'s 3,4, and 5.

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- 12- The Board inquired as to whether or not continued access through to the adjacent parcel (Ardiff) should be a consideration. Mr. Swain noted that to go through lot 5 to the Ardiff's would be difficult due to steep slopes and the only way would be right through the proposed building lot. The Zoning Administrator stated that he believed there was access to Ardiff's parcel just south of the Rood access off of Fuller Hill.
- 13- The applicant stated that the view shed was limited and that only the top of the ridge would be seen; both the valley floor and Lincoln Gap would not be visible.
- 14- Clearing/thinning restrictions would be imposed and the thinning lines had to be drawn/designated in such a way as to make a clear demarcation to facilitate Zoning Enforcement.
- 15- The covenants would allow further subdivision of lot 1 which is approx. 13 to 14 acres. The other lots would not be allowed further subdivision. This was later changed as further subdivision of Lot 1 was deemed to be problematic and thus not feasible.
- 16- In response to the Board's inquiry of potential higher density for the lower portion of the parcel, the applicant presented a site plan that showed the addition of four additional building lots.
- 17- The Board considered approval of lots 6, 7 and 8, with the provision that their configuration did not prohibit future subdivision and higher density development.
- 18- Even with providing for the possibility of further subdevelopment of the lower lots, there was no guarantee that water and septic would be feasible.
- 19- The subdivision was named "Vanishing Brook".
- 20- The applicant stated that the top and bottom thirds of the property were hardwoods where the middle third was a band of softwoods, the preferred vegetation for deer wintering. He also indicated that the middle area consisted of steep slopes and therefore not easily developable.
- 21- A representative of the Warren Conservation Commission stated that notwithstanding the biologist's report that they had concerns about the priority in which the wildlife habitat had been addressed.
- 22- This project does not require Act 250 review.
- 23- The applicant stated that the State standard is a 300-foot buffer from a deeryard. He also stated that the "un-impacted" area totaled approx. 45 acres and that if there is land within the parcel that will support the wildlife habitat one can use that as a mitigating factor.
- 24- There were two building envelopes that were modified, lot #1 and lot #5, to distance them from any impact on the deeryards. Lot number 1 met the 300-foot recommendation and though lot 5 was not a full 300 feet, it was significantly distanced from the grove of conifers the deer favor.
- 25- The conservation area was defined by "default" as it is the area that is not defined for building, infrastructure or tree thinning. No structures will be allowed to be built in this designated area. This conservation area is also protected under the homeowners' covenants. The DRB asked that conservation area be labeled on the final mylar.

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- 26- The thinning area would have to meet a standard of a minimum of 25 trees, minimum of 6 inches in diameter, remaining per acre, those areas being located (concentrated) towards the conservation area side of the parcels.
- 27- The Board asked that the covenants indicate that the 25 trees per acre be concentrated to the north westerly side of the house sites. Trees located due west and to the south of the building site should not be counted in the 25 trees per acre calculation.
- 28- Though road cuts are granted by the authority of the Select Board, discussion took place regarding the use of the existing Snow Road as access to the proposed lower lots. Mr. Snow was in opposition of the proposed drive and suggested an alternative. It was noted that the DRB can have a say, especially if steep slopes are involved, as to where the drive goes into a project from the point where the Town right-of way ends.
- 29- The original request for a 9-lot subdivision was amended to only a 7-lot subdivision, excluding the two additional lots off of Main Street. The seven lots include one lot for the current home, five lots accessed off of Fuller Hill and the seventh a small piece that will be taken care of as a boundary line adjustment (a sliver to be deeded to Grant) as it is intersected by Fuller Hill Road. This modification was reviewed at the June 20, 2007 hearing.
- 30- The road cut approved by the Select Board for access off of Main Street is not included in this plan as no subdivision is proposed with the amended application for 7-lots on the lower portion of the property requiring the development of that road.
- 31- Access to the potential fire pond on the Grants parcel does not appear to be an option so that the homes to be built will have to be required to be sprinkled.
- 32- A representative of the Conservation Commission asked about the potential for public trails or pathways and was told that unless the Town already had an established plan the DRB did not have the general legal authority to require public access trails.
- 33- An abutter to the south [Babic] had a concern in regard to their spring and whether or not this development would impact it. It was quickly and easily determined that the distance was significant enough that it was a non-issue.
- 34- The applicant stated that they were right on the "cusp" of needing a State CGP and would probably end up applying for one. He also said that the erosion control plan submitted should satisfy the State requirements as well.
- 35- The Fire Department recommends that wood burning heating sources be used only for back up heat and constructed with masonry chimneys.

Notice of Decision:

The Development Review Board, finding that the application meets the standards under Article 2, *Zoning Districts & District Standards*, Table 2.2, *Rural Residential District*, Table 2.3 *Warren Village Historic Residential District*, Article 6, *Subdivision Review* § 6.3, *Preliminary Plan Review* and § 6.4, *Final Plan Approval*, and Article 7, *Subdivision Standards*, of the Warren Land Use and Development Regulations., hereby approves the application as amended to show 7 lots, subject to the approval of the Subdivision Plat by the DRB and the following conditions:

- 1) The project shall be constructed and used only in accordance with the terms, plans, procedures and specifications stated:

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- In the application
 - All exhibits furnished by the applicant
 - The Subdivision Plat with the designated building envelope for Lot 7, as approved by the Development Review Board [DRB]. All findings of fact and conclusions previously stated above in this decision
- 2) The sections of the Vanishing Brook Subdivision Covenants titled *Tree Clearing, Protection of Conservation Resources and Maintenance and Management of Common Facilities and Services* may not be changed or altered without the prior approval of the Warren Development Review Board.
 - 3) Either a pond fed hydrant approved by the Fire Department be accessed/constructed or that the dwellings on Lots 1 through 5 be sprinkled with 13-D systems. In addition all turning radiuses and turnouts will be constructed as shown on the plans.
 - 4) All feeder roads to be 16' width plowed in winter. All drives to be 14' plowed in winter.

In Accordance with Section 6.5 and the Act[§ 4416], within 180 days of the receipt of final plan approval under Section 6.4 (C), the applicant shall file 4 copies of the final subdivision plat, 1 mylar copy and 3 paper copies, for recording with the town in conformance with the requirements of 27 V.S.A., Chapter 17. Approval of subdivision plats not filed and recorded within this 180-day period shall expire. Prior to plat recording, the plat must be signed by at least two authorized members of the Development Review Board.

The surveyed site plan to be recorded in the Warren Land Records shall include a separate sheet that shows only the following information: Lot Lines, Lot Line Dimensions, Parcel Area Text, Building and Out Building Locations, Boundary Information such as fences, stone walls, boundary markers, and additional sheet(s) that show the same information plus all other detail required by this approval.

Not later than ten (10) days after the date the surveyed site plan is filed for record in the Warren Land Records, the applicant shall caused to be filed with the Town Zoning Administrator a certificate by a Vermont registered land surveyor or a Vermont licensed professional engineer that the certifier has delivered a readable digital copy of the site plan as filed in the Warren Land Records in AutoCAD drawing format release 2000 or later format to the Warren Lister's office. In addition the drawing should be referenced to Vermont State Plane Feet Coordinates. The deadline for filing this certificate may be delayed to a latter date with either (a) approval of the DRB (b) the written permission of the Warren Lister's Office. Such DRB approval or Town Lister's permission may be given at any time before or after the deadline.

