**TOWN OF SOUTH HERO, VERMONT**

**DEVELOPMENT REVIEW BOARD**

**DECISION DATED June 9, 2022**

**APPLICANT**

**Name: Keeler Bay Associates, LLC**

**Address: PO Box 95, South Hero, South Hero, VT 05486**

**LANDOWNER**

**Name: same**

**APPLICATION**

**Type: Conditional Use and Site Plan Review for a food truck, to amend DRB decision #19-62-RT456.**

**Number: 22-53-RT464**

**PROPERTY**

**Location: 464 and 466 US RT 2**

**Hearing Date: April 27, 2022, May 11, 2022**

Keeler Bay Associates submitted an application on March 15, 2022 for a conditional use and site plan review to amend DRB decision #19-62-RT456, dated June 26, 2019. The 2019 decision approved a single food truck to operate from 10Am to 10PM, 7 days a week, May 1 to October 31, at the parking area with frontage on RT 2. A subsequent application by Blue Paddle Bistro and Keeler Bay Associates, dated June 24, 2020 (20-54-RT456), expanded the use to an outdoor deck located on the slope east of the mobile vendor location. The original application for 22-53-RT464, dated and rec’d March 15, 2022, requested to increase the number of vendors to 3. Per Section 805 of the South Hero Development Regulations, a warning for the public hearing appeared in the April 6, 2022 issue of the Islander and was posted in the Town Office, the Post Office, and the Town Library, and abutters were notified (see Conclusions of Law - B). A hearing was held on April 27, 2022 and recessed to May 11, 2022. Michael and Michele Gammal represented the Applicant at the hearing. A list of those present and participating in the hearing is included in the minutes of the hearing.

**During the course of the hearing, the following exhibits were submitted:**

1. Town of South Hero Development Regulations, effective March 3, 2013
2. Conditional Use and Site Plan Review Application, dated and received March 15, 2022.
3. Site Plan by Mike Gammal; rec’d March 15, 2022
4. DRB decisions 19-62-RT456 (dated June 26, 2019) and 20-54-RT456 (dated June 24, 2020.
5. Warning ad, Abutters’ Notice, and Hearing Letter for April 27, 2022 DRB CU/SP Review.
6. Amended application, dated April 28, 2022; rec’d May 2, 2022.
7. Amended site Plan; rec’d May 2, 2022.
8. Staff report for April 27, 2022 DRB hearing.
9. Staff report for May 11, 2022 continued hearing.
10. Minutes from April 27 and May 11, 2022 hearings.

Based on the applications, supporting documents, and testimony of Michael and Michele Gammal, **the Development Review Board makes the following Findings and enters the following decision:**

**Findings:**

1. A 2021 subdivision created 3 lots from the original 8.7-acre parcel. This review is for Lot 3 -- 464 US RT 2, and Lot 1 -- 466 US RT 2. Both lots share the same access from US RT 2 and are within the Keeler Bay Village zoning district.
2. Lot 3 has frontage on RT 2 and is 1.10 acres. This is the location of the original 2019 mobile vendor approval (#19-62-RT456). Lot 1, 3.66 acres, is Keeler Bay Marina. An outdoor deck was constructed on what is now Lot 1, on the hill close to the east boundary of Lot 3, and use was granted by approval of the 2020 Blue Paddle/Keeler Bay Associates application (#20-54-RT456).
3. The Applicant’s original March 15, 2022 application was for two additional vendors on Lot 3, and one vendor at the deck on Lot 1.
4. At the April 27 hearing, the Board requested a clarification of the site plan to clarify and delineate vendor and parking areas and to provide other details. In consultation with the applicant, the Board decided to continue the hearing to May 11.
5. The Applicant submitted a revised site plan, rec’d May 2, and application, dated April 28, rec’d May 2, for the continued hearing that expanded the scope to include additional mobile vendors on Lot 1.
6. Three ‘zones’ on the revised site plan, rec’d 5/2/22, identified vendor and seating locations:
	1. Zone #1 is the original food truck Lot 3. The Applicant proposes 2 additional mobile vendors in this zone. There are 40 parking spaces, on gravel and grass. The vendor and seating area are proposed for the south and east sides of the parking area.
	2. Zone #2 is adjacent to the existing deck on Lot 1. Parking for this area is an additional 49 spaces as shown on the site plan.
	3. Zone #3, adjacent to the marina on Lot 1, encompasses the lakefront areas of the 2 northern dock branches and the 32- space parking area on the north end of the lot, between James Montani and Peter Valesquez. The Applicant anticipates that this zone will be used for weekend events.
7. There is no change in the hours of operation requested -- 10AM to 10PM, 7 days/week, nor the dates of operation -- April 1st to October 31st.
8. The Applicant was co-applicant for use of the deck in 2020 as an accessory use to a food truck on what is now Lot 3. That use continues and is unchanged by this decision.

