

MONT VERNON PLANNING BOARD**Public Meeting Via Zoom****October 13, 2020****AGENDA**

Times are approximate and subject to change without notice.

- 7:00 pm Public Hearing Patricia Schmitz Revocable Trust
 Subdivision of Map 3-28, Beech Hill Road and Upton Road
- 8:00 pm Discussion on Zoning Ordinance Interpretation
 Purgatory Watershed District
- 8:45 pm Other Business
 Mail & Announcements
 Review Minutes from 09/22/20
- 9:00 pm Adjournment

Seated: Bill McKinney, Tim Berry, Chip Spalding, Charles Baker, Steve Bennett (7:10pm), Dave Hall (7:40pm)

Absent: Bill Johnson, Rebecca Schwarz, Eric Will, Jim Bird

7:00 PM – Public Hearing Patricia Schmitz Revocable Trust Subdivision Map 3-28

McKinney called the meeting to order and had everyone recite the Pledge of Allegiance.

7:02 PM -McKinney opened the public hearing on the 2-lot subdivision. Representing the applicant was Michael Ploof of Fieldstone Land Consultants, PLLC. Ploof presented a minor subdivision application for Patricia Schmitz Revocable Trust and Children’s Conservation Research Trust, which is the applicant. The subject lot is Tax Map 3-28 located on Beech Hill and Upton Road. The existing area of Lot 3-28 is 271-acres. The purpose of this application is to subdivide the exiting lot into two large area lots. The proposed new lot 3-28-1 would consist of 140-acres with 2,556 ft of frontage along Beech Hill Road and the remainder lot, 3-28 would contain 130-acres with 1,069 feet of frontage on Beech Hill Road and 5,018 feet of frontage on Upton Road. The current zoning for the site is Rural Residential District with a minimum lot size of 5-acres with 300 feet frontage. They are not proposing any development at this time except for trails for hiking on Lot 3-28-1, which the Children’s Conservation Research Trust is planning to purchase. Given the minor nature of this application and the large acreage of the lots, they have submitted a request for waiver letter for the Boards consideration. The first waiver is from Section III-605.1(a) for the scale of the plan. “Maps should be at scale of not more than 100 ft. to the inch”. The proposed Subdivision Plan shows 300 ft to the inch which would allow the whole site onto one plan for ease of viewing. The second waiver is from Section III-605.1(a)(ii)(1) “Site survey map showing boundary of subdivision area, topography, streams, existing features and foliage lines,

existing roads, structures, adjacent development, and soil type by U.S.S.C.S.”. The proposed Subdivision Plan is minor in nature by creating two lots in excess of 100-acres. There is no new development proposed with this application. They request that the Board grant a waiver to this requirement. Ploof concluded his presentation and asked if there were questions from the Board. **Baker** questioned the location of a driveway for 3-28-1. Crosby noted that there is an existing bar-way almost directly across from Lot 3-26. **McKinney** wants that located on the plan so we know where the location is. **McKinney** questioned if the hiking trails mentioned would be able to be accessed by the public or would they be private. The answer is they would be private. **Berry** asked if there are currently any conservation easements on this property. Ploof responded that they did not come across any in the deed of record. Ploof next went over each item of the Checklist. **Bennett** noted that there are a few items on the list that are checked off as ‘yes’ when in fact they are not yet completed. **Spalding** feels that when we subdivide a new parcel, the parent parcel goes away. He feels the new parcel numbers should be 3-28-1 & 3-28-2. He also stated that with new subdivisions, the Planning Board strives to have granted a 25’ easement from the center line of the existing roads to the property for road maintenance as a lot of our town roads are very narrow. He spoke of public access to the trails on Upton Road. He would like to have a minimum of 50’ frontage on Upton Road. **McKinney** requests that the items they are requesting waivers from be added to the checklist. **McKinney** opened the hearing to public comment or questions. Zoe Fimbel inquired as to the hiking trails being privately owned, not public trails. Kris Lowe-Gronberg questioned the driveways, stating that there are already two there. Ploof stated the top one is just for a means to pull off of Beech Hill Road to park; the lower driveway was a bar-gate for access. Crosby commented that was a logging access road that was upgraded. Chief Jay Wilson asked for clarification on what this new subdivision property would be used for. Ploof said that at this time it would be used only for recreation. There is no building proposed at this time; it will be used for walking trails and maybe camping. Chief Wilson said his concern is for the establishment of any campsite without proper permitting for outside fires, etc. that we would not have access to or knowledge of. The prospective owner, Matt Janchar, spoke of the property in Mont Vernon. He intends to use it for private recreation for himself, his children and their friends. At some point he would hope to pull building permits for storage sheds or outhouses or even a cabin so as to enjoy the property in the winter, but they have no set plans at this time. If and when they make those decisions, they would involve the Planning Board. As to any outdoor recreation they would use the property for, they would abide by any applicable permits, regulations and requirements. **Hall** asked Mr. Janchar to educate us on what is the Children’s Conservation Research Trust? What is this entity that has this property under contract? Mr. Janchar stated that his purchase of the property which is under contract was set up under a realty trust just for financial planning purposes. In order to post a property, you need to list an address. He felt if he listed an email address it would make it easier for anyone to contact him with any questions as opposed to mailing a letter. The Trust is simply named to convey his intended use of the property. He went on to say that his love of the outdoors is fundamental to him and is really designed to be a place where his children, friends and scouts can come and learn about conservation, research the outdoors and build their outdoor skills. **McKinney** asked Janchar if he would be willing to give the town a 25’ easement on both Beech Hill Road and Upton Road for road maintenance. **Spalding** asked if he is willing to change the southern boundary line to have at least 50’ frontage along Upton Road. Janchar agreed to both suggestions. Ploof said they could certainly make those revisions; he requested a conditional approval tonight and will then follow up with those revisions.

