

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

**Applicant:** Sandri Realty, Inc.

400 Chapman St., Greenfield, MA 01301

**Owner of record:** William A Sandri

**Agent:** Mike Behn, [MBehn@Sandri.com](mailto:MBehn@Sandri.com)

**Location of Property:** 2536 US Rt. 5 (Calvin Coolidge Memorial Hwy), Dummerston, VT

**Application:** Conditional Use Permit, Sign Permit and Sign Plan Review & Variance from Building Setback requirements

**RE:** Zoning Permit Application #3283, September 13, 2011

The consolidated application came before a duly warned public hearing of the Dummerston Development Review Board on October 18, 2011, at 7:00 p.m., at the Dummerston Town Offices, 1523 Middle Road, Dummerston Center, Vermont. A site visit preceding the public hearing was attended by participating members of the DRB: Chairman Herb Rest, John Warren, Cindy Wilcox, and Alternates Jack Lilly and Rick Sullivan. Attending for the applicant were Richard Marck, Paul DeCarlo, Mike Behn and Jim Marchionno. Six members from the public were also in attendance as reported on Exhibit #4a. After applicant presentation, testimony and further inquiries of the applicant by the Board, the public hearing was recessed until December 20<sup>th</sup> at the request of the applicant to allow revision of their proposal.

On December 20, 2011 at 7:10 the hearing was reopened. DRB member Lew Sorenson was seated in place of Cindy Wilcox, without objection after he explained that he had reviewed the application materials and testimony of the October meeting and viewed the site. Other participating Board members were Chair Herb Rest, John Warren, and Alternates Rick Sullivan and Jack Lilly; Board member Pat Jaquith attended as a non-voting member. Applicant representatives and members of the public in attendance are shown on Exhibit #4b. After extensive applicant testimony, questions from the Board, and public testimony, the hearing was closed at 9:45 allowing for a 7-day period for submittal of any final written materials, and was then followed by deliberations and motions.

**FINDINGS OF FACT**

The Board finds as follows:

1. The subject property consists of a nonconforming irregular parcel of 1.8 acres in a Rural/Commercial Zone with about 620 feet frontage on US Rt. 5 and a maximum depth

of about 155 feet. The parcel is a remnant of land left between Rt. 5 and I-91 after construction of the interstate highway. At its deepest part, the parcel is at the approximate level of Route 5 and is currently occupied by a gas station that predates Dummerston's zoning and a convenience store. The land use, building and signage are also nonconforming to zoning standards. A National Grid electric transmission line traverses the property in a north-south direction roughly parallel to the highways limiting site development options. The site is at the north edge of the Town of Dummerston adjacent to I-91 Exit 4 southbound ramps. It is approximately 500 feet from the Town of Putney and served by Putney Village water and wastewater systems.

2. On September 13, 2011 the applicant applied for a zoning permit to upgrade its 2,904 sq. ft. retail fuel and convenience store, add a 924 sq. ft. cooler and freezer to the structure, update restrooms, add a Dunkin Donuts Coffee shop inside the building, and upgrade heating/air conditioning systems, fixtures and interiors. The site plan also included drive-thru service, signage and lighting for Dunkin Donuts. On September 27<sup>th</sup> the Zoning Administrator denied the permit, finding that it required a conditional use permit, site plan approval, sign approval and variance for additional development within the building setback area from Route 5. The applicant concurrently applied to this Board for these approvals. After the October 18<sup>th</sup> hearing and during the December 20<sup>th</sup> continued hearing the applicant submitted revised application materials addressing signage and traffic flow. Following the December 20<sup>th</sup> hearing, the applicant submitted additional revised signage materials as well as State transportation and utility permit information. These findings, conclusions and decisions relate to the project with all revisions to date.

