

**TOWN OF WARREN
DEVELOPMENT REVIEW BOARD
MINUTES OF MEETING
OCTOBER 6, 2004**

MEMBERS PRESENT: Peter Monte, Chair, Eric Brattstrom, Lenord Robinson, Jeff Schoellkopf (alternate).

OTHERS PRESENT: Victoria Kingsbury, Dick King, Robin Bennett, Marilyn Ruseckas, Adam Whitney, Sharon Kellerman, Chris Behn (recused DRB member), Karen Van Gilder, DRB/PC Assistant.

AGENDA:

- 1) Call meeting to Order 7:00 PM
- 2) **2004-08-SD Kingsbury** – 3-lot subdivision on Route 100
- 3) **2004-07-CU Ruseckas** – Conditional Use for an Artist's Studio/Gallery
- 4) **2004-10-CU Whitney** – Conditional Use for Cottage Industry
- 5) Other Business

I. CALL TO ORDER

Chair Peter Monte called the meeting to order at 7:05 PM.

II. 2004-08-SD KINGSBURY – 3-LOT SUBDIVISION ON ROUTE 100

#2004-08-SD submitted by King & King on behalf of Bryan and Victoria Kingsbury seeking approval of a 3-Lot subdivision of 11.7 +/- acres into Lot 1 (2.53 +/- acres), Lot 2 (3.65 +/- acres) and Lot 3 (5.4 +/- acres). The property is located on VT Route 100 in the Rural Residential District. This project requires review under Article 6, *Subdivision Review*, and Article 7, *Subdivision Standards*, of the *Warren Land Use & Development Regulation*.

STAFF REPORT

Ms. Van Gilder reported that the public warning had run in the Valley Reporter on September 16, 2004 and that the applicant had requested a waiver of the sketch and preliminary plan review. Robinson, Brattstrom, Schoellkopf, Van Gilder, Whitney, Ruseckas, and Bennett attended a site visit that evening at which they discussed the access to proposed Lots 2 and 3.

PUBLIC INPUT

Mr. Bob Kingsbury submitted 3 letters dated September 4, 9, and 30, 2004. The first two stated an objection to the subdivision because of the impact on the brook. The third letter rescinded the objection but revisited the subject of the brook.

GENERAL DISCUSSION

Ms. Kingsbury stated that there was a pending sale of proposed Lot 1 to Whitney and Ruseckas. She stated that the parcel is the remainder of a previous subdivision. She stated that the future plans involve building a road to access proposed Lots 2 and 3.

Mr. Schoellkopf stated that on the site visit he noted that the area where the access to Lots 2 and 3 is proposed is very steep, possibly more than 25% slope.

Mr. Robinson stated that he would like to see a road plan with contours and that the applicant may have to meet with the Fire Department.

Mr. Monte stated that he thought this would be a minor subdivision and that there would probably be another meeting at which these items could be discussed.

Ms. Kingsbury stated that she wanted to find a way to expedite the process so that the house and Lot 1 could be sold to Whitney and Ruseckas.

Mr. Monte stated that he did not think he would want to approve a steep, curvy road without seeing a plan.

Mr. Schoellkopf stated that the board would be looking at two Conditional Use applications for this property as well and suggested that the group could skip ahead and review those. The group decided to continue on with the subdivision application.

MOTION by Mr. Monte, seconded by Mr. Schoellkopf, to classify the proposal as a minor subdivision. VOTE: unanimous; motion carried.

Mr. Monte stated that he was not comfortable granting the waiver for the sketch plan and preliminary review without the road plan, particularly if the slope might be greater than 25%.

Mr. Monte presented the letters mentioned in the public input section. Mr. Schoellkopf stated that he did not believe the brook would be impacted because of the required 100' setback from the bank.

Mr. Robinson stated that he felt the biggest question was about the roads and the steep grades.

Mr. Behn, who had just arrived, stated that he planned to purchase proposed Lots 2 and 3 and had looked into the placement of the road. He stated that his proposal was to go up the existing drive, turn about 90 degrees and proceed along the side of the knoll, which is relatively flat.

Mr. Monte asked if that plan was devised in order to avoid going through the yard of the existing residence. Mr. Behn said yes and stated that the potential route behind the existing shed was also very steep.

Mr. Brattstrom asked about Fire Department access. Mr. Behn stated that he planned to create a 30 foot turning radius on the 90 degree turn and at the end of the road and that the face of the ledge would have to be blasted.

