

TOWN OF DUMMERSTON

Development Review Board

Conditional Use and Site Plan Review Application Findings and Decision

Permit Application Number: 3665

Date Received: October 27, 2021

Applicant: Pike Industries, Inc.

Mailing Address: 346 Avenue A, Williston, VT 05495

Location of Property: Parcel 857, 354 Old Ferry Rd., Dummerston, VT

Owner of Record: Allard Lumber Co.

Application: Conditional Use Application and Site Plan Review for Temporary Asphalt Processing Facility.

Date of Hearing: December 14, 2021

INTRODUCTION AND PROCEDURAL HISTORY

1. This proceeding involves review of an application for a Conditional Use and Site Plan Review for a Temporary Asphalt Processing Facility under the Town of Dummerston Zoning Bylaw sections 720 and 724.
2. On November 23, 2021, notice of a public hearing was published in The Commons.
3. On November 24, 2021, notice of a public hearing was posted at the following places:
 - The Dummerston Town Office.
 - The West Dummerston Post Office.
 - The Dummerston School.
4. On November 29, 2021, notice of a public hearing was posted at the following place: 354 Old Ferry Rd., which is within view of the public-right-of-way most nearly adjacent to the property for which the application was made.
5. On November 24, 2021, a copy of the notice of a public hearing was emailed to the applicant.
6. On November 24, 2021, a copy of the notice of public hearing was mailed to the following owners of properties adjoining the property subject to the application:
 - a. Howe Robert W, Allyson M, Marilyn E Melissa E, 548 Old Ferry Rd, Dummerston, VT 05301
 - b. Jet Gas Inc, 11098 Clyde Savannah Rd, Clyde, NY 14433
 - c. Jillson Maralyn, 28 Wheeler Rd, Dummerston, VT 05301

d. Windham Solid Waste District, 327 Old Ferry Rd., Brattleboro, VT 05301

7. The application was considered by the Development Review Board (DRB) at a public hearing on December 14, 2021.
8. The Development Review Board reviewed the application under the Town of Dummerston Zoning Bylaw, as amended May 22, 2019.
9. Present at the hearing were the following:
 - a. Members of the Development Review Board:
Cami Elliott , Alan McBean, Chad Farnum
 - b. Others:
Jim Manley (Applicant, via Zoom), Roger Jasaitis (Zoning Administrator).
10. A site visit was conducted on December 11, 2021.
11. Present at the site visit were the following:
 - a. Members of the Development Review Board:
Chad Farnum, Natalie Pelham-Starkey, Cami Elliott, Alan McBean
 - b. Others:
Jim Manley (Applicant), Cliff Allard (Owner), Roger Jasaitis (Zoning Administrator).
12. During the course of the hearing the following exhibits were submitted to the DRB:
 - a. Application for Zoning Permit, number: 3665.
 - b. Application to the Development Review Board for a Conditional Use Permit and Site Plan Review, number: 3665.

FINDINGS OF FACT

Based on the application, testimony, exhibits, and other evidence the DRB makes the following findings:

1. The applicant seeks a Conditional Use permit for a Temporary Asphalt Processing Facility, to be used for the period of 2 years for the reconstruction of Vermont Route 9 in Brattleboro and Marlboro, under the Town of Dummerston Zoning Bylaw section 720 and 724. The subject property is a 30.5 acre parcel located at 327 Old Ferry Rd., in the Town of Dummerston (tax map parcel no. 000857). The property is more fully described in a Deed recorded at Book 92, Page 44, in the Town of Dummerston Land Records.
2. The property is located in the Commercial / Light Industrial District as described on the Town of Dummerston Zoning Map on record at the Town of Dummerston municipal office and Section 220 of the Zoning Bylaw.
3. Condition Use approval is requested for the Change of Use as that term is defined in Article VIII, Page 3, of the Zoning Bylaw. The application requires review under the following sections of the Town of Dummerston Zoning Bylaw:
 - a. Article VII, Section 720 Development Review Board.

b. Article VII, Section 724 Site Plan Approval.

4. Jim Manley (Applicant) gave an overview of the project. He stated that Pike Industries, Inc. request a Conditional Use permit for Temporary Asphalt Processing Facility.
5. This request is related to the project that Pike Industries is undertaking to reconstruct VT Rt. 9 in Brattleboro and Marlboro beginning in the spring of 2022.
6. The facility will consist of tanks, silos, conveyors and mechanical devices that move products around and stockpiles of the various materials used in the manufacture of the product.
7. The facility will process stone, sand, and ground asphalt from the project and related material from local sources and West Lebanon, NH.
8. Trucks will come in and out of the site to pick up the asphalt in a “lollipop” fashion, arriving and leaving by the same road in and out of the quarry area.
9. The trucks will come and go during the day depending on the construction schedule.
10. The applicant stated the State Agency of Natural Resources, Air Quality Division has issued an Air Quality Permit for the Plant. The Permit conditions fuel and production limits for the plant. As well as addressing dust, odors and emissions and any concerns by the public.
11. The haul road and production area will be coated with recycled asphalt pavement from the project to keep the dust or mud to a minimum. This product will be left after the project is complete.
12. The applicant stated that a traffic analysis has been completed and that the project falls below the requirements of VTRANS for any traffic mitigation. VTRANS will monitor the project through ACT 250. There is a recommendation to put some signage or signals on Old Ferry Rd. where the truck traffic enters and exits. Also to cut back some vegetation for better visibility. Paint will be used to delineate entrance and exit lanes onto Old Ferry Rd..
13. They anticipate 100 truck trips per day (100 in and 100 out) to support the paving. Also on an “as needed basis” an extra 50 trucks (50 in and 50 out) for resupply of product and 20 vehicle trips for employees and workers.
14. The quality control testing facilities (trailers) will be on site.
15. The applicant stated that the time of truck operations will be under the Allard State Act 250 permit from 7:00am to 5:00pm. Workers will arrive before 7:00am to “warm up” the plant and be on site from 6:00am to 6:00pm. The first trucks may arrive as early as 6:30am to queue up.
16. Most of the trucks are contracted local truck owners.
17. There will be no night operations.
18. The project is anticipated to start in April 2022 and run through November 2022. There is a chance that the project will run over into 2023 depending on the circumstances and weather. The application under consideration is for a 2 year period, “just in case”.
19. Lighting will be minimum at night for security purposes. There will be no tower work lights.
20. There are no liquid or solid wastes generated by this process. There will be hazardous waste kits on site for any fuel spills. There will be “roll off” containers for recycling and trash.

