

TOWN OF WILMINGTON
DEVELOPMENT REVIEW BOARD
FINDINGS OF FACT AND STATEMENT OF FINDINGS
WILMINGTON, VERMONT 05363

A request for a permit was made to the Board by: Joy Powell and Steven A Wrathall

Owner/Applicant(s) Mailing Address: 932 Fowler Road, Whitingham, VT 05361

Address of the subject property: 4 Catamount Lane

Tax Map: # 021-21-099.000

A copy of the request is filed in the office of the Board and is referred to as: **#2016-045**

Description of Case per Public Notice:

Application # 2016-045: Owner; Joy Powell & Steven A Wrathall. Agent: Sarah Hyde. Application is being made for a Conditional Use review to construct an Outdoor recreation facility (single target paintball range). Commercial/Residential district; Sections 450 E (4), 721 & 710: location: 4 Catamount Lane

Notice for a public hearing was published in the Valley News on: **September 1, 2016**

Notice was posted in three public places on: **September 1, 2016**

A copy of the notice was mailed to the applicant on: **September 1, 2016**

A copy of the notice was mailed to the abutters on: **September 1, 2016**

Public hearings were held on : September 19, 2016
There was no Site Visit.

Action taken on this application may be appealed by anyone identified as an interested party, pursuant to Vermont Statutes Annotated. Said appeal shall be made to the Vermont Environmental Court.

Appeal period for this Case expires on: November 25, 2016

Approval expires on: October 25, 2016

In *addition* to the Applicant/Agent the following persons, heard by the Board in connection with this request, were determined by the Board to be “interested persons”:

None

Copies of this decision have been mailed to those persons listed below.

Applicant

The following presented testimony on behalf of the Applicant or an Interested Person:

Ken Hartman – Operational Manager

EXHIBITS

The following Exhibits were placed in evidence by the Applicant or Interested Person:

1. Application consisting of 2 pages with the following exhibits:
 - 1a – Aerial Image
 - 1b – Portion of the tax map.
 - 1c – Portion of the tax map with dimensions
 - 1d – Portion of the Zoning Map showing the parcel
 - 1e – Sketch showing location of proposal. Note: the scale is incorrect.
 - 1f – Abutters map
 - 1g – Abutters List
 - 1h – Setbacks and Separation Distances
 - 1i – Portion of Flood Insurance Rate Map Windham County, Vermont Panel 451 of 652, Map number 50025C0451E, Effective Date September 28, 2007
 - 1j – Parking Analysis
 - 1k – Representative image of partitioned lean-to (only 6 partitions proposed) Exhibit withdrawn by the applicant at the hearing.
2. Written narrative of the proposal.
3. Photograph from Field towards Route 9
4. Drawing of shed. Exhibit withdrawn by the applicant at the hearing.
5. Plan for building a “Loafing Shed” consisting of two pages.
6. Photograph of proposed backstop.
7. Information sheet on ECOFILL paintball

SYNOPSIS

The applicant proposes to construct and operate a eight station paintball target range as a secondary use to the presently operating garden center. The range will have six firing positions constructed from hay bales and light fencing. Targets will be various miscellaneous objects located in the field between the firing positions and the rise to the garden center. The range is to be a maximum of 100 feet in distance and there will be a 50 ft by 13 ft backstop constructed at the north end. All equipment (paintball guns, paintballs, masks, gas canisters and so forth) is to be supplied by the operator. Paintball guns will be limited in strength to deliver a paintball no more than 100 feet from the firing positions. Although expecting to operate only on weekends and holidays, the applicant requests year round use.

APPLICABLE DISTRICT

Finding of Fact: Subject property is identified as Tax Map: # 021-21-099 and has an address of 4 Catamount Lane. (Exhibit 1)

Conclusions of Law: The proposed development lies in the Commercial/Residential District and will be reviewed under Article IV Section 450 E.

STRUCTURE

Findings of Fact: The structure will consist of light fencing and a backstop with hay bales for firing positions. None of the fencing or the backstop will exceed 6 feet in height. The total of the structure will be less that 150 square feet. Testimony of the Applicant

Conclusions of Law: The construction is a “small structure” under Article X, General Definitions. As such, does not require a permit. However, the use of the property is changing, requiring a permit.

USES

Finding of Facts: Current use is an open field which is below a garden center presently on the property. The proposed use will be a six position paintball target shooting range. Exhibit 1

Conclusions of Law: The proposed use is a Recreation Facility, Outdoor, a conditional use under Section 450 E 4 requiring review under Article VII, Standards.

