

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

*Packet to
DRB
6.17.24
Appeal.*

Zoning Permit Application Number:

Date of First Hearing:

Public Hearing Notice published in the Deerfield Valley News on:

Notice was posted in three public places on:

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

*Case 2024-109
Appeal of 2024-072
~~7.13.24~~
7.1.24
6.13.24
6.10.24
6.10.24*

Appeal period for this DRB Decision expires on: 9.4.24

Approved Permit (after two years) expires on: 5.16.25

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

An appeal of action by the Zoning Administrator granting Zoning Permit #2024-072 was made to the Board by: **Joseph Dasco**

Appellant's Mailing Address: 75 Bradway Road, Monson, MA 01057

Address of the subject property: **288 Old Mill Lane, Wilmington, VT 05363**

Tax Map: parcel # **09-1-53**

A copy of the appeal is filed in the office of the Board and is referred to as: **Permit #2024-109**

Description of Case per Public Notice

Application # **2024-072**

Appeal of Permit #2024-072 at 288 Old Red Mill Lane, to add Two (2) Bedroom Short-Term Rental (STR) Use to Existing Use; appeal made by Interested Party who does not own land in question Joseph Dasco of Monson, MA

Notice for a public hearing was published in the Valley News on: **6/13/2024**

Notice was posted in three public places on: **6/10/2024**

A copy of the notice was mailed to the appellant, applicant and abutters on: **6/10/2024**

Appeal period for this Case expires on: **9/5/2024**

Date of Public Hearing: **July 1, 2024.**

The following presented testimony as the Appellant:

Joseph Dasco

The following presented testimony on behalf of the Appellee:

Jessica Roberts, Zoning Administrator

The following witnesses also testified:

Bradley Palmiter
Colleen Palmiter
Aaron Palmiter
John Paul Shattuck
Emilio Mignanelli
Heather Frost
Robert Joslin

EXHIBITS

The following Exhibits were placed into evidence by the Appellant or Appellee:

1. Town of Wilmington Cover Sheet
2. Memorandum from Jessica Roberts, dated June 17, 2024
3. Town of Wilmington Warning of DRB Hearing
4. Appellant's Notice of Appeal with 5-page attachment
5. Town of Wilmington Zoning Permit (#2024-072)
6. Wastewater System and Potable Water Supply Permit for 288 Old Mill Lane, dated November 4, 2016 (3 pages)
7. Exemption Form for Construction of a Replacement Water Supply that serves only one Single Family Residence on its own Individual Lot, dated June 9, 2018 (4 pages)
8. Service List, postmarked June 10, 2024
9. Town of Wilmington Zoning Permit (#2024-072)
10. Zoning Application for 288 Old Mill Lane (13 pages)
11. Memorandum of Municipal Action, dated March 2, 2017
12. Zoning Administrator Response to Appeal (2 pages)
13. Email from Aaron Palmiter, dated July 1, 2024, with attachments (25 pages)

SYNOPSIS

On April 26, 2024, the Wilmington Zoning Administrator sent a letter to owners of unpermitted short-term rentals advising owners of a new permitting process for short-term rentals. See Exhibit 10. This letter stated that there were "two-types of permits" – (1) a change of use and (2) adding an additional use. See Exhibit 10. On May 16, 2024, the Owners of 288 Old Mill Lane, Bradley and Colleen Palmiter (Applicants) filed a Zoning Application with the Town of Wilmington seeking a change of use to a Two-Bedroom Short-Term Rental. See Exhibit 10. As part of the Zoning Application, the Applicants provided, among other things, a Site Plan indicating 50 feet by 15 feet driveway that fits two cars and a Wastewater and Potable Water Permit for the property. See Exhibit 10. On May 16, 2024, the Wilmington Zoning Administrator approved the Zoning Application. See Exhibit 9.

Joseph Dasco (Appellant), who owns 284 Old Mill Lane, filed an appeal of that Zoning permit on June 3, 2024. See Exhibit 5. The zoning district in which this property lies is the Residential District and governed by Section 450 C. See Exhibit 10.

