

VERMONT SUPERIOR COURT
Environmental Division
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Docket No. 26-ENV-00002



Land Use Permit Amendment 8B0334-10

MERITS DECISION

This matter involves an appeal from a decision of the District 8 Environmental Commission (District Commission) approving an application for an amendment to an existing Act 250 permit to authorize the after-the-fact conversion of a retail space located at 4659 Main Street, Manchester, Vermont (the Property), to a mixed-use building consisting of a restaurant and one 2-bedroom apartment. The Court held a de novo merits hearing via the Zoom platform on June 18, 2026. See 10 V.S.A. § 8504(h) (requiring the court to hold a de novo hearing); V.R.E.C.P. 5(g). Applicant/Appellee Ronald Rodriguez (Applicant) appeared, represented by Karl C. Anderson, Esq. Appellant High Ridge Plaza, LLC (Appellant) appeared through its members Karen Geriak and Adam Dworkin and was represented by Lawrence G. Slason, Esq. The Land Use Review Board (LURB) appeared through its counsel, Benjamin Canellys.

Legal Standard and Burdens of Proof

The issues before the Court on appeal all relate exclusively to a dispute about shared parking spaces and compliance with Act 250 Criterion 5 – Transportation. Criterion 5 provides: “(a) Before granting a permit, the District Commission shall find that the subdivision or development . . . (5)(A) Will not cause unreasonable congestion or unsafe conditions with respect to use of the highways, waterways, railways, airports and airways, and other means of transportation existing or proposed.” 10 V.S.A. § (a)(5)(A). Prior to trial, the Court confirmed all parties understood that it could not deny an Act 250 permit application based on failure to comply with Criterion 5, but could potentially impose conditions to remedy unreasonable congestion or unsafe conditions. 10 V.S.A. § 6087(b). With respect to Criterion 5, a party opposing the application has the burden of proof to show that the development will cause “unreasonable congestion or unsafe conditions,” but the applicant has the initial burden of producing sufficient evidence for us to make positive findings. See 10 V.S.A. §

6088(b); Katzenbach A250 Permit # 7R1374-1, No. 79-7-19 Vtec, slip. op. at 3 (Vt. Super. Ct. Envtl. Div. December 23, 2019)(Walsh, J.). In re Route 103 Quarry, No. 205-10-05 Vtec, slip op. at 8 (Vt. Envtl. Ct. Nov. 22, 2006) (Durkin, J.) (stating that § 6088(b) relates to the burden of persuasion and that the “applicant always carries the initial burden of production”). Here, if the Applicant meets his initial burden of production, Appellant must meet the high burden of persuasion that the proposed development will “cause unreasonable congestion or unsafe conditions” on area highways or other means of transportation. See Route 103 Quarry, No. 205-10-05 Vtec at 22 (noting that the burden is “fairly high”).

Statement of Questions

The issues on appeal, as set forth in Appellant’s Statement of Questions are:

1. Does the after-the-fact conversion of 4659 Main Street from retail use to a mixed use building with 25-seat restaurant, take-out service, and a 2-bedroom apartment cause unreasonable congestion and unsafe conditions, given that the Applicant has lawful use of only twelve (12) non-dedicated parking spaces?
2. Is it within Act 250 authority and jurisdiction to authorize a use that cannot be accommodated by the limited parking available to the applicant?
3. Can the Applicant present sufficient evidence for the Court to make affirmative findings on Criterion 5 absent proof of Applicant’s legal control of reasonably available and suitable additional parking spaces?
4. Should Applicant’s proposed mixed use building be limited in uses and/or size of restaurant and number of restaurant seats that can be reasonably and safely accommodated by 12 non-dedicated parking spaces?
5. Does the Applicant’s free standing sign obstruct site distance for vehicles entering onto Main Street thereby creating an unsafe condition?

Factual Findings

1. Applicant owns the Property (a/k/a Parcel 2), a roughly triangular-shaped lot consisting of approximately .22 acres. The Property is developed with a historic, three-story building—known and numbered as 4659 Main Street—that in recent years has been used for commercial purposes.¹
2. Applicant has owned the Property since 2006 and previously (from 2010-2023) operated a 32-seat restaurant there known as Ponce Bistro.

¹ The commercial use of the Property dates to at least the early 1980s, whereas the building was originally constructed in 1842.

