

## **Mendon Zoning Board of Adjustment**

### **Findings of Fact, Conclusions of Law and Decision**

#### **In Re: Application for Conditional Use Permit**

#### **Applicant: Marek Kukulka**

As noticed, a hearing on a conditional use permit application under §317 of the Mendon Zoning Regulations and submitted on behalf of Marek Kukulka was held on May 29, 2025. Present in person were ZBA members Jack Kennelly, Harvey Zara and Teri Corsones and Mendon Zoning Administrator Greg Smith. Also present in person were Marek Kukulka, Laura Kukulka, Jeffrey Biasuzzi, Jerry Weitzenkorn, Ben Clark, and Lois Wash. Will Clark attended remotely. Mr. Weitzenkorn indicated at the hearing that he was not contesting the site of the proposed development or whether it would be visible from vantage points per §317 of the Mendon Zoning Regulations but rather expressed concerns about water runoff from an existing driveway. As a result, a Board Review Committee was not appointed at the hearing. At the conclusion of the hearing it was determined that a site visit was warranted and a site visit was scheduled for June 3, 2025. Minutes of the May 29, 2025 hearing were filed on June 2, 2025.

A site visit was held on June 3, 2025 and a deliberative session was held immediately following the site visit. Present in person were ZBA members Jack Kennelly, Harvey Zara and Teri Corsones. Also present in person were Mendon Road Commissioner Chris Baird, Mendon Zoning Administrator Greg Smith, Dave Wisell, Jerry Weitzenkorn (for a portion of the site visit) Attorney Bill Meub on behalf of Mr. Weitzenkorn and Ben Clark. On June 9, 2025 Mr. Meub emailed the ZBA Chair requesting a Board Review Committee review. Minutes of the June 3 site visit and deliberative session were filed on June 9, 2025.

On June 10, 2025 a Board Review Committee was officially appointed and the Committee conducted a site visit on June 12, 2025. On June 18, 2025 the Board Review Committee met. Minutes of the June 18, 2025 meeting were filed on June 23, 2025.

## **Findings of Fact**

1. Marek and Laura Kukulka own approximately 35 acres at 49 Helvi Hill Road in Mendon. The property is undeveloped but for a small gazebo. A previous owner constructed a driveway in approximately 1994 and obtained WW-1-3194 permit, issued July 22, 2019. Mr. Kukulka applied for a zoning permit to construct a three-bedroom single family dwelling with an attached garage, screened-in porch and deck on January 23, 2025. In the course of reviewing the application, the Zoning Administrator ascertained that the property is located in the Ridgeline Overlay District, which requires a conditional use permit.
2. Jeffrey Biasuzzi is a Real Estate, Land Development and Permitting Consultant who assembled a three-page conditional use permit application with eight exhibits on behalf of Mr. and Mrs. Kukulka. A hearing on the application was noticed for May 29, 2025 and adjoining landowners were notified. Mr. Biasuzzi presented the application and described the exhibits at the May 29 hearing. The application is attached to the May 29 minutes and incorporated therein by reference
3. Jerry Weitzenkorn lives at 740 Sherwood Drive, which is located across Helvi Hill Road from the subject property. Helvi Hill Road is a private road that was constructed decades ago. Mr. Weitzenkorn testified at length about concerns that he has had about water run-off along Helvi Hill Road for many years. He acknowledges that the driveway on the Kukulka property was originally constructed approximately thirty years ago.
4. Ben Clark has lived on Helvi Hill Road for many years and also testified about the water run-off situation. He attributes the issues to the natural terrain in the area and not to any driveways located along the Helvi Hill Road.
5. ZBA Chair Kennelly noted at the hearing that Section 317 of the Mendon Zoning Regulations calls for the appointment of a Board Review Committee to determine whether a proposed development in the Ridgeline Overlay District will be visible from any vantage points as defined in the regulations. He indicated that if a Board Review Committee was appointed, he, Harvey Zara and Teri Corsones would comprise the Committee. Mr. Weitzenkorn testified that he was not concerned with whether the proposed development would be visible from any vantage points, and was concerned only with whether the proposed development

would impact water run-off onto Helvi Hill Road. His request was for the existing driveway to be moved to an entirely different location.

