

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 Town of Calais
Permit Application No.: 2024-26

INTRODUCTION AND PROCEDURAL HISTORY

1. This proceeding involves a notice of appeal submitted by the Town of Calais (“Applicant”) 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 Bylaw).
2. Applicant seeks a permit for “No new construction. Improving existing drainage and stabilizing ground to reduce erosion.”
3. Applicant seeks the DRB’s approval of a request for conditional use because part of the work on the Moscow Woods Gully project, “includes minor work within the River Corridor Overlay district. Access will be along the existing Town ROW on a historic road. Improvements include surfacing of gravel and widening by 2-3 feet where narrow.”
4. The application was submitted August 14, 2024. The application was required to be denied by the Zoning Administrator. Appeal of the Decision of the Zoning Administrator was submitted August 14, 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. Calais Recreation Ass’n Inc, C/O Michele Bailey, East Calais, VT 05650
 - b. Anne Toolan, P.O. Box 26, E. Calais, VT 05650
 - c. Jeffrey Gallagher, P.O. Box 16, E. Calais, VT 05650
 - d. Norman & Diane Scolaro, 158 Moscow Woods Road, East Calais, VT 05650
 - e. David Austin & Sherry Fellows, P.O. Box 106, E. Calais, VT 05650

- f. John & Meigan Risse, 18 Oakland Road, Brookline, MA 02445
 - g. Dwinell Homestead Ass'n Inc., c/o Andrew Noyes, 2600 Kennedy Blvd #26, Jersey City, NJ 07306
 - h. Adam Mackay & Daniell Barclay, 17 Moscow Woods Road, E. Calais, VT 05650
 - i. Michael Ryan & Catherine McCarty, 805 Morgan Dr., Boulder, CO 80303.
7. The appeal was considered by the DRB at a public hearing conducted on September 11, 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. Cand Smith, Vice Chair
 - d. Rachel Seelig
 9. At the hearing, in addition to the DRB members, were Kari Bradley, Town Administrator for the Applicant; Jessica Louisos, Senior Water Resources Engineer at SLR Consulting; Brian Voigt, Program Manager, Central Vermont Regional Planning Commission; and Interest Persons Syver Rogstad, Anne Toolan, John Risse, and Megan Risse.
 10. At the hearing, all attendees were sworn in as witnesses.
 11. The Board took testimony from the applicant, Ms. Louisos, the project's lead engineer, Mr. Voigt, Mr. Rogstad, Ms. Toolan, and Mr. Risse.
 12. At the conclusion of the hearing, the record was closed.
 13. The testimony of the applicant and the interested persons is contained in the minutes of the DRB meetings and is incorporated by reference into this decision.

FINDINGS

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

1. The applicant appeals a decision of the Zoning Administrator dated August 14, 2024, referring the application to the DRB for conditional use approval for development in the form of adding gravel fill to Grist Mill Road.
2. Grist Mill Road is an ancient road and is accurately described as a path.

3. The DRB takes judicial notice of the Selectboard's December 8, 2014, Road Discontinuance Hearing at which the road was retained.
4. The subject property is a town right of way and does not have a SPAN, and runs through or requires agreement of the Calais Recreation Association, Inc. (SPAN 120-037-10125), David Austin & Sherry Fellows (SPAN 120-037-10272), John & Meigan Risse (SPAN 120-037-10088), and Dwinell Homestead Association, Inc. (SPAN 120-037-10248).
5. The property is in a Village District (VIL) (Table 2.1), and within the River Corridor Overlay (RCO) (Table 2.7) 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 Bylaw.
6. The Moscow Woods Gully project is part of Calais's townwide stormwater master planning effort.
7. The project will receive Department of Environmental Conservation funds.
8. The Kingsbury Branch has developed a large gully through erosion because water funnels off the whole upper hill, as well as down Batten Road and Fellows Road, and then gets stuck in the eroding ditch.
9. While the gully is of concern, otherwise the Kingsbury Branch channel is very stable compared to most other streams.
10. Because of the location of the river, and height above the channel, none of the project falls within the Flood Hazard Overlay (FHO).
11. The project will have no impact on flooding or flood storage.
12. The Moscow Woods Gully project consists of other components that are not within the scope of this Conditional Use Request.
13. To treat the erosion in the gully, the town will add rip rap on the trail, create a transition from dirt to the forest area, perform grading, remove living trees and place logs into the slow water to catch sediment to keep erosion from continuing.
14. Part of Grist Mill Road, which goes down to the gully, is within the RCO. The project will involve addition of fill, which will improve the surface of the existing road so equipment and people can get to the gully.
15. The fill will be permanent.
16. There may be need for maintenance of the improvements so Grist Mill Road will need to continue to provide access to the gully after completion of the project.

17. The work on the part of Grist Mill Road that is most narrow includes a beautiful, historic stone wall which will be protected, and the path reinforced with concrete blocks or gravel.
18. The RCO exists so that there is space for the river to move around.
19. The improvements proposed within the RCO will further this purpose.
20. The project will reduce current and future erosion damage.
21. The project does not involve any new structure and no development other than the addition of fill.
22. The project will involve some moving around of material, but no extraction or quarrying.
23. The project will have minimal impact on town services, such as road crew clearing out a culvert or checking that the rip rap and logs placed in the water are performing as intended.
24. The project will maintain the character of the area by addressing an erosion problem.
25. The project will improve the area by making the river more accessible for pedestrians and allow for reconnecting a snowmobile trail across the rock that will be placed.
26. The project will have no impact on traffic because Grist Mill Road will not be opened to regular traffic.
27. The project will have no foreseeable negative impact on nearby landowner's use of renewal energy resources. It may allow use of the falls for energy at some point.
28. The project will not require any landscaping or screening because no new structure will be added.
29. The Applicant has submitted a construction stormwater permit which is under review by the State of Vermont.
30. The project may begin in 2024, but more likely will take place in 2025.
31. Mr. Rogstad maintains part of Grist Mill Road, the grassy area, by mowing it periodically.
32. Project completion includes restoration of the grassy area and approval of that restoration work by Ms. Louisos and a representative of the town.
33. Maintenance work may also disrupt the grassy area in the future and will also require restoration.
34. There is an American chestnut in the area which should not be removed.

