

**TOWN OF WOODSTOCK
DEVELOPMENT REVIEW BOARD**

In Re:

**Application: T-5084-20
Peace Field LLC
650 Pomfret Road
Woodstock, VT**

This matter pertains to the applicant's September 17, 2020 application for Site Plan Approval for an Accessory On-Farm Business ("AOFB"), pursuant to § 809 of the Town of Woodstock Zoning Regulations (effective August 8, 2017) and 24 V.S.A. Section 4412(11).

Procedural History

On October 27, 2020, the Woodstock Town Development Board (TDRB) opened a Public Hearing regarding this matter. During the hearing (and thereafter), the applicant, through its representative, John Holland, AIA, offered written and oral testimony pertaining to the application.

By Recess Memorandum, dated January 19, 2021, the TDRB solicited from the applicant certain detailed information regarding the design and operation of its proposed Accessory On-Farm Business. By letter dated January 26, 2021, Mr. Holland provided information in response to the TDRB's inquiry.

The public hearing was reconvened on February 23 and March 23, 2021 to allow the TDRB to hear additional testimony. At the conclusion of the March 23, 2021 hearing, the TDRB voted to "close testimony" regarding the application and recessed the hearing.

Throughout the hearing process, various interested persons also submitted oral and written testimony to the TDRB, including the following abutting property owners: David Nixa, 819 Pomfret Road; Al Alessi 799 Pomfret Road; Tom Meyerhoff & Cynthia Volk, 40 E. 78th Street, Apt 10C, NY, NY.; Carol Powell, 493 Pomfret Road; Larry Niles, 100 Pomfret Road; and Michael Brands 510 Lincoln Street.

On June 16, 2021, the applicant's representative, John Holland, notified the Town's Planner and Zoning Administrator of his intention to withdraw the applicant. Thereafter, on June 23, 2021, Mr. Holland notified the TDRB, via the Town's Planner and Zoning Administrator, that the applicant had "reconsidered" the request to withdraw and asked that review of the application continue.

and Zoning Administrator, that the applicant had “reconsidered” the request to withdraw and asked that review of the application continue.

Through a Notice to Parties issued on August 16, 2021, the Board solicited from the applicant and interested persons final legal memoranda/analysis discussing whether and how the proposed project is “accessory to a farm,” as that phrase is used in the relevant statute and zoning regulations. The applicant and certain interested persons submitted responses to the TDRB’s Notice to Parties on September 15, 2021, and to each other on September 30, 2021.

On November 9, 2021, upon review of the record, the TDRB voted for final adjournment and moved to deliberations and a decision on this matter.

Findings of Fact Regarding the Farm

1. On January 30, 2012, John & Maureen Holland (“the Hollands”) purchased the ±190-acre former Conklin Farm, located at 650 Pomfret Road in the Town (the “Farm” or “Peace Field Farm”). John Holland is also the Manager of Peacefield, LLC.
2. The property is located in the Town’s R-5 zoning district.
3. That same year (2012), the Hollands began a process of returning the forested land back to agricultural fields and making other improvements to the property. In September 2013, they began demolition of the Conklin barn and on October 16, 2015, the Town permitted a new 36'x72' post and beam barn on the property.
4. On December 17, 2016, the Hollands, working in conjunction with Vermont Land Trust, sent out a request for proposals for a farmer to work the land at 650 Pomfret Road. The RFP document provided for a completed barn to the farmer's specifications, a pond, infrastructure, and housing.
5. On March 2, 2017, the State of Vermont issued a permit to construct a pond on the property as a water source for crops, animals, recreation and to stabilize water runoff on the east side of property.
6. On December 2, 2019, the applicant received confirmation from the Vermont Agency of Agriculture that the proposed farm operation falls under the jurisdiction of the Agency and is in compliance with the Required Agricultural Practice (RAP) Rules.