3. The Property has frontage on Main Street, to the south, and is surrounded on its other sides by property owned by Appellant, High Ridge Plaza LLC.²
4. The Property is located close to Manchester Center and its historic downtown, with retail shopping, restaurants and lodging only a short distance away. As a result, this area sees vehicular and pedestrian traffic for much of the day.
5. Presently, the building at 4659 Main Street is used for restaurant purposes on the first floor. The second and third floors contain a two-bedroom apartment that is used by Applicant and his daughter and son-in-law.
6. The first-floor restaurant space, consisting of approximately 1289 square feet, is currently leased by Applicant to a third party (Vonnarat Chompupong et al.), with the lease assigned to Nong's Kitchen LLC. Nong's Kitchen (or Nong's) operates a dim sum restaurant with take-out service.³
7. On February 29, 2024, Applicant submitted Act 250 Amendment Application 8B0334-10 to the District Commission, which deemed the application complete on March 5, 2025.
8. Following certain clarifications, the Project approved by the District Commission was specifically described as the after-the-fact conversion of 4659 Main Street from retail to a mixed-use building consisting of a takeout and 25-seat eat-in restaurant (with a maximum of 22 indoor seats) and one 2-bedroom apartment. The after-the-fact scope of work included the construction of the back deck and stairs, basement entry enclosure (vestibule), an ancillary walk-in cooler and envelope (located under the back deck), a pergola, and interior renovation work. The application also sought authorization to install a fence to enclose the existing trash area, in addition to a new bike rack and steel bollards.
9. The District Commission granted Appellant party status under Act 250 criteria 1(B) (waste disposal), 4 (soil erosion and drainage), 5(A) (transportation congestion and safety) and 10 (local and regional plans). As noted above, the Appellant only challenges the Project's compliance with Criterion 5(A) in this proceeding.

² As laid out, the triangular-shaped Property has a northwesterly-southeasterly orientation and the building on the lot has a southwesterly-northeasterly orientation (i.e., the gable ends face southwest and northeast). See Ex. HRP-A, B, DD. For convenience, the Court refers to the most northerly tip of the triangular-shaped lot and the area to the rear of the building as "north," as if both the lot and building were more squarely oriented with the cardinal directions.

³ The owners of Nong's Kitchen also own and operate another restaurant nearby known as "Thai Basil," which is located a short distance away from the Property. Mr. Rodriguez is familiar with Nong's operation since the owners are his tenants, he is on good terms with them, and he eats at the restaurant approximately twice per week.

10. Applicant and Appellant share a parking lot, consisting of 29 spaces, that is partially located on the Property and partially located on lands owned by Appellant (the Shared Parking Lot or the Lot). The Shared Parking Lot is paved and has a single entry/exit drive located between the Nipper's Café/Cold Cow Creamery building (owned by Appellant and located at 4645 Main Street) and Applicant's building at 4659 Main Street. It extends across the properties of Appellant and Applicant in a generally southwest-northeast direction. See Ex. HRP-A, B & DD.
11. By virtue of certain agreements and reciprocal easements executed by their respective predecessors-in-interest, it is undisputed that Applicant and his authorized users are entitled to use 12 non-designated parking spaces within the Shared Parking Lot, while Appellant and its authorized users are entitled to use 17 non-designated parking spaces within the Lot. The relevant legal documents also describe: 1) a non-exclusive, appurtenant easement and right-of-way twenty-six feet (26') in width, to be used for vehicular and pedestrian ingress and egress over the properties now owned by Applicant and Appellant; and 2) a non-exclusive "parking easement" to use the non-designated parking spaces located on those properties.
12. The access drive to the Property is located on the west side of the building and the Shared Parking Lot is generally located to the north of 4659 Main Street, such that most of the parking is located to the rear of the building. To access the restaurant on the building's first floor, it is generally necessary to park in back and then walk on the west side of the building (the left side when viewed from Main Street/Route 7A), then turn left on the sidewalk to reach the front entrance.⁴
13. The Shared Parking Lot also provides parking for various commercial buildings owned or leased by Appellants, including Nipper's Café & Cold Cow Creamery (to the west) and an office building and a retail mattress store (located to the east and known and numbered as 4697 Main Street (a/k/a Building #2) and 4709 (a/k/a Building #1), respectively). See Ex. HRP-A, B & DD.
14. There are signs in the parking lot advising customers that additional parking is available off-site (Ex. HRP-BB), but this additional parking generally is not used due to the distance from the off-site lot(s) to the Shared Parking Lot and the businesses it serves.

⁴ There are sidewalks on both sides of Main Street (Route 7A) in the vicinity of the Property and the area is generally considered "walkable." Some customers walk or bike to Nong's Kitchen.

