

**TOWN OF BETHEL**  
**Development Review Board**

**Application for Conditional Use Review**  
**Findings and Decision**

In Regards to: Michael & Flormelin Bilodeau, Property Owners  
For the Property Located at: 428 Pleasant Street, Bethel, VT

Parcel # 16-030.000  
Map #10-034.000

**INTRODUCTION AND PROCEDURAL HISTORY**

1. This proceeding involves the review of an application for a conditional use submitted by Michael Bilodeau under the Town of Bethel Zoning Ordinance.

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2. The application was received by Keith Arlund on February 27, 2017. A copy of the application is available at the Bethel Town Office.
3. On March 8, 2017, notice of public hearing was published in the **Herald of Randolph**.
4. On March 10, 2017, notice of public hearing as posted at the following places:
  - a. The Town Manager's Office
  - b. The Town Clerk's Office;
  - c. The Bethel Public Library;
  - d. The Town of Bethel Website.
5. On March 10, 2017, a copy of the notice of a public hearing was mailed to the applicant. On March 10, 2017, a copy of the notice of a public hearing was mailed to the attached list of property owners adjoining the property subject to the application.
6. The application was considered by the Development Review Board (DRB) at a public hearing on April 4, 2017. The hearing was continued to June 27, 2017, continued again to August 22, 2017, continued again to November 7, 2017, and concluded on December 5, 2017. The DRB reviewed the application under the Town of Bethel Zoning Ordinance as amended August 27, 2007; December 10, 2007; and December 22, 2008.

7. Present at the hearings were the following members of the DRB:

- Eric Benson
- Keith Bollman
- Ruth Clough (Except 11/7/17)(Reviewed Minutes & Exhibits)
- Penny Griffin
- Charles Washburn
- Newt Whitcomb

8. At the outset of the hearing, the DRB afforded those persons wishing to receive status as an interested person an opportunity under 24 V.S.A. 4465(b) to demonstrate that the criteria set forth in that statute could be met. A record of the name and address of persons wishing status as an interested person, a summary of their evidence with regard to the criteria, and a record of their participation at the hearing is attached hereto.

9. During the course of the hearing the following exhibits were submitted to the DRB:

Exhibit #1. The original Zoning Permit Application with Project Narrative by Brad Ruderman, P.E.

Exhibit #2. Notice of Public Hearing

Exhibit #3. Site Plan #1

Exhibit #4. Minutes of 6/27/2017 Meeting

Exhibit #5. 11/3/17 Letter from John Broker-Campbell, Regional Flood Plain Engineer

Exhibit #6. Photo of Dwellings Similar to Those Proposed – M. Bilodeau

Exhibit #7. Miscellaneous Details – Brad W. Ruderman, P.E.

Exhibit #8. Minutes of 11/7/17 Meeting

Exhibit #9. Sign-in Sheet from 11/7/17 Meeting

Exhibit #10. Revised Site Plan

Exhibit #11. Transcript of 12/5/17 Testimony of Ann Fuller, Conservation Commission Member

Exhibit #12. Transcript of 12/5/17 Testimony of Ferron Griffin, Conservation Commission Co-Chair with Photos of the Adjacent Hodgdon Property During Flooding Events in 2008 and 20011 (TS. Irene)

Exhibit #13. Soil Data Submitted by M. Pavone

Exhibit #14. Transcript of Testimony of Katie O’Neil, Conservation Commission Member

Exhibit #15. Photos of Barre-Montpelier Area Commercial Properties

Exhibit #16. Minutes of 12/5/17 Meeting

Exhibit #17. Sign-in Sheet from 12/5/17 Meeting

The exhibits are available at the Bethel Town Office

## **FINDINGS:**

Based on the application, testimony at the hearing, exhibits, and other evidence, the DRB makes the following findings:

The applicant seeks a conditional use permit to construct four 48' x 30', three-bedroom residential units, two attached and the two outer units connected to the middle two with decks.