7. The Farm is currently leased to Mangalitsa, LLC (“Mangalista”) which manages the property. Matt Lombard is the Manager of Mangalitsa, LLC.
8. The applicant indicates that the Farm is actively raising, feeding and managing 90 swine, seven cows, and 150 egg-laying hens.
9. The Farm presently uses five acres of land for growing crops and intends to increase its crop acreage to ten acres. Thirty-eight (38) acres of land on the Farm is used to grow hay. The Farm can sustain fourteen to sixteen cows through intensive managed grazing of forage in the spring, summer and fall, with hay fed to the cows in the winter.
10. The Farm intends to increase from one to two high tunnels to aid in the production of over 100 varieties of vegetables and herbs.
11. The Farm has a modern composting facility that composts excess agricultural product and proteins into useable soil in three months.
12. The Farm intends to process, freeze, and store animal parts and fiber crops raised and grown on the Farm as well as offer these services to other farms, within the limitations of law.
13. There are seven full time employees working for Mangalitsa on the Farm and it is expected that those employees will work for the proposed AOFB as well.
14. Mangalitsa intends to host on-farm educational events involving tours of the farm and composting facility and classes on the raising and processing of proteins (pigs, cows, chickens), along with the cooking and preservation of such proteins and agricultural products (i.e. smoking, pickling, canning, etc.).
15. The proposed AOFB is a restaurant, operated by Mangalista and located in the barn, which is proposed to be a “farm to table” concept, with more than 50% of its sales coming from products produced/grown and processed on the Farm.
16. More specifically, through the restaurant, the Mangalista’s operators plan to serve “qualified products” from the Farm, including vegetables and herbs, pork, beef, poultry, beef, pork, and eggs. They also intend to incorporate agricultural products from other local farms that are processed on the Farm.
17. The applicant projects that the restaurant’s service hours would change seasonally. However, it is anticipated that during spring, summer and early autumn months the restaurant will be open six days a week, from 11:00 a.m. to 11:00 p.m. Winter hours are proposed as five days per week, from 5:00 p.m. to 11:00 p.m. The applicant projects that the restaurant will provide a

sandwich menu, prepared foods and a takeout menu that will operate at the same schedule.

18. The floor plans for the restaurant depict seating for up to 88 guests: dining room seating of 72 patrons including nine bar stools and 16 seats for seasonal outside dining. Service will be primarily by advance reservation.
19. There are plans to have seasonal outdoor cooking and dining with events centered around products produced on the farm.
20. The restaurant will include a 9-seat bar to service customers prior to and after dining service. Hours of operation for the bar will be in conjunction with dining service.
21. The frequency of outdoor activities anticipated for the restaurant is uncertain at this time. However, it is expected that four or five outdoor food driven events are anticipated for the first year of operation. The exterior hours would be during the daytime and generally May thru October.
22. It is expected that there will be two dinner servings per night with the last reservation scheduled for 8:30 PM. Accordingly, the maximum number of meals anticipated to be served for any given evening would not exceed 176 (88 seat capacity times 2). Notwithstanding, Mangalista's current goal is to serve 45-55 dinners per night.
23. There are to be 70 parking spaces total for the restaurant, 28 on hard pack and 42 on grass parking spaces. Typical traffic flow will be two way on the hard pack driveway on the south side of the restaurant/barn building with primary parking in the rear 13 spaces adjacent to the main entrance. First overflow parking will be in the rear 15 spaces adjacent to the high tunnels. Second overflow parking will be on the 24 grass spaces to the south and 18 grass spaces to the north. During busy periods, the hard pack exit driveway will be opened to allow internal traffic to exit onto the Pomfret Road.
24. Mangalista's current goal for the restaurant is to serve 45-55 dinners per night.
25. The applicant projects traffic to be approximately 25 to 40 trips during the peak hour on Pomfret Road.
26. The Farm anticipates hosting educational events and tours featuring meals made up of "qualified products" from the Farm and using the Restaurant/barn as a part of such events.

27. The proposed AOFB site has adequate drainage facilities and flood storage will be provided based on historic development of the facility. The AOFB will use no municipal services.
28. The proposed AFOB will be illuminated by several lights that are dimmed to 35% illumination, with screening measures also employed. The applicant does not propose to use the tree lights shown on the site plan.
29. Processing of the Farm's food products will take place within the restaurant/barn. Both proteins and vegetables can be brought directly from the farm into the kitchen and processed to code for future use or sale. Meat processing/packaging services will be conducted at the restaurant kitchen. It will operate Monday thru Saturday, during daytime hours only.
30. Under the Town's Zoning Regulations, restaurant use is not allowed in the R5 zoning district.

