

Approved
Town of Wallingford, VT Development Review Board (DRB)
Findings of Fact, Conclusions of Law, Decision & Order(s)

Application #19-03: Request to open a Restaurant in existing commercial facility
 Applicant (tenant): Robert Fitzgerald, PO Box 154 Pawlet VT 05761 802.293.5765
 Property Owner: James Mulkin, dba JM & MM Properties LLC, PO Box 734 Derby VT 05829 802.353.0666
 Subject Property Location: 34 Maple Street, Wallingford Village, VT **Town Parcel: 0030034**

INTRODUCTION

The Zoning Administrator (ZA) received the initial application which was reviewed on 3/22/2019. Per Article III of Wallingford Zoning Regulations (effective Sept. 2015), the ZA determined that the application required DRB review and was denied, appealed by the Applicant and referred to the DRB on 3/29/2019. The Applicant and Property Owner were notified of a Public Hearing via USPS Certified Mail on 4/2/2019. Abutting property owners were notified (documented by Certificate of Mailing) of this application on 4/2/2019 and that a Public Hearing was scheduled for 7:00 pm, April 22, 2019, at Town Offices, 75 School St. Wallingford Village. Public Notice was also given by Rutland Herald notice on 4/4/2019, project location POSTER, and in two other public buildings.

Accordingly, a Public Hearing was convened by the DRB at 7:00 pm on 4/22/18, with a quorum of Members in attendance. Zoning Administrator Jeffrey Biasuzzi and Applicant R. Fitzgerald were in attendance. Other Interested Parties identified include Vicki & Ed Timbers III and Tammy Durgin. All were sworn in and submitted testimony.

Jurisdiction was taken by Article III (Conditional Uses in Multiple use-Residential & Industrial Zoning Districts), Article IV (General Regulations; Conditional Use Approval), Off- Street Parking, and Article IX (Sign & Advertising Display).

After hearing testimony from Applicant and any Interested Parties; the DRB voted to close the Hearing to Testimony, and continue review in a Deliberative Session format. The Deliberative Session was recessed until 5/14/19 and again until 5/20/2019. While in Deliberative session the DRB approved the issuance of the permit subject to the following:

FINDINGS of FACT

1. The subject property is a conforming 1.6 acre corner parcel in the Town's Main Village. The 11,550 sq. ft. commercial structure was initially permitted for retail sales. Approximately 6750 sq. ft. is currently rented to Family Dollar. There is a paved parking area with 26+ parking spaces. There is an existing projecting (roof mounted) sign and a freestanding (road front) sign; both internally illuminated, both advertising the "Family Dollar" store.
2. The structure is connected to municipal Fire District water and sewer services. It is not in a FEMA mapped SFHA.
3. The application requests a Change of Use in the (vacant) 4800 sq. ft. of structure, which is in the Industrial Zoning District. The freestanding sign is located in the Multiple use-Residential district.
4. The application is requesting to open a Restaurant (business name to be determined), preparing and serving Lunch and Dinners initially; and possibly Breakfast in the future.
5. The Applicant testified that there would not be advertisement or sale of alcoholic beverages, lottery tickets and tobacco products.
6. The floor plan submitted with the application identifies that a kitchen, food prep area, and two patron/employee bathrooms will need to be installed. The bathrooms would serve up to 50 occupants. VT's Labor & Industry and Fire Marshall have not yet issued an Occupancy Permit that will determine the total number of persons permitted.

