

TOWN OF RICHMOND
DEVELOPMENT REVIEW BOARD

In re: Administrative Subdivision AS2026-001

Appeal No. AP2026-003

Property: 1330 Jericho Road

Appellants: Chelsye Brooks and Trevor Brooks

Applicant: Jay McCormack

APPELLANTS' MEMORANDUM IN SUPPORT OF APPEAL

Continued hearing scheduled for October 14, 2026

Requested Decision and Issues on Appeal

The Development Review Board should grant Appeal AP2026-003, reverse the Zoning Administrator's approval, and deny AS2026-001. Section 2.6.2 of the Richmond Zoning Regulations effective August 25, 2025 (RZR) required each created lot to meet the applicable zoning and subdivision requirements before administrative approval. The record does not establish that compliance. The approval relies on proposed driveway changes while Permit #2025-75 is under appeal, describes the existing house as a future accessory dwelling unit while its permit and certificate of occupancy are under appeal, postpones access and emergency access determinations, and leaves frontage, drainage, and utility plan issues unresolved.

Two questions could resolve this appeal without deciding every other dispute. First, may AS2026-001 rely on changes to the driveway and the stated use of the existing house while related matters are before the Environmental Division? Second, did the record establish compliant vehicular and emergency access before approval? The remaining sections address frontage, drainage, and infrastructure. The DRB is reviewing the Zoning Administrator's administrative approval, not an original subdivision application.

Principal record facts

1. On July 13, 2026, the Zoning Administrator approved AS2026-001 to divide the property into a new 2.76-acre Lot 1 and a remaining 95.40-acre Lot 2. The application proposes a duplex on Lot 1 and a new four-bedroom house on Lot 2, with the existing one-bedroom house becoming an accessory dwelling unit. (AS2026-001 packet at 2, 10–12.)

2. The AS2026-001 subdivision plat shows the existing parcel's approximately 55 feet of Jericho Road frontage assigned to the new Lot 1. RZR §3.2.3(c) calls for at least 75 feet of frontage or DRB approved access under §§4.2 and 4.3. On March 11, 2026, the DRB approved proposed right-of-way language for interior Lot 2. When Chelsye Brooks raised the frontage issue, the chair said it was not before the Board. (AS2026-001 packet at 4; March 11, 2026 DRB minutes at 4; meeting transcript at 35–38.)
3. The project narrative describes the existing driveway as approximately 1,852 feet long and 12 to 28 feet wide. It proposes narrowing the entire existing driveway to 12 feet by removing gravel and adding topsoil and seed, which the narrative says would remove approximately 12,090 square feet of impervious area. The proposed 12 foot width includes the shared portion serving both lots up to the duplex access. (AS2026-001 packet at 5, 10–12.)
4. For the drainage area containing the proposed duplex, the stormwater narrative credits approximately 9,000 square feet of that removal and reports lower modeled peak flow and volume. (Id. at 11.)
5. Permit #2025-75, which amended the driveway permit, remains under appeal in Environmental Division Case No. 26-ENV-00054. Its application describes the driveway width as “12' to 24' varying,” while AS2026-001 proposes narrowing the entire existing driveway to 12 feet. The driveway certificate of occupancy, CO2026-005, is separately under appeal in Case No. 26-ENV-00082. (Permit #2025-75 application at 1; AS2026-001 packet at 10–12.)
6. Permit #2024-67 authorized the existing one-bedroom house as a single-family home. That permit remains before the Environmental Division in Case No. 24-ENV-00107, and CO2026-006 for the same house is under appeal in Case No. 26-ENV-00082. AS2026-001 proposes a new four-bedroom house on the remaining Lot 2 and states that the existing house “will be converted to an Accessory Dwelling Unit.” (Permit #2024-67; Environmental Division Case Nos. 24-ENV-00107 and 26-ENV-00082; AS2026-001 packet at 10–11.)
7. The 2023 access application described its project as “Access for Single Family House.” The Highway Department recorded approximately 470 feet of sight distance in one direction and 500 feet in the other. On August 27, 2026, the Town Manager wrote that the local requirement was 495 feet, a quick site review still indicated about 470 feet, and a more thorough post construction measurement was needed. (Access Permit AC2023-04 at 1–2; Josh Arneson email, Aug. 27, 2026.)

