

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: Sandri Realty Inc.

Owner/Applicant(s) Mailing Address: 400 Chatham St, Greenfield, MA 01301

Address of the subject property: 43 East Main St, Wilmington, MA 05363

Tax Map: # 021-22-031.0

A copy of the request is filed in the office of the Board and is referred to as: **#2015-073**

Description of Case per Public Notice:

Application # 2015-073: Owner(s): Sandri Realty Inc., agent Wilcox & Barton Inc, c/o Peter Lazorchak. Application is being made to convert an existing self-service gas station to a full-service station and retrofit existing building into a Dunkin Donuts with drive-thru.

Notice for a public hearing was published in the Valley News on: **July 30, 2015**

Notice was posted in three public places on: **July 30, 2015**

A copy of the notice was mailed to the applicant on: **July 30, 2015**

A copy of the notice was mailed to the abutters on: **July 30, 2015**

Public hearings were held on August 17, 2015 and August 31, 2015

Site Visit was conducted August 24, 2015

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 Environmental Court.

Appeal period for this Case expires on: October 18, 2015

Approval expires on: September 18, 2017

In *addition* to the Applicant/Agent the following persons, heard by the Board in connection with this request, were determined by the Board to be “interested persons”: Copies of this decision have been mailed to those persons listed below.

The following presented testimony on behalf of the Applicant or an Interested Person:

Richard Marcks	Sandri Co.
Michael Behn	Sandri Co.
Ryan Bartlett	Interested Person - spokesperson by petition of group of 10
Susan Haughwout	Interested Person - spokesperson by petition of group of 10
Laura Steele	Interested Person – spokesperson by petition of group of 10
Anne Drozdowski	Interested Person - “owning or occupying property in the immediate neighborhood who can demonstrate a physical or environmental impact on their interests AND who alleges the proposed action will/will not conform to policies, purposes, or terms of the zoning ordinance.

EXHIBITS

The following Exhibits were placed in evidence by the Applicant or Interested Person:

1. Interested Person petition of 10 – Ryan Bartlett spokesperson
2. Interested Person petition of 10 – Susan Haughwout spokesperson
3. Interested Person petition of 10 – Laura Steele
4. Laura Steele a) Letter b) Estimates of family trips by 43 main, c) historical town census data
5. Comments from Change.org petition created by Andrea Silverman
6. Application
7. July 21, 2015 letter from Wilcox & Barton Inc. Application cover letter and comments
8. List of abutters for application #2015-073
9. Project Review Sheet: Department of Environmental Conservation & Natural Resources Board (Identifying state permits required and stating Act 250 application to not be required “because the parcel is smaller than 1 acre in a town without permanent zoning and subdivision bylaws”)
10. July 23, 2015 preliminary approval of wastewater treatment sewer allocation (500 gpd for 10 seat restaurant to 1400 gpd prior allocation for 4 pump gas station. Final application to be approved by October 22, 2015 or extension requested.)
11. VT ANR Special Flood Hazard Areas Map, Sandri Realty Wilmington, VT Site
12. Wilcox & Barton C-1, C-2, C-3, Conditions, Site Plan, Details,
13. Initial proposed design submitted with application: Newspaper article
14. MJTAVERS Architects A-1, Preliminary Floor Plan plotted June 23, 2015 and A-2 Preliminary Elevations plotted July 9, 2015
15. MJTAVERS Architects, A-4, A-4.1, A-1. Elevations, Floor Plan plotted August 21, 2015
16. MJTAVERS Architects, A-4, A-4.1, A-1. Elevations, Floor Plan plotted August 27, 2015.
17. Radius Wall Sconce Example
18. Baselite Corp: Example - Gooseneck down light
19. Progress Lighting: Example - 5” cylinder lighting
20. LPC Light Progress Company: Example - LP35710 lighting
21. Hi-Lite Mfg. Co: Example H-MR16 Sign Lighters Collection
22. Fisher & Fisher Law Offices, P.C. Letter of opinion
23. Postcard Display presented by Interested Person Laura Steele

APPLICABLE DISTRICT

Finding of Fact: Subject property is in the Village District. 43 East Main Street is identified as Tax Map: # 021-22-031.0

Conclusions of Law: The proposed development lies in the Village District pursuant to Article II, Section 270 B.

USES

Finding of Facts: Current use is as an unattended Automotive Service Station. Revised uses will include a fully attended Automotive Service Station and 10 seat Restaurant. These are both Conditional Uses in the Village District. Requested hours of operation are to change from 24/7 to 5AM – 11PM.

