

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

A request for permit was made to Board by: **Edward C. Metcalfe, Jr. and Augustus C. Metcalfe**

Owner/Applicant(s) Mailing Address: **179 VT Route 9 West, Wilmington VT 05363**

Address of the subject property: **179 VT Route 9 West, Wilmington, VT 05363**

Tax Map: **Parcel ID # 20-20-011.100**

A copy of the request is filed in the office of the Board and is referred to as: **# 2022-015**

Description of Case per Public Notice:

Application # **2022-015**: Owner: **Edward C. Metcalfe, Jr., and Augustus C. Metcalfe**

Project Summary: Application is being made for an added use to the subject property for a recreational vehicle park for up to three (3) recreational vehicles (RV) for overnight stays 'not to exceed' two consecutive weeks, on what is currently a residential property in a Commercial/Residential District. All RVs will be self-contained for utilities including potable water, wastewater, and electricity. No new site utilities or construction is being proposed. Applicant requests authorization for this property use on a seasonal basis from May through October.

Applicable Wilmington Code Sections:

Article II – Sections 222, 223, 224, 226, 227, 228

Article IV – Sections 420, 423, 430, 440, 450 E

Article VI – 602, 603, 604, 605, 606, 610

Article VII – Section 721, 722, 730

Notice for a public hearing was published in the Valley News on: **April 14, 2022**

Notice was posted in three public places on: **April 12, 2022**

A copy of the notice was mailed to the applicant on: **April 14, 2022**

A copy of the notice was mailed to the abutters on: **April 14, 2022**

HEARING DATE: May 2, 2022

Appeal period for this Case expires on: June 25, 2022

Approval expires on: May 25, 2024

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

Augustus C. Metcalfe, Applicant
Ivy Turner, Abutter via Zoom
Matthew Cole, Abutter (Great River Hydro.)

EXHIBITS

The following Exhibits were placed in evidence by the Applicant or their Agent:

1. Notice of Hearing
2. Application (3 pages)
3. Abutter List & Interested Parties Letter
4. Email chain (March 21 & 25 2022) includes correspondence from Ed Metcalfe to Mike Tuller with attachment of map depicting location of three RV: Email from Mike Tuller to Ed Metcalfe with two GIS maps -- Floodway & Flood Hazard maps sites. (4 pages)
5. Email reply April 1, 2022, from John Broker-Campbell -- Regional Floodplain Manager Vermont Department of Environmental Conservation to Mike Tuller (2 pages)

ARTICLE II: ADMINISTRATIVE PROCEDURES

Section 222 Conditional Uses

Section 223 Development Review Board Site Plan and Design Review

Section 224 Development Review Board Site Plan and Design Review Submission Requirements

Section 226 Development Review Board decisions

Section 227 Plan Changes after receiving a DRB decision

Section 228 State & Federal Permits & Development Review Board Decisions

Sections noted outline administrative procedures, definitions, role of the DRB, and responsibility of the applicant.

ARTICLE IV: DISTRICTS & USES

Section 420 Uses

Section 423 Conditional Uses

Section 440 Districts & District Requirements

Section 450 District Purposes & Descriptions

Finding of Facts: Subject property is in a Commercial/Residential District. Its current use is private residence. Applicant seeks to add a conditional use of the property for a recreational vehicle parking for up to three RV vehicles.

Conclusions of Law: Campground/Recreational Vehicle Park is an allowable Conditional Use in a Commercial/Residential District requiring DRB written decision and approval and a zoning Permit.

ARTICLE VI FLOOD HAZARD DISTRICT

Section 602: Lands to Which These Regulations Apply

- A. These regulations apply for development in all areas in the Town of Wilmington identified as areas of special flood hazard in and on the most current flood insurance studies and maps published by the Department of Homeland Security (DHS), Federal Emergency Management Agency (FEMA), National Flood Insurance Program (NFIP), as provided by the Secretary of the Agency of Natural Resources pursuant to 10 V.S.A. § 753, which are hereby adopted by reference and declared to be part of these regulations.

Findings of Fact: Based on Exhibit 4 Vermont Agency of Natural Resources Atlas Map the RV recreation parking site is in a 'flood hazard' area.

Conclusions of Law: The proposed use is subject to the flood hazard regulations.

Section 603: Development Permit Required

A Permit is required, to the extent authorized by State law, for all proposed construction or other development, including the placement of manufactured homes, in areas of special flood hazard. Conditional Use approval is required for all uses, except those defined as Permitted Uses in Section 605, prior to being Permitted by the Zoning Administrator. Such

development and subdivisions shall be reviewed to assure that such proposals minimize potential flood damage, and public facilities and utilities such as sewer, gas, electrical, and water systems are constructed so as to minimize flood damage, and adequate drainage is provided to reduce exposure to flood hazards.

Findings of Fact: The proposed RV recreation park is a Permitted Use under section 605.

Conclusions of Law: A permit is required.

Section 604: Interpretation of Flood Hazard Area Boundaries

The Zoning Administrator shall determine the boundaries of the designated flood hazard area by scaling distances on the National Flood Insurance Maps of the Federal Emergency Management Agency.

