

TOWN OF DUMMERSTON

Development Review Board

Conditional Use Decision Review Application Findings and Decision

Permit Application Number: 3670

Date Received: January 6, 2022

Applicant: Peter Thurrell.

Mailing Address: 50 Old Sawmill Rd., East Dummerston, VT 05346.

Location of Property: Parcel 389, 50 Old Sawmill Rd., East Dummerston, VT

Owner of Record: Peter Thurrell.

Application: Conditional Use Review of Condition #9 Landscape Requirements, for DRB Decision dated March 23, 2022.

Date of Hearing: November 15, 2022

INTRODUCTION AND PROCEDURAL HISTORY

1. This proceeding involves review of Condition #9 Landscape Requirements, for DRB Decision dated March 23, 2022, under the Town of Dummerston Zoning Bylaw Sections 720 - 727.
2. On November 1, 2022, notice of a public hearing was published in The Brattleboro Reformer.
3. On October 26, notice of a public hearing was posted at the following places:
 - The Dummerston Town Office.
 - The West Dummerston Post Office.
 - The Dummerston School.
4. On October 30, 2022, notice of a public hearing was posted at the following place: 50 Old Sawmill Rd., which is within view of the public-right-of-way most nearly adjacent to the property for which the application was made.
5. On October 26, 2022, a copy of the notice of a public hearing was emailed to the Applicant.
6. On October 26, a copy of the notice of public hearing was mailed to the following owners of properties adjoining the property subject to the application:
 - a. Goddard Yvonne M & Alan J, 2 Old Sawmill Dr, E Dummerston, VT 05346
 - b. Kessler Glenn D, 185 Canoe Brook Rd, E Dummerston, VT 05346

- c. Titus Deborah, 1656 US Rt 5, E Dummerston, VT 05346
 - d. Waterman Shirley, 61 Old Sawmill Dr, E Dummerston, VT 05346
 - e. Dunn Charles A & Thelma M, 1892 US Rt 5, E Dummerston, VT 05346
7. The application was considered by the Development Review Board (DRB) at a public hearing on November 15, 2022.
8. The Development Review Board reviewed the application under the Town of Dummerston Zoning Bylaw, as amended April 6, 2022.
9. Present at the hearing were the following:
 - a. Members of the Development Review Board:
Chad Farnum, Cami Elliott, Alan McBean (via Zoom), Peter Doubleday, Natalie Pelham-Starkey (via Zoom).
 - b. Others:
Peter Thurrell (Applicant, via Zoom), Roger Jasaitis (Zoning Administrator).
10. A site visit was conducted on November 12, 2022.
11. Present at the site visit were the following:
 - a. Members of the Development Review Board:
Cami Elliott, Natalie Pelham-Starkey, Peter Doubleday.
 - b. Others:
Peter Thurrell (Applicant), Roger Jasaitis (Zoning Administrator).
12. During the course of the hearing the following exhibits were submitted to the DRB:
 - a. Application for Zoning Permit, number: 3670.
 - b. Exhibits:
 - i. Photo of site A
 - ii. Photo of site B
 - iii. Photo of site C

FINDINGS OF FACT

Based on the application, testimony, exhibits, and other evidence the DRB makes the following findings:

1. Peter Thurrell requests clarification on the condition set forth in the Decision and Conditions section #9 of the approved Decision (dated March 23, 2022) for application # 3670 under the Town of Dummerston Zoning Bylaw Sections 720 - 727. The subject property is a 6.4 acre parcel located at 50 Old Sawmill Rd., in the Town of Dummerston (tax map parcel no. 000389). The property is more fully described in a Deed recorded at Book 117, Page 345, in the Town of Dummerston Land Records.
2. The property is located in the Rural Commercial District as described on the Town of Dummerston Zoning Map on record at the Town of Dummerston municipal office and Section 220 of the Zoning Bylaw.
3. The Condition under review reads as follows:

- a. *"9. The DRB noted that the development activity on this parcel has, over time, migrated to the front of the parcel within view of Route 5. Under Section 635 Landscaping Requirements, "Commercial and industrial uses shall provide for a strip of land at least fifteen (15) feet in width which shall be maintained as a landscaped area in the front...". To meet the requirements of this Section of the Bylaw, the Applicant must plant a vegetative screen consisting of evergreen trees or bushes with a minimum height at planting of 6' and to reach a minimum of 16' at maturity. Trees or bushes should be planted in such a way as to create a solid barrier. Spacing at the time of the planting shall be done so that plantings will create the solid barrier within 2 years. "*
4. The Applicant, Peter Thurrell, requests review of this Condition for the following reasons:
 - a. He has been advised by an arborist that evergreen plantings will not survive under the canopy of the existing mature locust trees.
 - b. He states that the plantings will not achieve the desired screening because the location and width of the driveway allows views into the site while driving by on Rt. 5.
 - c. The existing vegetation of trees and brush is adequate screening and planting more trees by the existing trees will not obscure the views down the driveway.
 - d. He is requesting removal of this condition from the Conditional Use permit.
5. Chad Farnum (DRB) clarified that the approved CU permit allows for 5 portable storage containers within view of Rt. 5. Peter Thurrell stated that there are 3 existing structures now and 2 will be added in the future. Cami Elliot (DRB) asked if the future containers would be closer to the road. Peter Thurrell stated that the future containers would be placed further back on the parcel behind the existing containers which are approximately 80 feet from the road.
6. Chad Farnum(DRB) stated that other Applicants that have had a similar Condition have opted for a screening fence instead of plantings and the DRB has agreed to this option in the past.
7. Cami Elliott (DRB) stated that Amy Wall on Rt. 5 had a similar Condition on her CU Permit for vegetative screening.
8. Peter Thurrell clarified that the problem is the 40 foot wide driveway opening and to put vegetative screening where the existing trees are will not make any difference or solve the issue.
9. Alan McBean (DRB) suggested that a 14 to 16 foot driveway opening would be adequate and that reducing the width of the driveway opening would help with the screening. He also offered that a fence would be a viable option.
10. Peter Thurrell offered to turn the Storage Container sideways to the road and paint it green.
11. The DRB clarified that an 8 foot high fence would be adequate. The Zoning Administrator clarified that any fence above 6 feet in height needs DRB approval anyway. The DRB offered this as an option.

