

Town of Warren
Development Review Board
Minutes of Meeting
Monday May 4, 2020

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NOTE: This meeting was conducted electronically via Google – Meet.

Members Present: Peter Monte, Jeff Schoellkopf, Chris Behn and Virginia Roth.

Others Present: George McCain, Vince Gauthier, Chuck Black, Jed Weiss, Mary & Michael McNulty, Andy Cunningham and Ruth Robbins.

Agenda: Call the meeting to order, 7:00pm

1. Application 2020-02-SD-BLA-AR Boundary Line Adjustment has been submitted by Vincent & Diane Gauthier located at 1680 Roxbury Mountain Road and Michael & Mary McNulty located at 1750 Roxbury Mountain Road. The request is for a boundary line adjust that will be an acreage exchange resulting in the Gauthier's property being reduced to no less than 25 acres and the McNulty property increasing in size to approximately 18 acres. Both properties are located in the Forest Reserve District and the minimum lot size is 25 acres. The McNulty property is current listed as .2 acres. This proposed change though not conforming will decrease the degree of non-conformity substantially. This application will be reviewed under the Warren Land Use and Development Regulations as adopted by the Warren Select Board on March 25, 2008 and last amended November 11, 2012. [Article 2, Table 2.1 Forest Reserve District; Article 6, Subdivision Review, Sec. 6.1; Article 7 Subdivision Standards, Sec 7.2.].

2. Application #2020-03-CU submitted by landowners William F. and Mary R. Heitmann, is requesting a realignment of their driveway for improved access from the road. The property is located at 650 Upper Village Drive, parcel id# 210038 and is in the Sugarbush Village Residential District. This application will be reviewed under the Warren Land Use and Development Regulations as adopted by the Warren Select Board on March 25, 2008 and last amended November 11, 2012. [Article 3, Sec. 3.4 Erosion Control & Development on Steep Slopes, and Article 5 Development Review Sec. 5.3 Conditional Use Review Standards].

3. New and other business

Mr. Monte called the meeting to order at 7:12 p.m.

1) Application 2020-02-SD-BLA-AR Boundary Line Adjustment has been submitted by Vincent & Diane Gauthier located at 1680 Roxbury Mountain Road and Michael & Mary McNulty located at 1750 Roxbury Mountain Road.

Mr. McCain representing the applicants summarized the requested boundary line adjustment for the Board. He said that the McNultys had a tiny parcel of approx. .2 acres located within Mr. Gauthier's 43+/- parcel. The boundary line adjustment would create a compliant 25-acre parcel for Mr. Gauthier and would decrease the current non-conforming parcel of the McNultys by expanding it to approx. 18 acres. He continued to tell the Board that the one boundary line that follows the shared driveway does create the need for some setback relief. Mr. McCain explained that the natural contour of the land was such that as it dropped off to the west of the drive that it seemed to be an appropriate place to put the boundary line. He also noted that there are two accessory structures at the end of the drive, one garage and another a sugarhouse. When asked why he didn't just make the new boundary such that the structures would be compliant with the setback requirements he answered that he hoped that the large decrease in non-conformity of the McNulty property would be a mitigating factor such that the DRB would consider approving some setback relief.

In further discussion it was noted that there are two structures along side the drive that will remain part of the Gauthier parcel. In order to make the McNulty home compliant would only make the Gauthier structures less compliant. Though it certainly may make sense to use topographical features to draw a property line, it was suggested that there should be enough room to move the line to make at least the accessory structures compliant, or consider moving them. Mr. Monte said if he saw the lay of the land, he might be more inclined to consider some setback relief. Mr. Gauthier said that as far as he was concerned, the two structures were not being used and could come down, but as they were going to be conveyed to the McNultys they should voice their opinion. Mr. Monte said that they had to make a decision as the Board could not approve a boundary line adjustment without knowing which it was going to be. Mr. McCain asked if the DRB could condition that the final plat [mylar] show the decision [as to take the structures down or move the line] as that way they'd have another chance to review the boundary line and either sign off on it or not.

