

**TOWN OF POULTNEY
DEVELOPMENT REVIEW BOARD**

**IN RE: POULTNEY PROPERTIES, LLC – 2/23/17 ZONING PERMIT
APPLICATIONS FOR PARCEL #225006.100**

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

INTRODUCTION AND BACKGROUND

On or about February 23, 2017, Poultney Properties, LLC (“Poultney Properties” or “Applicant”) submitted three zoning permit applications concerning, for zoning purposes, a single contiguous parcel of land identified as tax map parcel #225006.100. The parcel contains four (4) existing and separate structures with street addresses of 53, 55, 57 and 61 Beaman Street (Route 30) (f/n/a the “VEMAS” property, herein sometimes collectively referred to as “the Parcel”).¹ The applications variously seek change of use approval for “retail” (61 Beaman St.), “REED Woodworking Shop-Green Mountain College” (55 Beaman St.) and “Woodworking” (57 Beaman St.) all of which have been categorized by the Applicant as applications for “permitted use” or “permitted use subject to review by Development Review Board.” The application for retail use in connection with 61 Beaman St. also seeks approval of a variance and for signage. The Applicant is also seeking approval to remove 53 Beaman Street from the Parcel to provide parking and delivery space in connection with the proposed retail use of 61 Beaman Street.

The zoning applications were referred to the Poultney Development Review Board (DRB) for hearing pursuant to Poultney Unified Bylaws (PUB) Article XII and §415. Because the applications as submitted all pertain to a single unified and contiguous parcel of land with multiple pre-existing structures located thereon, the DRB has treated these simultaneous applications, for review purposes, as a single integrated use proposal given that each proposed use shares a single dimensional lot with integrated needs for access points, drives, parking, traffic, loading and unloading with cumulative impacts in connection with circulation safety, traffic and pedestrian flow, noise, glare, landscaping and screening.

On March 22nd, 2017, the DRB convened a duly warned public hearing at the Poultney High School Gymnasium to consider the integrated application pursuant to the PUB and, specifically, site plan review, the request for a variance,² signage approval and building removal. Hearings were recessed and continued to the following dates: April 9, 2017 and May 15, 2017. A site visit was also conducted on May 15, 2017, however access to the buildings was denied. On May 15, 2017, the hearing was closed and the DRB began its deliberations.

¹ The four (4) individual structures located on the Parcel shall hereinafter be referred to by their identified street addresses.

² The request for a variance was withdrawn by Poultney Properties during the hearing process.

All members of the DRB who have deliberated and have participated in this decision have reviewed all exhibits and other evidence and have either (1) attended all hearings in this matter by telephone or personally, or (2) have listened to the recordings of testimony they have missed pursuant to 24 V.S.A. §1208(b).

The following members of the public were sworn in to testify and/or presented evidence as Interested Parties on the following dates:

<u>22 March 2017</u>	<u>19 April 2017</u>	<u>15 May 2017</u>
C.B. Hall, representing Concerned Citizens of Poultney; Gene Sumner; Neal Vreeland; Melanie Lincoln Potter; Gary Kupferer, Esq., representing the Town of Poultney Steven Fesmire	Paul Hancock; C.B. Hall, representing Concerned Citizens of Poultney; Neal Vreeland; Linda Pepler; Melanie Lincoln Potter; Rebecca Ribeiro; Francis J. Kinney; Bianca Zanella; Diane Bargiel	Neal Vreeland; Gene Sumner; Harry Ryan, Esq., representing Steve and Barb Betit; C.B. Hall, representing Concerned Citizens of Poultney; Bianca Zanella; Diane Bargiel; Kathleen Warren; Mark Flynn; Keri O' Furlani; Greg Povey; Doug Duncan

Based upon the testimony of the interested parties appearing during the Hearing and the documents and evidence introduced at the hearings, the DRB finds, concludes and orders as follows:

FINDINGS OF FACT

- 1) The subject property is a single, contiguous and integrated parcel of land identified as Poultney tax map parcel #225006.100 with multiple pre-existing structures with street addresses of 53, 55, 57 and 61 Beaman Street ("the Parcel").
- 2) The Parcel is comprised of those lands that are described in a Warranty Deed from Knappmiller, LLC to Poultney Properties, LLC and dated January 10, 2017 and of record in the Poultney Land Records at Book 177, Page 81. See Exhibit A-15.
- 3) The lot is comprised of 1.76 contiguous acres and consists of 32,844 square feet of interior space in four (4) structures. See Exhibit F.