Mrs. Rice, speaking as a member of the public but not requesting Interested Person status, suggested that employees and deliveries not be allowed before 4 AM or after 11:30 PM.

Conclusions of Law: The proposed development is for approved uses for this district. Development will be conditioned on no employees or deliveries before 4 AM or after 11:30 PM.

SERVICE STATION & REPAIR GARAGE SPECIFIC PERFORMANCE STANDARDS – SECTION 364

Finding of Facts: Section 364 Specific Performance Standards applying to Service Stations in current zoning regulations requires that all Service Stations and Repair Garages a) have at least ½ acre, b) have frontage of 150 feet, c) have one two way access or one point of ingress and one point of egress, d) have pumps at least 30 feet from road frontage, e) keep dismantled vehicles stored inside overnight, and f) have the canopy at least 20 feet from lot lines. Sandri:

Lot Size is 0.38acres (does not meet current Service Station Specific Performance Standards)

Road Frontage is 150’ (meets current zoning criteria)

Ingress/Egress is proposed to be one point of ingress, one point of egress (meets current standard)

Pump Setback is 17.9’ front (does not meet current zoning criteria)

Canopy Setback is 8.6’ front, 59’ rear (does not meet f front setback of current zoning criteria.

Conclusions of Law: The Sandri Service Station does not meet lot size, pump setbacks, and canopy setbacks of Service Station Specific Performance Standards of the current Zoning Ordinance.

LEGAL NONCONFORMITIES – SECTION 230, 234

Finding of Facts: Section 230 defines a Legal Nonconformity as a Structure or Use that does not conform to current regulations of the Zoning Ordinance but did conform to current regulation “in existence at the time the Structure or Use was established”. Section 234 allows that any Legal Nonconforming Use may be a) altered, changed, or enhanced for any reason so long as it does not increase the degree of non-conformity and b) any nonconforming use that is not actively engaged in for a period of twelve (12) months shall be considered a discontinued Use and the property will become subject to the of the Ordinance, unless extension is granted by the Development Review Board

Current Use of this property as a Service Station predates zoning regulation in Wilmington. Michael Behn of Sandri Co. testified that the service station has been in continuous use as a Service Station since its initial opening and that Sandri Co had placed someone in the Service Station at least once every 12 months during periods of closure so as to not lose the Grandfathering of this

use. Peter Lazorchek, agent of the applicant, testified that the state requires that any tanks not in use be removed and he had checked with the state and found there is no record of Sandri Co. ever reporting non-use of gas pumps to the state of Vermont to deactivate use.

Conclusions of Law: This service station predates the initial zoning regulations in Wilmington, first dated March 5, 1968, making this use a Legal Nonconformity. As a Legal Nonconformity alterations and changes are allowed so long as they do not increase the degree of non-conformity. As defined Automotive Service Station and Repair Garage Specific Performance Standards – Section 364 above, nonconformities exist on

- Lot Size
- Pump Setbacks
- Canopy Setbacks

Proposed development by Sandri Inc. do not alter or change lot size, pump location, and canopy location. Therefore, the proposed changes do not increase the degree of nonconformity. The Sandri Inc. Service Station would lose status as a Legal Nonconformity if the use is not actively engaged in for a period of twelve (12) months. Testimony provided under oath is that this service station has not been inactive for any twelve (12) month period. Therefore, the Service Station has maintained its status as a Legal Nonconformity.

VILLAGE DIMENSIONAL REQUIREMENTS OUTSIDE OF THE HISTORIC REVIEW

Findings of Fact: Section 270 B(5.b) Village District dimensional requirements outside of the Historic Review District requires:

- Min Lot Size 1/8 acre
- 150 feet lot frontage
- 35 ‘ height maximum
- 20’ front setback
- 20’ side & rear setback

Sandri Dimensions are as follows:

- Lot Size 0.38 acres (meets Village District standard)
- Frontage 150’ (meets Village District standard)
- Proposed building height is 21’4” (meets height maximum)
- Front Setback of building is 60’ front, (meets front setback)
- East Side Setback is 37’ (meets side setback)
- West Side Setback is 62’ (proposed) 69’ (current) – (meets side setback)
- Rear Setback is 23’ (meets rear setback)

The structure will be expanded on the north side to add a 28’ long cooler 7’ wide the length of the building. While this expansion will increase the footprint of the building, the building meets all setback requirements and does not increase a non-conformity. Legal nonconformities exist on the lot size and pump/canopy setbacks. The increase in building footprint does not increase the degree of any of these Legal Nonconformities.

Conclusions of Law:

Dimensional requirements of lot size, frontage, building height, and setbacks are met for the Village District outside of the Historic Review District.

