



**WAITSFIELD DEVELOPMENT REVIEW BOARD
FINDINGS OF FACT AND NOTICE OF DECISION**

Application #: 3797-CU
Owner/Applicant: Ryan & Rebecca Diehl, dba Wilder Farm Inn
Property Address: 1460 Main Street
Parcel Number: 99013.000 in the Agricultural Residential District
Meeting Dates: January 23, February 13, March 13 & 27, 2018
Proposal/Type: Request for approval to revise the parking plan for the bed and breakfast property.

A. GUIDING ORDINANCE and POLICY PROVISIONS

1. Town of Waitsfield Zoning Bylaws, as adopted March 2, 1971 and amended through September 26, 2016:
 - a. Table 2.07 Agricultural Residential Zoning District.
 - b. Section 3.09 Parking & Loading Standards.
 - c. Section 5.03 Conditional Use Review.
 - d. Section 6.02(I) Exemption for solar facility.
2. Waitsfield Subdivision Regulations, amended on January 21, 2008.
3. Waitsfield Town Plan, as adopted on December 18, 2017.

B. MATERIALS SUBMITTED

1. The PZA has included correspondence between her, the owners, and SunCommon's legal counsel from December 2017, which led to this application.
2. On December 28, 2017, the applicant submitted a conditional use application, proposed parking site plan, and site plan of the existing parking plan approved in #3262-CU.
3. On January 17, 2018, the applicant submitted the signed Posting Sign Protocol.
4. On January 26, 2018, the applicant submitted the PUC registration for structure.
5. On January 30, 2018, the applicant submitted confirmed setback distances and photos of the structure.
6. On February 28, 2018, the applicant submitted a proposed screening plan, and a cost estimate from Mad River Property Management.
7. On March 22, 2018, the applicant submitted a narrative description of the revised screening proposal.
8. On March 26, 2018, the applicant submitted an updated landscaping site plan and a photo of the structure from the driveway.

9. On April 5, 2018, the applicant submitted a final landscaping site plan with the requested measurements from the carport structure to each hemlock location.

C. FINDINGS OF FACT

1. The property is located at 1460 Main Street, and is approved for a bed and breakfast and single family dwelling in the accessory structure. The parcel is identified as #99013.000 in the Agricultural Residential Zoning District.
2. The applicant hired SunCommon to construct a wooden structure for use as a solar facility and carport, which includes electric vehicle charging stations; SunCommon was responsible for permitting.
3. As the carport structure was being constructed, the PZA reached out to the owners to inquire as to what was being constructed and notifying them that it would likely need local approval. The owner referred her to the representative at SunCommon.
4. On December 7, 2017, the PZA provided notice to the owner and SunCommon that, while the panels and wiring might constitute a solar facility which was exempt from local permitting, the carport structure and its use for parking would require conditional use approval.
5. On December 11, 2017, the PZA received a letter from SunCommon's legal counsel that the entire wooden structure was deemed a "net-metering system" exempt from local authority, including setback requirements, per 24 V.S.A. Section 4413(b).
6. On December 15, 2017, the PZA corresponded directly with the property owners that a local conditional use approval would be required prior to using the structure for parking.
7. Use of the carport structure for bed and breakfast guest parking requires amended conditional use site plan approval. The prior parking site plan was approved in #3262-CU in 2009, when the prior owner received approval to construct the accessory barn and use it as an artist studio.
8. In 2016, the PZA issued a permit (#3722) to convert the artist studio to a single-family dwelling. The number of units in the bed and breakfast did not change and the structure was going from a conditional use to a permitted use.
9. The Zoning Bylaw requires only two parking spaces for the accessory structure/single family dwelling which are located adjacent to the building. The formerly-approved, existing site plan indicates five parking spaces adjacent to this building; now that it is a dwelling, the owner wants to reduce traffic and parking in this location.
10. Eight parking spaces are required for the bed and breakfast use. These spaces are proposed on an existing 4-space section of gravel and underneath the solar facility, as opposed to the several areas indicated on the approved site plan from #3262-CU in 2009.
11. The public hearing was opened on Tuesday, January 23, 2018. The abutting property owners were sent notice on January 3, 2018 and the notice appeared in the January 4, 2018 issue of *The Valley Reporter*.
12. The applicant and PZA reviewed the history of the project as outlined above. The board requested confirmation of the setback distances from the applicant and legal advice from the Town attorney. The board continued the hearing to Tuesday, February 13, 2018.
13. On January 26, 2018, the applicant submitted the PUC registration for the canopy which indicates that this structure was characterized as a "ground-mount" net-metering facility.
14. On January 30, 2018, the applicant submitted setback distances and photos of the structure.

