

ANNOTATION: Change in commercial use is not a substantial change, and addition of a used truck sales is a substantial change - Rules 2(A)(5) and 2(G).

STATE OF VERMONT
ENVIRONMENTAL BOARD
10 V.S.A. CHAPTER 151

RE: Robert Varney
Varney, Inc.
Route 5
Hartland, Vermont 05048

Declaratory Ruling

No. 110

On December 6, 1979 Robert Varney filed a request for a Declaratory Ruling concerning the applicability of Act 250 to certain commercial activities being conducted on his property in Hartland, Vermont. Petitioner Varney appealed Advisory Opinion #2-020 issued on November 6, 1979 by the District Coordinator which stated that these commercial activities were a substantial change from those previously occurring on the property, and that a land use permit was required. The Board served notice of a hearing on all parties, and published notice in the **Rutland** Herald on December 21, 1979. Because the hearing was cancelled, the Board again served notice on all parties and published notice in the **Rutland** Herald on January 7, 1980 of a rescheduled hearing and the intent of the Board to have Margaret P. Garland serve as hearing officer.

On January 23, 1980 a public hearing was convened in Hartford, Vermont before Margaret P. Garland, hearing officer, no objections to the use of a hearing officer having been received. Parties were the petitioner Robert Varney by Alexander L. Evarts, Esq., and the Town of **Hartland** Selectmen by Ronald F. Handley, Town Manager.

Alexander Evarts, Esq. moved to permanently adjourn the hearing because of a failure of the District Coordinator in Advisory Opinion #2-020 to outline the specific criteria under which there would be a significant impact that would constitute a substantial change. This motion was denied by the Chairman.

FINDINGS OF FACT

1. In June of 1979 **Robert** Varney purchased a certain tract of land consisting of **40** acres with various existing improvements located on the corner of U.S. Route 5 and Town Road 1-A in Hartland, Vermont.
2. The tract of land was formerly owned by the Britton Lumber Company which operated a retail/wholesale building supply and lumber sales establishment on the site until June 1978. Improvements on the property included a large single family dwelling, a large barn with office and apartment used as the main sales/display/storage building, a three-car garage, a large pole shed for lumber storage, parking areas and various outdoor storage areas. The site also included an abandoned gravel/sand pit on the eastern side.

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3. Because of the nature of the Britton operation, **large numbers** of trucks and cars crossed the site daily.
4. Robert Varney currently uses the property for his family residence and his numerous business activities. The majority of the site is involved in one way or another with his railroad reconstruction and equipment sales business. The large barn is used as a vehicle repair shop and storage building, and much of the outdoor storage area formerly used by Britton is now used for storage of railroad ties, rails, and other related material. As this business does not involve high volume retail sales, car and truck traffic is now less than **it was** when the property was a lumberyard.
5. In addition to his railroad business, Mr. Varney also uses a small portion of the storage yard adjacent to the barn for coal storage as part of his retail coal sales business. This is a very small operation with usually only one **dump-truck** load of coal leaving the site per day.
6. In conjunction with these businesses, Mr. Varney also conducts a used truck sales business on his property. Usually, all of the trucks that Mr. Varney owns and uses in his other businesses are for sale. When the trucks are not in use (some are currently not registered) they are often prominently displayed on a small hill or in a field adjacent to and visible from Town Highway 1-A, Interstate 91, **and** State Route 5. A permanent "**For Sale**" sign is placed in front of the trucks located on top of the hill, and each vehicle displayed also has an individual "**For Sale**" sign attached. Because Mr. Varney is in the business of buying and selling used trucks, he has a State of Vermont used car dealer's license.
7. In order to accommodate his various businesses, Mr. Varney has made some minor site alterations. The old gravel pit was reopened and the road to it was improved by removing vegetation and improving the surface. About 1,000 yards of sand/gravel from this pit were trucked to the southern side of the site where it was used to level an eroded area and to extend the storage area about 60 feet. No gravel from the pit has been sold or removed from the site. An addition to the barn was started but has since been **abandoned**. The foundation will be used as a slab for storage of railroad equipment.

CONCLUSIONS OF LAW

1. Conversion of this property from a lumberyard operation to a railroad reconstruction and equipment sales business in its present form does not constitute a substantial changes because the project will not result in significant impact

with respect to any of the criteria specified in **10 V.S.A.**, section 6086(a) 1-10. Therefore a land use permit for his operation is not necessary.

2. Similarly, the addition of the retail coal sales and delivery business in its present form does not constitute a substantial change because this activity does not result in any significant impacts under the criteria.
3. The used truck sales business does, however, in its present form constitute a substantial change under Criterion (8)' (aesthetics and scenic and natural beauty). There are significant impacts under this criterion because the trucks are prominently displayed in a location very visible from surrounding properties and highways, including Town Road 1-A, State Route 5, and Interstate-91; and there is a permanent sign advertising the fact that trucks are for sale.
4. The reopening of the gravel pit, improvement of the road, and addition of sand and gravel to **expand** the storage area adjacent to the barn do not constitute substantial changes- because these activities have not resulted in **any** significant change in impacts under the ten criteria.

ORDER

Accordingly, it is hereby ordered that the petitioner immediately apply to the District Environmental Commission for a land use permit for his used truck sales business if he wishes to continue the operation in its present or expanded form. The continued operation of this business on this site would be allowable without a land use permit if the following changes in the operation take place:

1. The trucks that are for sale are removed from the small hill and field so they are not visible from Interstate 91 or State Route 5.
2. The permanent "**For Sale**" advertising sign is removed from the hill.
3. Trucks parked on the site **that are** for sale are not displayed in conspicuous locations visible from State Route 5 or Interstate 91.

Dated at Montpelier, Vermont this 20th day of February, 1980,

ENVIRONMENTAL BOARD

By 
Margaret P. Garland, Chairman

Members voting to issue this decision:
Margaret P. Garland Michael A. Kimack
Ferdinand Bongartz Daniel C. Lyons
Dwight E. **Burnham**, Sr. Leonard U. Wilson
Melvin H. Carter