GENERAL STANDARDS FOR CONDITIONAL USES – SECTION 320 A

The proposed development shall not have an undue adverse effect on:

A1: Community Facilities

Findings of Fact: Police and Fire Departments indicate no adverse impact due to the planned development. The Applicant has not yet applied for a fire permit. Applicant testified that Emergency Service will be able to access the building from the sides, not from under the canopy. No EMS safety plan agreement has been presented by the applicant. There will be no expected impact on local schools, community services, health care facilities, or other community facilities.

Ryan Bartlett, speaking as an interested person, noted that when parking spaces and the drive-thru are full it would be impossible to get emergency vehicles through which could be disastrous.

Conclusions of Law: Fire Permit and EMS safety plan agreement will be conditioned in this decision to ensure there is a plan for emergency services and public safety.

A2: Character of the Area

Findings of Facts: The purpose of the Village District is “to retain the character of the existing village, provide for future residential and commercial development through historically appropriate structures and business types at appropriate densities, and promote residential and tourist quality of life by preserving and developing a clustered village reflecting a visibly vibrant and energized community.”

The first statement of character for this district purpose is for historically appropriate structures and business types. The proposed development was initially for a rectangular front with a monolith (Exhibit 13). The developer has worked closely with the Development Review Board and public comment to modify plans for a more historically appropriate structure. The revised plans have accommodated requested for a gable roofed structure compatible with the predominant Greek Revival architecture of the town. They have modified building detail and design to address compatibility issues. The structure proposed in the final plan Exhibit 16 is a historically appropriate structure. The building will be sided with clapboard-like Aztec Hardiplank. Flashing will be modified from the originally planned orange to a more neutral tone to match the white. Roofing will modified from the originally planned black to be slate colored or cedar shake colored to match historically accurate roofing products.

The second statement of character for this district is historically appropriate business types. The proposed development, Dunkin Donuts provides predominantly coffee, donuts, and food services. These are historically appropriate business types, compatible with the types of services provided historically and by other establishments in the town.

The applicant testified that Dunkin Donuts will provide 14 new jobs, Manager at \$38,000 - \$40,000, Assistant Manager at \$13 - \$15 an hour, and the remaining positions at \$10 per hour. They noted that food will not be cooked in the facility, it will be precooked and delivered to their facility, then heated on premise. Sandri Inc. testified that believes that the addition of a Dunkin Donuts is essential to make this facility economically viable in that selling gasoline alone is no longer an economically viable business model.

The third statement of character for this district calls for promotion of residential and tourist quality of life by preserving and developing a clustered village reflecting a visibly vibrant and energized community. The Sandri Inc. Service Station has been an unattended station for the recent past.

Susan Haughwout, Interested Person based on 10 signatures, spoke in support of the final design presented (Exhibit 16), asking that signage be “New England style” and that nighttime lighting be addressed.

Sheila Oshler, speaking as a member of the public, not requesting Interested Person’s status, requested that the structure be of a gabled roof design to match the other gabled roofs in town and across the street and in the neighborhood of the Sandri Inc. property. She suggested the building should be white clapboard to match the Greek Revival style prevalent in the town. Speaking as a historian and design expert Sheila believes that would be a more suitable solution for the town and has seen other Dunkin Donuts using that design style and color.

Arlene Palmiter, speaking as a member of the public not requesting Interested Person’s status, expressed that she is opposed to fast food restaurants in general and is particularly opposed to drive-thru’s in a fast food restaurants. She asked that the DRB work to manage the look of the structure such as a “beautiful clapboard structure with a small sign” and to use the lot size as a way to possibly disallow a drive-thru.

David Boliver, speaking as a member of the public not requesting Interested Person’s status spoke against the character of “chains” and the fact that they are “ugly”. He indicated “if you want Putney Road (referring to a strip development in Brattleboro) then add a McDonalds”.

Andrea Silverman, speaking as a member of the public not requesting Interested Person’s status, indicated she has 373 signatures of individuals opposed to the allowing a Dunkin Donuts into Wilmington (petition not presented as testimony).

Jim Marchionna, speaking as a member of the public not requesting Interested Person’s status, spoke as a former 7 year employee of Sandri Inc. He indicated he had spoken to many in the community about this potential development and had found many who support the idea. He noted that there is no one with better ideas of how to use this property for the betterment of the town. He also noted that the addition of a fully attended gas station with a Dunkin Donuts would add 20 new year-round jobs (Sandri Inc. testified 14 new jobs) to the community and while many of the jobs are not high paying, many of the jobs in the valley are minimum wage jobs, many of them seasonal. He feels that many visitors passing through or staying in the town seek something reliable that they are familiar with and that Dunkin Donuts provides that familiarity in products and reliability.

