

Rupert Design Review Board (DRB)
8 March 2021

DRB Members Present: Charlie Rockwell, Chair ; Bob Bain ; Rima Georgeson ; Phil Mazzucco ; Peter Pelton ; Jed Rubin ; Val Almosnino, Clerk

Zoning Administrator: John La Vecchia

Planning Commission: Jean Ceglowski ; Kim Davis

Public: Ted Adams, Robin Blodgett, Jim Carroll, Jane Davies, Kevin, Flanagan, Brian Mac, FAIA Birdseye, Jeff McBride, Amy Mestel, L. Mestel, Deb Mithoefer, Frank Parent, Keith Wagner.

Meeting called to order at 7:07 pm.

Charlie asked Val to take attendance: 4 DRB members, 2 Planning Commissioners, ZA, 12 members of public.

Val read warning per Charlie's Request.

According to Charlie there are two items to be decided this evening, determine whether a town line can be a sideline, and whether to approve the request to waive the building footprint restriction.

John read the portion of the land use regs (LUR) where he thought the first issue Charlie mentioned was involved, Section 2.01(C)(5) "Where the town line divides a lot, the standards of these regulations shall apply to that portion of the lot that is in the Town of Rupert in the same manner as if it was a separate lot entirely situated in the town."

The property is situated in Rupert and Dorset; however, the project is entirely in Rupert.

Charlie mentioned Nims Rd ends 0.22 miles in then becomes a legal trail to the gates in Dorset as shown on the highway maps of Dorset.

John wondered should we treat the portion of the lot as a separate lot and consider the application as it sits on that separate lot for zoning purposes. The access issue being one of the road's evolution over time in Dorset. Should the lot be considered an interior lot as far as Rupert is concerned with the first part LUR Section 3.02(A) being cited: "The DRB may allow development on an interior lot in existence prior to the effective date of these regulations that does not have frontage on a state highway or Class I, II, III or IV town road." Access to such a public road shall be provided by means of a permanent easement or right-of-way at least 50 feet wide. In deciding whether to grant, condition or deny approval, the DRB shall

consider the intended use of the property, safety, traffic, road and site conditions, the purpose of the district in which the parcel is located and associated policies of the *Rupert Town Plan*.”

Charlie mentioned that he and John had researched the road back to the 1931 Dorset Highway Maps. At some point in the mid-1980s to the mid-1990s the status of the road changed. Until that time, Nims Rd was a town highway in Dorset to the Rupert/Dorset Town Line. Charlie then continued with how the status of Nims Rd evolved with the gate being shown on the 1967 maps and the being indicated as the end of the legal trail. The portion from the gate to the Rupert/Dorset town line not indicated on the map. Charlie had a question for the applicant as to whether the applicant could confirm if there was a legal discontinuance by the Dorset Select Board for that portion of the road. If that confirmation could not be made, that could change things.

Jim Carroll, attorney for applicant, said his research was consistent with that of Charlie and John. He added that Nims Road was changed to a Class 3 in 1970. In 2020 it was a Class 3 road with an extension that might go to gate. At Mestel Property. Mr. Carroll had a question about the removal of a private road designation on a very short portion of Nims Rd which was on the Rupert Highway maps in 1940 and 1949. He further stated what is of interest to him is not the current status of the road but that there is historic mapping that shows a road, regardless of class. Regardless of its configuration, given Rupert's ordinance, the roadway should be considered a private drive. He then discussed at great length the differences between a road, a trail, and a right of way, citing LUR Sections 8.02(R)(16), (17), and (18).

The discussion then moved on to whether the Rupert/Dorset town line creates an interior lot. Mr. Carroll felt the Mestels acquired a right of way to the property, which to Mr. Carroll's opinion is a private drive which would avoid the interior lot definition.

Charlie explained he was looking for a way to be consistent in future determinations. This is an unusual situation and the DRB would like the decision to be technically correct. The road/right of way appears and disappears over a number of years. Charlie asked Mr. Carroll if he could determine if the Dorset Select Board had discontinued it and what that might mean in Mr. Carroll's opinion. Mr. Carroll said he could not. He has not conducted a thorough search of the land records for highway proceedings for Nims Rd in either town. Further, he is not sure its current existence as designated by Title 19(Highway Law) answers the question from the standpoint of zoning as to whether or not that road can and should be considered a private road for the purpose of applying the Rupert Land Use Regulations. What is

important is a road has existed from the highway up Nims Rd. to that location where the Mestels hope to build/rebuild a residence it that location and that that location, under the defined terms in the Rupert ordinance an interior lot for that provision which is creating a bollocks in terms of a set of issues in order for that provision to apply, it has to be a situation where the lot does not have frontage on a “private road”, however the term is defined in the ordinance. If it has frontage on a private road or is connected with a private road, then the interior lot provision does not apply as defined in ordinance, Charlie agreed the question is what is the travelled way defined as.

Mr. Carroll said he has regulatory links to how terms are defined in Rupert Regs and Ordinance and the close the gap for him in terms of ‘private road’ including the road which ends on the Mestel property.

It was Mr. Carroll’s opinion that although the public road ended before the gate at the entrance to the property, the road continues as a private road and does not create an interior lot on the property beginning at the town line. Since there is not an interior lot created, the project did not need to adhere to the more stringent set back requirements for an interior lot.

Charlie asked Mr. carroll would submit a brief so the DRB could substantiate and reproduce the reasons for reaching the decision the DRB made. Mr Carroll said he would.

Further discussion included whether the Town could consider the Rupert/Dorset Town Line where it crosses the road the frontline and the rest of the town line as side lot lines for this project. There were a few questions about the frontline and side lot lines from Jed which were answered and explained by Charlie.

Phil Mazzucco moved to consider the Rupert/Dorset town line to be a side lot line, except for where it crosses the road – which would be considered the frontline for this project. Seconded by Jed. Motion passed unanimously.

Phil then moved to accept the applicants’ request, pursuant to Section 7.07 of the Rupert Land Use Regulations, to waive the setback requirements for the 3 setbacks as referenced in the Green Acres Initiative site plan drawing sheet G100 dated 02/25/2021, which was submitted with the application. Seconded by Jed. Motion unanimously passed.

Phil also moved to waive the 4,000 square foot footprint limit for a principal structure by 10% per the language of the Green Acres Initiative site plan sheet G100 dated 02/25/2021. Seconded by Jed. Motion carried unanimously.

Written findings and a decision by the DRB will be forthcoming the near future.

Mr. Mestel thanked the DRB for considering his application and said he and his family plan to be good green neighbors and to keep the property as beautiful as possible per Dr Nims' vision.

Charlie entertained a motion to adjourn, so moved by Phil and seconded by Jed. Unanimous decision. Meeting adjourned at 8:33 pm.

Respectfully submitted,
Val Almosnino, Clerk