McKinney listed the revisions:

1. 1.25’ Easement
2. 2.Renumbering of Lot #'s
3. 3.50’ Upton Road frontage
4. 4.Updating of the application checklist to indicate which items they are requesting waivers from
5. 5.Add 2 driveway locations to the plan

McKinney stated that he understands why this plan does not show a delineation of the wetlands as it is such a big area, but he would ask that a note be added as a condition that any future development of the site would require the full wetlands to be identified. Ploof asked Janchar if he would be agreeable to that. Janchar stated

that there is a considerable area of land not near the wetlands. To the extent that he would ever want to put in structures as simple as a storage shed or a small cabin, it would be well away from any wet area. His concern is how expensive a full wetland survey of 145-acres would be. He is happy to ensure that no development would encroach upon any wetlands. **Berry** questioned the waivers they are asking for and would like the application to reflect more precisely exactly what they are seeking. Ploff said that if it is not on the plan now, they are asking for a waiver just due to the sheer magnitude and size of the lot. **McKinney** asked Janchar if time is of the essence to get this approval in. Janchar said because the subdivision doesn't yet exist; the purchase is pending the subdivision approval. **McKinney** asked if anyone could speak as to what the plan is for the remaining 131-acres of Lot 3-28. Kathy Schmitz spoke to that. She is current owner of the whole property. They plan to continue owning the remaining piece and have no plan of developing. They do plan to log the property in a few years. They are pleased to have the piece being sold go towards recreational use. She questioned the 25' maintenance easements being sought; would they apply to her piece as well? **McKinney** stated yes, we would be seeking the easements for the entirety of Map 3-28. She is agreeable to that. **McKinney** asked the Board's recommendation on a conditional approval being granted at this point. **Berry** asked how long it will take Ploff to make the changes to the plan and complete the necessary field work. He is not of the mind to grant a conditional approval at this time. The Board has not had the chance to discuss the requested waivers and he wants to see an updated checklist before moving forward. **Spalding** agrees and at this time his recommendation is to not provide a conditional approval until we get a completed application identifying all requested waivers. **Baker** agrees and thinks it would be premature to grant a conditional approval before we see all the facts. **Bennett** agrees as well. He thinks it will benefit us all to hold off until we receive the complete application. **McKinney** extended the option of asking for a continuance to the first meeting in November. Ploff formally requested a continuance of this hearing to November 10, 2020. All in favor, hearing is continued to November 10, 2020 at 7:00pm. Zoe Fimbel publicly thanked Kathy Schmitz for her preference to keep the land from being a large subdivision.

8:15 PM Discussion on Zoning Ordinance Interpretation of Purgatory Watershed District

