

**TOWN OF DUMMERSTON
DEVELOPMENT REVIEW BOARD
LAND USE DECISION**

Applicant: SB Land Partnership, LLC
Mailing Address: 142 Aiken Rd, Putney, VT 05346
Agent: Tim Severance
Owner of Record: SB Land Partnership, LLC
Location of Property: Winter Bell Dr. off Dummerston Station Rd.
Dummerston, VT
Application: Conditional Use Permit, Variance & Site Plan Review
Re: Application for Zoning Permit #3059

This matter came before a duly warned public hearing of the Dummerston Development Review Board (DRB) held on December 19, 2006, which was continued to January 16, 2007, and again to February 20, 2007, at the request of the applicant. The public hearing was held at the Dummerston Town office and the Town community meeting room downstairs in the Congregational Church, Dummerston Center, Vermont. Additional public notice was provided for the continued hearing sessions. The public hearing was adjourned, followed by deliberations and motions.

Present and participating were the following members of the Development Review Board (DRB): Patricia Jaquith, Andrew MacFarland, Regina Rockefeller, Cynthia Wilcox and Lew Sorenson. Also present at the December 19th hearing were Board Alternates, Herb Rest and Rick Sullivan (12/19 & 1/16), the applicant's representative Tim Severance (referred to in this decision as the applicant, 12/19 & 2/20), David Baxendale and consultant Bill Jewell representing the applicant (12/19), neighbor John Brooks (12/19), Zoning Administrator Alan McBean (12/19 & 1/16) and Dummerston resident Paul Normandeau (1/16).

FINDINGS OF FACT

The Board finds as follows:

1. The applicant proposes to reopen the Moore Farm gravel operation off Dummerston Station Road, including the excavation of 30,000 cubic yards per year, 14 days of material crushing and 60 days of screening of materials. The extraction of material would include areas within 200 feet of the property lines. The proposed time period of the operation is 10 years. The application was accompanied by a variety of statements and drawings and further supplemented by additional application materials submitted in response to the Board's request and supplied at the January 16 hearing, all of which are listed and identified as Exhibits 2 & 9.
2. The Zoning Administrator on January 2, 2007 found that the associated Application for Zoning Permit #3059 requires a Conditional Use Permit pursuant to Dummerston Zoning Bylaw Section 225 and was therefore not approved. The Zoning Administrator testified that bank run gravel extraction from the site predated the

Town's zoning, but that the operation had expanded to include crushing and screening, thereby triggering the bylaws permitting requirements. Further, prior to 2006, the Towns of Dummerston and Putney had the primary use of the pit and should have secured zoning permits when crushing and screening began. The applicant acquired the property recently and is now applying for the proper State and Town permits.

3. The subject property is an irregular shaped 16.05-acre parcel with immediate access by Winter Bell Drive, a private road. The property has an irregular shaped active gravel pit that forms a bowl covering a major portion of the acreage, with the base of the pit being about 50-60 feet below the elevation at the property line. The parcel is Lot 4 of a subdivision that includes six residential lots to the north and east. The other lots are, or are being, developed with homes. Other adjacent properties include a gravel pit to the northwest, the Vermont Transportation Agency's operational yard and office to the west, and a larger property to the south that contains a recreational campground and a gravel extraction area.
4. The area is characterized by a mixture of rural uses dominated by dispersed homes. Also of note is a concentration of earth extraction operations as shown on Exhibit 7 reflecting the presence of scarce gravel resources important to the region. In addition to Winter Bell Drive, the project traffic uses Dummerston Station Road for approximately a third of a mile to its intersection with US Route 5. Two other gravel pits also use Dummerston Station Road for access resulting in an accumulation of substantial truck traffic.
5. In testimony to the Board the applicant amended the project application somewhat to limit the total amount of extraction to 300,000 cubic yards and the final pit floor elevation to 364 feet. Extraction of material and final slope grading will be totally contained on the subject property in spite of the indication on Sheet 3, Finished Conditions, which shows work on adjacent properties. Work will also be precluded from the 50-foot roadway easement whose centerline exists along the northeasterly property line for the benefit of adjacent residential lots. 14-yard trucks will be used to minimize truck traffic to and from the site. Following reclamation the applicant proposes and intends to apply for permits for residential use of the property, possibly a planned unit development.
6. The applicant had also applied for a State Act 250 Land Use Permit. The applicant agreed that the September 12, 2006 Act 250 application materials, specifically the Schedule B Responses to the 10 criteria (less attachments), the October 20, 2006 stormwater discharge and extraction comments from the Agency of Natural Resources, and the District 2's October 27, 2006 recess memo, be incorporated and become part of the application materials for this proceeding (Exhibit 5). The following information from those application materials serve as further definition of the project and applicant testimony, and is incorporated into these findings as follows:
 - The hours of gravel extraction will be 7:00a.m. - 5:00 p.m. Monday through Friday and 8:00 a.m. - noon on Saturday. Hours of operation for the screener and crusher will be 8:00 a.m. - 5:00 p.m. Monday through Friday.