ARGUMENT

The Appellant makes several arguments as to why the Zoning Administrator should not have issued a permit in this matter:

1. The addition of a Two-Bedroom Short-Term Rental is a Secondary Use under Section 424 that requires a written decision and approval from the DRB.
2. The addition of a Two-Bedroom Short-Term Rental is a Business Use that is a Conditional Use under Section 462 that requires a written decision and approval from the DRB.
3. A full time Short-Term Rental is in violation of the Section 721 F. – Conditional Use - General Standard in that it is not a low-impact use and does not protect the settlement practices and aesthetics of the Residential District.
4. The Short-Term Rental is in violation of Section 722 – Conditional Use – Preserving the Character of the Town Section in that a Short-Term Rental does not preserve the rural and agricultural heritage of the Town.
5. The Short-Term Rental is in violation of Section 730 D: Specific Standards – Commercial Parking – in that there is insufficient room for the parking spaces required for the Short-Term Rental.
6. The Short-Term Rental is in violation of Section 730 H: Specific Standards – Wastewater System and Potable Water - because the Applicant did not comply with the terms of the Wastewater System and Potable Water Supply Permit for 288 Old Mill Lane, violated the terms of the Exemption for Construction of a Replacement Water Supply for 265 Old Mill Lane and is under investigation by the Department of Environmental Conservation for

- violation of the referenced Wastewater System and Potable Water Supply Permit.
7. The property is taxed as a season camp, but the rental listing shows that the property is available year-round.

1. Section 426 Secondary Use

Appellant argues that Section 424 applies to this permit and requires a written decision and approval from the DRB. Section 424 of Article IV states:

In order to provide for limited, sensible, mixed Use of properties within the community, Secondary Uses are allowed as conditional uses in those Zoning Districts that allow only one Principal Building and one Principal Use on a lot. Home Business and Home Industry are considered Secondary Uses. In order for a use to be allowed as a Secondary Use, it must meet the Conditional Use standards of Article VII § 710, 720, 730, 731, 732, 740, 741 and 742, as well as the following standards:

- A. The use must be allowed in the District as a Permitted Use, a Conditional Use or a Use Not Provided for in the list of Uses.*
- B. The Use must meet all requirements as specified in the District or this Ordinance.*
- C. Where the standards for the Secondary Use are more restrictive than those for the Primary Use the more restrictive standards shall be met.*
- D. Conditional Use written decision and approval must be obtained from the DRB for the addition of a Secondary Use.*

288 Old Red Mill Lane is in the Residential District (Section 450 C). The Residential District is one of the Zoning Districts that allows for only one Principal Building and one Principal Use. See Section 450 C.5. – Site Criteria – Residential District. Therefore, Section 424 does apply to this District. However, as the April 26, 2024, letter from the Zoning Administrator notes, the Applicants had two choices when applying for a Zoning Permit for a Short-Term Rental. They could apply for (1) a change of use or (2) add an additional use. In this case, Applicants applied for a change of use permit. As a result, there was no request for an additional or secondary use and Section 424 does not apply to the application that is the subject of this appeal. A Short-Term Rental, four or fewer guest rooms is a Permitted Use within the Residential District. See Section 450 C.3. The Zoning Administrator had the authority to issue the permit. See Section 420 B.

2. Section 462 Business Use within a Dwelling

Appellant next argues that a Two-Bedroom Short-Term Rental is a Business Use that is a Conditional Use under Section 462 that requires a written decision and approval from the DRB. Section 462 sets forth three types of uses in a Dwelling – (1) Home Occupation – Allowed Use, (2) Home Business – Conditional Use, and (3) Home industry – Conditional Use. However, Section 462 does not apply to this permit. Short-Term Rental, four or fewer guest rooms is a separately defined use and is a Permitted Use within the Residential District. See Section 450 C.3. The Zoning Administrator had the authority to issue the permit. See Section 420 B.

