

TOWN OF DUMMERSTON

Development Review Board

Appeal of Zoning Administrator Decision Re: Mark Younger, Permit #3735 Findings and Decision

Permit Application Number: 3739

Date Received: August 15, 2023

Appellants: Eesha Williams, Elizabeth Wood, Ann Schroeder, Jane Smith, Sarah Linn, Rebecca Hamil, Jesse Wagner, Emily Wagner.

Mailing Address: 111 Dutton Farm Rd., Dummerston, VT 05301

Location of Property: Parcel #654, Middle Rd., Dummerston, VT 05346

Owner of Record: Mark Younger

Application: Appeal of Zoning Administrator Decision Re: Mark Younger, Permit #3735

Date of hearing: October 17, 2023

INTRODUCTION AND PROCEDURAL HISTORY

1. This proceeding involves review of an application for an Appeal of Zoning Administrator Decision Re: Mark Younger, Permit #3735 under the Town of Dummerston Zoning Bylaw Section 716.
2. On September 27, 2023, notice of a public hearing was published in The Commons.
3. On September 27, 2023, notice of a public hearing was posted at the following places:
 - The Dummerston Town Office.
 - The West Dummerston Post Office.
 - The Dummerston School.
4. On October 2, 2023, notice of a public hearing was posted at the following place: Middle Rd. Parcel 654, 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 27, 2023, a copy of the notice of a public hearing was mailed to the applicant.
6. On September 27, 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. Aquadro Dana & Carl, 180 Autumn Gem Dr, E Dummerston, VT 05346
 - b. Bryck Richard L & Stacy, 904 Middle Rd, Dummerston, VT 05301
 - c. Davidson Todd C & Goepf Christine E W/Life Estate, 1320 Middle Rd, Dummerston, VT 05301

- d. Elysian Hills Revocable Trust, Manix Jack W & Karen E J Trustees, 1190 Rt 5,E Dummerston, VT 05346
 - e. Ferguson Eliot, 72 Sullivan St, Brooklyn, NY 11231
 - f. Gallup Franklin R & Una C Trustees, Gallup F R & U C Joint Rev Trust, 960 Middle Rd, Dummerston, VT 05301
 - g. Herman Christopher Et Al, C/O Stewart Herman, 2021 Harriet Ave, Minneapolis, MN 55405
 - h. Linn Sarah C, Hamil Rebecca A, 1170 Middle Rd, Dummerston, VT 05346
 - i. Normandeau Daniel E &, Ritson Carrie S, 1179 Kipling Rd, Dummerston, VT 05301
 - j. Schroeder Ann C, 1058 Middle Rd, Dummerston, VT 05301
 - k. Smith Jane W, PO Box 8141, Brattleboro, VT 05304
 - l. Sorenson Colonel L & Gail J, 1234 Middle Rd, Dummerston, VT 05301
 - m. Still Charles H Jr & Michelle B, 2711 Quenby Ave, Houston, TX 77005
 - n. Wagner Jesse & Emily, 1044 Middle Rd, Dummerston, VT 05301
7. The application was considered by the Development Review Board (DRB) at a public hearing on October 17, 2023.
 8. The Development Review Board reviewed the application under the Town of Dummerston Zoning Bylaw, as amended May 22, 2019.
 9. Present at the hearing were the following:
 - a. Members of the Development Review Board:
Cami Elliott ,Peter Doubleday, Chad Farnum (Acting Chair).
 - b. Others:
Roger Jasaitis (Zoning Administrator), Jody Normandeau, (Colonel) Lew Sorenson (Abutting Landowner), Rebecca Hamil (Appellant), Sarah Linn (Appellant), Jesse Wagner (Appellant), Elizabeth Wood (Appellant), Eesha Williams (Appellant), Jack Manix (Abutting Landowner), John Orgerteider, Mark Younger (Landowner), Mark Bannon, Alex Wilson, Ann Schroeder (Appellant), William Gallagher, Gail Sorenson (Abutting Landowner), Nancy Lang.
 10. During the course of the hearing the following exhibits were submitted to the DRB:
 - a. Application for Appeal of Zoning Administrator Decision: # 3739.
 - b. Appeal of Zoning Administrator Decision Re: Mark Younger, Permit #3735
 - c. Zoning Administrator Report dated October 4, 2023
 - d. Exhibit A; Letter to DRB dated August 11, 2023 by Rebecca Hamil & Sarah Linn.
 - e. Exhibit B; Email to Dummerston Selectboard Re: Mark Younger Access Permit.
 - f. Exhibit C; Vermont Agency of Natural Resources Atlas map of wetlands.
 - g. Exhibit D; Email chain; Peggy Winchester re: Meeting with Mark Younger.
 - h. Exhibit E; Email; Mark Younger re: permit issuance.
 - i. Exhibit F; Email chain; Eesha Williams re: notice of permit issuance; appeals.
 - j. Exhibit G; Email chain; Jesse Wagner re: appeal guidance.
 - k. Exhibit H; Email; Mark Younger; Notice of public hearing, photo.
 - l. Exhibit I; Email chain; Zeke Goodband; statutory appeal period.
 - m. Exhibit J; Email; ZA; statutory appeal period.
 - n. Exhibit K; Email; Todd Davidson (Selectboard), Appeal signature issue.

