

# TOWN OF DUMMERSTON

## Development Review Board

### Conditional Use and Site Plan Review Application Findings and Decision

**Permit Application Number: 3674**

**Date Received: February 15, 2022**

**Applicant: Kampfires LLC.**

**Mailing Address: 792 US Route 5 Dummerston, VT 05301.**

**Location of Property: Parcel #827 792 US Route 5 Dummerston, VT**

**Owner of Record: Amy Bradley / David Hiler: Whetstone Station LLC .**

**Application: Conditional Use and Site Plan Review: Mobile Food Truck, Accessory Structures, Outdoor seating area.**

**Date of Hearing: April 19, 2022**

#### INTRODUCTION AND PROCEDURAL HISTORY

1. This proceeding involves review of an application for a Conditional Use and Site Plan Review under the Town of Dummerston Zoning Bylaw Sections 720 and 726 and 665: Mobile Food Truck, Accessory Structures, Outdoor seating area.
2. On March 30, 2022, notice of a public hearing was published in The Commons.
3. On March 30, 2022, notice of a public hearing was posted at the following places:
  - The Dummerston Town Office.
  - The West Dummerston Post Office.
  - The Dummerston School.
4. On March 27, 2022, notice of a public hearing was posted at the following place: 792 US Route 5 Dummerston, VT, which is within view of the public-right-of-way most nearly adjacent to the property for which the application was made.
5. On March 30, 2022, a copy of the notice of a public hearing was emailed to the applicant.
6. On March 30, 2022, a copy of the notice of public hearing was mailed to the following owners of properties adjoining the property subject to the application:
  - a. Blocher David G, Teachman-Blocher Claudia A, 24 Poplar Commons, Dummerston, VT 05301
  - b. Bombach Keith A, 92 Poplar Commons, Dummerston, VT 05301
  - c. Borofsky Lee, 766 US Rt 5, Dummerston, VT 05301

- d. Casabona Steven & Catherine, PO Box 873, Putney, VT 05346
  - e. Chase Scott & Whitworth Darcy, 59 Poplar Commons, Dummerston, VT 05301
  - f. Grover Michael, Keller Sharon, 795 US Rt 5, Dummerston, VT 05301
  - g. Martin Kimberly A, 270 Carpenter Rd, Dummerston, VT 05301
  - h. Posternak Jason & Anne, 46 Poplar Commons, Dummerston, VT 05301
  - i. Quinney Jacob P & Roxanne M, 94 Poplar Commons, Dummerston, VT 05301
  - j. Rink Matthew S & Meghan R, 775 US Rt 5, Dummerston, VT 05301
  - k. Short Howard M & Clarice K Trustees, 125 Dummerston Station Rd, E Dummerston, VT 05346
  - l. Simpson Michelle F, 40 Poplar Commons, Dummerston, VT 05301
  - m. Smith Norma L, 73 Poplar Commons, Dummerston, VT 05301
  - n. Vinci Christopher J, 41 Poplar Commons, Dummerston, VT 05301
  - o. Karen Astley, Town Manager, Town of Putney, 127 Main Street, P.O. Box 233 Putney, VT 05346
7. The application was considered by the Development Review Board (DRB) at a public hearing on April 19, 2022.
  8. The Development Review Board reviewed the application under the Town of Dummerston Zoning Bylaw, as amended May 22, 2019 and April 6, 2022.
  9. Present at the hearing were the following:
    - a. Members of the Development Review Board:  
Chad Farnum, Natalie Pelham-Starkey, Cami Elliott, Alan McBean
    - b. Others:  
Amy Brady (applicant), Roger Jasaitis (Zoning Administrator), Claudia Teachman.
  10. A site visit was conducted on April 19, 2022.
  11. Present at the site visit were the following:
    - a. Members of the Development Review Board:  
Chad Farnum, Natalie Pelham-Starkey, Cami Elliott, Alan McBean
    - b. Others:  
David Hiler, Amy Brady (applicants), Roger Jasaitis (Zoning Administrator), Darcy Whetworth, Scott Chase, Claudia Teachman.
  12. During the course of the hearing the following exhibits were submitted to the DRB:
    - a. Application for Zoning Permit, number: 3674.
    - b. Application to the Development Review Board for a Conditional Use Permit and Site Plan Review, number: 3674.
    - c. Exhibits:
      - i. Conditional Use Permit Review (5 year), September 9, 2021.
      - ii. Zoning Permits #807, 809, 2439, 3023, 3444, 3549