MOTION by Mr. Monte that the final plat must show 1) the southern accessory structures as having been removed, or 2) the boundary line has been adjusted and redrawn to meet the required 150' setback from both buildings south of the McNulty home. **SECOND** by Mr. Behn. **VOTE:** all in favor the motion passed.

Mr. Monte then asked if there were other comments from those in attendance before they continued with reviewing the standards. Mr. Black spoke up and shared with the DRB that he is the owner of the right-of-way [ROW] that services the three lots owned by Gauthier, McNulty and Weiss. What concerned him was not the proposed boundary line adjustment between Gauthier and McNulty, but rather the potential for additional changes. Mr. Black explained that he has received correspondence that indicates that there may be more going on. He related that last year he had received a letter from two brothers of the last name of Grey who were interested in purchasing a piece of the land that contains the ROW for an easement. The Greys later shared with Mr. Black that they wanted to use the existing curb cut off of Roxbury Mountain Road, go through the Gauthier property to connect via an existing forestry road to some Grey property south of the Gauthier property. They further stated in their letter to Mr. Black that they were in an agreement to purchase Mr. Gauthier's property and that the road access they would be using would be the ROW owned by Mr. Black, extending beyond what the ROW was originally intended for. Mr. Black That since they first contacted him in March of 2019, the Grays have continued to pursue some sort of agreement over access. This past September they offered an unsolicited offer that for access to the ROW they would give Mr. Black a 15-acre parcel that abuts his property. Mr. Black commented that it was difficult to really see where that 15 acres was coming from but Mr. Black said they'd have to speak with his counsel to which the Greys replied that Mr. Black sis not need to lawyer up to do business with them. Mr. Black went on to share that they did not hear anything more from them and then were given notice about the Gauthier/McNulty boundary line adjustment. Mr. Black reiterated that he did not have a problem sharing the ROW with the three adjacent properties, but was concerned about future development beyond those three parcels. He respectfully asked that the ROW be utilized only for those three parcels and that it cannot be extended beyond property lines despite what may happen in the future.

Mr. Monte did say that with any subdivision, of which a boundary line adjustment is considered, the DRB must ask what future development plans might be under consideration. He then asked the

applicant if there was anything "brewing" that might want to make use of the ROW. Mr. McCain answered the question by saying that it was likely that there would be a house built on the Gauthier property as it's a nice area in town. Mr. Black interjected that he assumed that there would be a house at some point on the Gauthier parcel, but that it would not be extended across the Gauthier property to the Grey property. Mr. Monte asked if there were any plans of that sort and Mr. McCain answered "not to his knowledge". Mr. McNulty spoke up and stated that he had no plans for any additional use of the ROW. Mr. Gauthier spoke up and said that he and his wife were getting on in years and that there had been conversation over the years with the McNultys about them buying some of his land. He wasn't ready to do so but has now decided that he did not want his children to be saddled with the disposition of the property which is why he has made an agreement with the McNultys. He added that it also will create a 25-acre building lot. Mr. Monte then said the question that remains is are there any plans that would extend the ROW to other properties beyond your boundary. Mr. Gauthier replied that he didn't know if he could or could not and thought that was a legal issue. Mr. Monte agreed that the issue of the possible overburdening of a ROW would be a legal determination, not one that the DRB can answer. Mr. Black said his understanding was that the current ROW which is 25' wide has limitations as to how much access it can accommodate. He continued to say that Mr. Gauthier approached him over a decade ago about extending the ROW and increasing it to 35 feet wide to which Mr. Black declined to allow. Mr. Black said that this conversation has taken place before and his answer is the same in that he has no problem with the current 25' ROW being utilized by the three properties, but not to be extended.

