

**TOWN OF HINESBURG
DEVELOPMENT REVIEW BOARD
FINDINGS OF FACT, CONCLUSIONS & ORDER**

**Black Rock Construction / Haystack Crossing LLC
Conditional Use Approval for Stream Buffer Development
Parcel Number 16-20-56.500**

Based on the above-mentioned public hearing and the documents contained in the “document” file for this proposal, the Hinesburg Development Review Board (DRB) enters the following Findings of Fact, Conclusions and Order.

FINDINGS OF FACT

1. Black Rock Construction, hereafter referred to as the Applicant, is requesting conditional use application for development in a stream buffer area associated with a Preliminary Plat approval for the first phase of a subdivision of a 76±-acre undeveloped parcel located south of Shelburne Falls Road, west of Route 116, and north of Patrick Brook in the Village Northwest and Agricultural Zoning Districts. The property is owned by Haystack Crossing LLC, represented by Joseph Bissonette. This application would create 176 dwelling units (50 of which would be congregate, senior housing), a variety of commercial and light industrial space in multiple buildings, and 10,000 square feet (sf) of senior support space. The 126 non-congregate housing units would include 47 single family residences, 20 attached townhouse units, a ten-plex apartment building, and 49 units in four mixed use buildings.
2. This application was heard at an in-person meeting on February 18, 2020. The meeting scheduled for March 17, 2020 was canceled due to the covid-19 state of emergency. The application was then heard remotely using Zoom on April 21, 2020, May 5, 2020, May 19, 2020, June 2, 2020, June 16, 2020, July 7, 2020, July 21, 2020 and was closed on August 4, 2020. Ben Avery of Black Rock Construction attended all the meetings. The Applicant’s engineer, David Marshall, P.E., and landscape architect, Mike Buscher, L.A., described the work being done in the stream buffer at the April 21, 2020 meeting.
3. There are two mapped streams impacted by this development. One is Patrick Brook, which is just south of the southern property line. The other, the Applicant’s plans identify as Riggs Brook, which is along the northern property line and at the base of the access strip that leads to Shelburne Falls Road. Patrick Brook has a 100-foot setback. Riggs Brook has a 75-foot setback. The proposed development in these setbacks include the following:
 - 1) The expansion of Haystack Crossing from an 18-foot wide gravel road access to a 22-foot curbed two lane paved roadway in the Riggs Brook setback.
 - 2) The placement of a 10-foot wide recreation path with an 8-foot wide green strip to the east of the expanded Haystack Crossing roadway in the Riggs Brook setback.
 - 3) 30-inch diameter culvert extension to convey the stormwater in the Riggs Brook under the Haystack Crossing roadway.
 - 4) A portion of the approach road to Patrick Brook vehicular and pedestrian crossing, called Center Road on the plans.
 - 5) Gravel wetland #3, which will treat stormwater discharge generated from the Patrick Brook vehicular and pedestrian crossing.
 - 6) The discharge pipe and end section that discharges stormwater from the main gravel wetland.
4. The Hinesburg Official Map, last updated in February 2020, shows a variety of future community facilities on the subject property. Relevant to this application is the vehicular and pedestrian connections between Shelburne Falls Road as an extension of Haystack Crossing, the Town

recreation facilities, VT Route 116 opposite Riggs Road, and south to Hinesburg Center with a bridge over Patrick Brook. Facility numbers 10-14.