Conclusions of Law

Based upon the foregoing findings and its review and consideration of the application, the revised site plan, written and oral testimony received during the hearing, legal memoranda submitted by the parties, and an evaluation of the criteria and standards set forth in the Town of Woodstock Zoning Regulations and State law, the TDRB concludes as follows:

The applicant has applied for site plan approval pursuant to § 809 of the Zoning Regulations as an "Accessory On-Farm Business." Section 809 provides, in pertinent part, as follows:

Section 809; Site Plan Approval

F. No zoning permit shall be issued by the Administrative Officer for an Accessory on-farm business until the TDRB issues site plan approval. In undertaking its site plan review of an Accessory on-farm business, the TDRB shall not deny the application, nor shall the TDRB decision have the effect of prohibiting the Accessory on-farm business. In issuing site plan approval, the TDRB may set reasonable conditions and requirements as are allowed under the standards and requirements for site plan approval. (amended 3/11/2020)

G. No zoning permit shall be issued by the Administrative Officer for those activities of an Accessory on-farm business which are not exempt under 24 V.S.A. § 4413 unless site plan approval has been granted by the

TDRB in accordance with 24 V.S.A. § 4416 and this Bylaw. (amended 3/11/2020)

The Zoning Regulations, at § 110, further provide that an Accessory on Farm Business “shall have the same meaning as in 24 V.S.A. § 4412(11), and as it may be amended.”

That statutory provision, 24 V.S.A. § 4412(11) (added to Vermont law pursuant to Act 143 of 2018), expressly provides that “No bylaw shall have the effect of prohibiting an accessory on-farm business at the same location as a farm.”

As noted above, the Vermont Agency of Agriculture, the governmental entity having jurisdiction over the issue, as determined that Peace Field Farm is a “farm” within the meaning of the RAP Rules and is in compliance with the same. Therefore, if the restaurant proposed to be operated by Mangalista meets the definition of an “accessory on-farm business” under the statute, it cannot be prohibited in the R-5 district, notwithstanding anything in the Zoning Regulations to the contrary. However, “activities of an accessory on-farm business that are not exempt under section 4413 [of Title 24] may be subject to site plan review pursuant to section 4416 of ... [Title 24].” 24 V.S.A. § 4412(11)(D). In addition, “[a] bylaw may require that such activities meet the same performance standards otherwise adopted in the bylaw for similar commercial uses pursuant to subdivision 4414(5) of ... [Title 24].” Under the Woodstock Zoning Regulations, site plan review is conducted pursuant to § 809 and the relevant performance standards are set forth in § 709.

To qualify as an “accessory on-farm business” under the statute, 24 V.S.A. § 4412(11), a proposed AOFB activity must (1) be “accessory to a farm” and (2) “comprise” one or both of two qualifying criteria, as set forth in subsections (11)(A)(i)(I) and (II). Under these criteria, the AOFB must either:

- I. Store prepare, process, and sell qualifying products, provided that more than 50 percent of the total annual sales are from qualifying products that are principally produced on the farm at which the business is located.

OR

- II. Comprise educational recreational, or social events that feature agricultural practices or qualifying products, or both. Such events may include tours of the farm, farm stays, tastings and meals featuring qualifying products, and classes or exhibits in the preparation, processing, or harvesting of qualifying products. As used in this subdivision (II), “farm stay” means a paid, overnight guest accommodation on a farm for the purpose of participating in educational, recreational, or social activities on the farm that feature

agricultural practices or qualifying products, or both. A farm stay includes the option for guests to participate in such activities.¹

Notably, the phrase “accessory to a farm” is not defined in § 4412 or anywhere else in Chapter 117 of Title 24. Since the Town’s Zoning Regulations provide that Accessory on Farm Business “shall have the same meaning as in 24 V.S.A. § 4412(11),” it is necessary to discern the meaning of that phrase and, particularly, to construe the meaning of the word “accessory.”²

When interpreting a statute, the primary goal is to discern and give effect to the intent of the Legislature. *State v. O’Neill*, 165 Vt. 270, 275, 682 A.2d 943, 946 (1996). Thus, the TDRB looks first to the plain meaning of statutory language, and if the plain meaning is unambiguous and resolves the interpretation issue, it is generally not necessary to further. *Sawyer v. Spaulding*, 2008 VT 63, ¶ 7, 184 Vt. 545, 955 A.2d 532 (mem.). However, like the courts, the TDRB favors interpretations that further fair, rational consequences. *Id.* When the relevant terms are not defined in the statute, as in this case, the TDRB, like the courts, may look to dictionary definitions to determine the plain and ordinary meaning of the language. See *State v. Galanes*, 2015 VT 80, ¶ 13, 199 Vt. 456, 124 A.3d 800.

