

**TOWN OF PLAINFIELD**  
**Development Review Board**

**Application for Commercial Site Plan Review & Conditional Use Review for  
Light Industry: Distribution of Biodiesel Fuel and Food Trucks**

**In re: Second Wind LLC/Black Bear Biodiesel**  
**Permit Application No. 2013-17**

**INTRODUCTION AND PROCEDURAL HISTORY**

1. This proceeding involves review of an application for conditional use submitted by **Second Wind LLC (Peter Young)** under the Town of Plainfield Zoning Regulations. The affected lessee is **Black Bear Biodiesel (Jim Malloy)**.
2. The application was received by zoning administrator Karen Storey on 6/20/2013. A copy of the application is available at the Plainfield town offices.
3. On June 22, 2013, notice of a public hearing was published in the *Times Argus*.
4. On June 22, 2013, notice of a public hearing was posted at the following places:
  - a. Plainfield Town Offices
  - b. Plainfield Post Office, which is within view of Rt. 2, the public-right-of-way most nearly adjacent to the property for which the application was made.
  - c. Plainfield Co-op
5. On June 22, 2013, a copy of the notice of a public hearing was mailed to the following owners of properties adjoining the property subject to the application:

Tori Campbell	David Spidle & Shannon Spidle
Claire Dumas	Scott Stewart
Michael J. Palumbo	R. L. Vallee, Inc.
Patricia Scannell	Telephone Operating Company of Vermont/Fairpoint Communications
6. The application was considered by the development review board [DRB] at a public hearing on **July 10, 2013**. The DRB reviewed the application under the Town of Plainfield Zoning Regulations, as amended March 1, 2011.
7. Present at the hearing were the following members of the development review board [DRB]:  
Chair Janice Walrafen, Rob Bridges, and Neil Hogan
8. The following persons were present at the hearing and requested status as interested persons under 24 V.S.A. § 4465(b):

Jesse Cooper	Jim Malloy	Peter Young	Tim Phillips
Jon Anderson	Scott Stewart	Jill Bessette	
Anais Mitchell	Noah Hahn	Pat Scannell	
9. The hearing was continued to August 14, 2013 at 7 pm to address these issues: shared access with the neighboring building owned by R. L. Vallee; the location of pumps and traffic flow in general; fencing around the fuel tank. Mr. Malloy was asked to bring: (1) a picture or drawing of what the fuel storage tank will look like, (2) plans for the fence around the fuel tank, (3) plans for the sign he wants to hang on the garage door, (4) plans for parking spaces, and (5) a clear map of the parking and traffic flow.

Present at the continued hearing were the following members of the board: Rob Bridges, and Neil Hogan, and Sarah Albert. Rob Bridges was acting Chair.

10. The following persons were present at the 8/14 hearing and requested status as interested persons under 24 V.S.A. § 4465(b):

Peter Young                      Gary Graves                      Steve Pappas

11. At this hearing, Peter Young requested a continuance to the next meeting on September 11, 2013 because issues they need more time to resolve easement issues with the neighbor. DRB voted to continue the Black Bear Biodiesel hearing to September 11, 2013 at 7 pm. This does not need to be re-warned but Karen Storey will post notices in all three locations about the continuance.

12. The hearing was reconvened on September 11, 2013. Present at the hearing were the following members of the development review board [DRB]:

Chair Janice Walrafen, Rob Bridges, Neil Hogan and Sarah Albert

13. The following persons were present at the hearing and requested status as interested persons under 24 V.S.A. § 4465(b):

Jim Malloy                      Peter Young                      Pat Scannell  
David Gracyk                      Lucy Gibson for Dubois & King

The findings from the continued hearing are presented below beginning at no. 12.