Mr. Monte noted that Mr. Gauthier has no plans and does not know if the ROW could legally be extended or not. Of course, someone could purchase the property who may have other ideas. Mr. Black then piped up and said that it was his understanding that the Mr. Gauthier was selling the property to the Grays which is why he wanted to go on the record regarding the ROW. Mr. Behn asked Mr. Black if he was looking to have some language in the DRB decision, assuming they approved it, that would limit the use of the ROW. Mr. Black said yes. Mr. McCain asked if that was in the scope of the DRB's authority. Ms. Robbins said she did not think so but was not the legal eagle. Both Mr. Schoellkopf and Mr. Monte offered some thoughts but did not feel it was within their authority. Mr. Monte did ask Mr. Black if he had sought counsel on this issue. He said he had and that he understood that in the State of VT a ROW cannot be transferred to an additional property. By extending it beyond the three lots it services it would be considered use by another group. Mr. Black said that was his understanding but he was not a lawyer. He continued to say that only if the owner of the ROW agreed to expand the usage of the ROW could it take place but as he said earlier, he has no intension to expand the usage beyond the three lots. Mr. Black also noted that when he is told to "not lawyer up" and since he understands the Greys have been quite litigious, he wanted to go "on the record" with this boundary line adjustment request. Mr. Black shared that the Greys had told him that they had a road on the other side to connect to, though Mr. Gauthier said they did not. Mr. Weiss who is the third land owner who shares the use of the ROW with McNulty and Gauthier said he was aware of a road having been put in on the Grey property. Mr. Gauthier was asked if the Greys, assuming they are purchasing his property, had any plans to build on his parcel. He answered "yes, they could possibly". Mr. Weiss gave his endorsement to the boundary line adjustment but added that like Mr. Black had concerns about any additional use of the ROW beyond the three lots. Mr. Black thanked the DRB for allowing his to express his concerns and the DRB moved on to reviewing the standards.

MOTION by Mr. Monte that the Board finds the standards of Sec. 7.2 A, B, C and D are not offended by the boundary line adjustment request. **SECOND** by Mr. Schoellkopf. **VOTE:** all in favor, the motion passes.

The next standard was Sec. 7.2 E which is about the establishment of a building envelope.

MOTION by Mr. Monte that building envelopes must be shown for both parcels on the final plat. The McNulty building envelope shall be the existing McNulty lot the portions of which are closer to the boundary lines than are the existing structure. The building envelope on the parcel retained by Gauthiers shall be approximately one (1) acre and either conform to the required setbacks for the district or no closer to the newly created boundaries than that of the existing structure. **SECOND** by Mr. Schoellkopf. **VOTE:** all in favor, the motion passed. [Sec. 7.2 item E]

MOTION by Mr. Monte that Sec. 7.2 items F and G are found to not be applicable to this application. **SECOND** by Mrs. Roth. **VOTE:** all in favor, the motion passed.

Regarding Sec. 7.2 item H, Disclosure of subsequent Development Plans, Mr. Monte said the previous discussion with the abutters and the applicants pretty much covered that. No one disputed his statement.

MOTION by Mr. Schoellkopf that Sec. 7.3, Protection of Primary & Secondary Conservation Areas are not relevant at this time to the boundary line change under review and would be considered in detail at which time any proposed development will be required to come in front of the DRB for approval. **SECOND** by Mr. Behn. **VOTE:** all in favor, the motion passed.

MOTION by Mr. Monte that the Board finds that the standards under Sections 7.4, 7.5, 7.6, 7.7, 7.8, 7.9 and 7.10 are not relevant at this time to the boundary line change under review and would be considered in detail at which time development was proposed. **SECOND** by Mr. Schoellkopf. **VOTE:** all in favor, the motion passed.

MOTION by Mr. Monte that a condition of this approval will be that the McNultys are required, after the Boundary Line adjustment is completed, that their two lots, existing and newly acquired, are merged into one deed and recorded in the Town of Warren Land Records. **SECOND** by Mr. Behn. **VOTE:** all in favor, the motion passed.

MOTION by Mr. Monte that the Board approves the boundary line adjustment subject to the conditions voted on in this hearing and the standard conditions for boundary line adjustments. **SECOND** by Mr. Behn. **VOTE:** all in favor, the motion passed.

- 2) Application #2020-03-CU submitted by landowners William F. and Mary R. Heitmann, is requesting a realignment of their driveway for improved access from the road. The property is located at 650 Upper Village Drive, parcel id# 210038.

