

TOWN OF MARSHFIELD DEVELOPMENT REVIEW BOARD

Findings of Fact and Conclusions of Law

June 22, 2007

Decision on the application of:

Town of Marshfield
122 School Street
Marshfield, VT 05658

re: MARSHFIELD PARCEL ID# RT 026
Covered Bridge Project

A. Procedural History and Applicant Request

1. The Town of Marshfield (hereafter "Applicant") owns a 72-acre parcel that the town intends to develop into a public park. This property lies partially within the Floodplain and Water Conservation District and partially within the Forestry and Conservation District.
2. On February 26, 2007 the Applicant applied for a Zoning Permit to reset the restored bridge, construct a picnic pavilion, and create various public non-structural recreation improvements.
3. On March 15, 2007 the Zoning Administrator denied the picnic pavilion as it is not a structure allowed in the Floodplain and Water Conservation District. The Zoning Administrator also referred the remaining requested items of the application to the DRB for Site Plan and Conditional Use Review.
4. On March 20, 2007 the Applicant appealed the Zoning Administrator's denial and applied for a site plan review, a conditional use review, and a variance to construct a picnic pavilion.
5. The application included the following documentation:
 - A copy of the original zoning permit application and a letter dated February 26, 2007 to the Zoning Administrator describing the project in detail.
 - A letter dated March 20, 2007 from the Selectboard addressing the conditional use application criteria.
 - A site plan dated March 20, 2007 with two maps depicting the project.

6. The application and appeal was heard by the Development Review Board (hereafter "DRB"), after due notice, on May 10, 2007. This application was reviewed as a conditional use and a request for a variance. Board members present were James Arisman, Gary Wilson, Paul Brierre, and Dina Bookmyer-Baker. Zoning Administrator Robert Light was present. Present for the Applicant were Marshfield Selectboard Member Laura Johnson, accompanied by the project's consulting engineer, Rich Phillips. Also present were adjoining property owners, Sean Willey and Ivan Rus.

B. The DRB Findings and Conclusions

7. This application was reviewed in accordance with V.S.A. 24 § 4413, which limits the review of community-owned and operated facilities "with respect to location, size, height, building bulk, yards, courts, setbacks, density of buildings, off-street parking, loading facilities, traffic, noise, lighting, landscaping, and screening requirements, and only to the extent that regulations do not have the effect of interfering with the intended functional use."

Section 245-Conditional Uses, General Standards: Pursuant to the requirements of the Town of Marshfield Zoning Regulations, all Conditional Use Applications are reviewed under the requirements of Section 245. The DRB shall make findings on the general standards set forth in Section 245 to determine whether the proposed use will have an undue adverse impact upon:

8. **The capacity of existing or planned community facilities:** This requirement cannot be reviewed under the limitations established by V.S.A. 24 § 4413.

Conclusion: This provision is not applicable.

9. **The character of the area affected:** This requirement cannot be reviewed under the limitations established by V.S.A. 24 § 4413.

Conclusion: This provision is not applicable.

10. **Traffic on roads and highways in the vicinity:** It is anticipated that there will be a small number of visitors at one time.

Conclusion: The proposed development will create an insignificant amount of additional traffic.

11. **Bylaws then in effect:** With respect to location, much of the project is in the 100-year floodplain and certain portions are within the floodway. Pursuant to Section 440 Floodplain and Water

Conservation District regulations, permitted uses “shall be all non-structural recreational, forestry, and agricultural uses, providing that care is taken to minimize erosion.” Further, “the limits of the stream and pond frontage areas of the District include all lands within 75 feet of all streams, ponds, or lakes...” and “the area within 25 feet of streams, ponds, and lakes shall be maintained as a natural buffer zone.” Conditional uses in the Floodplain and Water Conservation District include public and private bridges. There are no setback requirements in this district.

Conclusion: The parking lot, paths, benches, plantings, and other non-structural recreational improvements in the project are in conformance with the bylaws currently in effect. The bridge is a conditional use. The proposed structure of the picnic pavilion is not a permitted use in the Floodplain and Water Conservation District, therefore, a variance is required to pursue this part of the project. (See the Section 240-Variances, below.)