- 4) An application has been filed by Poultney Properties, LLC for (1) Site Plan Review for a change of use of building (61 Beaman St.) from light industry to Retail Store, (2) change of use of building from light industry to a Green Mountain College directed Renewable Energy Ecological Design woodworking shop and classroom (hereafter REED Workshop) (55 Beaman St.), (3) continued use of an existing unpermitted woodworking shop (57 Beaman St.), (4) request for variance from the Poultney Unified Bylaws for signage, and (5) removal of existing historic structure. (53 Beaman Street).
- 5) The property is owned by Poultney Properties, LLC. The principal and managing partner is Leonard V. Knappmiller.
- 6) Mr. Leonard V. Knappmiller concurrently appointed and authorized Karl C. Anderson, Esq. of Anderson & Eaton, P.C. of Rutland, Vermont and Mark R. Thibeault of CRE Source of Essex Junction, Vermont to appear and speak on his behalf.
- 7) The following documents were introduced by interested parties during the hearings and have been admitted as Exhibits for the DRB's consideration: The DRB incorporates as part of the permanent record of this hearing, the following:

Application for Retail Use (Dollar General) (61 Beaman Street) and Signage and Building Removal, submitted by the Applicant, on February 23, 2017. Entered into evidence and labeled as **Exhibit A-1**.

Birdseye view depicting a portion of 61 Beaman Street, indicating 10,000 sq. feet of proposed retail store space, submitted by the Applicant, on February 23, 2017. Entered into evidence and labeled as **Exhibit A-2**.

Sketch of proposed retail store layout showing addition of bathroom, front door, offices and rear wall partition, submitted by the Applicant, on February 23, 2017. Entered into evidence and labeled as **Exhibit A-3**.

Sketch of proposed street sign location, submitted by the Applicant, on February 23, 2017. Entered into evidence and labeled as **Exhibit A-4**.

Sketch of proposed "Space Plan" for 61 Beaman Street, submitted by the Applicant, on February 23, 2017. Entered into evidence and labeled as **Exhibit A-5**.

Letter from Otter Creek Engineering dated January 19, 2017, submitted by the Applicant, on February 23, 2017. Entered into evidence and labeled as **Exhibit A-6**.

Building Removal Plan, submitted by the Applicant, on February 23, 2017. Entered into evidence and labeled as **Exhibit A-7**.

Zoning Application Addendum dated February 23, 2017, submitted by the Applicant, on February 23, 2017. Entered into evidence and labeled as **Exhibit A-8**.

Exhibit A Setbacks for 61, 55, 57, and 53 Beaman Street, submitted by the Applicant, on February 23, 2017. Entered into evidence and labeled as **Exhibit A-9**.

List of Adjoining Property Owners, submitted by the Applicant, on February 23, 2017. Entered into evidence and labeled as **Exhibit A-10**.

Application for REED Woodworking Shop- Green Mountain College (55 Beaman Street), submitted by the Applicant, on February 23, 2017. Entered into evidence and labeled as **Exhibit A-11**.

Site Plan for 55 Beaman Street, submitted by the Applicant, on February 23, 2017. Entered into evidence and labeled as **Exhibit A-12**.

Birdseye view of 55 Beaman Street, indicating 6,328 sq. feet of proposed REED Woodworking, submitted by the Applicant, on February 23, 2017. Entered into evidence and labeled as **Exhibit A-13**.

Application for Woodworking Shop (57 Beaman Street), submitted by the Applicant, on February 23, 2017. Entered into evidence and labeled as **Exhibit A-14**.

Copy of Warranty Deed from Knappmiller, LLC to Poultney Properties, LLC, dated January 10, 2017. Entered into evidence and labeled as **Exhibit A-15**.

Site and Location Plan entitled "No Boundaries, LLC VEMAS Plant Poultney, Vermont", submitted by the Applicant, on February 23, 2017. Entered into evidence and labeled as **Exhibit A-16**.

Potable Water Supply and Wastewater System Permit, WW-1-1500, submitted by the Applicant, on February 23, 2017. Entered into evidence and labeled as **Exhibit A-17**.

Water and Sewer Allocation Letter from the Village of Poultney, submitted by the Applicant, on February 23, 2017. Entered into evidence and labeled as **Exhibit A-18**.

