

# **TOWN OF DUMMERSTON**

## **Development Review Board**

### **Application for Waiver**

**Permit Application Number: 3657**

**Date Received: July 4, 2021**

**Applicant: Jason P. Davis**

**Mailing Address: 1673 West River Rd., Dummerston, VT 05301**

**Parcel Number: 000103**

**Location of Property: 1673 West River Rd., Dummerston, Vermont**

**Owner of Record: Jason P. Davis**

**Application: Application: Waiver under Section 256**

**Date of hearing: September 21, 2021**

### **INTRODUCTION AND PROCEDURAL HISTORY**

1. This proceeding involves review of an application for a Waiver to setback requirements submitted by Jason Davis under the Town of Dummerston Zoning Bylaw.
1. The application was received by the Zoning Administrator on July 4, 2021.
2. On August 30, 2021, notice of a public hearing was published in The Commons.
3. On September 1, 2021, notice of a public hearing was posted at the following places:
  - a. The Dummerston Town Office.
  - b. The West Dummerston Post Office.
  - c. The Dummerston School.
4. On September 6, 2021, notice of a public hearing was posted at the following place: 1673 West River Rd., Dummerston, Vermont which is within view of the public-right-of-way most nearly adjacent to the property for which the application was made.
5. On September 1, 2021, a copy of the notice of a public hearing was mailed to the applicant.
6. On September 1, 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. Evans John Lucas I, 1641 West River Rd., Dummerston, VT 05301
  - b. Hellus Ellen B, 40 Hemlock Hill Dr., Dummerston, VT 05301
  - c. Rabideau John A & Katherine H, 1695 Upper Dummerston Rd., Dummerston, VT 05301
  - d. Sherman Arlene, 1703 West River Rd., Dummerston, VT 05301
7. The application was considered by the Development Review Board (DRB) at a public hearing on September 21, 2021.
8. The Development Review Board reviewed the application under the Town of Dummerston Zoning Bylaw, as amended May 22, 2019.
9. A site visit was conducted on September 21, 2021. Present at the site visit were the following:
  - a. Members of the Development Review Board :  
Alan McBean, Josh Pacheco, Cami Elliott, Chad Farnum
  - b. Others: Roger Jasaitis (Zoning Administrator), Jason Davis (Applicant).

10. Present at the hearing were the following:
  - a. Members of the Development Review Board:  
Alan McBean, Josh Pacheco (via Zoom), Chad Farnum, Cami Elliott.
  - b. Others: Roger Jasaitis (Zoning Administrator), Daniel Gering, Jason Davis (Applicant) (via zoom).
11. During the course of the hearing the following exhibits were submitted to the DRB:
  - a. Application for Waiver, number: 3657.
  - b. Application to the Development Review Board for a Waiver under Section 256.

## 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 requirements for three (3) accessory structures. The subject property is a 3.4 acre parcel located at 1673 West River Rd. in the Town of Dummerston (tax map parcel no. 000599). The property is more fully described in a Deed recorded at Book 103, Page 600, of the Town of Dummerston Land Records.
2. The property is located in the Rural Commercial District as described on the Town of Dummerston Zoning Map on record at the Town of Dummerston municipal office and Section 210 of the Zoning Bylaw.
3. Waiver approval is requested for the project for Land Development as that term is defined in Article VIII 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. The application seeks a Waiver for three (3) accessory structures for storage. The size of the structures are as follows:
  - a. 12'x24'
  - b. 18'x20'
  - c. 18'x20'
5. The applicant constructed these structures approximately 10 years ago without seeking Zoning permits.
6. The structures do not fall into the small structure exemption for setbacks (200 sq. ft. or less).
7. The required setback for this Zoning district is 40 feet from the property line.
8. The existing fence is 1 foot from the property line.
9. The existing structures are 2 to 4 feet from the property line.
10. The applicants request a Waiver of 37 feet of setback for the structures from the parcel side boundary.
11. There are interior lights in two structures. No exterior lights are present.
12. The structures will remain this size.
13. The structures are closed on the gable end walls except for the woodshed.
14. The fence behind the structures is 6 feet in height.
15. The foundations are cement blocks and crushed stone.
16. There are no power lines over the structures.
17. There is no supplied water or wastewater.
18. The structures were built when there was a previous owner of the abutting property. The new owners of the abutting property have not questioned the siting of the structures.
19. The structures were noted as being out of compliance with the Zoning Bylaw after a site visit by the ZA on a different matter.

## **DECISION AND CONDITIONS**

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

1. As conditioned, the proposed development meets the requirements of *Sections 256 of the Zoning Bylaw Criteria:*

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

The DRB determines that since the structures have been present for 10 years with no complaints from abutters, it is reasonable to have them remain in place.

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

The waiver allows for the structures to remain in place and allow for vehicle circulation on the parcel.

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

The structures are predominantly screened from the abutting property by the existing fence.

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

The need was inadvertently created by the applicant by not applying for Zoning permits for the structures.

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

This project conforms to the Town Plan.

*f. 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 proposed project will still conform to the purpose of the zoning district.

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

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

The project will have no adverse effect on these criteria.

2. The DRB grants the applicant a waiver of 37 feet for the existing three (3) accessory structures.
3. No exterior lighting shall be installed.
4. The structures shall not be connected to a wastewater system or water system.
5. No permanent foundations or floors shall be installed.
6. The exterior dimensions of the structures shall not be changed.
7. The information included in the Application must be adhered to or the related Zoning Permit is null and void.
8. 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.
9. 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 the approval is null and void.,

Dated at Dummerston, Vermont, this \_\_\_\_\_ day of October, 2021.

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Signed for the Dummerston Development Review Board

The following members of the Dummerston Development Review Board participated and concur in this decision: Joshua Pacheco, Cami Elliott, Alan McBean, 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.