Mr. Monte stated that he would want to see contours and the final grades. Mr. Behn asked if it made any difference that the permits would be "deferred". Mr. Monte stated that he would want to consider the route through Lot 1 in comparison to the proposed access. Mr. Brattstrom stated

that he would want to see the contours. Mr. Monte stated that he thought the Fire Department would also need to see the plan and that proper erosion control would be necessary.

MOTION by Mr. Monte, seconded by Mr. Schoellkopf, to grant the request to waive the sketch plan and preliminary hearing. VOTE: unanimous; motion carried.

Ms. Bennett asked what the dotted line on the plans next to the pole barn on Lot 1 signifies. Mr. King, attorney for Ms. Kingsbury, and Mr. Behn stated that they thought that was an old road plan that was no longer operative.

Mr. Monte stated that he would like to see building envelopes to control the placement of the buildings. Mr. Schoellkopf asked about minimum lot frontage for the lots that do not front on the road. Mr. Monte stated that he didn't think the minimum lot frontage requirements applied unless there was road frontage.

Mr. Shoellkopf asked what the applicant's obligation on the septic system would be. Mr. Robinson stated that he thought they should bring in a plan before approval. Mr. Behn stated that he felt that two 3-bedroom homes could easily be supported by a shared system on this lot.

Ms. Kingsbury asked if the DRB could approve a 2-lot subdivision at this time so she could sell the house to Whitney and Ruseckas.

Mr. Monte stated that he would still want to see the road plan and that he would like to impose a restriction that any development of the large lot would have to come back before the DRB.

Ms. Kingsbury stated that she would like to pursue a 2-lot subdivision tonight. Mr. Monte stated that he would be okay with that if there were a prohibition on developing the upper part (currently Lot 3).

Mr. Brattstrom asked if it would be okay to change it to a 2-lot subdivision if 3 lots were warned. Mr. Monte stated that having fewer lots would not be a major change to the application.

Mr. Schoellkopf stated that the development prohibition makes sense. Mr. Behn requested that the prohibition apply only to habitable structures and not the septic system.

DELIBERATION/DECISION

MOTION by Mr. Monte, to impose a condition, if approved, that the area described as Lots 2 and 3 could not be developed with structures that require septic and water for occupancy or a road (except the improvement of the existing woods road). However, development of a septic system and access for that purpose would be allowed as long as erosion control was used. This prohibition would be marked on the final plan.

Mr. Monte opened the discussion. Mr. Schoellkopf stated that he felt that even in a minor subdivision the applicant would be required to define the primary and secondary conservation areas, building envelopes and driveways and the existing conditions on Lot 1. He added that he would include the entire area of Lot 2 and 3 in the prohibition.

Mr. King stated that it sounded like the only reason the approval would be slowed down was for the building envelopes, driveways, and the primary and secondary conservation areas.

MOTION AMENDED, by Mr. Monte, to say that there shall additionally be no building on proposed Lot 2 without DRB approval of building envelopes and driveways to ensure the protection of primary and secondary conservation areas and Fire Department approval.

Mr. Behn asked what the process for approval would be. Mr. Monte stated that the subdivision approval would have to be amended to designate the building envelopes and the driveway location. Mr. Schoellkopf stated that he would like to see the topographical information and the Fire Department approval.

Mr. Monte stated that this would allow the DRB to subdivide off Lot 1 and wait to resolve the other issues. Mr. Behn stated that he felt the prohibition was overboard because the resulting lot created by Lots 2 and 3 would be 10 acres and would have plenty of room for one residence.

Mr. Robinson expressed surprise that Mr. Behn and Mr. King did not make sure that the information about the road was complete.

Mr. Behn stated that he thought it would be okay for deferral permits. Mr. Schoellkopf asked what a deferral permit was. Mr. King stated that it was a state concept and was not discussed in Warren's regulations. Mr. Brattstrom expressed concern that the DRB could be creating a hardship situation if they allowed lots to be divided without complete information. Mr. Behn stated that he understood deferral permits to have risk associated with them and asked if the property could be divided into 3 lots if he was going to come back for review anyway.

Mr. Monte stated that his motion had been in response to Ms. Kingsbury's request to consider a 2-lot subdivision at this time.

Mr. Schoellkopf stated that Table 7.1 in the Land Use and Development Regulations stated what needed to be done for a subdivision permit.

Mr. Monte stated that he would like to see a building envelope on Lot 1 on the final plan. Mr. Schoellkopf stated that it could be defined by the setback from the boundaries and the brook. Mr. Monte stated that it would be 40 feet from Route 100 and 100 feet from the brook. He stated that the existing structures would be grandfathered in where they are within the setback.

