

# TOWN OF DUMMERSTON

## Development Review Board

### Application for Variance; Registered Childcare Facility and Site Plan Review Findings and Decision

**Permit Application Number: 3688**

**Date Received: May 24, 2022**

**Applicant: Britt Quell**

**Mailing Address: 204 Kelly Rd., Dummerston, VT 05301.**

**Location of Property: Parcel 464, 204 Kelly Rd., Dummerston, VT**

**Owner of Record: Andree C. Zaleska**

**Application: Variance; Registered Childcare Facility and Site Plan Review**

**Date of Hearing: June 21, 2022**

#### INTRODUCTION AND PROCEDURAL HISTORY

1. This proceeding involves review of an application for a Variance; Registered Childcare Facility and Site Plan Review under the Town of Dummerston Zoning Bylaw Sections: 720-728, at parcel #000464.
2. On June 1, 2022, notice of a public hearing was published in The Commons.
3. On June 1, 2022, 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 June 3, 2022, notice of a public hearing was posted at the following place: 204 Kelly Rd., 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 June 1, 2022, a copy of the notice of a public hearing was emailed to the applicant.
6. On June 1, 2022, a copy of the notice of public hearing was mailed to the following owners of properties adjoining the property subject to the application:
  - a. Leary Sandra Kim, Ballantine Ricky Donald, 283 Kelly Rd, Dummerston, VT 05301
  - b. Rjae Llc, 225 Rye St., Broadbrook, CT 06016
7. The application was considered by the Development Review Board (DRB) at a public hearing on June 21, 2022.

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:  
Natalie Pelham-Starkey, Alan McBean, Cami Elliott, Chad Farnum.
  - b. Others:  
Britt Quell (applicant), Andrew Hallad, Roger Jasaitis (ZA).
10. A site visit was conducted on June 21, 2022.
11. Present at the site visit were the following:
  - a. Members of the Development Review Board:  
Cami Elliott, Alan McBean, Chad Farnum.
  - b. Others:  
Britt Quell (applicant), Andrew Hallad, Roger Jasaitis (ZA).
12. During the course of the hearing the following exhibits were submitted to the DRB:
  - a. Application for Zoning Permit, number: 3688.
  - b. Application to the Development Review Board for a Variance; Registered Childcare Facility and Site Plan Review #3688.
  - c. Exhibit A: Letter from Kathy Rybick (RJAE, LLC, abutter).
  - d. Exhibit B: Screen Shot of Website for "Good Bones Homestead", Short Term Rental of property by Andree Zeleska (property owner).

## **FINDINGS OF FACT**

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

1. The applicant seeks a Variance; Registered Childcare Facility and Site Plan Review under the Town of Dummerston Zoning Bylaw Sections: 720-728, at parcel #000464.
2. The subject property is 10.3 acres, located at 204 Kelly Rd., in the Town of Dummerston (tax map parcel no. 000464). The property is more fully described in a Deed recorded at Book 122, Page 564-566, in the Town of Dummerston Land Records.
3. The property is located in the Conservation District as described on the Town of Dummerston Zoning Map on record at the Town of Dummerston municipal office and Section 205 of the Zoning Bylaw.
4. The DRB Application states Variance; Registered Childcare Facility approval is requested for the parcel.
5. The application requires review under the following sections of the Town of Dummerston Zoning Bylaw: 720-728.
6. Applicant: Britt Quell offered a general overview of the application.
7. She explains that she is currently running a Registered Licensed Family Childcare Home program and would like to upgrade to a Registered Licensed Family Childcare Facility.