The word “accessory” is defined in *The American Heritage College Dictionary* (3rd ed. 1997), in relevant part, as: “a. A subordinate or supplementary item; an adjunct. b. Something non-essential but desirable that contributes to an effect or result.” Similarly, the *Merriam-Webster* online dictionary defines accessory, when used as an adjective, to mean “aiding or contributing in a secondary way” or “present in a minor amount and not essential as a constituent.” Moreover, Black’s Law Dictionary (6th ed. 1990) defines “accessory,” in part, as “Anything which is joined to another thing as an ornament, or to render it more perfect, or which accompanies it, or is connected with it as an incident, or as subordinate to it, or which belongs to or with it” and also as “A thing of subordinate importance. Aiding or contributing in [a] secondary way or assisting in or contributing to as a subordinate.” (All emphasis added)

Taken together, the plain and unambiguous meaning of “accessory” is a thing that is subordinate, secondary and non-essential. Thus, activity is “accessory to a farm” if such activity is subordinate to the farm (i.e., of secondary or lesser importance) and/or contributes to, or is connected with, it in an incidental,

¹ For an accessory on-farm business to be eligible for the benefit of Section 4412(11), the business must also (1) be operated by the farm owner, one or more persons residing on the farm parcel, or the lessee of a portion of the farm and (2) meet the threshold criteria for applicability of the RAP Rules. 24 V.S.A. § 4412(11)(B)(i), (ii). It is undisputed that the applicant meets these eligibility requirements in this case.

² Neither the Environmental Court nor the Vermont Supreme Court has yet interpreted the phrase “accessory on-farm business” and, thus, the TDRB is without authoritative guidance and left to interpret the statute on its own.

minor or non-essential way. This interpretation is generally consistent with the definitions of “accessory structure” and “accessory use” in the Town’s Zoning Regulations, each of which emphasizes the “incidental” nature of the use or structure.

As noted above, our primary goal in interpreting a statute is to give effect to the intent of the Legislature. When the Vermont General Assembly adopted Act 143 in 2018 it stated the purpose of the Act:

Sec. 1. PURPOSE

The General Assembly adopts Sec. 2 of this act to:

- (1) promote and facilitate the economic viability of Vermont's farms; and
- (2) increase the consistency across the State of municipal regulation and permitting of accessory activity that supports those farms.

Thus, the Legislature’s primary purpose, in adopting Act 143, was to promote economic viability for farms and to increase regulatory consistency as it relates to “accessory activity” that supports those farms. This stated purpose suggests an intended meaning of the word “accessory” in Act 143 that is different from, and somewhat broader than, the traditional definition of “accessory” or “accessory use,” as used in zoning regulations in Vermont and elsewhere (i.e., customarily, incidental and subordinate to the principal use). In other words, while the accessory on-farm activity must be subordinate or secondary to the farm, it need not be “customary;” it is sufficient if the subordinate activity supports the farm.

In this case, the Farm consists of ±190 acres of land in total, with 38 acres of hay and five acres of crops (which are expected to expand to ten acres). The Farm cares for 90 swine, seven cows, and 150 egg-laying hens, with plans to grow the herd. The lessee of the farm, Mangalitsa, LLC, makes day-to-day decisions regarding crops and animal care. There is also no dispute that the farm meets the threshold criteria for the applicability of the RAP rules as required under 24 V.S.A. § 4412(11)(B)(ii)³ and the proposed restaurant business will be operated by Mangalitsa, LLC (the lessee of the farm).

The TDRB understands the proposed restaurant’s concept to be a “farm to table” operation with the restaurant placed upon the very farm that is to supply the majority of the food to be served. Furthermore, the TDRB notes that the physical size and capacity of the restaurant are controlling factors in the interpretation of term accessory. In order to conclude that the use meets with the term Accessory On

³ Vermont Department of Agriculture, Food and Markets (the “Department”) made this determination and has performed a site visit. The Department has not determined the barn housing the proposed Restaurant to be an “Agricultural Building.”