Laura Steele, speaking as an Interested Person, noted that the proposed Dunkin Donuts will take employees away from established businesses at a time when there are already an insufficient number of employees available in the valley. She also noted that most of the jobs will not provide a “living wage” as called for in the Town Plan, noting that the Town Plan calls for preserving the look of the area and our economic well-being. She does not feel a fast food restaurant and a drive-thru food service window are consistent with those Town Plan goals. She noted that on-line comments received from the Change.org petition discuss that “chains” take away from Vermont charm, noting that most of the comments came from younger people, and that the younger population are those who the town needs most not to lose. Ms. Steele said supports keeping Wilmington quaint and historical. She would like to preserve “what makes Wilmington unique”.

Ryan Bartlett, speaking as an Interested Person, indicated that he feels the historic heritage of the town is compromised by fast food service areas.

Conclusions of Law: The proposed development is consistent with the defined purpose of the Village District and is expected promote economic growth. The DRB has achieved design goals consistent with the purpose of the district and the public comment received. The DRB will ask the developer to side the structure with white clapboards (Aztec Hardiplank) with white trim as a more suitable color solution than their intended tan with white trim. The lack of activity within the building and the lack of attention to the facility has negatively impacted the quality and vibrancy of the area. Putting this parcel back into active use in a manner that promotes a vibrant and energized downtown will be beneficial to the community.

The DRB does not have cause to limit the drive-thru based on lot size as recommended by the public as there is no zoning restrictions or concessions that apply to this feature. There is not prohibition or restrictions on drive-thrus, setback criteria of the Village District are met, and the drive-thru in no way impact the “grandfathered” Legal Nonconformities of the Service Station Lot Size or Pump and Canopy Setbacks. The proposed development does not have an undue adverse impact on the character of the area.

Regarding the petition of 373 individuals opposing Dunkin Donuts being allowed into Wilmington, the DRB finds that there is no Zoning Regulation to support this position. There are no restrictions on this type of business or regulations requiring unique features. In addition, by law all businesses must be allowed free trade and commerce without prejudice to corporate structure or be in violation of anti-trust laws. The DRB does not have a legal basis on which to restrict Dunkin Donuts from doing business in the town of Wilmington.

A3: Traffic on Roads and Highways

Findings of Facts: Current traffic congestion pre-exists in this area. It is anticipated that the addition of a Dunkin Donuts will increase the traffic of this already congested area. While Sandri Inc. testified that they have not conducted any traffic studies, they estimate their daily vehicle volume to increase 22%.

Sandri current estimated service station volume: 1302 daily average vehicle trips

Sandri projected estimated volume: 1595 daily average vehicle trips (an increase of 293 or 22%)

Sandri testified that they believe cars that will use their Dunkin Donuts are cars that are coming through town anyway. They do not believe any cars will come to Wilmington specifically for Dunkin Donuts.

The proposed use is necessary to allow for the reasonable use of this property to become an economically viable enterprise. VTrans has approved a single point of ingress and single point of uncontrolled traffic flow of the service station.

Alice Greenspan, speaking as a member of the public, not requesting Interested Person’s status, expressed concern with traffic, the ability to clear snow in winter, and conflicts between drive-thru traffic and those in parking spaces attempting to back-up.

Lenny Chapman, speaking as a member of the public, not requesting Interested Person’s status, suggested that Dollar General/Bucket-of-Suds traffic using the same space as an ingress that Dunkin Donuts/Gas Station traffic would use as an egress would create traffic problems.

Anna Drozdowski, speaking as an Interested Person from the neighborhood noted that there could be as many as 27 vehicles on the property if the drive-thru, parking spaces, and gas pumps were all

at full capacity use at one time which seemed like a great many. Anna questioned whether there are laws about how many vehicles can be on the property at one time. She noted that a drive-thru in addition to parking may not be in the best interest of the village given pre-existing traffic density in the area. She also noted that the area of the Sandri Service Station is one of the highest traffic accident locations in the town according to the Dubois study conducted for the town, noting that pedestrian and bicycle ways through that area are narrow.

Laura Steele, speaking as an Interested Person, questioned what would happen when more people arrived that there are spaces for. She also noted that there is no space for a tractor trailer to pull in and that it was quite likely some would want to do so. She noted an increase of 293 vehicles per day on the property would increase the risk of accidents. Finally, Ms. Steele questioned pedestrian safety and availability of sidewalks during construction. (Michael Behm of Sandri Inc. noted that pedestrian traffic will be redirected through the service station area along a secure pathway during construction and that the service station will be closed during construction.)