Copy of Confirmation of Sale in the matter of Banknorth, N.A. v. JRL Industries, Inc., et al., submitted by the Applicant, on February 23, 2017. Entered into evidence and labeled as **Exhibit A-19**.

Street Sign Location overview, submitted by the Applicant, on February 23, 2017. Entered into evidence and labeled as **Exhibit A-20**.

Site And Location Plan and "lighting schedule" submitted by the Applicant, on February 23, 2017. Entered into evidence and labeled as **Exhibit A-21**.

Preliminary Site Plan entitled "Dollar General 61 Beaman Street, Poultney, VT" showing lighting locations submitted by the Applicant, on February 23, 2017. Entered into evidence and labeled as **Exhibit A-22**.

Street Sign sketch, submitted by the Applicant, on February 23, 2017. Entered into evidence and labeled as **Exhibit A-23**.

Building Sign Sketch, submitted by the Applicant, on February 23, 2017. Entered into evidence and labeled as **Exhibit A-24**.

Copy of portion of Survey entitled "Parcels 2 & 3 JRL Industries, Inc. Property, submitted by the Applicant, on February 23, 2017. Entered into evidence and labeled as **Exhibit A-25**.

Authorization of Poultney Properties, LLC for Karl C. Anderson, Esq. to represent the entity, submitted by the Applicant, on March 20, 2017. Entered into evidence and labeled as **Exhibit A-26**.

Authorization of Poultney Properties, LLC for Mark R. Thibeault to represent the entity, submitted by the Applicant, on March 20, 2017. Entered into evidence and labeled as **Exhibit A-27**.

Petition In Opposition to the Dollar General and Statement of Concerned Citizens of Poultney, submitted by C.B. Hall on behalf of the Concerned Citizens of Poultney, on March 22, 2017. Entered into evidence and labeled as **Exhibit B**.

Anonymous Public Comments (March 17, 2017) with Article by Larry Jensen, submitted by Bianca Zanella, on March 22, 2017. Entered into evidence and labeled as **Exhibit C**.

Letter to Karl C. Anderson, Esq. and Applicant dated March 28, 2017, submitted by Paul A. Donaldson, Zoning Administrator and Ernie DeMatties, Vice-Chair of the Poultney DRB, on March 28, 2017. Entered into evidence and labeled as **Exhibit D**.

Letter with various attachments from Karl C. Anderson, Esq. to Paul A. Donaldson, Poultney Zoning Administrator, dated April 11, 2017, submitted by Karl C. Anderson, Esq. on behalf of the Applicant, on April 11, 2017. Entered into evidence and labeled as **Exhibit E**.

Presentation to Poultney DRB dated April 19, 2017, submitted by Mark R. Thibeault on behalf of the Applicant, on April 19, 2017. Entered into evidence and labeled as **Exhibit F**.

Revised Sign Proposal for street sign, submitted by Mark R. Thibeault on behalf of the Applicant, on April 19, 2017. Entered into evidence and labeled as **Exhibit G**.

Revised Sign Proposal for building sign, submitted by Mark R. Thibeault on behalf of the Applicant, on April 19, 2017. Entered into evidence and labeled as **Exhibit H**.

Letter from Diane M. Bargiel to the DRB dated April 18, 2017, submitted by Diane Bargiel, on April 19, 2017. Entered into evidence and labeled as **Exhibit I**.

Presentation of Rebecca Ribeiro, submitted by Rebecca Ribeiro, on April 20, 2017. Entered into evidence and labeled as **Exhibit J**.

Letter from Julia Riell to the DRB, submitted by Bianca Zanella, on May 15, 2017. Entered into evidence and labeled as **Exhibit K**.

Letters from Charles and Patricia Matteson to Paul Donaldson, Zoning Administrator, submitted by Paul A. Donaldson, on May 15, 2017. Entered into evidence and labeled as **Exhibit L**.

Letter from Paul A. Donaldson to Karl C. Anderson and property owner seeking further information and dated February 17, 2017. Entered into evidence as **Exhibit M**.

E-mail transmittal with photographic attachment depicting proposed color scheme change of portion of 61 Beaman Street building façade dated May 16, 2017. Entered into evidence and labeled **Exhibit N**.

