

WATERBURY DEVELOPMENT REVIEW BOARD

General Minutes — Wednesday, January 17, 2018

In Attendance: Board members present: David Frothingham (Chair), Mike Bard, Nat Fish, Bud Wilson, and Rob Dombrowski. Staff present: Dina Bookmyer-Baker, (ZA) and Patti Spence (Secretary). Also present: Alyssa Johnson (Economic Development Director)

The public meeting was called to order by David Frothingham, Chair, at 6:30 p.m. in the Steele Community Room in the Municipal Center, 28 North Main Street, Waterbury, VT.

- 1) **#113-17, Katherine Vose** (landowner/appellant)
Appeal of denial of zoning permit application #103-17 for a two-lot subdivision at 967 Maple Street, Waterbury Center, VT (TMR zoning district)

Present: Katherine Vose, Gunner McCain, Dina Bookmyer-Baker.

Testimony: Conflicting interpretations on lot size dimension as per the zoning regulations were discussed.

Hearing decision filed separately.

2) **Other Business:**

- **#91-17: Joseph and Judith Duffy** (owner/applicant)
Approve and sign final plat for a three-lot subdivision on Wood Farm Road, Waterbury Center, VT. (LDR/CNS zoning district)

The final plat was approved as submitted and signed by the Chair.

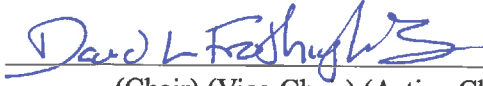
- **Approval of prior meeting minutes and decisions:**
The December 20, 2017 minutes and decisions were reviewed.

Mike Bard moved and Rob Dombrowski seconded to approve the general minutes the decision for application #110-17 (PGSR).

Vote: Passed 5–0.

Next meeting: 6:30 p.m. Wednesday, February 7, 2018.

Adjournment: The meeting was adjourned at 7:40 p.m.



(Chair) (Vice-Chair) (Acting Chair)

Approved on: 2/21/2018
(date)

**Town & Village of Waterbury
Development Review Board
Decision #113-17 • January 17, 2018**

Owner/Appellant: Katherine Vose
Address/Location: 967 Maple Street, Waterbury Center, VT Tax Map # 09-119.000
Zone: Town Mixed Residential (TMR)
Project: Permit #103-17 for a 2-lot subdivision of 2.08-acre parcel.
Appeal of: Zoning Administrator denial of zoning permit #103-17 for a 2-lot subdivision.

In Attendance: Board members present: David Frothingham (Chair), Mike Bard, Nat Fish, Bud Wilson, and Rob Dabrowski. Staff present: Patti Spence (Secretary).

Present and sworn in: Katherine Vose (Landowner/appellant), Gunner McCain (Consultant, landowner/appellant representative), and Dina Bookmyer-Baker (ZA/appellee).

Procedural History and Appellant Request

1. On October 20, 2017, Applicant Katherine Vose submitted zoning permit application #103-17 for a two-lot subdivision of the 2.08-acre parcel at 967 Maple Street, Waterbury Center, VT in the Town Mixed Residential (TMR) zoning district.
2. On November 2, 2017, Gunner McCain, of McCain Consulting Inc, representing Applicant, notified zoning administrator Dina Bookmyer-Baker (ZA) to put the application on hold until further notice.
3. ZA sought attorney guidance regarding reconciling two seemingly inconsistent provisions in the Waterbury Zoning Regulations (Regulations) governing calculating the area of a lot that includes a public street, permanent right-of-way, or easement. On November 7, 2017 ZA sent an email to Gunner McCain that included the attorney's opinion and her interpretation of the Regulations therefore, consistent with that opinion.
4. On November 11, 2017 McCain informed ZA to resume processing the application.
5. On December 4, 2017 ZA denied application #103-17, citing insufficient lot size, according to the definition of Lot Area in the Regulations, to meet the minimum requirement of one-acre in the TMR zoning district.
6. On December 12, 2017 Appellant Katherine Vose filed a Notice of Appeal requesting "Approval of the proposed 2-lot subdivision of the 2.08-acre parcel" as relief. The notice was accompanied by a letter, prepared by McCain Consulting Inc., dated 12/12/17, citing the conflict in the Regulations between the definition of Lot Area and the dimensional requirements in Section 401(d).
7. On December 21, 2017 ZA sent a referral notice to the Appellant, scheduling the Appeal to be heard on January 17, 2018.