Ryan Bartlett, speaking as an Interested Person, questioned what the maximum occupancy is for this building. (Michael Behm of Sandri Inc. noted this figure is generally established in a Fire Permit and that no Fire Permit had been requested yet, pending the outcome of this hearing.)

Conclusions of Law: While Sandri Inc estimates there will be a 22% increase in traffic, the clustered downtown has pre-existing periodic traffic congestion. This development is not expected to make it appreciably worse. VTrans feels the traffic flow planned for this facility will have a favorable impact on the current traffic flow situation.

To ensure public safety, the applicant will be responsible for ensuring that no vehicles are backed up into the state right-of-way from the drive-thru waiting line, that no vehicles including tractor trailers park within the right-of-way, and that vehicle flow in the parking lot will be managed as needed to ensure public safety. Traffic and parking impacts shall be monitored and actions taken as needed to ensure public safety at all times.

A4: Bylaws and Ordinances in Effect

Finding of Facts: Proposed development will not have an undue adverse impact complies with all bylaws and ordinances in effect at the time of this decision

Conclusions of Law: This application is in conformity with the Zoning Ordinance

A5. Utilization of Renewable Energy & Natural Resources

Findings of Fact: High efficiency lighting at the minimum lumens necessary to achieve the functional purpose will be used. No other renewable energy or natural resource impacts are anticipated for this development.

Conclusions of Law: The application is in conformity with having no undue adverse impact on utilization of renewable energy and natural resources.

SPECIFIC STANDARDS FOR CONDITIONAL USES SECTION 320

B. Must satisfy General Standards and Flood Hazard Regulations

Finding of Fact: See Exhibit 11. This development is not in the flood hazard area.

Conclusions of Law: Not applicable.

A. Dimensional, density, coverage and purpose of the district.

Findings of Fact: See lot size, frontage, and setback analysis of Section 270 B (5.b) on page 3. Density allows for 2 principal structures and 2 principal uses per parcel. There will be 1 principal structure and 2 principal uses on this parcel.

Conclusions of Law: Dimensional requirements for the Village District outside of the Historic Review District are met. Dimensional requirements for Service Stations pursuant to Section 364 are grandfathered as a Legal Nonconformity.

B. Traffic and parking safety

Findings of Fact: See Section 320 A.3 above.

Conclusions of Law: See Section 320 A.3 above.

C. Snow removal, the maintenance of parking areas, internal roads

Findings of Fact: Applicant testified that snow will be placed in the designated area on the Site Plan. In the event that not all snow can be held there, a bucket loader will be brought in promptly to remove excess snow impeding traffic. Applicant also testified that pavement will be promptly cleared of snow and ice and treated as needed to maintain safe conditions.

Vince Rice, speaking as a member of the public, not requesting Interested Person status, suggested restricted times what tankers can deliver gas to minimize disruption to residential properties. Requested hours of use are from 4 AM to 12:00 PM, hours of operation from 5 AM to 11 PM. He also noted that he has seen snow pile up in the Sandri lot to over 20' in height, that it is not removed promptly. (Sandri Inc. noted that they travel over route 9 ten (10) times a day and that contractors will remove their snow any time they ask it to be removed.)

Ryan Bartlett, speaking as an Interested Person, questioned the practicality of a flat roof in an area of Vermont receiving 193' of snow last year and whether a flat roof could handle the snow loads. (Michael Behn of Sandri Inc. noted the building has had a flat roof since 1961 and there have been no problems with snow clearing or snow load tolerance.)

Conclusions of Law: Applicant will be required to promptly remove all snow that does not fit in designated snow storage areas, promptly clear pavement of snow and ice and treat the pavement as need to maintain safe conditions during all hours of use. Applicant will be required to limit hours of business and hours of deliveries to 5 AM to 10 PM.

D. Landscaping and screening

Findings of Fact: See Exhibit 12 C-2 Site Plan. Applicant testified there will be landscape beds along the sides of the structure. On review of the site it was apparent that a landscaping bed could be placed along the length of the front side-walk up to 6' wide and still maintain traffic clearance similar to that provided to each car between fuel pumps.

Interested Person Laura Steele noted that given the outstanding scenic quality of Wilmington, a quality that separates Wilmington from other towns, she feels that this development should be required to meet a higher standard.

Conclusions of Law: Approval will be conditioned on landscaping beds on both sides of the buildings consistent with Exhibit 12 C-2 as well as a 4.5' wide bed the length of the raised sidewalk in front of the Service Station. The landscape strip shall be planted with shrubs, perennials, and seasonal planting in such a fashion as to not obstruct pedestrian passage and vehicular vision of oncoming traffic. Landscaping shall be maintained in good condition in perpetuity.

