

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

**Applicant:** Michael Malynowski c/o MHF Design Consultants, Inc.  
44 Stiles Road, Salem NH 03079, agent for Irving Oil Corp.

**Owner of record:** Irving Oil Corporation  
190 Commerce Way, Portsmouth, NH

**Location of Property:** 2557 West River Road (Route 30), West Dummerston, VT

**Application:** Site and Sign Plan Review & Variance from provisions of  
Section 669 (4) of the Bylaw

**RE:** **Zoning Permit #3172, December 29, 2008**

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The matter came before a duly warned public hearing of the Dummerston Development Review Board held on November 18, 2008, at 7:00 p.m., at the Dummerston Town Offices, 1523 Middle Road, Dummerston Center, Vermont. A site visit earlier that day was attended by all members of the DRB. After testimony and further inquiries of the applicant by the Board, the public hearing was recessed until December 16, 2008 at 7:00 p.m. to hear further options. On December 16, 2008 the hearing was reopened, more testimony given, and closed at 7:35 followed by deliberations and motions.

Present and participating were the following members of the Development Review Board: Lew Sorenson, Patricia Jaquith, Herb Rest, Cynthia Wilcox and alternate, John Warren. Also present were Development Review Board alternate Rick Sullivan, Acting Zoning Administrator Paul Normandeau and applicant, Michael Malynowski for Irving Oil Corporation.

**FINDINGS OF FACT**

The Board finds as follows:

1. Irving Oil Corp. is the current owner of the gasoline station on Route 30 at the base of the Village of West Dummerston and in the Village Zoning District. This is a rural, sparsely populated stretch of a scenic state highway with neighbors across the river, but few along the highway. The thickly settled West Dummerston Village abuts at the rear of the property on a bluff overlooking the West River and is thus physically separated from this site, although sharing the same zoning district.
2. Section 669(3) of the Bylaw limits non-residential use signage to one sign unless the DRB finds that more than one is necessary for the conduct of the business. Bylaw Sections 665-670 contain other standards and prohibitions for outdoor advertising signs, in keeping with adequate

identification of businesses and Dummerston's rural character. Nonresidential signs in the Village District are limited to a total of 20 square feet. Section 680, in setting standards for Gasoline or Auto Service Stations further provides that no sign shall extend beyond the pumps, nor exceed fifteen feet in height. Section 724-726 of the Bylaw set standards and procedures for Site Plan Review of signs.

3. The previous owners had installed a double sided pylon sign at the street as well as a canopy over the gas pumps with internally illuminated sign boxes and down-lit lighting for which they had received approval from the Dummerston Planning Commission in March 2002 (Permit #2736). The approval was issued contrary to the Bylaw's sign standards and without benefit of a Variance to the dimensional requirements and illumination standards.
4. The applicant applied for a zoning permit for the signage on October 28, 2008; and on the same date the Zoning Administrator denied the application finding that signs for commercial business require approval (Site Plan Review) by the Dummerston Development Review Board (Bylaw Section 665). The Zoning Administrator further noted that since the pylon sign would be smaller than the existing one, and the canopy signs the same in size, that the application would be for the additional sign on the building. The Board finds this determination incorrect, as Section 665(2) of the Bylaw requires a zoning permit approved by the Development Review Board outdoor advertising sign "before being erected, constructed or replaced . . ."
5. The applicant proposes to remove and replace the existing 77.6 sf free standing pylon sign with a new 66.1 sf free standing pylon sign in the same location as the previous one. He also proposes to keep the signage on the canopy with a change of color and name. In addition, the applicant proposes to install a new 16 sf internally illuminated sign to be mounted on the building to designate the operators of the convenience store, Circle K.
6. The applicant testified on November 18<sup>th</sup> that the reason for requesting the Circle K sign on the building was that the operators of the convenience store were a different business entity from the operators of the gasoline station (Irving); and they want their own identification visible for customers. He further testified that the pylon sign would be lower in height and smaller in area than the current sign and will remain at the same site; the planter box below the sign will remain; the illuminated areas would be reduced; and the price change signage area would be lit with LED lights. He also testified that the canopy signs would not change except for the color of the fascia and the name of the oil company. The exact dimensions and configurations were presented on the Exhibit #1 Site plan, and on the Exhibit #5 Four- page Color Signage Plans.
7. Although the signage and lighting at this gas station has been permitted since 2002, there have been recent complaints of light pollution from neighbors across the West River about this and other properties on Route 30. With this and the proposed changes in mind, the Board found the proposal not to be in conformance with Dummerston's rural character nor with the character of the Village District and, therefore, asked the applicant to come back to a reconvened hearing in December with some alternate design and lighting options for all the signs, to which the applicant agreed. Specifically, Section 670(4) of the Bylaw prohibits internally illuminated signs and the board wished this to be addressed by redesign. Since the square footage of signage requested is greater than what is allowed by Section 669(3) in the Rural Commercial District which this property abuts, and this allowance is greater than that allowed in the Village District, the applicant was asked to propose a significant reduction in square feet of signage as well.

