

**MONT VERNON PLANNING BOARD****Public Meeting Via Zoom****January 12, 2021****AGENDA**

Times are approximate and subject to change without notice.

7:00 pm Public Hearing, Kathy Marchocki 3-lot Subdivision

Map 1-8, Old Wilton Road

8:00 pm Review of 2020 Action Items for 2021

8:45 pm Other Business

Mail & Announcements

Review Minutes from 12/8/20

9:00 pm Adjournment

**Present:** Bill McKinney, Bill Johnson, Steve Bennett, Tim Berry, Chip Spalding, Jim Bird

**Absent:** Charles Baker, Rebecca Schwarz, Dave Hall, Eric Will

**7:05 PM – Public Hearing, Kathy Marchocki 3-lot Subdivision Map 1-8, Old Wilton Road**

**McKinney** opened the public hearing and had everyone recite the Pledge of Allegiance. Jonathon Lefebvre of Meridian Land Services represented the applicant, Kathryn A. Marchocki. The applicant proposes a 3-lot conventional subdivision in District 3, 5-acre Watershed Area. Lefebvre presented the subdivision plan to the Board. They are seeking to take parcel 1-8 which is 16-acres and subdivide into 3-lots of record, creating 2 new lots in the Watershed Rural Residential District. The existing house lot will be a 5.66-acre lot and the two new lots are proposed towards the rear of the parcel. The reason for this configuration is to preserve the existing field and keep it with the existing house on lot 1-8. The proposed lots will be serviced by private wells, private septic and overhead utilities. Sheet 2 of the plan shows the proposed wells, leach fields and proposed driveways. **Bennett** questioned the percentage of wetlands on each proposed lot. Lefebvre stated that Lot 1-8 has 5.0-acres net, Lot 1-8-1 has 4.5-acres net and Lot 1-8-2 has 4.5 acres net. There is 1-acre of wetland on Parcel 1-8 in its entirety. **Bennett** questioned the proposed driveway for Lot 1-8-1; it looks like there is wetlands that would have to be crossed. Lefebvre said they were proposing development in the front of the lot away from the wetlands. **McKinney** stated that if a purchaser of Lot 1-8-1 wanted to build farther back, they would have to go to DES for wetlands crossing permits in order to do so. **Spalding** noted that this is District 3, 5-acre zoning within the Watershed District. The parcel needs to have 5-acres of suitable soils that exclude wetlands and slopes. **McKinney** also noted that in our zoning ordinance there is an exclusion for wetlands and slopes in the 5-acre zoning area, specifically to the Purgatory Watershed District.

