

MEMORANDUM TO THE DEVELOPMENT REVIEW BOARD

RE: Certificate of Occupancy Appeals – 1330 Jericho Road

Appellants: Chelsye and Trevor Brooks

Property at Issue: 1330 Jericho Road, Richmond, Vermont

Permits at Issue: Zoning Permit #2024-02, #2025-75, #2024-67, and #2025-41

Certificates of Occupancy Appealed: Driveway Certificate of Occupancy and Dwelling Certificate of Occupancy

I. Purpose of Memorandum

This memorandum summarizes the main issues in the appeals of the Certificates of Occupancy issued for the driveway and single-family dwelling at 1330 Jericho Road.

The issue before the Development Review Board is whether, when the Certificates of Occupancy were issued, the record showed that the land, driveway, related site work, underground utilities and trenching, disturbance, drainage improvements, and dwelling were built according to the approved zoning permits, approved project plans, permit conditions, the Richmond Zoning Regulations, and applicable specifications.

During review of amended driveway permit #2025-75, Appellants raised concerns regarding excavation, grading, clearing, disturbance within the five-foot No-Build Zone, underground utilities and trenching, and other related site development. Those issues were not resolved during the amended permit appeal and were left for Certificate of Occupancy review. The Zoning Administrator later issued the Certificates of Occupancy even though those same compliance issues remained unresolved.

II. Applicable Certificate of Occupancy Standard

Before issuing a Certificate of Occupancy, Richmond Zoning Regulation § 5.3.5.3 requires the Administrative Officer to determine that the land is used and the structure is built according to the approved zoning permit, the Richmond Zoning Regulations, approved project plans, applicable conditions of approval, and any other applicable specifications. For heated or cooled structures, the applicant must also file the applicable building energy standards certificate.

The Certificate of Occupancy process therefore requires more than a general determination that construction occurred. The required finding is tied to the approved permits, approved plans, permit conditions, zoning regulations, and applicable specifications.

III. Authorities Relied Upon

This appeal relies on 24 V.S.A. §§ 4449(a)(1), 4449(a)(2), 4449(a)(3), and 4465; 30 V.S.A. § 51; and the following Richmond Zoning Regulations: §§ 1.6, 2.5.2, 3.2.4(e), 4.1, 4.12(g), 5.2.1(e), 5.3.3, 5.3.4, 5.3.5, 6.2, 6.11, and 8.1.

RZR § 4.1 requires vehicular accesses to comply with the Public Works Specifications. RZR § 6.2.1(e) requires the intersection of a driveway with a public or private road to conform to the Public Works Specifications and to meet the Vermont Agency of Transportation B-71 Standards for construction.

RZR § 5.3.3 provides that any zoning permit issued based on material inaccuracies or misrepresentations in an application or supporting documents is null and void. RZR § 5.3.4 provides that amendments to permits already issued are limited in scope to the changes from the permit already issued.

Section 4449(a)(2) provides that, where municipal bylaws require a Certificate of Occupancy, provision of the applicable RBES certificate required by 30 V.S.A. § 51 is a condition precedent to issuance of that Certificate of Occupancy. Under 30 V.S.A. § 51, the RBES certificate must certify that the residential building was constructed in compliance with RBES, and “builder” means the general contractor or other person in charge of construction with power to direct construction details.

Section 4465 authorizes an interested person to appeal a decision or act of the Administrative Officer to the Development Review Board.

IV. The Driveway Certificate of Occupancy Was Issued Before the Amended Permit Had Taken Effect

The Certificate of Occupancy for the amended driveway was issued while Zoning Permit #2025-75 had not yet taken effect.

Under 24 V.S.A. § 4449(a)(3), a municipal land use permit does not take effect until the time for appeal under § 4465 has passed. If a notice of appeal is filed, the permit does not take effect until the municipal appeal is complete and the time for taking an appeal to the Environmental Division has passed without an appeal being taken. Appeals to the Environmental Division from DRB decisions are taken within 30 days. If an appeal is taken to the Environmental Division, the permit does not take effect until the Environmental Division rules under 10 V.S.A. § 8504 on whether to issue a stay, or until 15 days expire, whichever comes first.

