

TOWN OF DUMMERSTON

Development Review Board

Application for Waiver to Dimensional Requirements

HEARING SPECIFICS

Permit Application Number: 3705

Date Received: January 25, 2023

Applicant: Chloe Learey

Mailing Address: 51 Austin Dr., Brattleboro, VT, 05346

Location of Property: Parcel 621, 1219 Wiccopee Hill Rd., Dummerston, VT, 05346

Owners of Record: Chloe Learey

Application: Waiver to Dimensional Requirements

Date of Hearing: February 21, 2023

INTRODUCTION AND PROCEDURAL HISTORY

1. This proceeding involves review of application #3705 for a Waiver to Dimensional Requirements pursuant to subdivision, under the Town of Dummerston Zoning Bylaw Section 256.
2. The subject property is 7.3 acres, located at 1219 Wiccopee Hill Rd., in the Town of Dummerston (tax map parcel no. 000621). The property is more fully described in a Deed recorded at Book 98, Page 478, in the Town of Dummerston Land Records.
3. 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.
4. On February 2, 2023, notice of a public hearing was published in The Brattleboro Reformer.
5. On February 1, 2023 notice of a public hearing was posted at the following places:
 - The Dummerston Town Office.
 - The West Dummerston Post Office.
 - The Dummerston School.

6. On February 5, 2023, notice of a public hearing was posted at the following place: 1219 Wiccopee Hill Rd., which is within view of the public-right-of-way most nearly adjacent to the property for which the application was made.
7. On February 1, 2023, a copy of the notice of a public hearing was emailed to the Applicant.
8. On February 1, 2023, a copy of the notice of public hearing was mailed to the following owners of properties adjoining the property subject to the application:
 - a. Brown Gail S, 46 Meyers Rd, Dummerston, VT 05301
 - b. Brown Paul Estate Carcare Linda, Brown Stephen D Estate, 46 Meyers Rd, Dummerston, VT 05301
 - c. Brown Timothy L, 47 Meyers Rd, Dummerston, VT 05301
 - d. Knapp Ann, 19 Woodys Dr, Dummerston, VT 05301
 - e. Stadel Dean & Vivian, 1235 Wiccopee Hill Rd, Dummerston, VT 05301
 - f. Tavella Stephen C, 1171 Wiccopee Hill, Dummerston, VT 05301
 - g. Wood Harold Andrew, 71 Woody's Dr, Dummerston, VT 05301
9. The application was considered by the Development Review Board (DRB) at a public hearing on February 21, 2023
10. The Development Review Board reviewed the application under the Town of Dummerston Zoning Bylaw, as amended April 6, 2022.
11. Present at the hearing were the following:
 - a. Members of the Development Review Board:
Alan McBean (Chair), Chad Farnum, Peter Doubleday.
 - b. Others:
Roger Jasaitis (Zoning Administrator), Chloe Learey (Applicant), Gail Brown, Robert Wood, Steve Tavella.
12. A site visit was conducted on February 21, 2023.
13. Present at the site visit were the following:
 - a. Members of the Development Review Board:
Alan McBean (Chair), Chad Farnum, Peter Doubleday.
 - b. Others:
Roger Jasaitis (Zoning Administrator), Chloe Learey (Applicant), Gail Brown, Robert Wood, Steve Tavella, Paul Brown, Ann Knapp.
14. During the course of the hearing the following exhibits were submitted to the DRB:
 - a. Application for Waiver to Dimensional Requirements, number: 3705.

FINDINGS OF FACT

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

1. Chloe Learey (Applicant), outlined in the application (#3705) a request for a Waiver to Dimensional Requirements for her parcel under Section 215 (Rural district). Minimum lot size is 5 acres in this district. She is requesting a Waiver in order to subdivide the parcel

- into two 3.65 parcels. She is planning (if approved) to subdivide the property, sell the lot with the house and eventually pass the remaining southerly parcel to her son.
2. Gail Brown (abutter) asked the Applicant if any new construction would be visible from my house. The Applicant responded that there are no plans for construction on the proposed parcels.
 3. Steve Tavella (abutter) asked what the required setbacks are for the parcel. The Zoning Administrator clarified that the required setback for structures is 40 feet from the property boundaries and 50 feet from the road center.
 4. Steve Tavella then asked what Uses would be allowed on the parcel. The Zoning Administrator outlined the Allowed and Conditional Uses for the Zoning District.
 5. Steve Tavella expressed his concerns regarding subdivision of this parcel. His concerns included garbage on the parcel, rats in the neighborhood, the Applicant's lack of communication regarding the renters of the house, the property value of his parcel.
 6. Alan McBean (Chair) asked Steve to show evidence that would relate to the Zoning Bylaw criteria regarding the Waiver. Steve accused him of being partial towards the Applicant for stopping his presentation. The Chair again asked Steve for evidence supporting his claim that his property value was affected, e.g. photos of Chloe's house. Steve responded that he did not have photos of the Applicant's parcel.
 7. Gail Brown refuted Steve Tavella's claim that the neighborhood never had rats present before the renter's trash was present. She shared that when Steve's parents had chickens, they had rats and that she had one last year in her woodshed eating her birdseed.
 8. Steve Tavella stated that he has had extensive tree work done on his parcel and is concerned about a large cherry tree on Chloe's parcel that puts his house in jeopardy if it should fall.
 9. Steve asked the DRB to not approve the Waiver so that he and the neighbors could negotiate with Chloe to resolve his concerns regarding the property, property maintenance and future land development on the parcel. He stated that he would appeal any decision that approved the Waiver.
 10. The Applicant reiterated that her intention is to hold the land for her son until he is older, she has no intention to build on it. She considers it to be an investment. She stated that the issue of the renters has been resolved after a long legal process. She regrets having rented the house as it was severely damaged by the renters. She also said that she intends to sell the house after fixing it up.
 11. Robert Wood acknowledged the work that Chloe has done to clean up the parcel after the renters were evicted a week ago. He does not hold her responsible for their actions.
 12. Chad Farnum (DRB) advised the Applicant and Abutters that the DRB is impartial in its decisions. The Board bases its decisions on the Zoning Bylaw and Town Plan. Evidence that is not pertinent to the application is not considered.
 13. Steve Tavella again stated that he thinks the Board is being partial in its consideration of this application and wants the DRB to deny the Waiver.

