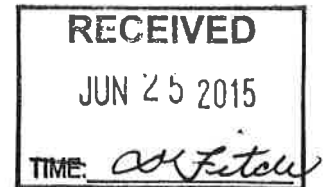


TOWN OF CALAIS  
DEVELOPMENT REVIEW BOARD



**Re: Permit Application #2015-13  
Mark C. & Brenda S. Mooney  
676 Upper Road  
East Calais, VT 05650**

**Conditional Use Permit review**

Proposed reconstruction of driveway at 546 Upper Road, Calais  
(PID # 300546) in Village District

**FINDINGS AND ORDER**

**Introduction:**

Mark C. & Brenda S. Mooney submitted an application on Sept 18, 2013 to the Calais Zoning Administrator for a Minor Subdivision for their 6 acre lot at 676 Upper Road (PID #05-076.000). The Subdivision was approved Sept 19, 2013, creating two new parcels<sup>1</sup>: PID # 300676, Tax Map #05-076.000 @ 3.1 acres with dwelling and PID # 300546, Tax Map # 05-076.100@ 2.9 acres. Ownership of the 3.1 acre parcel was recorded as transferred in the Calais land records on 2/19/2015.

Mark & Brenda Mooney applied to the Calais Selectboard for a Curb Cut for a driveway accessing the 2.9 acre parcel at 546 Upper Road on Feb 17, 2015. The Curb Cut was reviewed by the Selectboard and approved on February 23, 2015<sup>2</sup>.

Mark & Brenda Mooney applied for a Zoning Permit for the construction of a single family residence at 546 Upper Road on May 4, 2015.

Sometime between May 4 and May 13, the Calais Zoning Administrator noticed that driveway construction had commenced and that it was occurring on a slope greater than 15%. The Zoning Administrator notified the Mooneys by letter dated May 13 that no permit had yet been issued for the construction that was underway. The letter explained that per Calais *Land-Use and Development Regulations, Section 3.13*, a Conditional Use Permit was required for development on Steep Slopes (15% or greater). The Mooneys applied for a Condition Use Permit on May 19, 2015.

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<sup>1</sup> The portion of the original 6-acre parcel with the dwelling retained the same Parcel ID and Tax Map #, even after it was subdivided. Because the acreage has been modified by the subdivision, it is regarded as a "new parcel" for zoning purposes.

<sup>2</sup> It is likely that 2/17/15 was incorrectly entered as the date of Selectboard curb cut approval on the town's record of permit applications. Selectboard minutes show that approval was granted 2/23/15)

## June 4, 2015 Hearing:

On June 4, 2015, the Calais Development Review Board gathered at the Calais Town Office for a warned public meeting to review the Mooney's application. DRB Members attending were Margaret Bowen, Walter Ames, Nedene Martin, Ruth Porter, and DRB alternates Jack Russell and John McCullough. Also in attendance were applicants Mark and Brenda Mooney, engineer Dexter LaFavour (representing the applicants), abutting property owners Maria Melekus, Laura & Steven Bateman, David & Betsy Parah, Alan & Carolyn Beauregard, and Douglas Rowell, and Calais Zoning Administrator Dot Naylor.

Mr. Mooney and Mr. LaFavour explained elements of the proposal. The explanation was accompanied by a drawing prepared by engineer LaFavour entitled **Water and Wastewater Disposal Improvements, Plans and Details (May 2015, Project # 15081(Draft))** in which existing topographic contours and proposed new contours for elements of the proposal were graphically represented. Based on this drawing it is seen that:

- 1) A new driveway approximately 200 feet in length would be constructed on the side slope of land with slopes between 23% and 34%.
- 2) The new driveway width would be 12'.
- 3) The new driveway slope would be approximately 16%.
- 4) A new level parking area approximately 20' x 52' is proposed at the bottom end of the driveway.
- 5) No significant cutting of the existing side slope is part of the new driveway proposal. Almost all construction involves adding fill. The drawing shows that some cutting of the existing side slope would be required for a stone-lined swale along the uphill side of the new driveway and to create the new level parking area.
- 6) It was presented that house site is located at a point where the existing grades approach 15%.
- 7) It is seen from the drawing that the Septic Shield crosses the applicants' western property line. It was determined that the property onto which the Septic Shield extends is owned by Mr. and Mrs. Beauregard. Mr. and Mrs. Beauregard were present during this determination and voiced no opposition to this element of the proposal.

Because the Mooneys' project site is a short drive from the Town Office, the DRB agreed to continue the Hearing that same evening at the site. At this site visit, it was observed that a large portion of the driveway had been "roughed-out" with imported fill. It was observed that the entire proposed driveway, including the level parking area, had not yet received the entire fill required per the site drawing; the level parking area had not been created and the house building site had not been marked out. It was observed that a new slope of approximately 50% had been created by the new fill for the built-up driveway along most of its western edge.

Following the site visit, the hearing was closed.

