

**TOWN OF WILMINGTON  
COVER SHEET  
DRB FINDINGS OF FACT ATTACHED**

**Zoning Permit Application Number:**

2023-099

**Date of First Hearing:**

9.18.23

**Public Hearing Notice published in the Deerfield Valley News on:**

8.24.23

**Notice was posted in three public places on:**

8.21.23

**A copy of the Notice was mailed to the applicant and abutters on:**

8.21.23

**Appeal period for this DRB Decision expires on:** 10.28.23

**Approved Permit (after two years) expires on:** 9.28.25

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: **Great River Hydro LLC**

Owner/Applicant(s) Mailing Address: 69 Milk Street, Suite 306, Westborough MA 01581

Address of the subject property: **Fairview Avenue (Mangomap #186 Fairview Avenue); Parcel #05-02-017.000**

Tax Map: parcel # **05-02-017.000**

A copy of the request is filed in the office of the Board and is referred to as: **Permit #2023-099**

**Description of Case per Public Notice**

Application # **2023-099**

**Applicant proposes an upgrade of the Hoot, Toot, and Whistle Trail, plus a Parking Lot on Parcel ID 05-2-17 by Great River Hydro LLC**

Applicable Code Sections:

Article II- Sections: 222, 223, 224, 226, 227, 272

Article IV- Sections: 420, 423, 440, 450 A

Article VI- Sections 602, 605

Article VII- Sections: 721, 730 C, D, G

Notice for a public hearing was published in the Valley News on: **8/24/2023**

Notice was posted in three public places on: **8/21/2023**

A copy of the notice was mailed to the applicant on: **8/21/2023**

A copy of the notice was mailed to the abutters on: **8/21/2023**

Appeal period for this Case expires on: 10/27/23

Approval expires on: 9/27/25

Date of Public Hearing: **9/18/2023**

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

- Joanne Yankura
- Matthew Cole

**EXHIBITS**

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

1. Town of Wilmington Cover Sheet

2. Application for DRB Review (4 pages)
3. Email copy of application submittal from Joanne Yankura, dated 8/11/2023 (2 pages)
4. Abutters Notice Mailings and date stamp (7 pages)
5. Map of Overall Project Area
6. Maps of "existing trail conditions" (9 pages)
7. Maps of "proposed improvement plan" (9 pages)
8. Maps of "proposed improvement enlargement (2 pages)
9. "Construction Details" (10 pages)
10. Copy of "First Amendment to License Agreement" between Great River Hydro and Town of Wilmington (4 pages)
11. Copy of "License Agreement" (18 pages)
12. Summary page of the existing use and proposed use for this application

## **SYNOPSIS**

Applicant proposes an update to the Hoot, Toot, and Whistle Trail, plus a Parking Lot on Parcel ID 05-2-17

## **ARTICLE II: ADMINISTRATIVE PROCEDURES**

Section 222 Land Development and Uses Requiring Development Review Board Written Decision and Approval

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 Development Review Board Decision

Section 272 Who May Attend and Be Heard at A Public Hearing

**Finding of Facts:** Sections noted outline administrative procedures, definitions, role of the DRB, and responsibility of the applicant. This application was received containing all necessary documents and those in attendance were advised of who may provide testimony during the hearing. The applicant confirmed understanding of Section 227 regarding changes to the application after receiving a DRB decision.

**Conclusion of Law:** Article II is met.

## **ARTICLE IV: DISTRICTS & USES**

Section 420 Uses

Section 423 Conditional Uses

Section 440 Districts and District Requirements

Section 450 A District Purposes and Descriptions- Conservation District (CON)

**Finding of Facts:** Subject property is within the Conservation District (Section 450 A). The property is identified as Tax Map parcel # 05-2-17. In this district, both the parking lot and the trail are considered conditional uses, and must support the district's purposes. Applicants testified that the updates to the trail and the addition of the parking lot would increase accessibility to the trail, provide a mid-point in the trail for emergency services if needed, and generally provide for a better trail experience. Property abutters shared concerns regarding proper signage on Fairview Avenue and in the parking area that ensures no overnight parking and no parking on Fairview Avenue itself.

**Conclusion of Law:** Section IV is conditionally met.

## **ARTICLE VI: FLOOD HAZARD DISTRICT**

Section 602 Lands to Which These Regulations Apply

Section 605 Permitted Uses

### **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.
- B. The Base flood elevations and floodway limits (Zones A1-A30, AE, and AH) provided by the

National Flood Insurance Program in the Flood Insurance Study and accompanying maps shall be used to administer the provisions of these regulations.

- C. In areas where base flood elevations and floodway limits have not been provided by the National Flood Insurance Program ("Zone A") the base flood elevation and floodway information available from State or Federal agencies or other sources shall be obtained and reasonably utilized to administer the provisions of these regulations.
- D. If there is an area that is a potential floodway that has not been mapped, no new construction, substantial improvements, or other development shall be Permitted unless it is demonstrated that the cumulative effect of the proposed development, when combined with all the other existing development and anticipated development will not increase the water surface elevation of the base flood more than one foot at any point within the community.

#### **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.
- D. Municipal roadways, culverts and bridges.

**Finding of Facts:** Testimony from the applicants indicated that the proposed parking lot location does not fall in the floodway, only portions of the current Hoot, Toot, and Whistle trail do. No further questions were addressed on this section.

