

TOWN OF WARREN
DEVELOPMENT REVIEW BOARD
FINDINGS OF FACT & NOTICE OF DECISION
SUBDIVISION REVIEW – #2007-07-SD
CONDITIONAL USE REVIEW - #2007-07-CU
FOWLER - 258 SENOR ROAD

Bruce Fowler, of 258 Senor Road, is requesting to subdivide his parcel id # 023009-000, which is approx. 4.9+/- acres into two lots located in the Rural Residential District and Meadowland Overlay District. Though the parcel is partially designated Meadowland Overlay District, there is no proposed development in or through that district.

Duly warned hearings were held on April 4, 2007, May 23, 2007, July 18, 2007 and August 22, 2007. A site visit was held on Wednesday May 23rd prior to the scheduled hearing.

April 4, 2007. Members attending: Lenord Robinson, Virginia Roth, Chris Behn, Jeff Schoellkopf and Bob Kaufmann (arr. 8:05). Others in attendance: David Olenick, Alice Olenick, Bruce Fowler, Clayton-Paul Cormier, Dick King, Erin Post, Miron Malboeuf and Ruth Robbins.

May 23, 2007 Site Visit: Members who attended the site visit were: Mr. Markolf, Mr. Behn, Mrs. Roth and Mr. Robinson. Also at the site visit were: Mr. Fowler, Mr. Bannon, Mr. & Mrs. Olenick, Mr. King and Mr. Malboeuf.

May 23, 2007. Members attending: 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.

July 18, 2007. Members attending: David Markolf, Bob Kaufmann, Virginia Roth, Jeff Schoellkopf and Lenord Robinson. Others in attendance: David and Alice Olenick, George and Susanne Schaefer, Bruce Fowler, Brian Shea, Jim Trihy, Erin Post, Dick King, Phil Clapp, Mark Bannon, Gary and Joan Shivo, Miron Malboeuf and Ruth Robbins.

August 22, 2007. Members attending: David Markolf, Jeff Schoellkopf, Virginia Roth and Lenord Robinson. Others in attendance: Mark Bannon, Alice Olenick, Dave Olenick, Roland ?, Barry Naginsky, Jack Tulley, Harry Schwartz, Erin Post, Dick King, Kathleen Friedman, Kenneth Friedman, Miron Malboeuf and Ruth Robbins.

NOTE: Though Mr. Monte was in attendance at many of the hearings of this application, he officially recused himself from the proceedings and deliberations of this application as he is a nearby neighbor of the applicant.

Findings of Fact & Conclusions of Law:

1. The applicant submitted a complete application, notice to abutters and certificate of mailing and a site plan prepared by Bannon Engineering dated 1/19/07.
2. Other documents submitted are:
 - Copy of email from Attorney Dick King representing abutter Mary Power dated 4/4/07.
 - Revised site plan by Bannon Engineering dated 7/17/07
 - Revised site plan by Bannon Engineering dated 7/18/07
 - Draft of Covenants, Conditions, Restrictions and Easements; Bruce Fowler Subdivision, Senor Road, Warren, VT.
 - Memorandum from Attorney Richard King dated 8/22/07.
3. The frontage requirement of 200 feet cannot be met entirely on Senor Road and therefore is being calculated using the 50-foot right-of-way for the shared access in addition.