FINDINGS OF FACT

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

1. The applicants are appealing the Zoning Administrator(ZA) decision to issue a zoning permit for a Single Family Residence on July 27, 2023 under the Town of Dummerston Zoning Bylaw, Section 716. The subject property is a 67 acre parcel located on Middle Rd., in the Town of Dummerston (tax map parcel #000654). The property is more fully described in a Deed recorded at Book 91, Page 565, in the Town of Dummerston Land Records.
2. The property is located in the Conservation and Rural Residential Districts as described on the Town of Dummerston Zoning Map on record at the Town of Dummerston municipal office and Sections 205 and 220 of the Zoning Bylaw.
3. Eesha Williams (Appellant) gave an outline of the appeal reading highlights and quoting from Dummerston Bylaws and Town Plan. He states that Mr. Younger's development is the opposite of the Bylaw and Town Plan goals of protecting the natural environment, enhancing flood resistance, and the protection of wetlands. He and other interested people hope to encourage the creation of a Town forest in order to meet these goals, as well as create additional recreational opportunities and increase the quality of air, land, water and wildlife resources.
4. Eesha Williams (Appellant) then raised an objection with the timing of the posting of the notice of the issuance of the zoning permit by the landowner (Mark Younger), saying that the proper number of days was not observed.
5. Roger Jasaitis (Zoning Administrator) read from his report to the DRB on this appeal.
6. Mark Younger (Landowner) stated that the notice of the issuance of the zoning permit was posted on July 30th. He referenced Exhibit H (Email; Mark Younger; Notice of public hearing, photo) and presented a time and date stamp on his phone with the photo to the DRB.
7. Jesse Wagner (Appellant) stated that he never saw the posting.
8. Other Appellants also stated that they never saw the posting.
9. Jesse Wagner (Appellant) asked how boundary lines are determined in relation to setbacks for structures. Chad Farnum (Acting Chair) responded that the Town tax maps are used in this regard. This was confirmed by the Zoning Administrator. Cami Elliott (DRB) and Chad Farnum (Acting Chair) spoke of examples of past boundary discrepancies that came up in DRB proceedings.
10. Sarah Linn (Appellant) stated that she believes the boundary between her property and Mark Youngers has not been correctly surveyed. She understands that the DRB can not make that determination.
11. Jack Manix (Abutting Landowner) asked if Mark Younger's property had been surveyed? Mark Bannon (Engineer for Mark Younger) said that he had surveyed the property line in

question and flagged it. He also stated that there is a recorded survey for this parcel on record in the Town office.

12. Jody Normandeau voiced concerns about “no trespassing” signs on the property, how this is different from “posting” the property for hunting. Also that the wildlife on the parcel will be impacted by this development. She is concerned about the wetlands on the property being preserved. She wanted clarification if this zoning permit is strictly for the residence or if it affects other development on the lot, e.g. logging, etc. Chad Farnum (Acting Chair) stated that this appeal is for the residence. Jody Normandeau then questioned the placement of the house and was referred to the property map by the DRB. Mark Younger (Landowner) stated that all abutting landowners were mailed a copy of the application map of the property showing where the residence is located on the parcel.
13. Jesse Wagner (Appellant) asked for clarification from the Zoning Administrator concerning the history of subdivision and access route approval for this property. ZA explained the process but said that the subdivision of this property predated his tenure as ZA. Chad pointed out that these issues were not the purview of the DRB.
14. Mark Bannon, Mr. Younger’s engineer, asked the ZA which Zoning Districts in Town had a zoning classification that allowed Single Family Homes as an allowed Use. The ZA answered that all Districts in Town allow this Use.
15. (Colonel) Lew Sorenson (Abutting Landowner) stated that his property has been surveyed and the property line is pinned. Colonel Sorenson said he was speaking as a long-time community planner and advisor to the Dummerston Town Plan, and Bylaws. He had also worked on similar issues on a local, State and Federal level. He had been a member of the Planning Commission and DRB and had served as its Chair. He stated that he had reviewed the zoning permit materials involved in this appeal and he supports the ZA’s approval of the permit. He regretted that there was not a site visit prior to the meeting since he felt it would have helped all parties to see things as they are at a ground level.
16. Colonel Sorenson said that the ZA deserves our support because he has done his job exactly as he must. The DRB must also apply the Bylaw, as written, in their decision upon this appeal. Mr. Sorenson completed his comments by saying that he hopes that Mr. Younger will go about his future business on this property with a sensitivity to the habitat and environmental issues that it deserves.
17. Chad Farnum (Acting Chair) thanked the residents for remaining civil through this process. He thanked Colonel Sorenson for laying out the mandate for the DRB and how it must render its decision based on the Zoning Bylaw without regard to popularity.

