

TOWN OF DUMMERSTON

Development Review Board

Application for Land Division Permit with Waiver Review Findings and Decision

Permit Application Number: LD392

Date Received: January 6, 2021

Applicant: Naomi Ullian

Mailing Address: 365 Miller Rd., East Dummerston, VT, 05346

Location of Property: 2007 East West Rd., Dummerston, Vermont

Owner of Record: Michael & Karen Ullian

Application: Waiver under Section 256, Variable Lot Size / Maximum lot Number

Date of hearing: February 16, 2021

INTRODUCTION AND PROCEDURAL HISTORY

1. This proceeding involves review of an application for a Waiver to lot size submitted by Naomi Ullian under the Town of Dummerston Zoning Bylaw.
2. The application was received by the Zoning Administrator on January 6, 2021. A copy of the application is available at the Dummerston Town Office.
3. On January 26, 2021, notice of a public hearing was published in The Commons.
4. On January 28, 2021, notice of a public hearing was posted at the following places:
 - The Dummerston Town Office.
 - The West Dummerston Post Office.
5. On February 1, 2021, notice of a public hearing was posted at the following place: 2007 East West Rd., which is within view of East West Rd., the public-right-of-way most nearly adjacent to the property for which the application was made.
6. On January 22, 2021, a copy of the notice of a public hearing was mailed to the applicant.
7. On January 22, 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. Bagatelle Adrien: 1995 East West Rd., Dummerston, VT 05301
 - b. Clark Barbara W/ Life Estate: 511 Quarry Rd, Dummerston, VT 05301
 - c. Jerome Jennifer Taplin Revocable Trust, PO Box 532, W Dummerston, VT 05357
 - d. Nash HI Jr Irrevocable Trust/Nash Anne & Homewood Elizabeth Trustees, 1600-73C Islamorada Blvd, Punta Gorda, FL 33955
 - e. Nature Conservancy, 575 Stone Cutter's Way, Montpelier, VT 05602
 - f. Taylor Muriel A W/ Life Estate, PO Box 467, W Dummerston, VT 05357
8. The application was considered by the Development Review Board (DRB) at a public hearing on February 16, 2021.

9. The Development Review Board reviewed the application under the Town of Dummerston Zoning Bylaw, as amended May 22, 2019.
10. A site visit was conducted on February 16, 2021. Present at the site visit were the following:
 - a. Members of the Development Review Board :
 - i. Alan McBean, Josh Pacheco, Cami Elliott, Patty Walior
 - b. Others: Naomi Ullian, Bob and Muriel Taylor
11. Present at the hearing were the following:
 - a. Members of the Development Review Board:
 - i. Alan McBean, Josh Pacheco, Cami Elliott, Patty Walior, Chad Farnum
 - b. Others:
 - i. David Ullian, Michael and Karen Ullian, Joe Debernardo, Mike Barret, Katie and Shaun Lahey, Roger Turner, Linda Rood and Zoning Administrator; Roger Jasaitis
12. During the course of the hearing the following exhibits were submitted to the DRB:
 - a. Application for Zoning Permit for Land Division number: LD392
 - b. Application for Development Review Board for a Waiver.
13. DRB Chairperson, Alan McBean recused himself from this decision due to conflict of interest.

FINDINGS OF FACT

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

1. The applicant seeks a Waiver for a Land Division Permit The subject property is a 26.16 acre parcel located at 2007 East West Rd. in the Town of Dummerston (tax map parcel no. 000118). The property is more fully described in a Deed recorded at Book 128, Page 424, of the Town of Dummerston Land Records.
2. The property is located in the Rural District as described on the Town of Dummerston Zoning Map on record at the Town of Dummerston municipal office and Section 215 of the Zoning Bylaw.
3. Waiver approval is requested for the project for Land Division as that term is defined in Section 701 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; Variable Lot Size / Maximum lot Number
4. The application seeks a Waiver for a 2 lot subdivision with one lot being 3.16 acres rather than the required 5 acres and one lot being 23 acres.
5. The 3.16 lot has permitted house, garage and accessory structures on it already.
5. The applicant seeks to reduce the lot size to be able to keep as much land as possible for her farming and to support existing wildlife habitats.
6. The applicant states the Land Division will create no increased traffic on East West Rd.
7. The applicant states she may have a one time a month CSA (Community Supported Agriculture) pick up.
8. The applicant states that there are no wetlands on the property.