7. The Applicant testified that all the VT permits have been applied for. The Zoning Administrator has advised the Applicant to contact VT's Permit Assistance Specialist to receive a list of required permits.
8. Applicant would not make any exterior structural changes or install new exterior lighting.
9. The Applicant requested to have permitted Open hours of operation from 6:00 am until 12:00 am. (mid-night); seven (7) days per week. Actual initial Open hours would be from 11:00 am to 10:00 pm.
10. Outside picnic table seating was requested for seasonal use, to be located on the lawn area located northeast of the building.
11. Applicant stated that alcohol consumption would not be allowed on the premises, even if brought in by customers or visitors.
12. The Applicant testified that inside live music, and exterior music from any source, was not included the Application.
13. The Application requests two new flush-mounted non-illuminated, 4' X 4' signs, to be mounted on the east wall near the entry to the restaurant. These would be illuminated by the existing down directed (soffit) lighting mounted in the entry porch ceiling. A new projecting 4' X 4' (roof-mounted) one-sided sign, would be installed on the east side of the building (message detail to be determined), in line with the existing "Family Dollar" sign. This sign would be externally "up-lit" by a single floodlight, directed westerly at the sign. A 4' X 4' internally illuminated sign was requested for the existing roadside free-standing sign, to replace an internally illuminated sign that had been in this sign plaza in the past. Message details of these signs were not included with the application.
14. The off-street parking area available in the front of the property is presently down-fit by a number of pole mounted floodlights. There is a large floodlight mounted on the north wall of the building. The Applicant did not plan on adding any new external lighting. He was uncertain if the building had outside security surveillance cameras; but stated his belief that the adjacent G.M.P. sub-station did.
15. Neighboring owners (Timbers & Durgin) were concerned about additional exterior lighting; stating that the Family Dollar sign lights were already very bright and left on "24/7". Mr. Fitzgerald testified that he would not have any exterior lights on when the Restaurant was closed. An exception may be the freestanding sign, as he was not certain where or how the switch control for that lighting was set. The Neighbors were also concerned that the exterior tables would result in attracting unwanted and late hour use by non-patrons.

CONCLUSIONS of LAW

1. The DRB finds the Conditional Use Application with the testimony presented, conforming to the review criteria (a-d), as required for Conditional Use Approval in Articles III and IV of the Zoning Regulations, and does not adversely affect the following:
 - a) Capacity of existing or planned community facilities: The Town Fire District has provided documentation that there is adequate municipal sewer and water capacity to serve the restaurant.
 - b) The character of the area affected: The location is among existing permitted retail and manufacturing businesses; the existing commercial building and parking area will not be expanded. The DRB concludes that the area's character will be unchanged.
 - c) Traffic on roads and vicinity: The traffic generated by the new restaurant is not expected to significantly increase use of existing Town and VT roads.
 - d) By-Laws then in effect: In both the Multiple use-Residential and Industrial Zoning Districts, the Zoning Regulations (in effect 2015) provide for, "Other Uses not listed here may be permitted if the finding by the DRB shows that such use is clearly of the same general character as those permitted in the area, and not detrimental to other uses within the district, or to adjoining land uses, or their human environment, and not a prohibited use under Article III".

The DRB finds that the proposed restaurant, operating under reasonable conditions specified by the DRB, as allowed by Article IV is similar to other customer service business in the Village, including restaurants.

The DRB finds that the Sign portion of the Application involves a mix of Zoning Regulations in effect at different times; and need to be addressed accordingly:

2. Article IX of current Zoning Regulation (2015) prohibits all internally illuminated signs. However, the existing two-sided, free-standing, internally illuminated sign was approved under 2008 Zoning regulations, which did not prohibit such signage. Therefore, the DRB agrees to approve the repair and maintenance of this sign, and allow two 4' X 4' panels of translucent material to replace the existing panels on this sign plaza.
3. Article IX allows for two new flush mounted signs per business, and the substitution of one flush mounted sign for a projecting sign. The application requests two flush mounted signs and a projecting (roof mounted) sign. The DRB finds this request does not conform to Zoning.
4. The DRB has reviewed the other portions of the Application and finds them, under reasonable conditions, to conform with Zoning.

DECISION & ORDER

WHEREAS, the Wallingford Development Board APPROVES Application 19-03, Subject to the following amendments and CONDITIONS, which are to be attached to final PERMIT #19- 03, as follows:

1. An amended Application is Approved for a Restaurant business, serving food and non-alcoholic beverages as determined in Findings. All VT required Permits are to be acquired prior to start of restaurant operations, and copies of all VT permits are to be provided to the Town as a condition of this Town approval. The Applicant or Property Owner is to establish any required sewer & water maintenance accounts with the Town Fire District/Prudential Committee.
2. The sale of alcohol, lottery tickets, tobacco/cannabis products, and non-restaurant related products is not included or permitted in this Permit; without additional review and approval of the DRB.
3. Any on-property (inside or outside) consumption of alcoholic beverages by others is Prohibited. The Applicant and/or Owners will be responsible for any violations of this condition.
4. This Restaurant operation is Approved for the floor plan and occupancy requested by the Application. The Town Zoning Ordinance does not specifically regulate building occupancy; which is controlled by VT Public Safety rules. The maximum Occupancy of the building and grounds, including all employees, customers, and visitors, or any of its sub-units, shall not exceed limits set by Vermont Permits and regulations.
5. The request for outside picnic tables for seasonal use, for up to six (6) tables, designed to serve up to 60 users total, located in the N-E lawn area of the Building is Approved. Special or occasional private or catered events, for up to 60 guests (Birthday parties, Family gatherings, etc.) is included without any further review; providing Condition #3 (no alcoholic beverages) is still enforced.
6. The Applicant shall place and maintain an adequate number of outside commercial quality (separate specific use) trash, recycling, and smoking product receptacles to prevent littering and wind-blown trash. The exterior grounds shall be maintained on a daily schedule. The restaurant Dumpster location, as shown on the site plan is approved. The Dumpsters shall be enclosed and screened by a minimum six (6) foot high privacy fence.
7. The maximum hours of (Open) operation are Approved as being between 6:00 am and 11:00 pm (eastern), seven days a week. All Deliveries and Dumpster services to the business are restricted to these maximum hours of operation, and are still subject to any Town Noise Ordinance in effect.
8. No structural changes to the building's exterior or outside Lighting is approved in this permit, except to improvements that facilitate A.D.A. access or enhance property security. All exterior Restaurant lighting shall be programed to be OFF when the business is not open; EXCEPT for one half hour before opening

and one-half hour after closing; EXCEPT for minimum security lighting (exterior/ interior) necessary. All exterior lighting shall be directed so to stay within the property's boundaries.

- 9. To protect the Public from unpermitted or possibly illegal activity behind the building, the Owner or Applicant shall install and maintain motion sensitive exterior lighting, adequate to cover the west side and north sides of the entire structure. In addition, infrared Security Camera system(s) shall be installed and maintained to cover at minimum, the entire property area north of the structure, and including any picnic table area, with a minimum of 72 hour recording capability.
- 10. No music is permitted to be heard outside the restaurant's interior rental space. Regular and documented Noise or Music complaints, as a result of patrons or business operations, may be grounds for the DRB, upon its review, to suspend, amend, or revoke this permit.
- 11. The request to install (2) new 4' X 4' translucent Sign panels to the existing free-standing internally illuminated sign is **Approved**. The request to install two flush mounted signs and an externally projecting (roof mounted) sign is **Denied**. The Applicant is approved to install EITHER: two flush mounted signs OR one (1) Flush mounted 4' X 4' sign (externally illuminated by existing soffit lighting) and one (1) projecting (roof mounted) 4' X 4' sign that would be externally illuminated by a single westerly-directed floodlight.
- 12. Any future expansion or changes of Use will require an additional Permit Application.
- 13. This Town approval does not release the Applicant from obtaining any other local, state, or federal approval or permit their application may require. Any alteration to the approved application without written prior Town approval, misrepresentation to the facts presented in the application & public testimony, or failure to comply to other VT & federal permits required are grounds to revoke this local permit.
- 14. Any Decision by an Appropriate Municipal Panel is subject to appeal by an Interested Party to the VT Superior Court (Environmental Division), within 30 days of the formal decision, as defined in the Town Regulations, and 24 VSA 4471(a), with a copy submitted to the Town, in accordance with the Act.
- 15. By acceptance of this Conditional Use Permit, the Owners and Applicant grant Approval to authorized Town and VT officials to access to the premises for Compliance inspections.

Upon receipt of this Decision by the Zoning Administrator, he is Authorized to issue Permit # 19-03 subject to the DRB's Decision and Conditions; attached to and part of the final Approved Permit, with the following DRB Member's approval:

William Brooks: Approve; Erika Berner: Approve; ;

David Ballou: Approve; Lucy Thayer: Approve

Jillian Burkett: Approve

Approved on behalf of the DRB by William H Brooks, 5/28/2019,
William Brooks, Chairman, DRB