- 8) The Parcel is depicted as being located in the Industrial Zoning District ("I") on the Official Zoning Map (see PUB, **Article II: Establishment of Zoning Districts and Zoning Map**, at §202) and Official Zoning Map. The area in which the subject parcel is located, however, is commonly treated, and generally understood under the 2014 PUB, to be located within the Village Industrial Zoning District ("VI") (PUB, **Article II: Establishment of Zoning**

Districts and Zoning Map, §201(D)). It appears, and the DRB finds, that the Official Zoning Map has never been updated to reflect the 2014 amendments to the PUB which created and implemented the VI District.

- 9) Pursuant to the **PUB, Article III Table of Uses**, a Retail Store is a use permitted in the VI District but subject to review by the Development Review Board in accordance with the Site Plan Approval Provisions of Article XII.
- 10) Pursuant to the **PUB, Article III Table of Uses**, a Retail Store is not permitted in the I District. See PUB §204.
- 11) Pursuant to the **PUB, Article III Table of Uses**, a “College owned or directed facilit[y]” is a use which is not expressly permitted as a right or pursuant to site plan and/or conditional review in the I or VI Districts. **PUB, Article III Table of Uses.** See PUB §204
- 12) The only “mixed use” category recognized in the PUB, Table of Uses is for “Commercial/Residential Mixed Use”, a category which only applies to the Village Commercial District and has no application here where residential use is not being proposed. Mixed commercial uses are not otherwise specifically recognized in the PUB, Table of Uses.
- 13) All uses not permitted by the PUB are deemed prohibited. PUB, §204.
- 14) Pursuant to PUB, Article III Table of Uses, “Industry, Light” is considered a permitted use subject to review by the DRB in accordance with site plan approval under Article III in both the I and VI Districts.
- 15) Industry, Light is defined as:

A use engaged in the manufacture, predominantly from previously prepared materials, of finished products or parts, including processing, fabrication, assembly, treatment, packaging, incidental storage, sales, and distribution of such products, but excluding basic industrial processing.

See PUB at Article XIII, Definitions.

- 16) Currently, the structure on the subject parcel bearing a street address of 57 Beaman St. is occupied by a woodworking business which is engaged in on-site and off-site construction and restoration of wood products including furniture and cabinetry which may be considered the manufacture from prepared materials of furnished products or parts.

- 17) This woodworking business is operated by a sole proprietor whose hours of operation are 7:00 a.m. to 5:00 p.m., six (6) days a week. The operator parks his vehicle next to 57 Beaman Street and most customer contacts occur off site, meaning there is minimal customer parking.
- 18) Poultney Properties proposes to rent a portion of the structure identified as 61 Beaman St., comprised of 10,000± sq. ft. of indoor space, to a tenant for the operation of a retail store to sell food, beverages, hard goods, tools and other predominantly household items.
- 19) The owner and operator of the proposed retail store could not be confirmed and was not a co-applicant to this permit application. Based on the signage evidence submitted during the hearings and the testimony provided through Applicant's counsel, it is presumed that the tenant will operate a Dollar General retail store pending further agreements between the tenant and the Applicant.
- 20) The hours of operation of the proposed retail store could not be confirmed. The hours were estimated to be between 8:00 a.m. and 9:00 p.m. or 10:00 p.m. daily.
- 21) The days of operation of the proposed retail store could not be confirmed, though it was represented that the days of operation were expected to be seven (7) days a week.
- 22) The structures on the Parcel, including 61 Beaman Street, have been used, historically, for industrial/commercial purposes including the assembly of computer circuit boards. Most recently, the Parcel and 61 Beaman Street housed VEMAS Corp., an electromechanical manufacturer. 61 Beaman Street is currently unoccupied.
- 23) The number of employees of the proposed retail store could not be confirmed, though it was estimated that between one (1) and two (2) full time employees and several part time employees would work at the store during hours of operation.
- 24) The proposed retail store would be 10,056 sq. ft. in size.
- 25) The Applicant proposes to offer 48 spaces of customer parking along Beaman Street with two-way access through the existing curb cuts onto Beaman and Church Streets.
- 26) The existing and proposed northerly Church Street access to the retail space is less than 20 feet from the intersection of Church and Beaman Streets.

