

**TOWN OF MARSHFIELD
DEVELOPMENT REVIEW BOARD**

PRD application of :
Wayne & Susan Kowalski
2798 Maple Hill Road
Plainfield, VT 05667

PRELIMINARY PLAN DECISION

Wayne and Susan Kowalski (“Applicants”) seek approval for a Planned Residential Development (PRD) of their property on Maple Hill Road. The plan as proposed would create 3 new lots from a single source parcel, and reserve several acres to be merged with an adjoining property. One of the newly created lots would be designated for the construction of 2 new single family residences.

The Development Review Board held a Preliminary Plan hearing, after due notice, on the evening of January 4, 2007. The purpose of Preliminary Plan review of a PRD proposal is to enable the DRB to make a determination on whether it is “consistent with the purpose of PRD’s and that the plan on its face meets the minimum specific requirements for PRD’s” under Marshfield’s zoning ordinances (Section 260 of the Town of Marshfield Zoning Regulations As Amended March 2, 2004). A favorable determination authorizes an applicant to prepare a Final Plan to submit for approval.

Upon careful deliberation, the Marshfield Development Review Board (hereafter “DRB”) finds that the proposal advanced by the Kowalskis is not consistent with the purpose of either Planned Residential Developments or Planned Unit Developments (PUDs)¹. Therefore, the DRB denies authorization to proceed with this plan under our zoning ordinances. Our reasons for this conclusion follow below.

While there are a number of features to this development proposal, our decision turns on the one aspect of the plan that prompts it to be advanced as a PRD to begin with: the request to place new homes in an area that lies now in the Forestry and Conservation zoning district.

Planned Developments and the Town’s Land Use Goals

PUD/PRDs are provided for in state law “to permit flexibility in the application of land development regulations” (24 VSA §4417(a)). They represent a “modification” of existing zoning regulations by a board of review (the DRB, in our case) for the purposes of a single development proposal. Towns like Marshfield have an established and democratic process for land use planning, which results in a set of Zoning Regulations meant to ensure that future development conforms to our collective goals (as expressed in the Town Plan). But we cannot anticipate — at the planning stage — each individual development proposal that may come along. Some development plans may be desirable as a means of furthering the town’s land use objectives, but may nevertheless violate certain provisions of the Zoning Regulations. PUD/PRDs are the means by which such developments may be permitted.

¹ *Statutory note*— This Application was received on September 22, 2006. At that time, Marshfield’s Zoning Regulations recognized both Planned Residential Developments (PRDs) and Planned Unit Developments (PUDs) as permissible categories of development. In November, Marshfield adopted a revision of its Zoning Regulations. The differences between these current Regulations and those in effect when the Application was received reflect statutory changes made at the state level. Among these changes was the elimination of the PRD as a defined development category. Projects that formerly might have been pursued as PRDs will now be classified as PUDs under the Regulations. Although the application under review here is for a PRD, most of the discussion that follows applies equally to both.

Marshfield's Zoning Regulations and Subdivision Bylaws set out the purpose of PUDs and (formerly) PRDs, and provide specific standards for review. Among the general findings required for approval are that the plan "is consistent with the goals of the Town Plan," and that it is "an effective and unified treatment of the development possibilities on the project site." The specific standards that follow are mostly concerned with the clustering and spacing of buildings, the preservation of open space and natural features on the site, and even the provision of a pond for fire protection.

As noted in the Sketch Plan Determination issued for this application (dated 10/12/06) and elsewhere, this DRB believes that PUD/PRD approval is properly granted only to projects which advance a general, collective benefit in the growth and development of the Town. It is not enough that the plan provide a benefit to the landowner; if that was the standard, then PUD/PRDs would be merely an all-purpose means of getting around restrictions in the Zoning Regulations. Nor is it sufficient just to establish that the plan is not contrary to the goals of the Town Plan; it must actually result in a better environment, from the Town's perspective, than would be possible under strict adherence to the Zoning Regulations. (Note also the language of 24 VSA §4302(f)(1), with regard to state land use planning laws, that the phrase "consistent with the goals" requires substantial progress toward attainment of the goals, as opposed to being merely "compatible").

