

TOWN OF DUMMERSTON

Development Review Board

Application for Conditional Use; Brewery, Taproom and Site Plan Review Findings and Decision

Permit Application Number: 3796

Date Received: December 19, 2024

Applicant: Upper Pass Brewing Co. LLC

Mailing Address: 37 Ordway Rd., Tunbridge, VT 05077.

Location of Property: Parcel 850, 7 US Rt. 5, Dummerston, VT

Owner of Record: Hermit Thrush Nest LLC

Application: Conditional Use; Brewery, Taproom and Site Plan Review

Date of Hearing: January 21, 2025

INTRODUCTION AND PROCEDURAL HISTORY

1. This proceeding involves review of an application for a Conditional Use; Brewery, Taproom and Site Plan Review under the Town of Dummerston Zoning Bylaw Sections: 720-728, at parcel #000850.
2. On January 1, 2025, notice of a public hearing was published in The Commons.
3. On December 31, 2024, 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 January 5, 2025, notice of a public hearing was posted at the following place: 7 US Rt. 5, Dummerston, VT, which is within view of the public-right-of-way most nearly adjacent to the property for which the application was made.
5. On December 26, 2024, a copy of the notice of a public hearing was emailed to the applicant.
6. On December 26, 2024, a copy of the notice of public hearing was mailed to the following owners of properties adjoining the property subject to the application:
 - a. Fletcher Gary E & Kimberly A W/Life Estate, 75 Ryan Rd, Dummerston, VT 05301
 - b. Sopper Francis P, 25 Ryan Rd, Dummerston, VT 05301
 - c. Thibault Robert D & Parker Hannah M, 63 Ryan Rd, Dummerston, VT 05301

7. The application was considered by the Development Review Board (DRB) at a public hearing on January 21, 2025.
8. The Development Review Board reviewed the application under the Town of Dummerston Zoning Bylaw, as amended April 6, 2022.
9. Present at the hearing were the following:
 - a. Members of the Development Review Board:
Patty Walior, Alan McBean, Cami Elliott, Chad Farnum, Peter Doubleday.
 - b. Others:
Kim and Skip Fletcher, Francis and Susan Sopper, Kelsey Allen, Sean Condon, Bianca Miraglia, Roger Jasaitis (ZA).
10. A site visit was conducted on January 18, 2025.
11. Present at the site visit were the following:
 - a. Members of the Development Review Board:
Patty Walior, Alan McBean, Cami Elliott, Chad Farnum, Peter Doubleday.
 - b. Others:
Chris Perry, Francis Sopper, Susan Sopper, Gail Gullotti, Kim Fletcher, Skip Fletcher
Brandon McFadden, Roger Jasaitis (ZA).
12. During the course of the hearing the following exhibits were submitted to the DRB:
 - a. Application for Zoning Permit, number: 3696.
 - b. Application to the Development Review Board for a Conditional Use; Brewery, Taproom and Site Plan Review #3796.

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; Brewery, Taproom and Site Plan Review under the Town of Dummerston Zoning Bylaw Sections: 720-727, at parcel #000850.
2. The subject property is 7.3 acres, located at 7 US Rt. 5, in the Town of Dummerston (tax map parcel no. 000850). The property is more fully described in a Deed recorded at Book 72, Page 500, in the Town of Dummerston Land Records.
3. The property is located in the Rural Commercial District as described on the Town of Dummerston Zoning Map on record at the Town of Dummerston municipal office and Section 235 of the Zoning Bylaw.
4. The DRB Application states Conditional Use; Brewery, Taproom and Site Plan Review approval is requested for the parcel.
5. The application requires review under the following sections of the Town of Dummerston Zoning Bylaw: 720-727.

