

**VERMONT ENVIRONMENTAL BOARD**  
**10 V.S.A. Ch. 151**

Re: *Susan Dollenmaier and  
Martha Dollenmaier Spoor*

Land Use Permit #3W0125-5-EB

**Findings of Fact, Conclusions of Law, and Order**

This matter involves an appeal by Damian Poludin and Michael Copping to the Environmental Board (Board) from Land Use Permit #3W0125-5 (Permit) and accompanying Findings of Fact, Conclusions of Law, and Order (Decision) issued by the District 3 Environmental Commission (Commission) to Susan Dollenmaier and Martha Dollenmaier Spoor (Permittees). The Permit authorizes the construction of a two-story, 20,000 square foot commercial retail center with a 12,000 square foot “footprint” and associated parking and access drives located off West Gilson Avenue in Hartford, Vermont (Project).

**I. History**

On July 15, 2004, the Commission issued the Permit and Decision.

On August 17, 2004, Damien Poludin and Michael Copping filed an appeal, alleging error with respect to 10 V.S.A. §§6086(a)(1)(G), (5), (8), (8)(A), (9)(B) and (9)(K).

On August 25, 2004, Permittees filed a cross-appeal asserting that Permit Condition 17 should be stricken. That same day, the Permittees also filed a Motion to Dismiss the appeal as to 10 V.S.A. §§6086(a)(1)(G), (8)(A), (9) and (9)(K).

On September 29, 2004, following a September 21, 2004 Prehearing Conference, Board Chair Patricia Moulton Powden issued a *Prehearing Conference Report and Order and Chair's Preliminary Ruling on Permittees' Motion to Dismiss*. The Preliminary Ruling dismissed the appeal as to 10 V.S.A. §§6086(a)(1)(G), (8)(A), (9) and (9)(K). No objection to the Prehearing Order or Chair's Preliminary Ruling was filed.

A hearing was held on January 5, 2005. Permittees were represented by Charles F. Storrow, Esq. Damien Poludin and Michael Copping appeared *pro se*. The Town of Hartford Selectboard and Planning Commission appeared through Hunter Rieseberg, Len Berliner and Lori Hirschfield.<sup>1</sup>

---

<sup>1</sup> While the Prehearing Order allowed the Mid Vermont Christian School (School) to participate as an Environmental Board Rule 14(A)(5) party as to 10 V.S.A. §6086(a)(5) and (8)(aesthetics) in this appeal, the School did not appear at the hearing.

The Board deliberated on January 5 and February 2, 2005. This matter is now ready for final decision.

## **II. Issues**

The issues in this matter are:

1. Whether the Project complies with 10 V.S.A. §6086(a)(5).
2. Whether the Project complies with 10 V.S.A. §6086(a)(8) (aesthetics).
3. Whether Condition 17 of Land Use Permit #3W0125-5 should be deleted.

## **III. Findings of Fact**

To the extent that any proposed findings of fact are included within, they are granted; otherwise, they are denied. *See, Secretary, Agency of Natural Resources v. Upper Valley Regional Landfill Corp.*, 167 Vt. 228, 241-242 (1997); *Petition of Village of Hardwick Electric Department*, 143 Vt. 437, 445 (1983).

### *A. The Project*

1. The Project is the construction of a two-story, 20,000 square foot commercial retail center with associated parking and access drives on eight acres located southerly of West Gilson Avenue in Hartford, Vermont.

2. The Project will house the Permittees' Anichini, Inc. store and similar "up-scale" businesses, such as craft stores, artist studios, professional offices, a café, a garden center, and a fitness center.

### *B. Criterion 5*

3. Access to the parcel is via a drive that intersects West Gilson Avenue about 515 feet southeast of the intersection of West Gilson Avenue and US Route 4 almost directly opposite the exit to the Mid Vermont Christian School.

4. To get to the Project, motorists on US Route 4 will have to use either the intersection at West Gilson Avenue and US Route 4 or the intersection at Quechee-Hartland Road and US Route 4 and then drive on to West Gilson Avenue.

5. Resource Systems Group, Inc. (RSG) performed a traffic impacts study for the Project and issued a report in January 2004. The study included an analysis of trip ends that will be generated by the Project, timing movements at the affected Route 4 intersections, level of service numbers for 2003 and 2008 (with and without the construction of the Project), and safety.