8. Before AS2026-001 was issued, Chelsye Brooks asked whether the expanded use required a new access permit, a new sight distance measurement, and Fire Department review of the proposed narrowing. On July 13, the ZA replied, “Access is not effectively changing; no new access permit should be required.” He said deficiencies found under the Figure 8/B-71 standards could be corrected later and Fire recommendations would be addressed during later Zoning Permit and certificate of occupancy review. (Chelsye Brooks emails, June 22 and 30, 2026; ZA email, July 13, 2026 at 3:31 p.m.)

9. At the September 9 hearing, the ZA said a new access permit would be required later, with a Zoning Permit application for another dwelling. He also acknowledged that no prescribed sight distance measurement had been performed, that the Town’s estimate suggested a shortfall, and that Fire sign-off would occur during later zoning permitting. (Sept. 9, 2026 hearing recording at 32:35–35:13, 36:35–38:17, and 39:17–40:35.)

10. On June 29, the Fire Department tested the existing driveway with two engines. It found the first bump-out too small to turn a fire truck around and suggested making that turnaround deeper. At the second bend, Engine 3’s wheels left the traveled surface. Fire recommended moving the driveway “more to the right as you’re coming down,” with about four feet of additional width. Fire also recommended a turnaround at the new house, keeping the existing upper turnaround clear of debris, and placing distance markers every 800 feet. (AS2026-001 packet at 27–28.)

11. The Master Development Plan notes that the inner radius at the second bend will be widened by four feet, but it does not show a dimensioned widened edge or a revised impervious area calculation. The approval directs the applicant to address Fire’s recommendations during later zoning permitting and to submit revised plans and calculations if the driveway is widened. (AS2026-001 packet at 2, 5.)

12. The stormwater plan and HydroCAD model identify a drainage area for the first 875 feet of the existing driveway, shown as stations 0+00 through 8+75, and another beginning at station 18+52, or 1,852 feet from the starting point. They do not explain how runoff from the intervening 977 feet is represented. The model reports lower post development flows at selected points but does not compare flows reaching downstream drainage facilities with their capacity. (AS2026-001 packet at 6, 11–12, 13–21.)

13. Before approval, Chelsye Brooks told the ZA that the plans omitted the Appellants' privately owned underground electrical service beneath the vehicular access. She had previously hand delivered a labeled map showing the approximate locations of the Appellants' electrical service and water line. The ZA replied that private utilities serving the Appellants' lot were "not necessarily required for administrative subdivision approval" and pointed to a general note about easements not depicted. (Chelsye Brooks utility map, hand delivered to the ZA, October 10, 2025; Chelsye Brooks email, June 30, 2026 at 1:34 p.m.; ZA email, July 13, 2026 at 3:31 p.m.; AS2026-001 packet at 4–5.)

I. AS2026-001 depends on issues pending before the Environmental Division.

Once a municipal decision is appealed to the Environmental Division, the Town cannot reconsider or alter the matters within the scope of that appeal without a remand. A separate later application may proceed if it does not revisit the decision under appeal. *In re Freimour & Menard Conditional Use Permit*, No. 59-4-11 Vtec, slip op. at 6–7 (Vt. Super. Ct. Env'tl. Div. June 6, 2012); *In re Waitsfield Water System Preliminary & Final Plan Applications*, Nos. 39-3-12 Vtec & 67-5-12 Vtec, slip op. at 3–4 (Vt. Super. Ct. Env'tl. Div. July 20, 2012). The issue here is whether AS2026-001 can stand without deciding or changing matters in the pending appeals.

Permit #2025-75 remains under appeal in Case No. 26-ENV-00054. Its application describes the driveway width as "12' to 24' varying." AS2026-001 proposes narrowing the entire 1,852 foot driveway to 12 feet and credits 12,090 square feet of impervious surface removal. The subdivision thus depends on reconfiguring the driveway covered by the amended permit under appeal. The DRB should determine that reconfiguration would revisit the decision before the Court by comparing the AS2026-001 plans with the amended permit and its approved plans. (Permit #2025-75 application at 1 and approved plans; AS2026-001 packet at 5, 10–12.)

AS2026-001 also states that the existing one-bedroom house "will be converted to an Accessory Dwelling Unit" for the proposed four-bedroom house. Permit #2024-67 authorized the existing building as a single-family home and remains before the Environmental Division; CO2026-006 for that building is separately under appeal. By designating the existing house as a future accessory dwelling unit, AS2026-001 changes its stated status from the single-family home authorized by Permit #2024-67 while that permit remains under appeal before the Environmental Division. (Permit #2024-67; AS2026-001 packet at 10–11; Environmental Division Case No. 26-ENV-00082.)

