

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

A request for a permit was made to the Board by: **Sandri Realty, Inc.**

Owner/Applicant(s) Mailing Address: **400 Chapman St., Greenfield, MA 01301**

Address of the subject property: **374 VT Route 100 North, Wilmington, VT**

Tax Map: #06-02-022.000

A copy of the request is filed in the office of the Board and is referred to as: **#2021-099**

Description of Case per Public Notice:

Application # **2021-099**: Owner: Sandri Realty, Inc. Agent: Erika Young.

Proposal for a sign waiver to replace existing internally-illuminated multiple-price gasoline service station sign with a LED single-price gasoline service station sign.

Applicable Code Sections:

Article II – Sections 222, 223, 224, 226, 227, 229, 231, 233, 234

Article IV – Sections 430, 431, 440, 450E

Article VII – Sections 710 A, B, C, D; 720; 721F; 722D; 730A, C, D; 732B

Article VIII – all Sections

Notice for a public hearing was published in the Valley News on: **January 20, 2022**

Notice was posted in three public places on: **January 18, 2022**

A copy of the notice was mailed to the applicant on: **January 20, 2022**

A copy of the notice was mailed to the abutters on: **January 20, 2022**

Hearing Date: February 7, 2022

Appeal period for this Case expires on: April 6, 2022

Approval expires on: March 6, 2024

The following presented testimony as the applicant or on behalf of the Applicant or as an Interested Person: Erika Young – agent for Sandri Realty, Inc.

EXHIBITS

1. Notice of Hearing
2. Application (3 pages)
3. Property schematic
4. Picture of existing sign

5. Rendering of new sign
6. Schematic of new sign
7. 1.20.22 Letter to abutting property owners

SYNOPSIS

The application requests a sign waiver to replace existing static gas price sign with an LED gas price sign on the existing sign pole.

ARTICLE II: ADMINISTRATIVE PROCEDURES

Section 222 A. Conditional Uses: 1 (Changes in Use or a new Use that is a substantial expansion similar to the prior Use, even within the same category of Use)

Section 223 Development Review Board Site Plan and Design Review

Section 224 Development Review Board Site Plan and Design Review Submission Requirements

Section 226 Development Review Board Decisions

Section 227: Plan Changes after Receiving a Development Review Board Decision

Section 229: Dimensional, Use, and Sign Waivers Granted by the Development Review Board

Section 231: Legal Nonconforming Structures, Uses, and Lots

Section 233: Criteria for Obtaining a Sign Waiver from the Development Review Board

Section 234: Dimensional, Use, and Sign Waiver Application and Review Process of the Development Review Board

Finding of Facts: This standard has been met, all exhibits have been received & verified.

Conclusions of Law: Article II is met

ARTICLE IV: DISTRICTS & USES

Section 430: Legal Nonconformities

A nonconforming Structure, Lot and/or Use is a Structure, part of a structure, a Lot (or parcel) and/or a Use that does not comply with the present ordinance, but which was developed legally in conformance with the ordinance in effect that the time it was created or established. This includes:

B: All Structures, part of Structures, Lots and/or uses existing prior to January 26, 1968, when the first Wilmington zoning ordinance was adopted.

Findings of Fact: Applicant testified that application relates solely to changes in currently permitted signage.

Conclusion of Law: Not applicable. Governed by Article VIII.

Section 431: Changes to Legal Nonconforming Structures, Lots, and Uses

Nonconforming Structures, Lots & uses shall be allowed to exist indefinitely, in accordance with 24 V.S.A 4303 & 44412

B. Legal Nonconforming Uses

A nonconforming use may be altered or changed for any reason so long as, in the opinion of the Zoning Administrator, it will not increase the degree of nonconformity.

Any Nonconforming use which 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 requirements of this ordinance unless extension is granted by The Development Review Board.

Findings of Fact: Applicant testified that application relates solely to changes in currently permitted signage.

Conclusions of Law: Not applicable. Governed by Article VIII

Section 440 District & District Requirements

Finding of Facts: The subject property is in the Residential District.

Conclusions of Law: Section 440 is met

Section 450: Districts

A) Conservation

B) Village (a) within the HDRD and (b) outside the HDRD have unique dimensional requirements

C) Residential

D) Resort Residential

- E) Commercial/Residential
- F) Resort Commercial/Residential

DISTRICT

Findings of Fact: Subject property is in the Commercial/Residential District (450E). The property is identified as Tax Map: #06-02-022.000.

