

Application for Conditional Use Permit for Home Business

TOWN OF DUMMERSTON

Development Review Board

Application for Conditional Use Permit for Home Business Findings and Decision

Applicant: Zachary and Kelley Grover
Mailing Address: 141 Prospect View Drive, Dummerston, VT 05301
Location of Property: 141 Prospect View Drive, Dummerston, VT 05301,
Parcel # 295
Owner of Record: Zachary and Kelley Grover
Application: For Home Business
Permit Application #3539
Date Received: 2/20/19

INTRODUCTION AND PROCEDURAL HISTORY

1. This proceeding involves review of an application for conditional use for Home Business in a Conservation District submitted by Zachary and Kelley Grover.
2. The application was received on February 20, 2019.
3. On March 20, 2019 notice of a public hearing was published at the municipal clerk's office and the Commons newspaper.
4. Notice of a public hearing was mailed to the applicant and the following abutters of Zachary and Kelley Grover, Dummerston, VT.
 - Haydock Roger, P.O. Box 1052 Brattleboro, VT 05302
 - Garelli Joseph & Jolene, 9 Prospect View Drive, Dummerston, VT 05301
 - Green Jill, 73 Prospect View Drive, Dummerston, VT 05301
 - Freese Cassandra, 53 Dummerston Station Rd., E Dummerston, VT 05346
 - School of Theology at Claremont, 1325 North College Ave., Claremont, CA 91711
 - Crockett Larrimore C & Ellen T, 194 Prospect View Drive, Brattleboro, VT 05301
 - Jaquith, Frances & Patricia & Kirsten, Carrasquillo Andrea; Schneider, Alison, 379 Shepherder Hill Rd, Kalispell, MT 59901

5. A site visit was made to 141 Prospect View Drive, Dummerston VT on April 23, 2019.

6. The application was considered by the Development Review Board at a public hearing on April 23, 2019. The Development Review Board reviewed the application under the Town of Dummerston Zoning Bylaw, as amended March 28, 2018.

7. Present at the hearing were the following members of the Development Review Board

- Alan McBean, Chairman
- Cami Elliott
- Patty Walior
- Dennis Mewes
- Chad Farnum
- Jen Sargent

8. Present at the hearing were the following persons:

- Roger V. Jasaitis, Zoning Administrator
- Michelle and Steven Grover
- Carl Noe
- Jill Green
- Brian Tyler
- Dan Tyler
- Roger Haydock
- Joe and Jolene Garelli
- Kelley and Zachary Grover
- Ed Anthes
- Mary Ellen Copeland
- Paul Dery

9. During the course of the hearing the following exhibits were submitted to the Development Review Board:

- A. Jill Green email sent to Dummerston Zoning Board dated 1/17/19
- B. Larrimore and Ellen Crockett letter sent the Dummerston Zoning Administrator dated 4/11/19
- C. Aboveground Storage Tank (AST) Routine/New customer inspection Checklist dated February 13, 2019.
- D. Jill Green letter to the DRB dated 4/23/19
- E. Dummerston Conservation letter to the DRB dated 4/22/19
- F. DRB checklist
- G. DRB attendance sign-in sheet dated 4/23/19.

FINDINGS OF FACT

Based on the application, testimony, exhibits, and other evidence the Development Review Board notes the following:

1. This is an application for a conditional use permit for a Home Business as defined by section 605 of the Dummerston Zoning Bylaw.
2. Sections 205 Conservation District and 605 Home Business were considered in deliberations.
3. The business, Grover Services, is located at 141 Prospect View Drive, Dummerston, VT, a Conservation District.
4. Type of business conducted:
 - a) Property Maintenance
 - b) Excavation
 - c) Trucking
 - d) Landscaping
 - e) Firewood Processing
5. Grover Services employs 4 people who are not family members.
6. Business Hours of Operation: Monday through Friday. Employees arrive approximately 6:30 A.M. and typically leave for the job site at 7:00 to 7:30 A.M., returning to the yard at approximately 4:30 to 6:00 P.M.
7. During hours of operation dump trucks, excavating equipment on trailers, company pickup trucks and employees arrive and leave the business yard. Some days this activity occurs multiple times.
8. The business has 7 pieces of equipment and 7 trailers including but not limited to dump trucks, pickup trucks, equipment trailers and excavating equipment.
9. There are 2- 275 gallon fuel storage tanks on the property. Barrows Fisher Oil Co. inspected one tank and found it to be in compliance with State regulations. Refer to exhibit C.
10. The site visit on 4/23/19 revealed storage containers, a salt storage shed, excavation landfill and a firewood business. It was determined that no permits had been previously issued for any of the above.
11. Storage of material on the property includes but is not limited to: plastic drain pipe, culverts, lumber, mulch, salt, gravel and firewood in both log length and processed.
12. Salt is stored in an unpermitted shed on an asphalt pad.
13. Neighbor Jill Green testified that she feels that the operation of such a business in a Conservation District has changed the character of the neighborhood. She sited truck traffic, idling equipment, loading and unloading of material, noise, vibration, a bright light on an equipment shed facing her house and well water contamination caused by the altering of the landscape as contributing factors. She submitted exhibits A and D and does not support the application.

