

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: **Tony Lopez**

Agents: Sean Lopez and Brian Scranton

No other interested persons were present or heard on this case.

Owner/Applicant(s) Mailing Address: **P.O. Box 93, Wilmington, VT 05363**

Agent Mailing Address: **P.O. Box 107, Colrain MA 01340**

Address of the subject property: **175 Route 9 East, Wilmington VT 05363**

Tax Map: # **021-22-059**

A copy of the request is filed in the office of the Board and is referred to as: **#2018-021**

Description of Case per Public Notice:

Application # 2018-021; A request for a permit was made to the Board by: Tony Lopez. Application is being made for a Conditional Use review to allow a Food Stand (food truck). Commercial/Residential zoning district. Location: 175 Route 9 East

Notice for a public hearing was published in the Valley News on: **May 31, 2018**

Notice was posted in three public places on: **May 31, 2018**

A copy of the notice was mailed to the applicant on: **May 31, 2018**

A copy of the notice was mailed to the abutters on: **May 31, 2018**

Public hearing was held on **June 18, 2018**

There was no Site Visit.

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. There were no Interested Parties in attendance at this hearing.

Appeal period for this Case expires on: August 20, 2018

Approval expires on: July 20, 2020

EXHIBITS

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

1. Application consisting of four pages including Abutters List
2. Site Plan
3. Hand Drawn Site Plan of proposed cart location
4. The Vermont Statutes Online, Chapter 117, Sub Chapter 007: Bylaws, 24 V.S.A. Section 4416. Site Plan Review
5. Email From Theresa Gilman to Zoning Director, Craig Ohlson, Vermont Agency of Transportation permit applications for Lopez property

SYNOPSIS

The applicant proposes placing a pull behind food cart, owned and operated by Brian Scranton, in a 40 car dirt parking lot on the Lopez property, with picnic seating including five to ten 8 foot picnic tables, and two 10' x 10' pop up tents towards the north-eastern side of the Lopez property, located on 175 Route 9 East, Wilmington VT. Application is made for 365 days a year with approximate operating hours of 10:30 AM to dusk. Set up and closing hours would occur before 5 AM and 1 hour after dusk.

APPLICABLE DISTRICT

Finding of Fact: Subject property is identified as Tax Map: # **021-22-059** and has an address of 175 Route 9 East, Wilmington, VT

Conclusions of Law: The proposed development lies in the **Commercial/Residential** District and will be reviewed under Article IV Section 450 E.

USES

Findings of Fact: The proposed Use, Food Stand, is a Secondary Use to this property, with Current Use of Residential. Food Stand is "An establishment that serves food and beverages to the public for take-out and/or outdoor consumption." The applicant proposes serving 3 variations of pulled pork along with non-alcoholic beverages to be consumed outside within the picnic area provided. The Food Stand will be operational year-round. (Applicant testimony)

Conclusions of Law: A Food Stand is a Conditional Use in the Commercial/Residential District and is allowed if meeting the requirements of a Conditional Use. The Commercial/Residential District for Commercial Use allows an unlimited number of Commercial Structures and Uses per Lot Section 450(E)(5)

Dimensional Requirements:

Findings of Fact: the Commercial/Residential District: within the Commercial/Residential District 450 (5e)

Density Limits: Max of 25% Lot Coverage

Dimensional requirements:

- 1 acre Min Lot Size - Lot is noted to be 23.66 acres on the grand list and 23.24 acres GIS (Exhibit 2)
- 150 feet lot frontage: Frontage is 400 feet

- 38' to the highest point of the ridge line from average grade - expected height of tallest entity 10' (picnic tents)
- 40 ft. front setback: not applicable. There are no permanent structures proposed
- 20' side & rear setback: not applicable, there are no permanent structures proposed

The dimensions of entities included on site are a 150 lb. pig roaster “tow-behind” cooker roughly 123” x 68” with water cart included, five to ten 8’ x 5’ picnic tables and two 10’ x 10’ pop up tents.

Article VI Flood Hazard District

Section 602 (A-C): Lands to Which These Regulations Apply

Regulations apply to development in all areas of the town identified as special flood hazard in and on the most current flood insurance studies and maps published by the Dept. of Homeland Security, FEMA, and National Flood Insurance Program (NFIP), as provided by the ANR pursuant to 10 V.S.A. section 753. The base flood elevations and floodway limits (zones A1 – A30, AE and AH) provided by the NFIP shall be used to administer provisions of the regulation. If none is provided by the NFIP then information available from the state or federal agencies or other sources shall be obtained and reasonably utilized.