DIMENSIONAL REQUIREMENTS

Findings of Fact: Section 450 E 5, the Commercial/Residential District requires:

Structures/Uses Per Lot: Unlimited

Density Limits: Maximum of 25% lot coverage is not exceeded. Exhibit 1e

Dimensional requirements:

- Min Lot Size 1 acre. Lot size is 10.1 acres. Exhibit 1
- Min Lot Frontage 150 feet. Frontage is 313 feet. Exhibits 1 and 1e
- Min Lot Depth 150 feet. Lot depth is in excess of that amount
- Structure Height – Fence height is a maximum 6 feet
- Setback – Front - 40 feet – exceeded by the proposal. Exhibit 1e
- Setback Side/Rear – 20 feet – exceeded by the proposal. Exhibit 1e

Conclusions of Law:

Density & Dimensional requirements are met.

Article VII Standards

Section 710: Use Performance Standards

A. Vibration: No continuous, permanent, ongoing, or frequent vibration which is discernible at the property line.

Findings of Fact: The proposal is for a six station paintball shooting range. Paintballs do not create vibration. Exhibit 2

Conclusions of Law: This standard is satisfied

B. Noise: Continuous, permanent, ongoing or frequent noise in excess of that of a normal conversation must not exist at the property line. Recurring periodic noise in excess of that of a normal lawn mower at the property line is allowed provided it does not occur between the hours of 9PM and 7AM and does not significantly detract from or diminish other property's allowed use or land development.

Findings of Fact: Sound at the shooting positions will correspond to a BB gun or large Nerf gear. The property line is 120 feet from the shooting positions. Little if any sound from the shooting positions will be audible at the property line.

Conclusions of Law: This standard is satisfied

C. Air Emissions for Commercial Operations: There shall be no emission of dust, ash, smoke or other particulate matter which can:

1. Cause damage to human or animal health, vegetation, or property by reason of concentration or toxicity.
2. Contaminate the property or beyond the property boundaries.
3. Have solid or liquid particulates in concentrations exceeding state standards.
4. Cause odorous matter in quantities as to be offensive.

Findings of Fact: There will be no emissions of harmful particulate matter. The proposed paintballs are biodegradable with an environmentally friendly fill. Exhibits 2 and 7.

Conclusions of Law: This standard is satisfied.

Article VII Standards

Section 721: General Standards

The proposed use shall protect against adverse effect on:

A: Community, Municipal or Educational Facilities

Findings of Fact: The proposed use will have no additional employees beyond those serving in the garden center. No burdens are anticipated to be placed on any municipal service. Testimony of the Applicant

Conclusions of Law: The proposed development will not place an undue adverse effect on community services or facilities.

B: Traffic on Roads and Highways

Findings of Fact: The proposed activity is accessed from Catamount Lane by the driveway presently serving the garden center. East and West sightlines where Catamount Lane enters Route 9 are clear with no reported accidents at that intersection. Requested hours of operation are from 10 AM to 6 PM. No more than 15 cars are expected on a daily basis. Exhibit 2 and Testimony of the Applicant

Conclusions of Law: The proposed development will have minimal impact on traffic satisfying the standard requiring safe traffic, highways, and roadways.

C: Bylaws and Ordinances in Effect

Findings of Fact: Proposed development has been shown to be conforming to all bylaws and ordinances in effect at the time of this decision including the Zoning Ordinance and the Town Plan.

Conclusions of Law: This application is in conformity with all bylaws and ordinances.

D. Utilization of Renewable Energy

Findings of Fact: The proposed use will not use lighting and will have no affect on the use of renewable energy resources.

Conclusions of Law: Not applicable.

E. Air Quality

Findings of Fact: See Section 710 C above

Conclusions of Law: The proposed Use has been found to have no undue impact on air quality.

F. Character of the Area

Findings of Fact: The purpose of the Commercial/Residential District is to: encourage clustered economic development while preserving designated open spaces and historic village settlement patterns thus preventing sprawl and roadside strip development. The proposed use would be an addition to a small commercial cluster near the intersection of Routes 9 and 100. Located across Route 9 from the Flea Market and easterly of the Honora Winery, it is not visible from either being well below grade and some distance from the road. Exhibits 1e, 1f, 1h and 2 Access is from the driveway from Catamount Lane not directly from Route 9 preventing “strip” development. While the range will be 50 feet wide and 100 feet in length the vast majority will be open field with only fencing and hay bales to provide firing positions. Exhibit 2 and Testimony of the Applicant

Conclusions of Law: The proposed development is consistent with the defined purpose of the Commercial/Residential District and the character of the area.