6. While raw traffic volumes were collected in 2003, they were adjusted upward to reflect the design hour volume (DHV) of traffic; this is common practice in the traffic engineering profession.

7. DHV is the 30<sup>th</sup> highest hour of traffic in a year; it is the design standard that Vermont uses.

8. The DHV adjustments that the Permittees used were based on a continuous traffic counter on US Route 4 three miles from the Project site.

9. Permittees compared traffic volumes from the 2001 DHV with volumes counted from the peak hours in January and February 2003, because at the time recent count data from the continuous counter was not available. Thus, the most recent data (from 2001 data) was used to develop the DHV adjustment.

10. The DHV adjustments are overestimates of the actual traffic volumes on US Route 4.

#### *Level of Service*

11. RSG performed a Level of Service (LOS) analysis to determine changes in LOS at various intersections as a result of the Project.

12. LOS is a quantitative measure describing the operating conditions as perceived by motorists driving in the traffic stream. LOS A represents little or no delay associated with proceeding through an intersection; at the other extreme, LOS F represents 50 or more seconds of delay associated with proceeding through an unsignalized intersection.

13. At the intersection of the Project access and West Gilson Avenue, LOS will remain at LOS A through 2008, even if the Project is built.

14. For all turns at the West Gilson Avenue / US Route 4 intersection, LOS remains the same whether or not the Project is built.

15. For all traffic on Route 4, LOS remains the same at the Quechee-Hartland Road / US Route 4 intersection whether or not the Project is built.

16. For all traffic on the Quechee-Hartland Road, 2003 LOS drops from LOS C to LOS D (northbound) and LOS D to LOS E (southbound) in the 2003 “build” versus “no-build” scenario, and LOS E to LOS F (southbound) in the 2008 “build” versus “no-build” scenario.

17. For northbound traffic on the Quechee-Hartland Road, 2008 LOS drops from LOS C to LOS D whether or not the Project is built.

18. Even though the LOS for most of the approaches on the Quechee-Hartland Road to its intersection with US Route 4 are worse in the 2003 and 2008 “build” versus “no build” scenarios, the Project will not overtax the physical abilities of these approaches. Further, there should be sufficient breaks in the US Route 4 traffic to allow traffic from the Quechee-Hartland Road to access Route 4.

19. While not presently required, a traffic light at the Quechee-Hartland Road / US Route 4 intersection would improve its LOS.

#### *Turning lanes*

20. No turning lanes are needed at the intersection of the Project access and West Gilson Avenue or for eastbound traffic on Route 4 at the West Gilson Avenue / US Route 4 intersection.

21. A left turn lane for west-bound traffic on Route 4 at the West Gilson Avenue / US Route 4 intersection is necessary to address Project traffic. The Permittees are willing to construct this lane, and VTrans has issued a permit for such construction.

22. The RSG report recommends either (a) a set of left turn turning lanes being added to US Route 4 for its east and westbound traffic turning on to the Quechee-Hartland Road or (b) a traffic signal at the intersection at Quechee-Hartland Road and US Route 4. Traffic at this intersection will be a problem whether or not the Project is built.

23. Pursuant to requirements imposed by the Hartford Planning Commission, the Permittees have paid \$1500.00 toward funding a “signal warrant analysis” on the need for a signal at this intersection and are willing to fund a proportional (4.1%) cost of the signal if one is warranted.

*Sight distances and speed limits*

24. Stopping sight distance is the distance it takes a motorist traveling at the posted speed limit to stop. Corner sight distance is, in general terms, the distance that a motorist (who is waiting at an intersection) can see in either direction down the road the motorist wishes to enter.

25. There are potential stopping and corner sight distance problems at the West Gilson Avenue / US Route 4 intersection. These problems can be addressed by a reduction in the speed limit on Route 4 from 50 to 40 mph to solve this problem. At the request of the Town of Hartford, VTrans has approved this speed limit reduction, and the 40 mph signs have been installed.

26. The Permittees will conduct additional clearing at the southwest corner of the West Gilson Avenue / US Route 4 intersection to improve sight distances to the west.

*C. Condition 17*

27. On school days, during morning drop-off and afternoon pick-up at the Mid Vermont Christian School, parents sometimes queue up on West Gilson Avenue, as they wait to drop off or pick up their children.

