

CALAIS DEVELOPMENT REVIEW BOARD

Re: Babic, David and Katie
Excavating for building site in the Shoreland District
Conditional Use Review and Variance Request
Application 2015-01

DECISION

A. Introduction

The above application was submitted on December 5, 2014 and came before the DRB for hearing on January 29, 2015. The applicants own Lot #13 of the Theodore Barnett Subdivision located on Barnett Road in Calais. The applicants are requesting a conditional use permit to cut, clear, remove and excavate the areas previously designated for the house building envelope, installation of sewer and water systems and driveway access. They are now proposing to begin their house project on Lot #13 and this entails the cutting and removal of the tree growth located within the lot (prior to construction) which they had begun in the fall of 2014.

The applicants secured the services of Tom Otterman, a surveyor and engineer, to locate, identify and create a design that matches the specifications of the Act 250 waste water permit 5W0777 (corrected) issued in 8/28/1984. They secured the services of Marsh Engineering Services to prepare an Erosion Prevention and Sediment Control Plan to submit to the DRB for construction, excavation and stabilization of the site from commencement to completion.

The applicants are requesting a Variance within the 25 foot setback to relocate the driveway. Moving the drive to the top of the lot within the side hill grade would eliminate any future erosion into the lake and creates a natural approach to the house site.

B. Background

On June 19, 1984 an Act 250 Land Use Permit #5W0777 and Certificate of Compliance was issued for the construction of 3,700 feet of roadway and the creation of a 16 lot subdivision off Town Road #15 in Calais, Vermont. The permit documentation approved the building envelopes, drilled wells for water supply, the wastewater disposal system locations, and the proposed driveways.

The initial land survey was prepared by Paul C. Harrington dated January 1983 and filed in the Town of Calais Records on 9/9/1985 showing Lot #13. A subdivision Layout survey was prepared by Dufresne-Henry, Inc. (Donald R. Marsh) entitled Subdivision of the Rathburn Farm, Sabin Pond, Calais, Vermont, dated, 12/22/1983 and filed in the Town of Calais Records showing the proposed lots layout, including Lot #13. On August 28, 1984 the Calais Zoning Board of Adjustment (ZBA) granted Theodore Barnett conditional use approved to subdivide 63.9 acres on Woodbury Lake into 17 (amended 16) lots. See Theodore Barnett Conditional Use Permit request No. 84-13, Findings of Fact, Conclusions of Law and Decision 8/28/1984 and No.

84-13/85-16, Amended Finding of Fact, Conclusions of Law and Decision concerning Request to Amend Conditional use Permit 5/28/1985.

David Babic and Katie Hilferty purchased Lot #13 and submitted a permit application on July 24, 2007 to construct a floating dock and boathouse on the property. On July 26, 2007 this permit was granted by the Zoning Administrator see Application #07-39.

On August 13, 2007 the applicants submitted a second permit request for Conditional Use Review Approval of Tree Cutting Plan in 50 foot Buffer Zone. At the hearing it was also reported that the applicant had cut a path through the trees to the water and erected a slide extending from the upper lot down to the pond with a jump constructed on a dock in the water. The Zoning Administrator reported the slide was constructed of wooden pallets placed on the ground with carpeting on the top. The dock was previously permitted and her conclusion, upon contacting Act 250, was no permit was needed for the slide or the five foot path cut to access the pond. The County Forester submitted a written letter giving his approval of the cutting plan within the 50 foot buffer zone and it was granted by the DRB. See Application 07-46

C. Current Conditions

At the hearing held on January 29, 2015 before the DRB owner David Babic, Donald Marsh of Marsh Engineering Services, Dot Naylor former Zoning Administrator in 2007, and the owner of Lot # 12 in said subdivision were present. A brief history of the original subdivision and lot creation was given by David Babic and Donald Marsh.

David Babic indicated that he had started his building project by hiring a firm to cut down the necessary trees, removal and clearing of the site for the previously permitted building envelope, septic system area, drilled well and proposed waterline area, and the driveway in the fall of 2014. The clearing operation stopped when the present Zoning Administrator told him he had to submit the required permit applications and additional information first to secure his construction permit.

David Babic submitted his application on December 31, 2014 with an attached narrative, sketch of Lot #13 with the designated areas from January 1983; a copy of the subdivision map, request for conditional use review, request for a variance and a topographic site plan and septic system design location created by Thomas Ottman showing the original permitted area.