3. This land development has been the subject of a number of prior permits and deliberations:

- Conditional Use Permit for gas station and retail store – 3/28/1988
- Conditional Use Permit for canopy over gas islands and pumps – 7/27/1988; together with Site Plan Approval requiring elimination of canopy signage – 8/1/1988 (#1020)
- Zoning Permit for repair and replacement of bay door with glass door – 11/23/1993 (#2254)
- Variance, Site Plan and Sign Permit for 24”x72” “Mike & Terry – 24 hour” sign on north side of store with conditions that extra signage be removed and a sign inventory be submitted to the Zoning Administrator – 1/17/1995 (#2310)
- Conditional Use Permit for replacement and reconfiguration of pump islands and fuel dispensers (sign inventory required above submitted as part of this proceeding documenting 12 signs in violation) – 11/19/1997 (#2476)

These permits are further documented in Exhibit #5.

4. A number of Dummerston Zoning Bylaw sections are applicable to this consolidated application:

- a. Land Use: Section 225, Rural Commercial District, provides for conditional use

including “retail stores (including gas station)” and restaurants. Bylaw Article VIII, provides a definition for restaurant as a place where meals can be purchased and eaten inside, but excludes drive-in, drive-up or drive thru service. Retail store is defined as a “shop or store for the sale of goods, commodities, products or services . . . . This shall exclude drive-in service, free-standing retail stands, gasoline service . . . .”

b. Dimensional standards: For commercial uses in the RC district the bylaw (Section 225) requires a lot area of 4 acres, minimum width and depth of 300 ft., maximum building size of 15,000 sq. ft. and height of 35 ft., and maximum building/parking coverage of 35%. At the time of application the minimum setback requirements were 100’ from the front property line and 50’ from side and rear property lines. However, the minimum setbacks have recently been amended as part of a town-wide zoning update and are currently 25’ from the right-of-way and 40’ from all other property lines.

c. Signage: 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. Section 670 prohibits the erection or maintenance of internally illuminated signs and signs located as to be readable primarily from a limited access highway. Section 665 requires a zoning permit approved by the DRB for signs. Section 670 specifically provides that *“No On-premise sign may be erected or maintained along a highway and visible from the highway, which . . . is internally illuminated or is . . . located as to be readable primarily from a limited access highway . . . or within one hundred fifty (150) feet of any intersection”*. 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.

d. Gasoline station site standards: Section 680 item (5) limits access drives to two and maximum width to 40 ft. Item (6) requires a curbed landscape area maintained at least 5ft along street frontages.

e. Parking and loading standards: Sections 620 and 625 require for commercial uses one parking space per 200 sq. ft. of floor area and one loading space for up to 10,000 sq. ft. with the option of additional spaces upon determination of the DRB.

f. Landscaping standards: Section 635 requires for a commercial use a maintained landscaped area at least 15’ in width in the front, side and rear yards unless waived by the DRB.

g. Performance standards: Section 660 includes standards prohibiting any use that has: lights or reflections which constitute a nuisance to other property owners or a detriment to the public; wastes or refuse that have an undue burden on town facilities; or a fire, safety, explosion or other hazard endangering property owners or burdening town facilities.

h. Nonconforming use or structures: Section 255 provides a nonconforming use or building may be altered or extended upon a DRB finding that the changes will not be more detrimental or increase the degree of nonconformity.

i. Conditional Use, Site Plan & Variance standards: Bylaw Sections 720-728 set out procedures and standards for the review and approval of this consolidated application.

5. In addition to the technical aspects of the proposed development, the applicant testified to their desire and intent to upgrade the property and business to a level that they, and the community, would be proud of. The station dates from the 1960s and little renovation has

been done to the building itself. The applicant's agents expect substantially more business after the currently proposed upgrades and addition of the Dunkin Donuts tenant.

6. Testimony was received from a number of neighbors and citizen as shown on the attendance lists for the two meetings. Two letters were received from area property owners, Exhibit 17 & 18. Concerns included signage, traffic impacts (including the lack of traffic volume data for this specific location), increased crime, drive-thru, vehicle idling, alcohol sales, lighting, energy use, pollution, wildlife impacts, and variance standards.

7. Written testimony was also received from the Dummerston Planning Commission, the Dummerston Conservation Commission and the Dummerston Energy Committee, Exhibits 13,14 &15. The Dummerston Selectboard's Anti-Idling Resolution was also received, Exhibit 16.