28. In order to mitigate the Project's impact on the School and the Quechee-Hartland Road / US Route 4 intersection, the Commission imposed Condition 17 which reads: "The permittees shall install a "Left Turn Only "sign at exit of the project."

29. The Quechee-Hartland Road and the Marsh Family Road are both east of the Project on West Gilson Avenue. A motorist who is permitted to turn right at the Project's exit could immediately access the Marsh Family Road with another right turn or could travel east a short distance on West Gilson Avenue to its intersection with the Quechee-Hartland Road.

30. Condition 17's "Left Turn Only "requirement requires a motorist who wishes to access the Quechee-Hartland Road or the Marsh Family Road to (a) turn left on to West Gilson Avenue upon exiting the Project, (b) enter US Route 4 at its intersection with West Gilson Avenue, and (c) drive on Route 4 to its intersection with Quechee-Hartland Road. To get to Marsh Family Road, motorists would then (d) turn right on the Quechee-Hartland Road, (e) turn right on to West Gilson Avenue, and then (e) turn left on to Marsh Family Road. Condition 17's "Left Turn Only " requirement therefore always sends these motorists through both the US Route 4 / West Gilson Avenue intersection and the Quechee-Hartland Road / US Route 4 intersection.

31. Motorists who want to go east on US Route 4 could not do so without using the West Gilson Avenue / US Route 4 intersection, something that they could avoid (were Condition 17 deleted) by turning right as they exit the Project, turning left on to the Quechee-Hartland Road, and then right at the Quechee-Hartland Road / US Route 4 intersection.

*D. Criterion 8*

32. The Project site is a grassy field which slopes uphill south of West Gilson Avenue.

*The Project building on the Project site*

33. The Project building is 20,000 square feet with a 12,000 square foot footprint. The building, which runs in an east-west direction roughly parallel to West Gilson Avenue, is broken into four connected units to break up its mass appearance.

34. The Project building is 40 feet high, but stepped into the slope so that it will appear lower.

35. The building is designed in the "Vermont Vernacular" style to look like the style of buildings one associates with traditional Vermont architecture. It will have brown, wood clapboard siding; the standing seam roof will be charcoal grey; the doors will be red; the foundation will be red brick with black streaks.

36. There will be 90 parking spaces in a 45-foot wide paved area surrounding the building.

37. With construction on two of the Project site's eight acres, approximately seventy-five percent (75%) of the Project site will remain as open space.

*Context and views*

38. The Project is located in a mostly rural and rural residential area. While there are some other commercial enterprises within one-half mile of the Project site on US Route 4, the Mid Vermont Christian School is the only commercial enterprise in the immediate vicinity of the Project.

39. Views of the Project from off-site are mostly through existing treed areas, which will remain uncut, except as noted herein.

*Landscaping and vegetation*

40. The Project site will be landscaped with Vermont plant species, flowers, and other plantings in accordance with a planting plan on file in the Record.

41. Some trees on the northern border of the Project site will be cut; the remaining trees will be supplemented with plantings of other tree species: Paper Birch and Red Maple.

42. The retaining wall on the Project site's north border along West Gilson Avenue will be disguised with Red Osier Dogwood and Serviceberry.

43. Aspen and birch trees outside the construction limits around the retention pond will be retained and supplemented with American Elm, Ash, Blue Flag Iris and Soft Rush.

44. An existing belt of white pine and other coniferous trees on the Project site's southern edge will remain intact and aid in screening views of the Project from Marsh Family Road. The Hartford Planning Commission may require supplemental plantings in this area.

45. The Project access road will be lined with Summersweet Clethra and Red Maples will line the edges of the parking areas.

46. Groundcover will be planted to soften the retaining wall at the rear of the building.

*Signs and lighting*

47. Signs for the individual businesses at the Project will be lit with exterior lighting. Project lights on the building and in the parking lots are down-directed. All of these lights will turn off 15 - 30 minutes after the close of business hours, and, in no case, no later than 10:30 p.m.

48. There will be two free-standing Project signs, one at the Project entrance and one near the West Gilson Avenue / US Route 4 intersection. These signs are comparable to others found in the vicinity of the Project. They may remain lighted during the night.

*Quechee Lakes Landowners' Association review*

49. The Project has received design approval by the Quechee Lakes Landowners' Association Review Board and the Hartford Planning Commission.