Article VII Standards

Section 722: Conditional Use - Preserving the Character of the Town

A. Preserving the Town's Character: Business development shall, to the extent reasonable and possible, occur in a manner that preserves the rural and agricultural character and ambiance of the community and the historic downtown.

Findings of Fact: The proposed development is not within the historic district. It will utilize an open field with minimum construction.

Conclusions of Law: This standard is satisfied

B. Economic Development Contributing to the Character of the Town: Merchandise and services shall not detract from the historic character and nature of the town as a family destination for tourists and a family focused residential community.

Findings of Fact: The proposed paintball firing range will add another family oriented activity to the town complimenting a previously allowed paintball course at Adams Farm.

Conclusions of Law: This standard is satisfied.

C. Development Consistent with the Rural, Agricultural, and Historic Nature of the Town: Construction, reconstruction or land development shall, to the extent reasonable and possible, reflect and/or compliment the historic nature and the rural and agricultural appearance of the neighborhood and region.

Findings of Fact: See Findings under Section 721 F

Conclusions of Law: This standard is satisfied.

D. Formula Businesses

Findings of Fact: Not applicable

Conclusions of Law:

E. Maximum Square Footage of Retail (2000 square feet)

Findings of Fact: Not applicable

Conclusions of Law:

F. Building Scale Conformity: Development shall conform to the scale of the established neighborhood.

Findings of Fact: No new buildings are proposed

Conclusions of Law: Not applicable

G. Utility Placement: Underground utilities are encouraged

Findings of Fact: No lighting is proposed. .

Conclusions of Law: Not applicable

Article VII Standards

Section 723: Conditional Use - Preserving the Character of the Town: Historic

Preservation (required in the Historic Design Review District (HDRD), recommended in all other districts)

Findings of Fact: The proposed Use is not in the HDRD and does not impact a historic property.

Conclusions of Law: Not applicable

Article VII Standards

Section 730: Conditional Use – Specific Standards

A. Lighting and Glare: Shall be shielded and downcast. Glare and reflection prohibited if it is a unreasonable nuisance to other property owners or tenants, does not contribute to aesthetics, scenic value or character of the area, or could impair vision of pedestrians or drivers. In HDRD and village must be consistent with historic character.

Findings of Fact: No lighting is proposed.

Conclusions of Law: Not applicable

B. Safety: Shall minimize physical hazards where there are potential safety hazards.

Findings of Fact: The paintball range is 100 feet in length ending in a 6 foot backstop before a hill side planted with nursery trees. All paintball guns and gas canisters used on the course will be supplied by the applicant and will be set for a distance not to exceed 100 feet. These guns will be tethered by cables to cement filled pails to prevent their removal by customers using the range. The applicant will also supply appropriate eye protection and headgear. Firing positions will be separated by fencing. The sides of the range will be delineated by roping or other method. Prior to proceeding to the range, customers will attend a safety orientation including but not limited to the operation of the equipment and range rules and expectations. After this safety orientation, customers will be escorted to the range by an employee. An employee will be present at the range at all times when the range is in use. Red and green flags will be employed to indicate when firing begins and ends. The minimum age for using the range will be 10 years old. Exhibit 2 and Testimony of the Applicant

Conclusions of Law: This standard is satisfied

C. Traffic and Pedestrian Safety: Pedestrian walkways to ensure safe and efficient navigation by foot or bicycle. Special consideration shall be made for children’s safety. Traffic patterns will be reviewed for safety, ease of flow and efficiency.

Findings of Fact: Safety orientation is to take place either in a shed near the 8 parking spaces as shown on Exhibit 1j or at the garden center. Access to the range from either location is through fields.

Conclusions of Law: This standard is satisfied

D. Road Development: New roads, public and private, shall conform to the town’s Highway Ordinance.

Findings of Fact: The proposed use does not involve road development.

Conclusions of Law: Not applicable

E. Landscaping, Screening and Development: Shall “preserve the rural and agricultural character and ambiance of the community”. Natural features characteristic of the town’s rural and agricultural in shall be used Landscaping and Screening to preserve and protect the aesthetic and scenic value of the town, its neighborhoods, residents, and neighboring properties.

a. Landscaping beds, trees, shrubs and plantings: required as needed to meet the stated goals above and shall be maintained in perpetuity for general aesthetic appearance and plant health.

b. Screening and Buffer Areas: required as needed to screen all unaesthetic features to meet the stated goals above. Screening must be of natural vegetation and plantings. Fencing may be used secondary to plantings to achieve screening. (See special provisions for screening unaesthetic features, large and small.)

b1. Screening and Buffering Commercial Structures and Uses: Required when commercial development has an undue adverse aesthetic impact on surrounding properties and roads. Shall be minimum of 10 feet where reasonable and possible.

b2. Screening and Buffer of Parking: Required where reasonable and possible when parking has an undue adverse impact on the aesthetics of the properties and roads.

b3. Screening and Buffer of Ground Mounted Solar Arrays: Required when ground mounted solar arrays have an undue adverse aesthetic impact on surrounding properties and roads. Shall be minimum of 10 feet where reasonable and possible.