12. **The intrinsic capability of the land to support the use:** This requirement cannot be reviewed under the limitations established by V.S.A. 24 § 4413.

Conclusion: This provision is not applicable.

13. **Utilization of renewable energy resources:** This requirement cannot be reviewed under the limitations established by V.S.A. 24 § 4413.

Conclusion: This provision is not applicable.

14. **The goals and objectives of the Town Plan:** The town plan includes specific recommendations for improvements to the project area which will be addressed by this development.

Conclusion: The proposed improvements to the park land fit well within the objectives of the Marshfield town plan.

Section 245-Conditional Uses, Specific Standards: Pursuant to the requirements of the Town of Marshfield Zoning Regulations, all Conditional Use Applications are reviewed under the requirements of this section. The DRB shall make conclusions on the specific standards that include the following:

15. **Measures required for reducing fumes, gas, dust, smoke, odor, noise, vibration, or similar nuisances:** The Applicant acknowledges that there will be some construction-related temporary impacts such as dust and erosion. The Applicant intends to control these impacts pursuant to applicable State laws and regulations and any State permits.

Conclusion: The DRB has no additional requirements for reducing the impact of construction, as the nuisances are anticipated to be minor and temporary.

16. **Conditions for open spaces:** The entire 72-acre parcel is in town ownership and is under a conservation easement. The proposed parking area is set back 50 feet from the Route 2 centerline. The walkway from the parking lot to the bridge is not closer than 50 feet from the Route 2 centerline. The bridge will be located on its former site, approximately 400 feet from the Route 2 centerline. The proposed picnic shelter is about 240 feet beyond the bridge on the opposite side of the river.

Conclusion: The DRB concludes no conditions are required regarding the extent of open spaces between the proposed improvements and surrounding properties.

17. **Requirements for landscaping and fencing:** The parking area and the walkway to the bridge will be separated from Route 2 with some indigenous tree plantings. Trees and other landscape plantings will be placed selectively in the area of the bridge. Granite posts will block vehicular access to the bridge and serve as sign posts. The fields will be kept open by occasional brush-hogging. These efforts are consistent with the look of the site as open farmland. This project continues and improves the aesthetically pleasing views of the bridge, fields, knolls, wetlands, and woods clearly visible from Route 2.

Conclusion: The applicant has adequately addressed the need for landscaping and fencing. The DRB makes no further requirements.

18. **Adequacy of vehicular circulation:** The proposed access to the parking lot is located with good sight distance in both directions. The Applicant states that the parking area will be designed for safe access and egress for both cars and larger vehicles, such as buses and campers. The access will meet state standards and the Applicant states that the AOT permit is required. The applicant submitted a parking lot layout for nine spaces with a turn-around for campers and larger vehicles.

Conclusion: The DRB concludes the requirement for an AOT permit ensures that there will be safe and adequate access onto Route 2. The proposed parking lot design is adequate.

19. **Water supply and sewage disposal requirements:** This project does not include a plumbed water supply and does not include a sewage disposal system.

Conclusion: This condition is not applicable.

20. **Increased dimensional and setback requirements:** Most of the project is in the Floodplain and Water Conservation District. There are no setback requirements in this district.

Conclusion: This condition is not applicable.

21. **Design restrictions or conditions to maintain the character of the neighborhood:** The entire 72-acre parcel is under a conservation easement. The project includes informational/directional signs and no outdoor lighting. Informational/directional signs are exempt from permitting under the Town of Marshfield Zoning Regulations, Section 350.

Conclusion: The DRB concludes that the proposed signs are reasonable and do not need to be restricted.

Section 251-Site Plan Review Procedure: Pursuant to the requirements of the Town of Marshfield Zoning Regulations, the DRB shall review the site plan map and supporting data before approval or approval with stated conditions, or disapproval, is given, and taking into consideration the following objectives:

22. **Compatibility between the proposed use and existing adjacent uses:** The project is intended to preserve the 72-acre parcel as open farmland and is under a conservation easement that limits development.