**Additional Information:**

Though not presented specifically as material at this DRB Hearing, the owner has, upon signing the Curb Cut Application, accepted specific conditions on the proposed development. Additional conditions can be found in the Selectboard minutes of February 23.

1) Selectboard(unapproved minutes 2/23/15):

*Mooney Curb Cut: There were a number of ribbons flagging the site of the proposed curb cut on Upper Road making it difficult for Alfred to be sure of the exact location. There will need to be lots of fill due to the drop-off from the road. No culvert is needed, but there needs to be a 20' level space from the road and no more than 3% grade. The Mooney's permit will specify that the curb cut needs to comply with State of VT Agency of Transportation Standard B-71 (which is provided to applicants with the curb cut application form). Site distance is okay. Toby made a motion to approve the curb cut with the condition that B-71 standards be followed. Scott seconded the motion. The motion passed 4-0.*

**Findings:**

The proposal under consideration was reviewed with respect to Steep Slopes:

Steep Slopes in general

*Calais Land-Use and Development Regulations, Section 3.13 Steep Slopes*

*(A) Development on slopes in excess of 15% shall be subject to conditional use review by the DRB under Section 5.3. The DRB may require the submission of an acceptable erosion and sedimentation control plan, prepared by an engineer licensed by the state, which provides detailed information regarding temporary and permanent erosion and sedimentation control measures to be used prior to, during and following construction.*

The DRB understands this to mean that erosion and sediment control are the primary objectives of Zoning Regulation language as it relates to steep slopes.

The DRB sees erosion, as a potentially destructive force, being a concern where steep slope surface water runoff from a driveway could damage a town road. Specific language in the Calais Curb Cut Application forms makes it clear that this is an important steep slope development concern. In this specific driveway proposal, surface water runoff is away from the town road. There are no conditions which would prevent the applicants from constructing this driveway such that its intersection with Upper Road would not be in compliance with existing town standards having to do with erosion of town roads.

Erosion and sediment control on the new fill is addressed in part on the drawings submitted by the applicants. Silt fence is indicated along the downhill side of all disturbed areas on site, not just the new driveway fill. Additionally, at the new driveway fill, the submitted plan calls out:

"INSTALL NORTH AMERICAN GREEN S150BN NETTING, OR EQUAL, ON ALL DISTURBED SLOPES STEEPER THAN 1:3, KEY IN AT TOP AND BOTTOM OF SLOPE (NOTE: FABRIC TO BE INSTALLED PER MANUFACTURER'S RECOMMENDATIONS)"

Though not indicated on the draft plan, engineer LaFavour stated that the newly created slopes would be seeded for grass.

To the degree that these erosion and sediment control measures are adequate, it is understood that disturbed areas are at about 600 feet from the nearest stream buffer. And, it is seen from the Vermont ANR Natural Resources Atlas that the parcel being developed contains no significant wildlife habitat or environmental feature that would be adversely impacted by the proposed development. It was observed at the site visit, which came soon after a period of prolonged rainfall, that even without final erosion and sediment control measures in place, there was no visible sedimentation at toe of the new fill.

As far as the grade of the driveway itself, grades in excess of 15% are not prohibited. Per *Vermont Agency of Transportation Standard B-71* line 9:

*Driveway grades steeper than those shown (15%) may be allowed as long as a 20' approach area is achieved (driveway width x 20' at 3% maximum grade) "for the vehicle to pause before entering the highway."* This standard is part of the Calais Curb Cut ordinance. As presented by LaFavour to the DRB, this approach area would be part of the driveway.

#### Steep Slopes with respect to Conditional Use Standards

Per 5.3, (A), (B), (C) requirements met

Per 5.3, (D), Required Standards

5.3, (D), 1) There is no significant increase on municipal services due to the development of an additional single family dwelling as the Mooneys have proposed. The DRB does have a concern regarding the ability for emergency responders to safely access the house site via the proposed new driveway. **See DRB Conditions on the Project**

5.3, (D), 2) The proposal is consistent with the character of the neighborhood/area. The use is consistent with district standards. There is no significant visual distraction viewable from the public right-of-way caused by any element of the proposal.

5.3, (D), 3) There is no significant impact on traffic.

5.3, (D), 4) Per Zoning Permit application signed by the Mooneys, permission to begin construction shall be contingent on obtaining all state issued water and waste water permits.

5.3, (D), 5) no energy impacts

Per 5.3, (E) Discretionary Standards

5.3, (E), 1), No adverse health or environmental impacts associated with the proposal.

5.3, (E), 2), See 5.3, (D), 1. This discretionary standard lets the DRB set safe access by emergency vehicles as a condition of the permit.

5.3, (E),3), The visual impact of the proposal from the public right-of-way is negligible, and no landscaping is required for screening.

5.3, (E),4), The DRB does not impose any additional buffers.

5.3, (E),5), No buffer management plan is required. Erosion and Sediment Control requirements are found at **DRB Conditions on the Project**.