14. Alan McBean (Chair) refuted this claim saying that the Board's decisions are based on the Zoning Bylaw and Town Plan requirements and not personal feelings. Evidence given in hearings must pertain to the application in order to be considered.
15. Chloe Learey(Applicant) stated that she contacted the Town Health Officer regarding the situation with the renters and followed the proper channels in reporting their activity.
16. Steve Tavella said that he did not believe that she reported this. Alan McBean advised him to contact the Health Officer to see his file.
17. Paul Brown stated his concern about the activity on Chloe's parcel but said that her action as a landlord has no bearing on the application. If she sold the parcel to someone else or the renters, the activity might have continued. He appreciates the Board hearing their concerns and wonders if there might be restrictions placed on the parcel if subdivided to increase setbacks or the like.
18. Alan McBean (Chair) reiterated that there are legal avenues to pursue regarding health issues on properties. Chloe contacted the Health Officer. This was the proper thing to do. He also stated that there are Zoning regulations that prohibit trash being on the parcel. From the DRB standpoint, they must rule on the application using the Zoning Bylaw and Town Plan. Testimony must relate to the criteria in these regulations in order to be considered by the Board in their decision.

DECISION AND CONDITIONS

Based upon these findings, and subject to the conditions set forth below, the Development Review Board denies the application for a Waiver to Dimensional Requirements:

1. The DRB finds that this application for a Waiver does not meet the requirements of *Sections 256 of the Zoning Bylaw Waiver Criteria*.

Waiver Criteria:

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

The DRB finds that the waiver 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.*

The DRB finds that the waiver is not needed to enable reasonable use of the parcel.

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

Since the waiver is denied this is not applicable.

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

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

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

The DRB finds that the proposed waiver does not conform to the Town Plan. This parcel lies in the West Hills Focus Area. The Town Plan states: "*As part of the process to develop the future land use districts, focus areas were created to evaluate the landscape and unique values of various parts of Town. These focus areas provide a more detailed description of what each part of Town is like. They should be used in conjunction with the land use districts to evaluate the character of the area during development review.*"

The West Hills is a high elevation area with large, undeveloped tracts of land. It is largely forested and is part of a greater contiguous forested habitat that extends into neighboring towns. A significant portion of the area has been conserved because it serves as a watershed area for Brattleboro's water supply. Residential development is scattered along the roads. Known as Dummerston Hill, it was an early settlement abutting the towns of

Marlboro, Brattleboro and Newfane. Existing low density development, steep terrain and limited access from Dummerston contribute to the remote feeling of this focus area.

Rural District: The rural areas contain low-density development and are generally located at a distance from facilities and services. The Rural areas in the western part of town tend to be forested. These are areas that can support limited residential growth due to topography and soil conditions. The goal of rural lands is to provide for some housing while maintaining forestry and agriculture. Habitat protection and the preservation of the rural landscape are also important.

Policy 1.1 Designate distinct zoning districts to regulate land use activities to ensure compatibility with the purposes of those respective districts.

c. Preserve the Rural District to provide housing while maintaining forestry and agriculture that contribute to the rural character.

The DRB finds that the waiver pursuant to subdivision does not conform to the intent of the Focus Area and Land Use Policy 1.1(c.). In creating lot sizes smaller than the District minimum as stated in the District Dimensional Requirements the future subdivision does not conform with the intent of 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 DRB finds that the proposed waiver pursuant to subdivision, if granted, does not meet the intention of the Zoning District in which the parcel is located. The minimum lot size in the Rural district is 5 acres. The proposed lot sizes would be 3.65 each. The intent of this District is to preserve low density development in a rural setting.

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

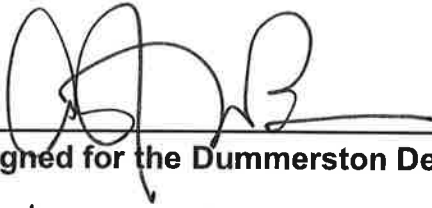
- a. Surrounding properties and property values
- b. The character and aesthetics of the neighborhood
- c. Traffic patterns and circulation
- d. Public health, safety, and utility services
- e. Stormwater management
- f. Water and wastewater capacity.

Since the Waiver is denied this is not applicable.

2. 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 be in violation of the Zoning Bylaw.

The following members of the Dummerston Development Review Board participated and concurred in this decision: Alan McBean, Chad Farnum, Peter Doubleday.

Dated at Dummerston, Vermont, this 8th day of March, 2023.



Signed for the Dummerston Development Review Board

ALAN J. McBEAN

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.