

TOWN OF DUMMERSTON

Development Review Board

Conditional Use and Site Plan Review Application Findings and Decision

Permit Application Number: 3670

Date Received: January 6, 2022

Applicant: Peter Thurrell.

Mailing Address: 50 Old Sawmill Rd., East Dummerston, VT 05346.

Location of Property: Parcel 389, 50 Old Sawmill Rd., East Dummerston, VT

Owner of Record: Peter Thurrell.

Application: Conditional Use Application and Site Plan Review for Conditional Use, Addition to Structure, Accessory Structures, Sign and Site Plan Review.

Date of Hearing: February 15, 2022

INTRODUCTION AND PROCEDURAL HISTORY

1. This proceeding involves review of an application for a Conditional Use, Addition to Structure, Accessory Structures, Sign and Site Plan Review under the Town of Dummerston Zoning Bylaw Sections 720 and 726 and 665.
2. On January 27, 2022, notice of a public hearing was published in The Commons.
3. On January 22, 2022, notice of a public hearing was posted at the following places:
 - The Dummerston Town Office.
 - The West Dummerston Post Office.
 - The Dummerston School.
4. On January 30, 2022, notice of a public hearing was posted at the following place: 50 Old Sawmill Rd., which is within view of the public-right-of-way most nearly adjacent to the property for which the application was made.
5. On January 22, 2022, a copy of the notice of a public hearing was emailed to the applicant.
6. On January 22, 2022, a copy of the notice of public hearing was mailed to the following owners of properties adjoining the property subject to the application:
 - a. Goddard Yvonne M & Alan J, 2 Old Sawmill Dr, E Dummerston, VT 05346
 - b. Kessler Glenn D, 185 Canoe Brook Rd, E Dummerston, VT 05346
 - c. Titus Deborah, 1656 US Rt 5, E Dummerston, VT 05346
 - d. Waterman Shirley, 61 Old Sawmill Dr, E Dummerston, VT 05346

e. Dunn Charles A & Thelma M, 1892 US Rt 5, E Dummerston, VT 05346

7. The application was considered by the Development Review Board (DRB) at a public hearing on February 15, 2022.
8. The Development Review Board reviewed the application under the Town of Dummerston Zoning Bylaw, as amended May 22, 2019.
9. Present at the hearing were the following:
 - a. Members of the Development Review Board:
Chad Farnum (via Zoom), Natalie Pelham-Starkey, Cami Elliott, Alan McBean, Josh Pacheco (via Zoom)
 - b. Others:
Peter Thurrell (applicant), Roger Jasaitis (Zoning Administrator).
10. A site visit was conducted on February 15, 2022.
11. Present at the site visit were the following:
 - a. Members of the Development Review Board:
Chad Farnum, Natalie Pelham-Starkey, Cami Elliott, Alan McBean
 - b. Others:
Peter Thurrell (applicant) , Roger Jasaitis (Zoning Administrator).
12. During the course of the hearing the following exhibits were submitted to the DRB:
 - a. Application for Zoning Permit, number: 3670.
 - b. Application to the Development Review Board for a Conditional Use Permit and Site Plan Review, number: 3670.
 - c. Exhibits:
 - i. A: Zoning Administrator Site Visit Report, June 23, 2021.
 - ii. B: Conditional Use Permit Review (5 year), October 7, 2020.
 - iii. C: Zoning Permit #3381
 - iv. D: Vermont State Wastewater Permit #WW-2-1151
 - v. E: Vermont State Subdivision Permit # EC-2-2357
 - vi. DRB Decision for Permit #3381 Sovern Solar, Inc.

FINDINGS OF FACT

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

1. The applicant seeks a Conditional Use permit for Conditional Use, Addition to Structure, Accessory Structures, Sign and Site Plan Review, under the Town of Dummerston Zoning Bylaw Sections 720 and 726 and 665. The subject property is a 6.4 acre parcel located at 50 Old Sawmill Rd., in the Town of Dummerston (tax map parcel no. 000389). The property

is more fully described in a Deed recorded at Book 117, Page 345, in the Town of Dummerston Land Records.

