

**TOWN OF PLAINFIELD
DEVELOPMENT REVIEW BOARD**

Findings of Fact and Conclusions of Law

Decision on the application of: Black Bear Biodiesel

Re: amendment to Conditional Use Permit

Permit Application No. 2016-31

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, Black Bear Biodiesel LLC requested an amendment to their permit to allow the sale of biodiesel blends. On October 14, 2015 the DRB voted to approve the amendment. (Refer to decision for Permit Application No. 2015-23 for details.)
7. On September 7, 2016, Zoning Administrator Karen Storey received permit application No. 2016-31 from Black Bear Biodiesel requesting an amendment to allow the operation of a trash/recycling drop on Saturdays from 8–noon.

8. On 9/22/16, notice of a public hearing was published in the *Times Argus*. On 9/24/16, notice of a public hearing was posted at the following three locations:
Plainfield Town Offices, Plainfield Post Office and Plainfield Co-op
9. On 9/22/16, 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:
Toni 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, and Neil Hogan

Also present were Zoning Administrator Karen Storey and minutes recorder Cindy Wyckoff.
11. The following persons were present at the hearing and requested status as interested persons under 24 V.S.A. § 4465(b):
Heather Grant Jim Malloy Willy Pacheco

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 the operation of a trash, recycling and compost drop service on the site on Saturday .
2. The previous permit issued to Black Bear Biodiesel requires a permit amendment for any change in activities on the site.
3. Heather Grant already operates a trash and recycling drop in East Montpelier and wanted to add a location in Plainfield. She received permission from the selectboard to have the drop at the Park & Ride lot, but would prefer the higher visibility on Rt. 2 at the Black Bear Biodiesel location.
4. Jim Malloy believes that this service will benefit the community.
5. The drop will be located on the west side of the lot and traffic flow should go around the back of the building the same way as fuel customers.
6. Willy Pacheco, the property manager for the apartments on the R.L. Vallee property, does not anticipate problems with the trash and recycling drop operating next door.

DECISION AND CONDITIONS

Based upon these findings and other information presented at the hearings, the DRB voted to approve the application as submitted and amend the Black Bear Biodiesel LLC conditional use permit to allow the operation of a trash, recycling and compost drop service under these conditions:

1. The service will operate on Saturdays from 8 am to 12 pm.
2. No trash, recycling or compost will be left on the site.

Voting in favor: Janice Walrafen, Rob Bridges, and Neil Hogan.
The decision carries 3–0.

Dated at Plainfield, Vermont, this 12th day of October, 2016.

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.