Attorney Quinn proceeded to go over his letter to the Board dated 1/12/21 (attached) which addresses their interpretation of Section I-304.2. The Board must decide whether the Ordinance requires minimum lot size of 5-acres or 5-acres net of wetlands and slopes. The applicant submits that the Ordinance only requires 5-acres of land based upon the language of the Ordinance itself and as interpreted by the Board for approximately 20 years. Quinn went on to state that the Ordinance is ambiguous; it could be read to require net tract calculations by excluding wetlands or it could be read to not require net tract calculations and simply exclude building on non-buildable soils. Quinn stated that the administrative gloss that has been placed on this Section over the years requires that the Section be interpreted not to require net tract area calculations. He offered four instances in the area of the applicants' property in which the current language regarding District 3 was interpreted to require 5 gross acres of land and not 5 net acres. The first was a 2002 case involving Daniel Pratt Family Homes. This plan subdivided Lot 1-7 into two lots. Lot 1-7-1 consists of 5.1 acres; only 4.3 acres of which is dry. Lot 1-7-1 directly abuts the applicant's property. The second instance is the creation of Lot 1-3-1 in 2002. This plan subdivided Lot 1-3 into Lot 1-3-1 and Lot 1-3-2. Lot 1-3-1 consists of 5.062 acres; only 4.6 of which are dry. Lot 1-3-1 is directly across the street from the applicants' property. The third instance is the creation of Lot 1-50 and Lot 1-51 in October 2019. Lot 1-51 consists of 5.5-acres of land. Although the amount of wetland is not recited, the wetlands are shown on the plan and it is clear that they comprise more than one-half acre. Lot 1-50 consists of 6-acres of land. The plan clearly shows a significant wetland within the Lot, but the plan does not recite, nor did the Board require, a recitation of the amount of wetland on the Lot. The fourth instance is regarding Lot 1-87 & Lot 1-82. The Board did not require the amounts of wetlands to be recited on the plan when the Board approved a lot line adjustment. This plan created a new Lot 1-87 consisting of 7.019 acres and clearly shows wetlands, but the size of the wetlands is not recited on the plan. Quinn feels it is apparent that an administrative gloss has been placed upon the interpretation of the language regulating development in District 3 which clearly sets the minimum lot size in District 3 at 5 gross acres, not 5 net acres of land. **Berry** asked Quinn if he was aware that the purchasers of Lot 1-51 had to go before the ZBA for a variance in order to build because the lot did not comply with our Ordinance. Quinn responded that yes, he is familiar with that. **Berry** went on to say that he does not know why Quinn would use this as an example of administrative gloss as it is not. The Ordinance was enforced in this case. The purchasers of this property had to go to the ZBA and seek a hardship variance in order to obtain a building permit. **Berry** agrees that this Ordinance is ambiguous. He just feels that the proper venue for Ms. Marchocki's concerns here is the ZBA. He stated that the Planning Board's job is to grant subdivisions that comply with the Zoning Ordinance; not to make changes to the Zoning Ordinance. **Spalding** stated that they are correct as far as the size of the lots noted in the Pratt Family Subdivision. There are parcels that are not 5-acres but fall within the Purgatory Watershed. This is an open space subdivision. When the Board started reviewing Mr. Pratt's subdivision, they looked at a complete set of drawings. These parcels abut a piece of open space land that was part of the bigger plan, the overall Pratt subdivision. These lots have the benefit of also Town property that was granted as part of that open space. In regard to Lot 1-87, **Spalding** stated that the Planning Board looked at the property, told the engineer that not only do you have to take out the wetlands, you also have to take out the steep slopes. The engineer adjusted the plans to what we were looking for; they adjusted the lot calculations to make certain that the overall parcel had over 5-acres to reflect the current zoning for District 3, 5-acres in Watershed Area minus steep slopes and minus wetlands. **Spalding** noted what is frustrating is that Quinn has cherry picked certain instances of decisions made by the Board but not understanding the full thought process that went behind them. He has also selectively not shared information where the Board has most definitely had the steep soils and wetlands subtracted for a lot line adjustment or new subdivision. He used the recent lot line adjustment on the Curtis property as an example where they were made to subtract steep soils and wetlands and also a proposed 76-lot subdivision out on Beech Hill Road. After reviewing the proposed plan and subtracting out the wetlands and steep soils, that 76-lot subdivision became a 42-lot subdivision. **Spalding** agrees with **Berry's** assessment on this. Based on the current zoning, he feels that the parcel being reviewed right now, without going to the ZBA, supports only 2-lots. If they wish to have 3-lots, he encourages them to go before the ZBA for a variance. He doesn't feel that the Planning Board can approve this. **Johnson** posed the following questions regarding the application:

- I. 1) Are markers on the site if they want to facilitate a site walk? Lefebvre stated yes.
- II. 2) Are the plans stamped by a certified soil scientist? Lefebvre stated yes.
- III. 3) Will proposed monuments be set as required per our Ordinance? Lefebvre stated yes.
- IV. 4) Was the subdivision surveyed? Lefebvre stated yes, as shown in Note #6 on the plan.

