

# TOWN OF DUMMERSTON

## Development Review Board

### Waiver Application Findings and Decision

**Permit Application Number: 3651**

**Date Received: August 3, 2021**

**Applicant: Daniel Berthelette**

**Mailing Address: 254 Falls Brook Rd., Dummerston, VT 05301**

**Location of Property: Parcel 039, 254 Falls Brook Rd.**

**Owner of Record: Daniel Berthelette**

**Application: Waiver to setback for Accessory Structure.**

**Date of hearing: November 16, 2021**

### INTRODUCTION AND PROCEDURAL HISTORY

1. This proceeding involves review of an application for a Waiver to setback requirements for an existing Accessory Structure under the Town of Dummerston Zoning Bylaw section 256.
2. On October 27, 2021, notice of a public hearing was published in The Commons.
3. On November 2, 2021, notice of a public hearing was posted at the following places:
  - The Dummerston Town Office.
  - The West Dummerston Post Office.
  - The Dummerston School.
4. On November 5, 2021, notice of a public hearing was posted at the following place: 254 Falls Brook Rd., which is within view of the public-right-of-way most nearly adjacent to the property for which the application was made.
5. On November 2, 2021, a copy of the notice of a public hearing was mailed to the applicant.
6. On November 2, 2021, a copy of the notice of public hearing was mailed to the following owners of properties adjoining the property subject to the application:
  - a. Asch Tony, 251 Falls Brook Rd, Dummerston, VT 05301
  - b. Bowen Beverly J, PO Box 502, West Dummerston, VT 05357
  - c. Brown Gregory & Carolyn Mayo, 431 Holland Hill, Putney, VT 05346
  - d. Lane Edward H, 513 Lindsay Ave, Scotia, NY 12302
7. The application was considered by the Development Review Board (DRB) at a public hearing on November 16, 2021.

8. The Development Review Board reviewed the application under the Town of Dummerston Zoning Bylaw, as amended May 22, 2019.
9. Present at the hearing were the following:
  - a. Members of the Development Review Board:  
Josh Pacheco(via Zoom), Cami Elliott , Alan McBean, Natalie Pelham-Starkey
  - b. Others:  
Daniel Berthelette (Applicant, via Zoom), Carolyn Mayo Brown (via Zoom), Edward Lane, Robert Ryan (via Zoom), Roger Jasaitis (Zoning Administrator).
10. Present at the site visit were the following:
  - a. Members of the Development Review Board:  
Josh Pacheco, Chad Farnum, Natalie Pelham-Starkey, Cami Elliott
  - b. Others:  
Daniel Berthelette (Applicant), Carolyn Mayo Brown, Edward Lane, Robert Ryan, Roger Jasaitis (Zoning Administrator).
11. During the course of the hearing the following exhibits were submitted to the DRB:
  - a. Application for Zoning Permit, number: 3651.
  - b. Application to the Development Review Board for a Waiver to setback, number: 3651.
  - c. Exhibit A; Zoning Administrator report of a timeline of email exchanges with the Applicant regarding development of the parcel.
  - d. Exhibit B; Email from Bev Bowen (abutter).
  - e. Exhibit C; Email from Tony Asch (abutter).
12. During the course of the hearing Alan McBean recused himself due to conflict of interest because of a professional relationship with the applicant.

## **FINDINGS OF FACT**

Based on the application, testimony, exhibits, and other evidence the DRB makes the following findings:

1. The applicant seeks a Waiver to setback for an existing unpermitted Accessory Structure under the Town of Dummerston Zoning Bylaw section 256. The subject property is a 9.5 acre parcel located at 254 Falls Brook Rd., in the Town of Dummerston (tax map parcel no. 000039). The property is more fully described in a Deed recorded at Book 127, Page 177-178, in the Town of Dummerston Land Records.
2. The property is located in the Rural Residential District as described on the Town of Dummerston Zoning Map on record at the Town of Dummerston municipal office and Section 220 of the Zoning Bylaw.
3. Waiver approval is requested for the Accessory Structure as that term is defined in Article VIII, Page 1, of the Zoning Bylaw. The application requires review under the following sections of the Town of Dummerston Zoning Bylaw:
  - a. Article II, Section 256 Waivers.

