

**WATERBURY DEVELOPMENT REVIEW BOARD**  
**General Minutes—June 03, 2020**

**Members:** David Frothingham (Chair), David Rogers (co-Vice Chair), Tom Kinley (co-Vice Chair), Alex Tolstoi, Andrew Strniste, Bud Wilson, Patrick Farrell, Harry Shepard (alternate, non-voting).

Staff Members: Steve Lotspeich, Community Planner/Acting ZA; Patti Martin, Secretary.

The public meeting convened at 6:30 p.m. with Staff Member Steve Lotspeich present in the Steele Community Room in the Municipal Center, 28 North Main Street, Waterbury, VT, while all other attendees participated in the meeting via ZOOM.

Call to order by the Chair. *(Meeting will be audio recorded.) The agenda was followed as presented.*

The following introduction was offered by the Chair, David Frothingham: Applicants and consultants will be given the option to be contacted once their hearing was ready to commence. The applicants should try and have one spokesperson. Steve will give a staff overview. The spokesperson (and/or applicant) will make a presentation of new information to the Board. DRB members will be asked one at a time to ask questions, followed by staff questions. Then the hearing will be opened for public comment and questions.

Seven of seven members were present. David F. reminded the applicants that four votes in the affirmative will be needed to pass a motion.

**1. #026-20: Ben & Jerry's Homemade Inc.** (owner/applicant)

Continuation of the Site Plan and Conditional Use review to construct a truck access drive and trailer drop-lot at 1281 Waterbury-Stowe Road, Waterbury, VT. (VCOM/RT100 zoning districts)

Testimony:

1. New sound readings were done, as per the prior request. See Exhibit K.
2. There is agreement with Unilever and the trucking company/ies that drivers can be directed to the Irving truck stop at I-89, Exit 7 for "safe haven" parking, as needed.

*The Board approved the project with conditions and will issue a written decision within 45 days.*

**2. #023-20: Loc Nguyen** (owner/applicant)

Continuation of Site Plan, Conditional Use, and Special Flood Hazard Area review to expand the existing restaurant use to include banquets and outdoor events at 1675 U.S. Route 2. (MDR/SFHA zoning and overlay districts) *(Applicant has requested further continuation to June 17, 2020)*

*The hearing was continued to June 17<sup>th</sup> at 6:30pm.*

**Review of prior decisions and meeting minutes:**

Tom Kinley moved and Dave Rogers seconded the motion to approve the general minutes May 5, 2020 and the decision for application #035, as amended.

Vote: The motion was approved 7 - 0

**Other Business:**

1. Patrick Farrell (regular member) and Harry Shepard (alternate member) were welcomed to the DRB.
2. The Select Board will be meeting to for a public hearing to review and possibly adopt Interim bylaws to allow restaurants to have tents with outdoor seating. The Planning Commission will be discussing the draft Interim bylaws at their meeting on June 8<sup>th</sup>.

**Adjournment:**

There being no other business, the meeting was adjourned at 9:38 p.m.



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(Chair) (Vice-Chair) (Acting Chair)

Approved: June 17, 2020

**Next meeting:**

June 17<sup>th</sup> at 6:30pm. To include continued hearing for application #023-20.

\* During the declared COVID 19 emergency, a public body is not required to provide a physical location for an open meeting or have a person physically present. The state legislature amended the Open Meeting Law to allow a public body to hold its meeting by phone, electronic, or other remote means, provided that the public can participate and information about how and when the public can access the meeting is published in the agenda. A quorum or more of the members of the public body must participate in the meeting.

***The Waterbury DRB has 1 Alternate position open:*** The DRB meets twice a month and reviews commercial projects, larger subdivisions, Planned-Unit developments, and Ridgeline-Hillside-Steep Slope projects. Contact Dina Bookmyer-Baker (ZA), 802-244-1018 or [dbookmyerbaker@waterburyvt.com](mailto:dbookmyerbaker@waterburyvt.com) for more information or to apply. These volunteer positions will be filled by Select Board appointment.

**Town & Village of Waterbury  
Development Review Board  
Approved Decision - Application #026-20  
June 3, 2020**

**Members:** David Frothingham (Chair), David Rogers (co-Vice Chair), Tom Kinley (co-Vice Chair), Alex Tolstoi, Andrew Strniste, Bud Wilson, Patrick Farrell, Harry Shepard (alternate, non-voting).

**Staff Members:** Steve Lotspeich, Community Planner/Acting ZA; Patti Martin, Secretary.

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Owner/Applicant:	Ben & Jerry's Homemade (owner)	
Address/Location:	1281 Waterbury-Stowe Road, Waterbury, VT	
Zone:	Village Commercial & Route 100 (VCOM & RT 100)	
Application #	#026-20	Tax Map # 13-110.000

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**Applicant Request:**

The Applicant seeks approval to construct a truck access road, a four-space linear drop lot, and a six-space trailer drop lot on the easterly and northly side of the existing ice cream plant located at 1281 Waterbury-Stowe Road, Waterbury, VT.

