

VERMONT ENVIRONMENTAL BOARD
10 V.S.A. Chapter 151

RE: Worcester Corporation

Findings of Fact,
Conclusions of Law,
and Order
Land Use Permit
#5L0979-2-EB

This decision pertains to an appeal filed with the Environmental Board by Worcester Corporation (the Permittee) on January 18, 1990, from the decision of the District #5 Environmental Commission and Land Use Permit #5L0979-2, dated January 11, 1990. The permit authorizes Worcester Corporation to alter the cutting lines on Lot #4 of a previously approved subdivision off Dewey Hill Road in Stowe, but denies the request of Worcester Corporation to relocate the proposed house site on that lot.

An administrative hearing panel of the Board convened a public hearing on April 11, 1990, with the following parties participating:

Worcester Corporation by Robert P. Davison, Jr., Esq.
Frederick and Joan Ross

After hearing the testimony, the panel recessed the hearing and visited the site.

On March 1, 1991, a proposed decision was sent to the parties and an opportunity for argument and written comment was provided. No request for oral argument was made and no written comments were filed. The Board deliberated in Montpelier on April 18, 1991. This matter is now ready for decision. To the extent any proposed findings of fact and conclusions of law are included below, they are granted; otherwise, they are denied.

I. BACKGROUND

Land Use Permit 5L0979, issued on January 16, 1989, authorized the Worcester Corporation to subdivide an approximately 40.57 acre tract in Stowe into eight 5+ acre lots. Condition #18 of the permit strictly prohibited clearing beyond the limits of the approved site plan.

On October 30, 1989, an amendment application was filed by Worcester Corporation to alter and clarify the tree clearing lines and the siting of the house on Lot #4. At the time St filed the application for amendment, Worcester Corporation advised the District Commission that during the actual site construction work a decision was made to move the

house site on Lot #4 uphill approximately 100 feet to provide for a better view. In order to do this, additional clearing was done beyond what was approved in the permit. Lot #4 contains 6.2 acres, 0.36 acres of which was cleared beyond the previously approved limits. Application #5L0979-2 was processed as a Minor Application under Environmental Board Rule 51.

An adjoining property owner raised an issue regarding aesthetics. The District Commission held a hearing on its own motion on December 12, 1989, and took evidence regarding aesthetic issues under 10 V.S.A. § 6086(a)(8) (Criterion 8). Land Use Permit #5L0979-2 and Supplemental Findings of Fact and Conclusions of Law and Order were issued by the District Commission on January 11, 1990, which approved the altered cutting line but denied the request to relocate the house site on the basis that "adverse visual and audio impacts would originate from the house."

The Permittee contends that the District Commission erred in finding that the relocation of the house site will cause undue adverse audio and visual impacts to the property of adjoining property owners, Frederick and Joan Ross.

II. ISSUE

The issue is whether relocation of the house site on Lot #4 will cause an undue adverse effect to the adjoining parcel owned by Frederick and Joan Ross or otherwise have an adverse impact upon the scenic or natural beauty of the area or upon aesthetics, pursuant to Criterion 8.