Here, the DRB issued its decision on amended driveway permit #2025-75 on May 8, 2026. The driveway Certificate of Occupancy was issued on May 15, 2026. At that time, the 30-day period for taking an appeal to the Environmental Division had not passed. The amended driveway permit therefore had not taken effect when the driveway CO was issued.

Because amended driveway permit #2025-75 had not yet taken effect, the driveway Certificate of Occupancy could not be issued based on that permit.

V. The Original Driveway Permit Required Compliance with Public Works Specifications Before CO

Zoning Permit #2024-02 required the driveway to comply with Richmond Public Works Specifications before a Certificate of Occupancy could be issued.

That condition is consistent with Richmond's regulatory structure. The Public Improvements Standards classify vehicular traveled ways as streets, roads, or driveways, and state that driveway standards are found in the Richmond Zoning Regulations. The Richmond Zoning Regulations, in turn, require vehicular accesses to comply with the Public Works Specifications. The Public Improvements Standards also include driveway-specific figures for urban driveway aprons and rural driveways, both of which reference VTrans B-71 and the Richmond Zoning Regulations. Additionally, the Zoning Regulations definition of the Public Works Specifications is inclusive of driveways and other such improvements, "The Town of Richmond's most recently adopted manual outlining and specifying the requirements for roads, driveways and other such improvements, including water and sewer improvements, which come under jurisdiction of the Town or are made a part of Town approvals."

The Public Improvements Standards further state that variations from those standards require written Town approval, that all materials, design, and work products must meet applicable Town standards, and that later changes to approved plans must be reviewed and approved by the Town. The review-process chart also provides that a new or modified access onto Town roads require access approval and pre- and post-construction inspection by the Town Highway Department, and that copies of approvals and inspection records must be filed with Planning and Zoning.

Because Permit #2024-02 required compliance with Public Works Specifications before CO, the record should show that this permit condition was satisfied before the driveway CO was issued. At minimum, the record should show that the as-built access and driveway were reviewed against the Public Works Specifications, the applicable access approval, the approved plans, the driveway entrance standards, VTrans B-71, drainage and culvert standards, stabilization standards, and any required pre- and post-construction inspections.

The record does not show that this occurred.

Examples of issues requiring review before issuance of the driveway CO include:

1. Whether the driveway entrance complies with the applicable Richmond Public Works Specifications and VTrans B-71 driveway standards.
2. Whether the driveway approach grade complies with the standards applicable to driveway intersections.

3. Whether required sight distance and access safety were verified.
4. Whether the driveway entrance geometry, width, grading, drainage, and driveway apron construction match the approved permit, approved plans, accepted lines, grades, and cross-sections.
5. Whether the as-built driveway and access changes were reviewed and approved as required for changes to approved plans.
6. Whether steep cut and fill slopes were constructed, drained, compacted, and stabilized in accordance with the Public Works Specifications.
7. Whether guardrail or other protective measures were required based on fill height and slope conditions.
8. Whether driveway drainage, culverts, ditches, discharge points, sediment controls, and related stormwater features were reviewed and functioning as approved at the time of CO.
9. Whether all required pre- and post-construction inspection records were filed with Planning and Zoning.
10. Whether the storm drainage works have been designed to accommodate at least a 25-year storm.

The permit condition required compliance with Public Works Specifications before CO, and the record does not show that this condition was satisfied. Because RZR § 5.3.5.3(a) requires the Administrative Officer to determine that the project was built according to the permit conditions and applicable specifications, the driveway CO was improperly issued without that verification.

VI. The Public Works Specifications Are Relevant to More Than the Road Entrance

The Public Works Specifications are relevant to the CO appeal because they were incorporated into the driveway permit, the Richmond Zoning Regulations, and the approved access requirements.