Conclusion: The proposed use is compatible with existing adjacent land uses.

23. **Safety of vehicular and pedestrian circulation between the site and roads:** As discussed under paragraph 18 above, adequate traffic circulation has been provided. Pedestrians will park and be able to walk on trails throughout the park. Vehicular and pedestrian circulation will occur in separate areas of the site.

Conclusion: Safe and adequate vehicular and pedestrian circulation has been provided.

24. **Adequacy of circulation, parking, and loading facilities:** The applicant submitted a parking lot layout for nine spaces with a turn-around for campers and larger vehicles. The testimony of the applicant is that they do not anticipate a large number of users at any one time.

Conclusion: Adequate parking has been provided.

25. **Adequacy of landscaping, screening, setbacks, and architectural design; and location of all proposed signs and outdoor lighting, in regard to achieving compatibility with and protection of**

adjacent property: The project is intended to preserve the 72-acre parcel as open farmland and is under a conservation easement that limits development. Adequate landscaping and tree/shrub plantings are proposed. No outdoor lighting is proposed. Limited directional/informational signs are proposed. This project intends to maintain the character of the land and setting.

Conclusion: The project as proposed satisfies this provision.

26. **Protection of the utilization of renewable energy resources:** No renewal energy resources are proposed to be utilized.

Conclusion: This provision is not applicable.

Section 240-Variances: Pursuant to the requirements of the Town of Marshfield Zoning Regulations, the DRB may grant a variance if all of the following facts are found by the board and such findings are specified in its decision:

27. **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 the unnecessary hardship is due to such conditions, and not the circumstances or conditions generally created by the provisions of the zoning regulation in the neighborhood or district in which the property is located:** The DRB reviewed the Applicant's request for a variance to allow a picnic pavilion in the Floodplain and Water Conservation District. The DRB did not find, and the applicant did not testify to, any unique physical circumstances or conditions requiring construction of a picnic pavilion in the floodway.

Conclusion: The picnic pavilion is not constrained by a unique physical circumstance to be located in the Floodplain and Water Conservation District.

28. **That because of such physical circumstances or conditions, there is no possibility that the property can be developed in strict conformity with the provisions of the zoning regulation and that the authorization of a variance is, therefore, necessary to enable the reasonable use of the property:** The Applicant's park development plan without a picnic pavilion demonstrates that the property has a reasonable use and can be developed in accordance with the town Zoning regulations.

Conclusion: The physical circumstances and conditions at the property allow it to be developed reasonably without a picnic pavilion in accordance with the Zoning regulations.

29. **That such unnecessary hardship has not been created by the appellant:** The inclusion of the picnic pavilion structure is not necessary for development of the park, but is an amenity desired by the Applicant.

Conclusion: The hardship is self-created.

30. **That the variance, if authorized, will not alter the essential character of the neighborhood or district in which the property is located, nor substantially or permanently impair the appropriate use or development of adjacent property, nor be detrimental to the public welfare:** The picnic pavilion is a minor element of the overall park development project and is located an adequate distance from adjacent properties. However, no documentation was submitted by a professional engineer certifying that the picnic pavilion, located in the floodway, will not result in an increase in flood levels. The Applicant acknowledges that the park improvements will attract additional public use of the property. Also, the Applicant acknowledges that there will be increased litter, and at this time has no maintenance plan to address this.

Conclusion: Lacking a certification of the impact on flood levels, construction of the picnic pavilion could be detrimental to the public welfare due to increased flooding.¹ The increased public attendance and use of the park will somewhat alter the character of the neighborhood, which was fallow farmland, by adding traffic, activity, and litter.

