

TOWN OF WILMINGTON
DEVELOPMENT REVIEW BOARD
FINDINGS OF FACT AND STATEMENT OF FINDINGS
WILMINGTON, VERMONT 05363

A request for a permit was made to the Board by: **Vincent Rice of Don's Dog House for Kenneth and Kathy Hobson**

Agent(s) Mailing Address: **PO Box 571, Wilmington, VT, 05363**

Owner/Applicant(s) Mailing Address: **5409 State Route 7, Hoosick Falls, NY, 12090**

Address of the subject property: **247 VT Rte. 9 East, Wilmington, VT 05363**

Tax Map #**021-22-071.000**

A copy of the request is filed in the office of the Board and is referred to as:
Case #: 2012-067

Description of Case per Public Notice:

Application # 2012-067; owner: Kenneth & Kathy Hobson; Agent: Vincent Rice. Application being made for Conditional Use review to allow expansion and revision to a previously approved Food Cart at a Mixed Use property; Zoning Ordinance Section 7.C & 512.C; location: 247 VT Rte 9 East.

Notice for a public hearing was published in the Valley News on: **6/29/2012**

Notice was posted in three public places on: **6/29/2012**

A copy of the notice was mailed to the applicant on: **6/28/2012**

A copy of the notice was mailed to the abutters on: **6/28/2012**

The public hearing was held on: **7/16/2012 and 7/19/2012**

Action taken on this application may be appealed by anyone identified as an interested party, pursuant to Vermont Statutes Annotated. Said appeal shall be made to the Vermont Environment Court.

Appeal period for this Case expires on: September 14, 2012

In *addition* to the Applicant / Agent the following persons were heard by the Board in connection with this request: (Copies were mailed to those persons listed below as having been heard.)

Alice Herrick, Zoning Administrator

I. The Board FINDS:

The following are the circumstances which give rise to the request, and the following are facts and opinions presented to the Board at the hearing and developed by the Board in independent evaluation.

EXHIBITS:

- Application (four pages)
- A Site map
- B Abutters List
- C DRB Findings for case 2010-085
- D Revised Site map

1. The subject property is in the Commercial District of the Town of Wilmington. The property is identified as Tax Map 021-22-071.000. The hearing was warned for July 16th and was continued until July 19th. DRB members Nicki Steel, chairwoman, and Gil Oxley were unavailable and did not attend the July 19th hearing, in which Andrew Schindel, vice chairman, presided. Also present were David Kuhnert and Paul Tonon, representing a majority of the Board.
2. The subject property is a mixed use property comprised of three buildings. The main building facing Route 9 is locally known as the Sugarhouse and houses Tallulah's Antique Shop. Outside the south side of the building is a stonework display area for Vermont Stoneworks. There is a small Coffee Shop (cart) on the east side of the property between Tallulah's and Route 9 which is open mornings till 11 a.m. serving coffee and baked goods. On the southern end of the property there is a large storage building that faces Route 100 and houses A to Z Landscaping.
3. Applicant is seeking a conditional use permit to operate a permanent food stand from a 32-foot trailer. Additionally, Applicant seeks to have an additional picnic table and to retain a storage cart. Applicant initially operated his food business from what is now used as the storage cart after moving onto the property in July, 2011. In November, 2011, he replaced the food cart (now storage cart) with the larger trailer and installed electric service. The old food cart is used to store frozen food. Applicant indicated that the smaller cart will remain on the property until it is sold. No further construction, change in lighting or signage is planned.

4. The food stand is situated diagonally to Route 9 and 100 on the western edge of the property. Applicant stated that the diagonal positioning was necessary to ensure visibility from both Route 9 and 100. The storage cart is immediately behind the stand and is not visible from Route 9. Applicant testified that he operates the food cart seven days a week from 7 a.m. to 7 p.m. all year and may have up to three employees.
5. Applicant testified that it was notified by the Zoning Administrator in February, 2012 and again in May, 2012 that a new permit was needed since the size of his food stand substantially exceeded that which the Board approved in DRB Case 2010-085 (Exhibit C) re: Allie's Grill. In that case, the Board approved a conditional use permit for a smaller 7 x 16 foot food cart.
6. Applicant's testimony and Exhibit D, the Revised Site Plan, indicates that the current placement of the larger food trailer violates the Wilmington Zoning Ordinance setback requirements by approximately 11 feet. Exhibit D shows that the distance from the center of Route 100 to the closest corner of the trailer is 54 feet. From the center of the highway to the edge of the highway right-of-way is 25 feet. The setback requirement is 40 feet. Since the distance from the edge of the highway right-of-way to the nearest corner of the trailer is 29 feet, the encroachment is 11 feet.

