

TOWN OF DUMMERSTON

Development Review Board

Conditional Use and Site Plan Review Application

Findings and Decision

Permit Application Number: 3669

Date Received: January 4, 2022

Applicant: Susan Leslie Powers.

Mailing Address: 2002 Black Mountain Rd., Dummerston, VT 05301.

Location of Property: Parcel 644, 2002 Black Mountain Rd., Dummerston, VT

Owner of Record: Windham- Windsor Housing Trust.

**Application: Conditional Use Application and Site Plan Review for Dog Boarding,
Dog Daycare Business known as Ellie's Pet Care, LLC.**

Date of Hearing: February 15, 2022

INTRODUCTION AND PROCEDURAL HISTORY

1. This proceeding involves review of an application for a Conditional Use and Site Plan Review for a Dog Boarding, Dog Daycare Business under the Town of Dummerston Zoning Bylaw sections 720 and 724.
2. On January 27, 2022, notice of a public hearing was published in The Commons.
3. On January 22, 2022, 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 January 30, 2022, notice of a public hearing was posted at the following place: 2002 Black Mountain 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 January 22, 2022, a copy of the notice of a public hearing was emailed to the applicant.
6. On January 22, 2022, a copy of the notice of public hearing was mailed to the following owners of properties adjoining the property subject to the application:
 - a. Haydock Roger, PO Box 1052, Brattleboro, VT 05302
 - b. Hickin Randall P, 1999 Black Mountain Rd, Dummerston, VT 05301
 - c. Newton Keri A & Joseph B, 2085 Black Mt Rd, Dummerston, VT 05301
 - d. Thorndike Frances P, 1245 Park Ave, New York, NY 10028
 - e. Windham & Windsor Housing Trust Inc, C/O Susan Powers, 2002 Black Mt Rd, Dummerston, VT 05301

7. The application was considered by the Development Review Board (DRB) at a public hearing on February 15, 2022.
8. The Development Review Board reviewed the application under the Town of Dummerston Zoning Bylaw, as amended May 22, 2019.
9. Present at the hearing were the following:
 - a. Members of the Development Review Board:
Chad Farnum (via Zoom), Natalie Pelham-Starkey, Cami Elliott, Alan McBean, Josh Pacheco (via Zoom)
 - b. Others:
Randy Hicken, Roger Haydock, Bill Fleischmann, Kathleen Fleischmann, Frances Thorndike, Joe Newton (abutter, via Zoom), Roger Jasaitis (Zoning Administrator).
10. A site visit was conducted on February 15, 2022.
11. Present at the site visit were the following:
 - a. Members of the Development Review Board:
Chad Farnum, Natalie Pelham-Starkey, Cami Elliott, Alan McBean
 - b. Others:
Leslie Powers, Randy Hicken, Roger Haydock, Bill Fleischmann, Kathleen Fleischmann, Frances Thorndike, 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: 3669.
 - b. Application to the Development Review Board for a Conditional Use Permit and Site Plan Review, number: 3669.
 - c. Exhibits:
 - i. A: Email Letter, Erica Walsh, Newfane, VT
 - ii. B: Email Letter, Frances Thorndike (abutter)
 - iii. C: Email Letter, Michele Carlson, Wilmington, VT
 - iv. D: Email Letter, Amy Davis, Putney, VT
 - v. E: Email Letter, Jodi Krasnow, Stratton, VT

FINDINGS OF FACT

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

1. The applicant seeks a Conditional Use permit for a Dog Boarding, Dog Daycare Business, under the Town of Dummerston Zoning Bylaw section 720 and 724. The subject property is a 0.3 acre parcel located at 2002 Black Mt Rd., in the Town of Dummerston (tax map parcel no. 000644). The property is more fully described in a Deed recorded at Book 117, Page 297, in the Town of Dummerston Land Records.