8. The applicant's traffic analyst indicates that 2010 traffic volume on Route 5 in the area about 0.4 miles south of the site is 3,400 vehicles per day . Based on general studies, not specific to this site, the gas station/convenience store is estimated to generate about 1,302 trips per day with a morning/evening peaks of 80-100 trips per hour. The addition of a Dunkin Donut tenant is expected to add about 870 trips per day, with morning/evening peaks of 42-110. The effect of the proposed development is that it will be a major, if not the greatest traffic generator for this section of highway. The traffic analyst looked at traffic conflicts at the driveway entrances to the site, and on the site between the several development functions. The Board finds that this is of particular concern as pedestrians, vehicles at the car fueling dispensers, convenience store patrons, drive-thru patrons and heavy trucks maneuvering to the diesel fueling dispenser will have multiple conflict points. While vehicle speeds will be low, the site lacks the space and flexibility of layout for these competing activities.

9. The existing building has a setback of 10' from the Route 5 right-of-way. Nearly all of this setback area along the building is occupied by a raised walk that provides access to the building's restrooms. The proposed building addition's footprint will extend into the setback area to the same extent as the present building. The addition will increase the square footage within the amended bylaw's reduced setback area from 450 to 660 square feet. Other variance considerations are the lack of depth of the property, the National Grid transmission line easement, and the fact that the parcel is a remnant left from the public's acquisition of the Interstate right-of-way. The lack of building setback is mitigated by a wide right-of-way for the highway that is currently unused for travel lanes or shoulder.. However, the setback variance is aggravated by use of the remaining setback area as well a part of the public right-of-way for the proposed drive-thru lane and vehicle stacking area. While the Vermont Agency of Transportation's Utility and Permits Unit indicates that they have no problems with the development, their "1111 permit" will be required for work within the right-of-way, Exhibit 8.

10. The applicant's revised site plan (11/30/11) shows a total of 13 parking spaces. The zoning bylaw requires one per 200 square feet or 19 spaces, plus one loading space. The applicant attempts to satisfy the deficient spaces by counting the eight spaces at the fueling dispensers. The site plan also shows the existing two 48' entrance/exit driveways and the applicant proposes to modify the southerly drive to improve on-site vehicle circulation. The Board finds that the northerly drive can also be modified to no more than 40' width and configured to calm entering traffic.

11. The applicant's revised site plan indicates a landscaped strip on the west and south sides of the building and within the highway right-of-way. Grass areas are shown on open areas at the north end of the site and along the interstate right-of-way. The Board finds that the drive-thru stacking lane preclude the required 15 ft. landscaping in the setback area at the front of the property. A similar condition exists for the paved area adjacent to the westerly fuel dispensers but the absence can be mitigated if the paving next to the fuel dispensers is reduced to the edge of the canopy to allow 5 feet of landscaping. The Board further finds that landscaping appropriate to the site and at least 15 ft. in depth can be accommodated in all other areas surrounding the development.

12. The applicant's revised plan calls for the retention of the under canopy lights and a pole light near the diesel fuel area. Motion detecting security lights will be installed at the building's secondary entrances and there will be downwash lights on the north face of the building.

13. The Board finds that signage at this development is greatly excessive, although we acknowledge that the applicant has offered to remove most of the signs in violation of the zoning regulation. However, even without the signs related to the proposed drive-thru, the remaining interstate pylon sign, the gas price signs and the proposed Dunkin Donut building surface sign total to 186 square feet, more than three times the allowed 50 sq. ft. limit. No variance for the additional signage has been requested. The Board further finds that in considering signage for Dummerston's other highway oriented gas station/convenience store (permit #3172) it has required the replacement of the elevated internally illuminated pylon sign with a smaller roadway level monument sign with external lighting. The Board finds that similar signage can be implemented at this site and provide adequate identification.

14. The Board finds that Eva Greene, Ramona Lawrence, and the Town of Dummerston through its Planning Commission, Conservation Commission and Energy Committee, meet the criteria for "interested parties" as provided in 24VSA, Section 4465(b).