Mr. Brattstrom stated that he was concerned that the new lot line for Lot 1 would create a non-conforming structure (the pole barn) because the line was less than 25 feet away from the barn.

He asked Mr. Whitney if he had plans to change the barn. Mr. Whitney stated that he would like to enlarge the barn so he could back a truck into it. Mr. Brattstrom stated that he did not want to vote on the motion until this was straightened out.

MOTION by Mr. Monte, seconded by Mr. Schoellkopf, to table the previous motion. VOTE: unanimous; motion carried.

Mr. Monte stated that he agreed with Mr. Brattstrom that the proposed boundary was too close to the shed and that they should not approve something that is in violation of the ordinance. Mr. Behn asked if that would prevent the DRB from approving the proposal tonight. Mr. Monte stated that it was a possibility that the setbacks could be waived.

MOTION by Mr. Monte, to impose a condition that the final plan solve the problem in one of the following two ways: (a) designate a portion of Lot 2 within 50' of shed as a no-build zone, or (b) relocate the boundary between Lot 1 and Lot 2.

Mr. Brattstrom stated that he could not agree to option A, because it was creating a problem for Lot 1. Ms. Kingsbury asked whether the surveyor could change the boundary in his office. Mr. Monte said yes but that the pins would have to be reset.

MOTION FAILED for want of a second.

MOTION by Mr. Brattstrom, seconded by Mr. Schoellkopf, to impose a condition that the boundary between Lot 1 and Lot 2 be adjusted so that a 25' setback from the shed is maintained. VOTE: unanimous; motion carried.

MOTION by Mr. Monte, seconded by Mr. Robinson, to reinstate the tabled motion with the amendment that the final plan would show the adjusted Lot 1 boundary and that Lots 2 and 3 would be combined and restricted. VOTE: unanimous; motion carried.

Mr. Monte stated that he felt that this meeting satisfied the initial and preliminary hearings.

MOTION by Mr. Monte, seconded by Mr. Robinson, to find that §7.2 General Standards would be satisfied with the condition that the building envelopes for Lot 1 are shown on the final plat. VOTE: unanimous; motion carried.

MOTION by Mr. Monte, seconded by Mr. Brattstrom, to impose a condition that the final plan show the building envelope in conformance with the zoning setback requirement with the 100' setback from the brook and to approve any existing structures outside the envelope. VOTE: unanimous; motion carried.

MOTION by Mr. Monte, seconded by Mr. Brattstrom, to find that the site plan conforms to §7.3 as amended and with the requirement of further review by the DRB to develop on Lot 2 (proposed Lots 2 and 3). VOTE: unanimous; motion carried.

MOTION by Mr. Monte, seconded by Mr. Brattstrom, to find that §7.4 – 7.10 are not applicable because no new construction has been approved and to remind the applicant that a separate application will have to be made if a sign is desired. VOTE: unanimous; motion carried.

Mr. Schoellkopf stated that he would like to see the existing septic field on the final plat. Mr. Robinson stated that if anything new is built on Lot 1 a new permit will have to be obtained.

MOTION by Mr. Robinson, seconded by Mr. Schoellkopf, to approve the 2-lot subdivision as amended and conditioned and with the statement on the final plat that the driveway will be used as a common roadway. VOTE: unanimous; motion carried.

III. **2004-71-CU RUSECKAS – CONDITIONAL USE ON ROUTE 100**

#2004-71-CU submitted by Marilyn Ruseckas seeking a conditional use permit for a artist's studio/gallery on property owned by Bryan and Victoria Kingsbury. The property is located on VT Route 100 in the Rural Residential District. This project requires Conditional Use Review under Article 5, *Development Review* of the Town of Warren Land Use and Development Regulations.

STAFF REPORT

Ms. Van Gilder reported that the public warning had run in the Valley Reporter on September 16, 2004. Robinson, Brattstrom, Schoellkopf, Van Gilder, Whitney, Ruseckas, and Bennett attended a site visit that evening at which the location of the studio was discussed.

PUBLIC INPUT

Mr. Behn stated that as an adjoining property owner he had no problem with either of the conditional use applications before the board.

GENERAL DISCUSSION

Mr. Monte stated that the Zoning Administrator had reviewed the application 2004-71-CU and 2004-10-CU and sent them to the DRB for review together. In relation to Ms. Ruseckas' application, he went through the criteria for a home occupation, which is a permitted use and would not require a conditional use permit.

Ms. Ruseckas confirmed that she would be a resident of the dwelling, that she would have no employees, that the studio space is less than 40% of the dwelling, that there would be no exterior display or storage, and that there would be no retail sales other than that which is created on site.