15. The building in which Nipper's/Cold Cow Creamery operates, located to the west of the Property, previously housed other restaurants (with different owners), including the Pancake House and the Rooster Café.
16. There is a parking space to the west of and immediately adjacent to 4659 Main Street in which Applicant has, for the last two years, parked a black Volkswagen that he owns.⁵ During that time, the Volkswagen has not moved and Appellant and its customers have not had access to the space.
17. Prior to the Volkswagen occupying the parking space, Mr. Dworkin would sometimes park his truck in the same location. When the truck was parked in this space, it was difficult for pedestrians to access the front of the building without walking into the entry drive.
18. Applicant now proposes to remove the Volkswagen and install bollards in the area where the Volkswagen is parked (on the driver's side), while preserving the 9' x 18' parking space, to create a safe corridor for pedestrian traffic from the parking lot to the front of the building.
19. Applicant also proposes to install a six-slot bike rack, available for general use, near where the Volkswagen is located but entirely on the Property, and not in the parking lot, thereby also preserving access to the parking space. Applicant is willing to agree to a condition requiring the bike rack to be located entirely on his property.
20. While it offers take-out service, Nong's Kitchen presently has 22 seats in its dining room areas, and the majority of its service is sit-down. It appears to meet the definition of "Restaurant, eat in" under the Manchester Land Use & Development Ordinance (the Ordinance).
21. Nong's Kitchen generally operates from 11:30 AM to 3 PM and then closes for two hours, reopening for dinner between 5 PM and 9 PM. Nipper's opens at 8 AM and closes at 3 PM, with ice cream service at Cold Cow Creamery open until 8 PM.
22. Applicant was not aware of the agreements regarding parking at the time he purchased the Property in 2006.
23. Formerly, the Rooster Café and Ponce Bistro operated at the same time, serving up to 250 customers per day, with no issues regarding parking. The commercial buildings immediately to the east were also occupied at that time.
24. In addition to the Volkswagen, Applicant has another car that he owns. He takes that car, which is generally parked to the northeast of the building's rear deck, and leaves the Property

⁵ In 2023, Applicant had been the subject of a Notice of Alleged Violation issued by the former Natural Resources Board for, in part, placing potted plants within this same parking space. Ex. HRP-O.

from 8 AM to 3 PM most days. His daughter and son-in-law share a vehicle. They live at the apartment from November to May and in Arlington, Vermont, from June to October, although they do periodically visit the property during the summer and may stay “from 30 minutes to hours.” When at the apartment, they park in whichever spot is available.

25. Most Nong’s employees carpool to work and park behind the building. They frequently leave in the middle of the day. One employee (“Kim”), who also works at Thai Basil, will sometimes go between the two businesses and park on the Property. This parking sometimes occurs after hours or overnight and, on occasion, may interfere with wintertime plowing of the lot.⁶
26. Employees of the office building to the east typically park in the same spaces day-to-day out of habit. Generally, there have not been issues with employees or visitors of the office building finding parking on site.
27. Applicant has one ADA parking space that is open for any person with a disability to use.⁷
28. In sum, Applicant frequently uses 2 spaces for the apartment, 1 space for Nong’s employees, 1 space for the Volkswagen and 1 ADA space, leaving only 7 non-ADA spaces (out of 12 spaces total) for Nong’s customers.⁸ These frequently used spaces are often not all occupied at the same time, however, and Nong’s customers do not all arrive in separate vehicles requiring parking. Thus, Applicant believes that Nong’s can safely operate with only 6-7 spaces.
29. The Town has placed “No Parking” signs on Hillvale Drive, located to the west of Nipper’s Café, and on-street parking is prohibited on this area of Main Street. Applicant believes that the Town posted “No Parking” signs on Hillvale Drive in response to complaints by local residents about customers of Cold Cow Creamery parking along the road to patronize that business.
30. In Applicant’s experience, the parking lot “works” and if there is any congestion he disagrees that he and Nong’s are the cause. Instead, Applicant suggests that Appellant’s customers may be contributing to any congestion problem by, among other things, lining up in the parking lot for ice cream.

⁶ Appellant is concerned that Applicant and his family members also do not move their cars to facilitate winter plowing activity.

⁷ Appellant also has one ADA parking space, although this space is designated for use only by its customers. Ex. HRP-BB.

⁸ Depending on the time and day, and whether Kim is parking on site, there may be only 6 non-ADA spaces available for the restaurant.