II. The Board CONCLUDES:

A Food Cart is a Conditional Use in the Commercial District and requires Conditional Use review to modify a previous approval. With regards to the criteria for a conditional use permit, the Board concludes that this proposal *will* conform to the requirements of the Wilmington Zoning Ordinance and the following standards:

- A. **Will the proposed Conditional Use have an undue adverse effect on the capacity of existing or planned community facilities?** No. Property has multiple businesses, including one other food cart.
- B. **Will the proposed Conditional Use have an undue adverse effect on traffic on roads and highways in the vicinity?** No. Property may be entered from Route 9 and Route 100. Traffic on the roadways will remain unimpeded.
- C. **Will the proposed Conditional Use have an undue adverse effect on the character of the area, as defined by the purpose or purposes of the zoning district within which the project is located?** Yes. The Board concludes that placement of two food carts where one formerly existed creates a crowded, unsightly condition to the property and limits parking spaces.
- D. **Will the proposed Conditional Use comply with specifically stated policies and standards of the Town Plan?** Yes.

- E. **Will the proposed Conditional Use comply with other sections of the Zoning Bylaw?** Yes. The definition of a building in the Zoning Regulations is as follows: “Building: Any structure, including mobile homes, camps, camp trailers, camping trucks, enclosed and isolated by exterior walls constructed or used for residence, business, industry, other public or private purposes, or uses accessory thereto, excluding structures for the storage of crops.”

The Board concludes that the 32-foot food trailer is a building even though it may be moved. Because it is a building as defined by the Zoning Ordinance, it must meet setbacks from both side and front property lines. The required front and side setbacks in the Commercial District are 40 feet.

The Board concludes that the location of the food trailer, as shown in Exhibit D, does not meet the required setbacks, as a corner of the food trailer is 29 feet from the Route 100 right-of-way. The Board approves the Application for a food trailer once it is moved so that it complies with the required 40 foot setbacks.

III. CONDITIONS:

This is granted subject to the following restrictions, requirements, limitations or specifications.

1. That the smaller food cart be removed from the premises within three months of the signing of this decision or via sale, whichever comes first.
2. That the larger, main food trailer be so placed on the property that there is at least a 40 foot setback from all property lines. In addition, the Board strongly recommends that the food trailer be placed parallel to Route 9 or Route 100 to enhance its appearance and to improve access to the other buildings on the property.
3. That at least one covered garbage can shall be supplied and emptied daily, or as often as necessary, with the refuse removed from the site at the closing of business each day.
4. That three picnic tables are approved to be placed on the grassy area and not on the parking lot.
5. The Board concludes that the Condition for the striping of parking places, as contained in DRB Case 2010-085, shall be eliminated.

Thus, the Development Review Board does **approve** the application for **Conditional Use review to allow revisions to a previously approved Food Cart in the Commercial District.**

If unused, this Approval expires 1 year from the date of issue. A request for extension may be made in writing to the Development Review Board before the expiration date. Such request shall be in the form of an APPLICATION FOR EXTENSION.

There is a thirty (30) day appeal period from the date of signature before this Approval becomes final. In addition, all fees must be paid and a Zoning Permit *must* be issued prior to the commencement of any work requested in this application. When a Zoning Permit is issued, there is an additional fifteen (15) day appeal period before the Permit becomes final. Work may commence when the Permit has been issued and all Appeal periods have ended.

This approval ***does not relieve you***, as applicant, from obtaining any and ALL applicable State and other local permits.

IN FAVOR of granting the APPROVAL FOR the above referenced application, with whatever restrictions, requirements, limitations or specifications are contained herein:

David Kuhnert
Andrew Schindel
Paul Tonon

OPPOSED:

None

NOT PRESENT:

Polly Steel
Gil Oxley

For the Board: Andrew Schindel, Vice-Chairperson

Date: 8/15/2012

Appeal Rights: An interested person may appeal this decision to the Vermont Superior Court, Environmental Division, pursuant to 24 VSA 4471 and VRECP Rule 5, in writing, within 30 days from the date this decision is issued. If you fail to appeal this decision, your right to challenge this decision at some future time may be lost because you waited too long. You will be bound by the decision, pursuant to 24 VSA 4472(d) (exclusivity of remedy; finality).

This approval does not relieve the Applicant of the responsibility to obtain all other applicable approvals that may be required by Federal, State, and local laws and ordinances.