Findings of Fact: Refer to Exhibit 4, Exhibit 5 email from John Broker - Campbell of Vermont Department of Environmental Conservation to Mike Tuller and testimony provided by Mike Tuller confirming the flood hazard area. Matthew Cole, abutter and Community Relation Officer for Great River Hydro also testified that the camp area would be subject to flooding, during higher elevations of the Harriman Reservoir, and stated there would be ample warning signs and time to move vehicles in a flood event.

Conclusions of Law: The RV recreation park appears to be in the Flood Hazard Area.

Section 605: Permitted Uses

The following open space uses shall be Permitted within flood hazard areas to the extent that they are not prohibited by any other ordinance or regulation and provided that they do not require the erection of structures, storage of materials and equipment, importing fill from outside the flood hazard area, do not obstruct flood flows and will not increase the flood level within the floodway during the occurrence of the base flood or increase off-site damage potential.

A. Agricultural Uses, such as general farming, pasture, orchard, grazing, outdoor plant nurseries, truck farming and forestry.

B. Recreational uses, such as parks, campsites, picnic grounds, golf courses and boat launching sites.

C. Residential uses, such as lawns, gardens, unpaved areas and play areas.

Findings of Fact: RV recreation park meets the description of open space uses described in 605; B. above.

Conclusions of Law: RV recreation park/camp site is a Permitted Use within a flood hazard area.

Section 606: Conditional Uses

Except for the Permitted Uses as defined by Section 605, all other uses listed for the zoning district that fall within any designated flood hazard area may be Permitted only upon the granting of a Conditional Use Permit by the Development Review Board.

Refer to 605.

Section 610: Development Standards

Before a Permit may be granted, the Development Review Board shall require the following standards:

A. Floodway and Floodway Fringe Areas:

1. Floodway Areas

a. Development within the regulatory floodway, as determined by Section

602, is prohibited unless it has been demonstrated through hydrologic and hydraulic analyses performed in accordance with standard engineering practice by a registered professional engineer certifying that the proposed development will result in no increase in flood levels during the occurrence of the base flood.

- b. Junkyards and storage facilities for floatable materials, chemicals, explosives, flammable liquids, or other hazardous or toxic materials, are prohibited within the floodway.

2. Floodway Fringe Areas (i.e., special flood hazard areas outside of the floodway)

- a. All Development - All development shall be reasonably safe from flooding and:
 - i. designed (or modified) and adequately anchored to prevent flotation, collapse, or lateral movement of the structure during the occurrence of the base flood,
 - ii. constructed with materials resistant to flood damage,
 - iii. constructed by methods and practices that minimize flood damage, and
 - iv. constructed with electrical, heating, ventilation, plumbing and air conditioning equipment and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.

Findings of Fact: No Land or Building Development is planned.

Conclusions of Law: Not Applicable.

F. Recreational Vehicles: Recreational Vehicles placed on sites with special flood hazard areas shall either:

1. be on the site for fewer than 180 consecutive days, or
2. be fully licensed and ready for highway use, or
3. be Permitted in accordance with the elevation and anchoring requirements for “manufactured homes” in section B.2. (ii).

Findings of Fact: RVs will be on site for less than the 180 consecutive days and will be fully licensed and highway ready since guests will be driving or towing RVs to the site.

Conclusions of Law: Based on testimony of applicant RVs placed on this site will meet this standard.

(I) Sanitary Sewage Systems: New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters.

Findings of Fact: No New Sanitary Sewage systems is planned.

Conclusions of Law: Not Applicable.

(L) Securing floatables: All floatables in any district and in an area which has historically flooded and all Flood Fringe Areas shall be raised above the Base Flood Elevation (BFE) or firmly secured so as to ensure they are not dislodged in the event of a flood. This includes but is not limited to propane, oil and gas tanks, chemicals, explosives, flammable liquids, toxic or hazardous materials. While hay bales and logs are protected Agricultural and Silviculture industries in Vermont, conformity with this provision is encouraged.

Findings of Fact: RVs will be driven off site in the event of a flood. Securing of floatables is not applicable.

Conclusions of Law: Not applicable

ARTICLE VII: STANDARDS

SECTIONS 721: CONDITIONAL USE - GENERAL STANDARDS

The proposed use shall protect against adverse effect on:

A: The Capacity of Existing or Planned Community, Municipal or Educational Facilities

B. Traffic on Roads and Highways

C: Bylaws and Ordinances in Effect

D. Utilization of Renewable Energy

E. Air Quality

F. Character of the Area

Findings of Fact: The lot is approx. 8.8 acres with approximately 300 ft of road frontage.

There are three driveways that provide vehicular access to the residence and the proposed RV sites. The lot consists of a primary residence several outbuildings in an open natural field setting. There is a large pond towards the end of the lot, where one of the RV sites is proposed. Binney Brook, a public walking/skiing trail and a wooded tree edge delineate the westerly lot line running North to South. The closet RV site is set back approximately 200 ft from Route 9 with the furthest site over 300 foot from Route 9. Applicant has testified that they plan to leave the natural setting, trails would not be affected, and the vehicle access would remain unpaved in keeping with the rustic character of the area. Traffic on Route 9 would not be affected by the occasional RV entering or leaving the property. There are no sight line obstructions to either vehicles approaching the property or for RVs leaving the property. RVs appear to have ample clearance and maneuverability to pull into and out of the property safely.