First, the original driveway permit expressly required compliance with Public Works Specifications before issuance of a CO. Second, RZR § 4.1 independently requires vehicular accesses to comply with the Public Works Specifications. Third, RZR § 6.2.1(e) specifically requires driveway intersections to comply with the Public Works Specifications and VTrans B-71. Fourth, the Public Improvements Standards themselves include driveway-specific figures and repeatedly address driveways, driveway access, driveway aprons, access permits, inspection records, utilities, grading, ditches, slope stabilization, drainage, culverts, and construction standards.

Where the Richmond Zoning Regulations contain a specific driveway rule, that rule must also be satisfied. Where the Public Works Specifications contain additional or more detailed construction, access, inspection, stabilization, drainage, culvert, or documentation requirements that are incorporated by permit condition, by RZR § 4.1, by RZR § 6.2.1(e), or by the approved project plans, those requirements also matter to the CO decision.

The concern here is that the CO record does not show compliance with the driveway, access, drainage, stabilization, inspection, and documentation requirements that were incorporated by the permit condition, the Richmond Zoning Regulations, the Public Works Specifications, and the approved project plans. The Zoning Administrator needed a record basis to determine that the driveway complied with the applicable zoning and Public Works requirements, or that any variation had been reviewed and approved by the Town.

VII. The As-Built Driveway and Related Site Work Exceed the Scope of the Amended Permit

The amended driveway permit application identified a limited set of changes. The as-built driveway and related site work include additional clearing, grading, excavation, disturbance, utility installation, drainage work, and homesite preparation activities that were not identified in the amendment application.

RZR § 5.3.4 requires amendments to permits already issued to be made by applying to the Administrative Officer for a new permit. The application for the new permit is limited in scope to the changes from the permit already issued.

If the applicant wanted approval for additional driveway work, expanded disturbance limits, grading, drainage, culverts, utilities, access changes, or homesite preparation activities beyond the scope of the amended permit application, those changes needed to be included in a new permit application before they could be relied on for a Certificate of Occupancy.

A Certificate of Occupancy cannot be used to approve additional work after the fact that was not identified in the amendment application and was not approved through the permit process.

VIII. The As-Built Driveway and Related Site Work Were Not Built According to Approved Plans

The permit record does not accurately show important parts of the as-built driveway and related site work, including underground utilities and trenching, disturbance limits, grading, clearing, drainage work, culverts, forebay conditions, and portions of the driveway and homesite preparation.

Because these improvements and disturbances are absent from the approved plans, the Zoning Administrator could not determine that the project was built according to approved project plans as required by RZR § 5.3.5.3(a).

This is especially important because the Public Improvements Standards address not only roads and accesses, but also utilities, drainage, culverts, stormwater, and other public or private improvements. The omission of underground utilities, drainage work, culvert conditions, and related disturbance from the approved plans prevented meaningful review of whether those

improvements complied with the Richmond Zoning Regulations, the Public Works Specifications, the No-Build Zone, and the approved project plans.

IX. Material inaccuracies, Misrepresentations, Inaccuracies, and Incomplete Approved Plans

RZR § 5.3.3 provides that any zoning permit issued based upon material inaccuracies or misrepresentations in an application or supporting documents is null and void and does not waive any provision of the zoning regulations.

That provision is relevant to the CO decision because the Certificates of Occupancy were issued based on the permit record and approved plans. If those records omitted or inaccurately showed material parts of the project, including disturbance limits, grading, clearing, underground utilities, utility trenching, drainage work, culverts, steep slopes, rights-of-way, or No-Build Zone impacts, the Administrative Officer could not determine that the project was built according to the approved permits, approved project plans, permit conditions, and applicable specifications.

At minimum, these omissions and inaccuracies prevented the Administrative Officer from making the required finding under RZR § 5.3.5.3(a) that the land was used and the project was built according to the approved zoning permit, approved project plans, permit conditions, and applicable specifications.

