

# TOWN OF DUMMERSTON

## Development Review Board

### Conditional Use and Site Plan Review Application Findings and Decision

#### HEARING SPECIFICS

**Permit Application Number: 3714**

**Date Received: April 4, 2023**

**Applicant: Evan Fitzgerald**

**Mailing Address: 164 Main St., Colchester, VT 05446.**

**Location of Property: Parcel 000865, VT Rt. 30 at the covered bridge, Dummerston, VT, a Conservation District.**

**Owner of Record: Town of Dummerston**

**Application: Conditional Use and Site Plan Review for Development in a Flood Hazard Area.**

**Date of Hearing: June 20, 2023**

#### INTRODUCTION AND PROCEDURAL HISTORY

1. This proceeding involves review of an application for a Conditional Use and Site Plan Review for Development in a Flood Hazard Area under the Town of Dummerston Zoning Bylaw Sections 715 – 726.
1. On May 31, 2023, notice of a public hearing was published in The Brattleboro Reformer.
2. On May 31, 2023, notice of a public hearing was posted at the following places:
  - The Dummerston Town Office.
  - The West Dummerston Post Office.
  - The Dummerston School.
3. On June 6, 2023, notice of a public hearing was posted at the following place: Park & Ride Commuter Parking Lot, Dummerston Covered Bridge, Dummerston, VT, which is within view of the public-right-of-way most nearly adjacent to the property for which the application was made.
4. On May 31, 2023, a copy of the notice of a public hearing was emailed to the applicant.

5. On May 31, 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. Butler Frank, 2179 East West Rd, Dummerston, VT 05301
  - b. Forthofer Scott & Sara, 2915 West River Road, Dummerston, VT 05301
  - c. Koski Kevin D., PO Box 466, W Dummerston, VT 05357
  - d. Mapleton Farm Inc, 19 Timber Ln, Brattleboro, VT 05301
  - e. Tyler Mary, 50 Camp Arden Rd, Dummerston, VT 05301
6. The application was considered by the Development Review Board (DRB) at a public hearing on June 20, 2023.
7. The Development Review Board reviewed the application under the Town of Dummerston Zoning Bylaw, as amended April 6, 2023.
8. Present at the hearing were the following:
  - a. Members of the Development Review Board:  
Alan McBean, Cami Elliott, Chad Farnum, Peter Doubleday.
  - b. Others:  
Cory Ross (applicant), Jordan Duffy (applicant), Roger Jasaitis (Zoning Administrator).
9. A site visit was conducted on June 20, 2023.
10. Present at the site visit were the following:
  - a. Members of the Development Review Board:  
Alan McBean, Cami Elliott, Peter Doubleday, Chad Farnum.
  - b. Others:  
Cory Ross (applicant), Jordan Duffy (applicant), 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: 3714.
  - b. Application to the Development Review Board for a Conditional Use Permit and Site Plan Review, number: 3714.
  - c. The Vermont Agency of Natural Resources River Corridor and Floodplain Protection Program letter dated April 27, 2023.

## **FINDINGS OF FACT**

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

1. The applicant seeks a Conditional Use permit for construction in a Flood Hazard Area, under Sections 715-726 of the Dummerston Zoning Bylaw, at Parcel 000865, VT Rt. 30 at the covered bridge, Dummerston, VT, a Conservation District.

2. The subject property is a 2 acre parcel located at VT Rt. 30 at the covered bridge, in the Town of Dummerston (tax map parcel no. 000865). The property is more fully described in a Deed recorded at Book 84, Page 467, in the Town of Dummerston Land Records.
3. The property is located in the Conservation District as described on the Town of Dummerston Zoning Map on record at the Town of Dummerston municipal office and Section 205 of the Zoning Bylaw.
4. The Application states Conditional Use approval is requested for: Infiltration steps and rain garden to mitigate erosion and improve water quality in the West River.
5. The application requires review under the following sections of the Town of Dummerston Zoning Bylaw: Article 4 Flood Hazard Area Regulations, Article 7; Section 720- 726 Development Review Board and Site Plan Approval.
6. Applicant: Cory Ross (Applicant) states that this project was identified by the Dummerston Conservation Commission to stabilize the access to the West River and stormwater improvements as a water quality project to limit runoff into the West River from the access stairs and parking area. This project would include improving the stairs and access with rain infiltration steps and creating a rain garden between the covered bridge and access steps that would gather water from the parking area and disperse it to the existing rain garden on the north end of the parking lot. This project has been approved preliminarily by the Vermont State Agency of Natural Resources and is supported by VTRANS.
7. Zoning Administrator: The application is also supported by the Dummerston Selectboard.
8. Alan McBean (DRB) is the existing rain garden at the north end functioning as intended? Cory Ross (Applicant) stated that it can handle the additional flow and is being maintained.
9. Cami Elliott (DRB) asked who is responsible for maintaining that area and who will be responsible for maintaining the new construction? Cory Ross (Applicant) stated that we don't know what the implementation and maintenance funding source will be yet, but typically the funding agreement would include funding for the Town to maintain the area.
10. (DRB) asked if the proposed design has been approved? The Applicant answered yes, by John Broker Campbell for development in the Flood Hazard Area. However the final plans have not been approved as of yet. We are at the 60% design stage. Final plans would be submitted to the ANR for approval with funding in place. The basic elements are on the current plans with specific anchoring of the lower steps yet to be approved.
11. Alan McBean (DRB) clarified that the infiltration steps are built of pressure treated timbers with gravel infill. The timbers are spiked into the ground with steel rebar. The design was indicated on the plans.
12. Cami Elliott (DRB) asked who would actually build the structures. Cory Ross (Applicant) stated that the design would go out to bid for a contractor. The project would be supervised and inspected by Evan Fitzgerald, Fitzgerald Environmental.
13. Cami Elliott (DRB) asked about how the funding works. The Applicant stated that the funding is initiated on the design so as the design is finished the funding will be applied for.