- 27) Landscaping and roof top venting are not proposed to change with the exception of a 6 foot stockade fence along the northwest section of the parking area adjacent to the neighboring residence.
- 28) A delivery schedule could not be confirmed by the Applicant, but was presumed to be once per week by tractor-trailer, and several times per week by non tractor-trailer, including three (3) times per week for dairy products, five (5) times per week for beverage products, two (2) times per week for frozen food products, and three (3) times per week for bread products.
- 29) The Applicant proposes to move the 53 Beaman Street structure off the Parcel to accommodate the retail parking spaces and space for tractor trailer delivery in the area between the 61 and 55 Beaman Street structures.
- 30) The proposed REED Workshop would be located in the existing building with a street address of 55 Beaman Street and an interior space of 6,328 sq. ft. in size.
- 31) As proposed, the REED Workshop will be an entirely interior woodworking and fabrication facility which will be operated by Green Mountain College and involve between 10 and 20 students at any one time. The parking will all be to the rear of the parcel behind 57 Beaman Street.
- 32) The woodworking shop would be maintained in its existing location at 57 Beaman Street.
- 33) The proposed retail store, REED Workshop and woodworking shop would all be located within the existing three (3) nonconforming structures which were all used historically for light manufacturing uses.
- 34) The minimum setbacks in the VI District are 30' in the Front, Side and Rear yards (**PUB Article V: Lot Size, Yards and Setbacks §501**). The existing structural dimensional nonconformities are as follows:

61 Beaman St. Proposed Retail Space:	Northerly setback is, at its minimum point, 6.25'
55 Beaman St. Proposed REED Workshop:	Southerly setback is 3.75'
57 Beaman St. Existing Woodworking Shop:	Southerly setback is 0'; Westerly setback is 6'
53 Beaman St. Historic Barn to be Removed:	Northerly setback is 25'; southerly setback is 15'; Easterly setback is 22'

- 35) The application does not expand or decrease the degree of structural nonconformance of 55, 57 or 61 Beaman Street assuming continued use for Industry, Light.
- 36) The proposed removal of 53 Beaman St. would remedy the structural nonconformance existing at that location albeit at the expense of removing a historic existing nonconforming structure from the Parcel.
- 37) As proposed, the access to parking, loading and service areas for all three proposed uses will be from streets with residentially zoned frontages. See, **PUB Article VI: Parking and Loading**, §601(E): (*“Access to parking, loading, and service areas for commercial and industrial uses shall not be from streets with residentially zoned frontages.”*)
- 38) The parking lot, as proposed, for all uses is not currently screened on all sides adjoining residential districts. See, PUB, Section 601: (G): (*“All open off-street parking areas containing more than four (4) parking spaces and all off-street loading areas shall be: 1. screened on each side adjoining or fronting on any property in a residential district, by a wall, fence, or densely planted hedge not less than five (5) feet in height. . . .”*)
- 39) The uses as proposed and as submitted will not remedy access to the parking lot from street with residential frontages, per **Exhibit A** and **E**.
- 40) The Applicant has proposed to provide screening of a six (6) foot stockade fence on the northwesterly corner of the proposed parking lot which adjoins residential property.
- 41) There are other existing nonconformities on the subject parcel including: (1) there is more than one principal building on the lot in derogation of PUB §1411 (Lot Limitations) and (2) one of the drives which acts as an access and exit point for the retail use as proposed is located less than 20 feet from the Church Street and Beaman Street intersection. PUB, Section 1426 (Location of Driveways).
- 42) The pre-existing structures with street addresses of 55 and 61 Beaman St. have been unoccupied in excess of one (1) year.
- 43) The current and expected Daily Traffic and load increase if the proposed uses are approved could not be confirmed by the Applicant.
- 44) No changes to the existing landscaping of the property are proposed.
- 45) No changes to the Existing Roof Top Ventilation System are proposed.

- 46) Ingress and egress for public access to the existing parking lot are proposed to use existing curb cuts on Vermont Route 30/Beaman Street and Church Street.
- 47) The applicant has testified all deliveries will use the Vermont Route 30/Beaman Street Curb Cut.
- 48) The applicant has testified delivery trucks will drive forward into the Parcel's proposed parking area and then back into the unloading area.
- 49) The applicant has testified trucks will leave the property in a forward motion when re-accessing the main road.
- 50) The applicant has testified that all proposed signage connected with the retail use will follow the regulations set forth in PUB Article XI and has, accordingly, withdrawn the request for a variance.
- 51) There are no currently proposed uses for the remainder of 61 Beaman Street.