31. **That the variance, if authorized, will represent the minimum variance that will afford relief and will represent the least modification possible of the zoning regulation and of the Plan:** At the May 10, 2007 public hearing on this application, Zoning Administrator, Bob Light, noted his support for the project but raised the concern that the biggest obstacle is granting a variance for the pavilion. He wondered if it would set a precedent for allowing building in the Floodplain and Water Conservation District. He also noted that the variance issue should not be taken lightly – that the Town forbids building in the floodway. The picnic pavilion is not a permitted structure in the Floodplain and Water Conservation District. Selectboard Member, Laura Johnson, advocated on behalf of the Applicant in favor of a variance for the picnic pavilion at its currently proposed location. She stated her belief that granting the requested variance would not open the door for others to apply for variances to build structures in the Floodplain and Water Conservation District

¹ The DRB does not anticipate that construction of the picnic pavilion will cause increased flooding. However, to grant the variance for the pavilion, the DRB must find that the proposed structure meets *all* of the criteria set forth in Section 240.

because of the unique nature of the structure (it has only posts, no walls, and no plumbing or heating associated with most residential structures). However, the DRB notes that landowners do put up accessory buildings, such as a gazebo near a pond or a sheltered picnic area, away from their house. It could reasonably be expected that a landowner along the Winooski or another river, stream or body of water might decide they would like a shelter by the water to have picnics, hold parties, or simply spend time, and that such a structure would be similar to the picnic pavilion in that it would only have posts and a roof. Therefore, the DRB believes that allowing the picnic pavilion in its proposed location could set a precedent to which future applicants might point when submitting an application for a similar structure in a similar location. Laura also commented that the DRB could distinguish this application from a private landowner's because the Town's application is for a public structure. However, the concerns underlying the prohibition of structures in the Floodplain and Water Conservation District, avoiding property damage, and protecting the public welfare, apply to any proposed project, regardless of the applicant.

Conclusion: Authorization of structures in the Floodplain and Water Conservation District is a significant deviation from the current regulations.

C. Comments and DRB Response

32. At the May 10, 2007 public hearing on this application, Sean Willey, who lives across from the property on Route 2, expressed concern that the parking lot for the park might prompt the State to re-route Route 2 across his property since they won't be able to route it through the bridge site. He also noted that the State would not disturb the wetlands for the Route 2 project, but now the Town of Marshfield is proposing to do so.

Response: The DRB sympathizes with Mr. Willey's concern about the taking of his property by the State. However, the DRB cannot control the State, nor can we procure an answer from them in this matter in a timely fashion so as not to postpone the project for the Applicant. Most likely, this will be a matter between the landowner and the State, if it ever comes up. Various persons at the hearing commented, in response to Mr. Willey's concern, that the state has been deliberating on moving forward with re-routing Route 2 for years, but just last year repaved and graded the berm. Regarding disturbing the wetlands, the Applicant has a permit to relocate the Eastern Pearl Mussels and is working with a State biologist to ensure that the wetlands are maintained.

D. Decision

1. This project, except for the picnic pavilion, is approved as submitted with no conditions.
2. The variance request for the picnic pavilion is denied.

Voting in favor: Gary Wilson, Paul Brierre, and Dina Bookmyer-Baker.

Voting to deny: None.

Voting to abstain: James Arisman².

Absent: Jim Barlow.

The decision³ carries, 3-0.

Dated at Marshfield, Vermont this 22nd day of June, 2007.

By: _____

Dina Bookmyer-Baker, Clerk
Marshfield Development Review Board

² DRB member James Arisman was in favor of approving the project as submitted, including the picnic pavilion, with no conditions. (On June 7 James Arisman resigned from the board, effective immediately.)

3 NOTICE OF RIGHT TO APPEAL: In accordance with 24 V.S.A. §§ 4471 and 4472, this decision may be appealed to the Vermont environmental court within 30 days. Notice of appeal shall be filed by certified mailing, with fees, to the Vermont environmental court and by mailing a copy of the appeal to the Marshfield Town Clerk (or the Zoning Administrator, if so designated). Failure of any interested person to appeal this decision to the Vermont environmental court within the specified 30-day period shall result in such interested person being bound by this decision or act of the DRB. Thereafter, such an interested person shall not contest, either directly or indirectly, the decision or act of the DRB in any subsequent proceeding, including any enforcement action brought under the provisions of Title 24, Chapter 117 of the Vermont Statutes Annotated. See also Town of Marshfield Zoning Regulations at § 235 (Appeals to Environmental Court).