

Town of Moretown Development Review Board  
79 School Street, Moretown, Vermont 05660

Minutes and Decision of Hearing Held October 27, 2022

Application No. 22-28: Dana Jinkins (Owner) and Dan and Jordan Von Trapp (Applicants) for Two Dwellings (Treehouses) on Lot 1 off Gove Road

Present for the Board were John Riley, Paula Woods, Jim O'Neill, Craig Oshkello (Alternate) and David Russo at the Town Office. Also present via Zoom was Greg Nagurney. Owner Dana Jinkins and Applicants Dan and Jordan Von Trapp were present for the Hearing at the Town Office. Also present was Brian Kitchens, supporter of the Applicants. Gail O'Keefe who owns an adjoining land parcel with Doug Melton appeared via Zoom.

John Riley called the meeting to order at 6:35 PM.

Zoning Administrator Karen Sauther prepared a Staff Report summarizing the application and her interpretation of which sections of the Zoning Ordinance apply to the application.

Prior to the Hearing Board Members received copies of the Staff Report; Development Review Board Application; Sketch Site Plan showing the Treehouse locations; Tax Map; Road Agreement between Lots 1 and 2, and Wastewater Permit approval.

Background

Dan and Jordan Von Trapp own a parcel of land at the end of Gove Road consisting of 30 acres. This includes their residence, a barn, and open fields which are used for pasturing and raising farm animals. The Von Trapp's have an existing Town permit approval to host Special Events (primarily weddings).

Dana Jinkins is Jordan's mother. Dana owns adjacent Lot 1 believed to consist of 58 acres which lie northerly and easterly of the Von Trapp parcel. In 2020 Ms. Jinkins' husband (James B'fer Roth) built what is depicted as "Treehouse #2" on the submitted sketch site plan (designations are reversed on Todd Hill's WW Permit Plan). There is an existing farm road which extends easterly from the end of Gove Road and travels across the Von Trapp parcel (Lot 2). Eventually after some 1,500 feet it enters the Jinkins parcel where Treehouse #2 was constructed.

Treehouse #2 was built for dwelling purposes. It is not insulated but does have a propane heater for heat and hot water, and a propane cookstove for preparation of meals. Initially it utilized a composting toilet which has been changed to a traditional flush toilet bathroom, and shares a common water source and septic disposal system with Treehouse #1 which was more recently built and is close to completion.

The Development Review Board Application describes the structures as “family guest house and occasional short term lodging”. During the course of the hearing Applicants acknowledged the first in time Treehouse (referred to herein as Treehouse #2) has been offered for lodging since 2020 through Airbnb and this past summer was regularly rented to guests most weekends between end of May and mid-October. As this treehouse is not insulated pipes were recently drained and will be little used during winter months. The treehouse is an elevated living structure, anchored and affixed to a cluster of living trees, with access via a bridge or walkway that begins flush to the ground, and permits access to the elevated living structure. Treehouse #2 is 318 square feet in area.

Newer Treehouse #1 is 712 square feet in size. It is at a different location on the Jinkins’ parcel. As described by Applicants, Treehouse #2 is considered Dana and B’fer’s with the Von Trapp’s assisting in facilitating its leasing for Airbnb purposes. Guests are able to drive beyond the Von Trapp residence, up the access road, and park at the Treehouse which has parking spaces for several vehicles. At about two-thirds of the way to Treehouse #2, a farm road turns left and proceeds to the Treehouse #1 location. This additional treehouse is of similar design, but has been insulated and is considered owned by Dan and Jordan Von Trapp. As noted above, it shares a spring water source with Treehouse #2, and joins into a common wastewater system, approved by the State of Vermont under Wastewater System and Potable Water Supply Permit WW-5-9005 dated September 6, 2022. The Permit describes the treehouses as “two, 1-bedroom seasonal cabins”.

The Von Trapp’s advised the treehouses are not usually occupied by guests attending weddings at the farm property. Sometimes guests arriving early may stay in them prior to the event, but typically prefer to stay off site with family or friends as do other event attendees.

The present application is an after the fact request for zoning approval. The Application indicates the Jinkins’ parcel is located in the Agricultural District and Preserve District.

The application seeks conditional use approval for a single family dwelling, and a second accessory dwelling. As the second in time Treehouse #1 has an area of 712 square feet it is proposed as the primary dwelling unit, and the earlier constructed treehouse as the

accessory dwelling unit. The Zoning Administrator included in meeting materials a screenshot of the applicable area of a USGS 7.5 minute quadrangle for determination of stream locations as defined in the zoning regulations. According to Applicants, there are intermittent seasonal streams that are under, or in close proximity, to each treehouse location. Jordan Von Trapp believed the Zoning Administrator concluded one stream appeared on the U.S.G.S. map, but not the other. The Application also requires the Board to consider access to the dwelling locations which are by a private road; and whether the proposed structure locations meet Ordinance setback requirements.

Gail O'Keefe participating by Zoom indicated she was interested in the Application as an adjoining landowner and had viewed the treehouse locations. Based upon the visit she stated she and Doug Melton have no objections to the Application as presented.

At approximately 7:30 PM the Board moved (Paula, seconded by Jim) to go into deliberative session to discuss the merits of the Application. Board Members were uncertain as to whether a site visit was desired or a further hearing might be needed for additional evidence, and advised the Applicants the Board would contact them to discuss an appropriate time if a site visit was required. The open portion of the Hearing concluded, and after non-Board members departed, the Board held a deliberative session for approximately 45 minutes.