31. Applicant's testimony was supported by several video exhibits (Ex. RR-1, 2, 4-7)⁹ depicting vehicles, including large commercial trucks, tractor trailers, trucks with tow-behind trailers, pick-up trucks, and standard passenger cars successfully navigating the Shared Parking Lot (including vehicles passing each other and executing parking, turning and backing movements). Several of the video exhibits depict empty spaces in the parking lot and others depict the lot (or portions of the lot) full or partially full during times that Nong's Kitchen is closed. One video depicts cyclists leaving their bicycles in the area where the bike rack is proposed and pedestrians walking in the area where bollards are proposed.
32. Deliveries to Nong's come through the back door. Nong's does not use large trucks for deliveries—food is delivered using smaller trucks or cars.
33. A photo of the Shared Parking Lot from December 15, 2022 (Ex. HRP-Z) depicts a portion of the lot full, with two vehicles in the center aisle, but this photo was taken prior to the time that Nong's began operating in 2024. The prior restaurant—Ponce Bistro—had more seats than Nong's.
34. Roger Dickinson, a civil engineer with experience in transportation planning, was retained by Appellant to examine the Shared Parking Lot, calculate the peak hour vehicular trip generation and parking demand associated with the conversion of the Property from retail to mixed-use, and evaluate the impacts of that conversion on traffic congestion and safety.
35. Prior to preparing his written Technical Memorandum (Ex. HRP-C), dated June 2, 2026, Mr. Dickinson conducted a two-hour site visit between noon and 2 PM on Tuesday, April 14. While he did not collect any data during the site visit, Mr. Dickinson observed that the parking lot was approximately $\frac{3}{4}$ full, the parking space markings were worn, the ADA spaces did not appear to meet applicable standards, and the Volkswagen was parked on the west side of the building. He further observed the condition of the entrance/exit drive providing access from/to Main Street and the conditions on Hillvale Drive, including the "No Parking" signs. Mr. Dickinson also observed sidewalks on both sides of Main Street and that the site was accessible from those sidewalks.
36. Using data from the Institute of Transportation Engineers (ITE) *Trip Generation Manual* (12th ed) and *Parking Generation Manual* (6th ed.), Mr. Dickinson calculated the vehicle trips for the former retail use (which he characterized as ITE Land-Use Category (LUC) #814: Variety

⁹ The parties stipulated to the admission of all of their respective exhibits at trial.

Store) compared to the present mixed restaurant/apartment use (which he characterized as ITE LUC #932: High-Turnover (Sit-Down) Restaurant and ITE LUC #220: Multifamily Housing). Using these categories for analysis, he determined that “the restaurant use generates a substantially greater number of [PM] peak-hour trips (17-19 vte/hr) during peak periods than the former retail use (8 vte/hr).”¹⁰

37. Using these same ITE land-use categories, Mr. Dickinson determined that the 85th percentile parking demand (commonly used to calculate the required number of on-site parking spaces during peak periods) increases from 3-5 spaces for a retail use/apartment to between 22 and 26 spaces, respectively, for a restaurant use of the approximate size and number of seats as Nong’s Kitchen, coupled with an apartment use, during the Friday peak period.
38. Mr. Dickson also found that using the Town’s parking standards, as set forth in the Ordinance, an eat-in restaurant and apartment require 14 parking spaces, compared to the 8 spaces required for the former retail and apartment use.
39. The characterization of Nong’s Kitchen as a High-Turnover (Sit-Down) Restaurant requires the exercise of professional judgment. Mr. Dickinson based his conclusions regarding the proper characterization of the business, in part, on a review of Nong’s website, which described the restaurant as a “bistro,” and its menu.
40. While Nong’s has some qualities of a High-Turnover (Sit-Down) Restaurant, as described by ITE,¹¹ the parking demand data that informs the High-Turnover (Sit-Down) Restaurant category is based on studies that generally do not contemplate restaurants of the size and number of seats involved here (i.e., 22 to 25-seat restaurants of under 1,300 square feet). On the contrary, the studies/data underlying this category generally involve restaurants that both have more seats and a larger floor area than Nong’s.¹²
41. Trip generation and parking demand under the ITE generally focus on peak-hour trip generation and peak parking demand, and not on hourly changes in trip generation and/or parking demand that may occur on a property.

¹⁰ The PM peak hour is generally between 4:30 PM and 5:30 PM, Monday through Friday, with the highest demand on Fridays.

¹¹ Land Use: 932 High-Turnover (Sit-Down) Restaurant is described, in part, as a “full-service eating establishment with a typical duration of stay of 60 minutes or less. This type of restaurant is usually moderately priced, frequently belongs to a restaurant chain, and is commonly referred to as casual dining.”

¹² Mr. Dickinson admits that the parking demand projections would be more reliable if data was available for 22-to-25-seat restaurants and that, while there may be other land use categories that might potentially apply to a use with 22-to-25 seats, no such data exists for restaurants.

