

TOWN OF WILMINGTON
DEVELOPMENT REVIEW BOARD
FINDINGS OF FACT AND STATEMENT OF FINDINGS
WILMINGTON, VERMONT 05363

A request for a permit was made to the Board by: **James Barnes of Hermitage Inn Real Estate Holding Company, LLC**

Agent(s) Mailing Address: **Robert Rubin, Haystack Operating Co., LLC, PO Box 2210, West Dover VT, 05356**

Owner/Applicant(s) Mailing Address: **PO Box 2210, West Dover VT, 05356**

Address of the subject property: **183 Gatehouse Trail, Wilmington, VT 05363**

Tax Map #**HAYSTACK.SKI**

A copy of the request is filed in the office of the Board and is referred to as:
Case #: 2012-108

Description of Case per Public Notice:

Application # 2012-108; owner: Hermitage Inn Real Estate Holding Company, LLC; Agent: James Barnes. Application being made for Conditional Use and PUD review to allow construction of a 92,109 sq. ft. base lodge; Zoning Ordinance Section 7; location: 125 Gatehouse Trail.

Notice for a public hearing was published in the Valley News on: **9/28/2012**

Notice was posted in three public places on: **9/28/2012**

A copy of the notice was mailed to the applicant on: **9/28/2012**

A copy of the notice was mailed to the abutters on: **9/28/2012**

The public hearing was held on: **10/15/2012**

Action taken on this application may be appealed by anyone identified as an interested party, pursuant to Vermont Statutes Annotated. Said appeal shall be made to the Vermont Environment Court.

Appeal period for this Case expires on: November 23, 2012

In *addition* to the Applicant / Agent the following persons were heard by the Board in connection with this request: (Copies were mailed to those persons listed below as having been heard.)

Alice Herrick, Zoning Administrator

Bill Austin of Austin Associates – Witness for Applicant
John Guminak of Guminak Design – Witness for Applicant
Bob Harrington of Harrington Engineering – Witness for Applicant
Bob Fisher, Esq. – Attorney for Applicant

Linton and Bonita Fluck – Interested Parties
Kelly Pawlak, General Manager of Mount Snow – Interested Party

I. The Board FINDS:

The following are the circumstances which give rise to the request, and the following are facts and opinions presented to the Board at the hearing and developed by the Board in independent evaluation.

EXHIBITS:

- Application (four pages)
- A Abutters List (3 pages)
- B Base Area Site Layout & Grading Plan by Harrington Engineering, Inc., CC-12A, 07/06/12, revised 08/15/12.
- C Plan Set “Haystack Club – Base Lodge” by Austin Design, Inc., 24 August 2012.
 - a. Cover
 - b. Site Plan, A-2.
 - c. Walk-out Basement Plan, A3.1
 - d. Sub-basement Plan, A3.2
 - e. 1st Floor Plan, A3.3
 - f. 2nd Floor Plan, A3.4
 - g. Roof Plan, A3.5
 - h. Exterior Elevations, A4.1
 - g. Exterior Elevations, A4.2
 - h. Exterior Perspectives, A4.3
 - i. Interior Perspectives, A4.4
 - j. Building Sections, A5.1
 - k. Building Sections, A5.2
 - l. Building Sections, A5.3
 - m. General Notes, S0.1
 - n. Sub-basement Foundation Plan, S1.1.1
 - o. Ski Bridge Foundation Plan, S1.1.2

- p. Walk-out Basement Framing Plan, S1.2
 - q. First Floor Framing Plan, S1.3
 - r. Typical Details, S5.1
 - s. Details & Sections, S5.2
- D. Plot Plan prepared for Haystack Club “Haystack Ski Area” portion of “Ski Area Parcel” by Harrington Engineering, Inc. and others, Oct. 15, 2012, no revisions.
- E. Deed dated 8/17/2012. 2 pp.
- F. Letter dated 10/12/2012 from Linton & Bonita Fluck

Bob Rubin, Agent for Haystack Club/ The Hermitage Inn Real Estate Company, spoke for the Applicant.