At the end of the deliberative session the Board voted to continue the deliberative discussions at a Zoom conference call Tuesday, November 1 at 5:00 PM.

The Board resumed deliberations by Zoom (all attending except Jim O'Neil) on November 1 for approximately 40 minutes.

Below is a discussion of how the Board believes the current Moretown Zoning Ordinance applies to the merits of the Application, followed by the Board's Findings and Decision.

#### Applicable Zoning District

During the first deliberate session the Board reviewed the large Zoning District Map on display at the Town Office. During the second deliberative session the Board reviewed the online Vermont Center for Geographic Information parcel maps which depict zoning district lines. Based upon this review, the Board concludes both Treehouse locations are located in the Preserve District.

These maps suggest that a portion of the Jinkins' parcel lies within the Agricultural-Residential District, with a portion in the Preserve District. In both cases, the treehouses

have been located on the most easterly portions of the parcel with Treehouse #2 located 35 feet from an O’Keefe/Melton line. Treehouse #1 has a parking area and ramp some 32 feet from an O’Keefe/Melton westerly boundary. Single family dwellings are a permitted use in the Preserve District. The Jinkins’ parcel meets the 5 acre lot area minimum set forth in Table 2.4. The Preserve District requires a 65 foot front yard setback; 25 foot rear yard setback; and 100 foot side yard setbacks. Ordinance Section 4.7(C) provides that front, side, and rear yard setbacks are measured as the horizontal distance from the nearest point of a building or structure to the related front, side or rear property line. Where a lot fronts an existing public right-of-way, the front yard setback is measured from the street centerline, to the point on the building closest to the street. Section 4.7(E) states that for any lot lacking road frontage (such as this one), all setbacks from adjacent parcel boundaries shall be considered side setbacks. As the treehouse locations do not have road frontage all distances to the adjoining parcels must meet the side setback requirement of 100 feet. Neither treehouse location meets this requirement.

A separate concern is whether the treehouses can be considered single family dwellings. The Ordinance describes “Dwelling Unit” as:

“One or more rooms designed, occupied or intended for occupancy as separate living quarters with cooking, sleeping and sanitary facilities provided within the dwelling unit for the exclusive use of a single family maintaining a household. The term ‘dwelling unit’ shall not include a hotel, motel, boarding house or similar structure. A Single Family home is equal to one dwelling unit.”

Based on the information presented the treehouses do not qualify as “dwelling units” as defined in the Zoning Ordinance. Although members of the Jinkins and Von Trapp households at times stay in the treehouses, the first is actively marketed for rental through Airbnb and that appears to be the intent for the new treehouse as well. The structures are more akin to a small hotel or motel. A motel or hotel is a Conditional Use in the Commercial District, but not a Permitted or Conditional Use in the Preserve District.

In addition, the second treehouse cannot qualify as an “accessory dwelling unit” which as defined in Section 7.2 of the Ordinance is either attached or detached from a single family dwelling; is clearly subordinate to a single family dwelling; with facilities for independent living, and where the owner occupies either the primary dwelling or the accessory dwelling. Treehouse #2 is not subordinate to the larger one, and neither treehouse is the primary dwelling of the owner.

## Stream Setback Waiver

Section 4.11 of the Ordinance is titled “Protection of Streams, Stream Banks and Wetlands”. Subsection (B) states land development shall be setback a minimum of fifty (50) feet from all streams and rivers to create a buffer strip. The 50’ buffer strip shall be measured from the top of the bank or, where a clear bank is not discernable, from the mean water mark. No development, excavation, landfill or grading shall occur within the buffer strip.

“Stream” is defined in Section 7.2 as all surface waters as depicted on the 1:24,000 (7.5 minute) US Geological Survey (USGS) maps covering the Town of Moretown. The site plan parcel map which was submitted depicts streams in close proximity to each treehouse location. They are labelled “intermittent stream” on the approved wastewater plan prepared by Todd Hill. The Board acknowledges the design of the treehouses is such that they are elevated structures. And so by design are not directly interfering with water flow in the streams. However, the Ordinance provision imposes mandatory setbacks from streams for structures. It allows no authority for the Zoning Administrator in the first instance, or Development Review Board under conditional use review, to grant waivers from the setback requirements.

## Decision

The Board finds that the two treehouse locations are located within the Preserve District as defined in the Moretown Zoning Regulations and official map. The treehouses do not meet setback requirements applicable to the District, and do not qualify for limited setback waivers.

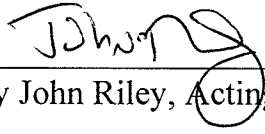
In addition, they are not “dwelling units” as defined in the Ordinance and neither can qualify as a single family dwelling unit, nor as an accessory dwelling unit within the definitions of the Ordinance. A significant present use is rental and as such is not a use that can be approved as a Permitted or Conditional Use in the Preserve District.

The treehouse locations are over or adjacent to “streams” as that term is defined in the Ordinance and do not meet stream setback requirements.

For these reasons the Application for Conditional Use Approval No. 22-28 is denied. The Decision of the Moretown Development Review Board is unanimous.

Dated this 11<sup>th</sup> day of November, 2022.

Moretown Development Review Board

A handwritten signature in black ink, appearing to read "John Riley", is written above a horizontal line. The signature is stylized and cursive.

By John Riley, Acting Clerk