1. The subject property is a 1.49 acre lot recently subdivided from an existing larger parcel located at 428 Pleasant Street in Bethel. The property is currently an open field used for agricultural purposes.
2. The property is located in the Village Commercial District as described on the Town of Bethel Zoning Map on record at Town of Bethel municipal office and section 271 of the Zoning Ordinance.
3. Conditional use approval is required for the project as a Multi-Family Dwelling (Multiple Family Dwelling) use as that term is defined in section 230 of the Zoning Ordinance. The application requires review under the following sections of the Town of Bethel Zoning Ordinance:
  - Section 260 - Off Street Parking
  - Section 271 – Bethel Village District – Village Commercial District
  - Section 277 - Flood Hazard Overlay
  - Section 279 - Well Head Protection
  - Section 601 - Conditional Use
  - Section 604 - Site Plan Approval

4. **Article 2, Section 260. Off Street Parking**

Except for land development located within the Village Business District, for every building hereafter erected, altered, extended or changed in use, and for every lot hereafter developed, there shall be provided off-street parking spaces as set forth below. A parking space shall be nine (9) feet by eighteen (18) feet and shall not include access drives or common areas.

1. *Residential Areas – Two parking spaces per dwelling unit.*
2. Commercial or Business Uses – One parking space for every business or employee vehicle, plus one space for every two hundred (200) square feet of floor area.
3. Places of Public Assembly/Restaurants – One parking space for every three seats, or capacity thereof, and one space per employee.
4. Industrial Uses – One parking space for every business or employee vehicle.

Based on the proposed plan, there will be 4 dwelling units. Bylaws require two parking spaces for each unit for a total of 8. The revised site plan meets this requirement (Exhibit 11)

5. **Section 271. Bethel Village District – Village Commercial District**

**Purpose:** The purpose of the Village Commercial District is to accommodate existing uses and provide for industrial expansion in the Bethel Village area.

**Permitted Uses:** The following uses may be permitted upon issuance of a Zoning Permit by the Zoning Administrator:

1. One and Two Family Dwellings
2. Accessory uses or structures
3. Home Occupations (see Section 311)
4. Accessory Apartments (see Section 330)
5. Detached Housing (see Section 330)
6. Outdoor Signs (see Section 323)
7. Temporary Uses or Structures (see Section 318)
8. Minor Subdivisions (see Section 334)

**Conditional Uses:** The following uses are permitted upon granting Conditional Use Approval by the DRB and the issuance of a Zoning Permit by the Administrative Officer:

1. Roadside Commercial
2. Town Center Commercial
3. *Multiple Family Dwelling*
4. Individual Service
5. Community Service
6. Light Industrial
7. Heavy Industrial
8. Municipal
9. Wireless Communications Facilities (see Section 326)
10. *Ponds or Impoundments* (see Section 325)
11. Day Care Facilities (see Section 332)
12. Special Public Uses (see Section 324)
13. Extraction of Soil, Minerals, Sand, or Gravel (see Section 321)

Conditional use review is required for the Multiple Family use. See Section 601.

#### **Land, Area, and Structural Requirements**

1. Lot Area Minimum 20,000 square feet for one and two family dwellings and municipal; 1 acre for Light Industrial; 2 acres for Roadside Commercial, Community Service and Heavy Industrial
2. Rear and Side Setback Minimum: 25 feet, except where an industrial or commercial use is adjacent to a residential use which is 75 feet
3. Front Setback Minimum: 25 feet from right of way for all uses, except for Roadside Commercial and Heavy Industrial which is 50 feet.
4. Off-Street Parking Requirements (see Section 260)

Per the submitted site plan, the proposed development meets the requirements for minimum lot area/density and setbacks for the proposed buildings.

6. **Section 277. Flood Hazard Overlay District** The proposed development has been determined

to be within Zone AE (100 year) FEMA flood zone.