#### **IV. Conclusions of Law**

##### **A. Burden of proof**

The burden of proof consists of the burdens of production and persuasion. *Applewood Corporation Dummerston Management*, Declaratory Ruling #325, Findings of Fact, Conclusions of Law, and Order at 8-9 (Sep. 25, 1996).

The burden of proof as to particular criteria is established by 10 V.S.A. §6088. However, regardless of who has the burden of proof on a particular issue, the applicant always has the burden of producing evidence sufficient to enable the Board to make the requisite positive findings on all of the criteria. *Herndon and Deborah Foster*, #5R0891-8B-EB, Findings of Fact, Conclusions of Law, and Order at 11 (Jun. 2, 1997).

Pursuant to 10 V.S.A. §6088(b), Damien Poludin and Michael Copping (as opponents to the Project) have the burden of proof concerning the Project's compliance with 10 V.S.A. §6086(a)(5) and (8).

##### **B. Criterion 5**

Under Criterion 5, Board or Commission must find that the subdivision or development "[w]ill not cause unreasonable congestion or unsafe conditions with respect to use of the highways, waterways, railways, airports and air ways, and other means of transportation existing or proposed." *In re Agency of Transportation*, 157 Vt. 203, 207 (1991), quoting 10 V.S.A. § 6086(a)(5); *Re: John J. Flynn Estate and Keystone Development Corp.* #4C0790-2-EB, Findings of Fact, Conclusions of Law, and Order at 20 (May 4, 2004).

The Board cannot deny a project for failure to satisfy Criterion 5, but it may impose reasonable conditions and requirements to alleviate burdens created. 10 V.S.A. § 6087(b); *In re Agency of Transportation*, 157 Vt. at 207; *In re Pilgrim Partnership*, 153 Vt. 594, 597 (1990), *Re: John J. Flynn Estate*, *supra*, at 20.

##### **1. Safety**

Safe travel on a right of way is in the public interest. *In re Pilgrim Partnership*, 153 Vt. at 596.

Adequate sight distances are an element of the Board's safety consideration. *Re: Old Vermonter Wood Products*, #5W1305-EB, Findings of Fact, Conclusions of Law, and Order at 16 - 18 (Aug. 19, 1999), citing *Re: Richard and Barbara Woodard*, #5W1262-EB, Findings of Fact, Conclusions of Law, and Order at 14 (Dec. 12, 1997); *Re: Town of Barre*, #5W1167-EB, Findings of Fact, Conclusions of Law, and



Order at 19 (Jun. 2, 1994). Whether sight distances are adequate is a function of the length of unobstructed views and speed limits. *Re: Old Vermonter Wood Products, supra* at 17. Here, the reduction in the speed limit on Route 4 near the West Gilson Avenue / US Route 4 intersection from 50 to 40 mph and the additional clearing at this intersection resolves stopping and corner sight distance concerns.

Installing a left turn lane at this intersection (which the Permittees are willing to construct, VTrans has approved, and the Commission imposed as a condition) will also address safety concerns. The Board agrees that the turning lane is a necessary condition of the permit. See, *Green Meadows Center LLC, The Community Alliance, and SEVCA, #2W0694-1-EB*, Findings of Fact, Conclusions of Law, and Order at 30 (Dec. 21, 2000); *Barre Granite Quarries, LLC and William and Margaret Dyott, #7C1079(Revised)-EB*, Findings of Fact, Conclusions of Law, and Order at 76 (Dec. 8, 2000).

## 2. *Unreasonable congestion*

The Board may impose permit conditions to address congestion issues. *OMYA, Inc. v. Town of Middlebury*, 171 Vt. 532, 533 (2000).

The only evidence supported by data in the Record as to congestion is that LOS will either not be affected by the Project or that lower LOS caused by the Project at the Quechee-Hartland Road / US Route 4 intersection will not overtax the roads. Further, the Permittees have contributed to a study to consider the need for a signal at this intersection and must pay a proportion of the signal's cost if one is warranted.

## 3. *Conclusion as to Criterion 5*

The Board finds that the Permittees' evidence meets their burden of producing evidence sufficient to enable the Board to make positive findings on Criterion 5. *Herndon and Deborah Foster*. The Board further finds that the opponents to the Project have not met their burden of proving that the Project will cause unreasonable congestion or unsafe conditions with respect to use of the highways.