Mr. Monte pointed out that there could be one sign but that a permit would be required from the Zoning Administrator.

Ms. Bennett, real estate agent for Ruseckas and Whitney, suggested that the Zoning Administrator referred the application to the DRB because there would be more than one occupational use on the site if Mr. Whitney were allowed his use, as well.

Mr. Monte stated that he believed the old ordinance had a restriction on multiple uses but that he did not think those were included in the new ordinance. He asked if the two uses combined would use more than 40% of the space. Ms. Ruseckas and Mr. Whitney stated that the house is 3200 sq ft and that the combined space of the studio and sheds would come to 1250 sq ft, which is less than 40%.

Mr. Schoellkopf stated that he would be concerned about noise or traffic and that he was concerned about chipping or outside storage of materials or equipment (except the truck) on the part of Mr. Whitney.

Mr. Monte looked at the standards for a Cottage Industry. Mr. Whitney confirmed that he would be a resident of the dwelling, that there would be no motor fuel stored on the property, that the vehicles and chipper would mostly be stored indoors, and that the lot had significant existing screening.

Mr. Monte stated that he would like to consider Mr. Whitney's application as a conditional use for a Cottage Industry and Ms. Ruseckas' as a permitted home occupation.

DELIBERATION/DISCUSSION

MOTION by Mr. Monte, seconded by Mr. Brattstrom, to find that the studio described in application 2004-71-CU satisfies the standards for a §4.8(A), Home Occupation and is a permitted use in the Rural Residential District. The DRB dismisses the conditional use application and recommends that the Zoning Administrator issue the requested permit for renovations. VOTE: unanimous; motion carried.

IV. 2004-10-CU WHITNEY – CONDITIONAL USE ON ROUTE 100

#2004-10-CU submitted by Adam Whitney seeking a conditional use permit for a cottage industry on property owned by Bryan and Victoria Kingsbury. The property is located on VT Route 100 in the Rural Residential District. This project requires Conditional Use Review under Article 5, *Development Review* of the Town of Warren Land Use and Development Regulations.

STAFF REPORT

Ms. Van Gilder reported that the public warning had run in the Valley Reporter on September 16, 2004. Robinson, Brattstrom, Schoellkopf, Van Gilder, Whitney, Ruseckas, and Bennett attended a site visit that evening at which the location of the sheds, parking, and wood cutting area were discussed.

PUBLIC INPUT

None

GENERAL DISCUSSION

Mr. Monte looked at §4.8(B)(12), Cottage Industry, and stated that it says that the permit should recite warning language about the use.

Mr. Schoellkopf stated that there were noise regulations in Warren and that with or without the permit neighbors could still complain about any unreasonable noise.

Mr. Whitney stated that he would like to cut a small amount of wood on the property each year and that the amount would not exceed 10 cords per year. He also stated that he planned to have some employees in the future but that he did not anticipate that number exceeding 6.

Mr. Robinson stated that he believed that a chainsaw would be under 70 decibels, the limit in Warren, and would constitute a small part of the business.

DELIBERATION/DECISION

MOTION by Mr. Monte, seconded by Mr. Brattstrom, to impose a condition, if approved, that the wood cutting on site would be confined to 20 cords/year for sale excluding personal use. Any expansion would have to come under further review, and the sawing must conform to the noise standards in §3.11, Performance Standards. VOTE: unanimous; motion carried.

MOTION by Mr. Scheollkopf, seconded by Mr. Robinson, to find that the proposed use conforms to §5.3(A)(1-4) and that the lay of the land makes §5.3(A)(5) not a problem. VOTE: unanimous; motion carried.

Mr. Whitney stated that he planned to plant more trees to shield the property from the neighbors.

Ms. Bennett asked whether this permit would allow Mr. Whitney to have employees. Mr. Schoellkopf stated that if the use is granted, the Cottage Industry Use would allow for up to 6 employees.

MOTION by Mr. Monte, seconded by Mr. Schoellkopf, to approve the project as submitted with the conditions stated above and the standard conditions. VOTE: unanimous; motion carried.

V. ADJOURNMENT

MOTION by Mr. Monte, seconded by Mr. Robinson, to adjourn the meeting. VOTE: unanimous; motion carried.

The meeting adjourned at 9:05 PM.

Respectfully submitted,
Karen Van Gilder
DRB/PC Assistant

Development Review Board

Peter Monte, Chair (date)

Lenord Robinson (date)

Eric Brattstrom (date)

Jeff Shoellkopf (date)