II. Section 2.6.2 required access and public safety compliance before approval.

RZR §2.6.2 prohibits an administrative subdivision permit unless each created lot complies with the applicable vehicular access requirements and the Richmond Subdivision Regulations. The Zoning Administrator must administer the bylaws literally and may issue only a permit that conforms to them. (24 V.S.A. §§4448(a), 4449(a)(1); RZR §§5.2.2(a), 8.1.) Compliance required for AS2026-001 must be established before approval, not left for a future Zoning Permit or certificate of occupancy review.

A permit condition that allows approval to take effect while leaving an essential compliance determination for later review is an impermissible “condition subsequent.” A later plan may document a design already found compliant, but it cannot replace the information and findings needed to approve that design. (*In re 4527 Mountain Road Permit 6521*, No. 21-ENV-00098, slip op. at 5–7, 9–10, 13–14 (Vt. Super. Ct. Envtl. Div. July 31, 2022); *In re Treetop Development Co. Act 250 Development*, 2016 VT 20, ¶¶11–12, 14 & n.5, 201 Vt. 532.)

Here, the approval leaves access and emergency access questions for later permitting. The ZA deferred a new access permit and Fire review, while the approval calls for revised plans and impervious-area calculations if Fire’s recommendations require widening. As Sections III and IV explain, the unresolved questions concern sight distance, driveway width, and turning space needed to establish compliance. They require substantive review before approval under §2.6.2. (AS2026-001 packet at 2, 5, 27–28; ZA email, July 13, 2026 at 3:31 p.m.; Sept. 9, 2026 hearing recording at 32:35–38:17 and 39:17–40:35.)

III. Lot 1 lacks required frontage, and the record does not establish compliant vehicular access.

The existing parcel has approximately 55 feet of Jericho Road frontage. The HDR District has a 75 foot minimum road frontage requirement under RZR §3.2.3(c). AS2026-001 would divide that parcel and create Lot 1, a new lot containing 2.76 acres with deficient frontage. Section 2.6.2 requires each created lot to comply with the applicable zoning requirements and subdivision regulations. Section 610.1 of the subdivision regs says, “All LOTS must have the required frontage.” On March 11, the DRB approved right-of-way language for interior Lot 2; it did not establish Lot 1’s compliance with §3.2.3(c). Because the newly created Lot 1 lacks the required frontage, its creation does not satisfy §2.6.2. This defect alone warrants granting the appeal and reversing the Zoning Administrator’s approval. (RZR §§3.2.3(c), 2.6.2; Subdivision Regulations

§610.1 at 12; AS2026-001 packet at 4, 10–12; March 11, 2026 DRB minutes at 4; meeting transcript at 35–38.)

RZR §4.1 requires vehicular accesses to meet the Public Improvements Standards. Section 1.3 of the 2016 standards calls for an access permit or amendment for new uses that increase average daily traffic (ADT). Access Permit AC2023-04 describes access for one single-family house. AS2026-001 depicts a duplex, a new four-bedroom house, and the existing house converted to an accessory dwelling unit using that access. The single-house permit does not establish compliance for the expanded use, and the AS2026-001 record contains no amended access approval for it. Figure 8 specifies a width of 15 feet for a shared driveway with an ADT of 11–30, and a width of 20–36 feet where the ADT is greater than 30. The record does not establish how the proposed 12 foot wide shared driveway satisfies this requirement. (2016 Public Improvements Standards §1.3; Public Improvements Standards, Figure 8; Access Permit AC2023-04 at 1–2; AS2026-001 packet at 4–5, 10–12.)

RZR §6.2.1(e) requires the driveway to meet VTrans B-71 construction standards. B-71A applies to residential access serving up to two single-family homes or one duplex. The proposed access would serve a duplex, a new house, and the existing house converted to an ADU, placing it within B-71B's scope for larger residential developments and subdivisions. B-71B, Detail D, requires a minimum 24-foot width for a two-way undivided entrance. Under Note 8, that requirement applies within the highway right-of-way or through the end of the turning radius, whichever extends farther. At the depicted property line, the entrance appears approximately 16 feet wide. The plan does not identify a 24-foot entrance or otherwise demonstrate compliance with B-71B's width requirement. Compliance therefore remains unresolved. (RZR §6.2.1(e); VTrans B-71A, Note 8; B-71B, Detail D and Notes 8 and 10; Master Development Plan, Sheet 1, revised July 2, 2026, entrance at Jericho Road.)

