

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: **Druke-Fawcett, LLC**

Owner/Applicant(s) Mailing Address: PO Box 299, Newfane, VT 05345

Address of the subject property: **444 VT Route 100, Wilmington, VT**

Tax Map: parcel # **06-02-006.100**

A copy of the request is filed in the office of the Board and is referred to as: **#2021-101**

Description of Case per Public Notice

Application # **2021-101**: Owner: Druke-Fawcett, LLC., Agent: Tito's Tacos, Tito Garza and Ian Rose. Applicant proposes to establish a food trailer location to sell Mexican tacos and burritos.

Applicable Code Sections:

Article II- Sections: 222, 223, 224, 226, 227, 231, 234

Article IV- Sections: 410, 423, 424, 430, 431, 440, 450 F

Article VII- Sections: 706, 710 A, B, C, D; 720, 721 B, E, F; 730 A, B, C, D

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:

Ian Rose

Tito Garza

Steve Wolf

EXHIBITS

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

1. Application (3 pages)
2. Notice of Hearing
3. Abutter Notice & List (3 pages)
4. Drawing of property and taco truck location
5. Picture of Taco Truck

6. Picture picnic tables and trash can around taco truck
7. Parcel Image of property with arrows locating signs and taco truck
8. Picture of location on property
9. Picture of location on property

SYNOPSIS

The applicant proposes to set up a taco trailer to sell Mexican tacos and burritos.

ARTICLE II: ADMINISTRATIVE PROCEDURES

Section 222 A. Conditional Uses: 1, 3, 4 and 5

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 231 Criteria for Obtaining a Dimensional Waiver from the Development Review Board

Section 234 Dimensional Variances Granted by the Development Review Board for Other than Renewable Energy Resource Structures

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 410 Non-Zoned Land

Section 423 Conditional Uses

Section 424 Secondary Uses

Section 430 Nonconformities

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

Section 440 Districts and District Requirements

Section 450 E District Purposes and Descriptions- Commercial/Residential District (COM/RES)

Section 423: Conditional Uses

A conditional use is, in any district, a use that is allowed only through issuance of a Permit by the Zoning Administrator.

Finding of Facts: This application seeks a change of use for Food Stand.

Conclusion of Law: This is an approved Conditional Use with approval from DRB.

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

Finding of Fact: Subject property is within the Commercial- Residential district (Section 450 E). The property is identified as Tax Map: parcel # **06-02-006.100**

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

USES

Finding of Facts: The Primary Use is currently Commercial.

Conclusions of Law: The applicant is requesting a change of use to allow a Food Stand on the premises.

ARTICLE VII: STANDARDS

Section 706 Nonconforming Structures on Developed Land/Lot

Section 710 Use Performance Standards

Section 720 Applicability of Conditional Use Standards and Site Plan and Design Guidelines

Section 721 B, E, F Conditional Use- General Standards

Section 730 A, B, C, D Specific 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: Applicant testifies there will be no vibration.

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: Applicant testifies there will be no noise between the hours of 9pm and 7am, and further testifies that open hours of operation for the Food Truck will be between 10AM-3PM only.

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: Applicant testifies there will be no air emissions beyond the acceptable threshold.

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: Applicant testifies there will be no injurious or noxious practices.

Conclusions of Law: This Use Performance Standard is met

SECTIONS 721: GENERAL STANDARDS

The proposed use shall protect against adverse effect on:

B. Traffic on Roads and Highways

E. Air Quality

F. Character of the Area

Findings of Fact: Applicant testifies that no undue adverse effects shall arise from approval of this application.

Conclusions of Law: This General Standard is met.

SECTION 730: CONDITIONAL USE – SPECIFIC STANDARDS

A. Lighting and Glare: All exterior lighting shall be shielded and downcast. Glare and reflection are 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. In HDRD and Village District exterior lighting must be consistent with historic character of the commercial area of the village.

Findings of Fact: Applicant testifies that no additional exterior lighting proposed for the food truck. Owner testifies that no additional exterior lighting is proposed for 444 VT 100 (Design Building). No Lighting is proposed in this application.