## **CONCLUSIONS OF LAW AND DECISION**

1. The Board concurs with the applicant on the need for general upgrading of this

development. In spite of the history of reviews and permits for this use, it remains out of conformity with many of the standards of the Town's zoning. This is particularly the case with signage and more should be done as part of the current upgrade to bring the signage into conformity. There has been a history of a variety of signs displayed in violation of Town zoning, and the large Sunoco pylon sign, while predating zoning, exceeds by itself the size limitations for the property, can be viewed from the interstate from approximately one mile in each direction and fails to meet the requirements of Bylaw Section 670. The Board finds that if an additional sign is to be installed to identify the Dunkin Donuts tenant, the development's total signage including the interstate pylon sign should be considered as part of the property upgrade.

2. The proposed drive-thru feature of this application is problematic in a number of aspects and contrary to the bylaws provisions. The Board finds that the drive-thru should not be authorized based on the following:

- a. Bylaw provisions that preclude drive-thru facilities. The applicant argues that the bylaw language simply excludes drive-thru facilities from the definition of retail stores and their proposed Dunkin Donuts is neither a retail store nor a restaurant. While the Board agrees that the definition and prohibition of drive-thru facilities should be more clearly articulated, the Board does not concur with the applicant's interpretation and finds it contrary to the intent of the bylaw. Further, if the proposal is not a "retail store", it would not fit any of the other uses that are permitted or conditional in the Rural Commercial district, and therefore would not be allowed even with DRB approval.
- b. The drive-thru proposal includes signage that further exceeds the square footage limits and is illuminated contrary to the bylaw.
- c. The drive-thru utilizes an access and stacking lane that aggravates the requested building setback variance by using the remaining front yard area for development purposes.
- d. The drive-thru requires use of non-owned property, the public right-of-way of Route 5.
- e. The drive-thru adds to on-site traffic congestion and traffic conflict points.
- f. The drive-thru is contrary to Dummerston's Anti-Idling Resolution.

3. If the site is used in the manner proposed, unnecessary additional congestion will result and vehicle-vehicle and vehicle-pedestrian conflicts will increase. If the drive-thru feature is eliminated these problems will be minimized and an additional parking space and a loading space can be accommodated in the currently designated parking areas. The additional 5 required spaces could be provided at the northerly end of the paved area beyond the diesel dispenser. While the distance from the store is greater, and potential vehicle-pedestrian conflicts added, these spaces could be designated for employee use.

4. The Board concludes that if the proposed development is modified as specified in 1-3 above, and with appropriate conditions, the application will conform to the Conditional Use Permit standards of Bylaw Sections 720-722. The Conditional Use Permit is therefore approved subject to the following conditions:

- a. The drive-thru portion of the proposed development be eliminated.

- b. The north driveway and paved area west of the canopy be modified as described in Finding 11.
- c. Off street parking be increased to 19 spaces, with one additional loading space as required by Bylaw Section 620-625.
- d. Landscaped areas be increased as required by Bylaw Sections 625 & 680 and described in Finding 11.
- e. All outside lighting be shielded and directed downwards to minimize light spill.
- f. Revised Site Plan and Sign permit applications be submitted for DRB review and approval.

5. The Board concludes that, with the Conditional Use Permit conditions above, the requested variance to the setback from Route 5 meets the requirements of Bylaw Section 728 and the Vermont statute. The variance is approved.

6. The Board concludes that, with the Conditional Use Permit conditions above, the requested Site Plan approval meets the standards of Bylaw Section 726 and is approved subject to the following condition:

- a. Within 30 days of the date of this decision the applicant submits a modified site plan consistent with the with Conditional Use Permit conditions enumerated above.

7. The Board concludes that the requested Sign Permit can not be approved at this time as it requires a further variance that has not been requested. However, the Board will reconsider and re-notice the Sign Permit application if the applicant within 30 days of this decision submits revised sign plans as outlined in Finding #13 and Conclusion #1, which may be accompanied by a limited variance application if the revised signage for the property exceeds 50 sq. ft.

8. The Board asks the Planning Commission to review and clarify the bylaw language for uses and related definitions related to gasoline stations, restaurants, retail stores and drive-thru business with its next bylaw update.

Dated: January 4, 2012

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.

Herb Rest, John Warren, Jack Lily, Rick Sullivan and Lew Sorenson

DUMMERSTON DEVELOPMENT REVIEW BOARD

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Herb Rest, Chair  
For the Board