T. Maxham closed the hearing on May 11, 2022.

**Conclusions of Law**

1. Per Table 2.2, in the Keeler Bay Village District, the proposed use on Lot 3 is permitted with site plan approval.
2. Upon entering deliberation, the Board became aware that all abutters of Lot 1 were not warned as required by statute.
3. Consequently, the Board cannot address any matter related to Lot 1 and will confine its decision to Lot 3. The Board invites the Applicant to apply for desired changes to Lot 1 so the abutters can be warned.
4. The application, as presented, meets the requirements of Conditional Uses (Sec. 302) for Lot 3.
5. The Board finds that the proposal will not result in undue adverse effect for Lot 3.
6. The plan, as presented, does not meet the requirements of Sec. 305.A (Site Plan Approval) and Table 3.2 (Final Site Plan Requirements), but the Board has decided that the information presented in the current and previous applications provides sufficient description of the intended use in this instance.

**On June 9, 2022, M. Welch moved to approve the request for 2 additional mobile vendors on current Lot 3, with the findings of fact listed and with the following Conditions; L. Kilcoyne second.**  **Whereas, Final Approval was granted to the application with Conditions,** with the following people voting in the affirmative: D. Patterson; M. Welch; N. Hayward; L. Kilcoyne; and J. Brightwell.

**Conditions:**

1. Applicants shall comply with all evidence as presented at the hearing or as amended by this decision.
2. This approval expands the number of mobile vendors to 3 on Lot 3. The use granted by this approval shall comply with all other conditions of previous decisions 19-62-RT456 (dated June 26, 2019) and 20-54-RT456 (dated June 24, 2020), including:
	1. Hours of business will be 10AM to 10PM.
	2. Dates of operation shall be April 1st to October 31st.
	3. Barriers will be placed between mobile vendors and the parking lot for protection of customers from vehicular traffic.
3. Mobile vendors shall be located a minimum of 10 feet from the parking barriers to allow for customer queueing.
4. Applicant will be responsible for trash and porta-lets for all mobile vendors.
5. There shall be no parking on the paved portion of RT 2.
6. Applicant shall return for a review of parking, traffic flow, and operations after one year.
7. The Town of South Hero’s responsibilities are limited to ensuring compliance with the approvals and permits issued by the Town of South Hero. The Town accepts no responsibility for compliance with the conditions of any permits or approvals issued by any other entity. The Town of South Hero will not be liable for the failure of the applicants to carry out their duties and responsibilities.

 **Dated: June 9, 2022**

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 **For the Development Review Board**

## APPEAL RIGHTS

 Any appeal of this decision must be filed with the Superior Court, Environmental Division (located at 2418 Airport Road, Suite 1, Barre, VT 05641-8701) within 30 days of the date the decision was issued, pursuant to 10 V.S.A. Chapter 220. The Notice of Appeal must comply with the Vermont Rules for Environmental Court Proceedings (VRECP). The appellant must file with the Notice of Appeal the entry fee required by 32 V.S.A. §1431 and the 5% surcharge required by 32 V.S.A. §1434a(a), which is $262.50 as of January 2011. A copy of this appeal must be filed with the Zoning Administrator or the Town Clerk within thirty (30) days from the date of issuance.