**Present and sworn in on May 06, 2020:**

Dereck Woolridge, Consulting Engineer  
Umair Arshad, Ben & Jerry's staff  
Joe Greene, adjacent landowner  
Jay Provencher, adjacent landowner

**Present and sworn in on May 20, 2020:**

Dereck Woolridge, Consulting Engineer  
Umair Arshad, Ben & Jerry's staff  
Nolan Titcomb, Ben & Jerry's staff  
Tom Burrows, Ben & Jerry's staff  
Jay Provencher, adjacent landowner

**Present and sworn in on June 3, 2020:**

Dereck Woolridge, Consulting Engineer  
Umair Arshad, Ben & Jerry's staff  
Tom Burrows, Ben & Jerry's staff  
Jay Provencher, adjacent landowner

**Exhibits:**

A: Application #026-20 (4 pages: zoning, site plan review, conditional use), submitted 3/19/2018;  
B: Overall and Detailed Site, Layout, and Grading Plans, dated 4/7/20, revised 5/14/2020 (4 pages)

- C: Road Plans and Profiles, dated 4/7/20, revised 5/14/2020 (2 pages)
- D: Landscaping and Lighting Plan and Details, dated 4/7/20, revised 5/14/2020 (2 pages)
- E: Gravel Wetland Plans, dated 4/7/20, revised 5/14/2020 (3 pages)
- F: Notice to adjacent property owners, mailed certified: 4/20/20
- G: Vehicle Tracking Plan, dated 5/14/20
- H: Photometric Pan, dated 2/18/20
- I: Lighting Fixture Cut Sheet, Photometrics, and Performance Data, dated 2/5/20
- J: Supplemental Information, dated 5/14/20
- K: Updated Noise Readings taken on 5/22/20

**Findings of Fact:**

1. Existing conditions: Ben & Jerry's Homemade, Inc. is applying to construct a truck access around the existing 54,000 sq. ft. industrial plant located on a 46.7-acre parcel located at 1281 Waterbury-Stowe Rd. in the Village Commercial (VCOM) and Route 100 (RT100) zoning districts. The truck access road will be located in the portion of the site that is in both the VCOM and RT100 zoning district. The lot is served by the municipal wastewater and water supply systems. The building that was permitted for a change of use to the "Pint University" employee training conference center has been demolished, in part to facilitate the construction of the truck access road.

2. Proposed Project: The Applicant is proposing to construct a truck access road, four-space linear drop lot, and six-space trailer drop lot on the easterly and northly side of the existing ice cream plant as shown on Exhibits C through J.

Specifically, the proposal involves the construction of a new truck access that is separated from the visitor entrances, especially the main handicap pedestrian entrance on the southwest side of the plant. Access to the current truck drop-lot has been a safety concern due to the proximity to the primary guest handicap access area. The new access way will utilize the right turn into the lower visitor parking lot, and then will veer to the east and then north on a two-lane road that will bring the trucks around the northern side of the plant and continue to the existing dock area at the rear of the building.

The includes six new spaces for a tractor trailer drop lot near the northerly border of the Ben & Jerry's property which was chosen as the best option to minimize the environmental factors such as existing wetlands, and the hillside terrain of the site. There will also be a four-space, linear drop lot closer to Route 100 on the north side of the proposed access road. The Applicant agrees that the four-space linear drop lot is the best location for the "Safe Harbor" area where drivers are allowed to sleep in their trucks. The six-space drop lot shall not be used as a "Safe Harbor" area. Trailers with compressors running may be parked at either drop lot at any time during a 24-hour period.

The drop lots will be used to drop off a trailer while it is not being used or is waiting to be loaded or unloaded at the rear of the plant. The new drop lots will save space in the loading dock area. Currently the trailers have to use the RV parking area, limiting the visitor parking in that area and increasing truck/pedestrian conflicts

Concerning truck traffic, most trucks arrive at the plant at “off peak” times. No trucks will block the entrance to the existing lower parking area. The capacity of the factory is not being increased, and therefore, the truck traffic is expected to remain the same.

The surface of the new access road will be pavement. The entry to the lower parking lot will have painted lines to delineate the visitor vs. truck lanes. The turning radii for the tractor trailer trucks are depicted in Exhibit G, Vehicle Tracking Plan. According to Exhibit G, the tractor trailer trucks entering the lower lot will not track into the opposing / exiting lane, nor will they block cars trying to exit the lower parking lot. Exiting tractor trailer trucks will track over a portion of the opposing lane that is entering the Ben & Jerry’s facility off Waterbury-Stowe Rd. and entering the lower parking lot.

1. Site Plan Review criteria: As set forth in Section 301, Site Plan Review and Approval, the Development Review Board reviewed and considered the following site plan criteria and granted approval:

(a) Section 301(f)(1) Adequacy of traffic access. Access for trucks and other vehicles will be changed as described above under the “Proposed Project” section of this decision.

