

**TOWN OF WARREN
DEVELOPMENT REVIEW BOARD
MINUTES OF MEETING
JANUARY 24, 2001**

- MEMBERS PRESENT:** Chris Behn, Eric Brattstrom, David Markolf, Peter Monte, Chair; Jeff Schoellkopf.
- OTHERS PRESENT:** Peter & Pennilee Reynells, Applicants; Sheila Getzinger, Reynells Attorney; Gunner McCain, Reynells Consultant; Ted Joslin, Leinbach Attorney; David Dion, Ron Hunkins, Beth Austin, Mac Rood, Monteverde Architect; Margo Wade, DRB/PC Assistant.
- AGENDA:**
1. 7:30 p.m. Call to Order
 2. Public Hearing: Reynells – Variance Review
 3. Public Hearing: Reynells – 2 Lot Subdivision
 4. Public Hearing Continuation: Monteverde – Cond. Use Review
 5. Other Business
 - a) signing of minutes & decisions
 - b) Fuller Subdivision – hearing waiver & schedule site visit

I. CALL TO ORDER

Mr. Monte called the meeting to order at 7:30 p.m.

II. PUBLIC HEARING: Reynells 2 Lot Subdivision & Variance Review

Peter and Pennilee Reynells seek approval for a 2-lot subdivision of 5 +/- acres. The proposed subdivision will create Lot A (3 +/- acres) and Lot B (2 +/- acres). The applicants also request a waiver of hearing requirement, by way of combining the initial meeting with the warned public hearing, and a variance from the 30 ft. right-of-way requirement because the existing right-of-way is only 25 ft. The property is located off the north side of the Sugarbush Access Road on Tishman Road in the Rural Residential District. The application will be reviewed under Article VI. §1. B. of the Warren Zoning Bylaws and the Permanent Subdivision Regulations.

Peter & Pennilee Reynells, Sheila Getzinger and Gunner McCain came before the board.

STAFF REPORT

Mr. Monte read the public notice, which ran in the January 3, 2001 and December 4, 2000 issue of the Valley Reporter, and the November 30, 2000 Times Argus.

Mr. Monte explained that the meeting is called because the applicants have requested a variance, and is also a continuation of the Subdivision hearing, which began on December 20, 2000. Evidence for both applications and review processes will be taken simultaneously.

DISCUSSION

Mr. McCain submitted an updated site plan map (last revised 1/02/01), which included the information requested at the December 20th hearing. He stated that he was involved with the Leinbach subdivision in 1995 and that the approved 25' right-of-way had never been identified as a problem during the application process by either the Planning Commission or the Selectboard.

The right-of-way (Tishman Road) gives access to the Leinbach lots, the abutting Reynells and Long Associates parcels. Ms. Reynells is a partner of Long Associates.

Ms. Getzinger explained that a variance from the frontage requirements was not necessary because in essence a variance exists since the PC approved the Leinbach subdivision with the 25' right-of-way, the Reynells have a building permit for their residence, and two of the Leinbach lot's also hold valid building permits. All three building permits were issued subsequent to the approval of the Leinbach subdivision. All of those applications clearly represented a 25' right-of-way. She pointed out that the proposed zoning requires a 20' right-of-way for existing developments, which complies with state statute. If the Tishman Road were regarded as a public road in light of this application, the right-of-way width requirement would not be an issue. The current zoning does not define "public road," but the subdivision regulations do. The Tishman Road could fall under the subdivision definition of a public road. She believed that the Board could clarify the existence of the approved and valid 25' right-of-way through the subdivision review process.

Mr. Joslin stated that the Leinbachs and the Reynells have vested rights regarding the approved 25' right-of-way. Disallowing further development by the current parties would be unwarranted since the Planning Commission and the Selectboard both approved the right-of-way in 1995.

Ms. Getzinger stated that if a variance was found to exist it would clarify the possibility of the non-conformance of the right-of-way.

Mr. Monte raised concern that if a variance were granted tonight it would only be granted to the Reynells and not Leinbach or Long Associates because they are not party to the pending application. Ms. Getzinger replied that all of the parties have legal interest in the right-of-way. Mr. Joslin agreed with Ms. Getzinger.

Mr. Monte read the variance criteria of Article IV. § 3. C.

MOTION by Mr. Markolf, seconded by Mr. Brattstrom due to the existing 25' right-of-way and prior approval by the Planning Commission that unique physical circumstances exist. MOTION WITHDRAWN

Mr. Behn stated that the board did not need to go through the variance criteria if they found that the 25' right-of-way was a vested right due to its approval and issuance of three subsequent building permits for properties serviced by the right-of-way. Mr. Schoellkopf stated that he was concerned that the board would be setting a precedent if a variance were not granted. Ms. Getzinger stated that certain circumstances surround the approved right-of-way, which would not support precedence. Specifically the PC and Selectboard approved the right-of-way width and alignment, and the Reynells and the Leinbach both made compromises with the approved alignment. The Reynells gave up the right to use the old town highway, which parallels the existing road configuration and ran right through the Leinbachs back patio.