Findings of Fact: 175 Route 9 East does not lie within the Flood Hazard District flood hazard area as defined by NFIP or FEMA flood maps.

Conclusions of Law: Flood Hazard District regulations are not applicable to this application.

Article VII Standards

Section 710: Use Performance Standards

A. Vibration: No continuous, permanent, ongoing, or frequent vibration which is discernible at the property line.

Findings of Fact: There will be no continuous, permanent, ongoing, or frequent vibration (Applicant testimony)

Conclusions of Law: Standard 710 A is met.

B. Noise: Continuous, permanent, ongoing or frequent noise in excess of that of a normal conversation must not exist at the property line. Recurring periodic noise in excess of that of a normal lawn mower at the property line is allowed provided it does not occur between the hours of 9PM and 7AM and does not significantly detract from or diminish other property’s allowed use or land development.

Findings of Fact: There will be no continuous, permanent, ongoing or frequent noise in excess of that of a normal conversation at the property line. Food preparation will run off of two propane tanks which operates at quieter than a normal conversation. (Applicant testimony)

Conclusions of Law: Standard 7610 B is met.

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

1. Cause damage to human or animal health, vegetation, or property by reason of concentration or toxicity.
2. Contaminate the property or beyond the property boundaries.
3. Have solid or liquid particulates in concentrations exceeding state standards.
4. Cause odorous matter in quantities as to be offensive.

Findings of Fact: There will be no emission of dust, ash, smoke or other particulate matter. The

smoke created from the cooker will be no more than an individuals at home grill (Applicant testimony)

Conclusions of Law: Standard 710 C is met.

D. Injurious or Noxious Practices: No operations or use shall create electromagnetic, liquid or solid refuse or waste, heat, cold, dampness, explosive, fire, glare, or other hazard which will cause injury or damage to human or animal health, vegetation, or property.

Findings of Fact: The property will have trash bins for bones and collected food waste and recycle bins for recyclables. The bins will be located around the picnic areas for easy accessibility to prevent unwanted waste. The bins will be strategically placed to prevent being seen from road and will have a wooden box cover for visual and hygienic purposes. The bins will be emptied as needed and no less than daily to the trash collection site. The food packaging materials will be in all “eco friendly” containers (applicant testimony) and to be be disposed of in appropriate trash receptacles. There will be no fryer on the food cart and hence no fryer oils to dispose of. The proposed food truck will not create electromagnetic, liquid or solid refuse or waste, heat, cold, dampness, explosive, fire, glare, or other hazard which will cause injury or damage to human or animal health, vegetation, or property. (Applicant testimony)

Conclusions of Law: Standard 710 D is met.

Section 721: General Standards

The proposed use shall protect against adverse effect on:

A: Community, Municipal or Educational Facilities

Findings of Fact: The proposed use will have up to 3 employees working at a time, 1 cooker and 2 servers. There will be a fire extinguisher on the property and proper safety precautions for the designated cooker. The Vermont Department of Health has been contacted for health permitting. No burdens are anticipated for schools, police, fire, health care facilities or other community services or facilities. (Testimony of the Applicant).

Conclusions of Law: The proposed development will not place an undue adverse effect on community services or facilities. This decision will be conditioned on obtaining any required fire, safety and health permits from the State of Vermont. Standard 721 A is met.

B. Traffic on Roads and Highways

Findings of Fact: The proposed site is accessed from the west and east side of Route 9 in the Commercial/Residential District. The speed limit through this section of Route 9 is 40 miles per hour at the driveway. There is one access point to driveway, and intends on leading to a designated parking area. This parking area is to hold 40 cars at 10’ x 18’ spaces. There will be a roped off area to guide pedestrians to the picnic area. Exhibit 4 and 5 suggest further permitting by Vermont Agency of Transportation.

Conclusions of Law: The proposed development will have minimal impact on traffic satisfying the standard requiring safe traffic, highways, and roadways. The decision will be conditioned on obtaining any required Vermont Agency of Transportation permits. Standard 721 B is met. **

C: Bylaws and Ordinances in Effect

Findings of Fact: Proposed development has been shown to be conforming to all bylaws and ordinances in effect at the time of this decision including the Zoning Ordinance and the Town Plan.