Marchocki stated that in regard to the cherry-picking comment, they don't have to prove every lot in town. They just need to prove that some lots have been created this way and we have a history of creating them. They have proved that 2 lots right next to her were created that do not have net tract 5-acres. **McKinney** opened the floor to public input. Jim Bird gave his perspective having been on the Board when some of these plans were done. Of the examples Quinn presented, none of them violates the Ordinance that we are talking about which says when preparing a subdivision, to calculate the density, we subtract out the wetlands and then divide the 2-acre soils by 2 and the 5-acre soils by 5. We've talked about lot line changes. An oddity of the MV zoning is that we calculate density consistent with MV Zoning I-304.5, but our site-specific rules may allow something different than that density. To his knowledge, the Board has never approved a subdivision with density greater than allowed by I-304.5. The applicants counsel did not present any approved subdivisions with greater density than that allowed by I-304.5. Of the four examples presented, none are an example of a violation of what we are looking at here. We have always divided by net tract area since this zoning was put into effect 25 years ago. In looking at the Dow Road subdivision plan, note #7 states they take the total tract area of 183-acres, they take out the wet area, they take out the slopes; the net tract area is 136-acres, they divide by 5 for a total of 27 lots. That is what they got, that is what we have done in every case. We are going to be hard pressed to approve this subdivision with three lots when the previous owner was denied the same thing. The Heaney's came before the Board wanting to do three lots. They were told our zoning does not allow it. They spoke of going before the ZBA for a variance. They were told that the state says financial hardship does not count; if the other lots around them have to follow these rules, they do as well. Bird feels this is a 2-lot subdivision unless we change the zoning. He believes the Board has to deny the application due to its failure to comply with I-304.5 of the MV Zoning Regulations. Jim Niemi & Lee Ann Murphy, 92 Old Wilton Road, agree with the Board that a 2-lot subdivision would seem more appropriate. Chris Palie, 5 Dow Road, feels that this plan put forward is the most aesthetically laid out plan that they could do. What is presented allows the open space on Marchocki's land to stay the way it is. Lot 1-8-1 touches Mont Vernon land. Technically, that 5-acres of land is touching hundreds of acres of Mont Vernon land so it has more than 4.5 net acres in the subdivision. He thinks what has been done here is really well done. Kim Roberge, 35 Salisbury Road, questioned past subdivisions being held to this Ordinance. If the Board chooses to approve this, can the past applicants that were made to take out wetlands and steep soils come back before the Board to absorb those extra acres back into the mother parcel? It seems to her that there is a different standard being set if this is to be approved. **McKinney** stated that in his professional opinion, depending on the decision of the Board this evening, those people that feel they are aggrieved by any decision by the Planning Board can have a civil case and discuss that in court. The Planning Board cannot revisit. He does not feel that has any ramifications on the decisions made by this Board tonight. **Bennett** stated that Ms. Roberge is asking for an advisory opinion. We cannot opine on applications of past or future as to what we may or may not do. There is a procedure if you are unhappy with the decision of the Planning Board and that is to file a timely appeal with Superior Court. **McKinney** stated to Attorney Quin that any time we approve a subdivision, we are looking for increased ROW or easements for drainage and such, typically 25' from roadway center. He asked if the applicant would entertain granting such? Lefebvre said they would discuss that and get back to us.

**8:35 PM- McKinney** closed the public hearing and public discussion and brought the application to a Board vote. **Bennett** motioned to continue this hearing to our next meeting in order to review further. **Johnson** motioned to deny the proposed subdivision application due to it not complying with the Regulations of the Town of Mont Vernon seconded by **Berry**. **McKinney** took a roll call vote. All in favor of denying the application:

**Johnson** Yes, in favor of not approving

**Berry** Yes, in favor of not approving

**Spalding** Yes, in favor of not approving

**Bennett** No, votes against the motion

**McKinney** No, votes in favor of applicant

The application is denied by 3-2 vote. Lefebvre asked for clarification on reason for denial. **Johnson** stated MV Zoning Article 3 Section I-304.2 & I-304.5. A written denial will be provided to the applicant.

### **9:00 PM – Review of 2020 Action Items for 2021**

**McKinney** brought to the attention of the Board that we have been approached by a cellular service provider about updating their equipment on the Lamson Road tower which is an approved cell tower site. They are not increasing any of their footprint of equipment on the ground; they are staying within the legal perimeters for the tower and their antenna equipment. We cannot say no to any of this because it is protected under federal regulations. Kim Roberge stated that the provider is SBA and they are replacing six antennas and adding 3 antennas. The antennas are higher but within the federal guidelines. What is not clear is what the actual approval stated when the tower originally went up. Joan will pull the file to find the original approval authorized. The 2020 Action items will be reviewed and prioritized at our work session on January 26, 2021. **McKinney** spoke of the Library Trustees wanting to come before the Planning Board for discussion on the road development/land division for the new library project. Eileen Naber stated that she has the documentation regarding this land that she will bring to Joan at Town Hall. The date of discussion will be determined.

### **9:35 PM – Other Business**

The Board reviewed the minutes from December 8, 2020. **Berry** motioned to approve as written seconded by **Bennett**. All in favor, motion passed. **McKinney** informed the Board that he will not seek Chairmanship of the Planning Board again. He has been nominated for a work regional committee that he is honored to accept. This will take his focus away from this Planning Board. He will continue on with his duties through the end of March. He wishes to remain on the Board, but not as Chairman.

### **9:43 PM**

As there was nothing further business before the Board, **Johnson** motioned to adjourn seconded by **Berry**. All in favor.

Respectfully submitted,

Joan Cleary

Administrative Assistant