Farm Business (AOFB), again it must find that the relationship of the restaurant is secondary and subordinate to the primary use of the property as a farm. Accordingly, it must discern that the, intensity and scale of the accessory activity meets common understanding of the term. The TDRB shall give the term (AOFB) a reasonable interpretation given the circumstances of the proposed use.

However, this Board finds this operation, as proposed, it being an 88 seat restaurant with plans to operate up to six days per week from 11 AM to 11 PM with a maximum serving capacity up to two dinner servings per table per evening, plans to be open for lunches and takeout foods during these hours and plans to host likely outdoor food events open to public and private parties several times per year, that such an operation fails to meet with the definition of Accessory On Farm Business (AOFB) as provided under 24 VSA Section 4412 (11) and as such term is similarly defined under the Town of Woodstock Zoning Regulations under Section 110.

While the TDRB could conclude that the proposed restaurant operation is not a secondary use of the property based on its findings, thus denying the applicant's request for Site Plan Approval as an AOFB, the TDRB retains the ability to limit or constrain the operation to the degree or extent that it can make an affirmative finding regarding the use or application of the term Accessory On Farm Business (AOFB). To that end, the TDRB concludes that the use, subject to meeting with the following limitations is an AOFB. These are:

1. Food and beverage service to patrons are limited to five days per week;
2. The restaurant hours are to be reduced to 11 AM to 10 PM;
3. Outdoor food service is limited to 16 persons at any one time.
4. Outdoor food events such as wedding parties and receptions are not allowed;
5. Total patrons being served food or beverage shall be limited to no more than 60 at one time.

With these limitations to the original proposal, we find the restaurant subordinate to the Farm. The TDRB finds the primary draw of the restaurant is where the food came from. The Farm and restaurant offers patrons the opportunity to eat food while looking upon the fields which primarily produced the food. Patrons will have the opportunity to tour the Farm and learn about the agricultural practices. The applicant has stated plans for expanding the Farm's food production to increase its dominance of the primary use over the planned accessory uses, including the "farm to table" restaurant. The TDRB notes that the proposal, as conditioned and defined above meets with the Legislative purposes of Act 143.

While we find the concept and function of the restaurant, as defined per the limitations noted above, to be "accessory to a farm" under Act 143 and Woodstock's Zoning Regulations, the TDRB can place conditions on the operation of the

restaurant to ensure that the restaurant remains accessory in practice. It remains the applicant's burden to sufficiently demonstrate the restaurant's compliance with 24 VSA Section 4412 (11) throughout its existence and upon request of the Zoning Administrator.

With reference to these standards noted under Section 709, the TDRB finds that the proposed use will not exceed standards as pertains to noise, odors, dust, smoke, noxious gases, excessive vibration, public hazards. Furthermore, the TDRB finds that the proposed use is in compliance with State of Vermont air and water pollution standards.

In conclusion, the TDRB approves this application for an Accessory On Farm Business (AOFB) (subject to the limitations on the term noted above) and the conditions set forth below:

1. Site Plan Review Section 809 (B)(3); The applicant shall install Norway Spruce or similar screening in a staggered formation to provide additional screening at the north, southern and western (street) facing edges of parking that are clearly visible from Pomfret Road and adjacent residential neighbors. The intent of this condition is to limit the visibility of parked cars from these locations and to reduce the glare from nighttime vehicle headlights.
2. Site Plan Review Section 809 (B) (4): The applicant shall employ measures to reduce glare emanating from the site and proposed use. To this end, the following conditions apply:
 - a. No exterior light bulbs shall be directly exposed. Light bulbs shall be shielded and pointed downward. All lighting shall be of a soft or warm color.
 - b. To reduce the lighting impact associated with the proposed use, all exterior lighting will be dimmable and not exceed 35% capacity. Additionally, no lights shall be projected upwards onto the building. Pursuant to Section 809 (E), the TDRB reserves the ability to review and evaluate this condition and to make modifications to exterior lighting requirements as may be necessary for revised or full lighting approval.
 - c. To minimize the effect of excessive exterior lighting only minimal lighting for the safety of patrons and staff shall be allowed after 10 PM. Business signs shall be off during non-business hours and after 10 PM.