The record also does not establish adequate sight distance. The original access review recorded approximately 470 feet in one direction, and the Town Manager later reported a similar observation following a site visit with the Highway Foreman and Zoning Administrator, while saying a proper post-construction measurement should be completed. At a posted speed of 45 miles per hour, Table 2 of the Public Improvements Standards specifies 495 feet, and VTrans B-71B specifies 500 feet of minimum intersection sight distance. RZR §§4.1 and 6.2.1(e) require compliance with the Town and B-71 standards, so the applicable minimum is 500 feet. No measurement using the prescribed procedure established that the access meets it. (Public

Improvements Standards, Table 2; VTrans B-71B, Sight Distance Table; Access Permit AC2023-04 at 1–2; Josh Arneson email, Aug. 27, 2026; Sept. 9, 2026 hearing recording at 36:35–38:17.)

IV. The approved design does not establish adequate emergency access.

Subdivision §600.8 requires emergency and service vehicles to have access to all lots and buildings. Through RZR §2.6.2, that requirement applies to the lots created by AS2026-001.

The Fire Department tested the existing driveway, which the application describes as varying from 12 to 28 feet wide. The Zoning Administrator stated at the hearing that Fire knew the driveway would be narrowed to 12 feet, but acknowledged that the test was conducted on the existing driveway. The July 2 letter does not acknowledge the plan to narrow the entire existing driveway to 12 feet or explain how the narrowed driveway and proposed turning areas would accommodate the same fire engines. (AS2026-001 packet at 10–12, 27–28; Sept. 9, 2026 hearing recording at 39:41–40:35.)

The Master Development Plan calls for widening the inner radius at the second bend by four feet, citing Fire’s comments. Fire’s July 2 letter describes moving the driveway “more to the right as you’re coming down,” creating “a little more of a wider swing,” which appears to call for widening the outer radius. It suggests about four feet of additional width but asks the applicant to “confirm with the Fire Department an adequate width to cure the turning radius in the corner of the second bend.” The record does not explain how the proposed inner-radius widening implements that recommendation or establish that Fire confirmed its adequacy. The plan does not adequately depict the existing slopes along the sides of the built-up driveway around much of the second bend. It also does not show a dimensioned widened edge or the proposed grading, stabilization measures, and resulting impervious area. (AS2026-001 packet at 5, 27–28.)

Rather than resolving those design questions, the approval directs the applicant to work with Fire during later zoning permitting and to submit revised plans and impervious-area calculations if the driveway is widened. The Zoning Administrator likewise said Fire review would occur later. The test of the driveway and the submitted plans therefore do not establish that the approved design meets §600.8. (AS2026-001 packet at 2, 5, 27–28; Sept. 9, 2026 hearing recording at 39:17–40:35.)

V. The stormwater record does not establish compliance with the drainage standards.

Subdivision §§650.1–650.4 require a drainage design that accounts for existing and proposed runoff, identifies the waterways receiving water from the site, addresses the capacity of downstream facilities for anticipated additional runoff, and accommodates a 25 year storm. RZR §2.6.2 requires compliance with those standards before administrative approval.

The stormwater plan and HydroCAD model address the existing driveway from station 0+00 through 8+75 and the proposed extension beginning at station 18+52. They do not explain how runoff from the intervening 977 feet of existing driveway is represented. Yet the application proposes narrowing the entire existing driveway and credits approximately 12,090 square feet of impervious-area removal. The narrative assigns approximately 9,000 square feet of that removal to Drainage Area 1 but does not identify where the remaining approximately 3,090 square feet is accounted for in the model. (AS2026-001 packet at 5–6, 10–17.)

The model reports reduced peak flows and volumes at the points it evaluates. It does not show where runoff from the middle driveway segment goes or identify all waterways receiving it, as §650.1 requires. Without that accounting, the record also cannot show whether the proposed work changes flows reaching downstream facilities or demonstrate their capacity to receive any anticipated additional runoff under §650.3. The application’s statement that no streams are mapped by ANR on the site does not address the stream shown beside the driveway fill slope on Fitzgerald Environmental’s August 5, 2024 Wetland Delineation Map. That documented stream supports the need to identify and evaluate the waterways receiving runoff from the site. (AS2026-001 packet at 10–12; Fitzgerald Environmental, Wetland Delineation Map, Aug. 5, 2024, Sheet 1.)