Mr. Hunkins, who was a Selectboard member at the time, stated that the Selectboard required the parties to reach agreement before a curb cut permit would be granted to the Leinbach subdivision. The Selectboard also requested re-alignment of the Tishman Road/Access Road intersection for safety reasons.

**MOTION by Mr. Behn, seconded by Mr. Schoellkopf to table Mr. Markolf's motion.
VOTE: unanimous; motion carried.**

Ms. Getzinger requested that the Tishman Road be considered a public road for the purposes of the subdivision. However, the zoning regulations do not define a public road, but the subdivision regulations do, and Tishman Road falls under that definition. Mr. McCain stated that the approved 25' right-of-way was a "defacto" public road since it serviced two or more lots, therefore is a legal public road for the purposes of the subdivision.

Mr. Monte re-iterated the argument. First, the PC approved the Leinbach subdivision with the 25' right-of-way, which grants access to the Sugarbush Access Road for the Leinbach lots and the Reynells and Long Associates parcels. Second, Tishman Road, the right-of-way in question, services more than two lots, therefore is a public road for the purposes of the subdivision. Third, a defacto variance exists because of the approved Leinbach subdivision and the subsequent building permits issued to properties accessed by Tishman Road were never appealed. Ms. Getzinger concurred.

Mr. Markolf raised concern calling Tishman Road a public road and the implications for the Town to maintain it as a public road. Ms. Getzinger clarified that it is a public road by virtue of the definition, but the Town assumes no responsibility for the maintenance of the road.

Mr. Monte stated that it is reasonable to use the subdivision regulation definition of public road considering the road was approved for the Leinbach subdivision.

MOTION by Mr. Monte, seconded by Mr. Behn that we find the Leinbach Subdivision access road (Tishman Road) a public road, as defined in Warren Subdivision Regulations, for the purposes set forth in Article IV § 3. B. of the Warren Zoning Regulations. Given the prior Planning Commission approval of the Leinbach subdivision and the issuance of three subsequent building permits by the Zoning Administrator to properties serviced by 25' right-of-way the right-of-way as established satisfies the purpose of the frontage requirement. VOTE 4 ayes, 1 nay (DM); motion carried.

MOTION by Mr. Behn, seconded by Mr. Schoellkopf given that the 25' right-of-way was approved through the subdivision permitting process and subsequently not appealed, it has been in use for six years, and numerous properties have deeded rights to use the right-of-way, said properties have vested rights in the right-of-way. Specifically, that the 25' right-of-way satisfies the applicable criteria under the present zoning regulations. VOTE: unanimous; motion carried.

Mr. Schoellkopf asked if access to the abutting Long Associates parcel via the right-of-way had been granted in 1995. Mr. Reynells stated that it had, with the understanding that in the event of a subdivision the Long Associates parcel would not be divided into more than four lots.

Mr. Reynells withdrew the variance request.

Mr. Markolf and Mr. Brattstrom withdrew their original motion.

SUBDIVISION REVIEW

MOTION by Mr. Behn, seconded by Mr. Schoellkopf to classify the requests as a minor subdivision and to deem the application complete. VOTE: unanimous; motion carried

Mr. Monte requested that the site plan be corrected to reflect the 25' right-of-way up to the Reynells property and a 30' right-of-way through the property.

Mr. Reynells stated the existing stand of trees located on Lot B west of the driveway would be protected by a deed restriction.

Per discussion at the last meeting, Mr. Monte asked if the Leinbach's request for trees to be planted for screening from Lot-A was still an issue. Mr. Joslin stated that the request is withdrawn.

MOTION by Mr. Monte, seconded by Mr. Brattstrom to find Article 4. § 1. *General Planning Standards* satisfied. VOTE: unanimous; motion carried.

MOTION by Mr. Monte, seconded by Mr. to find Article 4. *Planning & Design Standards* § 2. – 6. satisfied. VOTE: unanimous; motion carried.

Mr. Joslin stated that the current road agreement between the parties using the road would be amended shortly and filed with the Town Clerk. The amendment pertains to divisions of road construction costs.

Infrastructure exists; therefore, possibility of erosion is low.

MOTION by Mr. Behn, seconded by Mr. Monte to find Article 4. § 7. *Drainage & Erosion Control* satisfied. VOTE: unanimous; motion carried.

MOTION by Mr. Markolf, seconded by Mr. Behn to find Article 4. § 8. *Fire Protection* satisfied because the December 19, 2000 Fire Dept. recommendations have been submitted and the subdivision will be complied with those recommendations. VOTE: unanimous; motion carried.

MOTION by Mr. Schoellkopf, seconded by Mr. Markolf to impose the following conditions:

- 1) the existing tree buffer along the western side of the driveway will be protected via a deed restriction;**
- 2) exterior lighting will be down cast, shielded and of low lumens to prevent illumination of unintended areas; and**
- 3) free standing light poles will not exceed 12 feet in height.**

MOTION by Mr. Monte, seconded by Mr. Brattstrom to find Article 4. *Planning & Design Standards* § 9. – 12. satisfied. VOTE: unanimous; motion carried.