X. Five-Foot No-Build Zone

The driveway construction and related site work resulted in excavation, grading, filling, clearing, drainage work, utility trenching, and other disturbance within the five-foot No-Build Zone established by RZR § 3.2.4(e).

This land disturbance within the No-Build Zone was not authorized by the original driveway permit or approved as part of the amended driveway permit. Although portions of the disturbance appear on the as-built driveway plan attached to the amended permit application, the disturbance was not identified in the list of proposed amendments and was not approved as a permit amendment.

The driveway/right-of-way exception is limited. The record still had to show that any excavation, grading, filling, clearing, drainage work, utility trenching, or other disturbance within the No-Build Zone was within an applicable exception or was otherwise authorized by the approved permits and Richmond Zoning Regulations.

The existence of a private utility easement does not establish zoning compliance. The permit record still had to show that the utility work and associated disturbance complied with the Richmond Zoning Regulations.

XI. Driveway Width

The amended permit described narrowing the driveway to between twelve and twenty-four feet in width. The as-built driveway exceeds twenty-four feet in multiple locations.

Even if the Richmond Zoning Regulations allow a driveway up to thirty-six feet in some circumstances, that is not the same as saying the wider as-built driveway was approved for this parcel. The original driveway permit did not approve the wider as-built driveway, and the amended permit did not list the wider driveway as one of the proposed amendments.

Even if the wider driveway appears on an as-built plan attached to the amended permit materials does not mean that it was approved as a permit amendment. A Certificate of Occupancy cannot be used to approve, after the fact, driveway width and related site disturbance that were not requested and approved through the permit process.

The excess driveway width is tied to additional excavation, grading, filling, clearing, No-Build Zone disturbance, steep slopes, drainage changes, and stabilization issues. Those impacts needed to be reviewed and approved as part of the permit process before a Certificate of Occupancy could be issued.

XII. Steep Slopes, Embankments, Stabilization, and Non-Developable Land

The as-built driveway and related grading created steep cut and fill slopes, including slopes near or exceeding 1:1 in certain locations. Additional unpermitted disturbance and filling also appear to extend into areas identified by ANR mapping as potentially containing slopes greater than thirty-five percent.

These issues are relevant to whether the project complies with the non-developable land provisions of RZR § 2.5.2, the steep slope provisions of RZR § 6.11, approved plans, permit conditions, and applicable specifications. RZR § 2.5.2 deems slopes equal to or greater than 35%, and privately owned vehicular or utility easements or rights-of-way, incapable of supporting land development.

RZR § 6.11 requires proposed construction on land with a slope over 20% to include engineering plans for adequate erosion control and safe construction methods. It also requires access to meet VTrans B-71 Standards and local requirements, with the stricter requirement applying if they conflict.

The Public Works Specifications contain specific standards for embankments, slopes, ditches, and stabilization. They require hillside embankments to be stepped and properly drained as fill is constructed. They require material placed in embankments to be placed in horizontal layers, in six-inch lifts, and compacted to 95 percent maximum dry density. They prohibit stumps, trees, rubbish, and unsuitable material in embankments.

The Public Works Specifications also limit grassed roadway cut or embankment slopes to 1 vertical to 2 horizontal, with a limited allowance for slopes as steep as 1 vertical to 1.5 horizontal only in cases of severe topographic constraint and only where stabilized with 18 inches of Type 2 rock protection. The specifications define Type 2 stone fill separately, making this a specific construction requirement rather than a general preference.

The specifications further require that, at completion of grading, slopes, and ditches, all disturbed areas be smooth and free of pockets, have sufficient slope to ensure drainage, and receive a minimum of four inches of topsoil, seed, fertilizer, lime, and mulch. The specifications also provide that guardrail shall be erected when the height of fill at the shoulder point is more than five feet with a slope steeper than 1 on 3, or as ordered by the Town.