A driveway ditch extends approximately from station 5+00 to 9+00 and slopes downhill toward the intermittent stream feeding a pond on the neighboring Thornton’s property. The stream then continues into an ANR mapped “blueline” stream. From the Thornton property, Trevor and Chelsye have observed water flowing down the constructed slope at the first bend and into the stream. During visits over the past two years, they have observed gully erosion of the streambed before and after the pond, extending to and including the ANR mapped stream.

The calculations also assume that the existing driveway will be narrowed to 12 feet throughout. The approval recognizes that later Fire Department work may require widening and revised impervious area calculations. Until the access design and its drainage consequences are

resolved, the submitted model does not establish compliance for the design approved in AS2026-001. (AS2026-001 packet at 2, 5, 10–12, 27–28.)

VI. The record does not establish infrastructure and land capability compliance.

RZR §2.6.2 required the Zoning Administrator to establish compliance with applicable subdivision standards before approval. Subdivision §420.3(10) calls for a professional engineer's letter stating that all proposed public and private infrastructure "is in compliance" with the Subdivision Regulations and other Town standards. Bryan Currier, P.E.'s June 4 letter says the proposed infrastructure is, in his firm's opinion, in "significant accordance and intent" with the Subdivision and Zoning Regulations. It does not affirm compliance with all the listed standards, including the Public Works Specifications. (AS2026-001 packet at 24.)

The June 4 letter also predates the drainage model, Fire Department review, and July 2 plans and narrative. The record does not identify an updated professional engineer's statement affirming compliance of the infrastructure shown in those later materials. The general assurance in the June 4 letter does not resolve the specific access, emergency access, and drainage deficiencies discussed above. (AS2026-001 packet at 5, 10–24, 27–28.)

Subdivision §670.1 requires the final plat to show all existing and proposed utility systems. Section 670.3 addresses easements serving existing development outside the subdivision. Before approval, Chelsye Brooks told the Zoning Administrator that the plat omitted the Appellants' underground electrical service. She had also provided a labeled map identifying that service and the existing waterline for which the Appellants have a deeded Right of Way. Neither line appears on the submitted plat. The Zoning Administrator responded that private utilities serving the Appellants' property were not necessarily required to be shown. A general note that other easements may exist does not identify the lines' locations. (Chelsye Brooks utility map, hand delivered to the ZA, October 10, 2025; Chelsye Brooks email, June 30, 2026 at 1:34 p.m.; ZA email, July 13, 2026 at 3:31 p.m.; AS2026-001 packet at 4–5.)

The original recorded deed grants rights to use and develop the spring and a right of way to construct and maintain a waterline, but it does not specify the line's route. The plat should show the existing line based on reliable location evidence, without treating the deed as proof of its precise path. The issue is whether the subdivision plat accurately shows existing utilities, not who owns an easement. (Richmond Land Records Book 25, Page 450; Chelsye Brooks utility map.)

The plans also raise an unresolved land capability question under RZR §2.5.2(b), which classifies slopes of 35% or greater as incapable of supporting any Land Development. Appellants' preliminary measurements using the Master Development Plan's scale and two foot existing contours indicate slopes of approximately 33% to 40% or more within the proposed duplex site, its driveway, the driveway extension beyond the existing house, and the area of the second bend where Fire proposed widening. The record needs to establish whether the proposed development or grading overlaps slopes at or above 35% before compliance can be determined under §2.6.2. (RZR §§2.5.2(b), 2.6.2; Master Development Plan, Sheet SH1.)

Conclusion

The record does not establish the compliance required by RZR §2.6.2 for frontage, vehicular and emergency access, drainage, and existing utilities. Essential design and compliance questions remain deferred to later permitting, and the plans leave unresolved whether proposed development overlaps slopes of 35% or greater. The proposed driveway changes and the designation of the existing house as a future accessory dwelling unit also raise the jurisdictional issue discussed in Section I. The Development Review Board should grant Appeal AP2026-003, reverse the Zoning Administrator's decision, and deny AS2026-001.

Dated October 5, 2026

Respectfully submitted,

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