6. Applicant: Bianca Miraglia (Upper Pass Beer Co.) discussed the plans for the property, emphasizing the intention to operate during normal hours and avoid late-night activities. She mentioned the brewery's intention to beautify the outdoor space, mostly through landscaping, and the construction of a concrete pad for easier forklift movement. There would be minimal noise from forklifts as they primarily would be using them inside. Bianca also clarified that they would not have a lot of heavy truck traffic, they would be purchasing in bulk and relying on their Vermont distributor for deliveries. Her best estimate would be 1 to 2 tractor trailer deliveries per month. They would be getting smaller deliveries/pickups via UPS periodically during the week.
7. Skip Fletcher, as the closest neighbor, expressed his concerns about potential exterior lights from the back of the property that might shine towards his house. Bianca proposed the idea of installing security lights on a motion sensor for when a camera comes on, which Skip Fletcher agreed to as long as they were not shining all the time. Bianca also mentioned the possibility of having a security camera that needs to shine a light to take a photo.
8. Bianca clarified the operating hours for the tap room and production side, stating that the tap room would likely be open from 11 am to 10 pm seven days a week, with the production side operating from 8 am to 5 pm Monday-Friday. She emphasized their intention to maintain a civilized environment and not to be a late-night establishment. They have great relationships with current neighbors and want the same here. She is happy to give out her contact information to all neighbors should they have any concerns. Bianca also mentioned the possibility of hosting an occasional outdoor event during the day, such as a local breweries festival, but not on a regular basis. The maximum number of attendees for special events was estimated to be around 200 people. They will employ 3-4 production workers, and 3-5 people for the tap room. There are 3 owners and 1 sales rep.
9. Bianca discussed the parking lot size and the possibility of adding a sign on the property. She will measure the parking lot area and get the information to Roger ASAP (Total spaces; 36). Bianca clarified that they do not plan to increase the current paved area unless required by law.
10. Bianca also discussed the idea of hanging a low kilowatt branded logo light in a window facing the road, which does not need a permit. DRB mentioned that a sign near the road would need to adhere to the bylaws and would require a separate application if it's not part of the current application.
11. Bianca mentioned the possibility of having a food truck on site until their kitchen is up and running. She expressed their commitment to remaining compliant with the bylaws.

DECISION AND CONDITIONS

The Development Review Board (DRB) finds that this application meets the requirements of the Town Plan and the Zoning Bylaw and Approves the application with conditions.

1. The DRB approves the Conditional Use for Brewery and Taproom with conditions.

The proposed development 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.
4. By-laws then in effect;
 - a. The application meets this requirement.
5. Utilization of renewable energy sources;
 - a. The application meets this requirement.

As conditioned, the proposed development meets the requirements of *Sections 722 of the Zoning Bylaw Specific Standards*:

1. *Section 235 Rural Commercial*
 - a. The proposed project will conform to the purpose of the zoning district (as stated in Sections 205-240 of these Bylaws) in which the land development is located. Specifically, to regulate commercial, light industrial, and residential uses in defined areas along the Route 5 corridor. Such development will make the most of existing or planned facilities and services to ensure wise use of resources and public investment, a healthy economy, a stable tax base, and the protection of the health, safety and welfare of the public. Thoughtful development should be encouraged using techniques such as shared access points, increased landscaping, sign control, and emphasis on pedestrian movement.
2. *Section 324 Riparian Area Regulations*

- a. The majority of the parcel lies in the Riparian Zone for the North Branch of the Crosby Brook.
 - i. Setback from Normal Mean Watermark is 50 feet.
 - ii. Within Riparian Areas, the disposal of garbage or other solid waste, including the expansion of existing facilities, the disposal, storage or processing of materials that are pollutants, buoyant, flammable, poisonous, explosives or which could be otherwise injurious to human, animal, fish or aquatic life, are prohibited from these Areas unless proper containment is provided. No storage of these materials shall be located outside the facility building envelope.
3. *Article 4: Flood Hazard Area Regulations, Section 410 Lands to which these Regulations Apply*
 - a. *These regulations shall apply for development in all areas in the Town of Dummerston VT, identified as areas of special flood hazard in and on the most current flood insurance studies and maps published by the Department of Homeland Security (DHS), Federal Emergency Management Agency (FEMA), National Flood Insurance Program (NFIP), as provided by the Secretary of the Agency of Natural Resources pursuant to 10 V.S.A. § 753, which are hereby adopted by reference and declared to be part of these regulations.*
 - i. This parcel has a specified Flood Hazard Area on it. *Section 425* requires that;
 1. *Land Development including the construction, reconstruction, conversion, relocation or substantial improvement in any building or other structure, or of any mining, dredging, filling, grading, paving, excavation, drilling operations or storage of equipment or materials, subdivision or extension of use of land in the flood hazard area may be permitted only by approval of the Development Review Board as a Conditional Use in accordance with the standards and requirements of this Article.*
 2. *Prior to issuing a permit for the construction of new buildings, the substantial improvement of existing buildings or for development in the floodway, a copy of the application shall be submitted by the Administrative Officer to the State National Floodplain Insurance Program Coordinator at the Vermont Agency of Natural Resources, Vermont Department of Environmental Conservation, River Management Section in accordance with 24 V.S.A. 4424. A permit may be issued only following receipt of comments from the Agency or the expiration of 30 days from the date the application was mailed to the Agency, whichever is sooner.*