#### **DRB Conditions on the Project:**

In granting Conditional Use, the DRB may impose conditions it deems necessary and appropriate under the circumstances to implement the purposes of the Calais Land Use and Development Regulations, and the Calais Town Plan.

1. Sections 5.3, (D), 1 and 5.3, (E),2 allow the DRB to condition a permit with regard to the provision of services. The DRB asks that safe access to the site for ambulance and fire trucks be reviewed by a representative of the East Montpelier Volunteer Fire Department (EMFD) and any other designated emergency service provider. If it is determined that safe access cannot be guaranteed, then written notice to that effect shall be submitted to the applicants. A permit will be issued on the condition that the applicant accepts that emergency services may be limited to those described in the submitted documentation from the EMFD.
2. The site plan shall include a graphic representation of the "approach area" as defined in VTrans Standard B-71.
3. Sections 5.3, (E), 5 allows the DRB to condition a permit with regard to the erosion and sediment control. The DRB asks that the final site plan include information with regard to scope and quality for all erosion and sediment control strategies, including a planting schedule for any/all vegetative ground coverings.

Recommendation: The DRB does make the installation of a guardrail along the west side of the driveway a condition of a permit. It does recommend that a guardrail be considered as an element in the overall proposal. There is no specific language in the *Calais Subdivision and Land Use Regulations* that addresses guardrails, zoning regulations with regard to fences comes closest. And, a fence less than 6 feet tall is exempt from requiring a permit.

**DECISION AND ORDER:**

The DRB hereby GRANTS the Conditional Use Permit as required to move forward with this project as follows: the Applicant and Engineer Dexter LaFavour shall adhere to and complete ALL CONDITIONS noted and set forth above as #1 through #3 of this document.

Members of the Calais Development Review Board:

  
Margaret L. Bowen, Member

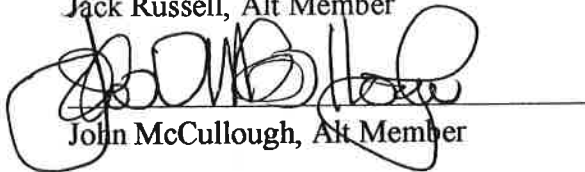
Dated 6/25/2015

  
Walter Ames, Member

Dated 6/25/2015

  
Jack Russell, Alt Member

Dated June 24, 2015

  
John McCullough, Alt Member

Dated June 24, 2015

**Notice of Right to Appeal:** In accordance with 24 VSA sections 4471 and 4472, this decision may be appealed within 30 days of the date to the Vermont Environmental Court. Notice of appeal shall be filed by certified mailing, with fees, to the Vermont Environmental Court and by mailing a copy to the Calais Zoning Administrator and to every interested person who appeared at the DRB hearings. Failure of any interested person to appeal within the specified 30 day period shall result in the interested person being bound by this decision. Thereafter, the interested person shall not contest, either directly or indirectly, the decision of the DRB in any subsequent proceeding, including any enforcement action brought under the provisions of 24 VSA Chapter 117. See also Town of Calais Land Use and Development Regulations, Section 1.7, Appeals.

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**Re: Permit Application #2015-13  
Mark C. & Brenda S. Mooney  
676 Upper Road  
East Calais, VT 05650**

We, the undersigned, dissent from the majority decision approving the driveway that the Applicants have requested a permit for. We believe that we are charged by the provisions of Section 3.13 to determine whether a driveway can safely be built down the very steep bank from the Upper Road to the Applicants' proposed house site.

*Section 3.13 Steep Slopes (A) Development on slopes in excess of 15% shall be subject to conditional use review by the DRB under Section 5.3*

*Section 5.3 (E) Discretionary Standards*

*2) Access & Circulation Standards The DRB may impose conditions as may be reasonably necessary to ensure the safety of vehicular and pedestrian traffic on- and off-site, including but not limited to conditions on ....provisions for emergency access, parking, service, snow storage and loading areas....*

We base our decision also on provisions in Article 3.

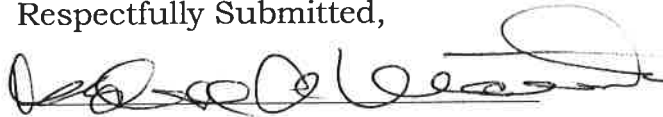
*Article 3, Requirements and Standards that Apply to All Zoning Permits, Section 3.2 Access for Nonfrontage Lots, Curb Cuts, & Driveway Standards (D) Driveway Standards. ....driveways shall be logically sited in relation to existing topography.*

**DECISION**

We believe that to grant permission to build such a dangerous driveway would be to invite future trouble for the Applicants and any service vehicles, and also for any town emergency equipment, including ambulances, that might be required to assist the Applicants and any

guests and future residents at the proposed home. Therefore, we vote to deny the permit for the drive and to recommend that the Applicants purchase a right-of-way across one of the neighboring lots where they could build a much safer driveway into their future house.

Respectfully Submitted,

 Dated 6/27/2015  
Nedene Martin, Member

 Dated 6/27/2015  
Ruth K. Porter, Member

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