1. The subject property is in the Commercial District of the Town of Wilmington. The property is identified as Tax Map HAYSTACK.SKI. This area under consideration is covered by agreements between previous and present owners of Haystack Ski Area and the Town of Wilmington, a PUD and many decisions by the Zoning Board (now DRB) going back to 1970. There are other areas such as the golf course and “villages” that are not part of the Application but that are included under the agreements, PUD and zoning decisions. The area being considered in the application is part of what is referred to as the Base Tract.
2. A smaller base lodge/amenity center was previously approved on July 26, 2012 in DRB decision #2012-051. The previously approved base lodge/amenity center had interior space totaling approximately 66,290 square feet and exterior porches and balconies totaling approximately 4500 square feet. The footprint of the building was approximately 200 by 112 feet. The building included a sub-basement, basement, first and second floors. The basement was a “walk-out” on the downhill side, making it four stories tall on that side and three stories on the uphill or mountain-facing side. The roofline was approximately 60 feet above grade on the downhill side and about 48 feet above grade on the mountain side.
3. The Applicant is requesting the following changes to the size of the building:
 - The total interior space would total approximately 78,000 square feet with most of the increased area being in an enlarged sub-basement. The location of the building remains that same. The sub-basement would be completely underground with exterior vehicular traffic access through a tunnel (see below). The basement level will be a “walk-out” on the downhill side making three stories facing downhill. There will be two stories facing toward the mountain. Two clock towers would extend above the roof line and would be visible from all sides.
 - The exterior areas would be increased to about 12,000 square feet. This area would include a first floor stone patio that would go around much of the perimeter of the building. (Ex. C.e. A3.3) The patio would have radiant heat and will be a few inches above grade to accommodate the basement foundation and the radiant heat piping. On three sides of the building the patio would have covered areas measuring about 96, 48 and 48 feet in length and either 16 or 12 feet deep (3,000

square feet or less). There would also be an eight-foot deep covered area along the walk-out portion of the basement. The second story will have a 16 by 48 foot (768 square feet) balcony (Ex. C.f. A3.4).

- The heights of the building have also changed. On the mountain side the top of the clock tower would be about 59.5 feet above grade and the top of the roof would be about 44 feet above grade. On the downhill side the top of the tower would be about 72.5 feet above ground and the top of the roof would be about 57 feet above grade (Ex. C.h. A4.1). The interior of the clock tower would only have one access and, therefore, would not be used by the public. It is possible that it could be used for office space.
 - The footprint of the building would be approximately 224 by 126 feet.
4. The uses of the building would remain essentially the same as those approved in Case #2012-051, except that the day care area will also be used for a children's ski school. There would also be some shifting of the allocation of use areas within the building.
 5. Another new feature would be the addition of a tunnel going from Chamonix Trail into the sub-basement (Ex. C.o. S1.1.2). This 44 by 72 foot long tunnel would not be used by the members or public but would be used only for such things as deliveries and maintenance. It would be lit and have a sprinkler system and dry hydrant. The top of the tunnel will be covered with sod.
 6. The Applicant stated that it has a previous permit from Fire and Safety and that the entire building will have a sprinkler system. It does not believe that it will need further approval under Act 250 for the enlarged building.
 7. The Hermitage Inn Real Estate Company has been meeting with the Wilmington Fire Department and the Wilmington Selectboard to rewrite the agreement as required by Condition #3 in Case #2012-051. An independent evaluator is being used to help formulate the agreement. Engineer Bob Stevens has met with the Wilmington Fire Department regarding placement of hydrants and other fire safety measures. The proposed new heights have not been discussed and there will need to be further discussion regarding placements of firewalls.
 8. The road to be upper parking area is essentially complete. Condition #13 in Case #2012-051 requires that this lot have at least 250 spaces and shall be maintained and cleared year round.
 9. A road would go from the parking lot to a drop-off zone at the south side of the building.
 10. The base lodge area was originally on a separate 10-acre parcel. The parcel was merged with the surrounding parcel on August 17, 2012 (Exhibits E and D).
 11. The Applicant stated that the Chamonix Village area was subdivided in about 2007 in order to delineate the area that would be covered by a Chamonix Village homeowners

association. No evidence was presented to indicate that this subdivision ever came before this Board for approval. However, the measurement of the closest part of the proposed building to the property line shown in Exhibit D is at least 131 feet.

