

**TOWN OF PAWLET, VERMONT**  
**DEVELOPMENT REVIEW BOARD**

Landowner/Landowner: Daniel S. Banyai  
Appellant: Richard J. Hulett, Sr.  
Property Address: 541 Briar Hill Road, Pawlet, VT  
Hearing Date: June 10, 2021

**FINDINGS OF FACT, CONCLUSIONS, AND ORDER**

INTRODUCTION AND PROCEDURAL HISTORY

This is an appeal from an application for a zoning permit filed by Daniel S. Banyai (“Landowner”) for his property at 541 Briar Hill Road (“Property”) on March 24, 2021, and approved by the Zoning Administrator on March 31, 2021 (“Permit”). Abutting property owner Richard J. Hulett, Sr. (“Appellant”) timely appealed to the Development Review Board. The appeal was mailed on April 6, 2021, and received on April 8, 2021.

FINDINGS OF FACT & CONCLUSIONS

Article VIII, § 2(1) of the Pawlet Unified Zoning Bylaws provides that “[n]o building construction or land development may commence . . . without a zoning permit duly issued by the Zoning Administrator . . .” Landowner has applied for, and was granted a zoning permit for an accessory building. The Property is located in the Agriculture and Rural Residential District (“ARR”), in which an “accessory use or building” is a permitted use. Landowner does not seek a change of use for the Property. Thus, while a permit is required, site plan and/or conditional use review are not.

Appellant contends that the proposed permit is for a structure that already exists on the Property, and which is subject to an order of the Vermont Superior Court, Environmental Division, ordering its removal. Appellant testified and submitted photographic evidence in support of this contention. Landowner testified that the application is not for a building that already exists, that it is for a new building, and that the proposed new building would be an accessory building to an existing, lawfully permitted garage/apartment for purposes of storage. Landowner did not submit evidence to establish the location of the proposed building in relation to existing, unpermitted structure(s), or which otherwise demonstrates that the permit is not for an existing, unpermitted building. Landowner also did not identify what type of storage structure the building would be.

The Zoning Administrator is authorized to enter upon property for which an application for a zoning permit has been made, in the presence of the owner or with the owner’s permission. Bylaws, Article VIII, § 1. On April 7, 2021, the Zoning Administrator requested to schedule a site visit by email to the Landowner. The Landowner did not respond to this request, so a site visit did not take place. At the DRB Hearing held on June 10, 2021, the Landowner indicated that the DRB could conduct a site visit, but only if: (a) only DRB members of Landowner’s choosing were in attendance; (b) the Town added Landowner as an additional insured on its insurance policy; and (c) the Town provided “private security” for the Landowner. These conditions are unreasonable and are effectively a denial of a site visit.

If the proposed structure is for a new storage building in a new location as an accessory to a properly permitted garage/apartment, then the Permit may have been properly granted. If, on the other hand, the permit is for an existing, unpermitted structure, then the Permit would not have been properly granted. The DRB does not have sufficient information to conclude that the Permit application is for a new structure as opposed to an existing, unpermitted structure. Additionally, without knowing what type of storage the building is for, the DRB cannot determine whether it is “[a] use or building customarily incidental or subordinate to the principal use” of garage/apartment. Bylaws, Definitions, “Accessory Use or Building.” The Bylaws give examples of accessory structures with respect to a residential use, which “include, but may not be limited to garages, garden and tool sheds, and playhouses.” Bylaws, Definitions “Accessory Structure.”

Article VIII, § 2(2) of the Bylaws requires that “[a]ll applications for a zoning permit be accompanied by two copies of a sketch plan *drawn to scale* showing the dimensions of the lot to be built on, location of the building, and accessory buildings to be erected, a surveyor’s plot plan of the property, if available, *and such other information as may be necessary to determine and provide for the enforcement of these Bylaws.*” (Emphasis added). The materials submitted in support of the Permit, and the evidence taken at the Hearing, do not include a scale sketch plan, and do not contain information necessary to determine and provide for the application of these Bylaws. The DRB is authorized to request submission of additional information pursuant to 24 V.S.A. § 4464(b)(1). Specifically, in this case, the DRB concludes that it is necessary to have a complete and accurate scale site plan of both the existing buildings and the proposed new structure in order to determine whether the permit is for a pre-existing, unpermitted structure, or if it is for a new structure in a new location. The DRB also requests that Landowner identify the type of storage structure proposed.

Appellant further contends that Landowner erroneously stated on the Permit application that the Property has road frontage of 261 feet. The DRB concludes that this was a harmless error on the part of the Landowner, and that 261 feet was intended to refer to the length of the driveway. Further, the Landowner correctly indicated that the Property has a right-of-way 30’ in width, which is also the width of the road frontage serving the Property. Bylaws Article V, § 4 requires at least 50 feet of frontage on a public road for any land development; however, the DRB concludes that the requirement applies with respect to a principal permitted use and/or structure. A permit for a garage/apartment was approved in 2018, and was not appealed. The principal permitted use is therefore residential. A structure that is an accessory to the residential use may be permitted notwithstanding Article V, § 4.

#### ORDER

The DRB grants the Landowner leave to supplement the Permit application by submitting, within 30 days of this Decision, a site plan prepared by a Vermont-licensed surveyor or engineer detailing all existing improvements (buildings and all other Development, as defined in the Pawlet Unified Zoning Bylaws), including dimensions and setbacks from boundary lines, and including a depiction of the location of the proposed structure. The Landowner must also identify the type of storage structure proposed in the application. The matter is recessed pending submission of additional information for further consideration by the DRB. If the Landowner fails to supplement the application with the required information within the time permitted herein, then the approval of the Permit shall be deemed **reversed**, and the Permit denied.

June 23, 2021

Approved by the Development Review Board:

/s/ Keith Mason, Chair

/s/ James Glick, Vice Chair

/s/ Jonathan Weiss

/s/ Gary Baierlein

/s/ Sarah Ludlam

NOTICE: This Decision may be appealed to the Vermont Environmental Court by an interested person who participated in the proceedings before the Board. Such appeal must be taken within 30 days of the date of this Decision, pursuant to 24 V.S.A § 4471 and Rule 5(b) of the Vermont Rules for Environmental Court Proceedings.