

Town of Danville, Development Review Board
Permit 2023-03,
Appeal of Zoning Administrator's Decision

Applicant: Nelson W Dodge

Site: TH127-006.000, 148 Cedar Lane, Danville VT 05828

Zoning District: Village Residential.

Project Description: Applicant proposed installing a pet crematorium in the attached garage. The Zoning Administrator ruled that as it is not a use listed in the bylaws, it is therefore not permitted. This decision was appealed to the DRB.

Warning: 24 February 2023.

Hearing Date: 15 March 2023.

Development Review Board Members Present: Mickey Bullock, Brian Henderson (Chair), Terry Hoffer, Craig Morris, Bruce Palmer, Theresa Pelletier, Wes Standish

Development Review Board Members Absent: Bob Magro, Larry Rossi.

Interested Parties Present: Nelson Dodge and Stacie Ruggles (Applicants), Dennis Marquise (Zoning Administrator),

Correspondence from Interested Parties and Supporting Documents:

Attached are:

1. Email letter from applicant to ZA.
2. VT regulations for crematoriums.
3. Manufacturers spec sheet for the proposed crematory (general).

Disclosure of Conflict of Interest: None by board.

Disclosure of *Ex Parté* Communication: None by board.

Applicable Bylaws:

The applicable Danville Bylaws are:

Sec 406, page 23, Protection of Home Occupations

Sec 502.3, page 30, Conditional Use

Sec 503, page 31, Allowable and Prohibited Uses

Sec 512, page 41, Village Residential.

Findings of Fact:

Sec 406, Protection of Home Occupations.

***406.1** Bylaw provisions: No provision of this bylaw shall infringe upon the right of any resident to use a minor portion of a dwelling for an occupation **which is customary in residential area**, and which does not change the character of the area. The home occupation shall be conducted / managed by the residents of the dwelling.*

Crematorium is not a customary use in a residential area.

406.2 In order to ensure that the home occupation will not change the character of the residential area, the owner must demonstrate that it will comply with all of the following standards;

- a) All business activities or transactions associated with the home occupation shall be carried on entirely within the dwelling unit; no outside storage will be permitted.
- b) No traffic will be generated which would be uncharacteristic of the neighborhood.
- c) Parking required for home occupation shall be provided off street and shall not be located in front yards.
- d) **No objectionable vibration, odor, smoke, dust, electrical disturbance, heat, or glare shall be produced by the home occupation.**

While the VT Pollution Control Regulations require zero emissions, it is hard to believe that there would not be occasional odor or smoke from this operation. The crematory would be located approximately 150' from the neighbor's deck and pool.

Sec 502.3, 502.4. Conditional Use

502.3 Conditional uses are those uses that may be allowed by the Development Review Board as provided for in 24 VSA §4414 after public notice and hearing. In order for the permit to be granted the DRB must find that the proposed use is in conformance with the specific standards for the district in which it is located, and it shall not adversely affect:

- a) The capacity of existing or planned community facilities,
- b) The character of the area affected as defined by the purpose of the zoning district within which the project is located, and specifically stated policies and standards of the plan, **The project would be located in a moderately developed residential area, not a commercial district.**
- c) Traffic on roads and highways in the vicinity,
- d) Bylaws and ordinances then in effect,
- e) The utilization of renewable energy resources.

502.4 As a condition of approval, the Development Review Board may attach such additional reasonable conditions and safeguards as it deems necessary for approval to implement the purposes of the Vermont Planning and Development Act (24 VSA Chapter 117) and these zoning regulations.

Sec 503, Allowable and Prohibited Uses

503.1 This bylaw categorizes uses as either allowable (permitted or conditional) or prohibited. It is impossible to perfectly specify all potential uses, however, so this section enumerates the allowable uses, provides guidance on categorizing new or unspecified uses, and lists some prohibited uses.

503.2 The following allowable uses are listed as permitted or conditional in at least one zoning district. There are definitions for each of these in Article 2.