Donald Marsh had prepared an Erosion Prevention and Sediment Control Plan for the project detailing the building envelope located within the center of the lot for the house, garage, the drive located on the upper boundary of the lot with the grass swale and stone check dams, the required retaining walls, the drilled well location and the grading plan for the back hillside which drains down into the building area. All of the major sections of the development are beyond the 150 foot set back from the lake. The portion that is beyond the 50 foot buffer zone and is partially located within the 150 foot setback is the leach field, a section of the retaining wall and the upper hillside behind the structure locations. The plan provided all the required information the DRB would need to review the project with the specific land use regulations.

David Babic also provided the DRB with a set of plans for his proposed house prepared by David Blosser Design of East Montpelier, Vermont February 3, 2007. In his permit narrative David Babic is requesting permission to build a 76 foot x 40 foot vacation residence with an attached garage and porches all inclusive in these dimensions.

The applicants are requesting permission to add natural flagstones to allow for better ease to the water's edge and lay a stone fire pit with additionally placed stones for seating and protective areas to keep starter wood. This is at the existing cleared walking path on the eastern side of the property which was approved in the 07-46 permit decision, within the 50 foot buffer setback from the lake.

The applicants would also like to request permission to keep a cleared five foot wide walking path at the end of the point at the southern most part of the property, within the 50 foot buffer setback from the lake. It is reported that this area is the best for swimming and water activities. In this area is a noxious exotic invasive species (Japanese Barberry) that is growing rampant at the end of the property. As a result they are asking for annual permission to keep this walking path clear by removal of the Japanese barberry bushes.

On the Applicants' permit application it is noted that both pathway work has been completed and the requests are "after the fact".

D. Conditions on the project

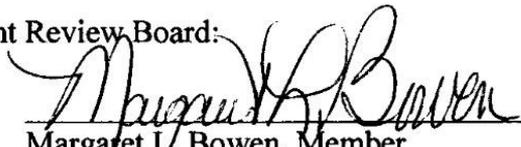
1. The DRB is requesting that upon completion of the final grading of the areas within the 150 foot buffer area and the upper hillside that the areas be landscaped with natural growth materials that would not require mowing.
2. The Applicants develop the property as designed and submitted in the Marsh Engineering Services Erosion Prevent and Sediment Control Site Plan without any deviation of the same. There will be no further tree and vegetation clearing beyond what is on the plan submitted without prior DRB approval.
3. The Applicants will not widen the existing pathway on the east side of the property down to the lake in the placement of flagstones and the fireplace at the bottom of the path. There is to be no further construction other than the placement of the stones in this 50 foot buffer area as completed.
4. The Applicants requested a second path down to the water edge on the south west side of the property for their recreational area, as completed. This pathway must be maintained no more than five feet in width and the Applicants may cut the Japanese Barberry back to said width each year to maintain the path.
5. The Applicants must apply for the Vermont Shoreland Protection Permit and submit the decision to the Calais Zoning Administrator for filing prior to commencing any work on the project.

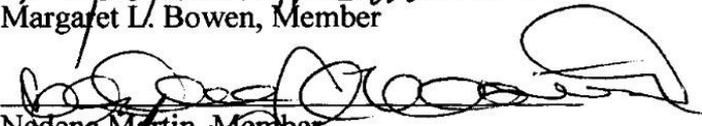
E. Decision

The application for a Conditional Use Permit to complete the construction of a vacation home including previously approved clearing of the lot for the building envelope, septic wastewater system area, drilled well and waterline area, driveway and parking area, two separate footpaths to the lake in the 50 foot buffer zone area and grading of the hillside behind the house site is hereby GRANTED by the DRB subject to conditions #1 through #5.

The application for a Variance to locate the driveway within the 25 foot setback from the rear property line is hereby GRANTED by the DRB and shall be built as designed.

Members of the Calais Development Review Board:

Dated 2/19/15

Margaret L. Bowen, Member

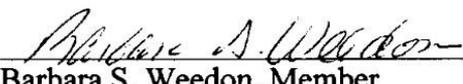
Dated 2/19/15

Nedene Martin, Member

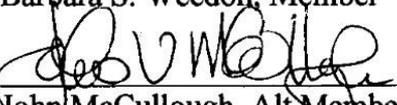
Dated 2/19/15

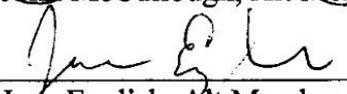
Michael Loignon, Member

Dated 2/19/2015

Ruth K. Porter, Member

Dated 2/19/2015

Barbara S. Weedon, Member

Dated 2/19/2015

John McCullough, Alt Member

Dated Feb 19, 2015

Jane English, Alt Member

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.