2. The property is located in the Rural Commercial District as described on the Town of Dummerston Zoning Map on record at the Town of Dummerston municipal office and Section 220 of the Zoning Bylaw.
3. The Application states Condition Use approval is requested for:
 - a. Renovations to the existing Saw Mill building: Addition and change of Use to Pickleball Court (private non-commercial).
 - b. Storage Facility for use by Southern Vermont Solar, as that term is defined in Article VIII, Page 9, of the Zoning Bylaw.
 - c. Accessory Structures, (5), Storage Containers for use by Southern Vermont Solar.
 - d. Sign (Southern Vermont Solar).
4. The application requires review under the following sections of the Town of Dummerston Zoning Bylaw: Article VII, Section 720 Development Review Board and Article VII, Section 724 Site Plan Approval.
5. Zoning administrator: Roger Jasaitis summarized his visit to the site to conduct standard 5 year review of a previous conditional use permit; Zoning Permit #3381: Conditional Use Permit Review (5 year), October 7, 2020. He noted several violations of the existing Conditional Use Permit. He communicated to the owner, Peter Thurrell, the nature of the violations and the need for them to be brought into compliance as reflected in the Zoning Administrator Site Visit Report, June 23, 2021. As part of the process of remediation of the Violations, the Applicant agreed to submit an application for Conditional Use to the DRB.
6. The Board reviewed the list of Uses and Structures currently on the property as follows: Residence (Applicant's Mobile Home on upper section of the parcel). Solar company (Southern Vermont Solar) including outdoor storage of materials, 1 dwelling unit (RV: no wastewater system), 2 portable storage containers, 1 accessory structure (garage; auto repair), Outdoor storage, Old Sawmill Building, Storage Trailer (behind Mill) and Sign.
7. At the time of the current site visit all of the violations had been brought into compliance/removed except for one RV used as a residence (one of the two dwellings), a storage trailer located behind the old sawmill (Accessory Structure) and a permit for the storage containers (listed in this application). It was also noted that one of the structures onsite that had previously been permitted for use as fabrication site (Garage) for the solar company was now being used as a mechanic shop, which it was not permitted for.
8. Peter Thurrell (Applicant) gave an overview of the Auto Repair business. One mechanic on site, he thinks, fixing carburetors and other small parts. He thinks no waste being generated. No regular service to autos. As a side note Peter said that the mechanic uses the RV behind the Garage for rest and occasional overnight stays. There is no sign for the business. It is a commercial Use.
9. The Applicant reported that there will be no new exterior lighting proposed on the site.
10. The Applicant requests the storage trailer be considered an Accessory Structure.

11. The ZA reported that the site is in a Riparian Zone. All Uses other than Residential need approval by the DRB.
12. It was clarified by the DRB that all commercial Uses and Structures in the Zone require DRB approval.

DECISION AND CONDITIONS

The DRB finds that this is a complex application with multiple requests and findings. This Decision will deal with each item in turn as follows:

- 1. The DRB approves the proposed development (reconstruction) of the old Saw Mill Structure and Change of Use to a Pickleball Court. No Commercial Use is allowed by the granting of this Approval.**

The application meets the requirements of *Sections 721 of the Zoning Bylaw General Standards*. The proposed development meets the requirements of *Sections 722 of the Zoning Bylaw Specific Standards*. The proposed development meets the requirements of *Sections 726 of the Zoning Bylaw Site Plan Review Procedure*.

- 2. The DRB approves the application for a total of five (5) Accessory Storage Units (Portable Storage Containers) with the following conditions:**
 - a. The Storage Units shall be used only by Southern Vermont Solar.**
 - b. No hazardous waste, solvents or lubricants shall be stored in the Units due to the parcel being in a Riparian Zone. Hazardous waste is defined as:**
 - i. “Hazardous waste” means any waste or combination of wastes of a solid, liquid, contained gaseous, or semi-solid form, including but not limited to those which are toxic, corrosive, ignitable, reactive, strong sensitizers, or which generate pressure through decomposition, heat or other means, which in the judgment of the Secretary may cause, or contribute to, an increase in mortality or an increase in serious irreversible or incapacitating reversible illness, taking into account the toxicity of such waste, its persistence and degradability in nature, and its potential for assimilation, or concentration in tissue, and other factors that may otherwise cause or contribute to adverse acute or chronic effects on the health of persons or other living organisms, or any matter which may have an unusually destructive effect on water quality if discharged to ground or surface waters of the state. All special nuclear, source, or by-product material, as defined by the Atomic Energy Act of 1954, as amended, codified in 42 U. S. C. § 2014, is specifically excluded from this definition.**

The application meets the requirements of *Sections 721 of the Zoning Bylaw General Standards*. The proposed development meets the requirements of *Sections 722 of the Zoning Bylaw Specific Standards*. The proposed development meets the requirements of *Sections 726 of the Zoning Bylaw Site Plan Review Procedure*.