42. Mr. Dickinson did no analysis of the use of the Shared Parking Lot by Appellant or its customers and tenants; he did not inquire into who was using the spaces that he observed during the site visit.
43. While Mr. Dickinson believes generally that there are a greater number of take-out customers since the Covid-19 pandemic and that, for parking purposes, take-out customers have increased parking demand, he did no analysis of post-Covid-19 pandemic parking patterns or the impact of take-out service on use of the Shared Parking Lot.
44. Broadly, Mr. Dickinson is of the opinion that additional vehicular trip generation will add to congestion in the Shared Parking Lot which, in turn, will negatively impact traffic safety due to increased turning movements and a heightened probability of accidents. Further, he believes that the 12 undesignated parking spaces are inadequate for the uses of 4659 Main Street and that this lack of parking adversely impacts traffic on adjacent streets. He reasons that when the lot is full, drivers must engage in additional turning movements to successfully turn around (sometimes discharging passengers first) in an area of limited space and then exit onto Main Street, in search of other parking. He also notes that there are no dedicated sidewalks along the parking lot edges and that pedestrians tend to walk in the “middle aisle” (i.e., the travel lane) where vehicles are also present.
45. While Mr. Dickinson has concerns about the maintenance and operating conditions of the Shared Parking Lot (i.e., pedestrians circulating with vehicles, no internal sidewalks, lack of lighting and lack of pavement markings), which he characterizes as “not safe,” no party presented evidence of accidents in the parking lot, nor any evidence of accidents at the intersection of the parking lot and Main Street.
46. If unreasonable congestion or unsafe conditions were present, one would expect to see crashes due to drivers not being able to enter or exit the site, knockdowns of pedestrians and/or “fender benders” of various kinds in or near the Lot. Again, there is no evidence of any such accidents.
47. Similarly, there is no evidence of vehicle trips generated by, or congestion or turning movements associated with, 4659 Main Street negatively impacting the level of service on Main Street.¹³

¹³ In response to a question from the Court, Mr. Dickinson indicated that he had no information regarding the level of service on Main Street.

48. Mr. Dickinson agrees that the installation of bollards on the “driver’s side” of the parking space where the Volkswagen is parked (i.e., the side closest to 4659 Main Street) to preserve a 3-foot pedestrian walkway “seems reasonable” and a safety improvement over current conditions (i.e., which potentially involve walking around a vehicle and into the entry drive to get into the restaurant).
49. The parking lot could also be improved through better maintenance of parking lot markings. Poorly defined parking spaces do not provide the same benefits as clearly marked spaces.
50. Notably, Mr. Dickinson observed that the function of the parking lot would improve with small signs designating each business’ respective spaces. The twelve spaces allocated to Applicant could be specifically marked with signage, but this would require modification of the existing legal agreements/easements between the parties.
51. In the “Conclusions & Recommendations” section of his Technical Memorandum (Ex. HRP-C), Mr. Dickinson recommends that consideration be given to imposing the following permit conditions: 1) Nong’s Kitchen be prohibited from using more than its allocated 12 parking spaces; 2) Nong’s Kitchen provide documentation of legal control of sufficient parking spaces to meet peak demand of not less than 22 parking spaces; and 3) Nong’s Kitchen remove its take-out service and/or reduce its seating capacity.
52. The Town of Manchester has issued a zoning permit for Nong’s Kitchen as an eat-in restaurant with 22 indoor seats and 10 outdoor seats and has confirmed compliance with the permit through the issuance of Certificates of Compliance. The Town has also approved Nong’s free-standing sign panel.
53. The District Commission concluded that the mixed-use proposed for 4659 Main Street (25-seat restaurant (max 22 indoor seats) and one 2-bedroom apartment) does not appear to meet the Town’s baseline parking requirements under the Ordinance, but observed that the Town has authorized the restaurant portion of the property.
54. In light of prior approvals by the Town—including the Town’s past approval of a 32-seat restaurant at this location—and the walkable, pedestrian-oriented nature of the area, the District Commission concluded that the 12 parking spaces available to the Property, as allocated by the existing agreements/easements, constituted sufficient parking for the proposed mixed use.

