

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

Applicants: James & Lisa Blake
422 Pond Brook Rd., West Chesterfield, NH 03466
Location of Property: 182 West St., West Dummerston, VT 05357
(Book 85, Page 701 Dummerston Land Records;
AKA: former West Dummerston Grange Building)
Application: Conditional Use Permit, Variance & Site Plan Review
Re: Zoning Permit #3130

The matter came before a duly warned public hearing of the Dummerston Development Review Board (DRB) held on May 20, 2008. The DRB conducted an exterior and interior site inspection preceding the public hearing at the Dummerston Community Center, West Dummerston, Vermont. The public hearing was continued to June 3, 2008 with the concurrence of applicants to allow them to provide additional information and for interested parties to respond. The public hearing was then adjourned, followed by deliberations and motions.

Present and participating were the following members of the Development Review Board: Patricia Jaquith, Herb Rest, Regina Rockefeller, Cynthia Wilcox and Lew Sorenson. Also present were alternate members Rick Sullivan and John Warren. In addition to the applicants, 19 citizens and the Zoning Administrator were present at the May 20th hearing and ten citizens at the June 3rd hearing, all as shown on the Attendance Sign-in sheets, Exhibits 14a and 14b, a part of this decision. Citizens qualifying as interested persons as defined by 24 VSA Section 4461 are shown on Exhibit 19.

FINDINGS OF FACT

The Board finds as follows:

1. The applicants request approval to establish mixed use of an existing building, specifically, a two unit residential dwelling unit and a home business in an existing nonconforming structure commonly known as the former West Dummerston Grange.
2. The applicants/owners applied for a Zoning Permit to establish two apartment dwellings, which was denied by the Zoning Administrator on April 2, 2008 finding that it did not conform to minimum setbacks required by the Zoning Bylaw, Section 235. Concurrently, the Zoning Administrator forwarded to the DRB the application for a Conditional Use Permit to change the use of the property to the two apartments and the installation of a new septic system and possibly a well. The application to the Development Review

Board was amended on April 23 to include a home business, hand crafted pottery to be sold through craft shows and gallery/gift shops, and a variance application for any and all nonconforming conditions. Additional application materials were received on May 8 and June 3. The requested variances include residential density, vehicular width for access to the rear of the property and sideyard setback for an existing fire escape. The sum of the application materials, supplemented by the applicants' testimony as reflected in this decision, is considered to be the proposed development for which DRB approval is requested. In cases such as parking, water supply and wastewater disposal, where the proposal has evolved, the later submittals control.

3. The applicants propose to convert the rear lower level of the structure to an apartment for their own use together with a home business consisting of potter's studio and workshop, including an indoor electric fired pottery kiln. Non-resident employees will not exceed one person and no retail activity would take place at the property. No signage is proposed. A second apartment is proposed at the front of the building with its entrance off the main level lobby, the main living and bedroom areas in the choir loft above the lobby and a second bedroom area in the attic area two levels above the lobby. New bathrooms and kitchens plumbing will be installed for the apartments connected to a new septic system; the existing bathrooms and wastewater plumbing will be decommissioned. While the applicants intend to monitor and use the existing spring supplied water source during renovations, they are prepared to have a water well drilled if needed for quality or quantity for the daily flows needed for two residential dwellings and the pottery business. State standards and approvals will apply to the continued use of the existing, and/or new, water supply system. Five parking spaces are proposed, two at the front of the building off West Street and three at the rear of the building accessed by a new driveway at the south-rear corner of the building
4. Legal notice covering the proposed development, including amendments, was given in the *Brattleboro Reformer* and by posting and notification of abutting property owners as required by statute and the Board's procedures.
5. A number of Sections of the Zoning Bylaw apply to the proposed development and the Board's consideration. Section 235 provides that a home business and "mixed use structure containing any permitted or conditional uses" in the Village District require a conditional use permit. This section also sets area (density), dimensional (width, depth and setbacks) and coverage requirements. Section 255 also requires a Conditional Use Permit for changes to non-conforming developments. Sections 620-660 set standards for off-street parking, loading, corner lot development and landscaping. Sections 720-723 set procedures and standards for Conditional Use Permits. The proposed development requires a Site Plan Review approval pursuant to Bylaw Sections 245 and 724-726. Section 728 provides for Variances and required findings.
6. The subject property is 60 feet in width with an average depth of approximately 190 feet, resulting in an area of approximately 11,500 square feet, although the property survey notes that ownership of the former West River Railroad right-of-way on the rear 25 feet is uncertain. The property slopes down from the road allowing full access to the lower level