(b) Section 301(f)(2) Adequacy of circulation and parking. The traffic circulation for trucks will be changed and improved, as the new layout is expected to reduce conflicts with the vehicular and pedestrian access ways for visitors. Employees will have the option of using the truck access road to access the employee parking lot in accordance with Exhibit B. There will be no change to the parking requirement for the building as a result of this project. The Development Review Board finds that the project conforms with criteria in this subsection.

(c) Section 301(f)(3) Adequacy of landscaping and screening. The existing landscaping on the site will be modified with new plantings as shown on Exhibit D, Landscaping and Lighting Plan and Details. The access road will be generally screened from Route 100 by the existing and proposed landscaping. The neighboring properties in the Countryside residential development will be generally screened from view of the truck access road and six-space drop lot by the existing forested areas and the change of topography. The drop lot is generally lower in elevation than the existing and proposed houses in the Countryside development.

There will be 15 new pole lights that will be approximately 25’ in height and in the locations depicted in Exhibit D, Landscaping and Lighting Plan and Details. Each pole light will have one downcast and shielded LED light fixture as shown on Exhibit I, Lighting Fixture Cut Sheet, Photometrics, and Performance Data. The photometrics for these lights are to be in accordance with the photometric plan (Exhibit H, Photometric Plan). All other existing exterior light fixtures on the site shall remain unchanged.

The Development Review Board finds that the application conforms with the following criteria:

(d)Sections 301(g) through (i) for uses in the Route 100 District. This Applicants are not proposing to change the use of the Ben & Jerry's plant; therefore, the Development Review Board finds the application in conformance with this subsection.

(e)Section 301(j) Special considerations for uses of property bordering Route 2, Route 100, and Interstate 89. The proposed truck access road and drop lots are screened from Route 100, and therefore, the Development Review Board finds the proposed project in conformance with the criteria in this subsection.

1. Conditional Use/Waiver criteria: The DRB grants conditional use approval in accordance with Section 303. The Board finds that the proposed project conforms to the following general and specific standards:

(a)Section 303(e)(1) Community facilities: The truck access road does not require addition municipal water or sewer allocation, will not burden the school capacity, and will not increase the demand for fire protection. The Applicant states that: "There will be no change in the traffic, water demand, or sewer disposal flows, and therefore will have little to no impact on community facilities" (see Application).

(b)Section 303(e)(2)(A-E) Character of the area: The use of the property will remain industrial. The Applicant states that: "The existing use is not changed with the project, as the new truck access and storage lots will relocate and expand upon existing storage. The truck access will separate the industrial operations from the visitor areas" (see Application).

(c)Section 303(e)(3) Municipal bylaws in effect: This proposed project complies with the site plan review and conditional use criteria, and other applicable zoning bylaws. The Applicants states that: "The existing use is not changed" (see Application).

(d)Section 303(f)(2) Methods to control fumes, gas, dust, smoke, odor, noise, or vibration: The Applicant states in Exhibit J that: "the proposed truck access will not create any additional fumes, gas, dust, smoke, odor, noise, or vibration as there will not be any increase in the amount of truck traffic." Exhibit J, Supplemental Information, and Exhibit K, Updated Noise Readings taken on May 22, 2020, addresses the noise levels associated with the site, including the proposed six space drop lot, and noise levels anticipated at the property line and on nearby adjacent properties to the north of the drop lot.

(e)Section 303(h) Removal of earth or mineral products conditions: The project does not include earth removal activities. This provision does not apply.

**Conclusion:**

Based upon these findings, and subject to the conditions set forth below, the Board concludes that the proposal by Ben & Jerry's Homemade, Inc. to construct a truck access road, a four-space linear drop lot, and a six-space trailer drop lot on the easterly and northly side of the existing ice cream plant located at 1281

Waterbury-Stowe Road, as presented in application #026-20 and supporting materials, meets the Site Plan Review and Conditional Use criteria set forth in Sections 301 and 303.

**Motion:**

On behalf of the Waterbury Development Review Board, Andrew Strniste moved and Tom Kinley seconded the motion to approve application #026-20 with the following conditions:

- (1) The Applicant shall complete the project in accordance with the Board’s findings and conclusions and the approved plans and exhibits.
- (2) All exterior lighting shall be downcast and shielded.
- (3) The Applicant agrees that the four-space linear drop lot is the best location for the Safe Harbor where drivers are allowed to sleep in their trucks. The six-space drop lot shall not be used as a Safe Harbor area.
- (4) The back-up alarm on the Ben & Jerry's Yard Dog tractor shall be disabled for all use on the truck access road and two drop lots.
- (5) The Applicant shall comply with erosion protection and sediment control measures when development commences on the lots. [Section 1202(a)3]

**Vote:** The motion was approved 7 - 0



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(Chair)

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June 17, 2020

(date)

This decision was approved on June 17, 2020.

State permits may be required for this project. The landowner/applicant is advised to contact Peter Kopsco, DEC Permit Specialist, at 802-505-5367 or pete.kopsco@vermont.gov, and the appropriate state agencies to determine permits that must be obtained.

*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. An 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.*