The appeal required review under the following sections of the Zoning Bylaw:

- 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, Table 2.1 Village District, Table 2.7 Flood Hazard and River Corridor River Corridor Overlay Districts, and
- d. Article 5.3 Conditional Use Review.

CONCLUSIONS OF LAW

Article 5, Section 5.2

1. The requirements of Section 5.2, Development Review Application are satisfied. Applicant provided the necessary application and general location map.

Article 3

2. The proposed development does not implicate Sections 3.2 (not an issue of access to a non-frontage lot), 3.3 (no change of use), 3.4 (no damaged structure), 3.5 (no structure to which height requirements apply), 3.6 (no change in parcel), 3.7 (not a nonconforming small lot), 3.8 (no nonconforming use or structure), 3.9 (no outdoor storage tanks), 3.10 (no parking), or 3.11 (no signage), 3.13 (no driveway), 3.16 (no mixed use), or 3.17 (no housing).
3. The requirement of Article 3.12(A) to protect significant natural features is the purpose of the project by mitigating the erosion problem that has created the large gully. The ancient road will not be moved but will be improved with fill and stabilized with concrete blocks or gravel so that the work that preserves the natural feature can be accomplished. Moreover, the entire project, including the portion under review, is designed to minimize and mitigate the effects of stormwater runoff that have caused the large gully.
4. The requirement of Article 3.12(b) applies because there is a historic feature, a stone wall, at the narrow point of Grist Mill Road which could be

negatively impacted if care is not taken to preserve it. The project as proposed will preserve the stone wall, so this requirement is satisfied.

5. The requirement for surface water protection of Article 3.14 is satisfied because the project will improve water quality by reducing the amount of sediment entering and moving through the Kingsbury Branch, and will protect the channel's stability, though it is already a very stable channel. The project is designed to mitigate the existing erosion.
6. Clearing, filling, and grading is permitted as an exception to the 35' buffer requirements for this project because it is an erosion, sediment control, and stormwater management project, as is the case here.
7. The applicant is or will be exempt from requirement of Article 3.15 for erosion and sediment control and stormwater management if or when it receives a state Construction Stormwater Permit.

Article 2, Section 2.2 and Tables 2.1 and 2.7

8. The current and planned use of the parcel, as a right of way, requires neither a zoning permit from the zoning administrator, nor conditional use approval in the Village District (Table 2.1).
9. This project is not within the FHO.
10. The purposes of the RCO include (1) preventing and minimizing loss of life and property, disruption of commerce, reduction in tax base, and considerable public expenditures and demands on public services; (2) minimizing potential damage to existing structures in the overlay from erosion; (3) managing land use to provide rivers and streams with lateral space necessary to minimize fluvial erosion hazards through natural, physical processes, (4) ensuring development minimizes or eliminates potential for fluvial erosion; and (5) managing land in accordance with state and federal regulations.
11. The project, which is an erosion control and stormwater management project, achieves each of these purposes because it will stabilize the gully caused by erosion, will not impact the river's space to move, and will be completed in accordance with state and federal law and regulations.
12. Grading is a conditional use in the River Corridor Overlay (RCO) (Table 2.7(F)), while fill or grading with mitigation resulting in no net loss of flood

storage is a conditional use in the Flood Hazard Overlay (FHO) (Table 2.7(D)).

Article 5, Section 5.3

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

- a. The project will be minimal in its impact on existing community facilities or services. It may require some annual maintenance by the town, but this maintenance is likely to be less than addressing damage caused by stormwater without the project's implementation.
- b. The development is consistent with the character of the neighborhood which is a village district with structures on either side of the Kingsbury Branch.
- 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 right of way. Once the project is complete, the ongoing use of the ancient road by pedestrians, and the opportunity to reconnect a snowmobile trail across the rocks that will be placed may have a minimal impact on traffic.
- d. As discussed elsewhere in this decision, the development is required to be completed in compliance with all other bylaws 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 and may enable 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. No access or circulation concerns were identified that require conditions under the discretionary access and circulation standard.
- h. No landscaping or screening conditions were identified as necessary conditions for the project because no structure will be developed.

- i. As described below, this permit is granted with the condition to comply with all requirements and conditions imposed by a state Construction Stormwater Permit.

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. Applicant shall not proceed with the project unless it receives a state Construction Stormwater Permit. If such permit is denied, Applicant must return to the Development Review Board for consideration of the application of Article 3.15.
2. Applicant, as required for its maintenance plan, shall obtain the signatures of the abutting landowners as necessary for implementation of the plan.
3. Applicant shall determine whether the American Chestnut identified by Interested Person John Risse is within the River Corridor, and, if so, shall preserve the tree as a significant natural resource. If it is outside the River Corridor, Applicant is strongly encouraged to preserve the tree.

Voting to approve: Scott Bassage, Willa Farrell, Rachel Seelig, Candi Smith

Voting to deny: none

Motion passed: 4 – 0

Abstentions: none

Dated at Calais, Vermont, this 20th day of September, 2024.



Willa Farrell, Chair