of the building. The property is non-conforming as to size, width and depth, and the structure is non-conforming as to setbacks and coverage. Use of the approximate 40-foot by 70-foot structure has lost any “grandfathered” non-conforming use status due to non-use for period of more than one year. Water supply is via an off-site spring across West Street and wastewater is directed to a tank in the building’s basement without treatment and uncertain outlet.

7. The property fronts on West Street and Town Highway #65 runs along the southerly side of the building and in front of the abutting Post Office rented property connecting with Lyons Street. Testimony from several parties indicated that the status and future of Town Highway #65 maybe uncertain but is currently shown on the Town’s highway map and approximately 7-9 feet of the paved travel way exists on the subject property. The applicant measures a 12-foot opening between the rear corner of the subject building and the Post Office’s access ramp that extends onto the subject property and was granted a 1990 setback variance (Exhibits 14-15). Post Office parking currently constricts this driveway opening to the rear of the property and the two property owners and Post Office employees will need to work together to meet the needs of both properties.
8. The property is the former West Dummerston Grange, which went out of existence several years ago. The property was subsequently occupied by West Street Arts, which conducted theatre activities for classes and performances for children and adults, and meetings and social gatherings for about 100 people. The property and structure are important to the West Dummerston Village and its character because of its history, architecture and community use. Together with the adjacent Post Office, Community Center, Fire Station and church, it adds to the rich fabric of the Village. The Village of West Dummerston is identified in the Dummerston Town Plan for mixed uses that preserve its historic character. The applicants testify that longer range they would like to consider returning the structure to community oriented gatherings, but are not including any use of the Grange Hall in their current application. The Board finds that while this goal is consistent with the Town Plan and the Bylaw’s Village District purpose, water supply, wastewater disposal and parking are major constraints that would have to be solved to allow such use.
9. Prior Zoning permits for the property include a 1999 authorization by Site Plan Review (#2562) for a Community Center for recreational and/or cultural activities together with a Sign Permit. In 2004 a Zoning Permit was issued for a fire escape on the northerly side of the building with a greater than 30-foot sideyard setback; the actual setback is about 11-feet. A June 2006 decision of this Board denied a Conditional Use Permit application of a prior owner to establish mixed residential and community building uses on the property (Exhibit #6). A long list of unresolved issues, identified in the board’s findings, and the property owner’s inability to address them led to the denial.
10. The applicants addressed the variance requirements of Bylaw Section 728. The non-conforming parcel and structure predate Town zoning. While the property and its preservation is important to the West Dummerston’s village character, the small size of the parcel and the large size and placement of the building dictate both use and site

development options. The requested variances are the minimum needed to afford relief and are required to allow reasonable use of the property and are consistent with the neighborhood and Village District.

11. Bylaw Section 620 requires two parking spaces per residential unit, plus parking for the home business. The applicants testify that a separate loading space for the home business is not needed as material delivery will be by their personal vehicle and finished product will be sent out by personal vehicle or walking parcels to the Post Office next door. Section 631 requires that vision must not be obstructed on corner lots at street intersection areas, which precludes parking at the southwesterly corner of the property. Section 635 provides landscaping requirements and standards. The applicants testify that in addition to recently planted trees along the southeasterly rear property line, they are willing to provide decorative landscaping at the front of the property to complement the building entry walk and define the parking spaces.