CONCLUSIONS OF LAW

A. Non-Conformities

- 52) It is evident from the facts as submitted by the Applicant and found above that the subject parcel, as proposed, does not, in its current configuration, conform with the PUB in at least two ways: (a) There are currently at least three (3) principle buildings located on the subject parcel which are proposed for use by three (3) distinct entities for three distinct uses in derogation of PUB §1411. (b) There are four (4) pre-existing nonconforming structures on the subject parcel that fail to meet existing setback requirements. Accordingly, the DRB must make a determination of whether the maintenance of any of these structures given the dimensional requirements which apply to the uses as proposed "increase[s] the degree of nonconformance." PUB §708. To that end, any adverse effects of the applicant's proposal needs to be reviewed pursuant to the relevant factors set forth in PUB §711. See Exhibit F.
- 53) The use proposed for 55 Beaman Street as a "REED Woodworking Shop – Green Mountain College" is properly characterized as both "Industry, Light" use rather than a "College Owned or directed facility" under the table of uses. As a "...use engaged in the manufacture ... of finished products or parts...", per the definition of "Industry, Light", the REED Woodworking Shop has historically been treated by the Zoning Administrator as "Industry, Light" and the Board concludes that this is the most appropriate use description for the proposed activities. This conclusion is unique to the REED Woodworking

Shop, and should not be construed to affect other College Owned or Directed uses within the Town.

- 54) The DRB concludes that at least three (3) principle buildings have historically existed on the subject parcel, those being 55, 57 and 61 Beaman Street. These structures have historically existed, and been used, in connection with a common use defined generally as being within the scope of Industry, Light as currently defined in PUB, Article XIII. The DRB therefore concludes, that these principle structures, and the historic building proposed to be moved, are all pre-existing for the purposes of compliance with PUB §1411's limitation on the number of principle buildings allowed on a lot. In so concluding, the DRB is reserving any ruling on whether the three (3) principle structures on the Parcel may be used for separate and distinct uses in compliance with PUB §1411.
- 55) The DRB concludes that the currently existing woodworking woodshop proposed for 57 Beaman Street meets the definition of Industry, Light given that it involves the manufacture of finished products or parts from previously prepared materials and, further, that maintenance of this use as currently practiced and proposed does not increase the degree of structural nonconformance in connection with any dimensional requirement. Therefore, to the extent that the Applicant is seeking approval for the continuation of a woodworking shop in 57 Beaman Street, the same is approved on condition that there be no unpermitted exterior modifications to the 57 Beaman Street building, that parking be limited to the area to the north of the building and that all manufacturing be interior to the building.
- 56) The DRB concludes, however, that in reviewing the Applicant's request to permit the use of a portion of 61 Beaman Street for 10,000 plus sq. ft. of retail space for occupancy by a tenant, the proposal, as made, does raise real questions of whether retail use will increase the degree of dimensional nonconformance under PUB §§708 and 711.
- 57) As proposed, it is understood, and the DRB concludes, that the outside dimension of 61 Beaman Street will not be altered or changed except as to any nominal change that may result from installing entry doors along the eastern face of the building and installing interior partitions at the window locations meaning that all current side, front and rear yard setbacks will not change.
- 58) The DRB concludes, however, that this new use as proposed adds, under the PUB, several other dimensional requirements that must be considered to determine whether the maintenance of the current dimensional nonconformities will have an adverse effect given the PUB's express limitations in connection with retail use of the subject parcel. Specifically, the DRB concludes that the dimensional requirements of PUB §415 A-B are

appropriately applied to this request given that 61 Beaman Street is, as it stands, a noncomplying structure and that specific “conditions regarding minimum lot size and set backs . . .”, PUB Article IV, apply when retail stores are contemplated as a proposed use. PUB §415.

- 59) PUB §415 A-F calls for a minimum lot size of 2 acres, lot coverage of no more than 30%, minimum setbacks of 25 feet on all sides with a minimum setback of 100 feet from residential property, parking lot entrances and exits on non-residential streets, off-street parking in compliance with Article VI with a minimum of 25 feet from adjacent residential property with planting screen, a fence and entrance and exits to be at least 75 feet from a street intersection.
- 60) The DRB concludes, pursuant to PUB §708 and 711, that the new use proposed for this pre-existing structure will, in fact, increase the degree of current dimensional nonconformity given that the proposed use brings with it numerous dimensional requirements that have not previously existed that are specific to and exceed those which applied to the existing structures. The degree of dimensional nonconformities, if this use is permitted, will expand to include area, setback, parking and access dimensional requirements well beyond those that have historically existed in connection with the light industry that has historically existed.
- 61) In looking at the adverse effects of such an expansion under PUB §711, the DRB concludes as follows:

- (a) The history of use of the lot.