Received by Zoning Administrator: JMBiosetti, 5/28/2019

Table for Deli

(S) = SINK

(T) = Toilet

(BC) = Babychanger

(D) DOOR + swing

(HA) Handicap Accessible
- all

No details for Family Dollar square footage or Facility

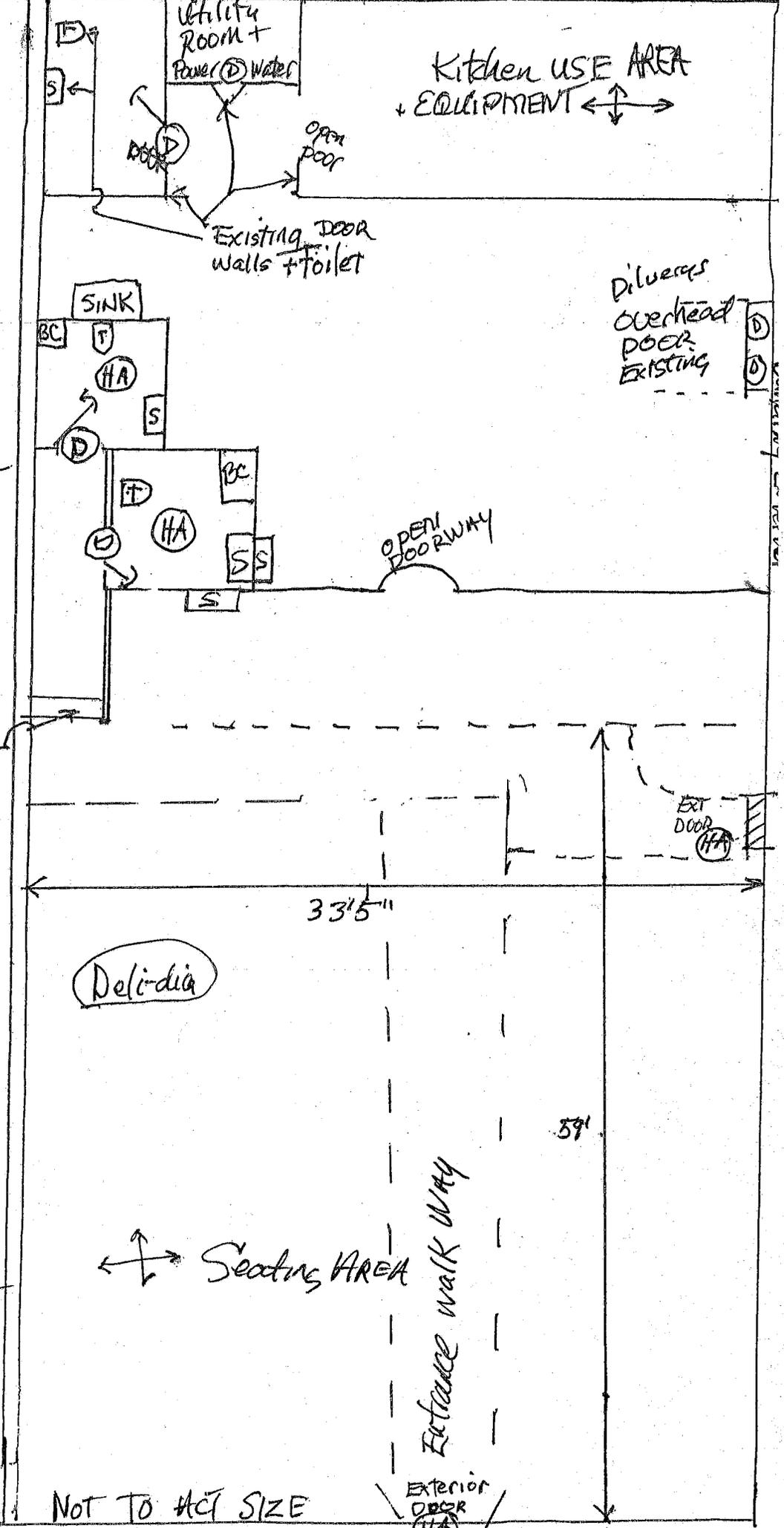
Family Dollar Store

Rest Rooms entrance

Dividing Wall

ADDENDUM 3-
APPLICATION 19-03
PROPOSED RESTAURANT
FLOOR PLAN

NOT TO ACT SIZE



Deliveries
Overhead
DOOR
Existing

OPEN
DOORWAY

EXIT
DOOR
(HA)

33'5"

59'

Seating AREA

Entrance walk way

EXTERIOR
DOOR
(HA)

NOT TO ACTUAL SIZE