Conclusions of Law: The proposed land development is subject to zoning applicable to the Commercial/Residential District.

USES

Finding of Facts: The applicant testified current use is Automotive Service Station & Repair Garage and there are no proposed changes in use.

Conclusions of Law: The current Use is a Conditional Use in this district. No changes are being proposed to current use.

Section 710: Use Performance Standards

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

Findings of Fact: Applicant testified that there will be no continuous, permanent, ongoing, or frequent vibration that is discernible at the property line.

Conclusions of Law: Not applicable. Signage is governed by Article VIII.

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: Applicant testified that there would be no noise at the property in violation of this standard.

Conclusions of Law: Not applicable. Signage is governed by Article VIII.

C. 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 to be offensive.

Findings of Fact: Applicant testified that the proposed use would not contribute to detrimental air emissions.

Conclusions of Law: Not applicable. Signage is governed by Article VIII.

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 may cause injury or damage to human or animal health, vegetation, or property.

Findings of Fact: Applicants testified that the proposed use would not contribute to detrimental air emissions.

Conclusions of Law: Not applicable. Signage is governed by Article VIII.

SECTION 721: CONDITIONAL USE - GENERAL STANDARDS

In all districts, all Conditional Use development shall protect from undue adverse effects. No Land Development or Use shall result in an undue adverse effect on any of the following:

F. Character of the Area

The character, aesthetics, and scenic value of the neighborhood and area affected, as defined by the purpose or purposes of the zoning district within which the project is located and specifically stated policies and standards of this ordinance and the Town Plan.

Findings of Fact: Applicant testified that the proposed signage will have no adverse impacts on the character, aesthetics or scenic value of the neighborhood.

Conclusion of Law: Not applicable. Signage is governed by Article VIII.

SECTION 722: CONDITIONAL USE – PRESERVING THE CHARACTER OF THE TOWN

Land development and Uses in all Districts shall preserve the character of town consistent with its rural and agricultural heritage, conforming to the following:

D. Formula Businesses: The visual appearance of Formula Businesses (also known as chain stores, including things such as grocery stores, gas stations, chain drugs stores, dollar stores, etc. See Article X for a complete definition of this term), including signage, shall project an appearance harmonious with the character of the rural, agricultural, and historic nature of the town, reflecting the distinctive and unique character of the town, consistent with the Site Plan and Design Guidelines of Appendix I.

Findings of Fact: Applicant testified that that the proposed signage will have no adverse impacts on the character of the town. Applicant acknowledged the currently permitted sign does not meet the Site Plan and Design Guidelines of Appendix I but that the signage is exempt from these guidelines because it is grandfathered signage under Article VIII.

Conclusion of Law: Appendix I Plan and Design Guidelines not applicable.

SECTION 730: SPECIFIC STANDARDS

All land development and Uses in all Districts and Overlay Districts shall conform to the following:

A. Lighting and Glare: All exterior lighting in the Historic Design Review District and Village District shall be in keeping with historic character of the commercial area of the village. All exterior lighting in all districts shall be shielded and downcast. Interior and exterior lighting, glare or reflection are prohibited if they:

- 1) Constitute an unreasonable nuisance to other property owners or tenants
- 2) Are found to not contribute to the aesthetics, scenic value, or character of the area and the community
- 3) Could impair the vision of pedestrians or the driver of a motor vehicle or an aircraft

Findings of Fact: Applicant testified that the lighting for the currently permitted sign is not shielded or downcast but acknowledged that the signage is exempt from this specific standard because it is grandfathered signage under Article VIII.

Conclusion of Law: Not applicable.

C. Traffic and Pedestrian Safety: Development shall provide for pedestrian walkways to ensure a safe and efficient means for pedestrians to navigate the town on foot or by bicycle. Special consideration shall be made for children's safety. Traffic patterns shall be reviewed for safety, ease of traffic flow, and efficiency. Access to public roadways require the approval of the Town of Wilmington (for access to town roads) or the State of Vermont (for access to state highways) pursuant to 19 V.S.A. § 1111.

Findings of Fact: Applicant testified that no changes are being proposed to further develop the service station or alter the position of the currently approved sign.

Conclusion of Law: Not applicable.