Mr. Reynells stated that they have no plans to further subdivision of the Reynells parcel, but requested that no restriction of that nature be implemented. In addition, that during the Leinbach subdivision process it was brought out that the Long associates parcel may be subdivided into up to four lots. Long Associates has no current plans to apply for that subdivision and in fact, the parcel is on the market in its entirety. Mr. Joslin requested that further subdivision of the Reynells parcel be imposed to maintain the character of the neighborhood. The Leinbach parcels range in size from two to three acres. Parcels smaller than that will not be in keeping with the surrounding development.

MOTION by Mr. Schoellkopf, seconded by Mr. Brattstrom to find that future development plans have been disclosed and to restrict the Reynells 2-Lot Subdivision from further subdivision, with the exception of boundary line adjustments. VOTE: 3 ayes, 2 nays (PM, DM); motion carried.

The mylar will included the right-of-way width, the tree buffer and the Lot-B building envelope.

MOTION by Mr. Schoellkopf, seconded by Mr. Monte to included the location and size of the Lot-B building envelope as indicated on the site plan as a condition of the permit. VOTE: unanimous; motion carried.

MOTION by Mr. Monte, seconded by Mr. Schoellkopf that the right-of-way on the Reynells 2-Lot Subdivision may be any width between 30' and 50' but the constructed roadway will not exceed 16' in width. VOTE; unanimous; motion carried.

MOTION by Mr. Monte, seconded by Mr. Markolf to approve the Reynells 2-Lot Subdivision as submitted with the above stated conditions. VOTE: unanimous; motion carried.

III. PUBLIC HEARING CONTINUATION: Monteverde First Corp

Monteverde First Corp. seeks approval to amend a previously approved building permit for a two-unit dwelling. The 28.49 +/- acre property is located off the north side of Roxbury Mountain Road in the Interim Forest Reserve District and requires review under Article V § 3. *Conditional Uses* of the Warren Zoning Bylaws.

Mac Rood came before the Board on behalf of the applicant.

STAFF REPORT

Mr. Monte stated that this was a continuation from the November 29, 2000 and December 20, 2000 hearings. The hearing was continued to explore less reflective glass options for the rounded 'turret' portion of the structure. The turret portion of the structure is located on the south and west façades, and members are concerned that the rounded design will result in prolonged reflection of the afternoon sun.

APPLICANT COMMENTS

Mr. Rood presented a table showing reflectance values for different types of glass. He also presented a sample of "Evergreen" glass, which has a reflectance value of 11%. Mr. Markolf stated that fiberglass screening placed on the outside of glass also minimizes sun reflection. The glass portion of the turret is approximately 500 sq. ft. per façade. The group discussed the glass options and different methods to minimize reflection.

PUBLIC INPUT

There was no public input.

DELIBERATION/DECISION

MOTION by Mr. Markolf, seconded by Mr. Brattstrom that the glass used in the turret portion of the structure will have a reflectance value no greater than 11%, or clear glass may be used if permanent charcoal screening is placed on the exterior of the glass. If the applicant is not using "Evergreen" brand glass documentation must be filed with the Zoning Administrator indicating the reflectance value of the substitute glass. The sole purpose of this condition is to minimize the reflection of afternoon sunlight off the rounded turret portion of the proposed structure. VOTE: 3 ayes, 1 nay (PM), 1 abstention (JS); motion carried.

Mr. Monte stated his reluctance to the condition is because the portion of the structure in question has already been permitted. This hearing is considering the request to change the footprint of the structure, which does not change the position or size of the turret area.

Ms. Wade read the conditions that were approved at the November 29, 2000 hearing. Mr. Rood requested that dark gray be added to the roof color options. Mr. Monte stated that if the applicant had a question regarding color options, beyond those approved, he could submit a color sample to the Zoning Administrator for clarification.

MOTION by Mr. Monte, seconded by Mr. Behn to approve the Monteverde First Corp. Conditional Use request to amend building permit #1999-73-MM as submitted with the above stated conditions. VOTE: unanimous; motion carried.

Mr. Schoellkopf departed at 10:00 p.m.

IV. OTHER BUSINESS

a) signing of minutes

MOTION by Mr. Markolf, seconded by Mr. Monte to approve the December 20, 2000 minutes with corrections. VOTE: 3 ayes, 1 abstention (EB); motion carried.

b) Fuller Subdivision – hearing waiver & schedule site visit

Ms. Wade briefed the board on the up-coming Fuller subdivision application. A site visit was determined unnecessary. The hearing is scheduled for February 21, 2001.

V. ADJOURNMENT

MOTION by M. Markolf, seconded by Mr. Monte, to adjourn. VOTE: unanimous; motion carried.

The meeting adjourned at 10:15 p.m.

Respectfully submitted,
Margo B. Wade
DRB/PC Assistant

DEVELOPMENT REVIEW BOARD

Chris Behn (date)

Eric Brattstrom (date)

David Markolf (date)

Peter Monte, Chair (date)

Jeff Schoellkopf (date)