Conclusions of Law: This application is in conformity with all bylaws and ordinances. Standard

721 C is met.

D. Utilization of Renewable Energy & Natural Resources

Findings of Fact: Renewable energy or natural resource impacts anticipated for this use have been addressed through use of “eco friendly” packaging and recyclable receptacles.

Conclusions of Law: Standard 721 D is met.

E. Air Quality

Findings of Fact: See Section 710 A above

Conclusions of Law: Standard 721 E is met.

F. Character of the Area

Findings of Fact: The purpose of the Commercial/District is to encourage clustered economic development while preserving designated open spaces to prevent sprawl and strip development. The proposed use benefits the small local business and will provide additional dining options for the community. Hours of operation will be no earlier than 5 AM and no later than dusk. The Food Stand, including employee hours for food preparation, will never occur before dawn. The applicant has taken steps to ensure that the use will not adversely impact neighboring properties.

Conclusions of Law: The proposed development is consistent with the defined purpose of the Commercial/Residential District and is consistent with the mixed-use character of the area. Standard 721 F is met.

Section 722: Conditional Use - Preserving the Character of the Town

A. Preserving the Town’s Character

B. Economic Development contributing to the Character of the Town: Preserves the rural, agricultural character and ambiance of the community and historic downtown.

C. Development Consistent with the Rural, Agricultural, and Historic Nature of the Town: Merchandise and services shall not detract from the historic character and nature of the town as a family destination for tourists and a family focused residential community.

D. Formula Businesses – not applicable

E. Maximum Square Footage of Retail (2000 square feet) – not applicable

F. Building Scale Conformity – Not applicable

G. Utility Placement – Not applicable

Finding of Fact: The proposed use is outside of the historic downtown. It is proposed for an area that has been a mixed use commercial/residential area past and present. The addition of a Food Stand does not detract from the historic or rural/agricultural character of the town. The presence of a Food Stand serves the needs of tourists and residents alike, contributing to services available and character of the town.

Conclusions of Law: The proposed use preserves the character of the town consistent with the rural, agricultural, historic nature of the town as a family oriented tourist destination and a residential community. Standard 722 A is met.

Section 723: Conditional Use - Preserving the Character of the Town: Historic Preservation (required in the Historic Design Review District (HDRD), recommended in all other districts)

Findings of Fact: The proposed Use is not in the HDRD and does not impact a historic property.
Conclusions of Law: Not applicable

Section 730: Conditional Use – Specific Standards

A. Lighting and Glare: Shall be shielded and downcast. Glare and reflection is prohibited if it is a unreasonable nuisance to other property owners or tenants, does not contribute to aesthetics, scenic value or character of the area, or could impair vision of pedestrians or drivers. In HDRD and village must be consistent with historic character.

Findings of Fact: The property will have no lighting and will not be operating after dusk. (Applicant testimony) Thus, It will not interfere with aesthetics, scenic value, or the character of the area.

Conclusions of Law: Standard 730 A is met.

B. Safety: Shall minimize physical hazards where there are potential safety hazards.

Findings of Fact: The client ensured proper safety precautions will be met. Food temperature management, food preparation and disposal hygiene, hand hygiene will be managed for cleanliness and food safety. Fire extinguishers will be on site along with water cart. (Applicant testimony) No significant safety issues are anticipated at the site.

Conclusions of Law: Standard 730 B is met.

C. Traffic and Pedestrian Safety: Pedestrian walkways to ensure safe and efficient navigation by foot or bicycle. Special consideration shall be made for children’s safety. Traffic patterns will be review for safety, ease of flow and efficiency.

Findings of Fact: Pedestrians areas will be kept separate and safe from vehicular traffic through placement of roped path between the parking area and the pedestrian area. (Applicant testimony) The path will be ADA compliant along with provide enough space between picnic tables for a wheel chair. Winter use will ensure safe passage for vehicular and pedestrian traffic through plowing, sanding, salting as needed. The client will also have to meet all Vtrans Permitting.

Conclusions of Law: Standard 731 C is met.

Section 732: Conditional Use - Other Specific Standards

- A. Affordable Housing
- B. Automotive Service Station and Repair Garage
- C. Junked Vehicles
- D. Medical Marijuana Dispensaries
- E. Mobil Home Parks (Trailer Parks)
- F. Commercial Parking and Unloading Areas
- G. Ponds/Water Impounds
- H. Quarry Operations
- I. Recreational Vehicle Storage
- J. Solar Projects
- K. Wind Turbines

Findings of Fact: The proposed development does not fall into any of the above categories with the exception of Commercial Parking and Loading Areas, provision F.