Findings of Fact: The construction is a small structure consisting of fencing, a backstop and hay bales.

Conclusions of Law: No landscaping is required as there are no undue impacts on the aesthetics of neighboring properties or the neighborhood.

F. Land and Water Management: Protect properties, transportation systems, and public safety by:

a. Safe and appropriate water management including water supply/availability, storm water retention/absorption, and impervious surface/runoff management.

b. prevent and control against water pollution

c. make provision for management of erosion, preservation of rivers & streams, river/stream bank management, wetland protection, waterway and channels management, and agricultural land protection,

Findings of Fact: No water will be supplied to the project. Sanitary facilities will be provided by a handicapped accessible unisex port-o-let placed on the range. No additional areas will be paved for parking. The paintballs will be biodegradable and non-toxic. Exhibits 1j, 2 and 7, Testimony of the Applicant .

Conclusions of Law: This condition is satisfied

G. Wastewater and Potable Water: A permit may be issued upon receipt of evidence there is a wastewater and potable water permit. If none if received with a submitted application, the Permit will be conditioned on receipt of a wastewater and potable water permit at which time a final Permit will be issued. DRB shall instruct the applicant on their responsibility to obtain state and federal permits and may condition their decision on obtaining such permits.

Findings of Fact: Sanitary facilities will be provided by a port-o-let as noted above and no water

will be supplied to the project. No wastewater or potable water permits are required.

Conclusions of Law: Not applicable

H. Natural Resources and Features: Existing vegetation, native species, native trees, scenic views, river access and other natural features shall be preserved to the extent possible and to the extent that they will enhance and promote the natural assets of the town. Clearing of land to create pastureland and scenic spaces/vistas is allowed provided it does not have an unreasonable impact on natural resources. Development shall blend with the topography, vegetation, and natural land features. It shall not have an undue adverse impact on natural features, natural resources or renewable energy. This includes no adverse impact on forested lands, streams and stream banks, steep slopes, wetlands, watersheds, floodplains, soil unsuitable for development, impervious surfaces essential to stormwater detention, agricultural lands, open scenic lands, scenic vistas, scenic features, unique natural or manmade features, and renewable energy sources.

Findings of Fact: The development is for a small structure, as defined. The proposed use will not impact the land.

Conclusions of Law: Not applicable

I. Wildlife Protection: No adverse impact on wildlife habitats or corridors.

Findings of Fact: The use will not impact wildlife habitats or corridors.

Conclusions of Law: Not applicable

J. Shoreland Protection: Compliance with Shoreland Protection Act if development is within 250 feet of a body of water greater than 10 acres.

Findings of Fact: .Not applicable.

Conclusions of Law: Not applicable

K. Flood Hazard Protection: Development must comply with the provisions of Article VI Flood Hazard District.

Findings of Fact: See Article VI above

Conclusions of Law: Not applicable.

L. Technical Review Costs: Applicant may be required to pay reasonable costs of technical review.

Findings of Fact: There are no technical review costs.

Conclusions of Law: Not applicable.

Section 732: Conditional Use – Other Specific Standards

- A. Affordable Housing
- B. Automotive Service Station and Repair Garage
- C. Junked Vehicles
- D. Medical Marijuana Dispensaries
- E. Mobil Home Parks (Trailer Parks)

- F. Commercial Parking and Loading Areas
- G. Ponds/Water Impounds
- H. Quarry Operations
- I. Recreational Vehicle Storage
- J. Solar Projects
- K. Wind Turbines

Findings of Fact: The proposed development does not fall into any of the above categories with the exception of Commercial Parking and Loading Areas, provision F.

Conclusions of Law: Not applicable with the exception of F. Commercial Parking which is addressed below.