**Conclusion of Law:** Section VI not applicable.

### **ARTICLE VII: STANDARDS**

Section 721 Conditional Use- General Standards

Section 730 Specific Standards C, D, G

#### **Section 721: Conditional Use - General Standards**

In all districts, all Conditional Use development shall protect from undue adverse effects: (24 V.S.A. § 4414 (3)(A)). No Land Development or Use shall result in an undue adverse effect on any of the following:

- A. The capacity of existing or planned community, municipal or educational facilities
- B. Impact on traffic, roads, highways, transportation systems, pedestrian walkways in the vicinity
- C. By-laws and ordinances in effect at the time
- D. Utilization of renewable energy resources
- E. Air quality
- F. The character, aesthetics, and scenic value of the neighborhood and area affected, as defined by the purpose or purposes of the zoning district within which the project is located and specifically stated policies and standards of this ordinance and the Town Plan.

The Development Review Board shall review all proposed Conditional Use development in all districts, demonstrating no undue adverse effect on Conditional Use General Standards A - F above. In establishing conformity with General Standard F, the Development Review Board shall seek to preserve the character of the town consistent with the rural, agricultural, and historic nature of the town as defined in Section 722 and 723 below.

#### **Section 730: Specific Standards**

All land development and Uses in all Districts and Overlay Districts shall conform to the following:

**C. Traffic and Pedestrian Safety:** Development shall provide for pedestrian walkways to ensure a safe and efficient means for pedestrians to navigate the town on foot or by bicycle. Special consideration shall be made for children's safety. Traffic patterns shall be review for the safety, ease of traffic flow, and efficiency. Access to public roadways require the approval of the Town of

Wilmington (for access to town roads) or the State of Vermont (for access to state highways) pursuant to 19 V.S.A 1111.

**D. Commercial Parking and Loading Area:** All commercial parking and loading areas in all districts in the town shall adhere to the following standards:

1. Parking Spaces Required
2. Size of Parking Spaces: parking space size shall be a minimum of ten (10) feet by eighteen (18) feet. Smaller parking spaces are allowed only where circumstances calling for added spaces outweigh the risks and public inconvenience of smaller spaces.
3. Minimum Number of Spaces: Dwelling, Multi-Family- two (2) parking spaces for every dwelling unit.
4. Drive up Window
5. Minimize the Visual Impact of Parking and Loading Area: Screen unaesthetic features where possible sufficient to minimize their physical and aesthetic impact on other land uses, properties in the area, the town and public or private roads.
6. Buffer Area to Parking
7. Public Road Access
8. Rainwater, Snow, and Ice Removal/Storage
9. Safety
10. Neighboring Properties

**G. Land and Water Management:** Pursuant to 24 V.S.A. § 4414 (1)(G) and 24 V.S.A. § 4414 (9) the development plan shall protect properties, transportation systems, and public safety by:

1. Providing for safe and environmentally appropriate water management including but not limited to water supply quality/availability, stormwater retention/absorption and impervious surface runoff management.
2. Preventing water pollution.
3. Making appropriate provision for management of erosion, preservation of rivers and streams, river/stream banks, wetlands, waterways, channels, and agricultural lands.
4. Preserving and promoting scenic or aesthetic features and open spaces

If the project is not subject to the State of Vermont Act 250 written decision and approval process, determination of conformity of this provision may be made through expert testimony or studies.

**Finding of Facts:** Applicants testified that the proposed parking area would be used initially as a staging area for materials and equipment needed for the trail updates. Upon completion of all the trail repairs/updates, the area would be converted to a parking lot approximately 220ft x 80ft. The timeline for the completion of the trail repairs and parking lot creation is undetermined, so the applicant was advised of how to apply for an extension if the project is approved and takes longer than two years. The concerns of several property abutters were revisited and suggestions were made for adequate signage and overnight parking to be prohibited.

**Conclusion of Law:** This article is conditionally met.

**CONDITIONS:**

The application for development is **APPROVED, with the condition(s) listed below.**

**CONDITIONS:**

- 1) Except as otherwise required to accommodate the conditions of this decision, development will be executed in accordance with all Exhibits received 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.
- 2) Signage for the proposed parking area shall be posted which prohibits overnight parking in the lot.
- 3) Signage along Fairview Avenue shall be posted which prohibits trail visitors from parking along the road.
- 4) In the event that a snow removal plan is put into place, the parking lot is approved for Winter use.

It is the opinion of this Development Review Board that this application meets the requirements and standards of the zoning ordinance, and therefore approves this application.

There is a thirty (30) day appeal period from the date of signature before this Approval becomes final.

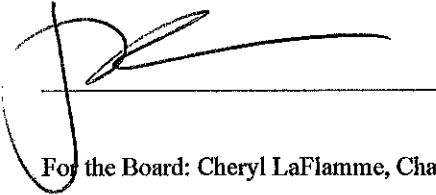
Town of Wilmington, Zoning Administrator reserves the right to monitor compliance with this decision and all decisions issued by the Development Review Board

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

Cheryl LaFlamme  
John Gannon  
Chrystal Holt  
Charlie Foster

OPPOSED:  
None

ABSTAINING:  
None



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Date: 9/27/23

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).

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*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.*