The as-built driveway contains steep cut and fill slopes that appear to exceed the ordinary Public Works slope standard and may exceed even the limited severe-constraint allowance. The record does not show that these slopes were stepped, drained, compacted, stabilized, armored, topsoiled, seeded, mulched, or otherwise treated in accordance with the Public Works Specifications. Nor does the record show that exposed ditch and slope soils were stabilized before the Certificate of Occupancy was issued. The record also does not show that guardrail or other protective measures were evaluated based on fill height and slope conditions. The EPSC plans submitted with both the house permit and amended driveway permit do not account for slopes exceeding 2:1 or 1:1, thus have not planned for adequate erosion control or safe construction methods for these-built site specific conditions.

Because Zoning Permit #2024-02 required compliance with Public Works Specifications before issuance of a Certificate of Occupancy, the lack of records showing compliance on these issues supports reversing or vacating the driveway CO under RZR § 5.3.5.3(a).

XIII. Approved EPSC Plan and Public Works Requirements Were Not Completed

The approved amended driveway permit included an EPSC plan addressing construction-phase erosion control and disposal of stumps, woody debris, and construction debris.

The EPSC plan is part of the approved project plans. When the driveway Certificate of Occupancy was issued, stumps and vegetative debris generated by the project remained on site and had not been disposed of as shown or required by the approved EPSC plan.

The Public Works Specifications also address clearing and grubbing material. They require material from clearing and grubbing to be disposed of in a manner approved by the Town and in compliance with local and State ordinances. They also provide that stumps, trees, rubbish, and other unsuitable material shall not be placed in embankments.

The remaining stumps and debris matter because the CO standard requires the project to be built according to approved project plans and applicable specifications. If the approved EPSC plan required disposal of stumps and debris, and the Public Works Specifications require

clearing and grubbing material to be properly disposed of and kept out of embankments, then the project had not been completed according to the approved plans and applicable specifications when the CO was issued.

XIV. Stormwater, Drainage, Culverts, and Downstream Impacts Were Not Shown to Comply

The Public Works Specifications contain drainage and culvert standards relevant to the driveway and related site work. The storm sewer section applies to both closed storm drain systems and open culvert applications. It provides that storm drainage calculations shall be provided as part of a site plan or preliminary subdivision plan, that the Town may require detailed hydrological analysis, that developments adversely impacting existing storm drainage facilities are expected to upgrade those facilities, and that new culverts, catch basins, manholes, and pipes associated with storm drainage must be designed to accommodate at least a 25-year storm.

The Public Works Specifications also identify stormwater management and best management practices as addressing both the quantity and quality of stormwater runoff. They identify relevant BMPs including proper sediment control throughout construction, maintenance of catch basins, vegetated swales and buffers, detention or infiltration facilities, plunge pools or stone splash pads at pipe outlets, and headwalls or wingwalls to minimize erosion and undermining. The specifications further identify stormwater management goals including minimizing runoff, providing adequate treatment before discharge, encouraging infiltration, ensuring that post-development 25-year peak discharge does not exceed pre-development rates, protecting channels from erosion, requiring enforceable operation and maintenance agreements for structural stormwater treatment elements, and returning stormwater discharges to the same drainage watershed where possible.

The Town required a culvert at the driveway entrance, and Appellants do not challenge the fact that a culvert was installed there. However, the installation of a Town-required driveway culvert does not resolve whether the as-built driveway drainage system as a whole was completed, stabilized, and functioning in accordance with the approved plans, Public Works Specifications, and Richmond Zoning Regulations when the driveway CO was issued.

These requirements are directly relevant to the as-built driveway. The ditch along the side of the driveway discharges into the Town ditch along Jericho Road. That Town ditch has required cleanout because of sediment and silt associated with the driveway construction and drainage. This is also relevant to RZR § 4.12(g), which prohibits uses that cause, create, or result in an undue adverse impact on municipal facilities and services.

The ditch across the middle section of the driveway discharges into a stream. That stream carries flow toward a neighboring pond, and Appellants have observed sediment reaching the pond and substantial downstream erosion of the stream channel after the pond outlet, including areas where the streambed has eroded approximately two to four feet.

