

**TOWN OF MARSHFIELD
DEVELOPMENT REVIEW BOARD
122 School Street, Room 1
Marshfield, Vermont 05658
(802) 426-3305
September 8, 2020**

Mark and Laurie Dumouchelle
548 Mendon Road
North Smithfield, Rhode Island 02896

Lisa Ginett
129 Mckinistry Road
Cabot, Vermont 15647

Re: Marshfield Parcel ID DA007
Application for Subdivision

Greetings:

Enclosed, please find the decision of the Marshfield Development Review Board approving, with conditions, your subdivision request of July 9, 2020.

If you have questions regarding this action, please contact the Development Review Board at the address above.


Gary Leach, for the Marshfield
Development Review Board

Enclosure
Cc: Jennifer Shatney, Jacqueline Soule, Erin Russell (Elmhill)
Mitch Osiecki, Zoning Administrator
Members of the Development Review Board

TOWN OF MARSHFIELD DEVELOPMENT REVIEW BOARD

Application for Subdivision of:

Mark and Laurie Dumouchelle, Landowners

Lisa Ginett, Applicant and Surveyor

Re: Town of Marshfield Parcel ID# DA007

355 Davis Road, Marshfield, Vermont (911 Address)

I. Current Situation and Applicant Request.

1. Mark and Laurie Dumouchelle own a parcel of 22.56 acres (Grand List), located at 355 Davis Road (Legal Trail No. 8), in the southcentral part of the Town of Marshfield, Vermont. The parcel is rectangular and its long axis runs downhill in a northwesterly direction from the Davis Road, almost to the old railroad bed. The parcel is bordered, for about half its southeastern boundary, by the Davis Road, a town trail not maintained as a road by the town. Where the Davis Road ends, a 50'-wide right-of-way continues along the rest of the southeastern boundary of the Dumouchelle parcel. This right-of-way is held in common by several adjoining landowners, including the parcel currently owned by the Dumouchelles. The land is primarily wooded. There is a small pond on the property just off the Davis Road and nearby a structure which the Dumouchelle's use as a vacation house. The house is served by a dug well and a "grandfathered" septic system. There are no other structures on the property. There are no public utilities running to or on the property. The Dumouchelles would like to subdivide this parcel with the intention of "gifting" a five-acre lot to Mark's younger brother, Brian, and his family for their recreational use.

2. On July 9, 2020, Lisa Ginett, surveyor, on behalf of Mark and Laurie Dumouchelle, landowners, submitted a written Application for Subdivision of the 22.56-acre property. The application proposes two lots. Lot #2 is a rectangular parcel of 5.04 acres, 215' in width and 1,025.5' long, taken out of the lower part of the northeast side of the existing parcel. Its southeastern boundary is bordered by a 215' length of a 50' wide right-of-way. Lot #1 is an L-shaped parcel containing the remaining 17.52 acres of the current 22.56-acre property. Its southeastern boundary fronts on 525' of public road. The application also includes three waiver requests. First, a request to waive the requirement for a survey of the entire parcel since it was recently surveyed, in December of 2009, as part of a prior subdivision. Second, a request to waive the requirement of certain detail in the final plan, such as land contours, inasmuch as no development of either lot is anticipated at this time. Third, a request to waive the

requirement, for Lot #2, of frontage on a public road, access to the lot being obtained instead by a deeded right of way at least 50' in width.

II. Public Hearing.

3. After due notice by the Applicant to all adjoining landowners and after posting the required public warnings in advance, the DRB on July 30, 2020 conducted a hearing on the application for subdivision, using a teleconferencing facility (Zoom) to connect participants. DRB members present were Gary Leach, Les Snow and Robin Schunk. Adjoining landowners at the hearing were Jennifer Shatney, Jacqueline Soule, and Erin Russell, representing Elmhill. Property owners Mark and Laurie Dumouchelle, and Mark's brother, Brian, participated, as well as Lisa Ginett, applicant, and Mitch Osiecki, Marshfield zoning administrator. All participants testified under oath.

4. Mark Dumouchelle opened the hearing by stating that the proposed Lot #2 would be gifted to his brother, Brian, who intends to use the lot as a camp for his family. Mark said there are no plans to further develop either of the proposed lots. Les Snow asked about the Lot #2 road frontage (215') stated in the application. Where does the town road end and the apparent right of way begin? Gary Leach said it appears Lot #2 has no road frontage, only the access afforded by the shared right-of-way. The town road ends short of the southwestern corner of the proposed Lot #2. Lisa Ginett said that is correct. Lisa said the land under the right-of-way is owned by Elmhill but the right-of-way is held and used by several adjoining landowners. Gary said the application needs to be corrected to indicate that access to the proposed Lot #2 is via right-of-way rather than road frontage. Lisa said she would make that correction. Gary pointed out that Lot #2, as proposed, would not comply with the 40' side setback requirement for the district, as there is currently a shed located 20' from the proposed southwestern boundary line. The shed or the boundary line could be moved to allow compliance. Mark said he is not interested in moving the boundary line; he would move or take down the shed instead. The hearing was recessed until August 13th to allow these issues to be resolved.

