

Application for Conditional Use Review

TOWN OF DUMMERSTON

Development Review Board

Application for Conditional Use Review Findings and Decision

Applicant: Niko Malkovich, Friends of the West River Trail
Mailing Address: 36 Cedar St. 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 and Site Plan Approval for the construction of an informational kiosk.

Permit Application No. 3528

Date Sent: September 26, 2018

INTRODUCTION AND PROCEDURAL HISTORY

1. This proceeding involves review of an application for conditional use and site plan approval for an informational kiosk in a flood hazard zone, submitted by Niko Malkovich, Friends of the West River Trail, Inc. (FWRT), under the Town of Dummerston Zoning Bylaw.
2. The application was received on September 26, 2018.
3. On September 26, 2018, 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 September 26, 2018 and abutters of Parcel #744.1 on September 26, 2018.
6. The application was considered by the Development Review Board at a public hearing on October 16, 2018. The Development Review Board reviewed the application under the Town of Dummerston Zoning Bylaw, as amended March 28, 2018.

7. Present at the hearing were the following members of the Development Review Board

- Cami Elliott
- Alan McBean, Chair
- Dennis Mewes
- Patty Walior

8. Present at the hearing were the following persons:

- Roger Jasaitis, Zoning Administrator
- Jason Cooper
- Malcolm Moore

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 # 3528, dated 09/26/2018 with attached sketch of proposed kiosk.
- C. Town of Dummerston "Development Review Board - Attendance Sign-In" dated 10/16/2018.
- D. Email from Paul Cameron to Dummerston Zoning Administrator dated October 19, 2015.
- E. Emails from John Broker-Campbell to Dummerston Zoning Administrator dated November 17, 2015 and October 8, 2018
- F. Vermont Natural Resources Atlas map of the DFIRM floodway for the subject parcel
- G. Vermont Natural Resources Atlas map of 100 year flood water elevations along the reach of the West River adjacent to the subject parcel.
- H. Windham Superior Court ruling for Friends of the West River Trail v. Melvin L. Mayo signed November 2, 2017 by Superior Court Judge John W. Valente.
- I. Map titled, "Sketch Map parcels along Rice Farm Rd Dummerston, Vt. Revised July 2018."

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 and site plan approval to erect an informational kiosk 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, including the railroad right-of-way.
3. The ownership of the railroad right-of-way (ROW) on Parcel #744.1 has been adjudicated in Windham Superior Court and ruled to be owned by FWRT.
4. The court further ruled that there is a "Prescriptive Right of Use" for public access to the "rail bed" along the length of trail from Rice Farm Road to the confluence of the West and Connecticut Rivers.
5. The "rail bed" is the traveled portion of the railroad right-of-way approximately 10 to 12 feet in width which has historically been used as a trail.
6. The Court has granted the FWRT the right to maintain the rail bed as a trail.
7. The kiosk is to be placed on land owned by FWRT which also includes ownership of the railroad ROW and the trail on Parcel #744.1 and therefore meets the criteria for an on premise sign.
8. The posts for the kiosk will be secured to a volume of concrete sufficient to sink the structure should a flood event result in scour at the structures base, thus preventing the kiosk from floating downstream.
9. The size and profile of the proposed 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 approves the application for the placement of a kiosk advertising the FWRT recreational trail. The informational kiosk meets the requirements of sections 215, 400-425 and 665-670 of the Dummerston Zoning Bylaw.

The body of the kiosk shall be placed above the mean flood elevation, estimated to be 262' in the vicinity of the kiosk. The exact elevation is to be determined from the 2007 FEMA Flood Insurance Study for the Town with the assistance of the Vermont ANR Rivers Program personnel if necessary. The kiosk shall be maintained in good condition so as not to be deemed a public hazard or eyesore as determined by this Board.

The applicant is responsible for obtaining any necessary State permits for the kiosk and shall be in compliance with all State laws regarding the placement of structures in a flood zone.

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: October 25, 2018

Cami Elliott, Alan McBean, Dennis Mewes and
Patty Walior

DUMMERSTON DEVELOPMENT REVIEW BOARD



Alan McBean, Chair