**Purpose:** It is the purpose of this Ordinance to promote the public health, safety, and general welfare, to prevent *increases in flooding caused by the uncontrolled development of lands in the Flood Hazard Overlay District*, and to *minimize losses due to floods by: restricting or prohibiting uses that are dangerous to health, safety, or property in times of flood or cause excessive increase in flood heights or velocities*: requiring that uses vulnerable to floods, including public facilities that serve such uses, shall be protected against flood damage at the time of initial construction; protecting individuals from buying lands that are unsuited for their intended purposes because of flood hazards.

**Permitted Uses:**

1. Recreational uses, such as parks, camps, picnic grounds, tennis courts, golf courses, golf driving, archery and shooting ranges, hiking and riding trails, hunting and fishing areas, game farms, fish hatcheries, wildlife sanctuaries, nature preserves, swimming areas, and boat launching sites.
2. Residential uses such as lawns, gardens, parking areas, and play areas.  
It is also noted in this section that “Junkyards, as defined in 24 VSA Section 2068, and storage facilities for chemicals, explosives, flammable liquids or other toxic materials are prohibited in the overlay district.

This application does not meet the standards for a permitted use and requires conditional use approval.

**Conditional Uses:** All new Construction and development uses prescribed by this Ordinance not included on the list of Permitted uses above and which fall within the designated Flood Hazard Overlay District are permitted only with the Conditional use Approval by the DRB as provided in the Conditional Use Review and Approval Procedures.

**Conditional Use Review and Approval Procedures**

1. Step One: Upon receiving an application for Conditional Use Approval the DRB shall, prior to scheduling a hearing and rendering a decision thereon, obtain:

- a.) base flood elevation data for all subdivisions and other proposed new developments greater than fifty (50) lots or five (5) acres, whichever is the smaller;

The Base Flood Elevation of the property is 569. See 12/5 Minutes, Page 3, Line 15

- b.) the elevation, in relation to mean sea level, of the lowest habitable floor, including basement, of all new construction or substantial improvement of structures;

The lowest habitable floor elevation is 570'. See 12/5 Minutes, Page 3, Line 15

- c.) confirmation as to whether or not such structures contain a basement;

The proposed structure does not have a basement. See 11/7 Minutes, Page 1, Line 4)

d.) the elevation, in relation to mean sea level, to which any structure or substantial improvement has been flood proofed. (See Above)

2. Step Two: In addition, the DRB shall require as much of the following information as it is deemed necessary for determining the suitability of the particular site for the proposed use:

a.) Plans in triplicate, drawn to scale, showing the location, dimensions, contours, and elevation of the lot; the size and location on the site of existing or proposed structures, fill or storage of materials; the location and elevations of streets, water supply, and sanitary facilities; and the relation of the above to the location of the channel, floodway, and base flood elevation when such information is available. (Submitted – Exhibit #11)

b.) A typical valley cross-section showing the channel of the stream, elevation of land areas adjoining each side of the channel, and cross-sectional areas to be occupied by the proposed development. (Submitted – Exhibit #8)

c.) A profile showing the slope of the bottom of the channel or flow line of the stream. (Submitted – Exhibit #8)

d.) Specifications for building construction and materials, flood proofing, mining, dredging, filling, grading, paving, excavation, or drilling, channel improvement, storage of materials, water supply, and sanitary facilities. (All received).

3. Step Three: In the absence of NFIP base flood elevation data, the DRB shall obtain, review, and reasonably utilize any base flood elevation and floodway data available from a federal, state, or other source as criteria for all new construction and substantial improvements under this Ordinance. (Received flood elevation data)

4. Step Four: The DRB shall notify adjacent communities and the State National Floodplain Insurance Program Coordinator at the Vermont Agency of Natural Resources, Department of Environmental Conservation, River Management Section for comment in accordance with 24 VSA Section 4424. For any permit application involving the alteration or relocation of a watercourse, the Zoning Administrator shall notify adjacent communities, the Administrator of the National Flood Insurance Program, and the Stream Alteration Engineer at the Vermont Agency of Natural Resources, Department of Environmental Conservation, River Management Section. A permit application will only be considered ready for conditional use hearing following the receipt of comments or the expiration of 30 days from the date the application was mailed to the Agency, whichever is sooner. (Comments were received from the ANR – see Exhibit #6)