5. The hearing was reopened on August 13th, absent Jennifer Shatney, Jacqueline Soule, Erin Russell, and Brian Dumouchelle. Lisa presented a corrected application, requesting a waiver of the requirement for 250' of road frontage and stating that access to Lot #2 is via a deeded 50' right-of-way rather than town road frontage. As evidence of this right-of-way, she presented copies of the deeds describing and conveying the right of way, which will be part of the record for this hearing. Lisa reported that she received notice from Mark, saying the shed had been taken down. There are no structures in the required setback areas. The Board took notice of these actions. The hearing was closed.

III. Findings.

6. The DRB grants the Applicant's request for a waiver of the requirement to survey the entire parcel being subdivided. Applicant has surveyed only Lot #2 for the purpose of this subdivision. The entire parcel was surveyed in 2009 and no benefit would be gained by doing so again.

7. The DRB grants the Applicant's request for a waiver of the requirement that a lot must have at least 250' of road frontage on a public road. **Section 302** of the Zoning Regulations states that a lot without the required road frontage shall be permitted if the lot has access to a public road by a permanent easement or right of way at least 50' in width. The DRB finds that the Applicant has presented sufficient evidence of such a right of way to assure permanent access to the property, with the condition that this right of way shall not be altered or extinguished. (see condition below)

8. The DRB grants the Applicant's request to waive the requirement that the final plan must show the slope of the buildable area by contour lines at 5' intervals. This requirement pertains to that part of the lot where the proposed development and use activities will occur. The applicant is not currently proposing any further development of either lot. **Section 2070** of the Subdivision Regulations gives the DRB the right to defer design review – review of the plan under the criteria of **Sections 4021 – 4032** of the Subdivision Regulations – for any lots that the subdivision applicant does not currently have plans to develop. The DRB hereby defers design review of both lots of this subdivision. (see condition below)

9. Pursuant to the Marshfield Subdivision Regulations, adopted March 4, 2014, subdivision applications are reviewed for compliance with the general standards set forth therein. Review under **Regulation Sections 4021 thru 4032** of these general standards has been deferred. The DRB does not require any special landscaping under **Section 4033** at this time although the DRB may require such under a Design Review. **Section 4034 Protection of Farmland and Open Fields** is not pertinent to this subdivision as the land is primarily wooded and is not farmland or open fields. The intended use of the proposed subdivision (**Section 4035 Protection of District Settlement Patterns**) is in character with the uses of the surrounding properties which are primarily recreational, wooded areas. The proposed subdivision is in line with **Section 4036 Protection of Rural Character** inasmuch as access to both lots is by a right of way shared by several landowners. Protection of the visual aspects of the rural landscape would need to be reviewed if further development is proposed.

10. All technical information (i.e., survey map and details) provided by Applicant is certified as to accuracy, as required by **Regulation 4040**. The DRB in rendering this decision accepts and credits the sworn testimony of those appearing before it in this matter. **Regulation 4050**.

11. The DRB concludes based on all of the above facts that both proposed lots satisfy the requirements of the Town of Marshfield Subdivision Regulations and, thus, may be and are **approved** by the DRB, subject to further review and approval under the provisions of **Section 2070 Deferral of Design Review** of the Subdivision Regulations if further development is proposed.

IV. Decision and Conditions.

The Subdivision Application of Mark and Laurie Dumouchelle is hereby **APPROVED** by the Marshfield Development Review Board, with the following conditions:

i) **Within 180 days of the date of this decision**, Applicant shall record the final plat with the Town of Marshfield Land Records. See 24 V.S.A. Sect. 4463(b). The plat shall conform to the requirements set forth in 27 V.S.A., Chapter 17 and to the final recording provisions of the Marshfield Subdivision Regulations, Section 2040. In addition to the final plat, prepared on Mylar, Applicant shall submit one full-sized paper copy of the final subdivision plan.

ii) Prior to recording, as required above, Applicant shall appear for final visual review of the final plat that is to be filed with the Town, prepared on Mylar, as well as the accompanying full-sized paper copy of the final subdivision plan. At least two members of the DRB, who voted in the hearing on this matter, must review, approve, and sign the plat, verifying that it is consistent with and unchanged from the submission(s) previously reviewed by the DRB in deciding this matter.

iii) The right of way from the Davis Road to the Dumouchelle parcel, as described above, reported on the final plat and evidenced by copies of the land records presented by the Applicant, shall be included in any conveyance of Lot #2. The following statement must also be included: "This right of way shall not be altered or extinguished."

iv) Under the authority granted in **Section 2070** of the Subdivision Regulations, the DRB has deferred the design review of this subdivision at the applicant's request, inasmuch as there are no current plans for development of either lot. No development requiring zoning review shall occur on either of these lots without further review and approval by the DRB. A note shall be included on the recorded plan, stating that these

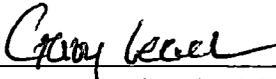
lots shall not be developed without review and approval by the DRB in accordance with the Subdivision and Zoning Regulations.

v) No changes, modifications, or revisions that alter the plan, plat, or conditions shall be made unless such proposed revisions are first submitted to the DRB, and the DRB thereafter approves any such revisions following a public hearing. See Marshfield Subdivision Regulations, Section 2060.

Voting in Favor: Members Gary Leach, Les Snow, and Robin Schunk.

Not Present and Not Voting: Jon Groveman and Jenny Warshow

Approved and Ordered at Marshfield, Vermont, this 8th day of September, 2020.

By: 
Gary Leach, for the Marshfield
Development Review Board

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 of the date of this decision. 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. 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).