## **B. Criterion 8**

Under Criterion 8, before issuing a permit, the Board must find the proposed Project will not have an undue adverse effect on the scenic or natural beauty of the area, aesthetics, historic sites or rare or irreplaceable natural areas. 10 V.S.A. §6086(a)(8).

While the burden of proof under Criterion 8 is on those who oppose the Project, 10 V.S.A. §6088(b), an applicant for a permit must provide sufficient information for the Board to make affirmative findings. *Hannaford Brothers Co. and Southland Enterprises*,

*Inc.*, #4C0238-5-EB, Findings of Fact, Conclusions of Law, and Order at 13 (Apr. 9, 2002); *and see, Re: Southwestern Vermont Health Care Corp.*, #8B0537-EB, Findings of Fact, Conclusions of Law, and Order at 28 (Feb. 22, 2001); *Re: Black River Valley Rod & Gun Club, Inc.*, #2S1019-EB, Findings of Fact, Conclusions of Law, and Order at 19 (June 12, 1997) and cases cited therein.

1. *Adverse Effect*

The Board relies upon a two-part test to determine whether a project satisfies Criterion 8. First, it determines whether the project will have an adverse effect under Criterion 8. *Re: James E. Hand and John R. Hand, d/b/a Hand Motors and East Dorset Partnership*, #8B0444-6-EB (Revised), Findings of Fact, Conclusions of Law, and Order at 24-25 (Aug. 19, 1996), *citing Re: Quechee Lakes Corp.*, #3W0411-EB and #3W0439-EB, Findings of Fact, Conclusions of Law, and Order at 17 -19 (Nov. 4, 1985).

[T]he Board looks to whether a proposed project will be in harmony with its surroundings or, in other words, whether it will “fit” the context within which it will be located. In making this evaluation, the Board examines a number of specific factors, including the nature of the project's surroundings, the compatibility of the project's design with those surroundings, the suitability for the project's context of the colors and materials selected for the project, the locations from which the project can be viewed, and the potential impact of the project on open space.

*Hand, supra*, at 25, *citing, Quechee, supra*, at 18. In other words, if a project “fits” its context, it will not have an adverse effect. *Re: Talon Hill Gun Club and John Swington*, #9A0192-2-EB, Findings of Fact, Conclusions of Law, and Order at 9 (June 7, 1995). If the Board concludes that the Project has an adverse effect under Criterion 8, the Board moves to the second part of the test and evaluates whether the adverse effect is “undue.”

Board precedent notes that application of Criterion 8 does not guarantee that views of the landscape will not change:

Criterion 8 was not intended to prevent all change to the landscape of Vermont or to guarantee that the view a person sees from his or her property will remain the same forever. Change must and will come, and criterion #8 will not be an impediment. Criterion #8 was intended to insure that as development does occur, reasonable consideration will be given to the visual impacts on neighboring landowners, the local community, and on the specific scenic resources of Vermont.

*Re: Okemo Mountain Inc.*, #2W5051-8-EB, Findings of Fact, Conclusions of Law and Order at 9 (Dec. 18, 1986); *and see Main Street Landing Company and City of*

*Burlington*, #4C1068-EB, Findings of Fact, Conclusions of Law, and Order at 17 – 18 (Nov. 20, 2001); *Horizon Development, supra*, at 20.

While a built environment is not always adverse, projects that result in the loss of open space and the alteration of vistas can have an adverse effect on aesthetics and scenic beauty. *E.g.*, *Re: Thomas W. Bryant and John P. Skinner*, #4C0795-EB, Findings of Fact, Conclusions of Law, and Order at 21 (June 26, 1991). *See also Re: Maple Tree Place Associates*, #4C0775-EB, Findings of Fact, Conclusions of Law, and Order at 48-49 (June 25, 1998); *Re: George, Mary, and Rene Boissoneault*, #6F0499-EB, Findings of Fact, Conclusions of Law, and Order at 19 (Jan. 29, 1998).

a. *The context of the Project*

To determine whether the Project is adverse in terms of aesthetics - whether it will “fit” the context of the area where it will be located - the Board first must determine what that context is. *Hannaford Brothers Co. and Southland Enterprises, Inc.*, #4C0238-5-EB, Findings of Fact, Conclusions of Law, and Order at 14 (Apr. 9, 2002); *The Van Sicklen Limited Partnership*, #4C1013R-EB, Findings of Fact, Conclusions of Law, and Order at 36 (Mar. 8, 2002).

