

TOWN OF PLAINFIELD
Development Review Board

Remand from Superior Court to add a condition to previous permit

In re: Second Wind LLC/Black Bear Biodiesel LLC

Permit Application No. 2013-17 amended

INTRODUCTION AND PROCEDURAL HISTORY

1. This proceeding involves a remand from the Superior Court, Environmental Division, of Second Wind LLC/Black Bear Biodiesel Docket No. 151-11-13 for modification of the October 9, 2013 Development Review Board approval of zoning permit application 2013-17.
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. On May 26, 2014, notice of a public hearing was published in the *Times Argus*.
6. On May 22, 2014, notice of a public hearing was posted at the following three locations:
Plainfield Town Offices, Plainfield Post Office and Plainfield Co-op
7. On May 23, 2014, 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	Tim Phillips
Claire Dumas	Scott Stewart	Noah Hahn	Anais Mitchell
Michael J. Palumbo	R. L. Vallee, Inc.	Jesse Cooper	Patricia Scannell
Jon Anderson	Gary Graves	Telephone Operating Company of Vt/Fairpoint Communications	
8. Present at the hearing were the following members of the development review board [DRB]:
Chair Janice Walrafen, Rob Bridges, Neil Hogan and Sarah Albert
9. The following persons were present at the hearing and requested status as interested persons under 24 V.S.A. § 4465(b):

David L. Grayck, attorney for Black Bear Biodiesel	Jim Malloy	Peter Young
Jon Anderson, attorney for R. L. Vallee	Scott Stewart	Jill Bessette
Jim Jamele, attorney for the Town of Plainfield	Claire Dumas	Scott Emery

FINDINGS

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

1. The attorneys for both sides, Second Wind LLC/Black Bear Biodiesel LLC and the appellant R. L. Vallee, have reached an agreement requesting that the following specific language from the public notice for this hearing be included as a 5th Condition: “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.”
2. The original application stated that Black Bear Biodiesel would sell B100 (or 100%) biodiesel, and discussion at the 7/10/13 and 9/11/13 hearing dates pertained to B100; however, the wording of the final decision did not include B100.
3. Jon Anderson states that Black Bear Biodiesel applied for the sale of the pure form of biodiesel, B100, and that is what needs to be in the decision, unless they return to the DRB asking to sell another kind of biodiesel, or other items.
4. Jim Malloy states it was always his intention to sell B100 biodiesel. If Black Bear Biodiesel wants to sell biodiesel blends in the future, they will come back to the DRB with an application.
5. Mr. Anderson states that he sent letters in September to the DRB and Black Bear Biodiesel’s attorney, requesting that a condition be added to limit the sale of biodiesel to B100 biodiesel.
6. The DRB had responded that they had already limited the sale of biodiesel to B100 in their findings; however, Mr. Anderson states the Vermont Supreme Court said that only what is included as specific conditions to the permit is enforceable, not what was said in a hearing.
7. Chair Walrafen asks Mr. Jamele if this will be considered a new decision, and whether it can be appealed. Mr. Jamele does not believe it can, unless an objection is put on record from this hearing. Mr. Anderson adds that no one can appeal unless they have signed into this meeting, and that R.L. Vallee has no intentions of appealing as long as the language agreed upon in the motion is used.

DECISION AND CONDITIONS

Based upon these findings and other information presented at the hearings, the DRB votes to **amend the conditional use permit for Black Bear Biodiesel LLC to operate a retail commercial business consisting of a distribution center for biodiesel and up to four mobile food units** by adding a fifth condition to the previously approved 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;
- 5. 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.**

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

Dated at Plainfield, Vermont, this ___ day of _____, 2014.

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.