6. Section 317(6) sets forth Standards for Approval for development within the Ridgeline Overlay District. Standard 6 refers to driveways and provides in part that the ZBA shall set such standards as appropriate. Approval by the Town Road Commissioner of finished grade and stormwater drainage is listed as a standard.

7. Members recessed the hearing until June 3, 2025, the date scheduled for a site visit attended by the Mendon Road Commissioner and interested parties. David Wisell, an excavator who is very familiar with the driveway, was also invited to the site visit.

8. At the site visit those in attendance as noted above observed the intersection of the driveway on the subject property with Helvi Hill Road as well as observed the proposed house site. Mr. Wisell described his work on the driveway over the years and his knowledge of the water issues on Helvi Hill Road. He has performed regular maintenance on the driveway to prevent washouts. He noted that water run-off from the driveway located more than 50' above the intersection of the driveway and Helvi Hill Road drains to the east and is channeled into a culvert that directs any such run-off beyond the Weitzenkorn property. He stated that water run-off from approximately 50' above the intersection of the driveway and Helvi Hill Road is the only water that impacts Helvi Hill Road. At the time of the site visit, no water erosion on the Kukulka driveway intersecting Helvi Hill Road was evident. By contrast, members observed channels of water erosion evident on the driveway immediately adjacent and west of the Kukulka driveway and opposite the Weitzenkorn property.

9. Ben Clark described his and his family's decades-long experience regarding water conditions on Helvi Hill Road. He explained that the terrain along both sides of the Helvi Hill Road has dictated the water flow onto the road.

10. Mendon Road Commissioner Chris Baird described his knowledge of Helvi Hill Road. He stated that in recent years persons from the state inspected Helvi Hill Road to evaluate possible remedies for improving the water situation. Commissioner Baird indicated that because Helvi Hill Road is a private road and there is no road association of the adjoining landowners it was not possible to move forward with possible remedies. Commissioner Baird indicated that in his view and given the length, width, slope, finished grade, storm water run-off and

other impacts, construction of the proposed home would not adversely impact storm water run-off on the driveway and met with his approval.

11. Mr. Weitzenkorn asked questions of Mr. Wisell and Commissioner Baird. He repeated that he did not oppose the house construction but had the same concerns that he had expressed about general water run-off on Helvi Hill Road for many years.

12. Members recessed the meeting and went into a deliberative session. Harvey Zara made a motion to approve the conditional use permit application conditioned on the representations made in the application and referenced at the May 29 hearing, including the siting and design of the construction where indicated and as depicted per the exhibits to minimize visibility, the use of the siding, roofing and window glazing materials also referenced in the application to harmonize with the surroundings, use of the lighting fixtures referenced to prevent glare, maintenance of the current natural ground in compliance with the Current Use Value Management Plan, adherence to the grading plan described in the application, continued maintenance of the driveway per Mr. Wisell's description at the site visit and adherence to all relevant state permit requirements including the water and wastewater permit issued for the property. Teri Corsones seconded the motion and the motion passed unanimously.

13. On June 9, 2025 Mr. Meub emailed Chair Kennelly and indicated in part that he and his client questioned whether the proposed house could be seen from locations that would trigger Board Review Committee review.

14. A Notice of Appointment dated June 10, 2025 referenced the June 9 request for Board Review Committee review and documented the appointment of Chair Kennelly, Harvey Zara and Teri Corsones to the Committee. The Committee scheduled a site visit on June 12, 2025 when the three members drove together in one automobile along Park Lane, U.S. Route 4, Meadowlake Drive, Sherwood Drive, Terra Lane and Helvi Hill Road, noting whether the proposed house site was visible from any vantage points. They also noted the distance from which any roads were visible from the proposed house site.