5. Step Five: The Secretary of the Development Review Board shall transmit one copy of the

information noted above to the Vermont Agency of Natural Resources as required by 24 VSA Section 4424. (See Step Four, above)

6. Step Six: In reviewing the application, the DRB shall consider any evaluation provided by the Vermont Agency of Natural Resources and shall determine that the proposed use will conform to the review standards of this Section. (See Exhibit #6)

7. Step Seven: No Zoning Permit may be granted for new construction or the development of land in any area designated as a flood plain by the Vermont Department of Water Resources prior to the expiration of a period of thirty (30) days following the submission of a report to the Vermont Department of Environmental Conservation. Response received – See Exhibit #6

**Considerations by the Development Review Board:** In reviewing each application, the DRB shall assure that the flood carrying capacity within any portion of an altered or relocated watercourse is maintained, and consider:

1. The danger of life and property due to increased flood heights or velocities caused by encroachments;

The DRB finds the project increases the danger to life and property due to increased flood heights and velocities. This is due to the unique physical circumstances in this area of the Third Branch of the White River basin where the easterly side of the valley (across the river from the proposed development) is armored with the Central Vermont Railway tracks putting all of the pressure to relieve increased river levels to the flood plain on the west side, which is where the subject property is located (see D. Rudell testimony, 11/7/17 Minutes, Page 43, Lines 11 – 20, and 12/5/17 Minutes, Page 25, Line 25 through Page 26, Line 8).

2. The danger that materials may be swept onto other lands or downstream to the injury of others;

The DRB finds that the proposed development presents a danger that materials may be swept onto other lands or downstream to the injury of others based in part on the 11/7/17 Testimony of Dan Rudell, Lead Author of the 2014 State of Vermont River Corridor Plan on Pages 31-32, & 43, and on 12/5/17, Pages 24-27. That testimony describes the type flash flooding that the river is predisposed to in this area which tends to be “erosion hazards and turbulent flows”. There is a strong potential for erosion in the area of the support piers for the dwelling units’ structures resulting in the collapse of the structures, which then would result in those materials being swept downstream to the injury of others. In addition, in his 11/7/17 Testimony, Page 32, Lines 19–23, Mr Ruddell describes historical movement of the river channel “in a relatively short time” in this area and “currently the river channel is over on the other side of the valley, but it won’t be there forever”. This indicates the likelihood of the river channel moving closer to the proposed development increasing the probability of erosion damage and potential collapse of the support piers.

3. The proposed water supply and sanitation systems and the ability of these systems to prevent

disease, contamination, and unsanitary conditions;

Since the property is served by drilled well with the well head 1' above the Base Flood Elevation or by municipal water and sewer, the DRB finds that these systems will prevent disease, contamination and unsanitary conditions during a flood event.

4. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owners;

The DRB finds that the project is susceptible to increasing flood damage (see F. Griffin 12/5/17 Testimony, Page 19, Line 19 through Page 20, Line 11), which would imperil the lives of the occupants as well as emergency responders charged with their evacuation/rescue.

5. The importance of the services provided by the proposed facility to the community;

The Board finds the development does not rise to the level importance to the community to place it in this location in the FEMA Special Flood Hazard Area (See 11/7/17 minutes, page 33, lines 10 - 19 testimony by Gene Krause).

6. The availability of alternative locations not subject to flooding for the proposed use;

The DRB agrees with the testimony of several individuals and finds that there are a number of alternative locations better suited for this project outside of the Special Flood Hazard Area.

7. The compatibility of the proposed use with existing development and development anticipated in the foreseeable future;

The DRB finds that the proposed use is not compatible with the existing development and development anticipated in the foreseeable future as referenced in the Town Plan Goals, Page 65, #1: "To maintain use of flood areas as open space, greenways, non-commercial, recreation and/or agricultural land," and #2: "To insure no net loss of flood storage capacity to minimize potential negative impacts."

