

TOWN OF DUMMERSTON

Development Review Board

Application for Waiver to Setback for Accessory Structure

HEARING SPECIFICS

Permit Application Number: 3703

Date Received: December 21, 2022

Applicant: Zach Corbin

Mailing Address: 243 School House Rd., East Dummerston, VT, 05346

Location of Property: Parcel 413.1, 245 School House Rd., East Dummerston, VT, 05346

Owners of Record: Zachary Corbin & Lewis S Teich

Application: Waiver to Setback for Accessory Structure

Date of Hearing: January 17, 2023

INTRODUCTION AND PROCEDURAL HISTORY

1. This proceeding involves review of application #3703 for Waiver to Setback for an Accessory Structure under the Town of Dummerston Zoning Bylaw Section 256.
2. The subject property is 1.55 acres, located at 245 School House Rd., in the Town of Dummerston (tax map parcel no. 000413.1). The property is more fully described in a Deed recorded at Book 122, Page 13-14, in the Town of Dummerston Land Records.
3. The property is located in the Residential District as described on the Town of Dummerston Zoning Map on record at the Town of Dummerston municipal office and Section 225 of the Zoning Bylaw.
4. On December 28, 2022, notice of a public hearing was published in The Brattleboro Reformer.
5. On December 28, 2022 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 January 8, 2023, notice of a public hearing was posted at the following place: 245 School House 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 December 28, 2022, a copy of the notice of a public hearing was emailed to the Applicant.
8. On December 28, 2022, a copy of the notice of public hearing was mailed to the following owners of properties adjoining the property subject to the application:
 - a. Black Birch Properties Llc, 86 Hillside Dr, E Dummerston, VT 05346
 - b. Duby Jacob A & Cheryl A, 157 School House Rd, E Dummerston, VT 05346
 - c. New England Power Corp, C/O Property Tax Dept, 40 Sylvan Rd, Waltham, MA 02451
9. The application was considered by the Development Review Board (DRB) at a public hearing on January 17, 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, Cami Elliott, Peter Doubleday, Via Zoom:
Natalie Pelham-Starkey.
 - b. Others:
Roger Jasaitis (Zoning Administrator),
12. A site visit was conducted on January 14, 2023.
13. Present at the site visit were the following:
 - a. Members of the Development Review Board:
Chad Farnum, Peter Doubleday.
 - b. Others:
Zach Corbin (Applicant).
14. During the course of the hearing the following exhibits were submitted to the DRB:
 - a. Application for Waiver to Setback, number: 3703.
 - b. Exhibit A: Letter to the DRB from the Applicant; Zach Corbin.

FINDINGS OF FACT

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

1. Zach Corbin (Applicant), outlined in the application (#3703) and letter (Exhibit A) request for a 30' Waiver to Setback for a 10'x18' food vending structure that currently is sited within the road setback, 20 feet from the road center. He would like the structure to be sited temporarily in its current location until it can be moved to the Hermit Thrush Brewery at 7

Rt. 5, Dummerston, VT. This is projected to happen in 12 to 18 months pending site work and permitting from the Hermit Thrush Brewery.

2. The Zoning Administrator clarified that although the structure is exempt because of size (under 200 square feet) and does not need a Zoning permit, the structure is in violation of the Bylaw because it is sited within the road setback.
3. The Zoning Administrator noted that no statement, application or inquiry has been made by the Hermit Thrush Brewery regarding this application or for siting the structure on their parcel. Because the Hermit Thrush Brewery is under a Conditional Use permit, they would need to come before the DRB and modify their permit to site this structure at that location.

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 Setback for the Accessory Structure:

1. The DRB finds that this application for a Waiver to setback is based on the assumption that the Hermit Thrush Brewery will accept this structure on it's parcel in the next 12 to 18 months. The DRB cannot base this decision on an unknown outcome of a possible future decision regarding the Hermit Thrush Brewery.
2. The application for 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 structure 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 structure is on skids and by moving the structure out of the setback would eliminate the need for a waiver.

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 created by the applicant by moving the structure to its current location within the road setback.

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

Since the waiver is denied this is not applicable.

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.*

Since the waiver is denied this is not applicable.

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.

3. The DRB will allow the Applicant until May 1, 2023 to move the structure to an appropriate location on this parcel that meets the Zoning Bylaw requirements for setback or to move the structure off of the parcel.

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 be in violation of the Zoning Bylaw.

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

Dated at Dummerston, Vermont, this 31ST day of January, 2022.



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.