4. *Section 620 Off-Street Parking Requirements*
 - a. The DRB approves the proposed parking plan for a total of 36 parking spaces; 34 regular and 2 ADA spaces.
5. *Section 625 Off-Street Loading Space Requirements*
 - a. The proposed development meets the requirements.
6. *Section 635 Landscaping Requirements*
 - a. Following are the minimum landscaping requirements:
 - i. Commercial and industrial uses shall provide for a strip of land at least fifteen (15) feet in width which shall be maintained as a landscaped area in the front, side and rear yards.
7. *Section 640 Erosion and Sediment Control*
 - a. The proposed development meets the requirements.
8. *Section 660 Performance Standards*
 - a. The proposed development meets the requirements with the following conditions:
 - i. Noise: No noise which is excessive at the property line and represents a significant increase in noise levels in the vicinity of the development, so as to be incompatible with the reasonable use of the surrounding area, shall be permitted. This approval will allow for 2 outdoor events with music on site per year with music ending by 10:00pm. Maximum attendance for these events shall be 200 persons.
 - ii. Glare, lights, reflections: No proposed development or use shall create, cause, or result in glare, lights, or reflections which constitute a nuisance to other property owners or tenants or which are detrimental to the public safety, health or welfare. All exterior lighting must be shielded to prevent glare to adjoining properties.
9. *Section 669 Permittable On-Premise Signs*
 - a. The DRB, with this approval, will allow;
 - i. A low kilowatt branded logo light in a window facing the road.
 - ii. The premises may contain more than one sign necessary in the conduct of business, such as but not limited to: parking, fire lanes, delivery and entrance signs not to exceed 6 square feet each (10 V.S.A., Chapter 21).
 - iii. Per *Section 665* any additional proposed signage shall be deemed Land Development and shall require a zoning permit before being erected, constructed or structurally modified and must be approved by the Development Review Board under Sections 725-727 of this Bylaw.

The proposed development 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.
4. By-laws then in effect;
 - a. The application meets this requirement.
5. Utilization of renewable energy sources;
 - a. The application meets this requirement.

As conditioned, the proposed development 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 with the following conditions:
 - i. Production shall be 5 days a week Monday through Friday from 8:00am to 5:00pm.
 - ii. Retail Sales of food and beverages shall be 7 days a week, 11:00am to 10:00pm. Any additional retail sales, e. g. Food Trucks, Vendors will require additional Zoning Permitting and must be approved by the Development Review Board under Sections 725-727 of this Bylaw.
 - iii. Food and beverages are allowed to be served and consumed indoors and outdoors on the patio.
2. Maximum safety of vehicular circulation between the site and the street network.
 - a. The proposed development meets the requirements.
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 with the conditions of *Sections 722 of the Zoning Bylaw Specific Standards*:
 - i. #6,a., i.(see above)
5. Lighting, noise, odors, protection of renewable energy resources.

- a. The proposed development meets the requirements with the conditions of *Sections 722 of the Zoning Bylaw Specific Standards*:
 - i. #8,a., ii & iii.(see above)
- 6. Furtherance of the provisions of the Dummerston Town Plan.
 - a. The proposed development conforms to the Town Plan.
 - i. Rural/Commercial District:
 - 1. This district includes lands along Route 5 and the west side of Route 30.
 - 2. It is suitable for light commercial uses that require good access to a main traveled road (US Route 5).
 - 3. Both residential and commercial uses, including recreation, are suited for this area.
 - 4. Commercial uses should be compatible with surrounding predominantly residential uses.
 - 5. Strip development should be discouraged, and its negative impacts minimized by techniques such as shared access points, increased landscaping, sign control, and emphasis on pedestrian movement.

Overall, the Town Plan emphasizes the importance of maintaining the town's rural character while supporting economic development through carefully planned and regulated commercial activities. The DRB supports these goals with this approval.

- 7. Expiration: All activities authorized by this approval shall be commenced within two years of the date of issue, or the zoning permit shall become null and void and re-application to implement any activities shall be required. (*Section 703*) All work must be completed as shown on any approved plan before the expiration date. One year extensions of this deadline may be granted by the Administrative Officer prior to expiration. Requests for extensions must be made in writing to the Administrative Officer.
- 8. 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: Patty Walior, Alan McBean, Cami Elliott, Chad Farnum, Peter Doubleday.

Dated at Dummerston, Vermont, this 7 day of Feb., 2025.



Signed for the Dummerston Development Review Board

Chad Farnum
Printed Name

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.