2. The property is located in the Productive Lands 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. Condition Use approval is requested for the Home Business as that term is defined in Article VI, Page 3, of the Zoning Bylaw. The application requires review under the following sections of the Town of Dummerston Zoning Bylaw:
 - a. Article VII, Section 720 Development Review Board.
 - b. Article VII, Section 724 Site Plan Approval.
4. Leslie Powers (Applicant) gave an overview of the application. Leslie Powers describes a 4 day week, M-Th for daycare with drop offs between 7am and 9am and pick ups between 3pm and 5:30pm. Between 9am and 3pm the dogs have play, naps and outside time. Around 3pm Leslie brings the louder/barking dogs inside to decrease the noise. Boarding of dogs is anytime.
5. Roughly 20 people arrive and depart for drop off and again at pick up (40 trips total). There are two employees that work during the week so that along with Leslie there are 2 people to care for 20 dogs at any given time. In the summer months and during vacations the number of dogs can exceed 20.
6. After receiving complaints about the noise of the dogs barking Leslie has taken steps to minimize and address the concerns by: Keeping barking dogs inside in the am and before pickup. Joining webinars with her staff to help educate her and staff on ways to address dog barking compassionately. She also adds that dogs bark and whether it's turkeys, UPS or a person walking by, you can't stop all the barking. She doesn't see it as an ongoing issue.
7. Another complaint received about the daycare was the increased traffic back-up and lack of parking to accommodate the number of cars coming at one time.
8. Leslie described 40 cars per day for drop off and pick up and that currently people drive in one at a time and others wait at the bottom of the driveway until there is space to proceed. There are no actual parking spots in front of Leslie's house for customers or staff. She has put out traffic cones in the summer to stop cars from parking on the opposite side of the road. The neighbor had declined use of the other side of the street as a turn around point for cars. As a result there is a bottleneck in the road during pick up drop off times that backs up onto Black Mountain Rd..
9. Applicant: Leslie Powers stated that she did not understand any screening requirements.
10. Zoning Administrator: Roger Jasaitis stated that the site visit in relation to the complaints by neighbors was observation of existing activity and screening.
11. Leslie Powers (Applicant) clarified that the lot is practically the existing fenced in area.
12. Neighbor/Abutter: Randy Hicken clarifies the size of the lot Leslie operates on. It is 0.3 acres. Clarifying that it is a little more than a ¼ of an acre.
13. Applicant: Leslie Powers clarifies that she has more than enough space for the number of dogs she cares for (20) as the industry standard is 50-75 sq feet per dog and she has 7,500 sq ft available to the dogs.

14. Neighbor/Abutter: Frances Thorndike asked if the landowner knows about this business.
15. Applicant: Leslie Powers stated that they do know about it.
16. Zoning Administrator: Roger Jasaitis stated that the Windham-Windsor Housing Trust was mailed a letter in regard to the hearing.
17. Neighbor/Abutter: Frances Thorndike comments that the business has grown over the past year or so. It is very noisy all the time (regarding barking) and that drop off and pick up is very crowded and chaotic ("like a piccadilly circus"). Frances adds that car speed is an issue.
18. Applicant: Leslie Powers agrees that the business has grown due to other businesses not accepting dogs but also notes that her staff is under training for the barking issue. It is not her responsibility to police speed limits on a public road and would like the town to put up better/more frequent speed signs.
19. Applicant: Leslie Powers stated that the road is a private right of way in front of her house.
20. Neighbor/Abutter: Randy Hicken asks if the number of dogs previously stated (20) included the boarded dogs.
21. Applicant: Leslie Powers said no. There are 5-6 additional dogs being boarded at any given time. The earliest the boarded dogs are outside is 5:30am and the latest is 9pm.
22. Randy notes that there has been some loud barking at night at times as well. Leslie disagrees with Randy on that point.
23. Neighbor/Abutter: Joe Newton (zoom) agrees that an email about speed to all patrons would be welcome, that he too has noticed an increase in traffic speeding on Black Mountain Road. He also asked if there was a waste disposal plan for dog waste. Leslie confirmed that she has a rubbish removal company remove waste every two weeks. Joe cites the dog barking as an issue as well but also agrees dogs are going to bark, as they are dogs.
24. Applicant: Leslie Powers offers a solution of increased landscaping to buffer the noise pollution.
25. Neighbor/Abutter: Roger Haydock comments that nothing less than a wall/mass will help to decrease noise.
26. Client of Daycare: Kathleen Fleischmann comments that the parking back-up situation, where more than one car waits on the corner of the driveway and Black Mountain Road, is actually an act of politeness and that it is not necessary if it is causing problems. Kathleen values Leslie business very much and supports its continued operation. She agrees it is not Leslie's fault if people speed and that to lose the Doggy daycare would be a disservice to dogs and dog owners in the area. She adds that regular socialization for dogs is a big deal and it would be a big deal to lose this opportunity for dogs in the community.
27. Client of Daycare: Erica Walsh offered her support of the business and agreed to its need in the community and for her/her dog specifically. She appreciates the flexibility for drop off, how good Leslie is with the dogs and the opportunity for the dogs to be outside. She has been bringing her dog to Leslie since May 2021.

