

Development Review Board, Town of Fayston, VT
Notice of Decision for Application Nos. 3832, 3833 & 3834

Appellant : Lisa Loomis & Christopher DelBrocco

Parcel ID : #07-03-0331

Reason for Application: Appeal of actions of the Zoning Administrator's Certificate of Occupancy (#3827), Zoning Permit #3830, and an Informal Notice of Violation (NOV) dated August 7, 2023 for Thomas McCarthy and Marie MacLeod's property located at 136 Old Quarry Road

Application Number(s): 3827, 3830, NOV dated 8/7/23

Public Hearing Attendees:

Attending DRB Members: Ky Koitzsch, Pete Ludlow, Shane Mullen (chair), Mike Quenneville, Daniel Young (Vice Chair),

Zoning Administrator: Jason Wilson

Public: Lisa Loomis (10/3/23, 10/11/23) & 11/07/23), Chris Delbrocco (10/3/23, 10/11/23 & 11/07/23), Tom McCarthy (10/3/23, 10/11/23 & 11/7/23), Marie MacLeod (10/11/23), Juan & Janice Darias (10/3/23), Andrew Carey (10/3/23), Tracy Keller (10/3/23), Brooke Dingleline (10/3/23), John Gravois (10/3/23), Chris Mayone (10/3/23), Kaiya Korbe (10/3/23), Justin Littlefield (10/3/23), Eastman Long (10/3/23), Kathy Pintair (11/7/23), Gunner McCain (11/07/23), Sarah Martin (11/07/23), Michael Duell (11/7/23) and Suzanne Lowen (11/7/23),

Introduction and Procedural History:

1. On August 22nd, 2023, Lisa Loomis and Christopher DelBrocco ("Appellants") submitted DRB applications 3832, 3833 and 3034 appealing decisions issued by the Fayston Zoning Administrator ("ZA") to Thomas Macleod and Marie Macleod ("Applicants") for a property at 136 Old Quarry Road.
2. For Application 3832, Appellants request that the DRB issue a determination that the Applicants are not entitled to a Certificate of Occupancy ("CO") for Permit #3704 because the structures were not constructed in conformance with the zoning permit and plans submitted, that the property constitutes a Campground, and that the Applicants did not apply for a State of Vermont wastewater permit prior to construction.
3. For Application 3833 Appellants request that the DRB issue a determination that a storage container is not a permitted use at the property, and that the sketch plan does not properly depict the 65' front yard setback.
4. For Application 3834 Appellants request that the DRB issue a determination that Applicant is in violation of Permit #3704 because the structures were not built according

to the Applicant's zoning permit application materials, that storage containers and mini cargo trailers are not permitted uses, that those structures are in violation of the Fayston Land Use Regulations (LURs), and that development of six campsites on the property constitute a campground and require a conditional use application as well as the installation of a wastewater disposal system.

5. Notice of the hearing was properly published.
6. The DRB considered the appeal at a public hearing on October 3, 2023 under the Fayston LURs as amended May 10, 2023. A site visit was scheduled and held on October 11th, 2023 to collect additional information.
7. A second public hearing was held on November 7, 2023.

The following exhibits were submitted to the Development Review Board:

- A. DRB Application 3832, including a Notice of Appeal filed by L. Brooke Dingleline, Esquire. *In Re: Appeal of Christopher DelBrocco and Lisa Loomis of the Zoning Administrator's Approval of Certificate of Occupancy for Permit Number 3827 dated August 8, 2023 regarding Past Permit Number 3704 for Parcel 07-033.001*
- B. DRB Application 3833, including a Notice of Appeal filed by L. Brooke Dingleline, Esquire *In Re: Appeal of Christopher DelBrocco and Lisa Loomis of the Zoning Administrator's Approval of Zoning Permit #3830 dated August 11, 2023 regarding an 8x20x10 Storage shed/container for Parcel 07-033.001*
- C. DRB Application 3844, including a Notice of Appeal filed by L. Brooke Dingleline, Esquire *In Re: Appeal of Christopher DelBrocco and Lisa Loomis of the Zoning Administrator's Final Determination Letter/Informal NOV dated August 7, 2023 regarding Zoning Violation Investigation for Parcel 07-033.001*
- D. Conditional Use permit 3085 (approved 6/30/10)
- E. Zoning permit application 3608 (approved 10/9/20)
- F. Zoning permit application 3704 (approved 11/23/21)
- G. Certificate of Occupancy 3827 (approved 8/8/23)
- H. Zoning permit application 3830 (approved 8/11/23)
- I. Letter from ZA Jason Wilson re: Zoning Violation Investigation for Parcel 07033.001 dated 8/7/23
- J. Complaint Report from EEO McCall (complaint number 23EC00744), VT DEC Environmental Compliance Division. Date approved 9/7/23

K. Proof of notification of abutters.

Findings:

1. The subject property (parcel ID 07033.001) is owned by Thomas and Marie Macleod. The property is located at 136 Old Quarry Road.
2. The property is located in the Rural Residential District as shown on the Town of Fayston Zoning Map and as described in Article 2, Table 2.4 of the LURs.
3. Conditional Use permit 3085 has expired and is no longer in effect.
4. Applicants attested that a single tent platform was constructed in 2004.
5. Application 3608 requested the construction of a shed and improvements to the existing tent platform.
6. Application 3704 requested the construction of two additional tent platforms plus a tent platform/pavilion structure and an extension to the shed approved in 3608. The application states that the front yard setback is in excess of 65 feet, and that all other setbacks are in excess of 150 feet. The supporting sketch illustrates one existing tent platform, three proposed tent platforms and an addition to the shed.
7. Application 3830 states that the property is residential and “recreation”. According to Table 2.4, “Outdoor Recreation Facility” is a permitted use. This use includes tent platforms (Table 2.4 (E)(3)).
8. Zoning Administrator Wilson (“ZA”) conducted a site visit to determine if the construction on the property as described in permit 3704 qualified for a CO. The ZA issued the CO on August 8, 2023.
9. EEO McCall’s report relates to a complaint about an unpermitted campground on the subject property. Applicants attested that there is no potable water or wastewater system currently, but a permit (WW-5-5468) was issued for the property. Applicants stated they occasionally camp on the property, but less than 60 days per year. Applicants stated they have used a travel camper on the property and intend to use it in the future. Applicant stated he would remove unbuilt decking and platform, leaving two wood tent platforms and a parking space for a travel camper. EEO McCall determined the after the work was completed, the property is not a campground according to State of Vermont wastewater regulations.
10. According to the LURs, a campground is a *parcel of land upon which three or more campsites are located for occupancy by a tent, cabin, lean-to, or similar structure as temporary living quarters for recreation, education, or vacation purposes.*
11. According to the LURs, a certificate of occupancy *certifies that the proposed use is constructed in conformance with the zoning ordinance and approved permit plans.*

12. According to Section 4.3 of the LURS, *[i]t shall be unlawful for any person to park a camper (travel trailer, recreation vehicle) or other temporary shelter (e.g., tent, tipi, yurt), except in an approved campground or on a residential or undeveloped lot, subject to the following provisions: (1) it is not occupied for dwelling purposes for more than 90 days within any one year period; and (2) it is not hooked up to a water system, septic system or other utilities.*
13. According to Section 4.16 B of the LURS, *any trailer used for storage or other accessory use for a period exceeding 30 days shall be considered a structure subject to all of the terms and conditions of these regulations.*
14. According to Section 9.2 B, *up to two (2) accessory structures per lot [are exempt from regulations in this zoning district], provided that each structure does not exceed eighty (80) square feet in floor area and 10 feet in height, and meet all setback distances for the district in which it is located.*
15. There is a driveway extending southeast to another property from the upper parking area. This extends the private road, Old Quarry Road, up to the upper parking area. Front yard setbacks were measured from the centerline of this road.
16. The existing tent platform measured approximately 126' to the centerline of Old Quarry Road.
17. The shed was measured to be approximately 67' to the centerline of Old Quarry Road.
18. The tent platform/pavilion measured approximately 63' to the centerline of Old Quarry Road.
19. A trailer and a 10' 7" x 5' 7" chair platform structure (59 square feet) were present at the time of the site visit.

Decision:

Based on the facts presented, the DRB finds the following:

1. The "current platform" as described in application 3704 has been in existence in excess of 15 years and is exempt from enforcement under 24 V.S.A. 4454(a).
2. The property has no permanent residence or water/sewer utilities. Applicant cannot claim two uses for the property. As there are tent platforms present, it is considered developed as an Outdoor Recreation Facility.
3. Applicants' property does not constitute a campground per the Fayston Land Use Regulations, there are only two tent platforms on the property.
4. The trailer and chair platform qualify as two accessory structures that are exempt from regulation. No other structures may be constructed without a permit.

5. In order for a Certificate of Occupancy to be issued, the Zoning Administrator must review what was constructed and determine whether the structures met the setback distances described in Table 2.4 (D) of the LURs.
6. Measurements taken by DRB members were inconclusive as to whether the existing remaining tent platform/pavilion met the 65-foot front yard setback. Due to the presence of trees, an accurate measurement was not possible.
7. A site survey prepared by a professional surveyor or engineer identifying property boundaries and existing features (e.g. roads, driveways, structures, utilities, etc.) is necessary to ascertain whether the remaining tent platform/pavilion meets setback requirements.
8. The DRB is able to provide setback waivers as per Section 3.6 D of the LURs.

Appellants' appeal of the ZA's CO (#3832) is **granted in part** as the 65-foot front yard setback appears to not have been met using the means and methods available to the DRB at the time of the site visit. However, additional evidence presented by the Applicant may be presented to the ZA in a new permit application with more accurate measurements of the setbacks and can be reconsidered. It is **denied in part** as to whether the property is a campground as there are only two tent spaces present, and there was no evidence of RV or campers on the site. It is also **denied in part** as to issuance of a state wastewater permit, Applicant is entitled to a CO regardless of if water/sewer infrastructure is in place as the uses present do not necessarily require one per the LURs.

Appellants' appeal of permit 3830 is **denied in full** as the shed as constructed meets the 65-foot front yard setback. The shed is an Accessory Structure to an Outdoor Recreation Facility that does not require conditional use approval.

Appellants' appeal of the informal NOV is **granted in part** as the 65-foot front yard setback for the only remaining structure part of application 3704 (the tent platform/pavilion appears to not have been met using the means and methods available to the DRB at the time of the site visit. However, additional evidence presented by the Applicant may be presented to the ZA in a new permit application with more accurate measurements of the setbacks and can be reconsidered. It is **denied in part** as the Applicant is allowed to have two structures less than 80 square feet on the property without ZA approval. It is **denied in part** as per the LUR's definition of campsite, which does not include parking spaces for RVs or travel trailers. Based on the evidence from the VT DEC enforcement officer, ZA, and the site visit by the DRB, there are currently only two tent platforms on the site.

DRB members voted as follows to the following in response to these applications:

Shane Mullen: **YES**/no/abstain/absent/recusal

Ky Koitzsch: **YES**/no/abstain/absent/recusal

Michael Quenneville: **YES**/no/abstain/absent/recusal

Peter Ludlow: **YES**/no/abstain/absent/recusal

Daniel Young: **YES**/no/abstain/absent/recusal

Dated at Fayston, Vermont, this 11th day of December, 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.