Mr. Cunningham representing the home owners, the Heitman's, gave the DRB an overview of the requested project of re-aligning the driveway to the home. The property is on Upper Village Road and

Mr. Cunningham told the Board that as you approach the property going uphill the driveway entrance occurs just after a sharp switchback of the road. He continued to say how even in the summer as well as the winter, due to the switchback and the sharp turn to the driveway can be challenging because of the slope and angle by which it currently is laid out. Realigning the drive by straightening it off of the road would improve the safety of access and make it easier for those from out of town who are not use to our roads and driveways.

Mr. Cunningham also stated that there was no change in the stormwater runoff s to location or amount of flow. Though he said he hadn't measured both Sugarbush and Ms. Robbins believed that the slope was at or in excess of 15% making it a "steep slope" under the Land Use and Development Regulations. Mr. Monte asked if an engineer has participated in this project in regards to the stormwater management. Mr. Cunningham said no, but that he has had a surveyor verify the property lines and Jim Dupre of Kingsbury Construction has been part of this project from the beginning.

Mr. Monte then asked, as it is a Sugarbush Resort road, if there had been approval for this change from them. Mr. Cunningham replied that both Gene Martin and Margo Wade had been to the site with him and he believes that they are on board with the change. Ms. Robbins did add that in a recent conversation with Ms. Wade that she did express some concerns. Ms. Robbins continued to say that she had heard from several of the abutting homeowners who understood the reason for wanting to improve the access to the property with the person just below the Heitman's as expressing his concern about how water runoff would be controlled and possible affects to his property.

Mr. Cunningham said he saw that there would be no change in the stormwater flow from the existing conditions. Mr. Behn asked about the re-vegetation of the abandoned section of driveway and was assured by Mr. Cunningham that it would be done so as to fade back into the existing landscape. Mr. Monte asked how he calculated the culvert sizes he proposed to use for this project. Mr. Cunningham said the current ones are 15" and 18" were better – anything larger would not be appropriate as it would create too deep of a ditch. The upper culvert is 8" and actually performs quite well for it's size. He went on to say that he believed one of Ms. Wade's concerns was that it is preferable to have stormwater spread over land that can absorb it versus having culvert/ditching system incorporated with the road doing all the heavy lifting. Mr. Cunningham also noted that he had included some check dams in his proposal to help slow the water down. Mr. Monte asked if there were any specifications for the check dams as to the dimensions and materials to be utilized. Mr. Cunningham said that he was leaving that to Kingsbury Construction who has been working on these roads and would know how to construct the check dams which Mr. Cunningham said was basically a ditch with stones to help slow down the flow of water.

Mr. Schoellkopf asked for some clarification on the actual property lines as the maps/site plans submitted didn't seem to be clear. Mr. Cunningham gave him some guidance as to the changes Mr. Towne, the surveyor made. Mr. Behn said he thought a site visit was in order. Mr. Monte said he di go by the property but that the Board needed better detail especially in regard to an erosion control plan and that an engineer would be best able to calculate the water flow due to the steepness of the slope. Mr. Cunningham asked Mr. Monte if he observed that there is only a 6-foot drop to the proposed drive from the existing drive which over 120-foot area is only adding 6 feet which does seem to be much of an

increase. Mr. Monte noted that despite the amount of change, the change also adds to the angle, degree, of the slope. He also said that he was torn between overkill in terms as to what the regulations require or not paying enough attention to the details of the drainage and stormwater aspects of this project. He was inclined to think that the Board really needed more detail on the design of the water control structures. Mr. Monte said that he doesn't doubt that Kingsbury knows what they are doing but that we need to know the details so that the Zoning Administrator can determine what was done was in line with what was approved by the Board. After some more discussion it was determined that the members wanted more detailed information.

MOTION by Mr. Monte that this application be continued to the next DRB hearing date of Monday May 18, 2020 at 7:00 pm. SECOND by Mr. Behn. VOTE: all in favor, the motion passed.

With no other business before the Board, the meeting was adjourned at 9:04 pm.

Respectfully submitted,

Ruth Robbins, Zoning Administrator

Development Review Board

_____ 6-15-20 _____ 6-15-20
Peter Monte date Chris Behn date

_____ 6-15-20 _____ 6-15-20
Jeff Schoellkopf date Virginia Roth date