DECISION AND CONDITIONS

Based upon these findings the Development Review Board DENIES the Appeal for issuance of Zoning Permit : Mark Younger, Permit #3735.

The DRB, in consideration of this Appeal, noted that the State Statute named in item #3 and #5; (24 V.S.A. § 2302) is incorrect. The language quoted in the Appeal is taken from 24 V.S.A. § 4302. This incorrect notation does not alter the DRB's conclusion to deny the appeal.

In response to "#5 The grounds why the requested relief is believed proper under the circumstances":

The first paragraph under this heading concerns a property boundary dispute between Mr. Younger and the abutting landowners, Sarah Linn and Rebecca Hamil. This dispute is not the jurisdiction of the DRB to settle. If, after the dispute is settled between the parties, the boundary line changes, the Zoning Bylaw setback requirements for this Zoning district will still need to be met by Mr. Younger.

The second paragraph cites the purpose of the Zoning Bylaw in relation to the Town Plan and Vermont Planning Goals. It is the opinion of the DRB that the Zoning Bylaw supports the Town Plan and Vermont Planning Goals. The DRB finds that the Zoning Administrator in his decision to issue the permit did not violate any provision or section of the Zoning Bylaw. Furthermore, the Appellants did not allege any provision or section of the Zoning Bylaw that was violated by this decision.

The DRB notes that Mr. Younger obtained a permit from the Agency of Natural Resources (ANR) (Wetland Individual Permit Project Number: 2022-0950) to develop this parcel. The ANR states in the permit; *"It was found by the ANR that this conditional use will not result in any undue, adverse effects to the protected functions of the significant wetland located at 654 Middle Rd. in Dummerston, Vermont"*. The DRB cites this permit as evidence that the wetland environment will be protected and meets the planning goal stated in paragraph three of this section of the appeal.

The Appellants have cited State and local planning goals saying that approving this appeal (and denying the Zoning permit) would comply with State statute. The Appellants have provided insufficient evidence that these planning goals cited will not be met by the issuance of the Zoning permit #3735.

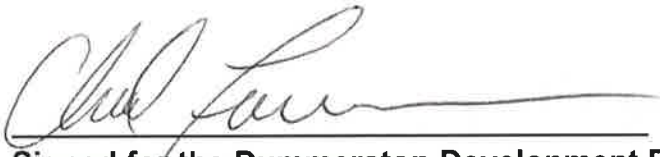
The DRB recognises that this parcel is privately owned and the Town has no right to mandate public access for recreational opportunities on private land. It is the right of landowners to post their property. The DRB has no jurisdiction to force the sale of this parcel for use as a Town forest to further this goal.

Finally, the DRB sees no defect in the warning and posting for this appeal. Exhibits E through J support this conclusion. The fact that all parties had adequate warning of the hearing is supported

by 24 V.S.A. § 4464: (5) *No defect in the form or substance of any requirements in subdivision (1) or (2) of this subsection shall invalidate the action of the appropriate municipal panel where reasonable efforts are made to provide adequate posting and notice.* It is the opinion of the DRB that the Zoning Administrator took great effort to provide notice of the issuance of the Zoning permit #3735 and DRB hearing #3739 to Mr. Younger and the Appellants, meeting the intent of the statute.

The following members of the Dummerston Development Review Board participated and concurred in this decision: Cami Elliott ,Peter Doubleday, Chad Farnum (Acting Chair).

Dated at Dummerston, Vermont, this 7th day of November, 2023.



Signed for the Dummerston Development Review Board



Print 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.