3. Conditional Use Standards of Article VII

Appellant also argues that the Short-Term Rental that is the subject of the permit does not comply with various sections of the Sections 721 and 722 of the Conditional Use Standards. As noted above, a Short-Term Rental, four or fewer guest rooms is a Permitted Use within the Residential District. See Section 450 C.3. The Conditional Use Standards do not apply. See Section 720.

4. Section 730 H Wastewater and Potable Water

Appellant argues that Applicants' permit should have been denied because the Applicants violated the terms of Wastewater and Potable Water Permit for the property, that allowing commercial use of the property violates an Exemption obtained for a water source, and the

Vermont Department of Conservation is investigating compliance with the above-referenced Wastewater and Potable Water Permit.

While both the Zoning Administrator and the DRB may condition a Permit upon evidence of a Wastewater and Potable Water Permit if one is not submitted with the application, neither the Zoning Administrator or the DRB administers the Wastewater and Potable Water Permit process nor exemptions from this process. See Section 730 H. The Vermont Department of Environmental Conservation administers this process and has the sole authority to bring an enforcement action against any person that has taken action that is in non-compliance with a Wastewater and Potable Water Permit or has otherwise not complied with the Vermont Department of Environmental Conservation's Rules. See 10 VSA § 1973 & DEC Rule 1-503.

Here Applicants provided a Wastewater and Potable Water permit with their Permit Application and met our Zoning Bylaw requirements. Neither the Zoning Administrator or the DRB has jurisdiction over whether there has been a violation of the Wastewater and Potable Water Permit or any other matter falling under the jurisdiction of the Vermont Department of Environmental Conservation. Those are matters that should be taken up with the Vermont Department of Environmental Conservation.

5. Section 730 D Parking

Appellant claims that there is only room to park one car on the subject property when the property requires two parking spaces under our Zoning Bylaws. The Appellant provided no evidence to support his position. The Applicants provided a site plan that shows that there is 50 feet by 15 feet driveway that fits two cars and indicated that there was more parking available on the property. See Exhibits 10 & 13. The Zoning Administrator indicated that she inspected the property and believes there is sufficient parking for two cars. See Exhibit 12.

Section 730 D.2 requires that a parking space be a minimum of 18 feet by 10 feet. Section 730 D.4.vii requires that Short-Term Rentals have three-quarters (.75) of a parking space for every guest room. Given the evidence presented, simple math indicates that there was more than sufficient parking for a Two Guest Room Short-Term Rental.

□

6. Taxation of the Property

Appellant claims that the property is taxed as a seasonal camp and that somehow because of this the Zoning Permit should be denied. Both the Zoning Administrator and Applicants testified that the property is taxed as a one family dwelling and provided evidence to support this. See Exhibit 12. This argument is without merit. The tax status of a property is irrelevant to the Zoning process.

CONCLUSION:

For the above reasons, the Board **DENIES** the appeal. This application for development is **GRANTED** and the Zoning Administrator is requested to correct her scrivener's error on the permit and change "to add Two (2) Bedroom Short Term Rental (STR) Use to existing Use" to "change use from Single Family Dwelling to Short Term Rental."

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

IN FAVOR of granting the appeal and **DENYING** the above referenced application:

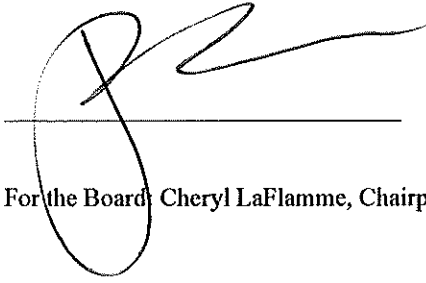
Cheryl LaFlamme
Diane Abate
John Gannon
Chrystal Holt

OPPOSED:

None

ABSTAINING:

None



A handwritten signature in black ink, appearing to read 'Cheryl LaFlamme', is written over a horizontal line. The signature is stylized and cursive.

Date: 8/5/2024

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.