15. Subsection 317(6) of the Mendon Zoning Regulations defines vantage points as "any point on a Class I or Class II public road or highway or any two points at least 500 feet apart on a Class III public road, from which the proposed development will be visible."

16. Members noted the considerations in the subsection regarding the relative importance of any vantage points, the volume of traffic using the affected roads or highways, the length of time that a project would be visible to motorists, and the project's distance from affected vantage points.

17. As scheduled, the Board Review Committee met on June 18, 2025 to determine whether the proposed development will be visible from any vantage point as defined in Subsection 317(6). Members reviewed the standards that serve as the basis for guiding development within the Ridgeline Overlay District without an undue adverse visual impact. Mr. Zara made a motion that the proposed house site is designed and situated such that it will very likely not be visible from any vantage points and if it is visible from any vantage points, it would be at such a distance and for such a brief amount of time that it would not have an undue adverse visual impact. Ms. Corsones seconded the motion and the motion passed unanimously.

## **Conclusions of Law**

1. Section 317(3) provides that no land development shall take place in the Ridgeline Overlay District without the Zoning Board of Adjustment's Conditional Use Approval. The Zoning Board of Adjustment voted unanimously to approve applicant's conditional use application with conditions.
2. Section 317(5) provides that a Board Review Committee shall determine whether a proposed development will be visible from any vantage point as defined in Section 317(6). It also provides that land development that will not be visible from such vantage points is exempt from the regulation. The Board Review Committee voted unanimously that it is very likely that the proposed development will not be visible from any vantage points and if it is visible it would be at such a distance and for such a brief amount of time that it would not have an undue adverse visual impact.
3. Section 317(6)(6) permits the ZBA to set such conditions regarding driveways as appropriate, including approval by the road commissioner of the finished grade and storm water drainage plan. The length, width, slope, finished grade, and storm water drainage plan associated with the driveway met with the Mendon Road Commissioner's approval.

**Decision:**

The subject conditional use permit application is approved per the Findings of Fact and Conclusions of Law stated above and incorporates by reference the minutes and any attachments of the May 29, 2025 hearing, June 3, 2025 site visit and June 18, 2025 hearing.

The conditional use permit is subject to the following terms and conditions:

Any modifications to the placement of the building as set forth on Exhibit A shall require an amendment to this permit. The Zoning Administrator may require a more definite site plan for the location of the building.

By acceptance of this permit, the Applicant agrees to let representatives from the Town of Mendon access the property covered by this permit, to ensure compliance with the conditions of this permit.

By acceptance of this permit and its conditions without appeal, the Applicant confirms for himself and his successors, heirs and assigns in interest, that this permit and its condition shall run with the land and the land uses permitted herein, and shall be binding upon and enforceable against the Applicant and all successors, heirs and assigns in interest.

The Mendon Zoning Board of Adjustment maintains continuing jurisdiction during the lifetime of this permit and may require periodically that the permit holder file an affidavit certifying that the project is being completed in accordance with the terms of this permit.

If the work described in this zoning permit has not been completed within two (2) years of the date of issuance, this permit shall expire and have no continuing effect.

This approval is conditioned upon receipt of any other permits required by local, state, and federal agencies. No construction or use may take place until all required permits are filed with the town office. If any changes to the project are made in other permits, the Applicant must also receive approval for these changes from the Mendon Zoning Board of Adjustment. Any conditions of other permits are automatically made a part of this permit and shall be included as conditions of this permit.

Failure to comply with any of the above conditions shall constitute a violation of this permit.

Any appeal of this Decision must be filed with the Clerk of the Environmental Division within thirty (30) days of the date of this Decision pursuant to 24 VSA 4471 and Vermont Rule for Environmental Court Proceeding 5(b).

Dated at Mendon, Vermont on July 23, 2025.

/s/ *John J. Kennelly*

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John J. Kennelly, Chair