

## Town of Warren

## Development Review Board

000089

## Restated Findings of Fact and Notice of Decision

## Conditional Use Review – Steep Slopes

## #2021-16-CU-AMENDED Baron

Robert Baron and Nancy Baron (who with their successors in interest are sometimes referred to herein as “Applicants” or as “Permittees”) received conditional use approval from the Development Review Board (“DRB”) for the development of a driveway, a single family home, and related infrastructure on Applicant’s 6.4 acre parcel, consisting of lots 19 and 20 of the Samara Farm subdivision, located on Anne Burns Road. The DRB approval imposed certain conditions on the Applicant’s project’s design and construction. The DRB approval was signed on December 28, 2021 and recorded in the Warren Land records on February 16, 2022

On November 29, 2021, the Applicants applied for a Land Use Permit Amendment for the same project with the District Five Environmental Commission of the Vermont Agency of Natural Resources. On June 22, 2023, the District Environmental Commission issued Land Use Permit Amendment 5W0082-7 subject to certain conditions (“LUP 5W0082- 7”).

Both the DRB’s conditional use approval of the project and the District Commission’s Land Use Permit for the project were appealed to the Environmental Division of the Superior Court by Susan Hemmeter (one appeal was by both Susan and Gilbert Hemmeter). Susan and Gilbert Hemmeter are sometimes called herein (“Appellants”).

During the consolidated proceedings before the Environmental Court the Applicants and Appellants stipulated to the imposition of additional conditions on the Applicant’s project’s design and construction. The Environmental Board determined that, based upon the conditions imposed by the parties stipulations, in addition to the conditions already imposed by the Development Review Board, Applicants met their burden of proof that the project complies with all applicable provisions of the Town of Warren’s Land Use and Development Regulations.

The Environmental Court issued its order deciding the appeal on December 20, 2023 (Docket numbers 21-ENV-00128 and 23-ENV-00074 . In its Order, the Environmental Court directed the DRB to issue a revised conditional use approval consistent with the Environmental Court’s Order. These Restated Findings of Facts and Notice of Decision are the DRB’s response to the Environmental Court’s said Order.

### Findings of Fact and Conclusions of Law:

- 1) The Applicant submitted a complete application including a site plan with slope analysis and an erosion control plan prepared by McCain Consulting dated 09/24/2021, notice to abutters and proof of mailing.
- 2) Mr. McCain stated that his firm has confirmed the wetland boundary through the work of two biologists and that none of the site work will impact either the wetland or the associated buffer area.
- 3) The wetland buffer will be marked to ensure that no tree cutting or other site work takes place within that zone.
- 4) Mr. McCain stated that approaching from the south side of the lot is problematic due to the switchback design that would be necessary to cover the vertical distance between the road and the house site. Moving the drive slightly north of what has been proposed is feasible, but would essentially be trading an increase in disturbed area for the benefits of a slightly reduced slope.

- 5) The Applicant found that the erosion control and sediment reduction plans as presented are adequate for general minimization of erosion risk.
- 6) The Applicant found that development of slopes greater than 25% is necessary to facilitate development on this property
- 7) The Applicant determined that the development has been sited to minimize impacts on areas of steep and very steep slope.
- 8) The Applicant found that Sections 3.4(D)1-4 of the Land Use and Development Regulations have been satisfied by the information presented in the application.
- 9) It was noted that the requirements outlined in Section 3.4(D)5-8 have not yet been detailed on the plan. Mr. McCain indicated that there will be no storage of topsoil during construction.
- 10) The Applicant found that the general standards of Sections 5.3(A)1-5 of the Land Use and Development Regulations are satisfied by the information provided in the application.

**Notice of Decision:**

**The Development Review Board having reviewed the Applicants' application for Conditional Use Approval for development on steep slopes, and having made the above findings, hereby approves the application subject to the following conditions:**

1. The proposed development must be constructed in accordance with the plans submitted to and approved by the DRB.
2. Before a building permit is issued the Applicant must file with the DRB a graphic depiction and description of the easterly ditch above the proposed roadway as well as the culvert/splash pad that will drain that ditch
3. The Applicant is required to use secondary silt fencing during construction of the driveway.
4. The Applicant must adhere to the requirements and standards of Sections 3.4(D)5-8 of the Warren Land Use and Development Regulations.
5. Except as necessary for development of the driveway, no tree cutting or removal of vegetation will take place in areas of 25% slope or greater, and stumps will not be removed from any trees which must be cut on such slopes due to disease, death, or the creation of dangerous conditions.

**The DRB's approval of the application is further subject to the following additional conditions imposed by the Judgment Order issued by the Vermont Superior Court on December 20, 2023 in the consolidated matters of *IN RE: BARON CU APPLICATION 2021-16-CU and IN RE: BARON LAND USE AMENDMENT 5W0082-7* (the "Environmental Court's Judgment Order")**

6. The driveway from Anne Burns Road to a residence on Lot 19 shall be constructed and maintained as follows:
  - a. That portion of the driveway on Lot 20 shall be in the location set forth in diagram "McCain Full Compliance" attached as exhibit 1 attached to the Environmental Court's Judgment Order.

- b. It shall have a sufficient amount of fill so that there will be no more than a 3% slope for the first 20 feet, the last 5 feet of which shall begin rounding to a 12% grade, and so that there will be no retaining walls.
  - c. It shall be constructed, maintained and repaired using select structural aggregate with multiple piped underdrains beneath the fill so that groundwater passes underneath the driveway, is not diverted in other directions, and does not cause slumping of driveway fill.
  - d. Tree cutting and site disturbance during construction shall be limited to the minimum required to construct the driveway, with all stumps left in place where reasonable. The driveway shall be no wider than twelve feet excepting within approximately 30 feet of Anne Burns Road, which shall be wide enough to allow for appropriate turning radii and for two cars to pass.
  - e. Construction shall adhere to the requirements of the Town of Warren Land Use and Development Regulations Section 3.4 as Amended and Adopted March 2008 and in effect in December 2023. Agricultural or forestry operations shall not be allowed.
  - f. A Licensed Professional Engineer for Baron shall prepare and sign plans for the driveway that conform to subparagraphs i, ii, iii, iv and v, and a Licensed Professional Engineer selected by Hemmeter shall then review the plans for conformance with those subparagraphs and approve or disapprove of the plans for the driveway based upon such review; in the event the two engineers do not agree that the plans conform with those subparagraphs, they shall agree upon a third Licensed Professional Engineer who will decide the matter and his or her decision regarding conformance with those subparagraphs shall be binding. Each party shall pay half of the fees of the third Licensed Professional Engineer.
  - g. The signed plan prepared by the Licensed Professional Engineer for Baron, approved as set forth above ( the “Approved Plan”), shall be recorded in the Warren Land Records, together with a covenant requiring construction and maintenance adhering to the Approved Plan.
7. The delineated wetland boundary on Lot 20 shall be clearly flagged throughout driveway construction, and a silt fence shall be erected and maintained throughout construction. The wetland delineation shall be provided to the Vermont Agency of Natural Resources for their records.