- d. To mitigate the effect of glare from neighboring properties and users of Pomfret Road, the applicant shall take measure to install window treatments above the ground floor of the restaurant building facing west to shield light emanating from the building. Per Section 809 (E), the TDRB reserves the ability to review and evaluate this condition to ensure that the intent of this condition is being reasonably met.
- e. To reduce the potential effect of excessive noise, no sound systems, bands, or music shall be outdoors.

While we find the concept and function of the restaurant, as defined per the limitations noted above, to be “accessory to a farm” under Act 143 and Woodstock’s Zoning Regulations, the TDRB can place conditions on the operation of the restaurant to ensure that the restaurant remains accessory in practice. It remains the applicant’s burden to sufficiently demonstrate the restaurant’s compliance with 24 VSA Section 4412 (11) throughout its existence and upon request of the Zoning Administrator.

We conclude that the restaurant as interpreted by the Board to be subordinate to the farm. What appears to be the primary draw of the proposed restaurant is that it is on the Farm where the food came from. This Farm and restaurant offer patrons the opportunity to eat food while looking upon the fields of the Farm that produced it. Patrons also have the opportunity to tour the Farm and learn about its agricultural practices. Thus, the primary draw for this restaurant is the Farm. The applicant’s stated concept of a “farm to table” restaurant, and its stated plans of expanding the Farm to increase offerings at the restaurant, appear consistent with the definition of an “Accessory On-Farm Business” and the Legislative purpose discussed above.

However, it is apparent to the TDRB that such a proposed accessory on-farm restaurant is uniquely susceptible to changing its operating concept from a “farm-to-table restaurant” to simply a restaurant on a farm. This susceptibility is not a result of any shortcoming or bad intent on the part of the applicant, but rather a function of economics. The applicant’s proposed concept, while part of a contemporary and growing trend, is a mixture of two business models that are notorious for slim margins and high risk. It is easy to understand how such a business may be pressured to abandon an expensive concept for a cheaper, more profitable one. It will be necessary to monitor this business going forward to ensure that it continues to function in the farm-to-table manner currently contemplated. However, subject to the limitations as imposed by this Board, the Board finds that the restaurant is “accessory to a farm,” within the meaning of 24 V.S.A. § 4412(11)(A)(i).

As noted earlier, an Accessory On Farm Business (AOFB) is subject to Site Plan Review, pursuant to 24 VSA Section 4416 and Section 806 of the Zoning Regulations. The Board may impose conditions, in accordance with the bylaws, incorporate appropriate conditions and safeguards with respect to the adequacy of parking, traffic access, and circulation for pedestrians and vehicles, landscaping and screening; the protection of the utilization of renewable resources; exterior lighting; the size, location and design of signs and other matters set forth in the Regulations.

With reference to Section 809 (B) site plan review objectives, the Board finds:

1. Access to the project is off Pomfret Road. The access driveway is generally flat with adequate sight distances to the north and south on Pomfret Road. Speed limit on the road is 40 MPH. The trip generation is estimated to be 40 vehicles per PM hour. Vendor deliveries will be limited to weekdays in the morning during lower traffic hours.
2. Parking will be on-site with primary spaces in the rear of the restaurant/barn with a total of up to 70 spaces including overflow parking. Traffic flow into and out of the restaurant will be via a two-way single access drive off Pomfret Road. Vendor deliveries will be at the rear of the building. Employee parking will be to the rear of restaurant.
3. The landscaping plans include raised beds, stone patios, stone walls, split rail fences, landscaping vegetation consisting of street trees, ornamental plantings, open lawns and wildflowers on the site intended for the proposed use. The use is situated in an area consisting of farms, open fields, agricultural uses, low-density single-family residences and small commercial operations. In addition, there are patches of woods immediate to the use.
4. Exterior lighting consists of lighting for the restaurant, driveways, parking areas, and landscaping. A series of pole light fixtures are located along the driveway, and the front and rear of the building. Shielded bollard lights and lights placed into the stone wall in front of the building are intended as part of the overall landscaping plan. All exterior lights are dimmable and are on timers.
5. Interior lighting during darkness is plainly visible from Pomfret Road and some adjacent neighbors. The front gable end of the restaurant/barn consists of a series of windows extending to the roof peak that are clearly visible from travelers on Pomfret Road.

