

Town of Calais
Development Review Board
Zoning Permit Application for Variance and Conditional Use Approval
Findings and Decision

In re: Zoning Permit Application Appeal for Paul Dayton & Megan Pew
Permit Application No.: 2024-18

INTRODUCTION AND PROCEDURAL HISTORY

1. This proceeding involves a notice of appeal submitted by Paul Dayton and Megan Pew for an appeal of an administrative officer decision under the Town of Calais Land Use and Development Regulations, as amended March 4, 2024 (the Zoning Regulations).
2. The application was submitted May 9, 2024. The application was required to be denied by the Zoning Administrator. Appeal of the Decision of the Zoning Administrator was submitted May 10, 2024.
3. Applicants seek a permit to “square off the footprint of the camp, adding approximately seven square feet, completing a vertical expansion to add a second floor to the camp, and modifying the roof line to a shed roof with the high point on the shore side of the parcel, and the low point on the road frontage side of the home.”
4. Following the appeal submission, and prior to the hearing, Applicants provided a copy of Shoreland Project registration 4265-SR, which was approved by the Vermont Dept. of Environmental Conservation effective May 18, 2024.
5. A notice of public hearing was posted pursuant to Bylaw 8.4(C) at the Calais Town Office, East Calais Post Office, Maple Corner Community Store, Adamant Co-op, and on the Calais Town website and Front Porch Forum.
6. A copy of the notice of public hearing was mailed to the following owners of properties adjoining the property subject to the appeal:
 - a. Jonathon Kempner & Conway Van Sustern, 6909 Radnor Road, Bethesda, MD 20817
 - b. David Bradt Rev. Trust c/o David Bradt, 62 Modena Drive, Concord, NH 03303,

- c. Peter Hazelton & Bonnie Dee Oakman, PO Box 788, Walkertown NC 27051
 - d. Burnes Family Camp LLC c/o George & Prudence Burnes, PO Box 222, Barre, VT 05641.
7. The appeal was considered by the DRB at a public hearing conducted on June 10, 2024. The DRB reviewed the appeal under the Zoning Bylaw.
8. At the hearing, the following members of the DRB were present.
 - a. Willa Farrell, Chair
 - b. Scott Bassage, Clerk
 - c. Gabrielle Malina
 - d. Rachel Seelig
9. At the hearing, in addition to the DRB members, were Paul Dayton and Megan Pew.
10. At the hearing, the Board took testimony from the applicants. No abutters or interested parties attended the hearing.
11. At the conclusion of the hearing, the record was closed.
12. The testimony of the applicants is contained in the minutes of the DRB meeting of June 10, 2024, and is incorporated by reference into this decision.

FINDINGS

Based on the application materials and testimony the DRB makes the following findings:

1. The applicants appeal a decision of the Zoning Administrator dated May 9, 2023 referring the application to the DRB for approval of variances and conditional use approval for development on a pre-existing nonconforming lot in a Rural Residential District [hereinafter RR1] in the Shoreland Overlay District [hereinafter SHROD] within the vegetative buffer zone.
2. The subject property is a .46 acre parcel, with 190 feet of frontage on a private road, located at 136 Lower Curtis Pond Road (Tax Parcel ID No. CP0136; SPAN: 120-037-10756).
3. The property is located in an RR1, and within the SHROD described in the Town of Calais Zoning District Map on record at the Town of Calais office and in section 2.1 of the Zoning Regulations.

4. The appeal required review under the following sections of the Zoning Regulations:
 - a. Article 5.2 Development Review Application
 - b. Article 3 Requirements and Standards that Apply to All Zoning Permits,
 - c. Article 2, Section 2.2 Zoning District Standards,
 - d. Table 2.2 Rural Residential District (RR1),
 - e. Table 2.4 Shoreland Overlay District (SHROD),
 - f. Article 5.3 Conditional Use Review, and
 - g. Article 1.8 Variances.