## FINDINGS

Based on the application, testimony, exhibits, and other evidence the development review board makes the following findings:

1. The applicant seeks a conditional use permit to operate a **distribution center for biodiesel**. The subject property is a .61 acre parcel located at 252 High Street (US Rt. 2) in the Town of Plainfield (tax map parcel no. 201-0252).
2. The property is located in the **Village** District as described on the Town of Plainfield Zoning Map on record at the town office and section **4.4** of the Zoning Regulations. The proposed use is a retail commercial service, which is a conditional use in the village district.
3. Section 2.6 of the zoning regulations states that site plan review by the Development Review Board is required for all commercial development.. The application requires review under the following sections of the Town of Plainfield Zoning Regulations:
  - 2.6 Commercial site plan review
  - 2.8 Conditional uses
  - 3.6 Signs
  - 3.8 Outdoor Lighting
  - 3.13 Parking
4. Black Bear Biodiesel currently has a permit to store vegetable oil collected from area restaurants in the existing building on this parcel. (Application 2013-06, approved 5/8/13).
5. The proposed project is phase two, a distribution center for B100 biodiesel, consisting of two self-service distribution pumps connected to a 6000-gallon capacity storage tank next to the existing building. The conversion from vegetable oil to biodiesel will not occur on site.
6. Application asks for approval of up to four mobile vending units (food trucks or carts) that will stand on the east side of the building selling coffee, pizza, etc. Food trucks/carts will be seasonal and will not require any outside lighting.
7. Mr. Malloy submits for the record a letter of memorandum from attorney Joslyn L. Wilschek of Primmer Piper Egelston & Cramer outlining the permitting process for B100 biodiesel.
8. Mr. Malloy states that a containment dike is not needed because biodiesel is biodegradable/non-toxic. He reports that the storage tank will be “two walled”, which is above and beyond what is needed for biodiesel. He says that the containment dike inside the building (part of permit 2013-06), is for ease of clean up of spillage from pouring the vegetable oil between storage containers.
9. An updated site plan was submitted showing location of pumps, food trucks, parking and traffic circulation.
10. The following standards from Section 2.6 Commercial Site Plan Review were reviewed:
  - A: DRB members find that the scale and size of this project are compatible with nearby properties and the historic character of the Village.
  - B: As to whether the use was appropriate to district and not detrimental to others in that district, neighbors are concerned about biodiesel fumes, and the noise of 18-wheelers. Mr. Malloy explains there are no fumes; cars that smell like French fries are different than this fuel. There will be no limit on size of trucks, but it is unlikely that 18-wheel trucks will enter the property, because there is not enough room to turn around. There are no plans for this to become a truck stop.
  - C: The DRB ascertained that since the project is considered a mixed use, it does utilize land efficiently.

D: Re plan for safe traffic circulation & adequate parking: what was submitted was not adequate to show the traffic circulation; it needs to be drawn clearly on the map.

Jon Anderson, legal representative of R.L. Vallee, has a statement of concern about traffic circulation between the two buildings, due to cross easements that were granted in prior deeds. The parties involved need to come to an agreement.

There are concerns about foot traffic between the food trucks and the traffic flow to the fuel pumps. Also that property entrance and exit are the same, which may not work as well in reality as shown on the map, especially if tractor-trailers, which require a large turning radius, are involved. DRB members agree this needs to be revisited at another meeting.

**E: No odor, lights etc. beyond border, landscaping may be required to screen the project preferably with native plants that are not deemed invasive or noxious. Fencing should be with natural materials if possible and blend in with surrounding properties. Outdoor lighting should be aimed downward and should not illuminate roadways or neighbor's properties:** Mr. Malloy reports that apple trees will be planted in the back of the building, and other landscaping will be with native plants. There will be no need for outdoor lighting because hours of operation of food trucks/carts will be in the warm months when the days are longer. No fencing is planned. Staymat will be used for parking areas.

11. The following standards from Section 2.8, Conditional Uses were reviewed: Project will not have an undue adverse affect on:

**1: The capacity of existing or planned community facilities:** DRB members agree that none are noted.

**2: The character of the area affected, as defined by the purpose or purposes of the district in which the proposed project is located and the specifically stated policies and standards of the municipal plan:** DRB members are in agreement that it is a commercial business, located in a commercial area.

**3: Traffic on roads and highways in the vicinity:** DRB members agree this will be continued to the next meeting.

**4: Bylaws and ordinances then in effect:** Z.A. Storey reports that Plainfield has a noise ordinance she believes is 10PM on weekdays, and 11PM on weekends. She mentions this because of the noise of tractor-trailers. Neighbor Scott Stewart mentions there is now a State regulation against idling vehicles. DRB members suggest that signs requesting engines be shut off during fueling would address this issue.