6. Stormwater run-off will be primarily sheet flow across lawns and open areas. The applicant seeks to manage any erosion and sediment run-off in accordance with Vermont Agency of Natural Resources standards.
7. The applicant will employ current standard and practices to ensure the utilization and renewable resources and the protection of natural resources for the restaurant use. Energy use will be limited during periods the restaurant/ food processing facilities are not open.
8. The project will utilize municipal police, fire, rescue services and road maintenance. The Town of Woodstock has indicated that it has the capacity to provide services without unreasonable burdens.

In addition, the proposed use as a restaurant/food processing facility is subject to the performance standards contained in Section 709 of the Zoning Regulations. With reference to these standards noted under Section 709, the TDRB finds that the proposed use will not exceed standards as pertains to noise, odors, dust, smoke, noxious gases, excessive vibration, public hazards. Furthermore, the TDRB finds that the proposed use is in compliance with State of Vermont air and water pollution standards.

In conclusion, the TDRB approves this application for an Accessory On Farm Business (AOFB) (subject to the limitations on the term noted above) and the conditions set forth below:

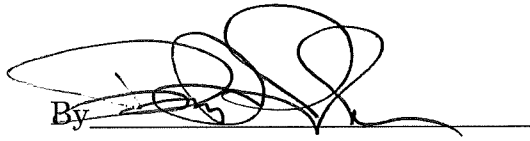
1. Site Plan Review Section 809 (B)(3); The applicant shall install Norway Spruce trees or similar screening in a staggered formation to provide additional screening at the north, southern and western (street) facing edges of parking that are clearly visible from Pomfret Road and adjacent residential neighbors. The intent of this condition is to limit the visibility of parked cars from these locations and to reduce the glare from nighttime vehicle headlights.
2. Site Plan Review Section 809 (B) (4): The applicant shall employ measures to reduce glare emanating from the site and proposed use. To this end, the following conditions apply:
 - a. No exterior light bulbs shall be directly exposed. Light bulbs shall be shielded and pointed downward. All lighting shall be of a soft or warm color.
 - b. To reduce the lighting impact associated with the proposed use, all exterior lighting will be dimmable and not exceed 35% capacity. Additionally, no lights shall be projected upwards onto the building.

Pursuant to Section 809 (E), the TDRB reserves the ability to review and evaluate this condition and to make modifications to exterior lighting requirements as may be necessary for revised or full lighting approval.

- c. To minimize the effect of excessive exterior lighting only minimal lighting for the safety of patrons and staff shall be allowed after 10 PM. Business signs shall be off during non-business hours and after 10 PM.
- d. To mitigate the effect of glare from neighboring properties and users of Pomfret Road, the applicant shall take measure to install window treatments above the ground floor of the restaurant building facing west to shield light emanating from the building. Per Section 809 (E), the TDRB reserves the ability to review and evaluate this condition to ensure that the intent of this condition is being reasonably met.
- e. To reduce the potential effect of excessive noise, no sound systems, bands, or music shall be outdoors.

Conclusions of Law and Order

Based upon the foregoing findings of fact, the TDRB concludes that the proposed Accessory On Farm Business meets with the Site Plan Approval requirements pursuant to Section 809 of the Town of Woodstock zoning regulations. NOW, BE IT RESOLVED, the Town of Woodstock Development Review Board finds the proposal presented in the above Application T-5084-20 to be in conformance with the Site Plan Approval requirements of the Town's Zoning Regulations and HEREBY APPROVES the application, subject to the terms and conditions outlined in this decision.

By 

Don A. Bourdon, Chair of the TDRB

Members approving of this decision: Wade Treadway, Kim French, Don Bourdon

Members dissenting: Brad Prescott, Alan Willard

Application: T-5084-20
Peace Field LLC
650 Pomfret Road
Woodstock, VT

Dissenting opinion – TDRB Members Brad Prescott & Alan Willard

The applicant has failed to prove they have satisfied the requirements necessary to be determined an Accessory On Farm Business under Act 143.

In respect to the application complying with the common definition of an “Accessory” use.