Regarding comments from the Interested Person, high standards of scenic beauty and preservation are applied to all development within the town. No requirements beyond those provided for any other development can be imposed on this requested development.

E. Allowance for Conditions. (see conditions section of this document)

F. Independent Technical Review (the Board finds no reason to convene an Independent Technical Review.

G. Any substantial alteration, extension or other change to a Conditional Use affecting one or more of the Conditional Use criteria shall require reapplication to the Development Review Board.

Section 340: General Performance Standards (for Conditional Uses and PUDs)

For Conditional Uses and PUDs, the following general performance standards must be met and maintained for all uses, except for agriculture and forestry, in all districts. All applicable criteria shall be determined or measured at the property line.

A: See Article II for District Requirements – see dimensional Findings of Fact in prior sections.

B: Air Emissions for Commercial Operations: There shall be no emission of dust, ash, smoke or other particulate matter

1. Which can cause damage to human or animal health, vegetation, or property by reason of concentration or toxicity;
2. Which can cause contamination of the subject property or beyond the property boundaries;
3. Which is composed of solid or liquid particles in concentrations exceeding current state authority standards;
4. Which causes emission of non-farming, odorous matter in such quantities, as determined by the current state authority standards to be offensive.

Findings of Fact: Applicant testified gas fume recovery devices are in all newer cars using the Service Station, cars are required to turn off engines during fueling, and there is a sprinkler system in the canopy in case fire breaks out. They do not expect there to be any notable emissions of dust, ash, smoke, or other particulate matter produced from Dunkin Donuts. Vents to the right rear of the building will be relocated to the side of the building to make way for drive-thru traffic.

Laura Steele, speaking as an Interested Person, provided a discarded Dunkin Donuts cup that she found along the side of the road, noting that the presence of Dunkin Donuts would contribute to littering.

Ryan Bartlet, speaking as an Interested Person, requested a Hazardous Waste Survey as he had heard that the prior occupant dumped hazardous waste on this site.

Mr Rice, speaking as a member of the public, not requesting Interested Person status, indicated he thought there were toxins under the buildings concrete floors and wondered how those toxins would be addressed.

Alice Greenspan, speaking as a member of the public, not requesting Interested Person status, questioned the noise and pollution of running cars.

Conclusions of Law: Hearsay testimony questioned the presence of toxins by a prior occupant. No credible evidence has been provided to support the presence of toxins. The Development Review Board finds no cause to convene an Independent Technical Review on this matter. This standard has been met to a reasonable level of certainty.

C: Buffer Areas: No industrial or commercial buildings or uses shall be established abutting a residential use (except in the Village District) unless a landscaped buffer strip of at least twenty (20) feet in depth is provided to visually screen the buildings or uses. Where no natural vegetation can be maintained or where necessary due to varying site conditions, the landscaping may consist of fences, walls, tree plantings, hedges or combinations thereof. The buffer areas shall be maintained and vegetation replaced to insure continuous year-round screening.

Finding of Facts: This property does not buffer a residential use. There are residential uses across the right-of-way, however no buffers are possible due to the right-of-way.

Conclusions of Law: Not applicable.

D: Landscaping: See Section 320.D.

E: Lighting and Glare: Exterior lighting on the site shall be shielded and downcast and shall not impair motor vehicles, aircraft or provide undue glare in surrounding areas. Lighting will not exceed 5 foot candles at abutting properties. **Findings of Fact:** Applicant testified all lighting will be shielded and downcast, it not create undue glare of interfere with motor vehicles or aircraft, the yard will be lit for pedestrian safety. Applicant testified diffused lighting fixtures can be acquired to reduce glare. Bronzed windows will prevent exterior glare. Applicant also testified lighting will go dark between the hours of 11PM and 5AM when the establishment is not in use.

Conclusions of Law: The proposed development meets this standard.

F: Parking: Required off-street parking (except in the HRD)

1. A parking space shall be at least ten (10) feet by twenty (20) feet.
5. Retail Business: One (1) parking space for every two hundred (200) square feet of floor area.
6. Restaurant, bar, lounge, Entertainment / Cultural Facility: One (1) parking space for every three (3) persons permitted for occupancy by the Vermont Department of Labor and Industry
Parking and loading docks should not be a predominant aspect of the site viewed from the road. Some visible parking is appropriate. However, front parking should not exceed the front width of the building and have no more than 5 spaces. If significant volume is needed, should be located toward the rear of the building and screened.

