

TOWN OF WILMINGTON  
SIGN BOARD OF ADJUSTMENT  
FINDINGS OF FACT AND STATEMENT OF FINDINGS  
WILMINGTON, VERMONT 05363

A request for a permit was made to the Board by: **Eric Trites of JEJ LLC (The Roadhouse Restaurant)**

Applicant(s) Mailing Address: **PO Box 322, Wilmington VT. 05363**

Address of the entity to be served: **4 Old Ark Road, Wilmington**

Tax Map #**002-04-008.000**

A copy of the request is filed in the office of the Board and is referred to as: **Case: #2010-058-S**

**Description of Case per Public Notice:**

Application # 2010-058-S; owner: JEJ LLC; Application being made for Variance review to allow installation of an additional Wall and Pole Signs. at an existing Restaurant with Cocktail Lounge; Sign Ordinance Section 6.B and Section 8; location: 4 Old Ark Road.

Notice for a public hearing was published in the Valley News on: **9/3/2010**

Notice was posted in three public places on: **9/2/2010**

A copy was mailed to the applicant on: **9/1/2010**

A copy of the notice was mailed to the abutters on: **9/1/2010**

The public hearing was held on: **9/20/2010**

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, Sign Administrator  
Pam Trites –Witness for Agent  
Ken Frano – Abutter

## **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 investigation.

### **EXHIBITS:**

- Application (3 pages)
- A Pole Sign design
- B Wall Sign design (2 pages)
- C Abutters List
- D Case History
- E Authorization letter from Lois McGovern
- F Letter from James Schipke dated 9/16/10
- G 1993 photos
- H List of existing and proposed signs
- I 2010 photos

1. The property is located at 4 Old Ark Road, Tax Map #002-04-008.000. It has been used as a restaurant with cocktail lounge since the early 1970's. The property also abuts Route 100 and is in the Commercial District.
2. Many of the signs have been on the property for some time. However, no sign permits are on file in the Town Offices. The restaurant and its signs do not predate the Sign Ordinance.
3. The building is on a corner lot bounded by Old Ark Road to the northern side and Route 100 on the easterly side. The access to the parking area is from Old Ark Road. The speed limit on Route 100 is 50 mph. The building is at an angle to both roads with the larger side of the building facing primarily southeast. (Exhibits G & I). In 1993 the building was totally destroyed by fire and then rebuilt on the destroyed building's footprint.
4. Through testimony and exhibits it was determined that the following signs are presently on the property:
  - A. One 50 inch by 50 inch two-sided sign (totaling 34.8 sq. ft.) that hangs from a wooden two pole frame. This frame is located at the northerly end of the property, near the intersection of Old Ark Road and Route 100. It is most visible when approaching the property from the north.
  - B. One 46 inch by 32 inch single-sided sign (10.2 sq. ft) on the southeasterly side of the building that says "Sunday Brunch" with the hours.
  - C. One 16 inch by 21 feet single-sided sign (28 sq. ft.) on the southeasterly side of the building that says "Roadhouse Restaurant".

D. One 90 inch by 20 inch single-sided sign (12.5 sq. ft.) on the northerly side that says "Restaurant".

E. One 46 inch by 32 inch single-sided sign (10.2 sq. ft.) on the northerly side that says "Dinner 5-10 pm".

F. One 46 inch by 32 inch single-sided sign (10.2 sq. ft.) on the northerly side that says "Sunday Brunch 11 am - 2 pm".

G. The Applicant also displays up to two sandwich signs between a fence and Route 100 and are likely in the State highway right-of-way. These signs advertise specials and are not displayed every day and they are taken in at night. These two-sided signs measure 26 inches by 25 inches (9 sq. ft. total) and 24 inches by 38 inches (12.6 sq. ft. total).

5. Without including either of the sandwich signs there is a total of six signs with square footage of 105.9 feet. If both sandwich signs are out, there is a total of eight signs and 127.5 square feet of signage.

6. The Applicant is proposing to have three different two-sided signs, all measuring three by four feet (total of 24 sq. ft.). Each of the signs would advertise specials such as a lobster dinner or special pricing for regular dinners. No more than one of these signs would be out at a time and there would be times when none of the signs would be used. These signs would be hung off an arm that would extend out from the pole sign frame.

7. If this signage was approved there could be a total of nine signs and 151.5 square feet when the sandwich signs were also being displayed.

## **II. The Board CONCLUDES:**

Applications in the Commercial District which request more than two signs, more than 64 square feet of signs or more than 35 square feet of area on one side of a sign, require that a Variance be granted before a permit may be issued. Section 6.B of the Wilmington Sign Ordinance provides that:

- 1. No premises shall contain more than two signs except as provided in Section VI. C. However, any such sign may designate more than one business or activity on the premises.**
- 2. No premises shall contain more than sixty-four (64) square feet of signs. When more than one side of a sign is used, the area of all sides shall be included in the total allowable area.**
- 3. No sign shall contain more than thirty-five (35) square feet of area on one side.**

The Board concludes that the present and proposed signage far exceeds the parameters of the Ordinance, both in the amount of square footage and the number of signs. There is no indication that the signage on the property was ever approved, even though many of the signs have been on the property for a number of years. Therefore, a Variance for square footage and for the number of signs is needed before a permit may be issued.