The AOFB must be “accessory to a farm”: My determination is in alignment with that written by Al Willard in his opinion dated 11/9/21. I have copied this portion of his opinion below for ease of reference. I would clarify that I do not have issue with the farm being developed with an AOFB in mind as part of the “business plan” and the two entities developing simultaneously or in synergy. This issue becomes relevant in my view given the scale and clear dependence the farm has upon the proposed AOFB in this case. Mr. Willard’s observation illustrates well the dependence of the farm upon the AOFB (restaurant) and is therefore not “subordinate” or “supplementary” to the farm. The portion of Mr. Willard’s opinion in which I am in agreement is copied below:

Since the statute does not define accessory I ... [looked] at the definition of “accessory” as defined by Webster: “contributing to or aiding an activity in a minor way; subsidiary or supplementary” and “an object that is not essential in itself but adds to the beauty or effectiveness of something else.” In this application the scale and scope of the restaurant component, as compared to the farm component, is such that the restaurant cannot be considered as supplementary or contributing in a minor way to the farm component. It appears to me that the farm component exists to support the Farm to Table concept of the restaurant. According to the minutes, the applicant stated in the October 2020 public hearing that the farm would not exist without the restaurant. I don’t see how this meets the portion of the definition of accessory that says, “an object that is not essential in itself but adds to the beauty or effectiveness of something else”.

It appears that the restaurant and the farm are being developed in tandem as opposed to a restaurant being added as an accessory to an already existing self-supporting farm operation. The restaurant is fully developed having converted from proposed agricultural use to a full-scale restaurant which is a commercial restaurant use which is not allowed in the 5 acre residential zone. The farm component has future goals that are not currently happening such as the production and processing of value-added products. According to testimony of the applicant, revenue from the farm operation was not available. The applicant was not able to identify any markets for farm products beyond the restaurant.

In my opinion, and in the absence of better definitions in the Statutes, I think it’s appropriate to look for extrinsic evidence that could shed light on the issue at hand. Therefore, additional consideration needs to be given to the Vermont Department of Agriculture’s publication Q&A on Act 143. The publication states as examples of accessory on farm business includes “on-farm dinners featuring qualifying products at a smaller scale than a restaurant.”

There are two additional criteria to qualify as an accessory on farm business. The applicant has not demonstrated that either is met here.

Criteria I

I: "The storage, preparation, processing and sale of qualifying products, provided that more than 50 percent of the total annual sales are from qualifying products that are principally produced on the farm at which the business is located."

The applicant has not proven the total annual sales from the AOFB (restaurant and processing operation) will be from products produced from the farm. These figures have been absent from the application. The applicant has provided varied and ambiguous information to the board regarding the quantity of meals and alcoholic beverages that will be served annually. Based on the information provided (number of seats, days and hours of operation, etc.) it can be concluded that this is somewhere between 10,000 and 30,000 meals per year. Considering the considerable and varied volume of food ingredients and alcoholic product necessary to serve these quantities, it is not reasonable to assume that 50 percent of the value/ sales of all these products will be produced from the farm.

The processing facility portion of the AOFB application may have some impact on these percentages. However, the applicant has not provided facts on which to make this assumption or conclude to what degree it would influence the percentage of sales of products from the farm.

Criteria II

II: "Educational, recreational, or social events that feature agricultural practices or qualifying products, or both. Such events may include tours of the farm, farm stays, tastings and meals featuring qualifying products, and classes or exhibits in the preparation, processing, or harvesting of qualifying products. As used in this subdivision (II), "farm stay" means a paid, overnight guest accommodation on a farm for the purpose of participating in educational, recreational, or social activities on the farm that feature agricultural practices or qualifying products, or both. A farm stay includes the option for guests to participate in such activities."

It is recognized that the applicant is intending to host social events and tours of farm. The AOFB application is primarily focused on seeking the AOFB status for serving meals of qualifying products and processing of products.

Meals: The application has been clear that the establishment serving meals and drinks is a restaurant and has been applied for as such. It will be open daily for individual and custom individual meal preparation. A restaurant differs from a "tastings and meals" venue providing for "events". Such events are understood to be intermittent and special occasions, such as dinners, for group gatherings of a dedicated period and nature. The Vermont Agency of Agriculture, Food & Markets Q & A, Act 143 published document clarifies their understanding that Act 143 was intended to "include tastings"... and "on farm dinners"... but "at a smaller scale than a restaurant". Understanding the intent of Act 143 to not include eating venues on the scale and intensity of a restaurant, the AOFB application does not comply with this portion of the AOFB criteria.