Findings of Fact: Applicant testified internal parking spaces will be 9 x 18. See Site Plan Exhibit 12 C-2 for proposed parking for 9 spaces, 4 for the restaurant, 4 for employees, 1 ADA accessible.

Conclusions of Law:

Number of Required Spaces based on Zoning Ordinance:

- 3.3 spaces for 10 seat restaurant
- 4 Employee parking spaces
- 1 ADA handicapped accessible space.
- 8 spaces total

Required space size is 10 x 20. Given the congested traffic conditions of the area 9 x 18 parking spaces will not be allowed. Spaces must be 10 x 20.

G: Shared Access: The applicant may be required to provide for shared access between adjoining properties.

Findings of Fact: The Sandri Service Station is abutted by the Post Office on one side and a right-of-way followed by Bucket-of-Suds and Dollar General on the other. No shared access with adjoining properties has been recommended by VTrans. They believe the proposed ingress and egress will improve traffic flow in this area satisfactorily and serves to maintain the deeded right-of-way next to the parcel.

Conclusions of Law: No shared access is required for this property.

H: Setbacks and Screening: Storage area setbacks and screening are required to provide a visual buffer and minimize visual impact. Minimize any potential physical hazards.

Findings of Fact: See Exhibit 12 C-2 Site Plan. Applicant testified storage, loading docks, and utility facilities will be visually buffered by landscaping. Landscaping beds will not impede visibility of on-coming traffic or impede pedestrian safety.

Conclusions of Law: Storage, Loading Dock, Utility screening meets this standard.

J: Traffic Impacts and Street Access Control: traffic circulation must safeguard against hazard to vehicles and pedestrians to avoid traffic congestion, and provide safe and accessible circulation.

Findings of Fact: See sections 320 A.3

Conclusions of Law: Proposed development meets this standard.

K: Road development: Any new roads, whether Town or private, shall conform with the Town of Wilmington Town Highway Ordinance 2011, adopted September 27, 2011

Findings of Fact: No road development in this proposed development. There will be a drive behind the structure for the drive-thru which will be 14' wide for 1 way traffic.

Conclusions of Law: Not applicable.

L: Vibration: There shall be no permanent, ongoing vibration discernible at the property line

Findings of Fact: Applicant testified there will be no permanent and ongoing vibration.

Generators will be on the roof and give off no discernable vibration. There will be vibration from tamping during construction.

Conclusions of Law: Proposed development meets this standard.

M: Noise: No Continuous, permanent or ongoing noise > 70 decibels at the property boundary line.

Findings of Fact: Applicant testified there will be no continuous, permanent, or ongoing noise.

Generators will be on the roof and give off no discernable noise.

Interested Party Laura Steele noted that passengers in the drive-thru would be exposed to noise from the generators as they went through the drive-thru.

Alice Greenspan, speaking as a member of the public and not requesting Interested Party status questioned the noise of air conditioners.

Conclusions of Law: Proposed development meets this standard.

N: Water Quality: Stormwater management and detention.

Findings of Fact: All stormwater will be directed toward the stormwater drain as noted on Exhibit 12 C-2 Site Plan. There will be a Belgium Block retaining with a guardrail to be constructed at the rear of the building and fade into the grade of the property. The retaining wall will be constructed with drainage behind the wall to bring water off of the rear of the structure and not produce run-off in abutting properties. Applicant testified no state wastewater permit is required for this lot due to lot size.

Conclusions of Law: Proposed development meets this standard.

CONDITIONS:

The application for development is **approved** with the following conditions, restrictions, requirements, limitations and specifications.