The Applicants' PRD plan calls for the construction of two new houses, to be retained by the Applicants, in a location — the Forestry and Conservation zoning district — where, absent PRD approval, they would be prohibited by the Zoning Regulations. Given the goals of Marshfield's Town Plan, and the current state of development in our town, it is difficult to see how this type of proposal can be reconciled with the principal purposes of a PUD/PRD.

PRD approval might be appropriate, for instance, for a plan to build multiple clustered housing units, in a unified fashion, near the Village. Such a plan might be found to help with development pressure generally, the stated goal of providing more affordable housing in town, and the focusing of high-density development in designated growth centers, as specified by the Town Plan (see Chapter 9, section I). This hypothetical plan would not only benefit the landowner; it would serve the collective interest by furthering the town's land use goals.

The plan before us, by contrast, would add two single family homes on a lot lying at the further reaches of Maple Hill Road. While landowners have fairly broad rights to build houses on their property, it cannot be said to be a *goal* of the Town Plan to establish houses in the outlying rural areas. The continued preservation of the property designated as Forestry and Conservation land, however, is now and has long been a stated goal of our Town Plan. The Plan envisions that these areas will remain largely undeveloped, and it is to this end that the Zoning Regulations have put them off limits to residential use.

In the exercise of its responsibilities, the DRB looks very cautiously at proposals which — like the one before us — seek to introduce a use to an area where it is normally proscribed by the duly adopted Zoning Regulations. This inclination is supported by the current enabling statute for PUDs: "Planned unit development bylaws may provide for ... the authorization of uses, densities, and intensities that do not correspond with or are not otherwise expressly permitted by the bylaws for the area in which a planned unit development is located, provided that the municipal plan contains a policy that encourages mixed use development, development at higher overall densities or intensities, or both." (24 VSA §4417(d)) The Marshfield Town Plan states that "the villages and growth centers should be the focus for mixed-use, higher intensity development and new growth." (Chapter 9, section I). The fact that our Town Plan does not encourage mixed uses in outlying areas weighs heavily against the proposition that introducing an otherwise disallowed use there is "consistent with the goals of the Town Plan."

There are several other aspects of this PRD proposal which *could* be found to directly, if modestly, further the goals of the Town Plan. Under this plan, the Applicants would grant approximately 2.6 acres to an adjoining residential lot of miniscule proportions, thus making it a conforming lot under the Regulations. They would also grant a perpetual right-of-way along their portion of the old Route 66, for the recreational use of the public. We note, however, that these steps could be taken within the restrictions of the existing Zoning Regulations. As a regulatory matter, they are not benefits which require PRD approval to achieve. (Whether the Applicants would ever be inclined to take these actions without benefit of an approval of their full development plans is, of course, a decision left to them.)

Site-specific Considerations

Simply as a matter of scale, the threshold standard described above —that a PUD/PRD must further the land use goals of the Town Plan to gain approval — would rarely be met by a proposal to add one or two houses to a single parcel. We must also consider, however, whether the PUD/PRD process has a subsidiary function for the development of particular parcels within our town.

As noted, the proposal before us seeks to create several lots, one of which (designated “Lot 2”) would host the two new homes. This lot would consist of just over 30 acres, lying partly in the Agricultural and Rural Residential zoning district and partly in Forestry and Conservation. As represented by the Applicants at hearing, and borne out by a visit made to the site, the ARR portion is lower and wetter, with the land rising as it goes back from the road into the F&C district. The Applicants’ site plan technician testified that locating a home in the lower portion would be very problematic, not least because it’s too wet there for septic disposal. The Applicants feel that they could not responsibly place a house in that area, and would like the DRB to recognize that building at the site they have chosen is clearly the “best use” of this particular property.