CONCLUSIONS OF LAW AND DECISION

1. The requested Conditional Use Permit for a mixed use, a two unit multiple family dwelling and a home business, with the conditions below, meets the change in non-conforming use standards of Bylaw Section 255, paragraphs 2 & 3; the home business standards of Section 605; and the general and specific standards for Conditional Use Permits of Sections 721-722.
2. The proposed development, with the conditions below, meets the General Regulation standards for parking, loading, corner lot obstruction of vision, and landscaping of Bylaw Sections 620-635.
3. The proposed development, with the conditions below, meets the Site Plan Review standards of Bylaw Section 726.
4. The requested Variances for residential density, rear driveway access and fire escape setback meet, with the conditions below, the required findings of Bylaw Section 728.
5. The consolidated Conditional Use Permit, Site Plan Review and Variances are approved subject to the following conditions:
 - a. Except as modified by these conditions, the project shall be developed as set out in the application materials; where the application materials contradict, the later submittal shall control.
 - b. The applicant shall secure all State water supply, sewage disposal, fire protection and other building permits, approvals (or written verification if a permit is not required) needed for the proposed two residential units and home business of pottery production. Compliance with State requirements shall be verified to the Zoning Administrator prior to issuance of the Town occupancy permit.
 - c. The proposed home business shall be conducted as described in the permit application materials. There shall be no more than one employee, other than the occupants of the lower residential apartment, and there shall be no on-site sales or retail activity. The indoor kiln shall meet State fire safety standards. The home business shall not include exterior storage or signs (the Historic West Dummerston Grange building sign may remain).

- d. Five off-street parking spaces shall be provided as shown on the applicants' revised parking layout and site plan received June 3, 2008 including 2 spaces at the front of the building and three at the rear, provided that the two spaces at the front off of West Street shall both be located on the northerly side of the porch rather than one on either side. A driveway from Town Highway #65 parallel to the southeasterly property line shall be improved to access the spaces at the rear of the building.
- e. Prior to occupancy plumbing fixtures and the former wastewater collection system shall be decommissioned in a manner approved by the State Agency of Natural Resources and replaced by two kitchens and two bathrooms connected to a State approved water and sewage disposal system.
- f. Landscaping material shall be provided along the southeasterly property line separating the rear driveway provided above and the adjacent Post Office. Decorative landscaping shall be provided at the front of the building to help define the two parking spaces and the front entry walk. Additional low height landscaping southerly of the front porch shall be provided that precludes parking in that area while not obscuring the sight lines from vehicles on West Street and Town Highway #65.
- g. Use of the fire escape authorized by the variance shall be limited to emergency egress.
- h. Exterior lighting shall be limited to the front porch, side entry and rear entry pointing downwards and not exceeding 100 watts at any of the locations.
- i. This permit grants approval for two residential apartments and a home business as described in this decision. Approval for use of the former Grange assembly hall is specifically not included in this permit and use of that part of the structure shall be limited to incidental storage use by the owner unless and until an amendment to this permit is secured. Likewise, any change to the structure's exterior envelope by the addition of decks, porches or entries shall require a new or amendment permit by this Board.

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, Herb Rest, Regina Rockefeller,
Cynthia Wilcox and Lew Sorenson

Dated: June 22, 2008

DUMMERSTON DEVELOPMENT REVIEW
BOARD

Lew Sorenson, Chair
For the Board

EXHIBITS:

- 1) Zoning Permit Application and Site Plan & Floor Plan: 3/14/08
- 2) DRB Application and abutters parcel map: 3/14/08 from applicant
- 3) Newspaper Legal Notice: 05/01/08
- 4) 12/10/07 VT ANR letter regarding wastewater and water supply: from applicant
- 5) DRB Chair 4/08/08 email to ZA requesting clarification of application
- 6) DRB 6/2/06 Land Use Decision on application of prior owner
- 7) Applicant's Public Notice Certification
- 8) 4/23 Application amendment with supplemental information statement from applicant
- 9) 2 parcel map drawings showing setbacks and abutting parcels: 4/23/08 from applicant
- 10) Replacement Wastewater system drawing: received 5/8/08 from applicant
- 11) Possible parking capacity drawing: received 5/08/08 from applicant
- 12) "Elder resident's map of existing springs": received 5/08/08 from applicant
- 13) 2007 survey of subject property by Malcolm Moore filed with the Town
- 14) Revised parking plan and septic disposal areas: received 6/3/08 from applicant
- 15) Dummerston Land Use Decision 10/3/90 w/attachments: received 6/3/08 from applicant
- 16) Copies of deeds from Town Office: received 6/3/08 from applicant
- 17) Variance topic outline: received 6/3/08 from applicant
- 18) DRB Attendance Sign-in Sheets for May 20 & June 3, 2008
- 19) DRB Interested Person Record and Service List