

Application for Conditional Use Review

TOWN OF DUMMERSTON

Development Review Board

Application for Conditional Use Review Findings and Decision

Applicant: Paul Cameron, Friends of the West River Trail
Mailing Address: 138 Elliot St., #3 Brattleboro, VT 05301
Location of Property: Parcel # 744.1, Rice Farm Rd. Dummerston, VT
Owner of Record: Friends of the West River Trail, Inc.
Application: Conditional Use Permit, Waiver and Site Plan Approval
for the construction of a kiosk and sign.

Permit Application No. 3418

Date Sent: January 22, 2016

INTRODUCTION AND PROCEDURAL HISTORY

1. This proceeding involves review of an application for conditional use, waiver and site plan approval, submitted by Paul Cameron, Friends of the West River Trail, Inc. (FWRT), under the Town of Dummerston Zoning Bylaw.
2. The application was received on October 13, 2015.
3. On October 27, 2015, notice of a public hearing was published at the municipal clerk's office.
5. Notice of a public hearing was mailed to the applicant on October 29, 2015 and abutters of Parcel #744.1 on October 28, 2015.
6. The application was considered by the Development Review Board at a public hearing on December 8, 2015. The Development Review Board reviewed the application under the Town of Dummerston Zoning Bylaw, as amended September 23, 2015.
7. Present at the hearing were the following members of the Development Review Board
 - Hugh Worden
 - Cami Elliott

- Alan McBean, Chair
- Sam Griffis
- Marty Forrett
- Patty Walior

8. Present at the hearing were the following persons:

- Charlotte Neer Annis (Dummerston Zoning Administrator)
- Jen O'Donnell
- Mike Euphrat
- Noah Hoskins
- Alex Wilson
- Jason Cooper
- Jean Momaney
- Melvin Mayo
- Lester Humphries
- Kathleen White
- Paul Cameron
- Malcom Moore
- Joe Cook

9. During the course of the hearing the following exhibits were submitted to the Development Review Board:

- A. DRB Hearing Checklist with Dates of notifications.
- B. Zoning Permit Application, Permit # 3418, dated 10/8/2015 with attached sketch of proposed sign and kiosk.
- C. Town of Dummerston "Development Review Board - Attendance Sign-In" dated 12/8/2015.
- D. Emails from Paul Cameron to Dummerston Zoning Administrator dated October 19th and October 21st.
- E. Undated email correspondence between Town attorney Robert Fisher and Zoning Administrator.
- F. Letter and tax map from abutter Melvin Mayo to DRB dated November 17, 2015.
- G. Quit Claim Deed from Grantors Catherine, Holly and Vernon David to Grantee, Friends of the West River Trail, Inc.
- H. Email from Lester Humphreys to Robert Fisher dated November 13, 2015.
- I. Letters from Morse Land Surveying to Friends of the West River Trail, Inc., dated January 8, 2015 and January 21, 2015.
- J. Map titled "West River Trail, lower section Brattleboro and Dummerston, Vt. 2014"

- K. Map titled, "Sketch Map parcels along Rice Farm Rd Dummerston, Vt. Revised July 2015."
- L. Vermont Natural Resource Atlas maps of DFIRM floodways and special flood hazard areas.

FINDINGS

Based on the application, testimony, exhibits, and other evidence the Development Review Board makes the following findings:

1. The applicant seeks a conditional use permit, waiver and site plan approval to erect a kiosk and sign providing information regarding a trail depicted on submitted maps running along the northeast side of the West River in the Town of Dummerston. The property is located in the Rural District as described on the Town of Dummerston Zoning Map.
2. The FWRT own Parcel #744.1, approximately 1 acre, exclusive of the 50' railroad right-of-way (ROW).
3. The ownership of the railroad ROW is in dispute.
4. Town attorney Fisher believes that the FWRT have not proven ownership or an existing easement for the railroad ROW.
5. Section 667 of the Dummerston Zoning Bylaw requires that an on premise sign be on the property where the service or activity is located and the informational content of the sign needs to be specific to the activity or service and not general in nature. The sign must also be placed on property owned by the service or activity provider.
6. The only place for the sign and kiosk to be located is west of the railroad ROW on land deeded to the FWRT. It would then be advertising an off premise activity, namely the trail located on the railroad ROW.
7. The size and profile of the proposed sign and kiosk do not adversely affect the riparian border of the river or have adverse effects on the floodplain.

DECISION AND CONDITIONS

Based upon these findings the Development Review Board denies the application for the placement of a sign and kiosk advertising the trail along the railroad ROW. An on premise sign can only be placed on the property where the activity or service is occurring and the property must be owned by the service providers. To meet the requirements of the Bylaw the FWRT would need to place the sign within the railroad ROW. To do this,

undisputed ownership of the railroad ROW needs to be documented. The only way for this to occur according to Town attorney Fisher is if the FWRT have the ownership issue adjudicated by a court of competent jurisdiction.

The following members of the Dummerston Development Review Board participated and concur in this decision. The Decision is subject to appeal as provided by Vermont statutes.

Dated: January 22, 2015

Hugh Worden, Sam Griffis, Cami Elliott, Alan McBean, Marty Forrett and Patty Walior

DUMMERSTON DEVELOPMENT REVIEW BOARD

A handwritten signature in black ink, appearing to read 'AMC', with a long horizontal line extending to the right.

Alan McBean, Chair