

Development Review Board, Town of Fayston, VT
Notice of Decision for Application No. 3813

Appellant: David Earl

Reason for Application: Appeal of the Zoning Administrator's issuance of Permit #3810 for Home Occupation of a Farm Education Summer Camp.

Application Number(s): 3813

Public Hearing Attendees: Attending DRB Members: Shane Mullen (Chair), Ky Koitzsch, Dan Young (Vice Chair), Mike Quenneville, Pete Ludlow

Zoning Administrator: Jason Wilson

Public Via Zoom: David Earl, Allison Hyde, Anne Marie Furey, Peggy Lord, Susan Koepplinger, Kelly Elwell, Kim Hall, Sara Gee, Karen Sauther, Asah Lauren, Lulu Kalman. In person: Mary Westhelle, Joan Crossen, Dick and Laura Kingsbury, Jim Westhelle, Jan Tierson, Christine Tierson, Katie Westhelle, ML McLaughlin, Hannah Skalecke, Simon Skalecke, Michael River, Laura Gailiunns, Craig Dahlgren, Robert Westhelle, Daniel Seff, Eliza Graves, Lisa Schermerhorn, Shannon Sumner, Brian Tillman, Laura Mongeon, Kelly Schiavone, Constencie Gomez, Lucia Gomez, Corinthia Richards, JB Weir, Katie Babbock

Introduction and Procedural History:

1. On June 5, 2023, David Earl ("Appellant") submitted Development Review Board Application #3813 appealing Home Occupation Permit #3810, issued to Katherine Westhelle ("Applicant") for property located at 247 High Country Road.
2. The Appellant requests that the Development Review Board reverse the ZA's decision to grant Home Occupation Permit #3810, declare that Home Occupation Permit #3810 is null and void, and deny the application for a home occupation permit.
3. Notice of the hearing was properly published. On June 15th, 2023, the legal warning for a public hearing for review of this application was published in the Valley Reporter. This warning was also posted at the Fayston municipal offices and both the Moretown and Waitsfield post offices. Abutters to the property were properly notified of the hearing.
4. The Development Review Board considered the appeal at a July 5, 2023, public hearing under the Town of Fayston Land Use Regulations, as amended on May 10, 2023.

The following exhibits were submitted to the Development Review Board:

- A. Development Review Board Application #3813.
- B. Notice of Appeal of Zoning Administrator's (ZA's) Decision filed by Daniel A. Seff, Esq.

- C. Letter from Laura DiPietro, Director of Water Quality, Agency of Agriculture, Food & Markets, dated June 13, 2023.
- D. Proof of notification of abutters.

Findings of Fact:

1. The subject property (parcel ID 06-014.006) is owned by Applicant Katherine Westhelle (the "Property"). The Property is located at 247 High Country Road.
2. The Property is located in the Soil and Water Conservation District as shown on the Town of Fayston Zoning Map and as described in Article 2, Table 2.4 of the Fayston Land Use Regulations.
3. Applicant has operated children's summer day camps on the Property since 2001.
4. The current day camp was established in 2022. It is operated as a farm education camp, serving up to six children.
5. The farm education camp operates from 9 AM to 3 PM, Monday through Friday, for up to eight weeks.
6. Activities at the day camp include crafting with farm-made goods, performing chores, feeding animals, animal care, horse riding, gardening, and education.
7. In good weather, at the end of the day, children swim in the nearby pond at Rabbit Run. Parents pick up their children from this location, reducing the traffic impact on High Country Road.
8. Applicant has received a determination from the Vermont Agency of Agriculture that the Property is a "farm" and operations on the Property meet the definition of "farming" in Section 2.16 of the Agency of Agriculture, Food & Markets' Required Agricultural Practices Regulations.
9. Livestock on the Property includes ten alpacas, four horses, seven chickens, and nine rabbits. Camp activities include raising, feeding, and management of this livestock.
10. Appellant alleges that there has been a significant increase in traffic and increase in vehicle speed on High Country Road, which is attributable to Applicant's business. The DRB finds that the Appellant has not provided sufficient evidence to support these assertions or demonstrate that a traffic increase on High Country Road, if any has occurred, is related to Applicant's business.

Decision:

1. **The Home Occupation Permit is denied.**

Applicant was issued Permit #3810 for a Home Occupation under Section 4.8(B) of the Fayston Land Use Regulations. Section 4.8(B) provides that Home Occupations are permitted as an accessory use in all zoning districts where residential uses are permitted.

Section 10.2 of the Regulations defines Home Occupation as “A use conducted entirely within a minor portion of a dwelling unit or accessory structure that is conducted by residents of the dwelling that is clearly incidental and secondary to the use of the dwelling for dwelling purposes, and that does not change the character of the dwelling and neighborhood (see Section 4.8; Home Based Businesses). A Home Occupation has no non-resident employees.”

Section 4.8(B)(2) also provides, “The home occupation shall be carried on within a minor portion of the dwelling or a minor portion of accessory building such as a garage or barn. In no case shall the home occupation occupy greater than an area equal to 40% of the floor area of the primary dwelling.”

Applicant’s farm education day camp includes activities such as performing chores, feeding animals, animal care, horse riding, and gardening, conducted outside and not entirely within a minor portion of the dwelling or an accessory structure on the Property. For this reason, the Development Review Board concludes that Applicant’s Day camp does not meet the definition of a Home Occupation and is not permitted as a Home Occupation under Section 4.8(B) of the Regulations.

2. Applicant’s farm education day camp is allowed as an accessory on-farm business under 24 V.S.A. §4412(11).

Twenty-four V.S.A. §4412(11) provides, “No bylaw shall have the effect of prohibiting an accessory on-farm business at the same location as a farm.” An “accessory on-farm business” is defined as “activity that is accessory to a farm” that comprises “educational, recreational, or social events that feature agricultural practices.” 24 V.S.A. §4412(11)(A)(i)(II).

The Agency of Agriculture, Food, and Markets, in its letter of June 13, 2023, has determined that the Property is a “farm” and operations on the Property meet the definition of “farming” under the Required Agricultural Practices regulations.

The Development Review Board concludes that Applicant’s Day camp is an accessory to Applicant’s farm, and the activities conducted at the day camp comprise educational, recreational, and social events featuring agricultural practices. Therefore, Applicant’s Day camp is allowed as an accessory on-farm business under 24 V.S.A. §4412(11).

The Fayston Land Use Regulations presently do not regulate accessory on-farm businesses. Therefore, the Development Review Board is without authority to further review or impose conditions on Applicant’s accessory on-farm business and no zoning permit is required for its operation. However, to retain eligibility as an accessory on-farm business, Applicant must comply with the requirements in 24 V.S.A. §4412(11)(B).

Development Review Board members voted as follows to the following in response to this application:

Shane Mullen: **Yes**/no/abstain/absent/recused

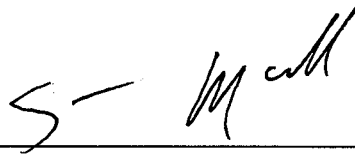
Ky Koitzsch: **Yes**/no/abstain/absent/recused

Michael Quenneville: **Yes**/no/abstain/absent/recused

Peter Ludlow: **yes/NO**/abstain/absent/recused

Daniel Young: **Yes**/no/abstain/absent/recused

Dated at Fayston, Vermont, this 1st day of August 2023.



Shane Mullen, Development Review Board Chair

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.