5. The Board issued two prior decisions related to the Riggs Brook crossing, and related impacts to this stream buffer area. In a December 2, 2015 decision issued to Haystack Crossing LLC and the Town of Hinesburg, the Board approved a plan for a much larger culvert, in order to properly deal with runoff from a 100-year storm event. In a December 5, 2017 decision issued to the Town, the Board agreed to revise the 2014 decision to delay upgrading to a larger diameter culvert, and revisit the issue when further development was proposed on the Haystack Crossing property.
6. David Marshall P.E. testified at the April 21, 2020 hearing that moving the discharge pipe and end section that discharges stormwater from the main gravel wetland out of the stream setback would have required the main gravel wetland, and a large portion of the proposed subdivision to be raised several feet in height to be able to convey stormwater to the gravel wetland.
7. Both the Conservation Commission (CC) and Robert Hyams (one member of the CC) raised concerns about possible impacts to, and long-term management of, the Patrick Brook riparian area. Robert Hyams noted that the project plans to discharge stormwater to an unstable riparian area that the applicant doesn't own or control. He said that existing streambank erosion and stream course adjustment will continue, and that without long-term management, the project's stormwater treatment system could be threatened and could adversely impact Patrick Brook. Both the CC and Robert Hyams recommended creating a management plan to address this.
8. David Marshall P.E. testified at the April 21, 2020 hearing that the existing 24-inch Riggs Brook culvert is adequate to handle a 50-year storm event; however, there would be some ponding at the inlet area. He indicated that extending the Riggs Brook culvert with a 30-inch pipe on the inlet side will reduce any ponding in a large storm event. He indicated that the larger 30-inch inlet portion will allow water to pass more efficiently through the existing 24-inch section.
9. Plan sheet C3.10 incorrectly shows the proposed Riggs Brook culvert extension pipe diameter as 24-inches instead of 30 inches.
10. Plan sheet C3.10 shows grading for a path west of the Haystack Crossing roadway and south of Riggs Brook. The path, which is located on both sides of the Haystack Crossing roadway is hatched to resemble a proposed impervious surface. The Applicant agreed at the hearing that the path will be unimproved, except for mowing.
11. Plan sheets C7.0 through C7.11 provide plans and specifications for the project's erosion prevention and sediment control. Plan sheet C7.5 focuses on the Patrick Brook stream buffer area impacted by Center Road. Plan sheet C7.6 focuses on the Riggs Brook stream buffer area impacts.
12. The Conditional Use application for development in a stream setback was submitted on October 8, 2019 and deemed complete on October 17, 2019. This application was submitted in conjunction with a preliminary plat application. This application included the application form, correspondences, and the following documents, which are contained in the document file (16-20-56.500) in the Hinesburg Planning & Zoning office. Of the submittals for the entire development, the following documents are specific to the conditional use application for development in a stream setback:
 - 1) 2 Vermont ANR maps for the Riggs Brook culvert crossing.
 - 2) HydroCAD modeling of existing and proposed conditions for the Riggs Brook crossing by Civil Engineering Associates dated December 27, 2019.

- 3) A plan titled "Overall Site Plan, Grading & Drainage", by Civil Engineering Associates, Inc., with project number 13127, and with sheet number C3.0, dated October 4, 2019 and last revised 1/10/20.
 - 4) 10 plan sheets titled "Partial Site Plan, Grading & Drainage", by Civil Engineering Associates, Inc., with project number 13127, and with sheet numbers C3.1 through C.11, dated October 4, 2019 and last revised 1/16/20.
13. The following members of the DRB were present for the preliminary plat/conditional used for development in a stream buffer hearing on April 21, 2020, constituting a quorum: Dennis Place, Dick Jordan, Sarah Murphy, Ted Bloomhardt, Greg Waples, John Lyman and Branden Martin. See the official meeting minutes for a list of others present at the meeting. Although no additional testimony or review for the development in a stream buffer application was taken after the April 21, 2020 meeting, the application was not closed until the August 4, 2020 meeting because of the possibility a design change from the preliminary plat application could affect the development that would occur in the stream buffer.
 14. The April 21, 2020 public hearing was warned in *The Citizen* on April 2, 2020.