1. A Fire Permit shall be obtained from the Fire Chief of Wilmington, establishing maximum occupancy and that the proposed structure meets fire safety standards.
2. An Emergency Medical Services statement of public safety for accessing EMS services will be obtained prior to opening of the Dunkin Donuts.
3. Hours of operation are approved for 5 AM – 10 PM. No employees or deliveries shall be allowed before 4 AM or after 11:00 PM.
4. Except as otherwise required to accommodate the conditions of this decision, development will be executed in accordance with Exhibits 12 & 16 presented with this application and the testimony provided. Any changes to the plans will require an administrative approval from the zoning administrator or a review by the Development Review Board, in conformance with the Zoning Ordinance.
5. All Village District setbacks shall be met, including the awning overhang of the drive-thru window on the read of the building.
6. Clapboard siding (Aztec Hardiplank) and trim will all be white.
7. Flashing will be neutral or white tone to match the white.
8. Windows will have divided light panels across the top to simulate historic divided light panes.
9. Doors will have mullions to simulate divided light panes.
10. Roofing will be gray slate colored or cedar shake colored architectural shingles to match historically accurate roofing products.
11. There will be a white front porch with pillars across the front of the building with roof material matching that of the building.
12. External lighting fixtures will be appropriate to simulate the historically appropriate Neoclassical Greek Revival style such as wall sconces or carriage lamps with simulated candle or gas lighting. Gooseneck lighting is encouraged over structure mounted signs.
13. Awning material over the drive-thru will be sunbrella material in a tone to match roofing.
14. To ensure public safety, the applicant will be responsible for ensuring that no vehicles are backed up into the state right-of-way from the drive-thru waiting line, that no vehicles, including tractor trailers, will park within the right-of-way to access Dunkin Donut services.
15. Traffic impacts will be monitored. Traffic impact mitigation solutions will be carried out as needed.
16. Safety measures will be taken to ensure public safety in the gas pumping/parking area.
17. Applicant will promptly remove all snow that does not fit in designated snow storage areas, will promptly clear pavement of snow and ice, and treat the pavement as need to maintain safe conditions during all hours of use.
18. Final approval will be obtained for a Wastewater Treatment Sewer Allocation.

19. There shall be a minimum of 8 parking spaces, 3 for the 10 seat restaurant, 4 for employees (3 Dunkin Donuts, 1 gas attendant), and 1 ADA handicapped accessible. All parking spaces must be 10 x 20. No waiver will be granted for a 9 x 18 space given the congested traffic of the parcel and the area.
20. Development and construction shall be managed to address all safety hazards.
21. There will be landscaping beds on both sides of the buildings consistent with Exhibit 12 C-2 as well as a 4.5' wide bed the length of the raised sidewalk in front of the Service Station.
22. The landscape strip shall be planted with shrubs, perennials, and seasonal planting in such a fashion as to not obstruct pedestrian passage and vehicular vision of oncoming traffic. Landscaping shall be maintained in good condition in perpetuity.
23. Noise and vibration will be minimized during construction to so as to not negatively impact neighboring properties between the hours of 8 PM and 8 AM.
24. All dimensional requirements of the District shall be met. Dimensional Specific Standards of Service Stations Section 364 shall be waived so long as the Service Station does not fall into a period of non-active use for greater than twelve (12) months.
25. All facilities, parking areas, crosswalks and walkways will be handicapped accessible compliant with ADA.
26. All sidewalks, crosswalks, guardrails and parking will be made safe for the public and compliant with VTrans safety recommendations and requirements.
27. Pedestrian pathways will be planned and maintained in such a fashion as to provide for maximum pedestrian safety at all times.
28. Pedestrian traffic will be redirected through the service station area along a secure pathway during construction. The service station will be closed during construction.
29. The drive-thru around the rear of the building will be built to 14' wide and will allow traffic in only one direction.
30. All outdoor public areas and sidewalks will be lit sufficiently to provide for public safety.
31. All outdoor lighting will be shielded and downcast, with the minimum lumens necessary to meet the needs of the lighting purpose. Lighting will not impair motor vehicles or aircraft and will not produce undue glare.
32. Lighting fixtures will provide diffused lighting to reduce glare.
33. Windows will be bronzed to prevent exterior glare from internal lighting.
34. The establishment will go dark and have no lighting from 11:00 PM to 4:00 AM. External lighting of the parking lot and drive-thru will be dimmed but kept at a minimum lumens sufficient to provide for public safety.
35. Storage areas, loading docks and dumpsters shall be shielded from public view through natural landscaping and/or fencing.
36. Stormwater runoff will be directed to the stormwater drains.
37. All outdoor paved surfaces will be maintained during all hours of use for public safe including repairs, plowing, sanding, de-icing and such other maintenance as may be required.
38. There shall be no significant air emissions of dust, ash, smoke or other particulate matter.
39. There shall be no permanent or ongoing vibrations created.
40. There shall be no ongoing or permanent noise created.
41. Structure mounted sign(s) will be made of wood.
42. All building signage will conform to the current Zoning Ordinance and be Permitted by the Zoning Administrator or Development Review Board.
43. Evidence of conformity with these conditions shall be provided to the Zoning Administrator prior to opening of the Dunkin Donuts.

The applicant is responsible for obtaining all state and federal permits.

If unused, this Approval expires 2 years 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.

Town of Wilmington, Zoning Administrator reserves the right to monitor compliance with this decision and all decisions issued by the Development Review Board

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

Peter Wallace
Wendy Manners
Tim Hall
Meg Streeter
Allen Taylor

OPPOSED:

None

ABSTAINING:

None

For the Board: Peter Wallace, Chairperson

Date: September 18, 2015

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.