## **FINDINGS OF FACT**

Based on the application, testimony, exhibits, and other evidence the DRB makes the following findings:

1. The applicant seeks a Conditional Use permit for Mobile Food Truck (non event related), Accessory Structures (2), Outdoor seating area to serve the Mobile Food Truck and Ice Cream Shop.
2. The subject property is a 17.48 acre parcel located at 792 US Route 5, in the Town of Dummerston (tax map parcel no. 000827). The property is more fully described in a Deed recorded at Book 119, Page 406, in the Town of Dummerston Land Records.
3. The property is located in the Rural Commercial District as described on the Town of Dummerston Zoning Map on record at the Town of Dummerston municipal office and Section 220 of the Zoning Bylaw.
4. The Application states Condition Use approval is requested for:
  - a. Mobile Food Truck (non event related).
  - b. Accessory Structures (2) for storage.
  - c. Outdoor seating area to serve the Mobile Food Truck and Ice Cream Shop.
5. The application requires review under the following sections of the Town of Dummerston Zoning Bylaw: Article VII, Section 720 Development Review Board and Article VII, Section 724 - 726 Site Plan Approval and Section 727 Conditional Use / Site Plan Review.
6. Christopher Vinci emailed the zoning administrator prior to the meeting requesting party status as an abutting landowner and the Board approved.
7. Amy Brady (applicant) outlined the application request.
8. Lighting:
  - a. Existing lighting on the Accessory Structures faces the campground and is turned on as needed. No additional lighting is planned for the Accessory Structures.
  - b. The Outdoor Seating Area has string lights only. The area is closed at dark.
  - c. The Food Truck has no exterior lighting. It closes at dark.
9. Seating: The outdoor seating area is used for both the Food Truck and Ice Cream Stand and is fenced in. There are 20, 4 seat tables.
10. Visitors:
  - a. 50 to 100 people are served daily.
11. Hours:
  - a. 7 days a week, noon to 8:00pm.
12. The parcel is permitted for events and music under the existing CU permit.
13. Additional Signage:
  - a. The Burger Flag is temporary and brought in at night.
  - b. The Food Truck has no signs except what is painted on the sides.

14. The Food Truck generates no smoke and has had a grease trap installed.
15. Zoning administrator: Roger Jasaitis summarized his visit to the site to conduct a standard 5 year review of previous conditional use permits under Section 727 of the Zoning Bylaw. He noted several violations of the existing Conditional Use Permits. He communicated to the owner, David Hiler, the nature of the violations and the need for them to be brought into compliance as reflected in the Zoning Administrator Site Visit Report, September 9, 2021. As part of the process of remediation of the Violations, the Applicant agreed to submit an application for Conditional Use to the DRB. The wood shed and pool shed were determined to be pre-existing structures prior to the Zoning Bylaw and are "grandfathered". The additional signage noted in the report needs to be reviewed by the DRB.

## **DECISION AND CONDITIONS**

**The Development Review Board (DRB) approves this application with the following conditions:**

**1. Accessory Structures: The DRB approves the 2 Accessory Structures for storage .** The application meets the requirements of *Sections 721 of the Zoning Bylaw General Standards*. The proposed development meets the requirements of *Sections 722 of the Zoning Bylaw Specific Standards*. The proposed development meets the requirements of *Sections 726 of the Zoning Bylaw Site Plan Review Procedure and meets the requirements of Section 235 for setback and dimensional requirements*.

- 2. Outdoor Seating Area: The DRB approves the application for the Outdoor Seating Area with the following conditions:**
- a. The seating shall be limited to the existing 20, 4 person tables within the fenced in area.
  - b. No additional lighting shall be installed without further permitting.
  - c. Seating for customers shall be between dawn and 9:00pm.