21. There will be no solvents on site.

22. The applicants stated the site State Act 250 permit is under review allowing for this use.

DECISION AND CONDITIONS

Based upon these findings and subject to the conditions set forth below, the Development Review Board grants the applicants a Conditional Use permit for a Temporary Asphalt Processing Facility for a period of two (2) years.

The proposed development with conditions meets the requirements of *Sections 721 of the Zoning Bylaw General Standards*:

1. *The capacity of existing or planned community facilities;*
 - a. The application meets this requirement.
2. *The character of the area affected;*
 - a. The application meets this requirement.
3. *Traffic on roads and highways in the vicinity;*
 - a. The application meets this requirement with the following conditions:
 - i. A stop sign on a post shall be installed at the entrance/exit to Old Ferry from the quarry site for all vehicles exiting the site.
 - ii. The entrance/exit shall be delineated by painted traffic lanes.
 - iii. The vegetation along Old Ferry Rd. in the vicinity of the quarry entrance and exit shall be trimmed back for driver visibility.
 - iv. The applicant shall petition the Selectboard to install temporary “trucks entering” signs north and south of the quarry entrance on Old Ferry Rd. to alert local drivers.
4. *By-laws then in effect;*
 - a. The application meets this requirement.
5. *Utilization of renewable energy sources;*
 - a. The application meets this requirement.
6. *Furtherance of the provisions of the Dummerston Town Plan.*
 - a. The proposed development conforms to the Town Plan.
 - i. *h. Commercial/Light Industrial: The purpose of these areas is to encourage well-planned and coordinated development of commercial and light industrial (e.g. manufacturing, warehousing, building trades, storage, etc.) within the Town. Efforts will be made to guide and regulate development in such a way to ensure wise public investment and minimize impacts on the land and*

surrounding community while avoiding strip development and supporting a range of economic development and business opportunities in the Town.

- ii. *Policy 3.1: Limit light industrial development to areas shown as Commercial/Light Industrial on the future land use map.*

The proposed development meets the requirements of *Sections 722 of the Zoning Bylaw Specific Standards:*

1. *Section 240 Commercial / Light Industrial District*
 - a. The proposed project will still conform to the purpose of the zoning district (as stated in *Sections 205-240* of these Bylaws) in which the land development is located.
2. *Section 615 Setback Requirements*
 - a. The proposed development meets the requirements for the district.
3. *Section 620 Off-Street Parking Requirements*
 - a. The proposed development meets the requirements for the district.
4. *Section 635 Landscaping Requirements*
 - a. The proposed development meets the requirements.
5. *Section 640 Erosion and Sediment Control*
 - a. The proposed development meets the requirements.
6. *Section 660 Performance Standards*
 - a. The proposed development meets the requirements with the following conditions:
 - i. Security lighting at night must be shielded to prevent glare to adjoining properties (*Section 660, (6)*).
7. *Section 669 Permittable On-Premise Signs*
 - a. The proposed development meets the requirements.

The proposed development with conditions meets the requirements of *Sections 726 of the Zoning Bylaw Site Plan Review Procedure:*

1. *Compatibility with adjacent land uses.*
 - a. The proposed development meets the requirements.
2. *Maximum safety of vehicular circulation between the site and the street network.*
 - a. The proposed development meets the requirements with the conditions stated under *Section 721 (3-a)*.
3. *Adequacy of circulation, parking and loading facilities with particular attention to safety.*
 - a. The proposed development meets the requirements.
4. *Adequacy of landscaping, screening and setbacks in regard to achieving maximum compatibility and protection of adjacent property.*
 - a. The proposed development meets the requirements.
5. *Lighting, noise, odors, protection of renewable energy resources.*
 - a. The proposed development meets the requirements with the conditions stated under *Section 722 (6-a)*.

- b. The traffic flow shall be maintained to minimize the sounding of “back-up” alarms on trucks and equipment.

Expiration: This Zoning Permit approval will expire by limitation two (2) years from the date of approval. All work must be completed as shown on any approved plan before the expiration date.

It is the Applicant's responsibility to be in compliance with any and all Town or State required or issued permits at all times or this approval is null and void.,

The following members of the Dummerston Development Review Board participated and concurred in this decision: Cami Elliott, Alan McBean, Chad Farnum.

Dated at Dummerston, Vermont, this ____ day of January, 2022.

Signed for the Dummerston Development Review Board

NOTICE: This decision may be appealed to the Vermont Environmental Court by an interested person who participated in the proceeding(s) before the Development Review Board. Such appeal must be taken within 30 days of the date of this decision, pursuant to 24 V.S.A. § 4471 and Rule 5(b) of the Vermont Rules for Environmental Court Proceedings.