55. With the exception of Condition 21 (addressing the bike rack and steel bollards), the District Commission imposed no additional conditions related to parking in LUP Amendment 8B0334-10.
56. The LURB asks that the Court not impose any additional conditions in this proceeding. Applicant also requests that no additional parking-related conditions be imposed (presumably excepting the requirement that the bike rack be located entirely on his property).
57. Appellant requests that the Court impose the following conditions under Criterion 5 in connection with Land Use Permit Amendment 8B0334-10:
- (1) Permittee shall not use more than twelve (12) parking spaces at any time within the shared parking area.
 - (2) The Permittee's restaurant shall not provide takeout service.
 - (3) All parking spaces within the shared parking area shall remain available for parking of operatable vehicles by patrons, tenants and employees. The use of any parking space for a use other than parking is prohibited.
 - (4) Applicant shall provide documentation of legal control of not less than twenty-two (22) spaces to meet peak parking demands.¹⁴
58. The Court gave the parties the opportunity to file post-hearing memoranda or proposed findings following the merits hearing. No party elected to file such memoranda or proposed findings.

Discussion

It is undisputed that the issues in this case all relate to Criterion 5 of Act 250. As noted above, "Criterion 5 requires that a proposed project '[w]ill not cause unreasonable congestion or unsafe conditions with respect to use of the highways, waterways, railways, airports and airways, and other means of transportation.'" 10 V.S.A. § 6086(a)(5)(A). A permit may not be denied solely for lack of compliance with Criterion 5; however, reasonable conditions may be added to "alleviate" a project's traffic burden. *Id.* § 6087(b). *In re Katzenbach A250 Permit #7R1374-1*, 2022 VT 42, ¶ 34. In evaluating whether a project or, in Act 250 parlance, a "development," will cause unreasonable congestion or unsafe conditions, and whether conditions are warranted, the Court has "broad discretion to assess the credibility of the witnesses and the persuasive value of the evidence." *In re*

¹⁴ In advance of trial, the Court requested that the parties each submit proposed permit conditions. Appellant's Proposed Permit Conditions were filed June 4, 2026. The Applicant and LURB both filed pretrial memoranda on June 3 and June 12, respectively, requesting no additional permit conditions.

Costco Stormwater Discharge Permit, 2016 VT 86, ¶ 14 (citation omitted). Again, “[t]he party opposing the applicant has the ultimate burden of persuasion with respect to Criterion 5 . . . but the applicant has the initial burden of production regarding that criterion” In re Hinesburg Hannaford Act 250 Permit, 2017 VT 106, ¶ 55.

The Court begins its evaluation of Appellant’s Statement of Questions with Question 5, which asks whether Applicant’s “freestanding sign obstruct[s] site distance for vehicles entering onto Main Street thereby creating an unsafe condition.”

The only evidence that the Court received in this proceeding regarding the sign was from the LURB, whose Exhibits 7 and 8 contain the Applicant’s responses to follow-up requests from the District Commission for information on the application. Exhibit 7 states, in part, that “[t]here has never been a safety issue with the freestanding sign or the entrance to the property at 4659 Main Street,” even though a sign has been present at that location for over 30 years. Exhibit 8 contains the Affirmation of Elias Schroeder, the Town’s Assistant Zoning Administrator, confirming that: 1) there has been a free-standing sign located on the Property since 1995 in generally the same location as the current sign; 2) that the current sign panel is smaller than the one that previously existed; 3) that there have been no known safety issues; and 4) that the Town issued a zoning permit for the sign panel. No party presented additional, specific testimony regarding the sign at trial, although it is visible in Exhibits RR-2, HRP-V and HRP-X. Certainly, there was no evidence from Appellant (or any other party) demonstrating that the sign “obstructs site distance for vehicles entering onto Main Street, so as to create an unsafe condition” and, as noted above, the evidence that exists is to the contrary (i.e., suggesting the absence of a safety issue). Accordingly, the Court answers Question 5 in the negative.

Appellant’s Question 2 asks whether it is “within Act 250 authority and jurisdiction to authorize a use that cannot be accommodated by the limited parking available to the applicant?”

As drafted, this Question is argumentative and contains a potentially false premise—i.e., that the proposed mixed use cannot be accommodated by the parking available to the Applicant. Although no party moved to dismiss or clarify this Question, questions that go beyond a short, concise and plain statement of the issues and cross over into arguing the merits are disfavored and it is appropriate to strike such language. See e.g., Roser Wetland Permit, No. 24-ENV-00050, slip op. at 3 (Vt. Super. Ct. Envtl. Div. Nov. 7, 2024 (Walsh, J.) (“[T]he Statement of Questions is not a mechanism to argue one’s claims.”) We do so here.