15. The board continued the hearing on Tuesday, February 13, 2018. The applicant presented information that was requested at the last meeting. Mr. Diehl clarified that the carport structure was set back 62.5 feet from the road centerline and 42 feet from the edge of the traveled way. Ms. Lander, from SunCommon, stated that there is a septic field to the west of the carport structure so it could not be pushed further back from Route 100; she also said that, due to its capacity and size, the structure was exempt from the state's net-metered facility minimum setback requirement.
16. The board discussed screening options with the applicant. The board requested a screening plan proposal from the applicant, which identified the species, size, and location of plantings. The hearing was continued to Tuesday, March 13, 2018.
17. On February 14, 2018, the PZA sent specific guidance related to the board's requested screening proposal to the applicant via email, on behalf of the board. It stated, "Please note the following in developing a screening proposal:
 - The plan should be designed by a professional who is knowledgeable in this area.
 - The carport should be screened from the north side and from Route 100; everyone seemed to agree the south side is pretty screened as-is, based on the road curve and topography; but, perhaps a consultant would have a different perspective when they visit the site.
 - The relevant regulations on parking and screening and landscaping are as follows and can be found online:
 - Section 3.09(A).
 - Section 5.03(D)(4).
 - Section 5.03(D)(7). Please note subsections (c) and (d)."
18. On February 28, 2018, the applicant submitted a sketch screening proposal, and a cost estimate developed by Mad River Property Management.
19. The board continued the hearing on March 13, 2018. They reviewed the proposed screening plan and determined that it did not meet the criteria they provided. The plan was not prepared by a professional, the proposed hedge did not screen from the Route 100 side, and the parking area was not adequately screened from view of southbound traffic. The members requested that the applicant stake out the proposed planting locations on-site so they could review it prior to the next hearing.
20. On March 22, 2018, the applicant submitted a revised narrative for the screening proposal which was prepared by Mad River Property Management ("MRPM"). On March 26, 2018, the applicant submitted additional visual depictions of the site and proposal. While the narrative recommended planting "smaller container-size deciduous plants" (amelanchiers) but the proposed site plan indicates the amelanchiers will be planted in boxes. The board understands the intent of the narrative from MRPM to be that the size of the amelanchier at time of planting to be "container sized" but that the plants will be planted directly in the ground and not kept in containers. The plants will grow when established, and will be pruned and maintained by the landowners at their discretion.
21. The board continued the hearing on Tuesday, March 27, 2018. They visited the site prior to the hearing, and observed conditions of the property and surrounding areas. Rebecca Diehl, Lauren Dennis, Chris Cook, Brian Shupe, Rudy Polwin, Gib Geiger, and Susan Senning were present for the site visit.
22. The board closed the hearing on this application and stated that a written decision would be issued within 45 days.