Conclusion of Law: Having considered the physical site, exhibits provided, and description of use provided by the applicant, the proposed RV recreation park as presented should not have an adverse effect on A-F. General Standards are met.

SECTION 730: SPECIFIC STANDARDS

A. Lighting and Glare: Shall be shielded and downcast. Glare and reflection is prohibited if it is an 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.

Findings of Fact: No new lighting is proposed.

Conclusions of Law: Not Applicable.

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

Findings of Fact: No physical hazards or potential safety hazards were identified during the hearing from either the testimony from applicant or from examination of the exhibits.

Conclusions of Law: Standard 730 B is met.

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 review for safety. ease

Findings of Fact: RVs entering and leaving the site will not be a frequent and ongoing occurrence. No unfavorable traffic and pedestrian conditions would appear to be created by this use.

Conclusions of Law: Standard 730 C is met.

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

1. Provide off-street parking (except in the Historic Design Review District)
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 un-obscured 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: Visual impact of RV parking areas is minimized due to distance from roadway and existing natural coverage. No added buffer parking areas are needed. Public Road Access is not affected and no adverse impact to traffic, pedestrian safety, or vehicular movement has been identified. There are unobscured views approaching the driveways from both directions of Route 9. Neighboring properties appear to not be affected.

Conclusions of Law: Standard 730 C is met.

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

Findings of Fact: No new roads are planned.

Conclusions of Law: Section 730 E is not applicable.

F. 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 nature shall be preserved. Landscaping and Screening shall be used to preserve and protect the aesthetic and scenic value of the town, its neighborhoods, residents, and neighboring properties.

Findings of Fact: No landscaping changes are planned. The natural features and characteristics of the site are to remain unchanged.

Conclusions of Law: Standard 730 F is met.

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

- a. Safe and appropriate water management including water supply/availability, stormwater 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: there are not planned changes to the site. Stormwater retention/absorption impervious surface/runoff management will remain as is. Applicant testified that all guests will be provided with a set of rules on prohibited activities including the protection of the pond and brook from pollutants. Applicant may also post small signs near the pond to remind guests.

Conclusions of Law: Standard 730 G is met.

H Wastewater and Potable Water:

Findings of Fact: No water or wastewater is planned.

Conclusions of Law: Standard 730 H – not applicable

I. 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: No clearing of lands is planned. Existing vegetation and other natural features will be preserved.

Conclusions of Law: Standard 730 I is met.

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

Findings of Fact: The Town of Wilmington Natural Resource Map 2017 does not indicate wildlife habitats or corridors.

Conclusions of Law: Standard 730 J is met.

K. 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: No land or building development is planned.

Conclusions of Law: Standard 730 K is not applicable.

L. Flood Hazard Protection: All development must comply with the provisions of Article VI Flood Hazard District.

Findings of Fact: Refer to responses in Article VI above.

Conclusions of Law: Standard 730 I is met.

M. Energy Resources: Commercial Development shall comply with the Vermont Commercial Building Energy Standards

Findings of Fact: No Commercial Development is planned.

Conclusions of Law: Section 730 M – not applicable.

CONDITIONS:

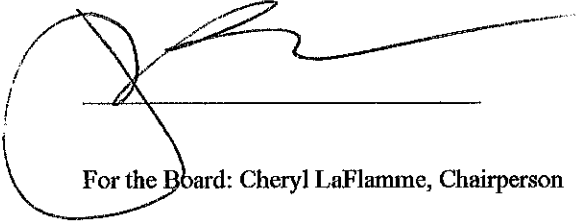
1. RV recreational camping season to run from May through October.
2. No Class A Vehicles Permitted.
3. Length of stay – max number of consecutive days is two weeks.
4. Section 710, Use Performance Standards shall apply. Notably, 'B. Noise: continuous, permanent, ongoing, or frequent noise in excess of that of a normal conversation must not exist at the property boundary line. Recurring periodic or intermittent noises in excess of that of a normal lawn mower at the property line is allowed provided it does not occur between the hours of nine (9) PM and seven (7) AM and does not significantly detract from or diminish other property's allowed Use or land development.'
5. Generators may only be run from 8am to 10am and from 4pm to 6pm.
6. The applicant is responsible for obtaining any needed State or Federal required Permits.
7. Except as otherwise required to accommodate the conditions of this decision, development will be executed in accordance with Exhibits 1-5 and the testimony provided. Any changes to the plans will require an administrative approval from the Zoning Administrator and/or a review by the Development Review Board, in conformance with the ordinance.

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

Cheryl LaFlamme
Chrystal Holt
Justin Linder
Charles Foster
Diane Abate

OPPOSED:

ABSTAINING:



Date: 5/26/2022

For the Board: Cheryl LaFlamme, Chairperson

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.
