

TOWN OF CALAIS
DEVELOPMENT REVIEW BOARD
Request for Conditional Use
Findings and Decision

Re: Permit Application #2023-12
Jeffrey and Melinde Kantor (Applicant)
204 The Cove Rd. (Property Address)
Calais, VT 05648

INTRODUCTION AND PROCEDURAL HISTORY

1. This proceeding involves a Town of Calais Zoning Permit Application (“Application”) submitted by Jeffrey and Melinde Kantor (Applicant) seeking Conditional Use Approval for a proposed vertical expansion and minor horizontal expansion of an existing seasonal dwelling on property located at 204 The Cove Road (Parcel ID #NP0204) referred to the Development Review Board (“DRB”) by the Town of Calais Zoning Administrator (“ZA”) under the Town of Calais Land Use and Development Regulations, as amended March 7, 2017 (“Zoning Regulations”).
2. The Application was originally submitted to the Town of Calais on June 7, 2023 and was subsequently administratively denied by the ZA and referred to the DRB for Conditional Use Approval on June 20, 2023.
3. Upon submission of the Application to the DRB on June 20, 2023, the ZA informed the Chair of the DRB (“Chair”) that on June 12, 2023 the Town of Calais Selectboard (“Selectboard”) approved all proposed amendments (“2023 Amendments”) to the current Zoning Regulations as submitted by the Town of Calais Planning Commission (“Planning Commission”). Therefore, the revised Zoning Regulations would be applicable to this Application.
4. As part of the correspondence received from the ZA on June 20, 2023, the ZA informed the Chair that a pertinent component of the 2023 Amendments involved the creation of a new River Corridor Overlay (RCO) District which corresponds to the State of Vermont’s (“State”) River Corridor Overlay maps and overlays on the Applicant’s property. The ZA noted, however, that the State of Vermont’s River Corridor Overlay maps are not completely accurate and in circumstances where a property is located at a boundary of a River Corridor, this should be reviewed by the State with the Applicant.

The ZA informed the Chair that the Applicant was currently in contact with Ned Swanberg, Regional Floodplain Manager, State of Vermont Department of Environmental Conservation (“DEC”). Once a formal determination was made by the State, this would be provided to the DRB and allow them to proceed with scheduling a formal hearing.

5. On July 6, 2023, the ZA informed the Chair that a site visit was scheduled for July 7, 2023 with the Applicant, ZA, Assistant ZA, and Mr. Swanberg (DEC), to review the project site in relation to the State’s mapped River Corridor.
6. Following the site visit on July 7, 2023, on or about July 10, 2023, the ZA informed the Chair that the 2023 Amendments pertaining to the River Corridor Overlay District contained some contradictory language with regard to State regulations and would need to be amended. As a result of this, it was noted that the Planning Commission was going to formally ask the Selectboard to cancel the Town vote to adopt the 2023 Amendments. As a result of this decision, the Chair was informed that this Application should be reviewed under the current (2017) Zoning Regulations.
7. On July 9, 2023, the Applicant emailed the Chair and ZA to inform them that more time was needed to compile the documentation required for DRB review under Section 5.2, *Development Review Application*. It was communicated to the Applicant by the Chair that a hearing would be promptly scheduled upon receipt of all required documentation and a determination that the Application was complete.
8. On August 27, 2023, via email, the Applicant submitted all of the outstanding documentation required for DRB review under Section 5.2, *Development Review Application*.
9. On August 28, 2023, the Chair of the DRB reviewed all of the outstanding documentation received on August 27, 2023, and considered the Application complete.
10. On September 6, 2023, a notice of public hearing was posted at the Calais Town Office, Calais Town Hall, East Calais Post Office, Maple Corner Community Store, and Adamant Co-op, and on the Calais Town website and Front Porch Forum.
11. On September 6, 2023, a copy of the notice of public hearing was mailed to the following adjoining landowners (abutters):
 - a. Wallace Malley & Margaret Allen-Malley, 76 Greenock Ave., Montpelier, VT 05602
 - b. Karl & Monique Adcock, 92 Nelson Pond Rd., East Calais, VT 05650

- c. Foster Homestead Trust, c/o Bill Davis, P.O. Box 12, Calais, VT 05648
12. The Application was considered by the DRB at a public hearing conducted at the Calais Town Hall on September 21, 2023, and was reviewed under the Zoning Regulations.
13. At the hearing, the following members of the DRB were present:
 - a. Ryan Edwards, Chair
 - b. Willa Farrell, Vice Chair
 - c. Scott Bassage, Acting Clerk (Alternate)
 - d. Stephanie Kaplan
 - e. Dennis Shaffer
14. At the hearing, in addition to the DRB members, were Jeffrey and Melinde Kantor, Applicant, and John McCullough, ZA. No interested persons were present.
15. At the hearing, the DRB reviewed all submitted Application documentation and took testimony from the Applicant regarding the proposed project.
16. The testimony of the Applicant is contained within the minutes of the hearing and is incorporated by reference into this decision.
17. At the conclusion of the hearing the DRB voted to formally close the hearing and subsequently voted to enter into deliberative session.