8. With her current program she can care for 8 children unless public school is on vacation in which case she can care for 10 children. With the upgrade she can care for 12 children full time. Two of her children (1 year old and 2 year old) are enrolled in the program. With the upgrade, she will also hire a teacher to work with her to be in compliance with the state ratio regulations. She is aware of the state regulations and stated that she is in compliance. The state is responsible for checking for compliance, not the town.
9. Chad Farnum clarified that the business is currently licensed with the State for 10 children.
10. The business will generate less than 10 trips on the road.
11. Andrew Hallad : Parent of twin boys in the program, stated that his boys have behavior issues and Brit and her program had had a positive effect on the boys.
12. The Zoning Administrator clarified that the current business (Registered Family Childcare Home) holds no Town Zoning permit in spite of the fact that the activity requires a Zoning Permit and Site Plan Approval by Sections 204 and 685 of the Bylaw. This Use is allowed with permitting in all Zoning Districts in Dummerston. The application before the DRB is for a Licensed Childcare Facility licensed by the State. This Use requires a Conditional Use Permit in all Zoning Districts of the Town except the Conservation District, hence the request for a Variance to accommodate the business.
13. The upgrade will allow 12 children total on site all day long. The State requires more intense regulations to follow for the owner. Emergency care is allowed under State rules and requires additional reporting.
14. The ages of the children are 6 weeks to 13 years old.
15. The parking is adequate on site.
16. Britt Quell addressed the issues raised in the letter from the abutting landowner: The children are always within eyesight of the teachers per State regulations. The owner's Short Term Rentals are not part of this application and are included in the State regulations regarding identification and fingerprinting of renters. The children will no longer be allowed off the property on the adjoining hiking trails. The sledding hill is on the property.
17. If the application is approved, there will be a total of 2 teachers.
18. The applicant reported that Andree Zeleska (property owner) approves of this business.
19. The Zoning Administrator clarified for the record that he became aware of the Short Term Rental of the property through the letter to the DRB by the abutter. The Short Term Rentals by Andree Zeleska (property owner) are not permitted and are in violation of the Zoning Bylaw. This has no bearing on the current application under consideration. He will deal with that as a separate issue.
20. There are 2 permitted yurts (The ZA issued the permits in 2019 as accessory structures) on the property. One is used by the business as a classroom.
21. The business uses the basement level and one yurt. The applicant resides in the basement level.
22. Hours are 8:30am to 4:00pm, 7 days a week. It is drop-in care on weekends by request.

## 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 Variance for Registered Licensed Childcare Facility.
2. The DRB recognizes the fact that the current Family Childcare Home as defined in Article 8-3, is in violation of the Zoning Bylaw because it requires a Zoning Permit and Site Plan Review under *Section 204 and 685*. The applicant was not aware of this fact.
3. Because the applicant is intending to increase the number of children being cared for by two (2) children to a total of twelve (12) children, the business will need to become a Licensed Child Care Facility under *Section 685* of the Bylaw and State Statute and so requires a Conditional Use Permit.
4. In addressing the criteria of *Section 728 Variances*, the DRB finds the following:
  - a. 1. This criteria is not applicable to the application because it is a Use.
  - b. 2. This criteria is not applicable to the application because it is a Use.
  - c. 3. The DRB notes that the Family Childcare Home Use is allowed in the Conservation District in which this business resides, as well as every Zoning District in the Town of Dummerston. By increasing the intensity of Use to a Licensed Childcare Facility the Zoning Bylaw considers this a Conditional Use. This specific Conditional Use is allowed in every Zoning District in Dummerston except the Conservation District. The DRB finds that this creates an unnecessary hardship for the applicant by requiring a Variance from the Zoning Bylaw. The Town Plan states:  
*Other Educational Services 1. Childcare Safe and affordable child care is important to local residents. Dummerston's Zoning Bylaw provides for both family child care homes and child care facilities.*  
*Policy 2.2: Ensure that land use regulations do not place unreasonable limitations on child care homes and facilities.*  
Policy 2.2 of Residential and Conditional Use is reflected in the Zoning Bylaw except for the Conservation District and so grants the Variance.
  - d. 4. This Variance will not alter the essential character of the neighborhood or district or substantially or permanently impair the appropriate use or development of adjacent property. Access to renewable energy resources will not be affected. The DRB feels that this Variance will improve the public welfare in the District by providing a much needed resource for working parents of young children.
  - e. 5. The DRB, by applying Conditions to this approval, will effect the minimum restrictions that will afford relief to the applicant and the least deviation from the Zoning Bylaw and Town Plan.

- f. The application meets the requirements of *Sections 720-728* of the Zoning Bylaw.
- g. The application meets the requirements of *Sections 205 of the Zoning Bylaw* for the Conservation District.
- h. The proposed development meets the requirements of *Sections 726 of the Zoning Bylaw Site Plan Review Procedure*.
- i. The proposed development meets the policies and goals of the Town Plan.

**The following conditions apply to this approval:**

1. The maximum number of children allowed on site under this approval is twelve (12), except in the case of emergency.
2. This approval “runs with the land” and is not transferable to other properties or locations in the Town of Dummerston.
3. The existing 3 foot diameter sign (Signal Pine Playschool) is authorized by this approval. Any change to signage requires further permitting.
4. 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*)
5. It is the Applicant's responsibility to be in compliance with any and all Town or State required regulations 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: Chad Farnum, Natalie Pelham-Starkey, Cami Elliott, Alan McBean.

Dated at Dummerston, Vermont, this 19<sup>th</sup> day of July, 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.