There have also been drainage and culvert issues downstream where this stream crosses Jericho Road, including a sinkhole repair near the Jericho Road culvert. These downstream conditions show why drainage calculations, hydrologic review, stormwater treatment, culvert function, sediment control, and post-construction inspection should have been verified before issuance of the driveway Certificate of Occupancy.

The record does not show that drainage, culvert function, stormwater treatment, erosion prevention, downstream impacts, or long-term maintenance requirements were reviewed or satisfied before the driveway CO was issued. Nor does the record show that the as-built driveway drainage system, forebay area, ditches, culverts, and downstream discharge points were functioning as approved when the CO was issued.

XV. House Certificate of Occupancy Depends on Valid Driveway CO

The house permit expressly required issuance of a Certificate of Occupancy for the driveway before issuance of a Certificate of Occupancy for the dwelling.

Because the driveway CO was issued too early and is not supported by the record, the prerequisite for issuance of the dwelling CO was not satisfied. The house CO should therefore also be reversed or vacated.

XVI. RBES Certificate for the Dwelling Does Not Show Compliance

RZR § 5.2.1(e) requires applicants for heated or cooled structures to adhere to the applicable Building Energy Standards and requires an RBES or CBES certification of adherence to the standards before issuance of a Certificate of Occupancy.

State law also makes provision of the required RBES certificate a condition precedent to issuance of a municipal Certificate of Occupancy where the municipality requires a CO. Under 30 V.S.A. § 51, the certification must certify that the residential construction meets RBES, and “builder” means the general contractor or other person in charge of construction who has the power to direct others with respect to construction details.

The RBES Certificate submitted with CO 2026-006 does not show compliance with the applicable 2020 RBES requirements. Richmond’s regulations and state law require a certification of adherence to the standards, not simply the filing of an RBES form. Among other deficiencies, the certificate appears incomplete, does not show that the signer was the builder or otherwise authorized under 30 V.S.A. § 51, identifies only three Package Plus points for a new single-family dwelling under 2,000 square feet, omits blower-door test information, and includes insulation values that do not appear to meet the selected 2020 RBES compliance path.

Because the submitted certificate does not show compliance with the applicable RBES requirements, the Zoning Administrator could not determine under RZR § 5.3.5.3(a) that the structure was built according to the Richmond Zoning Regulations and applicable specifications.

XVII. Requested Relief

For the reasons above, Appellants respectfully request that the Development Review Board reverse or vacate the Certificates of Occupancy issued for Zoning Permit #2024-02, #2025-75, #2024-67, and #2025-41.

The DRB has authority under 24 V.S.A. § 4465 to review the Zoning Administrator's issuance of the Certificates of Occupancy and the related determinations that the project complied with the approved permits, approved plans, Richmond Zoning Regulations, permit conditions, and applicable specifications.

The permit record and as-built driveway and related site work do not show that the driveway, associated site development, underground utilities and trenching, disturbance, drainage improvements, and dwelling were constructed according to the approved permits, approved plans, permit conditions, Richmond Zoning Regulations, and applicable specifications as required by RZR § 5.3.5.3(a).

At minimum, Appellants request that the DRB remand the matter to the Zoning Administrator with instructions that Certificates of Occupancy may not issue unless the permit record contains approved as-built plans and documentation showing compliance with the approved permits, approved project plans, permit conditions, Richmond Zoning Regulations, Public Works Specifications, VTrans B-71, applicable inspection requirements, stormwater and drainage requirements, EPSC requirements, and RBES requirements. This documentation should include verification that driveway drainage, culverts, ditches, stormwater controls, sediment controls, discharge points, downstream impacts, and long-term maintenance requirements comply with the approved plans, Public Works Specifications, and Richmond Zoning Regulations.

Signed and Submitted July 8, 2026

/s/ Trevor Brooks

/s/ Chelsye Brooks