12. Peter Thurell stated that a fence is a viable option but reiterated that a fence will not achieve the screening that the DRB is requiring and would just cost him money.
13. The ZA offered the Exhibit photos taken at the site visit showing the view of the property from the edge of Rt. 5.

DECISION AND CONDITIONS

The DRB denies the Applicants request to strike Condition #9 from the Conditional Use permit. The DRB finds that this Condition meets the requirements of the Town Plan and the Zoning Bylaw and requires compliance with the following modifications to the Decision.

1. The DRB notes the following text from Section 235 Rural Commercial District:

General Description and Purpose

“ Commercial uses should be compatible with surrounding residential, agricultural and other uses.”

*“The Purpose of the Rural Commercial District is to encourage and regulate commercial, light industrial, and residential uses in defined areas along the Route 5 and 30 corridors. Thoughtful development should be encouraged using techniques such as shared access points, **increased landscaping**, sign control, and emphasis on pedestrian movement.”*

This condition is in keeping with the intent of this Section in the Bylaw.

2. The DRB also points to the Town Plan Land Use Section:

*f. Rural/Commercial: This district includes lands along Route 5 and the west side of Route 30. These lands fit the criteria for Rural Residential, and appear generally suitable for light commercial uses that require good access to a main traveled road. Both residential and commercial uses including recreation are suited for this area. **Commercial uses should be compatible with surrounding predominantly residential uses. Strip development should be discouraged and its negative impacts minimized if possible, by techniques such as shared access points, increased landscaping, sign control, and emphasis on pedestrian movement.***

This condition is in keeping with the intent of this Section in the Town Plan.

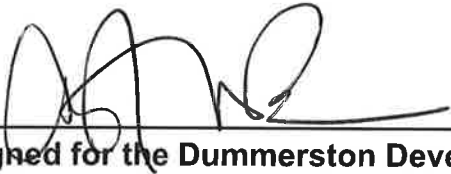
3. The DRB reiterates that the development activity on this parcel has, over time, migrated to the front of the parcel within view of Route 5. Under Section 635 Landscaping Requirements, “Commercial and industrial uses shall provide for a strip of land at least fifteen (15) feet in width which shall be maintained as a landscaped area in the front...”. The DRB recognizes that narrowing the driveway entrance to 16 feet wide will facilitate the screening of the parcel and encourages the Applicant to do this. The DRB also offers that creating an earthen berm that vegetative screening or fencing could be placed on top of would facilitate screening the parcel.
4. The DRB also noted on the tax map and survey of the parcel that the actual boundary line for the parcel is on the west side of the existing mature locust trees, approximately 140 feet from the centerline of Rt. 5. This will place the mandated screening beyond the canopy of the existing mature trees. The screening mandated must be on the parcel, not on the State property or in the Rt. 5 roadway right of way.
5. To meet the requirements of Section 635 of the Bylaw, the DRB gives the Applicant the following options to comply with the Zoning Bylaw and Town Plan. The Applicant must choose one or more of these options:
 - a. The Applicant must plant a vegetative screen along the front of the parcel shielding Rt. 5 from the site, consisting of evergreen trees or bushes with a minimum height at planting of 6' and to reach a minimum of 16' at maturity. Trees or bushes should be planted in such a way as to create a solid barrier. Spacing at the time of the planting shall be done so that plantings will create the solid barrier within 2 years. Vegetation shall be monitored and replaced if they fail to thrive. The screening shall extend from the edge of the driveway to where the bank falls off to the brook (approximately 40 feet).
 - b. The Applicant must erect an 8 foot high wooden fence along the front of the parcel to shield the parcel from the view of Rt. 5. The fencing shall extend from the edge of the driveway to where the bank falls off to the brook (approximately 40 feet).
6. Being that the planting season has ended for the winter, the Permit #3670, Condition #11: *“This Conditional Use permit will be reviewed by the DRB in 1 year (March 2023) for compliance.”* is hereby suspended. The Zoning Administrator will monitor the site in the spring of 2023 for compliance.
7. The provisions and conditions of previous Conditional Use permits remain in effect on this parcel.

8. **Expiration: This Zoning Permit approval will expire by limitation two (2) years from the date of approval. All work must be completed as shown on any approved plan before the expiration date.**

9. **It is the Applicant's responsibility to be in compliance with any and all Town or State required or issued permits at all times or this approval is null and void.**

The following members of the Dummerston Development Review Board participated and concurred in this decision: Chad Farnum, Cami Elliott, Alan McBean, Peter Doubleday.

Dated at Dummerston, Vermont, this 21st day of November, 2022.

A handwritten signature in black ink, appearing to read 'AMC', is written over a horizontal line.

Signed for the Dummerston Development Review Board

NOTICE: This decision may be appealed to the Vermont Environmental Court by an interested person who participated in the proceeding(s) before the Development Review Board. Such appeal must be taken within 30 days of the date of this decision, pursuant to 24 V.S.A. § 4471 and Rule 5(b) of the Vermont Rules for Environmental Court Proceedings.