- Noise from the crusher and screener will be mitigated by their placement in areas surrounded by earth berms higher than the equipment.
 - Dust will be controlled by water or calcium chloride as needed. No other water will be used.
 - The site will be continuously graded so that stormwater will not run off the site.
 - Slopes will be stabilized to a grade of 1:2 (rise to horizontal) and then seeded and mulched.
 - The site has been logged off. There are a few stumps remaining in the area to be mined.
 - There is no stream or river near the site and no wetland on the property.
 - There are neither rare or irreplaceable natural or fragile areas, nor significant wildlife habitat because the site is an existing mining operation.
 - Slopes will be stabilized with seed and mulch as part of the restoration process.
 - Previously 16,000 cubic yards per year were hauled in 7-yard trucks. At the extraction rate of 30,000 yards and use of 14-yard trucks there will be a reduction in trips per day.
 - There will be no building on the site or use of public utilities or facilities as part of the project.
7. An unusually large number of Dummerston Zoning Bylaw sections are applicable to this development:
- a. Section 225 Rural Commercial District: Includes general purpose statement for district including contributing to wise use of resources, provides that earth and mineral extraction is a conditional use, sets dimensional and setback requirements;
 - b. Section 650 Extraction of Soil, Sand or Gravel: Includes standards for earth mineral extraction including special 200-foot setbacks, and requires a rehabilitation plan and bond approved by the DRB;
 - c. Section 660 Performance Standards: Sets noise, vibration and dust performances for commercial and industrial development to minimize adverse affects to the surrounding area;
 - d. Section 635 Landscaping Requirements: Requires a landscaped buffer strip of land at least 15 feet in width for commercial and industrial uses unless waived by the DRB;
 - e. Section 640 Erosion and Sediment Control: Sets standards for maximizing percolation into the site's soils, minimizing direct runoff and design and repair of drainage swales;
 - f. Section 645 Grading: Precludes cut slopes with a finished grade in excess of 1-1/2:1, and lesser grades for erosion susceptible soils;
 - g. Sections 721-723 Conditional Use Permits: Sets general and specific standards addressing adverse affects and provides for a 5-year review of all Conditional Use Permits;
 - h. Section 727 Site Plan Review: Sets standards and procedural requirements including a provision for the consolidation of Conditional Use Permit and Site Plan Review approvals when both are required;
 - i. Section 728 Variances: Sets required findings as provided by Vermont statutes for variance approvals by the Board.
8. The hearing was not attended by, and the Board received no testimony from, neighborhood residents other than John Brooks, owner of abutting Lot 5, who attended the December 19th meeting and expressed no concerns.

9. At the request of the Board the applicant submitted the results of sound readings conducted on November 15, 2006. Readings were taken at the outside of the Bell residence on Lot 3 with an operating loader at 3 locations on the subject property with decibel readings ranging from 54 –90; the highest readings coming from the loaders back-up beeper. Maximum background noise from the I-91 interstate was measured at 52 –56. The sound readings were ordered by the District Environmental Commission after testimony at its first hearing from Mr. Bell. The Bylaw’s noise performance standard in Section 660 prohibits noise that is excessive at the property line and represents a significant increase in noise levels in the vicinity so as to be incompatible with the reasonable use of the surrounding area.
10. The applicant testified that maximum truck traffic associated with the project, based on 30,000 yards and 14-yard trucks, would be roughly 2,150 loads per year of 4,300 trips. With an effective nine months of operation per year the average daily trips would be 22, however, the applicant testified that the maximum realistic trips per day would be 50-60 and the realistic maximum per hour would be about eight (four in, four out).
11. The applicant’s detailed drawing of the Winter Bell Drive access road shows its construction outside of its right-of-way on abutting Lot 3. Conversely, the access drive for abutting Lots 8 & 9 is shown within the subject property, rather than centered on the property line as testified by the applicant. The applicant explained that the actual alignments were dictated by topography, and are not proposed to be adjusted.
12. At the request of the Board the applicant submitted an estimate from their environmental consultant, Bill Jewell, estimating restoration costs at \$99,222 plus landscaping costs. The estimate does not take into consideration inflation during the project’s 10-year life.
13. The applicant testified that he would like not to plant significant buffering vegetation at the boundaries of the project, as the intended future use of the site for residences would be diminished if views beyond the property were interrupted.
14. The Board finds that retaining continuing jurisdiction on this application is a useful and necessary method of mitigating adverse impacts to area properties. The Board further finds that a two-year review would be an appropriate interim review in addition to the 5-year review specified by Bylaw Section 723.
15. The Board finds that due to the use and low intensity of adjoining properties and the area generally, the landscaped buffer strip required by Section 635 of the Bylaw is not appropriate and is therefore waived as a prerequisite to continuing operations. However, buffering and harmonizing landscaping of various types shall be included with the final reclamation plan for both finished slopes and property edges.
16. The applicant submitted a statement with the application materials specifically addressing the variance criteria contained in Section 728 and Vermont Statute 24 VSA Section 4464. The Board finds that there are unique physical conditions of the subject property that support a variance, primarily the concentration of gravel

resources and the concentration of gravel extraction operations in the area. Given the shape of the property and prior gravel extraction, it is not possible or reasonable for the project to conform to the required special 200-foot setback requirement.