F. Commercial Parking and Loading: Commercial parking and loading areas in all districts shall:

- 1. Provide off-street parking** (except in the HDRD)
- 2. Parking spaces shall be 10 x 18** (smaller allowed only if need for added spaces outweighs the risk and public inconvenience of smaller spaces). Special consideration shall be given to safety, pedestrian and disabled persons concerns when smaller spaces are allowed.
- 3. Minimum number of spaces:** One (1) parking space for each 200 sq. ft. retail.
- 4. Drive-up Windows:** no waiting lines in public ROW
- 5. Minimize visual impact of parking/loading areas**
- 6. Buffer parking areas** if needed for safety or aesthetics
- 7. Public Road Access:** minimize traffic interruption, provide for auto and pedestrian safety
- 8. Rainwater, Snow, and Ice Removal/Storage:** Plan for snow/ice removal, runoff, safety.
- 9. Safety:** Minimize physical hazards, provide safe pedestrian and vehicular movement with unobscured views, especially visibility at intersections, pedestrian safety, convenience, emergency access.
- 10. Neighboring properties:** integrate circulation and parking with neighboring properties. Work to maximize for efficiency, safety, and attractive solutions.

Findings of Fact: The dirt lot parking area of the proposed development has room for an estimated maximum of 40 cars. The demand for parking will be more than met by the current available parking. The area will be plowed in the winter and salted and/or sanded as need to keep pedestrians and vehicles safe. (Applicant testimony).

Conclusions of Law: Precautions as defined above will be taken to ensure safe and efficient parking for pedestrians and autos. Standard 732 F is met.

D. Road Development: New roads, public and private, shall conform to the town's Highway Ordinance.

Findings of Fact: The proposed use does not involve road development.

Conclusions of Law: Section 730 D is not applicable

E. Landscaping, Screening and Development: Shall "preserve the rural and agricultural character and ambiance of the community". Natural features characteristic of the town's rural and agricultural nature shall be preserved. Landscaping and Screening shall be used to preserve and protect the aesthetic and scenic value of the town, its neighborhoods, residents, and neighboring properties.

a. Landscaping beds, trees, shrubs and plantings: required as needed to meet the stated goals above and shall be maintained in perpetuity for general aesthetic appearance and plant health.

b. Screening and Buffer Areas: required as needed to screen all unaesthetic features to meet the stated goals above. Screening must be of natural vegetation and plantings. Fencing may be used secondary to plantings to achieve screening. (See special provisions for screening unaesthetic features, large and small.)

b1. Screening and Buffering Commercial Structures and Uses: Required when commercial development has an undue adverse aesthetic impact on surrounding properties and roads. Shall be minimum of 10 feet where reasonable and possible.

b2. Screening and Buffer of Parking: Required where reasonable and possible when parking has an undue adverse impact on the aesthetics of properties and roads.

b3. Screening and Buffer of Ground Mounted Solar Arrays: Required when ground mounted solar arrays have an undue adverse aesthetic impact on surrounding properties and roads. Shall be minimum of 10 feet where reasonable and possible.

Findings of Fact: No removal of natural vegetation will occur, existing trees will be used as receptacle buffers along with additional shrub plantings to help. Mowing will be maintained and no additional landscape is planned. This parking area is grass / dirt lot. No aesthetic concerns have been expressed by neighbors through Interested Party status in this hearing.

Conclusions of Law: Screening and buffering with live vegetation will be required at visible trash receptacles from rt. 9, Standard 730 E is met.

F. Land and Water Management: Protect properties, transportation systems, and public safety by
a. Safe and appropriate water management including water supply/availability, stormwater retention/absorption, and impervious surface/runoff management.

b. prevent and control against water pollution

c. make provision for management of erosion, preservation of rivers & streams, river/stream bank management, wetland protection, waterway and channels management, and agricultural land protection,

Findings of Fact: The proposed food truck will not release any water, waste or chemicals to the property. All food products and food production byproducts, equipment and supplies will be self-contained within the Food Stand and will be removed safely to protect and preserve land and water. The food truck will create no pollution. There will be no impervious surfaces created to impact stormwater absorption. The dirt parking lot will promote absorption. There will be no alteration of lands, rivers, streams, waterways. Nothing in this proposed development will create erosion.

Conclusions of Law: Standard 730 F is met.