Allowable Uses Table		
Accessory Structure/Use	Equipment Service...	Parking Facility
Agriculture	Essential Services	Personal Service
Bakery	Forestry	Pond, Man-made
Bank	Funeral Home	Public Assembly
Bar/Pub	Gasoline Station	Public Facility
Bed & Breakfast	Grocery Store	Recreation Facility, Indoor
Brewery/Distillery	Group Home	Recreation Facility, Outdoor
Campground	Home Occupation	Recycling Facility
Cemetery	Home Child Care	Religious Institution
Clinic	Hotel	Removal of Fill...
Club, Private	Junk Yard	Residential Care Facility
Commercial Use	Kennel	Restaurant
Community Center	Light industry	Retail Store
Cultural Facility	Lodging house	School
Day Care Center	Mixed Use	Studio
Dwelling, Accessory	Motel	Transit Facility
Dwelling, Multi-family	Motor Vehicle Sales	Veterinarian

<i>Dwelling, Seasonal</i>	<i>Motor Vehicle Service...</i>	<i>Warehousing Trucking...</i>
<i>Dwelling, Single Family</i>	<i>Office</i>	<i>Wholesale Distribution...</i>
<i>Dwelling, Two Family</i>	<i>Outdoor Market</i>	

503.3 *There are many uses which may be similar to but broader or more specific than listed allowable uses. For example, grocery stores may be treated separately from the more general retail store. Where not otherwise specified, the intent for use categories is to follow the Standard Industrial Classification (SIC) structure maintained by the US Department of Labor, available online (<https://www.osha.gov/data/sic-manual>) at the time of publication).*

- a) If there is any question whether a use falls into a given category, the matter should follow the permit process for a Conditional Use.*
- b) The DRB shall determine whether the specific case falls under a listed allowable use and whether that use is permitted for the district and parcel in question.*
- c) The Zoning Administrator shall report any such cases to the Planning Commission for consideration and clarification in the next amendment of this bylaw.*

There is nothing relating to crematorium listed in the above. It may be considered similar to refuse systems as prohibited below. Per Vermont Air Pollution Control Regulations (VAPCR 5-401-1), crematoriums are classified as incinerators.

503.4 *Any use which is not specifically listed as allowable, or which the DRB determines cannot be categorized as belonging within an allowable use, is prohibited. The following are prohibited uses for which there may or may not be definitions in Article 2. These are listed both as examples and to clearly specify them as prohibited. **The only way to change a prohibited use is to amend this bylaw.***

*Airports, Flying Fields, And Airport Terminals
Outdoor Gun Ranges
Correctional Institutions (government or private)
Refuse Systems*

Sec 516, Village Residential.

512.1 *The Village Residential District is intended to provide areas for expansion of Danville Villages that preserve and extend the fundamental patterns of land use and interconnected street networks that define the historic portions of the village, while offering flexible standards and a range of options for site design. Development within this district is to be compact and shall provide easy pedestrian access to the village core. **Limited nonresidential development is allowed, so long as it does not detract from the essential residential character of the district.** The village of North Danville is also classified as this type of zone.*

This type of home business in a moderately dense residential neighborhood is inconsistent with residential uses envisioned by the ordinance for the village residential district.

Summary of Discussion:

Stacie Ruggles outlined the project and their grounds for appeal. This should be considered as a home occupation. It would be located in the recently constructed addition to the garage. They would be offering cremation services for pets, perhaps two per week. The applicant would handle all deliveries as part of his normal travels and there would be no public traffic. There would be no signage or advertising. Presently, pet crematories are located in Wilder(?) and Northfield VT, and Canaan NH.

The applicant has selected a crematory manufactured by Firelake Manufacturing, Model C6-200-CS4. This appliance handles two hundred pound carcasses in a six cubic foot chamber, is propane fired, burns at 1800 degrees, and claims EPA compliance with no visible emissions or odors. There is no indication of stack height. Bruce Palmer requested manufacturer's stack emission data for review, although this testing and verification is required for the Air Pollution Control Permit.

The Applicant was led to believe that a pet crematorium did not need Vermont permitting. A Vermont Air Pollution Control Permit is necessary, along with many other requirements. A copy of the regulation was given to the Applicant.

Decision and Conditions:

After a brief discussion, Bruce Palmer motioned to deny the appeal for a pet crematorium. Seconded by Terry Hoffer. The Chair called the question, and Mickey Bullock, Brian Henderson (Chair), Terry Hoffer, Bruce Palmer, , and Wes Standish voted aye to deny the appeal. Craig Morris, and Theresa Pelletier voted no. The appeal is denied with a vote of five to two.

While a pet crematorium is a viable service and likely growth opportunity, it is not a suitable activity for a residential area.

Signed:

Brian F Henderson

Brian Henderson, Chair, Danville Development Review Board

Date of Decision: 16 March 2023

Final Appeal Date: 15 April 2023

NOTICE:

This decision may be appealed to the Vermont Environmental Court by an interested person who participated in the proceeding (in person or in writing) before the Development Review Board. Such appeal must be made within 30 days of the date of this decision, pursuant to 24 V.S.A. #4471 and Rule 5(b) of the Vermont Rules for Environmental Court Proceedings.