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4. Attorney King expressed the concern his client Mary Powers had regarding the proposed building site. Once it was staked and the Board had conducted their site visit, it would be clearly evident that the site was not appropriate for development due to wetness.
5. There is currently one permitted curb cut and the other could arguably be considered as an agricultural curb cut. The applicant was aware though that they would be required to obtain an approved curb cut permit from the Select Board for the curb cut they planned to utilize on the site plan.
6. There was expressed concern about the subdivision dividing up a large piece of meadowland and how to ensure that the meadowland was maintained as one area going forward. Attorney Olenick replied that the applicant would be willing to provide language in the form of protective covenants that would help assure that the meadowlands were maintained as a continuous area by both owners.
7. There was extensive discussion both before the site visit of May 23rd and in the subsequent hearings regarding the true determination of the "water course" on the Fowler property. Discussion centered on whether this was a natural "stream" or an artificially created waterway, i.e. drainage ditch. Mr. Fowler stated that it was created back in 1996 when the pond was re-dug and rainstorms created some minor flooding.
8. Other than the designated Meadowland, there were no other primary or secondary conservation areas located on this parcel.
9. The applicant's engineer had invited the State Stream alteration engineer, Patrick Ross, to visit the watercourse/drainage ditch. Mr. Ross told Mr. Bannon that however it was defined, he did not have any jurisdiction over it but that he would have no problem in moving it if he did have jurisdiction and that he did not want to enter into the controversy over what it was.
10. In doing additional verification Mr. Bannon found on a USGS map a "blue line" in the vicinity of the disputed water course. With that being the case, the plans have been modified: the building envelope has been changed and the water course has been relocated.
11. The proposed house footprint has also been modified to meet a minimum 50 foot distance from the relocated water course.
12. The question of whether or not the wastewater system encroaching into the well shield on the lot with the existing house was brought up. Mr. Bannon pointed out to the Board that the wastewater system would be submitted to the State and they would either approve or not, that the DRB did not have to make a determination.
13. The Board has taken the position that frontage can be figured along both the road and a right-of-way. The definition of frontage from the regulations is: "the distance of the portion of a lot line abutting a road right-of-way".
14. When asked if there was an erosion control plan for the relocation of the water course, Mr. Bannon said it would be a stone-lined cascading water course and erosion was not an issue.
15. The Board found the standards of Table 2.13 (E) (1) (a) had been met by the application due primarily to the fact that there is no development taking place within the designated Meadowland Overlay District.
16. Any new installation of utilities would be underground which specifically refers to Lot 2. Utilities to the current dwelling on Lot 1 is presently above ground.

17. There is a 50-foot vegetated buffer between the relocated water course and the building envelope.

Notice of Decision:

The Board, finding that the applicant has satisfied the criteria under Article 7 Subdivision Standards, Article 5 Development Review, § 5.3 Conditional Use Review Standards, Article 2 District Standards, Table 2.13 and Article 3 General Regulations § 3.13 Surface Water Protection, hereby grants the applicants request for a two lot subdivision subject to the following conditions:

- 1) The project shall be constructed and used only in accordance with the terms, plans, procedures and specifications stated:
 - In the application
 - All exhibits furnished by the applicant
 - The Subdivision Plat as approved by the Development Review Board [DRB]. All findings of fact and conclusions previously stated above in this decision.
- 2) Provision for the maintenance of the pond be included in the covenants.
- 3) The intersection grade does not exceed 3% for a distance of 35 feet from the edge of the traveled lane.
- 4) Receipt of state health permits prior to any construction.

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.

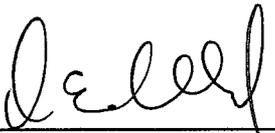
The surveyed site plan to be recorded in the Warren Land Records shall include a separate sheet that shows only the following information: Lot Lines, Lot Line Dimensions, Parcel Area Text, Building and Out Building Locations, Boundary Information such as fences, stone walls, boundary markers, and additional 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.

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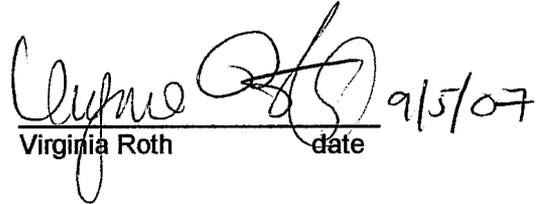
DEVELOPMENT REVIEW BOARD

 9/5/07

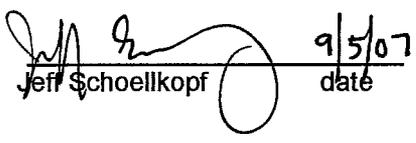
David Markolf date

 9/5/07

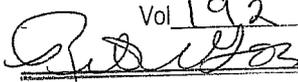
Lenord Robinson date

 9/5/07

Virginia Roth date

 9/5/07

Jeff Schoellkopf date

TOWN OF WARREN, VT
Received for Record 9/6 2007
at 10:30 o'clock 11 M and Received in
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TOWN CLERK