Setting aside its argumentative language, Question 2 functionally asks whether it is within Act 250 authority and jurisdiction to authorize the proposed mixed use as an amendment (specifically, the

“dash 10” amendment) to LUP 8B0334. The District Commission previously determined in Jurisdictional Opinion (JO) 8-286 that this project constitutes a material change to a permitted development and requires a permit amendment pursuant to Act 250 Rule 34.¹⁵ Ex. LURB-2 at 2. Where, as here, an applicant does not propose to amend a condition that was included in an Act 250 permit to resolve an issue critical to the issuance of the permit, Act 250 Rule 34 specifically authorizes the District Commission to consider the amendment on its merits. See Act 250 Rule 34(E)(1)(a); Ex. LURB-2 at 3. Further, 10 V.S.A. § 8504(a) and (h) authorize this Court to hear appeals from decisions of district commissions and requires us, in most cases, to hold a de novo hearing “applying the substantive standards that were applicable before the tribunal appealed from.” 10 V.S.A. § 8504(a), (h). Whether the proposed amendment should be approved on the merits, under the substantive standards at issue (here Criterion 5) is what this Court ultimately must determine. We conclude, however, that Act 250 authorizes the District Commission to consider the proposed amendment application. Further, 10 V.S.A. Chapter 220, and our Rule 5(g), authorize this Court on appeal to conduct a de novo hearing and evaluate the proposed amendment on the merits, as circumscribed by the Statement of Questions. Therefore, Question 2, as reframed, is answered in the affirmative.

Question 3 asks: “Can the Applicant present sufficient evidence for the Court to make affirmative findings on Criterion 5 absent proof of Applicant’s legal control of reasonably available and suitable additional parking spaces? This Question functionally asks whether the Applicant can meet his threshold or prima facie burden of showing compliance with Criterion 5. We also answer this question in the affirmative.

As set forth in the findings and summarized here, the Applicant’s evidence, both testimonial and documentary was that: (1) he has the legal right to twelve non-designated parking spaces in the Shared Parking Lot; (2) the proposed mixed use of 4659 Main Street represents a reduction in parking demand since Nong’s has a lower seating capacity than the restaurant use that previously existed on the Property; (3) historically (prior to Appellant’s ownership of its property) there were no issues with congestion or safety in the Shared Parking Lot; (4) the Shared Parking Lot “works” and there is room for both passenger cars and large trucks to negotiate the lot (as shown in the video exhibits); (5) there is no history of accidents in the Lot, at the entry drive or on the immediately adjacent roadway; (6) there is no evidence that the level of service on the adjacent roadway (Main Street) will change; (7)

¹⁵ A copy of JO 8-286, dated May 23, 2023, was not provided to the Court, but it is referenced in Ex. LURB-2 and the Court takes judicial notice of it, pursuant to V.R.E. 201, as a document “capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.” V.R.E. 201(b)(2). The Court understands that JO 8-286 was not appealed and is final.

Nong's is frequented by pedestrians and cyclists and the area is walkable; (8) most of Nong's employees commute to work and Nong's does not use large delivery vehicles; (9) residents of the apartment often leave during the day or live elsewhere for portions of the year; (10) occupants of and visitors to the office building and mattress store are able to consistently find parking; (11) Applicant plans to remove the Volkswagen and install a bike rack and bollards to create a corridor for pedestrians; (12) the times during the day when both Nipper's and Nong's are open are limited; (13) the Town has approved the mixed use, including the parking; and (14) if occasional congestion occurs, it is not exclusively caused by the proposed mixed use and/or is not unreasonable. Taken together, the Court concludes that the Applicant has met his prima facie burden of presenting sufficient evidence to allow the Court to make affirmative findings that the proposed amendment to authorize a mixed use at 4659 Main Street will not create conditions that violate Criterion 5 of Act 250.

Questions 1 and 4 go directly to the merits of this case. They respectively ask whether the proposed mixed use will "cause unreasonable congestion and unsafe conditions, given that the Applicant has lawful use of only twelve (12) non-dedicated parking spaces" and whether the "proposed mixed-use building [should] be limited in uses and/or size of restaurant and number of restaurant seats." In other words, will the development, as amended, cause unreasonable congestion or unsafe conditions with respect to "use of the highways . . . and other means of transportation"¹⁶ and, if so, should the Court impose conditions and requirements, as authorized by 10 V.S.A. § 8086(c).

Appellants argue, primarily through their expert witness, Mr. Dickinson, that the introduction of the mixed use has caused unreasonable congestion and unsafe conditions in and around the Shared Parking Lot. The Court is not convinced. While we do not doubt that the ITE trip generation and parking demand data for a High Turnover (Sit-Down) Restaurant and an apartment suggests the need for more parking than the twelve spaces allocated to Applicant, and that the Town's parking standards also suggest that more parking is required, we are not bound by those measures/standards in this proceeding.