8. The notice of public hearing was published in the *Waterbury Record* newspaper on December 28, 2017 and posted at the municipal offices, the Waterbury Post Office, and a local bank on Main Street. The landowner and adjoining landowners were notified by certified mail sent on December 21, 2017. The hearing notice poster was placed on the subject parcel, 967 Maple Street, on or before January 2, 2018.
9. On January 17, 2018 attorney Christopher J. Nordle, of Darby Kolter and Nordle LLP, provided a letter of opinion, regarding the ZA's decision to deny zoning permit application #103-17, to Gunner McCain, which was forward to the ZA on the same day.
10. On January 17, 2018 the Development Review Board conducted a warned public hearing. Materials submitted and/or made available to the Board included the following:
 - Zoning permit application #103-17 for a 2-lot subdivision, submitted 10/20/17.
 - ZA email correspondence to McCain regarding Lot Area Q, dated 11/7/17.
 - ZA letter of denial of Vose zoning permit application #103-17, dated 12/4/17.
 - Vose Notice of Appeal application #113-17 of ZA denial of zp #103-17, dated 12/12/17.
 - Letter of hearing notice to adjoining landowners, mailed certified on 12/ 21/17.
 - Letter from attorney Nordle to McCain regarding interpreting relevant provisions in the Regulations and caselaw, dated 1/17/18.

Findings of Fact

11. Existing conditions: Katherine Vose owns a 2.08-acre parcel located at 967 Maple Street, Waterbury Center, VT. The property is developed with an existing two-story single-family dwelling and a 1 1/2 story barn/shed. The property is served by municipal water supply and on-site septic. The parcel includes 246' of frontage on and has access to Maple Street, a Town road. The parcel is in the Town Mixed Residential (TMR) zoning district.
12. Proposal: Zoning permit application #103-17 proposed to subdivide the existing 2.08-acre parcel into two lots as follows:
 - Lot 1, of 1.07 acres, including 0.15 acres within the public right-of-way of Maple Street, will include the existing frontage and structures and a proposed 50' right-of-way to provide access to Lot 2.
 - Lot 2, of 1.01 acres, is currently undeveloped and is proposed for a three-bedroom dwelling with a one-bedroom accessory dwelling. Lot 2 does not have frontage and will access Maple Street via a 50' right-of-way across Lot 1.

Lot 1 and Lot 2 as proposed, including area lying within permanent rights-of-way or easements, are greater than one-acre in size.
13. TMR dimensional requirements, Table 5.2: The minimum lot size in TMR is 1-acre for one- and two-family dwellings. TMR does not require minimum frontage.
14. Section 401(d) Dimensional Requirements: Any permanent right-of-way or easement on a lot of one acre or less shall not be included when determining the area of that lot. On lots larger than one acre, permanent rights-of-way or easements may be included in determining lot area.

15. Definition, Lot Area: Total contiguous area within the property lines of a lot, excluding any part thereof lying within the boundaries of a public street or proposed public street. Separate land parcels connected only by a right-of-way or easement shall not be considered contiguous, nor shall convolutedly shaped lots that violate the intent of the contiguous requirement.
16. Section 401(d) and the definition of Lot Area appear to conflict regarding calculating the area of a lot that includes a public street, permanent right-of-way, or easement.
17. ZA's interpretation: The definition of Lot Area controls, as it is more specific than Section 401(d) that governs the more general permanent right-of-way or easement, which would include utility easements and rights-of-way that provide access to adjoining lots. A public street is a type of right-of-way, but due to its specific reference in Lot Area, this excludes it from contributing to the area of the lot before calculating if any permanent right-of-way or easement shall be included when determining lot area based on the size of the lot as described in Section 401(d). The area of a parcel that lies within the boundaries of a public street shall be excluded when determining lot area, without regard to the size of the lot.
18. Appellant's interpretation: Section 401(d) more specifically describes the intent of the Regulations because it differentiates lot area calculation based on the lot size as either greater than or less than 1 acre, which is more specific than the generic definition of Lot Area in Article XIV. This differentiation provides more detail for interpreting and applying the lot area regulation. Also, turning to caselaw, when inconsistency among provisions creates ambiguity, the Courts have found in favor of the landowner.
19. Board's interpretation: Each approach, summarized above, to parsing the intent of the Regulations has merit. Certainly, the provisions taken together create ambiguity in how to correctly calculate lot area.

Conclusion

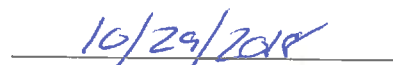
Based upon these findings, the Board concludes that the inconsistency among the provisions creates ambiguity that shall be resolved in favor of the landowner. Lot 1 and Lot 2 as proposed are greater than one-acre in size. Therefore, any permanent rights-of-way or easements, including any acreage that lies within the boundaries of a public street, shall be included in the calculation of lot area.

Decision Motion

On behalf of the Waterbury Development Review Board Mike Bard moved and Nat Fish seconded the motion to grant the Appeal and overrule the Zoning Administrator's denial of Katherine Vose's zoning permit application #103-17 for a two-lot subdivision of the 2.08-acre parcel at 967 Maple Street.

Vote: The motion passed with four yes votes and one no vote.


 (Chair) (Vice-Chair) (Acting Chair)


 (date)

NOTICE: This decision may be appealed to the Vermont Environmental Court by an interested person who participated in the proceeding(s) before the Development Review Board. An appeal must be taken within 30 days of the date of this decision, pursuant to 24 V.S.A. § 4471 and Rule 5(b) of the Vermont Rules for Environmental Court Proceedings.