The Board continued discussion relative to a conceptual subdivision plan that came before us located in the Purgatory Watershed area. We've looked at subdivision lots in this area that do not seem to have complied with the 5-acre requirement minus unbuildable area. **McKinney** has gone over the District 3 area extensively and he thinks the description of it is pretty clear. The intent of this section of the Ordinance is for 5-acres of buildable land. **Spalding** said the Town bases the sizes of parcels that are subdivided based on soils. If you have well drained soils, that allows for a higher density; that's your 2-acre soils. The poorer soils - steep slopes and bedrock or ledge; that pushes you into a 5-acre category. When zoning was originally put in place, these requirements were set up so that parcels could support an individual well and septic system and could be supported based on soils. We have an additional requirement for the Purgatory Watershed. This is one more level of protection and that is because of a sensitive watershed area. If 5-acres was sufficient, we would not have a Purgatory Watershed. Again, this area was identified to be a sensitive, important area. That's why you have that additional caveat to provide additional protection. **McKinney** was looking at the other lots in question in the area that were approved and is wanting to know if they were approved before or after the Purgatory Watershed area came into effect. He was unable to find the history on that. Marchocki noted a newspaper article from 2002 that was about a warrant article on the 5-acre zoning in the Purgatory Brook Watershed area. Quinn went back to a plan for an abutting lot that was subdivided by Meridian. Lot 1-7-1 was created; 5.1 acres, 4.1 contiguous dry, 4.3 total dry. That plan was approved by the Planning Board in 9/02. **McKinney** questioned if the soil types were listed. The question is are we dealing with type 4 soils or with 1,2 or 3 which could be permitted. Quinn said the plan clearly shows wetlands and the lot was approved. He feels they should not be treated any differently. **Bennett** does not think that this board is bound by a decision made by a prior Planning Board. We don't know what their interpretation was. Marchocki stated that she has 16-acres. Going by our interpretation she is .9 acres short of 3 lots excluding wetlands. Going by the interpretation she has heard the Board give for years prior, where it is just 5-acres plain, she is golden and always thought she was. **Spalding** stated that he realizes we are trying to make informed decisions on the proposed application before us. He went on to say that just because she has 16-acres does not mean that she can subdivide that into 3 parcels. Marchocki argued that there is a significant difference to tell towns people and land owners in years past that the minimum acreage is 5-acres for both District 3 and Purgatory Watershed and then in the past half year say now its 5 dry acres. Quinn

argued that you can subdivide, you just can't build. **Spalding** stated that the Planning Board cannot accept a non-usable parcel of record. This is town law that we cannot deviate from. We cannot subdivide a parcel that does not meet our zoning requirements. District 4 is non-buildable. Quinn argued that it doesn't say you cannot subdivide it, only that you cannot build on it. **McKinney** looked at RSA 674:36 to see if the Planning Board can legally approve subdivision of lots that would not be buildable. **Berry** questioned why would you want to create an unbuildable lot that would damage the value of your land? He respectfully suggested that she take her 16-acres of land which is only .9 acres short of dry land, make two legal lots of 5 dry acres and make a third lot with her house and outbuildings on it and ask the ZBA for a variance for her homestead property. That way she would have two saleable lots. **McKinney** stated that we need more time to research if the Planning Board can legally approve of lots that are not buildable. **Berry** suggested that we table the discussion until we can get more information on the legality of subdividing this property into at least one or more lots that are non-buildable. **Berry** motioned to table the discussion until we can delve deeper into the subdivision from 2002. Marchocki quoted from Planning Board minutes dated 9/22/20 where Board members agree that the Ordinance is difficult to interpret and we need clarification. She went on to argue that if it is that difficult for Board members to interpret, how can a land owner understand it and doesn't that lack of clarity legally benefit the aggrieved party, which would be the applicant? **Spalding** stated that at this point he was feeling harassed and intimidated by the applicant on Old Wilton Road and her attorney. He suggests we call a vote. The Planning Board can vote up or down; if it's down they can go before the ZBA. **Bennett** feels it is worth taking another look at; he doesn't feel there is an attempt to intimidate. He thinks we should have some more time to take a look at this and see if we can come up with minutes from 2002. **McKinney** reminded the Board that there has been no formal application submitted as of yet to approve or deny; it's only been discussion so far. He agrees with Kathy that we need to look at the ordinance. **Berry** motioned to table this discussion until we can delve deeper into this, seconded by **Bennett**. Four in favor, one against. **Spalding** stated it was his understanding that this was a work session where we were trying to figure this out amongst ourselves. If the applicant then wanted to push forward, the applicant would have a chance to talk at a public meeting for the application. If this is going to be a repeat of another discussion with the applicant basically providing an argument of their position then he wants no part of it. If it's a discussion amongst the Board members to review it, he is all in favor of continuing the discussion. Work sessions are meant for the Board to try to wrap our heads around things; they are not meant to get into a confrontational argument with an applicant who wants to push something forward. **McKinney** understands but feels we have to consider all the information and view points out there for us to know what questions we are answering. He feels that at our next meeting, which is our work session, we can take a formal vote on how we are going to interpret this section of the Ordinance and that will be a binding decision by the Board.

9:25 PM – Other Business

McKinney read an email regarding Lot 1-82-1 on Hutchinson Road. A town resident wants to purchase the lot and grow lavender which she would sell to the public. She is asking if this would be allowed. **McKinney** would look at this as an agricultural use which is allowable in this zoning district. The ordinance does allow for farming activity which includes retail sales. One concern, because it is quasi-business, would be the traffic with vehicles entering and parking. There may be some need for a site plan when she puts up a barn and needs parking space. **Spalding** thinks we will need to do a non-residential site plan review. **McKinney** will respond to the email. The Board reviewed the minutes from 9/22/20. **Berry** motioned to accept the minutes as amended seconded by **Baker**. All in favor, meeting adjourned.

Respectfully submitted,

Joan Cleary

Administrative Assistant