Mr. Dickinson concedes that the land use category that he selected for his analysis (ITE LUC #932) is not an ideal fit for a restaurant with only 22 to 25 seats, and that the parking demand data he relies on is based on studies that generally do not contemplate restaurants of the size and number of seats involved here. During his limited site visit, which did not involve any data collection, Mr.

¹⁶ As the District Commission observed, the former Environmental Board construed "other means of transportation" to include traffic conditions on project driveways and internal roads. Ex. LURB-2 at 19. No party has challenged whether Criterion 5 may be applied exclusively to the use of internal parking areas.

Dickinson did not observe the Shared Parking Lot at capacity and the evidence indicates that it often is not full. Even when other vehicles are present, the lot layout and configuration are adequate to allow large vehicles to pass each other and turn around without issue. Employees and patrons of the various businesses served by the Shared Parking Lot are generally able to find places to park, and some Nong's customers arrive on foot or by bicycle. Despite the need for some additional parking lot maintenance, there is no evidence of accidents in the Lot, nor have accidents occurred at its entry drive or on the immediately adjacent roadway. There is no evidence that the level of service on Main Street will change. The Applicant has plans to remove the Volkswagen and install a bike rack and steel bollards, which Mr. Dickinson agrees is reasonable and should enhance safety. The Town has also authorized the mixed use, notwithstanding any noncompliance with its parking requirements.

Thus, while Mr. Dickinson's general premise—that additional vehicular trip generation will add to congestion in the Shared Parking Lot which, in turn, will negatively impact traffic safety due to increased turning movements leading to accidents—has some logical appeal, the evidence does not support this conclusion. This is also the case with his suggestion that inadequate parking for 4659 Main Street negatively impacts traffic on adjacent streets. He notes that where a site is unreasonably congested, one would expect to see that congestion cause vehicle crashes due to drivers not being able to exit or enter the Shared Parking Lot, pedestrian knockdowns, fender benders and other incidents of this sort. There is no evidence that any of this has transpired. Further, to the extent that there is occasional congestion, it appears that Appellant's customers may contribute to it and, moreover, any congestion that exists is not unreasonable in the context of the development as a whole. Therefore, based on all of the foregoing, the Court concludes that Appellant has not met its burden of demonstrating that the proposed mixed use will cause unreasonable congestion or unsafe conditions. Accordingly, Question 1 is answered in the negative.

Similarly, Question 4 is answered in the negative. Because the Court concludes that the proposed mixed use will not cause unreasonable congestion or unsafe conditions, there is no need to impose additional conditions beyond those contained in Permit No. LUP 8B0334-10, as issued by the District Commission, with one exception. At trial, the Applicant stipulated that the bike rack would be located entirely on his property. To the extent that this requirement is not expressly included in Permit Condition #21, that condition is hereby modified for consistency with the Applicant's representation at trial.

Given its conclusions above, the Court does not adopt Mr. Dickinson's proposed conditions/recommendations, which are redundant of the Appellant's own requested conditions. The

Court strongly agrees, however, with one recommendation provided by Mr. Dickinson at trial—parking spaces in the Shared Parking Lot should be designated, with clear signage indicating which spaces are assigned to which business. Prior to trial, the Court had recommended that the parties consider designating spaces through signage. Now, Appellant’s own expert has made functionally the same recommendation. It is a simple and logical solution to address, at least in part, the parties’ disagreements regarding the use of the Shared Parking Lot—twelve spaces could be reserved for the use of Applicant and his authorized users, and seventeen spaces could be reserved for the use of Appellant and its authorized users. Any prohibition on unauthorized use could be enforced through towing. But for this to occur, the parties would have to amend their existing legal agreements and easements. The Court declines to impose a condition on Applicant requiring that he alone designate parking spaces when to do so would potentially violate those agreements and easements, which call for the parking spaces to be undesignated. However, the Court is not aware of anything that would prevent the parties from amending their agreements and easements to allow designated parking. Once amended, enforcement could take place by way of a civil action if necessary.¹⁷

This concludes the matter before the Court. A Judgment Order accompanies this decision.

Electronically signed on July 16, 2026, pursuant to V.R.E.F. 9(d).



Joseph S. McLean
Superior Court Judge
Environmental Division

¹⁷ To the extent that both Mr. Dickinson’s and Appellant’s proposed conditions suggest a present breach by Applicant of the agreements and easements that regulate the parking arrangement (e.g., alleged use by Applicant or his tenants of more than 12 parking spaces, exclusive use of parking spaces), that is a civil matter that is beyond the authority of this Court to address, and we therefore make no ruling on the matter. As discussed herein, it is for the parties, and not this Court, to enforce or amend those agreements and easements as they deem appropriate.