Conclusions of Law: Standard 730 A is not applicable.

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

Findings of Fact: Applicant testifies that all precautions will be taken to reduce safety risks while the food truck is in operation, to include positioning the truck in a way that clearly delineated the area to be used by patrons on foot versus areas for people to park vehicles.

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: Applicant testifies that visible barriers will be placed to block the previous driveway, trashcans and food truck positioning will be used to demarcate pedestrian areas, and traffic patterns will not be affected by the placement of the food truck.

Conclusion 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: Applicant testifies that when the food truck is not in operation, utility vehicles have adequate access to the building and parking will remain accessible by patrons. While the food truck is in use, parking will not be affected.

Conclusions of Law: Standard 732 D is conditionally met.

ARTICLE VIII: SIGNS

Section 800 Purpose

Section 802 Application in Districts

Section 803 Types of Signs

Section 820 Allowed/Exempt Signs (Not requiring a permit)

Section 821 Subject to a Maximum of three (3) square feet in total area per side

Section 822 Subject to a Maximum of six (6) square feet in total area per side

Section 823 Other Signs

Section 830 Permitted Signs

Section 831 Types of Signs

Section 832 Number of Signs

Section 833 Size of Signs

Section 840 Obtaining a Permit

Section 841 Zoning Ordinance Administration

Section 842 When is a Zoning Permit Required

Section 843 Administrative Amendments to Zoning Permits

Section 844 Obtaining a Zoning Permit for a Sign

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

Section 860 Sign Not Allowed

Section 870 Sign Standards – Applying to ALL Signs

Section 871 Sign Design Guidelines

Section 873 Setback and Height Limitations – Applying to ALL signs

Section 874 Calculation of Area and Number of Signs

Section 880 Enforcement and Penalties

Section 881 Appeals and Waivers

Section 890 Signs for which Provision is Not Made

Finding of Facts: Applicant testifies to use one (1) sandwich-style A-frame sign as allowed in the sign ordinance. No other sign requests were proposed by the applicant.

Conclusion of Law: Article VIII is conditionally 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 5, 6, 7 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. The conditional Use for a food stand (food truck) to be operated by Tito's Tacos and located at 444 VT 100 is approved with the following conditions:
3. The food truck shall be maintained in working condition and licensed, registered and safety inspected with the Registry of Motor Vehicles.
4. The applicant testifies that hours of operation will be from 10AM-3PM only.
5. No additional lighting is permitted on the exterior of the food truck or the exterior of 444 VT 100, as this application did not include proposed lighting.

6. Location of the food truck must comply with VTrans right-of-way requirements, specifically the 25 foot setback from the center line of VT 100.
7. Food truck location and orientation must create a safe area for patrons on foot, and be clearly delineated from parking areas and areas where vehicles could drive.
8. Refuse containers to be placed in the picnic area shall be emptied daily and the picnic area shall be kept clear of trash.
9. One (1) sandwich board sign is permitted (based on Article VIII) to be used and displayed during hours of operation only, and must be put away when the truck is closed.

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:

Diane Abate
 Cheryl LaFlamme
 Justin Linder
 Chrystal Holt

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.

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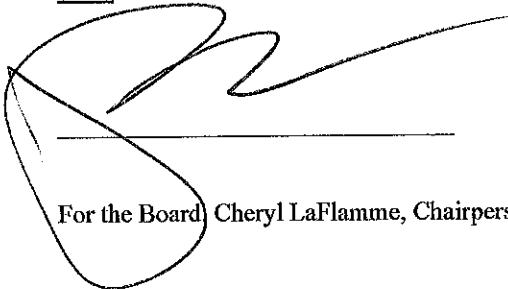
Diane Abate
 Cheryl LaFlamme
 Justin Linder
 Chrystal Holt

OPPOSED:

None

ABSTAINING:

None



Date: 3/7/2022

For the Board Cheryl LaFlamme, Chairperson

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