8. The relationship of the proposed use to the proposed comprehensive plan insofar as it has been developed;

The proposed use complies with criteria in the applicable Village Commercial Zoning District but not the criteria of the Flood Hazard Overlay District of the Zoning Ordinance.

The 2014 Town Plan (comprehensive plan) was referenced several times in testimony, most notably during the 12/5/2017 meeting from Conservation Commission member F. Griffin, beginning on Page 18 and running through Page 24, Line 21 of the minutes of that meeting. In particular, there was testimony regarding the project's non-conformance with the Flood Plains Section on Page 63 of the Town Plan. The DRB finds that the following statements in the 2014 Town Plan are sufficiently specific and stated in mandatory language such that they may be



enforced and applied to the proposed project. "Floodplains make excellent agricultural land but are poorly suited for development, both because of their propensity for flooding and because of their proximity to watercourses, which creates the potential for pollution" and "Public interest dictates that every reasonable attempt should be made to avoid or reduce such exposure to flood damage". As a cluster of residential structures located in the Special Flood Hazard Area, the project does not conform to the above standards of the 2014 Town Plan.

The Goals in the Flood Plains Section of the 2014 Town Plan as referenced on Page 65 of the 2014 Town Plan support the above-referenced regulatory standards. The Goals are to "1. To enhance and maintain use of flood hazard areas as open space, greenways, non-commercial recreation and/or agricultural land." and "2. To ensure no net loss of flood storage capacity in an effort to minimize potential negative impacts." Pursuant to the first policy in this section of the 2014 Town Plan, "It is the policy of the Town that the preferred uses for flood hazard areas should be for open space, greenbelts, pastureland, recreational and agricultural uses." Although the foregoing goals are not sufficiently unambiguous to create mandatory standards, when read in conjunction with the above mandatory standards in the Flood Plain section, they support the DRB's finding that the project does not conform to the 2014 Town Plan.

The Flood Hazard Area section of the 2014 Town Plan is also applicable to the project. The first Policy in this section, on page 88, is sufficiently clear and unambiguous as to be regulatory in nature. That Policy states, "1. It is the policy of the Town that only agriculture, recreational and open space uses should be allowed in floodplains". The project, as a multi-family residential development, does not conform to this specific policy of the 2014 Town Plan.

9. The safety of access to the property in times of flood of ordinary and emergency vehicles;

As depicted on the cross section shown on the plan entitled "Miscellaneous Details" (Exhibit #8 ) submitted by Mr. Bilodeau, the elevation of the centerline of Route 12 at the access point to the proposed development, is 568', which is 1 foot below the base flood elevation of 569'. The Board finds that in a flood event, it is highly probable that the proposed development endangers the lives of emergency responders, as well as those of the residents, because in a flood event, emergency responders and others would be forced to cross potentially swift moving floodwaters to access project and its residents. This is clearly a safety concern. (see K. Barry testimony, 12/5/17, Page 17, Lines 10-14, and later at that same meeting, F. Griffin, Page 23, Lines 7 – 10).

10. The expected heights, velocity, duration, rate of rise, and sediment transport of the flood waters expected at the site; and

The DRB agrees with the statements of the Agency of Natural Resources' John Broker-Campbell's letter to the Town of Bethel, admitted as Exhibit #6, which states:

"It should be noted to the applicant that the entire parcel of land at 428 Pleasant Street in Bethel, VT is within the VT ANR mapped River Corridor; an area which represents the lateral land space needed for the White River Third Branch to achieve and maintain an equilibrium

state. While not regulated under the Town of Bethel regulations, the development of the property represents additional investment in an area which is known to be hazardous. This parcel and land upstream was subject to destructive flooding during Tropical Storm Irene and additional investments should be made cautiously.