Article 5, Section 5.2

5. The requirements of Section 5.2, Development Review Application are satisfied. Applicant provided the necessary application, and general location map. A plan was provided that was not drawn to scale, but the DRB waived this requirement determining that it was not necessary for comprehensive review of the application as permitted by Section 5.2(B) because of the already approved Shoreland Project Application by the Watershed Management Division of the Department of Environmental Conservation.

Article 3

6. The proposed development does not implicate Sections 3.2, 3.3, 3.4, 3.9, 3.10, or 3.11 of Article 3.
7. Section 3.5 - Height Requirements: The development will remain within the height requirements for RR1, and there are no separate height limitations specific to the SHROD.
8. Sections 3.6 & 3.7 - Lot and Yard Requirements: The parcel will continue to have only one principal use, seasonal dwelling. The lot does not meet dimensional standards for RR1 or SHROD but is a pre-existing nonconforming small lot. The parcel is a nonconforming small lot which has not been conveyed to create common ownership that would merge the lot with contiguous lots.
9. Section 3.8 - Nonconforming Uses & Structures

- a. Nonconforming Use: The use of seasonal dwelling is a permitted use in RR1 and is not a nonconforming use in the SHROD pursuant to Table 2.4(F)(3) given our conditional use review findings and approval.
- b. Nonconforming Structures: Nonconforming structures may be repaired, restored or expanded with DRB approval, subject to conditional use review, as described below. In the alternative, a variance is granted subject to the same conditions.

Article 2, Section 2.2 and Tables 2.2 and 2.4

10. A seasonal dwelling is a permitted use for RR1. Table 2.2(B). The dimensional standards for RR1 are not met and are not required to be met as a pre-existing nonconforming small lot, as described in Section 3.7. The vertical expansion component of the development will not exceed the maximum height limitation for RR1 of 35 feet.
11. The purpose of the SHROD is to conserve aquatic and wildlife habitat and water quality. The SHROD applies to this parcel because it is land around Curtis Pond. Table 2.4(B). Within the Vegetative Buffer Zone, which is the first 100 feet of land from the mean water level, reconstruction with no change in height or building footprint is a permitted use; however, all other changes, including the development proposed in this application, require conditional use approval.
12. The dimensional standards for SHROD are not met and are not required to be met as a pre-existing nonconforming small lot, as described in Section 3.7.
13. Applicants seek a variance because enlargement and expansion of nonconforming structures is not permitted in the SHROD, nor can structures be expanded to add impervious surface. Table 2.4(J)(2), (K)(11).
14. Applicants received a Shoreland Project registration approval from the Watershed Management Division of the Department of Environmental Conservation for the project based on the following description:

Proposed expansion to square up the camp, bringing the 7' x 24'4" (using drip line measurements) sunroom out to 7' x 25'4" NOT toward the shoreland but parallel. The main cottage is 18'4 x 25'4".

This would make the camp 25'4" x 25'4" square. The land immediately around the camp is already clear and has been for the life of the camp... there would be no clearing of any shrubs, trees, or vegetation for the expansion. The total expansion is 7 sq. feet.

Article 1, Section 1.8

The DRB has concluded it is authorized to grant a conditional use permit for enlargement of the seasonal dwelling in the SHROD pursuant to Section 3.8 which allows expansion of nonconforming structures. In the alternative, if Section 3.8 and Table 2.4 are in conflict, we concluded that a variance will be granted based upon all of the following:

15. There are unique physical circumstances and conditions peculiar to this property. The ceiling height on the interior of the camp is only 6' 11" which is not consistent with today's building code and not liveable for applicants. The bathroom is the size of a port-o-let and a small shower is in a separate small space. This habitability issue cannot be remediated without expansion. The sunroom is slightly narrower than the rest of the seasonal dwelling to which it is attached, and so expansion is less than 100 square feet, does not encroach on the shoreline, and does not entail any clearing of trees, shrubs, or vegetation.
16. These conditions are particular to the property and not a result of the zoning regulations for RR1 or SHROD.
17. There is no possibility of development in strict conformity with the zoning regulation.
18. A variance is necessary to enable reasonable use of the property.
19. Applicants did not create the unnecessary hardship.
20. The variance sought will not alter the essential character of the neighborhood, the RR1 or the SHROD. It will not substantially or permanently impair the appropriate use or development of adjacent properties, reduce access to renewable energy resources, or be detrimental to the public welfare. By changing the roof to a shed roof, Applicants expect to reduce stormwater runoff into the pond, by directing it away from the pond and toward the private road.