23. According to SunCommon's legal counsel, the wooden structure is integral to the solar installation and therefore exempt from local authority as a registered net-metering system; however, local land use regulations are triggered when these facilities are used for anything other than renewable energy production.
24. Several statutory provisions are worth considering when determining whether or not this structure is exempt from local jurisdiction. Chapter 117 of Title 24 states that "public utility power generating plants and transmission facilities" and "solar electric generating plants" are exempt from municipal zoning regulation. *See* 24 V.S.A. §4413(b) and §4414(15). As defined in 30 V.S.A. §8002, the term "plant" means "an independent technical facility that generates electricity from renewable energy." Such facilities and plants are regulated under 30 V.S.A. §248, 30 V.S.A. §8010, and applicable Public Utility Commission ("PUC") Rules (with enforcement thereof occurring pursuant to 30 V.S.A. §30).
25. PUC Rule 5.100 specifically pertains to the construction and operation of net-metering systems. Under the Rule, §5.105 et seq., there are provisions for registration with the PUC of "ground-mounted photovoltaic systems of up to 15 kW and photovoltaic net-metering systems that are mounted on a roof." Notably, PUC Rule 5.100 does not define the terms "ground-mounted" or "roof-mounted." The Rule defines "preferred site" to include a "parking lot canopy over a paved parking lot." The new parking area at Wilder Farm was an unpaved area at the time it was identified as a preferred site.
26. PUC Rule 5.113 contains specific setback requirements for "ground-mounted net metering systems" from a state or municipal highway (measured from the edge of the travelled way) and from property boundaries. However, solar facilities with a plant capacity equal to or less than 15 kW are exempt from the state setback requirements.
27. While the board is not formally contesting the PUC registration, the structure is mischaracterized. The carport is not located on a "preferred site" and, therefore, should not be considered a ground-mount, net-metered facility. It is more adequately characterized as a roof-mounted system on a structure over a new parking area. Therefore, it must satisfy local land use regulations.
28. A setback waiver is granted to reduce the 75-foot front setback requirement to allow for the 62.5-foot setback from the road centerline of the as-built structure.
29. The Zoning Bylaw states a preference for non-residential parking areas to be located to the side or rear of buildings, which the board members would have preferred had the structure received prior review and approval. Section 3.09(A) and Section 5.03(D)(4) of the Bylaws provide the board with some discretion related to the location of non-residential parking. The revised parking location, when screening is installed, will satisfy these provisions.
30. The final screening proposal, received on April 5, 2018, satisfies the applicable Zoning Bylaw provisions.

D. CONCLUSIONS OF LAW

Based on its review of the application materials, submitted site plans, presented testimony, and Findings of Fact above, the Waitsfield Development Review Board hereby concludes this application as proposed, and when finalized and implemented, does meet the conditional use and

setback waiver criteria of the Town of Waitsfield Zoning Bylaws and is in conformance with the Waitsfield Town Plan.

E. DECISION

Application #3797-CU is hereby APPROVED, subject to the following conditions:

1. The parking plan from #3722 is amended. The accessory structure shall have two (2) parking spaces, the four-space parking area between the bed and breakfast and the carport structure shall remain, and the carport may be used for parking. All other previously-approved parking areas on the property shall be abandoned.
2. The "Wilder Farm Inn Landscaping Plan 3/29/18" which was received on April 5, 2018 is approved. The eight (8) hemlocks shall be planted in the exact locations as measured from the carport, which is representative of the stakes that were placed at the site visit. The three (3) amelanchiers shall be planted directly into the ground and not kept in their containers. The location of each planting shall be in accordance with the approved site plan which were identified by MRPM for best survival.
3. If any plant dies or become unhealthy at any time in the future, the plant(s) shall be replaced, in a timely manner, with one of the same species and equal size to the height indicated on the final landscaping plan.
4. This decision is subject to any and all applicable local, state, and federal permit approvals.

Dated at Waitsfield, Vermont this 25 day of April, 2018 for the Town of Waitsfield Development Review Board by:



Chris Cook, Development Review Board Chair

Voting in the Affirmative: Chris Cook, Gib Geiger, Rudy Polwin, and Brian Shupe.

Voting in the Negative: None.

Absent: John Donaldson, Chris Jernigan, and Michael Kingsbury.

Appeal

Pursuant to Title 24 VSA §4471 and §4472, an interested person who has participated in the review of this application may appeal this decision to the Environmental Division of the Vermont Superior Court by filing a Notice of Appeal directly to the Court, 32 Cherry Street, Suite 303, Burlington, Vermont 05401, by certified mail within thirty (30) days of the date this decision is issued. A copy of the notice must also be sent to the Zoning Administrator or the Municipal Clerk who is required to provide a list of interested persons to the appellant within five days of receipt of the Notice. The appellant is required to send a copy of the Notice, via certified mail, to each interested person.