28. DRB member: Chad Farnum clarifies that the original permit was for home occupation only, meaning dogs would only be cared for in-home (not outside).
29. Applicant: Leslie Powers admits she misunderstood that her original permit was indoor only.
30. DRB member: Alan Mcbean further clarifies that this application is to change the business from the original Home Occupation permit to a Conditional Use permit that would allow for a Doggy daycare and Boarding on premise.

DECISION AND CONDITIONS

While the DRB recognises that this business is popular in the community and there is a need expressed for it based on testimony, this Decision is based on the Zoning Bylaw. The Zoning Bylaw, voted and approved by the citizens of Dummerston, supports the Town Plan. The Town Plan is the vision of the community for where development is needed and appropriate in the Town. Based upon these findings, the Development Review Board denies the applicant a Conditional Use permit for a Home Business; Doggy Daycare, Dog Boarding for not meeting the requirements of the Zoning Bylaw and Town Plan.

The proposed development does not meet the requirements of *Sections 721 of the Zoning Bylaw General Standards*:

The proposed Use shall not adversely affect:

1. *The character of the area affected;*
 - a. The application does not meet this requirement.
 - i. The proposed Use adversely affects the neighborhood which is predominantly farmland and forest. (Section 210, see below)
2. *Traffic on roads and highways in the vicinity;*
 - a. The application does not meet this requirement.
 - i. The Business creates more traffic than would normally be present in the neighborhood. (Section 603:6: *No traffic shall be generated by such home industry in greater volumes than would normally be expected in the neighborhood.*)
 - ii. The Business causes traffic to back up onto Black Mountain Rd. causing safety concerns. (Section 726;2: *Maximum safety of vehicular circulation between the site and the street network.*)
3. *By-laws then in effect;*
 - a. This application is a result of complaints about the permitted Home Occupation (Zoning Permit #3570). The Home Occupation at present is out of compliance with the Zoning Bylaw (Section 604). This Section specifically states that the Home Occupation must “*use a minor portion of a dwelling unit*” and “*is customary in residential areas and that does not have an undue adverse effect upon the character*”

of the residential area in which the dwelling is located". The Zoning Administrator's site visit in June, 2021 showed:

- i. The Home Occupation is not housed within the dwelling.
- ii. The Home Occupation is unduly having an adverse effect on the character of the residential area through noise, traffic and lack of screening.
- iii. The Home Occupation is employing multiple persons that are not family members.

4. *Furtherance of the provisions of the Dummerston Town Plan.*

a. The proposed development does not conform to the Town Plan.

- i. *Land Use Districts: Productive Lands; "...to preserve the rural character of Dummerston which is characterized by extensive woodlands and undeveloped fields, while accommodating low to very low density residential development...".* The DRB notes that Commercial development is not promoted here.
- ii. *Policy 1.5: Minimize community exposure to excessive noise.* The DRB considers continuously barking dogs to be excessive.

The proposed development does not meet the requirements of *Sections 722 of the Zoning Bylaw Specific Standards:*

1. *Section 210 Productive Lands District*

a. The proposed business will not conform to the purpose of the zoning district (as stated in *Sections 205-240* of these Bylaws) in which the land development is located.