Sections 8.B.2 – 4 provide for Variances. The Sign Board of Adjustment has the duties and powers prescribed by law including but not limited to the following:

- 2. To authorize upon appeal in specific cases such variance from the terms of this ordinance as will not be contrary to the public interest where owing to special considerations a literal enforcement of the provisions of this ordinance will result in unnecessary hardship, or where the Board determines that variance from the provisions of the ordinance will result in furthering the public interest.** The property and siting of the building have some unique features. The entrance to the property is from a side road. This side road is at the northern end of the property and vehicles traveling south on Route 100 pass the side road before they get to the building itself. Also, the road curves just north of the property and the sight lines are slightly reduced. When a vehicle is traveling north on Route 100 the pole sign is not clearly visible until it is almost too late to turn onto Old Ark Road. With the 50 mph speed limit vehicles are traveling at significant speeds. Because the building is angled and not parallel to Route 100 any sign on a side of the building can only be seen when traveling in one direction.
- 3. Before decision on appeals, the Board shall take into consideration such factors as the effect on public highway safety, the convenience of the traveling public, custom of trade, the preservation of scenic beauty and the expressed opinions, desires or other evidence brought forward by interested persons. Scenic beauty shall be deemed to include but not be limited to location of signs in relation to other structures, shape of signs, colors of signs and other items related to the effect created.** When vehicles are traveling at 50 mph they need time to read signage. Because the entrance to the property is from a side road, the entrance is not as obvious as it would be if the entrance were directly off Route 100. Additional signage is necessary so that the traveling public may easily identify the property in time to safely turn into the property.
- 4. In rendering a decision in favor of an appellant under this section, the Board of Adjustment may attach such conditions to such variance as it may consider necessary and appropriate under the circumstances to implement the purposes of the ordinance including but not limited to time limits on variances.** In granting a sign variance, the Board grants the minimum that will afford relief.

The Board notes that it does not have the authority to grant the placement of any sign in the State highway right-of-way. That approval would need to be received from the Vermont Department of Transportation. This Board is in no way encouraging placement of signs within the State highway right-of-way without the State's approval.

With regards to the criteria for a Variance, the Board concludes that, with the conditions cited below, this proposal *will* conform to the requirements of the Wilmington Sign Ordinance and the Variance criteria.

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

The Board approves the following signs:

- A. One 50 inch by 50 inch two-sided sign (totaling 34.8 sq. ft.) that presently hangs from an existing wooden two pole frame. The frame is located at the northerly end of the property, near the intersection of Old Ark Road and Route 100.
- B. One 16 inch by 21 feet single-sided sign (28 sq. ft.) on the southeasterly side of the building that says "Roadhouse Restaurant".
- C. One three foot by four two-sided sign (24 sq. ft. total) to be hung on an arm that extends out from the existing wooden two pole sign frame. The Applicant may have different signs that advertise different specials or Sunday brunch as long as only one sign at a time is displayed.
- D. One two-sided sign not to exceed three feet by one foot (6 sq. ft. total). This sign shall hang underneath the 50 inch by 50 inch sign and will indicate open hours.
- E. The Applicant may display one two-sided sandwich sign. The sign shall be taken in within a half hour of closing. The sign's measurement shall not exceed 24 inches by 38 inches (12.6 sq. ft. total). The sign may be displayed anywhere on the property.

If all the allowed signage is used, there will no more than five signs with a total of not more than 105.4 square feet.

The following signs shall be removed within 60 days of the signing of this decision:

- A. The 46 inch by 32 inch single-sided sign (10.2 sq. ft) on the southeasterly side of the building that says "Sunday Brunch" with the hours.
- B. The 90 inch by 20 inch single-sided sign (12.5 sq. ft.) on the northerly side that says "Restaurant".

C. The 46 inch by 32 inch single-sided sign (10.2 sq. ft.) on the northerly side that says "Dinner 5-10 pm".

D. The 46 inch by 32 inch single-sided sign (10.2 sq. ft.) on the northerly side that says "Sunday Brunch 11 am - 2 pm".

Sign variances *do not* run with the land. The sign(s) approved in this Case may not be replaced if the sign use is terminated. Any new sign(s) will require a new application.

Thus, the Development Review Board does **approve** the **Variance for an additional three signs (total of five allowed) and 41.4 square feet (total of 105.4) in the Commercial District as outlined above.**

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

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:

Nicki (Polly) Steel  
Paul Tonon  
Andrew Schindel  
Maryjane Finnegan

OPPOSED: none

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For the Board: Polly Steel, Chairperson

Date: September 29, 2010