

TOWN OF PLAINFIELD
Development Review Board

Application to amend Conditional Use Permit

September 23, 2015

Permit Application No. 2015-23

INTRODUCTION AND PROCEDURAL HISTORY

1. This proceeding involves an application by **Black Bear Biodiesel LLC for a Conditional Use amendment to Zoning Permit 2013-17CU: Amend permit to distribute not only pure biodiesel (B100), but to also sell blended biodiesel.**
2. The original application was received by zoning administrator Karen Storey on June 20, 2013 and the public hearing commenced on July 10, 2013. The hearing was continued to August 14, 2013, at which time a continuance to September 11, 2013 was requested. On September 11, 2013 the DRB approved 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 conditions. A copy of the application and details of the foregoing decision is available at the Plainfield town offices.
3. On November 8, 2013 the permit was appealed to the Superior Court, Environmental Division by R. J. Vallee, Inc. The appeal questioned whether the permit should be conditioned to allow at the site only the uses that were studied in reviewing the permit application. A copy of the appeal and communications from the Superior Court can be viewed at the Plainfield town offices.
4. At their May 14, 2014 meeting, the DRB considered motions filed by Second Wind LLC and Black Bear Biodiesel LLC including the request to remand. On May 15, 2014, the Town of Plainfield filed a motion for remand with the Superior Court. A hearing date of June 11, 2014 was set by the DRB.
5. The attorneys for both sides, Black Bear Biodiesel LLC and the appellant R. L. Vallee, reached an agreement requesting that the following specific language be included as a 5th condition to the permit: “The approved project is only for the sale of B100 biodiesel, without prejudice to a future application for the sale of biodiesel blends, including that such application shall not be subject to the “flexibility versus finality” permit amendment standards and analysis, including as that analysis has been set forth by the Vermont Supreme Court in *In re Appeal of Hildebrand*, 2007 VT 5, 181 Vt. 568.” On June 11, 2014 the DRB voted to amend the conditional use permit for Black Bear Biodiesel LLC by adding that language to the previously approved conditions.
6. On September 4, 2015, Zoning Administrator Karen Storey received permit application No. 2015-23 from Black Bear Biodiesel LLC requesting to amend their permit to allow the sale of biodiesel blends.
7. On September 4, 2015, notice of a public hearing was published in the *Times Argus*.
8. On September 4, 2015, notice of a public hearing was posted at the following three locations:
Plainfield Town Offices, Plainfield Post Office and Plainfield Co-op
9. On September 4, 2015, a copy of the notice of a public hearing was mailed to the following interested parties or owners of properties adjoining the property subject to the application:
Tori Campbell David Spidle Shannon Spidle Claire Dumas
Michael J. Palumbo R. L. Vallee, Inc. Patricia Scannell Scott Stewart
Telephone Operating Company of Vt/Fairpoint Communications

10. Present at the hearing were the following members of the development review board [DRB]:
 Chair Janice Walrafen, Rob Bridges, Neil Hogan and Sarah Albert
 Zoning administrator Karen Storey and administrative assistant Mary Lane were also present.
11. The following persons were present at the hearing and requested status as interested persons under 24 V.S.A. § 4465(b):

| | | | |
|--|-------------|---------------|-----------------|
| Jim Malloy | Scott Emery | Tim Phillips | Charlie Cogbill |
| Jon Anderson (attorney for R. L. Vallee) | | Scott Stewart | Gary Graves |

FINDINGS

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

1. Applicant Jim Malloy, DBA Black Bear Biodiesel, asks to amend the conditions on his permit to allow him to sell plans to sell biodiesel blends during the colder months. His aim is to displace as much petroleum as possible and he will sell B100/pure biodiesel for half of the year. However, pure biodiesel has a high gel point and needs to be blended with diesel to be useable at cold temperatures. He states that when they first applied they wanted to be able to sell blends, but that they had agreed to the condition limiting them to pure biodiesel in order to get their business in operation.
2. Mr. Malloy testified that his facility was built to the higher standards of a diesel facility; there are currently no state permits required for selling pure biodiesel. The state Agency of Natural Resources will need to issue a permit; he is going to initiate that process after his town permit has been amended. ANR will do an inspection of his facility as part of the application. The canopy has been built according to the fire marshall's specifications for a diesel facility. There will probably be an increase in customers, but the initial traffic flow analysis was done for a diesel facility, not for a facility serving pure biodiesel. He attests that nothing at the facility will change except for the percentage of biodiesel in the tank.
3. In response to DRB member Bridge's question Mr. Malloy explains that there is a complete spectrum of biodiesel blends, and biodiesel can be blended to any percentage according to customer preference and outside temperatures. Biodiesel can be blended in-line at the pump or in the tank (splash blending). In-line blending at the pump requires expensive equipment; Black Bear will be blending their biodiesel in the tank they currently use for pure biodiesel..
4. DRB members reviewed a letter from R.L. Vallee attorney Jon Anderson that had just arrived this week (attached). This statement of concern from R. L. Vallee lists a number of concerns of they have because of the impact they believe it will have on the residential and retail space they are currently renovating located next door at the former Red Store location. The letter states: that the sale of motor fuels isn't a permitted or conditional use in the village, that Black Bear Biodiesel is operating under a Cottage Industry permit, that Black Bear Biodiesel lacks approval for their canopy, and that in constructing a gravel driveway Black Bear filled an area within the 50-foot buffer of a Class 2 wetland on an adjacent property.
5. Clerk Albert states that their first application was for a Cottage Industry, but that Black Bear later applied, and on September 11, 2013 received approval, for a conditional use permit for a retail commercial business consisting of a distribution center for biodiesel and up to four mobile food units.
6. A discussion follows about the interpretation of one of the conditional uses in the Village district: "Retail or wholesale commercial service". The Plainfield Zoning Regulations definition of Commercial Use is: "the use of a building or land or portions thereof for the purchase, sale or exchange of goods and commodities, services and amenities." DRB members find that Black Bear Biodiesel's business activities fall within our definition of Commercial Use in the Village zoning district.

7. Zoning administrator Storey attested that Black Bear Biodiesel had returned to the DRB for approval of the canopy design.
8. With regard to the alleged incursion into the wetlands buffer, attached to the statement of concern was a map showing an area of wetlands considerably larger than the wetlands shown on the map used during the permitting process. The DRB members find that the map was not issued by a state agency; it was created by a private engineering firm in July 2015, a year after Black Bear's permit application had been approved.
9. In response to a question about possible spillage near the wetlands during fueling, Mr. Malloy responded that the nozzle on the pump doesn't have a clip on it; that is, the user has to continue to hold the nozzle in order for fuel to flow, so fueling can't occur without someone present.
10. Mr. Anderson asks that the DRB place conditions limiting when Black Bear can sell different biodiesel blends. Mr. Malloy requests that there not be further conditions placed on his permit unless the DRB finds that there is a valid reason for them. The DRB finds the allegations in the statement of concern submitted by Jon Anderson on behalf of R. L. Vallee to be baseless and sees no reason to set such conditions. They further find that the percentage of biodiesel blend being dispensed at Black Bear Biodiesel will have no effect on the appearance, noise, lighting or other impacts of the business on its surroundings.

DECISION AND CONDITIONS

Based upon these findings and other information presented at the hearings, the DRB votes to approve the application as submitted and amend the Black Bear Biodiesel LLC conditional use permit to allow the sale of biodiesel blends with the following conditions:

1. The applicant will obtain the required permit to sell biodiesel blends from the Vermont Agency of Natural Resources.

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

Dated at Plainfield, Vermont, this 14th day of October, 2015.

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.