- With the DRB approval the design could go to a 90% complete set of plans that could be submitted to VTRANS and the ANR for final approval. At that point the funding for construction would be applied for. Construction would start late September - early October.
14. Applicant: There will be no change to the Parking on site. The lot will be closed for 2 days during construction.
  15. Lighting: No extra lighting will be added to the site.

## **DECISION AND CONDITIONS**

Based upon these findings, and subject to the conditions set forth below, The Development Review Board APPROVES the application for Conditional Use; development in a Flood Hazard Area.

As conditioned, the proposed development meets the requirements of *Sections 721 of the Zoning Bylaw General Standards*:

1. The capacity of existing or planned community facilities;
  - a. The application meets this requirement.
2. The character of the area affected;
  - a. The application meets this requirement.
3. Traffic on roads and highways in the vicinity;
  - a. The application meets this requirement.
4. By-laws then in effect;
  - a. The application meets this requirement.
5. Utilization of renewable energy sources;
  - a. The application meets this requirement.

As conditioned, the proposed development meets the requirements of *Sections 722 of the Zoning Bylaw Specific Standards*:

1. *Section 205 Conservation*
  - a. 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. Specifically, protecting natural resources and allowing for low intensity recreation.
2. *Section 324 Riparian Area Regulations*
  - a. The proposed development meets the requirements.
3. *Section 615 Setback Requirements*
  - a. The proposed development meets the requirements.
4. *Section 620 Off-Street Parking Requirements*

- a. The proposed development meets the requirements.
- 5. *Section 635 Landscaping Requirements*
  - a. The proposed development meets the requirements.
- 6. *Section 640 Erosion and Sediment Control*
  - a. The proposed development meets the requirements.
- 7. *Section 660 Performance Standards*
  - a. The proposed development meets the requirements.
- 8. *Section 669 Permittable On-Premise Signs*
  - a. The proposed development meets the requirements for instructional signs per 10 V.S.A. § 494(8).

As conditioned, the proposed development meets the requirements of *Sections 726 of the Zoning Bylaw Site Plan Review Procedure*:

- 1. Compatibility with adjacent land uses.
  - a. The proposed development meets the requirements.
- 2. Maximum safety of vehicular circulation between the site and the street network.
  - a. The proposed development meets the requirements.
- 3. Adequacy of circulation, parking and loading facilities with particular attention to safety.
  - a. As conditioned, the proposed development meets the requirements.
- 4. Adequacy of landscaping, screening and setbacks in regard to achieving maximum compatibility and protection of adjacent property.
  - a. The proposed development meets the requirements.
- 5. Lighting, noise, odors, protection of renewable energy resources.
  - a. The proposed development meets the requirements.
- 6. Furtherance of the provisions of the Dummerston Town Plan.
  - a. The proposed development conforms to the Town Plan.
    - i. Water and Wetland Resources; Policies*
      - 1. Policy 1.2 Provide long term stewardship of riparian habitat.
      - 2. Policy 1.3 Minimize Impervious Surfaces
      - 3. Policy 1.6 Retain wetland areas in their natural state for wildlife habitat protection, as retention areas of surface runoff, and for habitat and scenic values.
    - ii. Cultural Resources*
      - 1. Policy 1.1 Maintain and enhance access to public lands and waters.
        - G. Increase town awareness of and encourage participation in West River Byway activities.

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

1. The Structures and site work must be located and constructed as indicated on the Application.
2. The information included in the Application must be adhered to or the related Zoning Permit is null and void.
3. Fencing or other measures must be installed to prevent pedestrian and vehicular traffic through or near the new rain garden to prevent compaction of the soils.
4. Fencing and handrails must be installed to insure access and safety on the stairs.
5. Instructional signs are allowed: *10 V.S.A. § 494(8) Small signs displayed for the direction, instruction, or convenience of the public, including signs which identify rest rooms, freight entrances, posted areas or the like, with a total surface area not exceeding four square feet.* Other additional signage requires approval by the DRB.
6. Expiration: Zoning Permit 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 to the Administrative Officer.
7. 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.

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

**Dated at Dummerston, Vermont, this 18<sup>th</sup> day of July, 2023.**



**Signed for the Dummerston Development Review Board**

ALAN J. McBEAN

**Printed name**

**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.