

**Development Review Board, Town of Fayston, VT  
Notice of Decision for Application No. 3535**

**Applicant(s): Robert Holden & Douglas Hall**

**Parcel ID: #07-056.000**

**Reason for Application: Re-establish Non-Conforming Use**

**Public Hearing Attendees:** Attending DRB Members: Shane Mullen (Chair), Lindsay Browning (Vice-Chair), Mike Quenneville, Ky Koitzsch, and Pete Ludlow (alternate); ZA: John Weir; Public: Bob Holden, Doug Hall, Sheila Getzinger, Bruce Isaacson, Gunner McCain, Michael Clendenin, Karen Sauther

**Introduction and Procedural History:**

1. The Development Review Board application was filed on July 16, 2019. Applicants Robert Holden and Douglas Hall request conditional use approval under Section 3.8 (B) of the Fayston Land Use Regulations to re-establish a non-conforming use at the former Bongiorno's restaurant. A copy of the application and supporting paperwork are available at the Fayston, VT town offices.
2. Notice of the hearing was properly published. On June 27, 2019 the legal warning for a public hearing for review of this application was published in the Valley Reporter. This warning was also posted at the Fayston municipal offices, as well as at both the Moretown and Waitsfield post offices.
3. Abutters to the property were properly notified of the hearing.
4. The application and plans were considered by the Development Review Board at a public hearing which occurred on July 16, 2019. The Development Review Board reviewed the application and plans under the Town of Fayston, VT Land Use Regulations, as amended June, 2018.

**The following exhibits were submitted to the Development Review Board:**

Exhibit A. Conditional Use application #3535

Exhibit B. Letter to adjoining landowners with project description

Exhibit C. Narrative: Request for Conditional Use Approval to Re-establish a Non-Conforming Use (a restaurant) Pursuant to Article 3.8 (B) (1) of the Town of Fayston Land Use Regulations

Exhibit D. Site Plan (McCain Consulting, dated September 18, 2014)

Exhibit E. Survey (Keller & Lowe, dated December, 1977)

Exhibit F. Vermont State Curb Cut Permit #39224

Exhibit G. Warning placed in the Valley Reporter on June 27, 2019. This warning was also posted at the Fayston municipal offices, as well as at both the Moretown and Waitsfield post offices.

**Findings:**

1. The Board found the application to be complete at a public hearing held July 16, 2019.
2. The property is located in the Rural Residential District as described on the Town of Fayston Zoning Map on record at the Town of Fayston municipal office, also described under Article 2, Table 2.4 of the Town of Fayston, VT land use regulations.
3. The applicant's parcel is adjacent to land owned by Karen Anderson, Heidi Schmidt, Michael and Lisa Lang, and TLC Vermont, LLC.
4. There were no Interested Parties to this application.
5. This application seeks to re-establish a use in an existing building that is otherwise conforming. It is the use only that does not conform to the Rural Residential district.
6. The building stopped being used as a restaurant in October 2017 when Bongiorno's closed.
7. As of the date of enactment of the revised land use regulations in June of 2018, this grandfathered non-conforming use was still valid and could be re-established. The grandfathered non-conforming use remained a valid permitted use under the land use regulations until October 2018.
8. The use as a restaurant was in place since the late 1960's. Additionally, no known burden was placed on any existing or planned community facilities or services as a result thereof.
9. Aside from the fact that the use as a restaurant was in place for more than 50 years, there are a number of other restaurants in the vicinity of the subject property.
10. There have been no traffic issues or complaints over the years that applicants are aware of.
11. The proposed use remains compatible with all other land use regulations.
12. The water supply for the property is an on-site drilled well with holding tanks.
13. There is periodic water testing as required by the Vermont Department of Health as part of the licensing requirements for any restaurant.

14. The sewage disposal system serving the property is an on-site system shared with the other building located on the property which houses the Hall & Holden, PC.
15. The restaurant building has a grease trap and a 1,000 gallon concrete septic tank and the office building also has a 1,000 gallon concrete tank. The septic tanks were last pumped on July 29, 2018 and are regularly maintained.
16. Both the water supply and sewage disposal systems have adequately served both the office building and the restaurant uses.
17. There are more than enough parking spaces to satisfy the zoning ordinance. Table 3.1 on Page 44 of the Town of Fayston Land Use Regulations requires one parking space per 250 square feet of gross floor area accessible to the public for a commercial/retail establishment (and one space plus one per 300 square feet of office space). The public will have access to approximately 1,250 square feet of space in the restaurant which equals five (5) parking spaces. The office building would appear to require 8 parking spaces, for a total of 13 if both were in use at the same time. The office building and restaurant are permitted to share all parking spaces on the property – a total of thirty (30) spaces (only 17 are shown on the enclosed plan but more parking space is available on the site).
18. No new construction is proposed. Accordingly, no effect will be had upon Siting and Dimensional Standards, Access and Circulation Standards, Landscaping and Screening Standards, nor Stormwater Management & Erosion Control Standards.
19. With regard to the Performance Standards, the proposed hours of service for the restaurant would be between 6:00 a.m. and 10:00 p.m. The existing signage and lighting (either pre-existing or permitted) would be maintained in the same size and format.
20. The proposed use would be identical to the prior use as Bongiorno's. The proposed restaurant's owner is only seeking a license for up to 100 customers at a time.
21. There are no plans for the upstairs at this time, aside from office space and laundry facilities.
22. There is a dedicated exterior grease trap that was used by Bongiorno's and will be used by the proposed restaurant. It will be periodically maintained just as before. No increase in grease load is anticipated.

**Decision:**

DRB members voted unanimously to approve conditional use application #3535 with the following conditions:

1. Obtain and follow all necessary State and Federal permits.
2. Lighting on the sign must be downcast.

**Dated at Fayston, Vermont, this 29<sup>th</sup> day of July, 2019.**

A handwritten signature in black ink, appearing to read 'S M M', with a stylized flourish at the end.

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**Shane Mullen, Development Review Board 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.