

TOWN OF ELMORE
Development Review Board
Appeal of Administrative Officer Decision
Findings and Decision

In re: Martin Revocable Living Trust Subdivision Application

INTRODUCTION AND PROCEDURAL HISTORY

1. This proceeding involves a notice of appeal submitted by Brian Leven, Esq. on behalf of the Martin Revocable Living Trust for an appeal of an administrative officer decision under the Town of Elmore Zoning Bylaws.

2. The notice of appeal was received by the Town Clerk on November 7, 2023. A copy of the notice of appeal is available at the Elmore Town Offices.

3. On December 21, 2023, notice of a public hearing was published in the News and Citizen.

4. On December 19, 2023, notice of a public hearing was posted at the following places:

a) The municipal clerk's office.

b) Town Hall, which is within view of the public-right-of-way most nearly adjacent to the property for which the application was made.

5. On December 19, 2023, a copy of the notice of a public hearing was mailed to the appellant.

On December 19, 2023, a copy of the notice of public hearing was mailed to the following owners of properties adjoining the property subject to the appeal:

Peter & Susan Kitonis

Gerald Kitonis

Bradley Robertson

6. The appeal was considered by the development review board at a public hearing on January 4, 2024, which was held within 60 days of the filing of the notice of appeal. The development review board reviewed the appeal under the Town of Elmore Zoning Bylaw.

7. Present at the hearing were the following members of the development review board:

Caroline DeVore

Paul Rousselle

Jason Cohen

Michael Furst

Chris Jolly, Chair

FINDINGS

Based on the application, testimony, exhibits, and other evidence the development review board makes the following findings:

1. A Conditional Use hearing was conducted at the February 9, 2023 meeting of the development review board. At this meeting, the application received approval, subject to the following three Conditions:
 - 1) All State Permits must be in hand at the Town Office for Review
 - 2) A Homeowners Association Agreement addressing the maintenance of the road to the lots must be worked out and submitted for approval.
 - 3) A Tree Mitigation Agreement must be worked out and agreed to with each of the abutters.

This information was conveyed to the Applicant via a letter from the zoning administrator at the time, dated February 28, 2023.

2. Marble Consulting, in a letter dated September 13, 2023, provided response to the three Conditions set at the Feb 9, 2023 Conditional Use hearing, including:
 - a. A copy of state WW permit #WW-5-3559-1
 - b. Declaration of Protective Covenants, Conditions and Restrictions Applicable to the Martin Revocable Living Trust Subdivision Known As the Rauhnn Lane Property Located at 882 King Farm Rd, Elmore, Vermont, recorded in Book 88, Page 354-358 of the Elmore Land Records.
 - c. Agreement completed on September 2, 2023 between G. Kitonis and Martin in response to Condition 3 regarding tree mitigation.
 - d. Agreement completed August 27, 2005 between G. Kitonis and Martin regarding improvements to access road to the subject Martin parcel (presumed to be what is now known as Yankee Way), including other misc. issues.
 - e. Private Roadway Maintenance Agreement dated October 19, 2005, between G. Kitonis and Martin, recorded in Book 59, Page 536 of the Land Records, outlining criteria for establishing a Roadway Maintenance Association, and cost sharing for the portion of Yankee Way between King Farm Rd and the Martin parcel.

It is noted that in consideration of items b) and d) above, all existing and proposed shared, privately owned roadways serving the subject subdivision have in place appropriate mechanisms for establishing maintenance of the road(s).

3. During the hearing it was discovered that those party to the above referenced Roadway Maintenance Agreement dated October 19, 2005, including Martin Revocable Living Trust, G. Kitonis, B. Robertson, and others, have not established a Roadway Maintenance Association, and as such, are not meeting the requirements of this binding document at the time of the Town receiving the subject subdivision application and subsequent appeal.
4. The applicant appeals a decision of the zoning administrator dated October 26, 2023. In that decision the zoning administrator denied the permit on the basis of the applicant failing to adequately respond to one of the three Conditions set upon the DRB's preliminary approval of the subdivision at their Feb 9, 2023 meeting. The zoning administrator concluded that Condition 2, formation of 'A Homeowners Association Agreement addressing the maintenance of the road to the lots must be worked out and submitted for approval', has not been met by the applicant. It is agreed by both the appellant and the zoning administrator at the time that Conditions 1 and 3 are satisfied.
5. Notice of appeal was filed on November 7, 2023, which is within the 15 day period required under 24 V.S.A. § 4465(a).

6. In accordance with 24 V.S.A. § 4466, the notice of appeal was in writing and included the name and address of the appellant, a brief description of the property with respect to which the appeal was taken, a reference to the regulatory provisions applicable to the appeal, the relief requested by the applicant, and the alleged grounds why the relief requested was believed proper under the circumstances.
7. The appellant is an interested person as defined at 24 V.S.A. § 4465(b).
8. The subject property is a 9.3 acre parcel located at 882 King Farm Rd, in the Town of Elmore (tax map parcel no. 08/01/13.1000)
9. The property is located in the Rural East District.
10. The appeal requires review under Section 8.3 of the Zoning Bylaws

DECISION

Based upon these findings, the development review board does not agree with the zoning administrators decision to deny the subdivision application, as stated in his October 26, 2023 letter.

With this decision, the applicant is informed that the three Conditions set in the February 9, 2023 hearing and preliminary approval of the subdivision, are considered satisfied. As such the applicant is encouraged to complete the two-step subdivision approval process, and work with the current zoning administrator to complete the Final Subdivision Review per Section 6.5 of the Elmore Zoning Bylaws. In an effort of clarity and good faith, for purposes of the requirement to complete the Final Subdivision Review Process within six months of the preliminary review, the applicant will have six months from today to complete the Final Subdivision Review and not six months from the February 9, 2023 hearing, or any milestone between then and now.

Dated at Elmore Vermont, this 16 day of February 2024.

Chris Jolly, Chair
Caroline DeVore
Michael Furst
Paul Rousselle
Jason Cohen

NOTICE: This decision may be appealed to the Vermont Environmental Court by an interested person who participated in the proceeding(s) before the 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