- i. *The primary purpose of the Productive Lands District is to recognize and provide for the continuation of economic value of agricultural and forest land that is in productive use or has potential for productive use. Another purpose is to preserve extensive woodlands and undeveloped fields, while accommodating low residential development that avoids the need for new roads.*

2. *Section 605 Home Business*

a. The proposed business does not conform to the requirements of this Section.

- i. *(3) The home business shall be carried on within the principal or accessory structures of their residence.* The DRB finds that the business is carried on outside of the principal and accessory structures.
- ii. *(5) Objectionable circumstances such as noise...shall not be permitted.* The DRB finds that the barking is excessive.
- iii. *(6) No traffic shall be generated by such home industry in greater volumes than would normally be expected in the neighborhood.* The DRB finds that this business generates significantly more traffic than would otherwise be present.
- iv. *(7) Parking shall be provided off-street and shall not be located in front yards*

except for the first two cars. The DRB finds that there is not adequate parking.

3. *Section 620 Off-Street Parking Requirements*

a. The proposed development does not meet the requirements for the Use.

i. *Section 605 (7) Parking shall be provided off-street and shall not be located in front yards except for the first two cars.* The DRB finds that no parking is provided for in the application.

4. *Section 635 Landscaping Requirements*

a. The proposed development does not meet the requirements.

i. *(1) Where any non-residential land use abuts a residential land use, a strip of land at least twenty-five (25) feet in width shall be maintained as a landscape and utility area in the front yard, side yards and rear yard.* The DRB finds that no landscaping or screening is proposed in the application.

5. *Section 660 Performance Standards*

a. The proposed development does not meet the requirements:

i. *(1) Noise: No noise which is excessive at the property line and represents a significant increase in noise levels in the vicinity of the development, so as to be incompatible with the reasonable use of the surrounding area, shall be permitted.* The DRB finds that the multiple barking dogs does not meet this requirement.

The proposed development does not meet the requirements of *Sections 726 of the Zoning Bylaw Site Plan Review Procedure:*

1. *Compatibility with adjacent land uses.*

a. The proposed development does not meet this requirement by not conforming to the Town Plan (see Section 721 #4 above).

b. The proposed development does not meet this requirement by not conforming to the purpose of the zoning district District (see Section 722 #1 above).

2. *Maximum safety of vehicular circulation between the site and the street network.*

a. The application does not meet the requirements by not having adequate off street parking and turn around space. Also the Finding of Fact which states traffic backing up onto Black Mountain Rd. as an issue.

3. *Adequacy of circulation, parking and loading facilities with particular attention to safety.*

a. The application does not meet the requirements of *Section 605 (7)* for parking: *“Parking shall be provided off-street and shall not be located in front yards except for the first two cars.”* Additionally circulation is impaired by not having adequate space for cars to turn around and cars backing up onto the Town Rd.

4. *Adequacy of landscaping, screening and setbacks in regard to achieving maximum compatibility and protection of adjacent property.*

a. The proposed development does not meet the requirements of *Section 635 (1): “Where any non-residential land use abuts a residential land use, a strip of land at least twenty-five (25) feet in width shall be maintained as a landscape and utility*

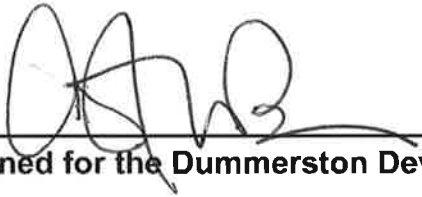
area in the front yard, side yards and rear yard...". There is no proposed screening in the application.

5. Lighting, noise, odors, protection of renewable energy resources.

- a. The application does not meet the requirements because of noise generated by the barking dogs.

The following members of the Dummerston Development Review Board participated in this decision: Chad Farnum, Natalie Pelham-Starkey, Cami Elliott, Alan McBean, Josh Pacheco.

Dated at Dummerston, Vermont, this 15 day of March, 2022.



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.