The subject parcel has been historically used for light industry.

- (b) The objective of the zoning district in which the lot and adjoining lots are located as defined in PUB §201 is to:

“Provide for the limited expansion of existing industrial developments and appropriate new industrial developments within the confines of the Village, in keeping with high environmental and siting standards due to proximity to less intense neighboring land uses. The intent is to provide nearby employment opportunities for residents without unduly impacting the capacity of community services and facilities.”

PUB §201(D).

- (c) *Whether an increase in business hours or a change in hours from daytime to nighttime will result and the effect of such an increase or change on adjoining uses and the neighborhood. PUB §711G*

While the testimony is not clear, the Applicant expects that his tenant will have hours of operation seven (7) days a week from 8:00 a.m. until 9:00 or 10:00 p.m. This change of business hours, particularly in the evening, is likely to result in adverse effects to the adjoining residential neighborhood.

(d) *Whether greater volumes of vehicular traffic will be generated and what impact this greater volume of traffic will have on the use of adjoining lots, on the neighborhood, and on pedestrian and vehicular safety. PUB §711I*

The DRB concludes that a change in the hours of operation and resulting expected increase in customer and delivery vehicular traffic patterns is likely to have an adverse effect on pedestrian and vehicular safety in the neighborhood particularly given the proximity of the parking lot's proposed north entrance to the intersection of Church Street and Beaman Street.

(e) *Whether there will be an increase in storm drainage and lighting on adjoining lots and in the neighborhood. PUB §711M*

The DRB concludes that the proposed changes to outdoor lighting in the parking area and increased evening hours of operation is likely to have an adverse effect on adjoining lots and the neighborhood.

(f) *Whether there will be screening or landscaping to lessen any adverse effects on adjoining lots and the neighborhood. PUB §711N*

The DRB concludes that the proposed screening of a six (6) foot stockade fence along the northeasterly residential border may remedy the previously described nonconformance with parking lot screening on residential borders, although the abutting neighbor has objected to the construction of such a fence given the resulting loss of sight lines to the abutting residential property owner.

(g) *Whether there is an increase in the visibility of the use or structure from adjoining lots and from public ways. PUB §711O*

The DRB concludes that proposed signage and outdoor lighting during the evening hours and the lighting structures would be more numerous and will increase the visibility of the use from adjoining lots and from public ways as depicted in Exhibit E (Attachment A).

Also, the parking capacity will increase up to forty-eight (48) parking spaces provided for the proposed uses, including six (6) or seven (7) unimproved spaces in the back of the lot. To accommodate this change, as well as truck deliveries, a historic structure will need to be removed from the subject parcel and relocated off site to an unidentified or disclosed location. While

this, to some degree, reduces the current dimensional setback nonconformance attached to this structure, it does so at the expense of removing a historic structure and replacing it with expanded parking thereby increasing the degree of visibility related to this proposed use. Further, the northern entrance point, as proposed, is located less than 20 feet from an intersection. Given the new retail use, as proposed, the dimensional requirement is 75 feet, PUB §415(F), meaning that the degree of nonconformance has now expanded by 55 feet.

B. Site Plan Review

- 62) In addition to the adverse effects which are likely to be caused by maintaining the existing dimensional nonconformity in light of the new proposed use, the DRB concludes that the Applicant has not provided sufficient detailed information upon which to sustain site plan approval in accordance with 24 V.S.A. §4416(a) and (b). PUB Article XII, Site Plan Approval, Section 1203 in the following ways:

(A) Maximum safety of vehicular circulation between the site and the street network. Particular consideration shall be given to visibility at intersections, to traffic flow and control, to pedestrian safety and convenience, and to access in case of an emergency.

The DRB concludes that without the submission of an official traffic study of pedestrian use of Church Street and Main Street in the area of the Parcel, and a study of the existing and proposed traffic flow of the two major nearby intersections (Church and Beaman Street/Vermont Route 30 and traffic that currently backs up from the stop light at the Main Street/Vermont Route 140 and Beaman Street/Vermont Route 30 intersection, and impacts that would result from the main entrance to the proposed retail store being located at this area), the Board has been presented with insufficient information to provide site approval as submitted.

