

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

A request for permit was made to Board by: **813 Commercial LLC**

Owner/Applicant(s) Mailing Address: **813-B VT Route 100 North, Wilmington VT**

Address of the subject property: **813-B VT Route 100 North, Wilmington VT**

Tax Map: **Parcel ID # 03-01-076.000**

A copy of the request is filed in the office of the Board and is referred to as: **# 2022-039.**

**Description of Case per Public Notice:**

Application # **2022-039**: Owner: 813 Commercial LLC. Agent: Robert Lambert

Project Summary: Proposal to establish a food trailer location in front of the auction hall.

**Applicable Wilmington Code Sections:**

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

Article IV – Sections 423, 424, 430, 431, 440, 450 F

Article VII – Section 706, 710 A-D, 720, 721 B, E, F.; 730 A-D

Notice for a public hearing was published in the Valley News on: **May 19, 2022**

Notice was posted in three public places on: **May 17, 2022**

A copy of the notice was mailed to the applicant on: **May 18, 2022**

A copy of the notice was mailed to the abutters on: **May 18, 2022**

**HEARING DATE: June 6, 2022**

**Appeal period for this Case expires on: July 17, 2022**

**Approval expires on: June 16, 2024**

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

Robert Lambert  
Donna Lambert

**EXHIBITS**

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

1. Hearing Notice
2. Application for DRB Review (3 Pages)
3. Town of Wilmington parcel map
4. Image of subject property

5. Abutter Notice & List (3 pages)
6. ANR floodway map

## **SYNOPSIS**

The applicant proposes to set up a food trailer in front of the auction hall.

## **ARTICLE II: ADMINISTRATIVE PROCEDURES**

Section 222 Conditional Uses

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:** Sections noted outline administrative procedures, definitions, role of the DRB, and responsibility of the applicant. Application was received containing all necessary documents.

**Conclusion 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 F District Purposes and Descriptions- Commercial/Residential District (COM/RES)

**Finding of Facts:** Subject property is within the Commercial- Residential district (Section 450 F).

The property is identified as Tax Map: parcel # 03-01-076.000. The primary use is currently Commercial and this application seeks a change of use/conditional use for Food Stand.

**Conclusion of Law:** This is an approved Conditional Use with approval from DRB within the Commercial/Residential district.

## **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 Conditional Use- General Standards

Section 730 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:** Based on proposed food truck operations, there is no indication that vibrations will be produced and applicant testifies there will be not vibrations.

**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 11AM-7PM only. Based on testimony, noise created by the food truck will not detract from other property's allowed use.

**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 created from the food truck that will create a negative impact. Testimony provided by applicant indicated that food prepared in the food truck would not require the use of fryers, and air emissions would be limited to the use of an outdoor grill.

**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. No part of the applicant's proposal indicates 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**

**Findings of Fact:** Based on the proposed food trucks location and orientation, there is no indication of adverse effects on the traffic in or around the location.

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

### **E. Air Quality**

**Findings of Fact:** The proposed food truck does not include fryers or other devices that would create emissions. The proposal included the use of a standard sized grill, which does not pose significant risks to the air quality.

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

### **F. Character of the Area**

**Findings of Fact:** Applicant testifies that no undue adverse effects shall arise from approval of this application. Based on the proposed application, the food truck will not impact the character of the area in a negative way.

**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 proposes no new lighting for the food truck. The proposed location near the building will utilize existing exterior lighting, both from the mounted lights on the building and the spotlights in the parking area.

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

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

**Findings of Fact:** Applicant testifies to orienting the food truck based on the assessment of potential safety concerns. The proposed location will prevent individuals from being in the parking lot area.

**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:** Proposed food truck location and orientation take into consideration traffic and pedestrian safety.

**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**

**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:** Proposed food truck location will reduce commercial parking by 2-3 spots.

Applicant testified that if/when additional parking spaces were needed, work vehicles could be moved to another section of the property to allow for adequate parking for food truck guests. Based on current size of lot, the commercial parking requirements can be met.

**Conclusions of Law:** Standard 730 D 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 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) is approved with the following conditions:
3. The applicant testifies that hours of operation will be from 11am-7pm.
4. 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.
5. 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.
6. Refuse containers must be placed near the food truck for proper trash disposal.
7. Applicant testifies that current lighting is sufficient and no additional lighting will be provided.
8. Parking of 813 Commercial LLC company vehicles can be moved to rear of the building if additional customer parking is needed.
9. Food truck dimensions cannot exceed 26 feet in length and application does not include seating for patrons
10. Applicant testified to running electrical service at roof level- any other setup requires adequate safety considerations to prevent hazards for patrons of the food truck.

**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:

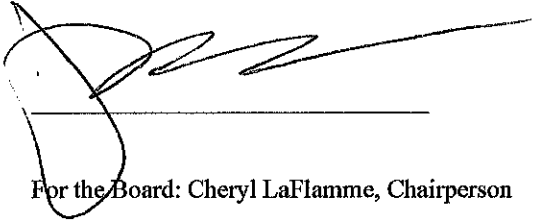
Charles Foster

OPPOSED:

None

ABSTAINING:

None



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Date: 6/17/2022

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).

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*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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