FINDINGS

Based on the Application and testimony the DRB makes the following findings:

1. The Applicant seeks Conditional Use Approval for a proposed vertical expansion and minor horizontal expansion of an existing noncomplying seasonal dwelling (structure) on an existing noncomplying parcel.
2. The subject property is a 0.24 acre parcel located at 204 The Cove Road (Parcel ID #NP0204).
3. The subject property is located within a Shoreland District as identified on the Town of Calais Zoning Districts Map and as defined under Table 2.4, *Shoreland District (SHR)* of the Zoning Regulations.
4. The Application requires review under the following sections of the Zoning Regulations:
 - a. Article 2, Table 2.4, *Shoreland District (SHR)*

- b. Article 3, Section 3.8, *Nonconforming Uses & Noncomplying Structures*
 - i. Subsection (B)(4)
 - c. Article 3, Section 3.12, *Protection of Natural Resources*
 - i. Subsection (A), *Significant Natural Features*.
 - d. Article 5, Section 5.2, *Development Review Application*
 - e. Article 5, Section 5.3, *Conditional Use Review*
5. A seasonal dwelling is a permitted use within a Shoreland District. The proposed expanded structure will remain a seasonal dwelling for use by the Applicant and their family. In addition, the proposed expanded structure will not increase the number of bedrooms and will therefore not require an expansion of, or modification to, the existing wastewater system.
6. The minimum setback from a structure to the mean water mark within a Shoreland District is 150 feet. The existing structure is setback approximately 35'-0" from the mean water mark. The proposed expansion of the existing structure includes a proposed 6'-0" (east/west) X 4'-0" (north/south) (24 square feet) horizontal expansion at the east end of the south facade to provide a second means of egress from the structure. The proposed horizontal expansion will not increase the degree of noncompliance of the existing structure.
7. The maximum building height of a structure within a Shoreland District is 35 feet. Based on scaled drawings provided in the Application, the height of the existing structure, taken as the height of the building from the average finished grade to the ridge, is approximately 18'-2". The height of the structure with the proposed vertical expansion will be approximately 22'-0". The height of the structure with the proposed vertical expansion complies with the maximum building height requirement for the Shoreland District.
8. No cutting of existing vegetation (e.g. trees, shrubs) on the Applicant's property will occur as a result of this project.
9. To mitigate potential pollution and erosion into the adjacent stream and surface water (Nelson Pond) as a result of construction activities pertaining to the proposed project, the Applicant will install a silt fence between the structure and the adjacent stream throughout the duration of construction. In addition, for long-term runoff and erosion mitigation, the Applicant will permanently install rain gutters on both eaves which will drain into rain barrels or similar catch basins to slow the amount of rainwater runoff. The Applicant will also install a supplemental 18" wide crushed gravel bed at the eaves to mitigate rainwater runoff not captured by the gutters.

10. An existing noncomplying structure is permitted to be enlarged or expanded horizontally or vertically with approval of the DRB, subject to conditional use review under Section 5.3 of the Zoning Regulations, and a finding by the DRB that the enlargement or expansion will have no adverse effect on the public health, safety, and welfare. Based on the documentation submitted as part of the Application and testimony by the Applicant, the DRB finds that the proposed vertical expansion and minor horizontal expansion will have no adverse effect on the public health, safety, and welfare.
11. The proposed vertical expansion and minor horizontal expansion of the existing noncomplying structure will not result in any undue adverse impacts to the natural resources present on or adjacent to the subject property. The Applicant proposes no site modifications to the subject property as a result of the proposed project.
12. The requirements of Section 5.2, *Development Review Application*, are satisfied by the documentation submitted by the Applicant, including, but not limited to: a general location map, site plans meeting the requirements of Section 5.2(A)(3), as well as supplemental documentation depicting existing and proposed structural elevations and proposed temporary and permanent erosion prevention measures. No waivers were requested by the Applicant.
13. Under Section 5.3, *Conditional Use Review*, the DRB finds that the proposed vertical expansion and minor horizontal expansion of the existing noncomplying structure: 1) will have no impact on the capacity of existing community facilities and services, 2) will not adversely affect the character of the Shoreland District, 3) will have no impact on traffic on roads in the vicinity of the subject property, 4) will not violate any municipal bylaws or ordinances, and 5) will have no impact on the utilization of renewable energy resources.

DECISION

Approval for a Conditional Use Permit is hereby **granted and approved** for Application #2023-12 as presented to the Calais Development Review Board, with the following conditions of approval:

- 1) The project shall be constructed per the documentation and drawings provided in the Application. Any changes to the plans or the proposed use of the property shall be brought to the Zoning Administrator's attention, prior to such change being made, for a determination whether an amendment is required.

- 2) Given the proximity of the subject structure to the adjacent surface water (Nelson Pond), and in order to ensure maximum erosion prevention and sediment control during construction, silt fencing shall be installed between the subject structure and surface water, running continuously from the south boundary to the north boundary of the subject property. Silt fencing shall be installed in conformance with “The Low Risk Site Handbook for Erosion Prevention and Sediment Control” published by the Vermont Division of Environmental Conservation (August 2006)¹.
- 3) At the completion of the Project, the Applicant shall notify the ZA, in writing, that the project has been completed per the documentation submitted within the Application and the conditions of this approval.

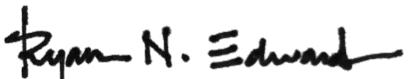
Voting to approve: R. Edwards, W. Farrell, S. Bassage, S. Kaplan, D. Shaffer

Voting to deny: None

Abstentions: None

The motion passes 5-0.

Dated at Calais, Vermont this 19th day October, 2023.

By: 

Ryan Edwards, Chair

NOTICE: This decision may be appealed to the Vermont Environmental Court by an Interested Person who participated in the proceeding(s) before the Calais 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.

¹https://dec.vermont.gov/sites/dec/files/wsm/stormwater/docs/StormwaterConstructionDischargePermits/sw_low_risk_site_handbook.pdf