G. Wastewater and Potable Water: A permit may be issued upon receipt of evidence there is a wastewater and potable water permit. If none is received with a submitted application, the Permit will be conditioned on receipt of a wastewater and potable water permit at which time a final Permit will be issued. DRB shall instruct the applicant on their responsibility to obtain state and federal permits and may condition their decision on obtaining such permits.

Findings of Fact: The food preparation cart has a self contained water management system for clean and grey water. No wastewater or potable water is required.

Conclusions of Law: Standard 730 G is met.

H. Natural Resources and Features: Existing vegetation, native species, native trees, scenic views, river access and other natural features shall be preserved to the extent possible and to the extent that they will enhance and promote the natural assets of the town. Clearing of land to create pastureland and scenic spaces/vistas is allowed provided it does not have an unreasonable impact on natural resources. Development shall blend with the topography, vegetation, and natural land features. It shall not have an undue adverse impact on natural features, natural resources or renewable energy. This includes no adverse impact on forested lands, streams and stream banks, steep slopes, wetlands, watersheds, floodplains, soil unsuitable for development, impervious surfaces essential to stormwater detention, agricultural lands, open scenic lands, scenic vistas, scenic features, unique natural or manmade features, and renewable energy sources.

Findings of Fact: The Food Stand will not alter or have an adverse impact on existing vegetation, native species, native trees, scenic views, river access or other natural features including forested lands, streams, stream beds, stream banks, steep slopes, wetlands, watersheds or floodplains. There will be no land clearing. The Food Stand will not create any impervious surfaces. It has no impact on unique natural features or renewable energy resources.

Conclusions of Law: There will be no adverse impact on natural resources and features. Standard

730 H is met.

I. Wildlife Protection: No adverse impact on wildlife habitats or corridors.

Findings of Fact: The property is not identified on the town Natural Resources Map, Nov 2016 as having any rare or uncommon animals; a significant natural community; a deer wintering area or wildlife habitat.

Conclusions of Law: The proposed Use will not have any adverse impact on wildlife habitats or corridor. Standard 730 I is met.

J. Shoreland Protection: Compliance with Shoreland Protection Act if development is within 250 feet of a body of water greater than 10 acres.

Findings of Fact: Proposed development is not near a body of water.

Conclusions of Law: Standard 730 J is not applicable.

K. Flood Hazard Protection: Development must comply with the provisions of Article VI Flood Hazard District.

Findings of Fact: 175 Route 9 East is not in a Flood Hazard area.

Conclusions of Law: Standard 730 K is not applicable.

L. Technical Review Costs: Applicant may be required to pay reasonable costs of technical review.

Findings of Fact: There are no technical review costs.

Conclusions of Law: Section 730 L is not applicable.

CONDITIONS:

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

1. Except as otherwise required to accommodate the conditions of this decision, development will be executed in accordance with Exhibits. 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.
2. The tow-behind Food Stand (pig cooker) shall be maintained in working condition and licensed, registered and safety inspected with the Registry of Motor Vehicles as may be required by law
3. The Applicant shall obtain State and Federal permits, as needed, to operate; including the Vermont Health of Department and Vermont Agency of Transportation.
4. Picnic tables shall be wooden and trash receptacles shall screened and buffered with live vegetation such as existing trees and/or new shrub plantings
5. Refuse containers to be placed in the picnic area shall be emptied daily and the picnic area shall be kept clear of trash.
6. The applicant shall provide to the zoning administrator copies of valid Green Mountain Fire and municipal fire and safety permits prior to commencing operations.
7. To maintain the character of the area and the district, hours of operation are approved for 5AM – dusk.
8. There shall be a maximum of 40 parking spaces provided for by a pre-existing dirt parking lot.
9. The food truck site shall be managed to address safety hazards and to preserve pedestrian and

- vehicular safety.
10. To preserve pedestrian safety a roped off path is to be placed between the customer service area and the parking area.
 11. Water, food products and waste will be removed in a timely fashion and on a regular basis.
 12. There shall be no significant air emissions of dust, ash, smoke or other particulate matter.
 13. There shall be no permanent or ongoing vibrations created.
 14. There shall be no ongoing or permanent noise created that is louder than a normal conversation as heard from the property line.

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:

Jessie Couture
Fred Houston
Paul Lockyear
Wendy Manners Seaman

OPPOSED:

none

ABSTAINING:

none

For the Board: Wendy Manners Seaman, Chairperson

Date: July 20, 2018

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.