4. Daniel Berthelette (Applicant) stated that the application is current and nothing has changed on the parcel since submission of the applications.
5. The Zoning Administrator submitted Exhibits A,B and C.
  - a. Exhibit A is a timeline and summary of email exchanges between the Applicant and the Zoning Administrator.
  - b. Exhibits B and C are emails submitted by abutting landowners in favor of the Waiver request. The emails were read aloud.
6. Edward Lane (abutter) stated he lives opposite Dan Berthelette across Falls Brook Rd. He outlined his family history on the property, his history with the Applicant, and with Alan McBean regarding his water source. He outlined his interaction with Lee Chamberlin regarding the driveway construction on the Applicants parcel. He brought complaints of how the driveway was constructed with photos as evidence. He stated that Dan Berthelette had an Access Permit that he did not follow, causing damage to his property, and that he did not obtain a Zoning Permit for construction of his house and garage prior to development. Edward feels that he is being treated unfairly and wanted to point out that the Applicant has not followed the Town's rules and regulations to date. He is worried that the Applicant will not follow the rules in the future. He realizes that the Access Permit issue is not part of this Hearing but sees the Applicants lack of compliance as problematic.
7. The Applicant stated that the accessory structure was built in July or August of 2020.
8. The Applicant stated that he obtained an Access Permit from the Town in September of 2020, a Wastewater and Well Permit from the State (Permit # WW-2-6193) on September 24, 2020 and that he was not aware of any additional permitting requirements regarding Town Zoning. He believed that the Zoning Administrator had emailed the requirements to him but that he had overlooked them. The Applicant stated that he did not know that he needed a Zoning Permit for his house or garage.
9. The Zoning Administrator outlined the sequence of events regarding the violation;
  - a. July 29, 2021; I was informed by a neighbor that the site had been developed with no Zoning permits issued. I contacted the applicant with a notice of a possible Zoning violation.
  - b. August 3, 2021; An application for a Zoning Permit was dropped off at the Town Office.
  - c. August 4, 2021; I visited the site as part of the review process and noted that the accessory structure was not noted on the site plan as part of the application and the accessory structure was within the setback for the side boundary. I emailed the applicant with the information that the application was incomplete and that there was an issue with setback for the accessory structure.
  - d. August 5, 2021; The applicant advised me that he would seek a waiver from the DRB in relation to the setback issue and would submit a new site plan showing all the structures.
10. The Board asked about the site plans submitted.
  - a. The ZA clarified that the original site plan submitted for the Access Permit on September 16, 2020 did not show any proposed or existing structures on the parcel.

- b. Also, the site plan submitted for the Zoning Permit application on August 3, 2021 did not show the accessory structure.
  - c. After visiting the site and noting the omission, the ZA contacted Daniel to submit a complete site plan showing all structures and advised that a Waiver would need to be granted by the DRB for the accessory structure because it was within the setback.
11. The applicant stated there is electricity to the accessory structure.
  12. The applicant stated there is no water line to the structure.
  13. The applicant stated the floor is currently crushed stone but would like to upgrade possibly to poured concrete in the future.
  14. The ZA confirmed that the required setback distance in this District is 40 feet to the side boundaries and 50 feet to the road center.
  15. The applicant stated that the current setback for the structure is 12 feet from the property boundary.

## **DECISION AND CONDITIONS**

**Based upon these findings the Development Review Board denies the applicant a Waiver for the Accessory Structure. Section 256 reads “The burden of proof is on the applicant to demonstrate that the waiver requested meets the Waiver Criteria.” The DRB finds that the development does not meet the requirements of Sections 256 of the Zoning Bylaw Criteria:**

1. *The waiver is helpful or necessary to allow for reasonable use of the property.*

The DRB determines that this development is not necessary for reasonable use of the property.

2. *The waiver is the minimum reduction in the dimensional requirement that will enable the reasonable use of the property.*

Because the structure is already existing within the required setback, the DRB has no latitude in granting a minimum reduction in setback requirements.

3. *Any adverse effects of the waiver are mitigated by design, screening, or other remedies.*

Because the structure is existing no mitigation by design can be conditioned by the DRB.

4. *The need for a waiver was not created by past decisions of the applicant.*

The need for a waiver was created by the applicant in constructing the accessory structure without permitting in a location that requires a waiver.

The DRB notes the one and a half year long history of communication with the Zoning

Administrator about proper permitting. Section 701 of the Dummerston Zoning Bylaw reads; *"No "Land Development" as defined by this Bylaw may commence, unless a zoning permit shall have been duly issued by the Administrative Officer"*.

The DRB recognizes that the Administrative Officer made every effort to be clear about what permitting was required on the parcel through phone conversations and email exchanges.

Section 120 of the Zoning Bylaw reads; *" Except as hereinafter provided, no "Land Development" as such term is defined by this Bylaw may be commenced in the Town of Dummerston, unless in conformity with the regulations herein specified for the district in which it is located. "*

It is the landowners responsibility to be in compliance with the Town's Zoning Bylaw. The DRB deems the lack of responsibility on the part of the applicant in this case to obtain proper permits before construction caused this need.

5. *The proposed project will still conform to the Town Plan.*

The Town Plan in the *Introduction and Purpose of the Town Plan* supports the Zoning Bylaw and it's administration. Provision #4. Reads: *"To provide a framework for zoning and any other bylaws or ordinances the Town may adopt."* The existing structure was built without the required Zoning permits supported by the Town Plan. This structure does not conform to the Town Plan.

6. *The proposed project will still conform to the purpose of the zoning district (as stated in Sections 205-240 of these Bylaws) in which the land development is located.*

The existing structure does not meet the purpose of the district in that *"These areas should be used to accommodate residential growth, but in a manner that preserves the rural character of the land, and is sensitive to physical limitations on development."* The DRB finds that the applicant disregarded the physical limitations of the parcel and built the accessory structure in the required setback area.

7. *The proposed project will not have an undue adverse effect on the following:*

- a. Surrounding properties and property values*
- b. The character and aesthetics of the neighborhood*
- c. Traffic patterns and circulation*
- d. Public health, safety, and utility services*
- e. Stormwater management*
- f. Water and wastewater capacity.*

The DRB finds that the existing accessory structure negatively impacts the surrounding properties and character of the neighborhood by being within the required setback area.

**The following members of the Dummerston Development Review Board participated and concurred in this decision: Josh Pacheco, Cami Elliott, Natalie Pelham-Starkey.**

**Dated at Dummerston, Vermont, this 10 day of December, 2021.**

  
**Signed for the Dummerston Development Review Board**

**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. Such 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.