11. Such other factors as are relevant to the purposes of this Ordinance.

**Conditions Attached to Conditional Uses:** Upon consideration of those factors referenced above, and the purpose of this Section, the DRB shall attach such conditions to its approval as are necessary to meet the flood plain management requirements of the FIA regulations and further the purpose of this Zoning Ordinance. Such conditions shall require that:

1. All permits for development in the FHD shall be conditioned on the receipt of all necessary permits from those government agencies from which approval is required by Federal, State or Municipal Law.

If the project is approved, the DRB will add such a condition of approval

2. Development within the floodway is prohibited, except for minor improvements to existing structures or relating to bridges, culverts, roads, stabilization projects, public utilities, or health and safety measures.

The criterion is not applicable as the proposed development is not in the floodway.

3. In addition to all provisions below, proposed developments in the floodway must demonstrate through hydrologic and hydraulic analysis's, performed and certified in accordance with standard engineering practice by a registered professional engineer, that the proposed development will result in no increase in flood levels during the occurrence of the base flood.

The criterion is not applicable as the proposed development is not in the floodway.

Within the special flood hazard areas outside of the floodway:

1. All Development- All development shall be reasonably safe from flooding and:

a) designed (or modified) and adequately anchored to prevent flotation, collapse, or lateral movement of the structure during the occurrence of the base flood,

b) constructed with materials resistant to flood damage,

c) constructed by methods and practices that minimize flood damage, and

d) constructed with electrical, heating, ventilation, plumbing and air conditioning

equipment and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.

The proposed development meets the above requirements.

2. Residential Development:

a) New construction and existing buildings to be substantially improved that are located in Zones A, A1-30 and AE shall have the lowest floor, including basement, elevated to at least one foot above the base flood elevation.

b) Manufactured homes to be placed and existing manufactured homes to be substantially improved that are:

i. located in a new manufactured home park or subdivision, outside of a manufactured home park or subdivision, in an expansion to an existing manufactured home park or subdivision which has incurred substantial damage from a flood shall be elevated on a permanent foundation such that the lowest floor of the manufactured home is elevated to one foot above the base flood elevation and be securely anchored to an adequately anchored foundation system to resist floatation, collapse, and lateral movement during the occurrence of the base flood.

ii. located in an existing manufactured home park, where elevating a replacement home to or above base flood level elevation is not possible, the lowest floor shall be supported by reinforced piers or other foundation elements of at least equivalent strength that are no less than 48 inches in height above grade and be securely anchored to an adequately anchored system to resist floatation, collapse, and lateral movement.

The proposed structure meets these criteria.

3. Non-Residential Development: Does Not Apply

4. Subdivisions:

a) New subdivision proposals and other proposed development (including proposals for manufactured home parks and subdivisions) that are greater than 50 lots or 5 acres, whichever is the lesser, shall include base flood elevation data.

The criterion does not apply to this project.

b) Subdivisions (including manufactured home parks) shall be designed to assure:

I. such proposals minimize flood damage within the flood-prone area,

The proposal fails to meet this criterion as detailed in the findings in Pages 7 through 11 above.

ii. public utilities and facilities, such as sewer, gas, electrical, and water systems are located and constructed to minimize or eliminate flood damage,

The proposed development meets this criterion.

iii. adequate drainage is provided to reduce exposure to flood hazards, and

The proposal fails this criterion as detailed in the findings in Section 1 on Page 7 of this document.

iv. any access roads to habitable structures or critical facilities shall be at least one foot above base flood elevations and able to withstand a 100-year event without failure or overtopping. The proposed development meets this criterion.

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5. Enclosed Areas Below the Lowest Floor: This criterion does not apply to the project.

6. Recreational Vehicles: Recreational Vehicles placed on sites with special flood hazard areas shall either: This criterion does not apply to the project.

7. Accessory Structures: A small accessory building that represents a minimal investment need not be elevated to the base flood elevation provided the building: This criterion does not apply to the project.

8. Water Supply Systems: New and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the systems. The proposed development meets this criterion because the well heads are elevated to 1 foot above the base flood elevation.

9. Sanitary Sewage Systems: New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters. This criterion does not apply to the project since it is served by municipal sewer.