17. The character of the neighborhood will not be changed due to the development of the gravel pit as proposed. The current condition of the area is rural undeveloped land and includes several other gravel pits in the immediate vicinity. The town plan encourages extraction of mineral resources before a land is used for other purposes.
18. The variance as requested, however, does not represent the least possible deviation to maintain a reasonable use. The Board finds that a 35-foot setback would afford both appropriate relief for the applicant and represent the least appropriate deviation from the special setback regulation.

CONCLUSIONS OF LAW AND DECISION

- A. The requested total variance to the setback requirements of Sections 225 and 650 is not approved; however, a reduced setback of 35 feet for all gravel extraction activities is approved for all property boundaries, except where the edge of the existing pit is already less than 35 feet along portions of the west and north property lines, and in those areas the existing edge shall be maintained and stabilized with supporting material sloped to a grade of not more than 1:2. With this adjustment the variance requirements of 24 VSA 4464 and the Zoning Bylaw Section 728 are met.
- B. The consolidated Conditional Use Permit and Site Plan Review is approved subject to the following conditions:
 1. This Conditional Use/Site Plan Review approval is for the application as presented and described above, including finding #5 and the Act 250 Application materials noted in finding #6, and except as explicitly modified by the authorized variance and these conditions. All extraction, operation, trucking and reclamation shall be carried out in conformance with these provisions.
 2. This permit shall be issued for a period not to exceed 10 years, with an option for the applicant to renew the permit for a maximum of an additional period of up to five years with the approval of this Board after a noticed public hearing if extraction proceeds at a slower rate. All reclamation of the site shall be completed before the end of the permit period, including any approved extension.
 3. The applicant shall obtain and comply with all other applicable State and local permits. Should the project change as a result of these permits, the changed proposal shall be presented to this Board for review and determination if it is materially different from this decision and requires an amendment.
 4. A revised final contours plan (a revised Sheet 3) shall be submitted showing conformance to the approved setback variance and these conditions (and accurate as to no changes of existing contours on abutting properties). Additional

documents shall be submitted documenting rights to the existing access road on abutting Lot 3 and relocating the easement access to Lots 8 & 9. The revised plan and documents shall be reviewed and approved by the Zoning Administrator, or referred to the Board if the plan or Administrator's review reveal issues of conformance to this decision.

5. The Board retains jurisdiction of this permit and will review it after two years, in March 2009. The Board at that time may hear from the applicant, property owner, Zoning Administrator, and other interested persons. The Board will notify all persons on the service list who attended this hearing and others who request in writing notice during the two-year period.
 6. A final reclamation plan for the site shall be submitted to the Board no later than eight years from the date of this decision. The reclamation plan shall include additional plant and landscaping materials to stabilize and help soften the slopes and provide a transition buffer to abutting properties. If needed, due to the lack of expertise within the Town government, the Board may retain an independent party at the applicant's expense to assist in this review. Reclamation shall not be deemed complete until the Zoning Administrator has certified that all work has been completed and is in conformance with this permit.
 7. A performance bond shall be submitted within 60 days of this decision to the Town in the amount \$125,000 to assure completion of all reclamation activities.
- C. A copy of this Decision shall be provided to applicable State permitting agencies and the District Environmental Commission. Full consideration and incorporation of the findings and conditions of this approval is requested.

The following members of the Dummerston Development Review Board participated and concur in this decision. The Decision is subject to appeal as provided by Vermont statute.

Pat Jaquith, Andrew MacFarland, Regina
Rockefeller, Cynthia Wilcox and Lew Sorenson

Dated: March 12, 2007

DUMMERSTON DEVELOPMENT REVIEW
BOARD

Lew Sorenson, Chair
For the Board

EXHIBITS:

1. Application for Zoning Permit #3059
2. DRB Conditional Use Permit, Site Plan Review and Variance application including statement speaking to Bylaw provisions and large scale drawings sheets 1 through 6
3. Newspaper Public Hearing Legal Notice
4. Applicant's Posting and Adjoining Property Owner Notice Certification
5. Act 250 Schedule B Application materials including ANR 10/20/06 comments and 10/27/06 District 2 recess memo
6. Aerial ortho photo submitted by Zoning Administrator and returned to Town files
7. Copy of Town parcel map showing area gravel extraction activities submitted by Zoning Administrator at Board's request
8. Mapquest aerial photo from internet search, 3 pages
9. Board's 1/7/07 and 1/18/07 requests to applicant for additional information and applicant's response materials
10. DRB Attendance Sign-in Sheet
11. Interested Persons Record and Service List