D. Commercial Parking and Loading Areas: Pursuant to 24 V.S.A. § 4414(4) All commercial parking and loading areas in all districts in the town shall adhere to the following standards:

Findings of Fact: Applicant testified that no changes are being proposed to parking or loading areas.

Conclusion of Law: Not applicable.

SECTION 732: OTHER SPECIFIC STANDARDS

B. Automotive Service Station and Repair Garage:

Automotive Service Station and Repair Garage must obtain Conditional Use written decision and approval from the Development Review Board in all districts where allowed and may be allowed if the following can be met:

1. Lot size shall be at least one-half acre (1/2 acre).
2. Lot frontage shall be at least one hundred fifty (150) feet.
3. One (1) two-way access or one (1) point of ingress and one (1) point of egress shall be allowed. An additional driveway may be allowed if the property has frontage on two Town roads. Where appropriate the Development Review Board may require a landscape strip. Where there is one point of ingress and one point of egress a landscape strip should be considered along the length of the remaining frontage, beginning at a point adjacent to the driveway and continuing to the side property line, at a minimum of four (4) feet wide.
4. All portions of canopies shall be located at least twenty (20) feet from the side and rear Lot lines and all canopy lighting shall be recessed to reduce glare.
5. All canopies shall be of a solid color. Bright colors and designs on canopies are not allowed.

Findings of Fact: Applicant testified that no changes are being proposed to anything else but the sign at issue in the application. **Conclusion of Law:** Not applicable.

ARTICLE VIII: SIGNS

Section 801: Purpose

Section 802: Application in District

Section 840: Obtaining a Permit

Section 841: Zoning Ordinance Administration

Section 842: When is a Zoning Permit Required

Section 844: Obtaining a Zoning Permit for a Sign

Section 850: Conditional Sign Waivers Requiring Written Decision and Approval from the Development Review Board

Finding of Facts: These standards are applicable and have been met, all exhibits have been received & verified.

Conclusions of Law: These standards are applicable and have been met.

Section 803: Types of Signs

Signs may be Allowed/Exempt, Permitted, Conditional Waivers, or Not Allowed:

1. Allowed/Exempt: Not requiring a zoning Permit

2. Permitted: Requiring a zoning Permit from the Zoning Administrator. A Structure or Use existing prior to the first sign zoning ordinance, March 7, 1972, is deemed Permitted. 3. Conditional Waivers: Requiring Development Review Board Waiver and requiring a zoning Permit issued by the Zoning Administrator

4. Not Allowed: A prohibited sign

Findings of Fact: Cheryl LaFlamme acknowledged that the current signage at issue was in existence prior to March 7, 1972.

Conclusions of Law: The current signage is deemed Permitted. The proposed change in signage from internal illumination to LED requires a Conditional Waiver and permit.

Section 820: Allowed/Exempt Signs (Not Requiring a Permit)

Conclusions of Law: Not applicable.

Section 822: Subject to a Maximum of six (6) Square Feet in Total Area per side Allowed/Exempt Signs (Not Requiring a Permit)

Conclusions of Law: Not applicable.

Section 823: Other Signs Allowed/Exempt Signs (Not Requiring a Permit)

Conclusions of Law: Not applicable.

Section 830: Permitted Signs (Requiring a Zoning Permit)

Conclusions of Law: Conditional Waiver and permit are required.

Section 831: Types of Signs Permitted Signs (Requiring a Zoning Permit)

Findings of Fact: Applicant testified that this is a sign mounted on a pole.

Conclusions of Law: This is a freestanding sign.

Section 832: Number of Signs Permitted Signs (Requiring a Zoning Permit)

Findings of Fact: Applicants testified that they are not proposing to add any additional signage than the number of signs currently in use. Applicant testified that the number of signs currently in use will remain the same.

Conclusions of Law: Not applicable.

Section 833: Size of Signs Permitted Signs (Requiring a Zoning Permit)

Findings of Fact: Applicants testified that they are not proposing to increase the size of the signage currently in use.

Conclusions of Law: Not applicable.

Section 860: Signs Not Allowed

A. Signs erected, drawn, painted or attached to or on trees, rocks, other natural features, or utility poles as expressly prohibited in 10 VSA § 495(5).