The Zoning Regulations in effect at the time this application was submitted list, as one of the purposes of PRDs and PUDs, “to provide for the development of existing lots which because of physical, topographical or geological conditions could not otherwise be developed...” This language may suggest that the PRD process can serve a remedial function in allowing the development of an individual lot, much as a Variance might. An argument could certainly be made that allowing a particular lot to be developed in a way that is functionally best, given the physical conditions of the property, may sometimes better serve the general ideal of orderly development than would a rigid application of the Regulations.

The language specifying that difficulties of topography or geology on a lot can be a reason for a PUD/PRD plan is absent in the current Zoning Regulations ... were the Applicants to receive PRD approval on this basis, they may well be the last residents to do so for the foreseeable future. But granting for the moment that this is a suitable reason for considering a PRD application that was filed before the Regulations changed, we run into a substantial difficulty with this particular PRD proposal: the existing lot — that is, the source parcel for this PRD plan — is already developed. It has for some years been a residential lot containing the Applicants’ home. What they would be asking for here, in effect, is to create a new lot (Lot #2) which will be unsuitable for development within the Regulations, and then be granted PRD approval to remedy the problem thus created. It is a general principle of zoning review that relief from zoning restrictions is not available to those who create the problems for themselves.

We do take note that the source parcel here is quite large — some 77 acres. Someone with this much property might reasonably expect to be able to do more with it than build a single home. But there is no prescribed level of development to which a landowner is entitled simply by virtue of total acreage, particularly when that acreage is of varied topography and spans different zoning districts.

Zoning Map Anomalies

There is one other aspect of Marshfield's overall land use picture that the DRB considered carefully with regard to this PRD proposal. Maple Hill Road runs roughly parallel to our municipal boundary with the Town of Plainfield. The first 600 feet from the Road toward the town line are zoned as Agricultural and Rural Residential, and thus available for residential construction. The rest of the distance to the Town line is reserved from residential use as part of the Forestry and Conservation district. On the other side of the line, residential use is permitted under Plainfield's Zoning Regulations.

The reserved strip of F&C land is quite narrow in places. Because the Applicants have cleared that portion of their lot, one can stand on their proposed building site and actually see residences on both the Maple Hill side and the side directly opposite, over the Plainfield Town line. The Applicants might reasonably ask what conservation purpose is really served by forbidding them to build a home or two on the strip in between.

On this question, the DRB notes only that this is the case with all of the properties lying along the south side of Maple Hill Road. As part of its planning process, Marshfield's official zoning map is revised and approved periodically. If the Town continues to reserve the property along this Town line as Forestry and Conservation land, we will respect this judgment and act accordingly with any development proposals that come before us for review.

The DRB *has* granted PRD approval in one case which presented a true anomaly — one which arose as a result of haphazard and inconsistent zoning approvals by previous bodies. In our view, the modification effected by that approval helped to restore a more orderly development picture in that area. In the present case, however, the property in the neighborhood is now being treated equally and uniformly under the Regulations. The approval the Applicants seek would create an exception in the area, and we can find no compensating benefit to the Town in allowing it to proceed.

Conclusion

The Kowalskis' plans for their property are both modest and reasonable. They are also outside the bounds of our existing Zoning Regulations. The addition of the new residences they propose for the subject property would not advance the Town's land use objectives sufficiently to justify the modification of the Zoning Regulations to accommodate it. The required finding for Preliminary Plan approval — that the plan is consistent with the purpose of PRDs — can thus not be made.

The integrity of Marshfield's land use rules, and their continued acceptance by the public, require a consistent and principled application of the discretionary powers of the Development Review Board. Given this priority, we cannot provide the regulatory flexibility the Applicants seek for their property. Nevertheless, with regard to their future enjoyment of the property, we do hope they can find a satisfactory alternative that can be accomplished within the Regulations.

Dated Marshfield, Vermont, this 2nd day of February, 2007.

For Marshfield Development Review Board:

James Arisman	Tom Daley
Paul Brierre	Gary Wilson