9. The Zoning Administrator stated that there are permitted House, Garage and Accessory Structures on the property now.
10. Murial Taylor stated that as a neighbor she supports the plan.

DECISION AND CONDITIONS

Based upon these findings, and subject to the conditions set forth below, The Development Review Board grants the application for Waiver.

As conditioned, the proposed development meets 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.*

Section 215 support: "Appropriate primary uses include agricultural and forestry activities".

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

Criteria 2 is waived under criteria number 9.

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

The DRB sees no adverse effects due to this Land Development.

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

The need was not created by the applicant.

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

This project conforms 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 purpose of Rural Districts is to provide opportunities for some housing while maintaining moderate levels of forestry, agriculture, open land, and habitat protection.

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 project will have no adverse effect on these criteria.

Waivers using the Variable Lot Size / Maximum Lot Number method for land division permits are allowed in CN, PL, and RUR districts and only for residential uses. Criteria 2 above may be waived and the following additional requirements must be met:

- 8. *No land division shall be smaller than 2 acres. Lot width and depth minimums shall not be less than 200 feet.*

The project meets this criteria. Lot 1; 3.16 acres, lot 2; 23 acres. Lot width and depth minimums are adequate.

- 9. *The land division must be designed to prioritize preservation of undeveloped land, agricultural land, wetlands, waterways, and wildlife habitat, where appropriate.*

The project supports Section 215: "Clustering of detached dwelling units as a means for leaving land undeveloped, and protecting habitats and natural resources should be encouraged."

- 10. *The maximum number of lots allowed by land division shall be determined by dividing the total acreage of the original lot by the minimum lot size of the zoning district.*

The total acreage is 26.16 acres and the parcel being in a Rural district (minimum lot size is 5 acres for this district) determines that the maximum number of lots allowed is 5 lots.

- 11. *The DRB shall attach conditions to the land division permit limiting future subdivision to the Maximum Lot Number minus the number of lots created by the land division permit. Any subsequent division of land shall be based on this new Maximum Lot Number.*

Given the lot size of 26.16 acres and the parcel being in a Rural district (minimum lot size is 5 acres for this district) this subdivision of 3.16 acres leaves 23 acres left to be subdivided up to 4 more times.

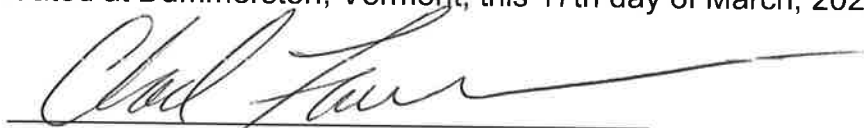
12. The Land Division Permit and the Development Review Board's decision including the new maximum lot number shall be recorded in the Dummerston Land Records.

The maximum lot number of further subdivisions for the 23 acre parcel is 4 lots as of the date of issuance of the Land Division Permit.

The Development Review Board unanimously approves the application subject to the following conditions:

1. The maximum lot number of further subdivisions for the 23 acre parcel is 4 lots as of the date of issuance of the Land Division Permit.
2. The maximum lot number of further subdivisions for the 23 acre parcel is 4 lots and shall be recorded in the Dummerston Land Records.
3. Expiration: Waiver approvals shall expire by limitation if work is not completed within two (2) years from the date they are approved. All work must be completed as shown on any approved plan before the expiration date. One year extensions of this deadline may be granted by the Administrative Officer prior to expiration. Requests for extensions must be made in writing.
4. It is the Applicant's responsibility to be in compliance with any and all Town or State required or issued permits at all times or this approval is null and void.

Dated at Dummerston, Vermont, this 17th day of March, 2021.



Chad Farnum, Vice-Chair

The following members of the Dummerston Development Review Board participated and concur in this decision: Josh Pacheco, Cami Elliott, Patty Walior, Chad Farnum

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.