21. This variance represents the minimum that will afford relief and the least deviation possible from the zoning regulations and Calais Town Plan. Specifically, the expansion of the footprint of the camp would be only seven feet. The vertical expansion will create a livable ceiling height without adding bedrooms, and a useable bathroom, without increasing demands on the wastewater system.

Article 5, Section 5.3

22. The following findings are made regarding the required and discretionary conditional use standards:

- a. The project will be neutral in its impact on existing community facilities or services. The camp is on a private road, served by its own well and wastewater system. The camp has its own lake access and its own parking area. There are no anticipated changes in the impact on fire protection facilities, nor on utilities.
- b. The development is consistent with the character of the neighborhood which is made up of a combination of seasonal dwellings and single-family dwellings, including both single-story and two-story dwellings.
- c. The potential impact of traffic generated by the development is limited to the period of conducting the project when there may be a slight increase in traffic on the public road and the private road during the period of construction. However, there is generally an increase in traffic in the area during the summer months in the area. And, once the project is complete, the ongoing use of the expended seasonal dwelling is not anticipated to impact traffic relative to the current use of the seasonal dwelling.
- d. As discussed elsewhere in this decision, the development is required to be completed in compliance with all other regulations and ordinances in effect.
- e. The development is not expected to interfere with the sustainable use of renewable energy resources, as it is not likely to impact neighboring property owners' access to such resources, nor to impact their future availability.

- f. No health or environmental considerations were identified that could arise from the development that require conditions under the discretionary health and environmental standard.
- g. The parcel is on a private road, no access or circulation concerns were identified that require conditions under the discretionary access and circulation standard.
- h. No changes resulting from the development are expected to impact the character of the area affected. Therefore no landscaping or screening conditions were identified as necessary conditions for the project.
- i. As described below, this permit is granted with the condition to comply with all requirements and conditions imposed in the approval of shoreland project 4265-SR issued May 18, 2024; no additional required buffers, open space, or storm water conditions will be required.

DECISION

The application for variance for expansion in the vegetative buffer of the SHROD is GRANTED, and conditional use permit for squaring off and vertical expansion in the SHROD is GRANTED with the following conditions:

1. The development must be completed as proposed, which is the minimum variance from the Zoning Regulation and Calais Town Plan necessary to address the unnecessary hardship created by the unique physical circumstances and conditions of the parcel. This includes the repair of stonework to return the shoreline to a more natural state described in Applicants' narrative. Any substantial modification of the development, such as requiring additional or replacement footings, change in the height of the final development, change in square footage expansion, or change in the number of bedrooms, change in the expected absence of need for removal of trees, shrubs, or other vegetation, shall require notification of the DRB and may require a new permit application.
2. Applicants must complete the development consistent with the Shoreland Project 4265-SR registered as approved May 18, 2024.

3. Pursuant to Table 2.4(J), the applicants must conduct the development such that it complies with the Shoreland Protection Act, all other requirements of the Calais Shoreland Overlay District (SHROD), Erosion and Sediment Control and Stormwater Management Standards.
4. Pursuant to Section 3.7, if the wastewater system fails, the owners are required to obtain from the Agency of Natural Resources, Department of Environmental Conservation, Division of Wastewater Management either a wastewater permit or certification that the wastewater system has been modified or replaced and no longer constitutes a failed system.

Voting to approve: Scott Bassage, Willa Farrell, Gabrielle Malina, Rachel Seelig

Voting to deny: none

Motion passed: 4 – 0

Abstentions: none

Dated at Calais, Vermont, this 16th day of July, 2024.

A handwritten signature in blue ink, appearing to read "W. Farrell", written in a cursive style.

Willa Farrell, Chair