10. On-Site Waste Disposal Systems: On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding. The lowest elevation of the wastewater distribution field shall be located at least 1 foot above the base flood elevation. This criterion does not apply to the project since it is served by municipal sewer.

11. Watercourse Carrying Capacity: The flood and sediment carrying capacity within any

altered or relocated portion of a watercourse shall be maintained. This criterion does not apply to the project since it does not alter a watercourse.

12. No structure shall be placed closer than fifty (50) horizontal feet from the top of any river or perennial stream bank within the overlay. The Development Review Board may attach such additional conditions to the granting of a permit as are necessary to meet the purposes and flood hazard area management requirements of these zoning regulations. The proposed project's building meets this setback requirement.

### **SECTION 279. WELLHEAD PROTECTION DISTRICT**

For the purposes of maintaining a quality source of public water to the citizens of Bethel, accommodating development surrounding the wellhead, protecting the Town's investment in the water system and implementing the Town's Source Protection Plan, a Wellhead Protection District is created.

All land development, except as otherwise may be exempted or excluded, within the Wellhead Protection District, shall be subject to Conditional Use Review to ensure adequate protection of the resource. In considering an application, the DRB shall evaluate the potential impact of the proposed use on the resource. No Zoning Permit shall be issued unless all approvals required under this section are first obtained by the Applicant.

Due to the relatively high risk of permanent groundwater contamination, the following uses or activities are prohibited within the Wellhead Protection District:

1. commercial storage of liquid petroleum products;

This criterion does not apply to this project

2. commercial salvage yards or junkyards;

This criterion does not apply to the project

3. manufacture, use or storage of toxic chemicals exceeding 50 gallons or 250 pounds of dry weight;

This criterion does not apply to the project

4. uncontained storage of animal manure;

This criterion does not apply to the project

5. landfills or waste transfer stations; and

This criterion does not apply to the project.

6. industrial uses that discharge process waste on-site.

Land development that involves or typically requires installation, maintenance, or operation of a subsurface sewage disposal system shall not be permitted unless the Board first determines that the facility will not adversely affect groundwater quality or contaminate Bethel's public water supplies. To the extent necessary, the Applicant may be required to provide testimony from a qualified hydrologist documenting that the intended development has been planned or engineered so as not result in a high risk of groundwater and surface water pollution.

This criterion does not apply to the project since it is served by municipal sewer.

## **SECTION 601. CONDITIONAL USES**

No Zoning Permit shall be issued by the Administrative Officer for any use or structure identified as a conditional use in the district where the proposed development is to occur until the DRB grants approval. The DRB will approve an application only upon findings that the proposed conditional use will conform to specific requirements prescribed by this Ordinance and that it will not unduly adversely impact:

1. The capacity of existing or planned community facilities;

The Board finds the proposed project is in the Special Flood Hazard Area, and as such increases dangers to the public, and to roads in the vicinity, in flood events since floodwaters displaced by the project will likely be pushed to the west, where Vermont Route 12 is located.

2. The character of the area in which it would be located;

The Board finds the character of the area in which it would be located would not be adversely impacted.

3. Traffic on roads and highways in the vicinity; and

The Board finds the traffic on the roads and highways in the vicinity would not be adversely affected.

4. Any by-laws of the Town then in effect.

See prior findings regarding Sections 277 and 603 where the DRB found that the project fails to meet required criteria in those sections.

In the case of proposed commercial development that is a conditional use, the DRB, in addition to the above criteria, shall grant approval only on findings that the proposed development conforms to the above requirements and does not have an undue adverse effect on:

1. The tax base of the Town or

The proposed development would not have an undue adverse effect on the Town's tax base.

2. The efficient utilization of existing structures and public services.

The proposed development would not utilize any existing structures.

#### **SECTION 604. SITE PLAN APPROVAL**

**When Site Plan Approval is Required:** The Administrative Officer shall not issue a Zoning Permit for any use or structure, except for one-family and two-family dwellings, agricultural uses and accessory uses, until the DRB grants site plan approval.