**5: Utilization of renewable energy resources:** DRB members agree this is the objective of the business.

**Specific standards** are to include: signage at the pumps requesting that vehicles be turned off to reduce any fumes and noise. All set backs must be met, including the mobile units. This is 10 feet from the property lines. DRB members request additional fencing around the storage tank, because the planned cement posts may not be adequate. Off street parking is adequate. There is conformance with the Town Plan.

12. At the 9/11/13 continuance, a packet of information was distributed by Karen Storey, including letters from the Attorneys for BBB, David Grayck, and R.L. Vallee, Jon Anderson; a memo to Jim Malloy of BBB from Lucy Gibson, P.E. of DuBois & King; an updated map created by DuBois & King; and additional email correspondence between Z.A. Storey and David Grayck.

13. Using the map as a guide, Mr. Malloy and Lucy Gibson explain the traffic flow, and that only one curb cut will have to be used. Ms. Gibson reports they used a projected model for the traffic study. She believes there will be a small amount of traffic generated by the pumps, and the food trucks.

Chair Walrafen references the letter from Jon Anderson and asks them to explain how trucks will be able to stay within their right of way. They show that the dimensions support two traffic lanes, as they will be 20 to 30 feet combined. There will be barriers called “landscape hemlock” between the gravel parking area and the existing paved driveway. They will bring in an updated map that will show a more clear demarcation between the gravel and existing paved area, as well as better dimensions to show the width of the lanes of traffic, and the area of the parking lot.

14. The pumps will sit on a concrete pad that measures 9ft x 18ft. There will be 2 pumps, and each pump can service 2 cars. There will be a downward facing light, set on a pole, over each pump. The location of the pumps will be to the side and slightly in front of the building.
15. The food trucks/carts will be off to the west side, on the grassy area. They will be self-sufficient, operating on their own power, and will not use generators. They will operate primarily during lunch and dinner hours and will need no lighting, and will be there less than 6 months out of the year. The only smells associated with the trucks/carts will be food smells such as: smoke from a BBQ, and a wood fired pizza oven. The cappuccino cart will probably have the longest hours of operation, which could be from 7am to 7pm. They will have a power cord run out to them from the building.
16. The double-walled storage tank, originally planned for outside, is being moved to inside the building to allow more room for traffic flow. Its capacity will now be 7,000 gallon instead of the originally planned 6,000 gallons. The Fire Inspector has approved this move. The dispensing and storage of the fuel does not need any permitting; the only requirement is they register as a business, and pay taxes.
17. Lights over the pumps will only be on during hours of operation (7 am–7pm); motion detection security lighting may be used, but the light will be downward facing and turn off after a short period of time.
18. This project meets all setbacks, and the traffic flow around the pumps and building are adequate as designed.
19. The footprint of a future canopy is part of this application, but before any canopy is installed its design must be approved by the DRB.
20. Changes were made to the submitted map during the hearing; an updated map will be submitted to the DRB.

## DECISION AND CONDITIONS

Based upon these findings and other information (letters, maps and drawings) presented at the hearings, the DRB votes to approve the **conditional use permit for a retail commercial business consisting of a distribution center for biodiesel and up to four mobile food units** subject to the following conditions:

1. The hours of operation are 7am to 7pm, with food trucks/carts being available for 6 months out of the year.
2. Downward facing lighting can be over the pumps during hours of operation, with downward facing motion detection security lighting available after hours of operation;
3. A canopy footprint is approved, but the design of the future canopy needs to be approved by the DRB.
4. Any kind of expansion/change to the existing structures, hours of operation, and food trucks/carts, will need re-approval from the DRB;

Voting in favor: Janice Walrafen, Rob Bridges, Neil Hogan and Sarah Albert.  
The decision carries 4-0.

Dated at Plainfield, Vermont, this \_\_\_ day of \_\_\_\_\_, 2013.

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Janice Walrafen, Chair

**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.