The application meets the requirements of *Sections 721 of the Zoning Bylaw General Standards*. The proposed development meets the requirements of *Sections 722 of the Zoning Bylaw Specific Standards*. The proposed development meets the requirements of *Sections 726 of the Zoning Bylaw Site Plan Review Procedure*.

- 3. Mobile Food Truck: The DRB approves the application for the Mobile Food Truck with the following conditions:**
- a. Service for customers shall be between dawn and 9:00pm.
  - b. Signage painted on the vehicle is permitted under *10 V.S.A. § 494 (2) Signs on registered and inspected motor vehicles except those that are determined by the Travel Information Council to be circumventing the intent of this chapter*.

- c. **No additional signage is permitted. This includes flags, banners and temporary signs per Section 665: any display, device or representation which is visible from any highway or other public right-of-way and is designed or used to advertise or direct attention to any business, profession, commodity, service, or entertainment... and Section 669: Permit Criteria for Outdoor Advertising Signs: 5(a) ...one sign per each premises, not exceeding 32 square feet.**

The application meets the requirements of Sections 721 of the Zoning Bylaw General Standards. The proposed development meets the requirements of Sections 722 of the Zoning Bylaw Specific Standards. The proposed development meets the requirements of Sections 726 of the Zoning Bylaw Site Plan Review Procedure.

#### **4. Signage.**

The DRB notes the multiple signs displayed on site and reported in the Zoning Administrators report of September 9, 2021. Other than signs permitted by 10 V.S.A. § 494(8) *Small signs displayed for the direction, instruction, or convenience of the public, including signs which identify rest rooms, freight entrances, posted areas or the like, with a total surface area not exceeding four square feet., and Section 669 Permit Criteria for Outdoor Advertising Signs: 5(a) ...one sign per each premises, not exceeding 32 square feet., any additional signage is not permitted.*

Signs under the Zoning Bylaw are defined in **Section 665 Outdoor Advertising Signs: An Outdoor Advertising Sign is any display, device or representation which is visible from any highway or other public right-of-way and is designed or used to advertise or direct attention to any business, profession, commodity, service, or entertainment.**

The Conditional Use permit for this parcel (#0807) allows for 1 sign. The existing sign permitted under Zoning Permit #0807 is larger than the current Bylaw allows for but is allowed by the Zoning Bylaws in Dummerston in effect at the time the permit was issued. Any sign on this parcel visible from the public right of way (Rt. 5) is subject to these restrictions.

- In reviewing Conditional Use permit (#3444) no additional provisions are made for signage. No mention of superseding previous decisions regarding this parcel was made in the DRB decision #3444.
- In 1997 the Dummerston Zoning Board of Adjustment in decision #2439, condition #4, specifically stated that “there will be no new signs erected”.
- The application for additional signage (#3549) was denied by the DRB on September 9, 2019.

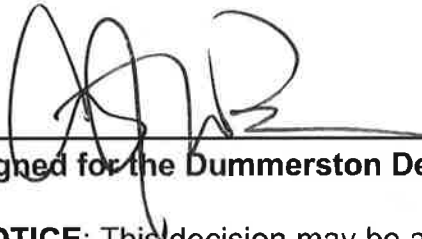
The DRB noted signs on site used for decorative purposes that are not visible from the public right of way and has no issue with them.

- A. Any existing additional signage not permitted under Conditional Use permits must be removed.**
- B. No additional signs, temporary or permanent, that do not meet Town and State statute shall be erected.**

**5. The provisions and conditions of all previous Conditional Use permits remain in effect on this parcel.**

**The following members of the Dummerston Development Review Board participated and concurred in this decision: Chad Farnum, Natalie Pelham-Starkey, Cami Elliott, Alan McBean.**

**Dated at Dummerston, Vermont, this 18th day of May, 2022.**

A handwritten signature in black ink, appearing to be 'AMR', written over a horizontal line.

**Signed for the Dummerston Development Review Board**

**NOTICE:** This decision may be appealed to the Vermont Environmental Court by an interested person who participated in the proceeding(s) before the Development Review Board. Such appeal must be taken within 30 days of the date of this decision, pursuant to 24 V.S.A. § 4471 and Rule 5(b) of the Vermont Rules for Environmental Court Proceedings.