(B) Adequacy of circulation, parking and loading facilities. Particular consideration shall be given to the items in (A) above and the effect of noise, glare, or odors on adjoining properties. Refuse and service areas should be included in this consideration. Provisions for snow removal should also be made. The standards under Article VI Parking Requirements must also be met.

The standards of **PUB §601(E), Article VI Parking and Loading** have not been shown to be met given that all access points originate from streets with residentially zoned frontages in contrast to the requirements of this section, which states that “access to parking, loading, and service areas for commercial and industrial uses shall not be from streets with residentially zoned frontages.”

(C) Adequacy of landscaping and screening with regard to achieving maximum compatibility and protection to adjacent property. Particular consideration shall be given to the preservation of existing vegetation, visibility of unsightly or incompatible areas from the road and adjoining properties, and the adequacy of landscaping materials to meet seasonal conditions, soil conditions, and light on the site.

The proposed partial screening of a six (6) foot stockade fence does not meet the letter of this requirement, and it is noted that few specifics concerning the particulars of the fence itself or any landscaping or vegetation have been provided and that at least one adjacent landowner has objected to the location of this structure on their border while another adjacent landowner has insisted on some form of screening. To that end, the Applicant has failed to submit a site plan that achieves maximum compatibility with adjacent property by preserving existing vegetation while minimizing unsightly and incompatible areas from visibility.

ORDER/DECISION

Insofar as the application as filed seeks use and site plan approval in connection with 57 Beaman Street as a woodworking facility, the same is approved on condition that access to and from 57 Beaman Street shall be from Beaman Street and on condition that the exterior of 57 Beaman Street not be changed or altered without permit approval and that all parking be located to the north of 57 Beaman Street.

Insofar as the application as filed seeks use approval in connection with 55 Beaman Street for the REED Woodworking Shop to be operated by Green Mountain College as a tenant, the same is approved on condition that: (a) it be operated entirely within the 55 Beaman Street building, (b) all parking be to the west of 55 Beaman Street, (c) all deliveries or shipping of materials and manufactured goods be from the Beaman Street entrance and there be no signage or exterior lighting placed or constructed on the Parcel without seeking and obtaining permit approval.

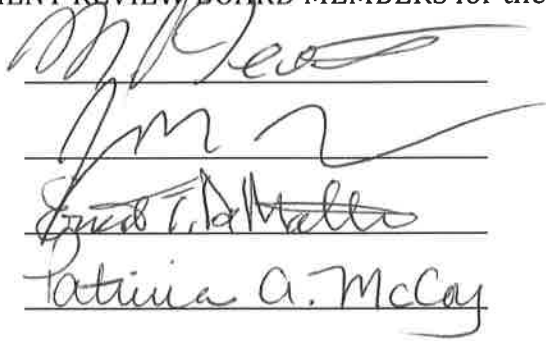
The permit application seeking use approval and site plan approval in connection with the retail use of 61 Beaman Street is denied.

Motion made by Ernie DeMatties, seconded by Jaime Lee.

APPEAL PROCEDURE

Any interested person who has participated in this proceeding may appeal this Decision of the Development Review Board to the Superior Court, Environmental Division within thirty (30) days of this decision under PUB §1001(b) and pursuant to 24 V.S.A. §4471. Upon the failure of any interested person to appeal this decision to the Superior Court, Environmental Division, this decision will be final. See 24 V.S.A. §4472(d).

DEVELOPMENT REVIEW BOARD MEMBERS for the decision



The image shows four handwritten signatures, each written over a horizontal line. From top to bottom, the signatures are: 1. A cursive signature that appears to be 'M. Geo'. 2. A cursive signature that appears to be 'J. M. R.'. 3. A cursive signature that appears to be 'Fred T. D. Hall'. 4. A cursive signature that appears to be 'Tatiana A. McCoy'.

Dated at Poultney, Vermont, this 28 day of June, 2017

Copy to: Leonard V. Knappmiller of Poultney Properties, LLC, Karl C. Anderson, Esq. of Anderson & Eaton, P.C. of Rutland, Vermont, and Mark R. Thibealut of CRE Source of Essex Junction, Vermont (Certified Mail)