14. Neighbor Joe Garelli testified that Grover Services has not changed the character of the neighborhood and that they have been good neighbors. They support the application.
15. Mary Ellen Copeland read a letter from the Dummerston Conservation Commission outlining their concerns over the environmental impacts that have taken place and that the establishment of such a business in a Conservation District does not fit into the intent of the Zoning Bylaw. They do not support the application. Refer to Exhibit E.
16. Neighbors Larrimore and Ellen Crockett submitted a letter to Zoning Administrator Roger Jasaitis dated 4/11/19. They support the application and are thankful for all that Grover Services does for them. Refer to Exhibit B.

DECISION

The Town of Dummerston Bylaw section 605 contains 7 criteria. All must be met before a conditional use permit for Home Business can be granted.

The Criteria:

- # 1 states that the home business shall be carried on by members of the family living on the property. Therefore, #1 has been met.
- #2 states that a business may only have 3 employees who are not part of the family. Therefore, the application does not meet criteria #2 for a Home Business.
- #3 states the Home Business shall be carried on within the principal or accessory structures of their residence. Therefore, the application does not meet criteria #3 for a Home Business.
- #4 states that storage of materials shall be permitted only if in character with the neighborhood. Therefore, the application does not meet criteria #4 for a Home Business.
- #5 states that objectionable circumstances such as noise, vibration or glare shall not be permitted. Therefore, the application does not meet criteria #5 for a Home Business.
- #6 states that no traffic shall be generated by such home industry in greater volumes than would normally be expected in the neighborhood. Therefore, the application does not meet criteria #6 for a Home Business.
- #7 states that parking shall be provided off street and shall not be located in front yards except for the first 2 cars. Therefore #7 has been met.

The Board has determined that such a business does not fit the purpose or description of a Conservation District as laid out in the Bylaw. Section 205 states: The priority and purpose of the conservation area is to maintain large tracts of undeveloped land, much of which is forested, that has wildlife habitat, watershed, conservation corridor and other natural resource values. To this end, permitted land uses in these areas should be limited primarily to forestry, agriculture, low density residential and accessory uses to the permitted uses on the same lot.

The Development Review Board requested that ZA, Roger Jasaitis follow up on Act 250 requirements. The results of this inquiry are that the State District 2 Coordinator, Stephanie Giles, considers this parcel to be out of compliance: " The construction of improvements for a commercial purpose on more than 10 acres of land requires an Act 250 permit." She will be issuing a Jurisdictional Opinion (JO) on this activity that will be binding on the property owner.

The Development Review Board requested that ZA, Roger Jasaitis follow up on the firewood business regarding State exemptions for forestry operations. The results of this inquiry are as follows:

The State Statutes that regulate this activity are as follows:

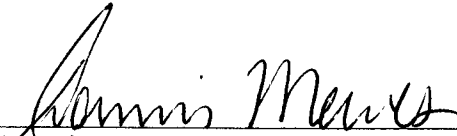
1. 24 V.S.A. § 4413 Limitations on municipal bylaws; (d)(1) A bylaw under this chapter shall not regulate: (C) forestry operations.
2. (2) As used in this section: (B) "Forestry operations" has the same meaning as in 10 V.S.A. § 2602.
3. 10 V.S.A. § 2602. Definitions:
 - (5) "Forest product" mean logs; pulpwood; veneer; bolt wood; wood chips; stud wood; poles; pilings; biomass; fuel wood; maple sap; or bark.
 - (6) "Forestry operation" means activities related to the management of forests, including a timber harvest; pruning; planting; reforestation; pest, disease, and invasive species control; wildlife habitat management; and fertilization. "Forestry operation" includes the primary processing of forest products of commercial value on a parcel where the timber harvest occurs.

The Zoning Administrator considers that in order to be exempt from Zoning Permitting the processing of the "Forest Product" i.e. firewood (fuel wood) needs to be on the parcel where the timber is harvested. This activity needs a Zoning Permit if it is of a commercial nature occurring on a parcel that the timber was not harvested on.

At the conclusion of deliberations, a motion was made and seconded to deny application #3539 for a Home Business permit in a Conservation District. Board members agreed that a yes vote would signify a denial of the application. The resulting vote was 6-0 in favor of denial.

The following members of the Dummerston Development Review Board participated and voted in this decision. The Decision is subject to appeal as provided by Vermont statutes. Alan Mc Bean, Cami Elliott, Dennis Mewes, Patty Walior, Jen Sargent and Chad Farnum.

DUMMERSTON DEVELOPMENT REVIEW BOARD



Dennis Mewes

Dated: May 29, 2019