3. The DRB finds that the Sign for Southern Vermont Solar in the application is permitted under the existing Conditional Use permit (Zoning Permit #3381), Finding of Fact #8 and Decision.
4. The DRB finds that the “staging area” requested in the application is permitted under the existing Conditional Use permit (Zoning Permit #3381), Finding of Fact #3.
5. The DRB denies the request for consideration by the applicant for the addition of the storage trailer behind the Saw Mill structure on this application. This Structure is not mentioned in the application or shown on the site plan (#3670). This structure must be removed from the site or a permit properly applied for.
6. The DRB denies the addition of a Commercial Use (Auto Service and Repair) in the Garage structure. This Change of Use is not mentioned in the application (#3670). The DRB finds the testimony regarding this Use in the Hearing not factually sufficient to approve this Use:
 - a. The current Conditional Use permit does not allow for this Use.
 - b. The details of this business as presented were vague with no supporting documentation, e.g. owners name, hours, nature of business, nature of materials stored on site, types of waste generated, trips generated, etc.
 - c. The current State Water Supply / Wastewater Disposal Permit WW-2-1151 (provision #3) does not allow for this Use without written approval from the State.
7. The DRB denies the Accessory Dwelling Unit in the Recreational Vehicle. This Structure is not mentioned in the application (#3670). Only in the supporting letter (Area 3). The DRB finds the testimony regarding this Structure in the Hearing not factually sufficient to approve this Structure and Use:
 - a. The DRB noted that this Structure was occupied at the time of the site visit.
 - b. No State Wastewater permit was approved for this Structure.
 - c. The current State Water Supply / Wastewater Disposal Permit WW-2-1151 (provision #3) does not allow for this Use without written approval from the State.
 - d. The DRB notes the following State Guidance:

- i. **State of Vermont Department of Environmental Conservation ,Agency of Natural Resources :Guidance Related to the Wastewater System and Potable Water Supply Rules: Guidance Document 2015-01 regarding Recreational Vehicles:**

“The critical issues are the extent to which the actions of the owner or user constitute construction or indicate permanence rather than temporary use. Such indications might include putting the vehicle on blocks, constructing steps, porches, paths or other permanent or semi-permanent facilities to serve the vehicle, leaving the vehicle in place for a period of weeks and failing to drive the vehicle off the lot to have the holding tanks pumped out and replenish other supplies. Depending on the precise situation, one or a combination of these facts, would be sufficient to subject the activity to our jurisdiction.”

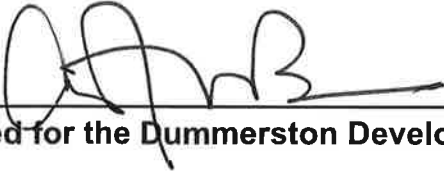
- e. **The DRB noted that this vehicle has been in place for at least 3 years, the Zoning Administrator noted it in his reports.**
 - f. **The State Subdivision Permit # EC-2-2357 requires all new residences to have written approval from the State. (Provision #3)**
 - g. **All Structures require Zoning permits:**
 - i. **STRUCTURE: anything constructed, erected or installed for occupancy or use which remains, or will remain, more than 12 months in the same location. Any building, mobile home, trailer, recreational vehicle, tower, swimming pool, deck, or portable storage container may be considered a structure if it meets the above criteria. If any construction or installation requires a wastewater system permit from VT Agency of Natural Resources, then it is considered a Structure by this bylaw. (Bylaw Definition)**
8. **All Solid Waste must be removed from the site including: junk, junk motor vehicles, scrap metal, old or scrap copper, brass, iron, steel or other old or scrap or nonferrous material-, including but not limited to rope, rags, batteries, glass, rubber debris, waste of any discarded, dismantled, wrecked, scrapped, abandoned or ruined motor vehicles or parts thereof (Bylaw Definition).**
 9. **The DRB noted that the development activity on this parcel has, over time, migrated to the front of the parcel within view of Route 5. Under Section 635 Landscaping Requirements, “Commercial and industrial uses shall provide for a strip of land at least fifteen (15) feet in width which shall be maintained as a landscaped area in the front...”. To meet the requirements of this Section of the Bylaw, the applicant must plant a vegetative screen consisting of evergreen trees or bushes with a minimum height at planting of 6' and to reach a minimum of 16' at maturity. Trees or bushes should be planted in such a way as to create a solid barrier. Spacing at the time of**

the planting shall be done so that plantings will create the solid barrier within 2 years.

10. The provisions and conditions of Conditional Use permit #3381 remain in effect on this parcel.
11. This Conditional Use permit will be reviewed by the DRB in 1 year (March 2023) for compliance.

The following members of the Dummerston Development Review Board participated and concurred in this decision: Chad Farnum, Natalie Pelham-Starkey, Cami Elliott, Alan McBean, Josh Pacheco.

Dated at Dummerston, Vermont, this 23rd day of March, 2022.



Signed for the Dummerston Development Review Board

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.