

**Town of Richmond
Development Review Board
Staff Report – September 9, 2020**

Review description

Donald and Laurel Palmer, trustees of the Palmer Family Trust – Application #2020-106 for an appeal and variance request of the Zoning Administrator’s determination that a driveway is a roadway, located at 640 Palmer Lane, Parcel ID PA0640, in the Agricultural/Residential (A/R) Zoning District.

Application #	2020-106
Appellant	Brennan Punderson & Donahue, PLLC, on behalf of Donald and Laurel Palmer
Property Address	640 Palmer Lane
Parcel #	PA0640
Size in Acres	9.6 acres
Zoning District	Agricultural/Residential

Submittals

- A. Zoning Administrator Determination email, dated July 15, 2020.
- B. Opinion from Town Attorney David Rugh, Stitzel Page & Fletcher, PLLC, dated July 15, 2020
- C. Notice of Appeal form, dated July 29, 2020
- D. Narrative to Notice of Appeal, prepared by Kevin T. Brennan, Brennan Punderson & Donahue, PLLC, dated July 29, 2020
- E. Appellants’ Exhibits:
 1. Vermont Agency of Natural Resources Map of the appellants’ parcels
 2. Vermont Significant Wetland Inventory Map of the appellants’ parcels
 3. Town of Hinesburg DRB Final Plat Approval for Donald and Laurel Palmer for a two-lot subdivision on May 7, 2002
 4. Wetland Delineation from Evan Fitzgerald, Fitzgerald Environmental Associates
- F. Town of Richmond DRB Final Subdivision Application Approval for Donald and Laurel Palmer for a two-lot residential subdivision on March 25, 2008
- G. Survey of portion of property of Donald & Laurel Palmer (subject property) prepared by Ronald LaRose, dated July 31, 2007. (For Town of Richmond DRB Final Subdivision Application)
- H. Google Earth aerial photo of subject property dated June 9, 2018
- I. Google Earth aerial photo of subject property dated May 13, 2015
- J. Google Earth aerial photo of subject property dated May 19, 2012
- K. Google Earth aerial photo of subject property dated July 5, 2009
- L. Google Earth aerial photo of subject property dated April 30, 2004

- M. Copy of Richmond Zoning Regulations Section 6.9, effective November 5, 1996
- N. Staff report prepared for Town of Hinesburg DRB for Sketch Plan Review of a two-lot subdivision, dated April 2, 2002
- O. Staff report prepared for Town of Hinesburg DRB for Final Plat Review of a two-lot subdivision, prepared by Faith Ingulsrud, Town Planner, Town of Hinesburg, dated May 7, 2002
- P. Survey of portion of property of Donald & Laurel Palmer (subject property) prepared by Ronald LaRose, dated September 6, 2000 and revised April 2, 2002 (For Town of Hinesburg DRB Final Plat Review application)
- Q. Copy of 24 V.S.A. §4413 (Limitations on municipal bylaw)
- R. This staff report, prepared by Ravi Venkataraman, Town Planner, Town of Richmond, dated September 9, 2020

Procedural Information

As per the Notice Requirements, a Notice for Public Hearing appeared in the Burlington Free Press on August 25, 2020. The Notice was also posted at three locations within the Town. The Referral Notice were sent on August 20, 2020. Notice to the adjoining landowners was sent on August 20, 2020.

Staff Recommendation

Staff recommends upholding the Zoning Administrator's determination and denying the appellant's variance request.

Permitting History

- January 18, 1989 – Building Permit for 224-square-foot sugar house
- February 1, 2008 – Preliminary Plan Subdivision approval for a two-lot subdivision
- March 25, 2008 – Final Plan Subdivision approval for a two-lot subdivision
- July 8, 2013 – Zoning Permit for “Use travel trailer until [applicants] depart for Florida in November; get a E911 permanent [address] to use 640 [Palmer Lane]”
- October 13, 2014 – Boundary line adjustment by Donald and Laurel Palmer, Jose Palmer Leavitt and James C. Leavitt of 0.8 acres

Timeline leading up to this hearing

1. The Zoning Administrator met with appellants on June 4, 2020 to discuss constructing a driveway on the subject property.
2. The appellants requested a determination from the Zoning Administrator on constructing a driveway within a wetland buffer on July 2, 2020.
3. The Zoning Administrator sought legal advice from the Town Attorney on this matter on July 2, 2020
4. Based on the Zoning Administrator's interpretation of the zoning regulations and the Town Attorney's advice, the Zoning Administrator made the determination that “a driveway is a roadway and hence development within the wetland buffers isn't allowed” in an email to the appellant on July 15, 2020.