The determination of the Project's context is one that is crucial to the Criterion 8 analysis; if the Project “fits” its context, then the Project, by definition, is not adverse, and the Board’s inquiry under Criterion 8 ends. *Re: John J. Flynn Estate, supra*, at 24 n. 6; *Re: Hannaford Brothers Co. and Southland Enterprises, Inc., supra* at 14.

The Project is in a residential area with some existing commercial development.

b. *The impact of the Project on its context*

Once the Board determines the context of the Project site, the Board then must consider the scope and extent of the Project's impacts on that context.

Assessing the impacts of a project is a fact-specific inquiry. On the one hand, the Board has found that a project would have an adverse impact on aesthetics because size and density of its units would differ from surrounding structures. *Brewster River Land Co., LLC*, #5L1348-EB, Findings of Facts, Conclusions of Law, and Order at 15 (Feb. 22, 2001). On the other hand, the Board has found that a large-scale residential development in a rural area (on Dorset Street in South Burlington along the Shelburne Town line) would not have undue adverse effect. *Re: MBL Associates*, #4C0948-EB (Altered), Findings of Fact, Conclusions of Law, and Order (Jan. 30, 1996), *aff'd, In re MBL Associates, Inc.*, 166 Vt. 606 (1997).

If the Board concludes that the Project has no adverse aesthetic impacts on its context, then it fits that context and the Project satisfies Criterion 8. See, *Re: John J. Flynn Estate, supra*, at 26.

The Board concludes that the Project, a two-story, 20,000 square foot commercial retail center with associated parking and access drives, does not fit its context and is therefore adverse.

## 2. *Undue Adverse Effect*

Because the Board concludes that the Project has an adverse effect under Criterion 8, the Board must evaluate whether the adverse effect is “undue.” The Board will conclude that adverse effect is “undue” if it reaches a positive finding with respect to any one of the following factors:

Does the Project violate a clear, written community standard intended to preserve the aesthetics or scenic beauty of the area?

Does the Project offend the sensibilities of the average person? Is it offensive or shocking because it is out of character with its surroundings or significantly diminishes the scenic qualities of the area?

Has the Applicant failed to take generally available mitigating steps which a reasonable person would take to improve the harmony of the Project with its surroundings?

See, *Quechee Lakes, supra*, at 19-20. And see, *Black River, supra*, at 19-20; *Hand, supra*, at 25-29;

### a. *Written Community Aesthetic Standard*

Under this first factor, the Board must determine whether the Project violates a clear, written community standard intended to preserve the aesthetics or scenic beauty applicable to the area in which the Project would be located.

In evaluating whether a project violates a clear written community standard, the Board routinely looks to town plans, open land studies, and other municipal documents to discern whether a clear, written community standard exists and should be applied in the review of the aesthetic impacts of a project. See *Raymond and Centry Duff*, #5W0952-2-EB, Findings of Fact, Conclusions of Law, and Order at 9 (Jan. 29, 1998); *Re: Herbert and Patricia Clark*, Application #1R0785-EB, Findings of Fact, Conclusions of Law, and Order at 35 - 37 (Apr. 3, 1997); *Re: Thomas W. Bryant and John P. Skinner* at 22; and see *Nile and Julie Duppsstadt & John and Deborah Alden*, #4C1013-EB, Findings of Fact, Conclusions of Law, and Order at 34 (Apr. 30, 1999) (town plan can

be an authoritative source of clear community aesthetic standards, and it is therefore appropriate for the Board to rely upon such a Plan “in determining whether [a] Project violates the community standard.”)

The Board must therefore examine whether there are community aesthetic standards that are applicable to the Project.

The Board has no evidence of any community standard before it. Since the burden is on the opponents to prove that the Project violates such a standard, the absence of any standard in the Record means that the Project satisfies this factor.