F. Commercial Parking and Loading: Commercial parking and loading areas in all districts shall:

1. **Provide off-street parking** (except in the HDRD)
2. **Parking spaces shall be 10 x 18** (smaller allowed only if need for added spaces outweighs the risk and public inconvenience of smaller spaces). Special consideration shall be given to safety, pedestrian and disabled persons concerns when smaller spaces are allowed.
3. **Minimum number of spaces:** One (1) parking space for each 200 sq ft retail.
4. **Drive-up Windows:** no waiting lines in public ROW
5. **Minimize visual impact of parking/loading areas**
6. **Buffer parking areas** if needed for safety or aesthetics
7. **Public Road Access:** minimize traffic interruption, provide for auto and pedestrian safety
8. **Rainwater, Snow, and Ice Removal/Storage:** Plan for snow/ice removal, runoff, safety.
9. **Safety:** Minimize physical hazards, provide safe pedestrian and vehicular movement with unobscured views, especially visibility at intersections, pedestrian safety, convenience, emergency access.
10. **Neighboring properties:** integrate circulation and parking with neighboring properties. Work to maximize for efficiency, safety, and attractive solutions.

Finding of Facts: Exhibit 1j shows 4 parking spaces at the garden center, 8 spaces next to the sheds on the westerly side of the drive, and an additional 9 further down the drive. The 15 spaces shown on Exhibit 1j, easterly of the drive were removed from consideration by the applicant at the hearing. There is no walkway along the drive from the lower parking to the garden center. The applicant expects no more than 15 cars per day. Testimony of the Applicant.

Conclusions of Law: There is sufficient parking for the intended use. Pedestrian safety will be addressed in the conditions to this permit..

Article VIII Signs

Findings of Fact: No signage was requested by the applicant.

Conclusions of Law: Not applicable

CONDITIONS:

The application for development is **approved** with the following conditions, restrictions, requirements, limitations and specifications.

1. To maintain the character of the area and the district, hours of operation will be from 10 AM till sunset or 6 PM whichever comes first.
2. Except as otherwise required to accommodate the conditions of this decision, development will be executed in accordance with Exhibits. Any changes to the plans will require an administrative approval from the zoning administrator or a review by the Development Review Board, in conformance with the Zoning Ordinance.
3. There shall be a minimum of 12 parking spaces. The 4 at the garden center and the 8 lower on the driveway as shown on Exhibit 1j. All parking spaces shall be 10 ft x 20 ft..
4. Development and construction shall be managed to address all safety hazards..
5. If required by any State of Vermont permitting agency, all facilities, parking areas, crosswalks and walkways will be handicapped accessible compliant with ADA.
6. The applicant shall mow and maintain a 4 foot wide pedestrian pathway on the westerly side of the driveway from the lower parking areas to the garden center. A pedestrian pathway will be created and maintained from the garden center or from the lower parking to the firing range, whichever is applicable. Pedestrian pathways will be planned and maintained in such a fashion, to include but not be limited to ice and snow removal, as to provide for maximum pedestrian safety at all times..
7. There will be no storage areas, loading docks and dumpsters.
8. There shall be no significant air emissions of dust, ash, smoke or other particulate matter.
9. There shall be no permanent or ongoing vibrations created.
10. There shall be no ongoing or permanent noise created.

The applicant is responsible for obtaining all state and federal permits.

If unused, this Approval expires two years from the date of issue. A request for extension may be made in writing to the Development Review Board before the expiration date. Such request shall be in the form of an APPLICATION FOR EXTENSION.

There is a thirty (30) day appeal period from the date of signature before this Approval becomes final. In addition, all fees must be paid and a Zoning Permit *must* be issued prior to the commencement of any work requested in this application. When a Zoning Permit is issued, there is an additional fifteen (15) day appeal period before the Permit becomes final. Work may commence when the Permit has been issued and all Appeal periods have ended.

This approval ***does not relieve you***, as applicant, from obtaining any and ALL applicable State and other local permits.

Town of Wilmington, Zoning Administrator reserves the right to monitor compliance with this decision and all decisions issued by the Development Review Board

IN FAVOR of granting the APPROVAL FOR the above referenced application, with whatever restrictions, requirements, limitations or specifications are contained herein:

Wendy Manners Seaman

Peter Wallace
Fred Houston
Meg Streeter

OPPOSED:

ABSTAINING:

For the Board: Wendy Manners Seaman, Chairperson

Date: October 25, 2016

Appeal Rights: An interested person may appeal this decision to the Vermont Superior Court, Environmental Division, pursuant to 24 VSA 4471 and VRECP Rule 5, in writing, within 30 days from the date this decision is issued. If you fail to appeal this decision, your right to challenge this decision at some future time may be lost because you waited too long. You will be bound by the decision, pursuant to 24 VSA 4472(d) (exclusivity of remedy; finality).

This approval does not relieve the Applicant of the responsibility to obtain all other applicable approvals that may be required by Federal, State, and local laws and ordinances.