

**TOWN OF SOUTH HERO, VERMONT
DEVELOPMENT REVIEW BOARD
DECISION DATED OCTOBER 11, 2023**

APPLICANT

Name: Jon Quackenbush/Pest Pro
Address: P.O. Box 609
South Hero, VT 05486

LANDOWNER

Name: Quackenbush Properties LLC

APPLICATION

Type: Appeal to a Notice of Violation
Number: 23-82-RT238

PROPERTY

Location: 238 US RT 2 / Parcel RT238

Hearing Date: July 26, 2023, continued September 13, 2023

On June 13, 2023 the Town's Administrative Officer sent Mr. Quackenbush/Pest Pro a 7-day warning letter notifying him of a violation of Conditions #1 and #4 of the Planning Commission's December 17, 2014 Site Plan approval. The violation was caused by enlarging the parking lot without obtaining a Site Plan amendment.

Quackenbush/Pest Pro appealed the violation notice and a hearing date of July 26, 2023 was warned to consider the appeal.

During the course of the hearing, the following exhibits were submitted:

1. Town of South Hero Development Regulations, effective September 13, 2021.
2. Application for an Appeal; dated and rec'd June 20, 2023.
3. Email communications with Sue Mahany, dated May 23, 2023 to July 11, 2023.
4. 7-Day warning letter sent to Mr. Quackenbush, dated June 13, 2023.
5. Email request from Mr. Quackenbush appealing the Notice of Violation.
6. Planning Commission Site Plan decision, dated December 17, 2014.
7. Site Plan titled "Pest Pro" by David Tudhope, dated September 26, 2014.
8. Zoning Board of Adjustment conditional use decision, dated December 22, 2014.

9. State of Vermont Superior Court Environmental Division decision, dated October 9, 2015.
10. Photograph of the expanded parking lot, and aerial views of the parking lot site with distances to the north boundary and 17 Heritage Dr.
11. Warning Ad, Abutters' Notice, and Hearing Letter for the July 26, 2023 DRB Appeal hearing.
12. Building permit #22-30-RT238 for an addition to office space, dated October 10, 2021.
13. Staff report by Zoning Administrator for the April 12, 2023 hearing.
14. Hand drawn site plan of Pest Pro parking lot expansion, dated July 25, 2023, entered into the record as Exhibit #1 at the July 26, 2023 hearing.
15. Letter from Liam Murphy of MSK Attorneys to the Development Review Board, dated July 26, 2023, entered into the record as Exhibit #2 at the July 26, 2023 hearing.
16. Letter from the Cryan Family, dated July 26, 2023, entered into the record as Exhibit #3 at the July 26, 2023 hearing.

Based on the application, supporting documents and testimony, **the Development Review Board makes the following Findings and enters the following decision:**

Findings:

1. The Notice of Violation concerns an 8.4-acre property located at 238 U.S. Route 2 in the South Hero Village zoning district.
2. The Applicant received Conditional Use approval for commercial use in a decision by the Zoning Board of Adjustment dated December 22, 2014.
3. The matter was heard jointly with the Planning Commission, and the Applicant received Site Plan approval in a decision by the Planning Commission dated December 17, 2014.
4. The Findings of Fact #13 in the December 17, 2014 Site Plan decision indicates that the Applicant proposed to have 9 parking spaces.
5. The Site Plan schematic submitted as a part of the application for the December 17, 2014 Site Plan approval shows 9 spaces.
6. The parking area was recently enlarged to accommodate additional vehicles without an application to amend the original Site Plan approval.
7. The 2014 Site Plan Approval and Conditional Use Approval were appealed to the Vermont Superior Court, Environmental Division. The subsequent Settlement Agreement and Order did not modify the Conditions that are the subject of this Notice of Violation and the issues in the Settlement are outside the scope of this hearing and decision.

Conclusions of Law:

1. Condition #1 of the December 17, 2014 Site Plan decision says "Applicant shall comply with all evidence as presented at the hearing or as amended by this decision." The

- enlargement of the parking area is not consistent with the Site Plan presented by the applicant in the original Site Plan hearing, and so constitutes a violation of Condition #1.
2. Condition #4 of the December 17, 2014 Site Plan decision says “Any change of use or to the Site Plans as presented shall require re-submission for conditional use/Site Plan approval...”. The enlargement of the parking area constitutes a change to the Site Plan and is a violation of this condition.

On October 11, 2023, T. Maxham moved to approve the appeal of the Notice of Violation; N. Hayward seconded the motion. The Board members voted as follows: T. Maxham (no), N. Hayward (no), J. Brightwell (no), M. Welch (no), and E. Reid (no). The appeal is denied.

Dated: October 11, 2023



For the Development Review Board

APPEAL RIGHTS

Any appeal of this decision must be filed with the Superior Court, Environmental Division (located at 2418 Airport Road, Suite 1, Barre, VT 05641-8701) within 30 days of the date the decision was issued, pursuant to 10 V.S.A. Chapter 220. The Notice of Appeal must comply with the Vermont Rules for Environmental Court Proceedings (VRECP). The appellant must file with the Notice of Appeal the entry fee required by 32 V.S.A. §1431 and the 5% surcharge required by 32 V.S.A. §1434a(a). A copy of this appeal must be filed with the Zoning Administrator or the Town Clerk within thirty (30) days from the date of issuance.