5. The appellant filed an appeal on the Zoning Administrator's determination on July 29, 2020.

Basis of the Zoning Administrator's Determination

Per Richmond Zoning Regulations Section 6.9 (emphasis added):

No building, roadway or septic system shall be constructed within 100 feet of a Class I wetland and within 50 feet of a Class II wetland. Classifications of wetlands are established by the State of Vermont.

The zoning regulations do not include a definition for "roadway". When interpreting zoning regulations, the Zoning Administrator interprets the plain and ordinary meaning of the ordinance (In re Appeal of Trahan, 2008 VT 90, 184 Vt. 262). For terms that are not defined in the ordinance, the Zoning Administrator may obtain the plain and ordinary meaning of the term from a dictionary definition (Franks v. Town of Essex, 2013 VT 84, 194 Vt. 595). Merriam-Webster Dictionary defines a "roadway" as:

the strip of land over which a road passes.

The zoning regulations does include a definition for "road" under Section 7.2 (emphasis added):

A way for vehicular traffic, whether designated as a Road or Highway, road titled to town in simple fee, town rights-of-way, highway, thoroughfare, parkway, throughway, road, avenue, boulevard, lane, or otherwise.

In addition, the zoning regulations includes the following definition for "driveway" per Section 7.2 (emphasis added):

An improved surface for vehicular access to no more than three (3) lots.

Thus, the Zoning Administrator concluded that a driveway is a type of road, and that a roadway includes driveways based on the plain and ordinary meaning of the terms. Based on the data from the Vermont Agency of Natural Resources, the Zoning Administrator found that the proposed location of the driveway would be located within a Class II wetland buffer. Therefore, the Zoning Administrator determined that the applicant's request for a permit could not be issued for a driveway within a wetland buffer

The Town Attorney also confirmed that this interpretation would be the correct application of the zoning regulations. The Town Attorney's opinion affirming the Zoning Administrator's interpretation of the regulations is enclosed for your consideration.

Variances

The appellant has also requested a variance. Pursuant to Section 8.4.5 as well as 24 V.S.A. 4464, the DRB may grant a variance if all the following facts are found (staff notes on this matter are in **bold**):

a) That there are unique physical circumstances or conditions, including irregularity, narrowness, or shallowness of Lot size or shape, or exceptional topographical or other physical conditions peculiar to the particular property, and that unnecessary hardship is due to such conditions, and not the circumstances or conditions generally created by the provisions of these Zoning Regulations in the neighborhood or Zoning District in which the property is located.

The subject lot is not irregular or nonconforming. Natural resources on the lot include the presumed Class II wetland, and a stream. Portions of the lot contain steep slopes (greater than 20 percent grade)

b) That because of these physical circumstances or conditions, there is no possibility that the property can be developed in strict conformity with the provisions of these Zoning Regulations and that the authorization of a variance is therefore necessary to enable the reasonable use of the property.

Staff concludes that the subject property can be developed in accordance with the zoning regulations currently in effect. Enabling the appellant to build a driveway on the subject parcel would allow access to a parcel the appellant owns within the Town of Hinesburg. Determining reasonable use of a property located within the Town of Hinesburg is not in the Town of Richmond's jurisdiction.

c) That the unnecessary hardship has not been created by the appellant.

d) That the variance, if authorized, shall not alter the essential character of the neighborhood or district in which the property is located, substantially or permanently impair the appropriate use of development of adjacent property, reduce access to renewable energy resources, nor be detrimental to the public welfare.

e) That the variance, if authorized, shall represent the minimum variance that shall afford relief and shall represent the least deviation possible from these Zoning Regulations and from the Town Plan.

Draft Motions

To facilitate action by the DRB, I have provided the following draft motions:

Motion to uphold Zoning Administrator's determination

I, _____, move to uphold the Zoning Administrator's determination that a driveway is a roadway and therefore cannot be constructed in the appellants' proposed location pursuant to Section 6.9.

OR

Motion to overturn Zoning Administrator's determination

I, _____, move to overturn the Zoning Administrator's determination for the following reasons:

1. [placeholder]
2. [placeholder]

Motion to grant variance request

I, _____, move to grant the appellant's variance request based on the following findings:

1. [placeholder for findings under criteria (a)]
2. [placeholder for findings under criteria (b)]
3. [placeholder for findings under criteria (c)]
4. [placeholder for findings under criteria (d)]
5. [placeholder for findings under criteria (e)]

OR

Motion to deny variance request

I, _____, move to deny the appellant's variance request based on the following findings:

1. [placeholder for findings under criteria (a)]
2. [placeholder for findings under criteria (b)]
3. [placeholder for findings under criteria (c)]
4. [placeholder for findings under criteria (d)]
5. [placeholder for findings under criteria (e)]