**Application for Site Plan Approval:** Every applicant for a Zoning Permit for a use, other than those specifically excluded above, shall submit along with the permit application two sets of the site plan maps and supporting data which shall include the following information:

1. Name and address of the owner of record, and the name (s) and address (s) of the owner (s) of adjoining lands. Name and address of person or firm preparing map. Scale of map, north point and date. Bethel Zoning Ordinance – February 12, 2005, Last Amended December 22, 2008 60
2. Survey of property showing existing features, including contours, structures, large trees, streets, utility easements, rights of way, land use and deed restrictions.
3. Site plan showing proposed structure locations and land use areas; streets, driveways, traffic circulation, parking and loading spaces and pedestrian walks; landscaping plans, including site grading, landscape design and screening.
4. Construction sequence and time schedule for completion of each phase for buildings, parking spaces and landscaped areas of the entire development.

**Standards for Approval of Site Plan:** The DRB shall review the site plan map and supporting data before approval, approval with stated conditions, or disapproval is given and shall take into consideration only the following objectives:

1. Maximum safety of vehicular circulation between the site and the street network. Particular consideration shall be given to visibility at intersections, to traffic flow and control, to efforts to minimize curb cuts, to pedestrian safety and convenience, and to access in case of an emergency,

The proposed development fails this standard in the area of pedestrian safety as there is a need for one or more cross walks to gain access to the proposed development from the Bethel Schools located across the street from the proposed development. This would safely allow children from the Bethel Schools cross Pleasant Street (Route 12) and walk along sidewalks to access the proposed residences (See A. Fuller 12/5/17 Testimony, Exhibit 12 and K. Barry 12/5 Testimony on Page 15 Lines 21 - 23). The Board finds the proposed development also fails this criterion in regards to access in case of a flooding event (see #9, page 9 of this document).

2. Adequacy of circulation, parking and loading facilities. Particular consideration shall be given to the items in (1) above and effect of noise, glare, or odors on adjoining properties. Refuse and service areas should be included in this consideration.

The proposed development meets this criterion.

3. Adequacy of landscaping, screening and setbacks with regard to achieving maximum compatibility with and providing protection to adjacent property. Particular consideration shall be given to preservation of existing vegetation, visibility of unsightly or incompatible areas from the road and adjoining properties and the adequacy of materials to meet seasonal conditions, soil conditions and light on the site.

The proposed development meets this criterion.

4. Decision by Development Review Board: The DRB shall act to approve or disapprove such site plan within forty-five days after the date upon which it receives the proposed plan, and failure to so act within such period shall be deemed approval.

## **DECISION**

Based upon the above findings, the Development Review Board denies the application. Despite the best intentions and willingness to revise the proposed development by the Applicant as evidenced by the revised site plan (Exhibit #11), the proposed development fails to meet the Town Plan and Zoning Regulations' criteria.

More specifically, the application fails to meet Sections 277(1), (2), (4), (5), (6), (8), (10) and (10); 279(1) and (3); 325; 601(1) and (4); and 604 (4) of the Town of Bethel Zoning Ordinance.

**Motion by R. Clough to approve the subject application; seconded by C. Washburn,**

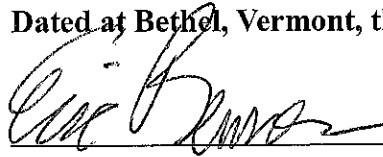
Eric Benson	Nay
Keith Bollman	Nay
Ruth Clough	Yes
Penny Griffin	Nay
Charles Washburn	Yes
Newt Whitcomb	Nay

**Based on the foregoing, the Town of Bethel Development Review Board denies the**



application for the project.

Dated at Bethel, Vermont, this 18<sup>th</sup> day of January, 2018.

  
-----, Chair

**NOTICE: This decision may be appealed to the Vermont Environmental Court by an interested person who participated in the proceeding(s) before the development review 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.**