8. On December 16<sup>th</sup>, at the reconvened Public Hearing, the applicant submitted a new set of signage designs for the pylon sign, the canopy signs and the Circle K sign on the building referenced as revision #2 dated 12/03/08 of the “Proposed Exterior Brand Upgrade” prepared for Irving Oil by MHF Design Consultants. (Exhibit #8). The pylon sign has been redesigned to be a stucco-covered structure with wood trim crown moldings carrying three signs on each side. In the upper section, there would be 12” cast aluminum letters and chevrons designating the Irving logo. Below that to the left would be a 3’x3’ Circle K logo, and to the right, an area in which to place a manual price changer. The height of the sign is 6’10”, the width of the top section 6’2” and width of the lower section 9’10”. It would still be located in the existing planter box; and will be externally illuminated with lights directed downward. Total proposed square footage of signage on this sign is 54 sf. The fascia of the canopy will be replaced with a blue one with a red horizontal line. The existing canopy signs will be changed to “Irving”; and while the revised plans continue to show internal illumination, the applicant agrees in testimony to de-electrify these signs. There is a notation for proposed light upgrade under the canopy as well as 1’x2’ pump-top promotional signs on each of the two pumps. The Circle K sign for the building will also be externally illuminated only by the down lighting currently in the soffit the building.
9. The Notice of the Public Hearing was properly posted on the property and so certified at the opening of the hearing on November 18<sup>th</sup>. Subsequent to that part of the hearing the Notice was temporarily removed; however it was replaced in a timely manner including notation of the continued Public Hearing, and so re-certified by the applicant. The board finds this notice defect to be non-substantive, and should not invalidate the proceeding. [24VSA4444(d)]

### **CONCLUSIONS OF LAW AND DECISION**

1. The Board concludes that the re-designed signage with the conditions enumerated below is compatible with its rural setting and with adjacent uses along Route 30. Specifically the applicant’s elimination of all internally illuminated signage, the reduction of the height of the pylon sign from 17’9” to 6’10”, and the square footage from 77.6 sf to 54 sf, constitutes a substantive effort to comply with the DRB request to redesign their signage to be in keeping with Dummerston’s rural character, and to reduce the light pollution emanating from this site. The Board further concludes that the previous Sign and Site Plan approvals by the Dummerston Planning Commission and Zoning Board of Adjustment for this property dating back to 1973 and continuing in 1979, 1985, 1988, 1993, 1994 and 2002 make absolute compliance with Section 669(4.) unreasonable, and therefore a Variance to allow this reduced signage is warranted and is hereby approved.
2. The Board asks the planning Commission to review and clarify the signing dimensional requirements and standard with its next Bylaw update.
3. There are no changes to the vehicular circulation, parking or landscape screening from those formerly approved by the Planning Commission.
4. Sign and Site Plan application for Zoning Permit #3172 is therefore approved with the following conditions.

- a. All signage shall comply with the plans as revised 12/03/08 and presented to the DRB on December 16, 2008, including size limitation, dimensions, materials, color schemes and exterior illumination.
- b. Final design of external lighting of the pylon sign shall provide only the minimum illumination to afford adequate nighttime identification, and be downward directed from the top of the sign. This performance standard shall be reviewed and administered by the Zoning Administrator and returned to the Board if needed for conflict resolution.
- c. Plantings in the planter box below and in front of the pylon sign shall be of trailing varieties, be they shrubbery or flowering plants.
- d. The Circle K sign on the building shall be located so as not to dislocate the current Bulletin Board (which shall be retained) and shall have no further illumination or intensity than what is currently available in the soffit.
- e. There shall be no advertising signs in the windows, on the building, or on other locations of the property beyond that specifically authorized by this permit. Hours of operation may be posted at the door.
- f. All of the Circle K signs shall be made of cast aluminum or wood, and have a matte rather than gloss reflective finish.
- g. The electrification of the canopy signs shall be removed. There shall be no increase in under canopy illumination beyond that authorized installed as part of the prior permit.

Dated: January 5, 2009

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

Lew Sorenson, Pat Jaquith, Cynthia Wilcox, Herb Rest and John Warren

DUMMERSTON DEVELOPMENT REVIEW BOARD

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Cynthia Wilcox, Vice Chair  
For the Board

## **EXHIBITS:**

1. Application for Zoning Permit #3172 including site plan dated 9/2/08 by MHF Design Consultants for Irving Oil Application for Development Review Board approval of Variance and Sign Plan dated Mach 16, 2006.
2. DRB Application 3172 dated 10/28/2008.
3. Newspaper Legal Notice
4. Applicants' Certification of Notice (part A)
5. 4-page color signage plans (pre and post- ownership pictures)
6. Interested party list
7. Applicants' Certification of Notice (part B)
8. Revised Site/Sign plans - revision dated 12/03/08