B. Billboards as defined and regulated in Title 10 VSA § 494(4) are not allowed in the state of Vermont.

C. Off-premise signs regulated in Title 10 VSA § 494 are not allowed in the state of Vermont.

D. Any sign not meeting the standards and requirements of this Article, including sign standards as defined in Section 870 below.

Findings of Fact: Applicant testified that they are not proposing to add additional signs or change the structure of the currently approved sign, other than to replace the internally illuminated price sign with a LED-lit sign.

Conclusions of Law: Not applicable.

Section 870: Sign Standards – Applying to ALL signs Allowed (not requiring a Permit) and Permitted (requiring a Permit) With the exception of those signs receiving a Conditional Sign Waiver from the Development Review Board as defined in Section 850, all signs, both Allowed and Permitted, must satisfy the following standards:

- A. Signs shall not prevent a clear and unobstructed view of existing Allowed or Permitted signs.
- B. All signs must be maintained in good repair, with clear, easily readable lettering, without significant rotting, rusting, peeling, fading, or deteriorating parts, and must be in stable, safe and durable condition, safely secured to a stable Structure as determined by the Zoning Administrator.
- C. When a business or organization closes, moves or otherwise terminates, or an advertised product ceases to be offered, all graphics and text signs pertaining to that Use, service, product or event must be removed from the location within ninety (90) days unless an extension of time is approved by the Development Review Board. The need to maintain a visible sense of business activity in retail areas will be considered in the granting of waivers to this provision.
- D. Any nonconforming ('grandfathered') sign that is destroyed or damaged may be restored to its original state, but not altered unless in conformance with this Bylaw.
- E. Signs shall not be placed without permission from the owner or tenant of a property or his/her authorized agent.
- F. Signs shall not impair public safety or impede pedestrian traffic. Violations are subject to State penalties pursuant to 19 V.S.A. § 1105.
- G. Signs shall not prevent a clear and unobstructed view of official signs and approaching or merging traffic.
- H. Signs shall not impede access to any door, window, or fire escape.
- I. With the exception of entrance and exit signs, signs shall not be erected which appear to direct the movement of traffic or interfere with, imitate, or resemble any official traffic, directional or route sign, signal or device.
- J. External illumination of signs shall be downcast and effectively shielded to prevent beams or rays of light from being directed at any portion of the traveled way of a Public Road or adjacent properties. Businesses in the Village District are encouraged to keep externally illuminated signs and soft internal window displays illuminated until midnight to maintain an active appearance. Bright lighting is discouraged.
- K. Signs with internal illumination, including but not limited to incandescent, fluorescent, neon, and LED, are not allowed. Previously Permitted internally illuminated signs existing on November 20, 2014, the date of adoption of this provision in the Sign Article of the zoning ordinance, are "Grandfathered" and considered "Permitted" under Section 803 (2) of this Article VIII and may remain "as-is." Sign changes require full compliance with this Article VIII. (See Section 842)
- L. Signs shall not be illuminated, internally or externally, by any flashing, moving or intermittent light.
- M. Signs shall not contain any moving parts.
- N. Signs shall not emit noise or have audible systems to the extent that they can be heard on adjacent properties, public ways, parking areas, streets, or highways.
- O. External signs shall be sufficiently secured and of a material able to withstand sustained winds.
- P. Signs may not be placed internally so as to be visible through a window or door, with the intention of circumventing this article.

Findings of Fact: Applicant testified that the proposed signage would not violate any of the requirements of Section 870 and the current signage is a Grandfathered internally illuminated sign under Section 803 (2) of this Article VIII.

Conclusion of Law: Section 870 is met.

Section 872: Time Limitations

Conclusion of Law: Not applicable.

Section 873: Setback and Height Limitations - Applying to ALL signs Allowed (not requiring a Permit) and Permitted (requiring a Permit)

Findings of Fact: Applicant testified that they are not proposing to change the positioning or increase the height currently approved sign.

Conclusion of Law: Not applicable.

CONDITIONS:

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

- Except as otherwise required to accommodate the conditions of this decision, development will be executed in accordance with the specifications set forth in Exhibit 5 and Exhibit 6 and the testimony provided. Any change to the plans will require and administrative approval from the Zoning Administrator and/or review by the Development Review Board, in conformance with the ordinance.

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
Chrystal Holt
Justin Linder
Diane Abate

OPPOSED:

None

ABSTAINING:

None

Date: _____

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.