III. FINDINGS OF FACT

1. Land Use Permit #5L0979, issued on January 19, 1989, authorized the Permittee to subdivide a 40.57+- acre tract off Dewey Hill Road in Stowe into eight 5+ acre lots. Lot #4 is 6.2 acres.
 2. The eight-lot subdivision is in a sparsely populated section of a rural residential neighborhood. Other lots in the immediate area outside of the subdivision are generally 10 to 15 acres.
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3. The subdivision is wooded. Trees and other vegetation provide natural screening between lots. House sites within the subdivision are not generally visible to surrounding properties or to each other.
 4. Frederick and Joan Ross own property (the Ross property) abutting Lot #4 to the southeast. The Ross property is approximately 35 acres and is comprised of meadows and woods. Their residence was built in 1987 in the meadow portion of the property.
 5. The Ross property and Lot #4 enjoy a panoramic view of the surrounding area, including Mount Mansfield to the west. The view from the Ross property also encompasses the entire valley, including the Village of Stowe and residential and commercial development. Several other residences are in open view from the Ross residence.
 6. The subdivision and the immediate area are on sloped terrain; the Ross property lies uphill from and to the southeast of Lot #4.
 7. Lot #4 was originally approved with a cutting line approximately 175 feet from its southeast property line. During construction on the site approximately 100 additional feet were cleared in the direction of the Ross property.
 8. A perimeter buffer of approximately 75 feet of mature trees has been retained on all three sides of Lot #4.
 9. In addition to the approximately 75 feet of vegetation that has been retained on Lot #4, there is an additional 200 feet of vegetation on the perimeter of the Ross property abutting Lot #4.
 10. The vegetation on the perimeter of the Ross property and on the perimeter of Lot #4 consists of mixed hardwoods and softwoods. There are predominantly immature trees on the uphill side and mature trees of an average height of 50 feet on the downhill side.
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11. The clearing of Lot #4 beyond that which was allowed under the terms of the original Land Use Permit reduced the amount of natural screening between the Ross property and Lot #4.
 12. The buffer of vegetation that will be retained between the Ross property and Lot #4 and between other house sites in the area and Lot #4 preserves the wooded nature of the area. The site is not generally visible to other residences.
 13. Lot #4, as approved, showed a house site approximately 250 feet from the southeast lot line of Lot #4, which abuts the Ross property. The proposed house site is approximately 120 feet east/southeast of the approved site and up the hill.
 14. The proposed house site is approximately 795 feet from the dwelling on the Ross property. The distances of the dwelling on the Ross property from other residences in the area are as follows: 290 feet from the Oliphant residence; 420 feet from the garage on the Irvine property; and 765 feet from the Larson residence.
 15. The distance of the proposed house site to the Ross dwelling is not incompatible with the distance between other residences in the area and is in keeping with the existing land use.
 16. The distance between the proposed dwelling site and the Ross property and dwelling provides an adequate buffer for any noise that can be expected in a residential area. No evidence was submitted to demonstrate that the proposed lot site creates any potential audio impacts to the Ross property or any other property in the area that do not exist with the approved site.
 17. Zoning restrictions prohibit construction of a house more than 25 feet in height measured from the uphill side at ground level to a point one-half of the way between the eave and the ridge of the roof. The total maximum height of a house will be 31-32 feet.
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18. A portion of the roof of a house on the permitted site would have been visible from the windows of one bedroom of the Ross dwelling. A portion of the roof of a house on the proposed site will be visible over the tree line from the windows of one bedroom of the Ross dwelling. A glimpse of a house on the proposed site may be visible from outside of the dwelling on the Ross property through the buffer of vegetation at certain times of the year.
19. The panoramic view to the west from the Ross property will not be impaired by a house of the maximum permitted height on the proposed site.
20. Any dwelling constructed on Lot #4 will be required to conform to certain protective covenants including a requirement that the colors of siding, roofs and improvements shall blend with the natural environment.

IV. CONCLUSIONS OF LAW

In Re: Quechee Lakes Corporation, Findings of Fact, Conclusions of Law and Order #3W0411-A-EB and 3W0439-EB (Nov. 4, 1985), the Board set forth a number of objective criteria to apply to a consideration of a project's compliance with Criterion 8 (aesthetics). The first step involves a determination of whether the project will have an adverse impact upon the scenic or natural beauty of the area or upon aesthetics. This involves the identification of a proposed project's context and a determination of whether the project will "fit" into that context. The Board evaluates the nature of the project's surroundings, the project's compatibility with its surroundings, the suitability of the colors and materials selected for the project, the visibility of the project, and the project's impact on open space in the area. Id. at 18.

The first consideration under the Quechee test is of the "context" of the project and whether the project fits within that context. The context of this project is a residential area with lots buffered by natural vegetation and a panoramic view of the surrounding area. The location of the house on Lot #4 on the newly proposed site is not incompatible with its surroundings. The construction of a residence is

unquestionably in keeping with the existing land uses and structures in the area. The proposal to move the house site 120 feet uphill has no impact on its overall compatibility with the area. A substantial buffer of natural vegetation has been preserved and will be retained between the Ross property and the proposed house site on Lot #4. The panoramic view from the Ross property will not be impaired. The fact that a dwelling built on the proposed site may be visible from the Ross property does not create an "adverse impact" within the meaning of Criterion 8. As the Environmental Board stated in Re: Okemo Mountain, Inc., #250351-8-EB, Findings of Fact, Conclusions of Law and Order (Dec. 18, 1986), at page 9:

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 ensure that as development does occur, reasonable consideration will be given to the visual impacts on neighboring landowners, the local community, and on the special scenic resources of Vermont.

The relocation of the house site from the permitted site to the proposed site will not have an adverse audio or visual impact on the Ross property or upon the scenic or natural beauty of the area or upon aesthetics.

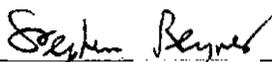
In the Quechee decision the Board stated that once it determines that a proposed project will have an adverse effect upon the aesthetics of an area, it must evaluate whether the effect is "undue." In this case, it is unnecessary to advance to this second stage of analysis because of our conclusion that the proposed house site does not meet the objective criteria delineated in the Quechee decision as the basis for a finding of adverse impact upon the scenic or natural beauty of the area or upon aesthetics.

V. ORDER

Land Use Permit Amendment #5L0979-2 is hereby issued. Jurisdiction is returned to the District #5 Environmental Commission.

Dated at Montpelier, Vermont, this 15th day of May, 1991.

ENVIRONMENTAL BOARD



Stephen Reynes, Acting Chair
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Charles F. Storrow
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