*b. Shocking or offensive*

Under this second aesthetic factor, the Board must determine whether the Project offends the sensibilities of the average person. This includes whether the Project would be so out of character with its surroundings or so significantly diminish the scenic qualities of the area as to be offensive or shocking to the average person. *Re: Pike Industries, Inc. and William E. Dailey, Inc.*, #1R0807-EB, Findings of Fact, Conclusions of Law, and Order at 18 - 19 (June 25, 1998); *Duppstadt, supra*, at 35; and *see, Re: Robert B. & Deborah J. McShinsky*, #3W0530-EB, Findings of Fact, Conclusions of Law, and Order at 9 (April 21, 1988), *aff'd, In re Robert and Deborah McShinsky*, 153 Vt. 586 (1990).

The Board concludes that the Project, as designed, will not be offensive or shocking to the average person.

*c. Mitigation*

Pursuant to 10 V.S.A. §6086(c), the Board has the authority to impose conditions necessary to alleviate adverse impacts with respect to the ten Act 250 criteria. As long as a condition constitutes a proper exercise of the police power and alleviates adverse effects that would otherwise be caused by a project, the Board may impose the condition. Any condition must be reasonable. *In re Denio*, 158 Vt. 230, 240 (1992).

In judging whether there should be mitigation, the Board looks to the steps that the applicant has taken or may take to reduce the aesthetic impacts of a project on the character of the area where it is proposed; the Board asks whether there are generally available mitigating steps that have or should be taken to improve the harmony of the project with its surroundings. *See Re: Thomas W. Bryant and John P. Skinner, supra*, at 22 (height and exterior color restrictions on homes, plantings to screen the development, covenants to govern future activities on the site, and retained open space all comprised generally available mitigating steps to alleviate adverse effects of subdivision on the surrounding area).

The Permittees will mitigate the impacts of the Project through the design of the building, limitations on the businesses which will occupy the building, landscaping and other vegetative screening, and restrictions on lighting and hours of operation. The Board finds these mitigative measures to be sufficient.

**3. Conclusion as to Criterion 8**

The Board finds that the Permittees' evidence meets their burden of producing evidence sufficient to enable the Board to make positive findings on Criterion 8. *Herndon and Deborah Foster*. The Board further finds that the opponents to the Project have not met their burden of proving that the Project will cause unreasonably adverse impacts on the aesthetics of the area.

**C. Condition 17**

Condition 17 of the Commission's Permit, which requires a "Left Turn Only" sign at the Project's egress, attempts to mitigate the Project's impact on the School and the Quechee-Hartland Road / US Route 4 intersection, by requiring all traffic to use the West Gilson Avenue / US Route 4 intersection.

While the Condition would alleviate traffic at the entrance to the School and at the intersection of West Gilson Avenue and the Quechee-Hartland Road, it will send motorists who simply wish to go south on the Quechee-Hartland Road or on to Marsh Family Road (or the roads that branch off those roads) on a lengthy journey through both the West Gilson Avenue / US Route 4 intersection and the Quechee-Hartland Road / US Route 4 intersection. Likewise, if Condition 17 remains, motorists who want to go east on US Route 4 cannot do so without using the West Gilson Avenue / US Route 4 intersection.

The Board has some concerns about sending traffic past the entrance to the School, during those hours when parents queue up on West Gilson Avenue, as they deliver or collect their children from the School. The Board concludes, however, that this is a problem of limited duration and effect, as most customers will likely visit the businesses at the Project on days or at times when children are not arriving at or departing from the School. Further, the Board believes that the parents' use of West Gilson Avenue is a problem that the School and the Town should resolve; it is unfair and improper to place the burden of solving the parents' unsafe use of the roads on the Project. Lastly, the Board concludes that whatever benefits that might result from restricting those who exit the Project to left turns only are outweighed by the additional burdens that such a restriction imposes. The Board will therefore delete Condition 17 from the Permit.

**V. Order**

1. The Project complies with 10 V.S.A. §6086(a)(5).
2. The Project complies with 10 V.S.A. §6086(a)(8) (aesthetics).
3. Condition 17 of Land Use Permit #3W0125-5 is deleted.
4. Land Use Permit #3W0125-5-EB is issued.
5. Jurisdiction is returned to the District 3 Environmental Commission.

Dated at Montpelier, Vermont this 7<sup>th</sup> day of February 2005.

ENVIRONMENTAL BOARD

*/s/Patricia Moulton Powden*  
Patricia Moulton Powden, Chair  
Jill Broderick  
George Holland  
Samuel Lloyd  
W. William Martinez  
Patricia A. Nowak  
Alice Olenick  
Karen Paul  
Jean Richardson