CONCLUSIONS

1. The Applicant has submitted all information required by the Hinesburg Zoning Regulations for the aforementioned application.
2. The proposed stream buffer encroachments (Finding of Fact #3, items 1-5) help accommodate the future community facilities shown on the Official Map, and discussed in Findings of Fact #4.
3. The rationale for not replacing the existing 24-inch diameter pipe listed in Findings of Fact #8 is reasonable based on the stormwater modeling and testimony from the Applicant's engineer. It appears that the extension and inlet upgrade to a 30-inch diameter pipe will allow for passage of storms larger than a 50-year event without adverse impacts to the stream, surrounding properties, and infrastructure.
4. An upgraded C3.10 plan corrected as described in Findings of Fact #9 & #10 is required.
5. The erosion control and sediment prevention plans (sheets C7.0 – C.7.11), and the project's overall stormwater control plans adequately address protection of water quality by preventing or mitigating sediment and stormwater impacts to the stream buffer area during and after construction.
6. Pursuant to Section 2.5.2(5) of the Hinesburg Zoning Regulations, the Board concludes that there are no practical alternatives to proposed stream buffer area encroachments, and that the stream buffer function will be adequately addressed through erosion controls, plantings, and/or other measures. The Riggs Brook stream crossing exists, and the improvements are necessary to provide access to the project, and the crossing design creates the least possible impact on the buffer area. Similarly, the Patrick Brook stream crossing and adjacent stormwater treatment systems are necessary to provide a connection (as shown on the Official Map) between this property and the village core to the south. The outlet of the stormwater discharge pipe from the main gravel wetland creates a minimal impact to the stream buffer area, and is necessary to effectively provide stormwater treatment, and emulate the site's existing drainage patterns.
7. Concerns raised about possible impacts to the Patrick Brook riparian area located on adjacent property (Finding of Fact #7) deserve consideration. Collaboration with the Conservation Commission and the adjacent landowner is warranted, and may help clarify the issue and

potential partnerships for long-term solutions that will benefit both the development and the natural resource. With that said, the Applicant's plan is sufficient for the subject property.

ORDER

Based on the Findings of Fact and Conclusions set forth above, the Hinesburg DRB grants conditional use approval for development in the stream buffer subject to the conditions listed below.

1. Prior to or along with the submission of a final plat application for this development, the Applicant shall submit a corrected C3.10 plan that conforms to the changes described in Findings of Fact #9 & #10.
2. Pursuant to Conclusion #7, the Applicant shall collaborate with Staff to evaluate the Patrick Brook riparian area, and address concerns about possible impacts and long-term management options.
3. The areas exposed during construction shall be treated in a manner consistent with the procedures contained in the Vermont Handbook for Soil Erosion and Sediment Control on Construction Sites.
4. This project shall be completed, operated, and maintained as set forth in the plans and exhibits as approved by the DRB and on file in the Town Office, and in accordance with the conditions of this approval. Deviations may be made from these plans if they are:
 - a. Approved by the designer, or equivalent, and
 - b. In conformance with the intent of this decision, and
 - c. Determined by the Zoning Administrator that they are not significant enough to require a formal revision to the DRB decision.



Development Review Board

September 15, 2020
Date

Board Members participating in this decision: Dennis Place, Dick Jordan, Sarah Murphy, Ted Bloomhardt, Greg Waples, John Lyman and Branden Martin.

Vote to approve: 7-0

30-day Appeal Period: - An "interested person", who has participated in this proceeding, may appeal this decision to the Vermont Superior Court, Environmental Division within 30 days of the date this decision was signed. Participation shall consist of offering, through oral or written testimony, evidence or a statement of concern related to the subject of the proceeding. See V.S.A. Title 24, Chapter 117, Section 4465b for clarification on who qualifies as an "interested person".

Notice of the appeal, along with applicable fees, should be sent by certified mail to the Vermont Superior Court - Environmental Division. A copy of the notice of appeal should also be mailed to the Hinesburg Planning & Zoning Department at 10632 VT Route 116, Hinesburg, VT 05461. Please contact the Court for more information on filing requirements, fees, and current mailing address.

State Permits: - It is the obligation of the Applicants or permittee to identify, apply for, and obtain required state permits for this project prior to any construction. The VT Agency of Natural Resources provides assistance. Please contact the regional Permit Specialist at 879-5676 (111 West St, Essex Jct., VT 05452) for more information.

All new residential and/or commercial construction including additions, alterations, renovations, and repairs are subject to either the Vermont Residential Building Energy Standard (RBES) - 21 V.S.A. § 266, or the Vermont Commercial Building Energy Standard (CBES) - 30 V.S.A. § 53. A certificate of occupancy cannot be issued until the required RBES or CBES certification has been filed in the town records.