

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: **Bearclaw Real Estate Holdings, LLC- Mark Unferth**

Owner/Applicant(s) Mailing Address: 26 Barberry Lane, Short Hills, NJ 07078

Address of the subject property: **661 RT 100 N**

Tax Map: # **02-04-027.000**

A copy of the request is filed in the office of the Board and is referred to as: **#2020-065**

**Description of Case per Public Notice:**

Application for a Mobile Food Vendor Trailer on the northern portion of the subject property in the Commercial/Residential District.

Applicable Wilmington Code Sections:  
Article VI- Section 602, 610  
Article VII- Section 710 721, 722, 730, 732J

Hearing Date: **December 7, 2020**

Notice for a public hearing was published in the Valley News on: **11/19/2020**

Notice was posted in three public places on: **11/18/2020**

A copy of the notice was mailed to the applicant on: **11/19/2020**

A copy of the notice was mailed to the abutters on: **11/19/2020**

**Appeal period for this Case expires: January 11, 2021**

**Approval expires: December 11, 2022**

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

Brandon Ruble, Nomad Chefs

**EXHIBITS**

The following Exhibits were placed in evidence by the Applicant or their Agent:

1. Application
2. Notice of Hearing
3. Abutter Notice
4. Abutter List
5. Property sketch
6. Positioning of food trailer request
7. Satellite overview
8. Pictures of food truck
9. Email from John Broker Campbell

**Article VI Flood Hazard District**

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

These 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.

**Conclusions of Law:** Flood Hazard District regulations are applicable to the proposed development which lies within the Flood Hazard district of Deerfield River.

**Permitted Uses**

**Finding of Facts:** Application is not requesting any development changes to the property.

**Conclusions of Law:** Article VI 602 has been met

**Development Standards – Flood Fringe Areas Section 610 C (1)**

**Finding of Facts:** New construction and existing buildings to be substantially improved shall have the lowest floor, including basement, elevated to or above the base flood elevation or together with attendant utility and sanitary facilities to be designed so that below the base flood elevation & the Structure is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy.

**Conclusions of Law:** Standard is met.

**ARTICLE VII: STANDARDS**

**Section 710: Use Performance Standards**

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

**Findings of Fact:** Testimony provided by agent.

**Conclusions of Law:** This Use Performance Standard 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:** Testimony provided by agent.

**Conclusions of Law:** This Use Performance Standard is met.

**C. Air Emissions for Commercial Operations:** There shall be no emission of dust, ash, smoke or other particulate matter that 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:** Testimony provided by agent.

**Conclusions of Law:** This Use Performance Standard 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:** Testimony provided by agent.

**Conclusions of Law:** This Use Performance Standard is met

## **SECTIONS 721: GENERAL STANDARDS**

The proposed use shall protect against adverse effect on:

**A: The Capacity of Existing or Planned Community, Municipal or Educational Facilities**

**B. Traffic on Roads and Highways**

**C: Bylaws and Ordinances in Effect**

**D. Utilization of Renewable Energy**

**E. Air Quality**

**F. Character of the Area**

**Findings of Fact:** Testimony provided by agent.

**Conclusion of Law:** General standard is met.

**Findings of Fact:** The purpose of the Commercial/ Residential District

“To encourage clustered economic development while preserving designated open spaces & historic village settlement patterns thus preventing sprawl & roadside strip development. PUD's are encouraged within the commercial district & such types of development must meet the PUD requirements as well as consider physical & environmental limitations, such as flood hazard areas, wildlife habitat, steep slopes & traffic volume & flow.”

**Conclusions of Law:** Proposed change of use is consistent with the defined purpose of the Commercial/ Residential District and is consistent with the character of the area.

**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**

**C. Development Consistent with the Rural, Agricultural, and Historic Nature of the Town**

**D. Formula Businesses**

**E. Maximum Square Footage of Retail (2000 square feet)**

**F. Building Scale Conformity**

**G. Utility Placement**

**Findings of Fact:** Testimony provided by agent.

**Conclusions of Law:** The proposed land development meets the requirements of Section 722

**SECTION 730: CONDITIONAL USE – SPECIFIC STANDARDS**

**A. Lighting and Glare:** Shall be shielded and downcast. Glare and reflection is prohibited if it is an 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.

**Findings of Fact:** No additional lighting

**Conclusions of Law:** Standard 730 A is met.

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

**Findings of Fact:** testimony provided by owner that additional cones will be placed for pedestrian safety

**Conclusions of Law:** Standard 730 B is conditionally 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:** additional measures will be taken.

**Conclusions of Law:** Standard 730 C is conditionally met

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

**1. Provide off-street parking** (except in the Historic Design Review District)

**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 un-obscured 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.

**Finding of Facts:** n/a

**Conclusions of Law:** Standard 732 D is met.

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

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

**Conclusions of Law:** Section 730 E is not applicable

**F. 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.

**Findings of Fact:** n/a

**Conclusions of Law:** Standard 730 F is conditionally met

**G. 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:** N/A

**Conclusions of Law:** Standard 730 G is conditionally met

**H 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:** proposed application does not apply.

**Conclusions of Law:** Standard 730 H is conditionally met

**I. 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:** proposed application does not apply.

**Conclusions of Law:** Standard 730 I is conditionally met.

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

**Findings of Fact:** proposed application does not apply.

**Conclusions of Law:** Standard 730 J is conditionally met

**K. 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:** N/A

**Conclusions of Law:** Standard 730 K is not applicable.

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

**Findings of Fact:** Proposed project is not within flood hazard district.

**Conclusions of Law:** See responses under Article VI above.

**M. Energy Resources:** Commercial Development shall comply with the Vermont Commercial Building Energy Standards

**Findings of Fact:** N/A

**Conclusions of Law:** Section 730 M is met.

**N. 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 N is not applicable.

## **SECTION 732: OTHER SPECIFIC STANDARDS**

**J. Temporary Outdoor Retail:** Retail of greater than two months is not considered temporary & requires the written decision & approval of the DRB.

**Findings of Fact:** Food truck will be operated over 2 months

**Conclusion of Law:** section 732 is met

## **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 1-9 and the testimony provided. Any changes to the plans will require an administrative approval from the Zoning Administrator and/or a review by the Development Review Board, in conformance with the ordinance.
2. Additional cones to be placed on north side of building delineating a pedestrian walkway from grocery store parking area to food truck to ensure pedestrian safety.

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:

Cheryl LaFlamme  
Charles Foster  
Diane Abate  
Mary Brady

OPPOSED:

None

ABSTAINING:

None

\_\_\_\_\_ Date: 12/10/2020

For the Board: Cheryl LaFlamme, Chairperson

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.*