12. Interested Party Kelly Pawlak of Mount Snow stated that Mount Snow has various agreements with previous owners and the Hermitage Inn Real Estate Company and was there to listen to the proposal.
13. A letter was received from Linton and Bonita Fluck and was entered as Exhibit F. The Flucks live at 110 Fanny Hill Road and are abutters and Interested Persons in this case. They expressed concerns regarding some blasting that has occurred and the possible impact on the water pressure and water quality of their well. They would like to be notified about future blasting and have their well assessed to determine "baseline condition".
The Applicant stated that the blasting had been going on almost every day for a few months and will be completed in about a week of the date of this hearing. The blasting was approved under the previous case and blasting companies carry insurance that would apply to damage done to surrounding wells. Engineer Bob Stevens said that he would get in touch with the Flucks to discuss their concerns.

II. The Board CONCLUDES:

Although this proposal is quite a bit larger than what was previously approved, much of the additional interior space will not be visible at ground level. Even the tunnel access to the sub-basement will be covered over and, except for the entrance, will not be visible. The top of the tunnel will become usable green space.

When giving the amount of exterior square footage the Applicant counted the stone patio, even the parts of the patio that are not covered. Even though the patio may be slightly raised, the Board concludes that a patio without a roof that is attached to a building is considered landscaping and not part of the square footage of the building. Therefore, the additional exterior square footage is significantly less than the 14,262 square feet the Applicant cited.

The Board concludes that the blasting that concern the Flucks was approved in Case #2012-051. Since that blasting is not part of this approval and the Applicant's testimony was that blasting would likely be done before the issuance of this decision the Board cannot directly address the Flucks' concerns regarding the blasting. However, the Board urges the Flucks to talk directly with the Applicant and/or drilling company and to continue to monitor their well for water pressure and quality.

The Board concludes that the Base Lodge 10 acre (+/-) parcel was legally merged with the surrounding lot.

The Board concludes that there is no evidence that approval for the subdivision of

Chamonix Village was ever asked for or received. It also concludes that, even if the subdivision was not legally created, all setback requirements have been met.

The Board concludes that there are previously approved uses in Case #2012-051 and that there are no additional uses being requested. Although the areas of the uses may have shifted within the interior of the building, this Board continues its approval of the uses.

A ski base lodge/amenity center is a Conditional Use in the Commercial District and the proposed additions requires Conditional Use review. With regards to the criteria for a conditional use permit, the Board concludes that this proposal *will* conform to the requirements of the Wilmington Zoning Ordinance and the following standards:

- A. **Will the proposed Conditional Use have an undue adverse effect on the capacity of existing or planned community facilities?** In Case #2012-051 this Board expressed concerns regarding affordable housing, fire safety and police calls and placed conditions on its approval to address those concerns. Since most of the square footage increase in the base lodge/amenity center is in the sub-basement that is used mostly for supporting functions (deliveries, maintenance, utilities, etc.) there should be little or no further impact on affordable housing or police call concerns. The Board continues to have concerns about the height of the building and the clock towers with regard to fire safety. The Board will continue to require an agreement with the Town of Wilmington and its fire department so that this concern will be mitigated.
- B. **Will the proposed Conditional Use have an undue adverse effect on traffic on roads and highways in the vicinity?** Since the square footage increase is largely in the sub-basement and the uses remain the same there should be little or no increase in traffic.
- C. **Will the proposed Conditional Use have an undue adverse effect on the character of the area, as defined by the purpose or purposes of the zoning district within which the project is located?** As cited in Case #2012-051 this area has long been approved for intense commercial and residential development.
- D. **Will the proposed Conditional Use comply with specifically stated policies and standards of the Town Plan?** As cited in Case #2012-051 the Town Plan has long recognized this area as a Commercial District and has encouraged dense commercial growth in that district.
- E. **Will the proposed Conditional Use comply with other sections of the Zoning Bylaw?** Although part of the property is in the Flood Hazard Area, the base lodge/amenity center is not in the FHA. There are no other sections of the Bylaw that apply.

The Board concludes that the tunnel and road connecting Chamonix Trail and the sub-basement of the building will help separate delivery and utility truck traffic from club

members and the general public and is **approved as presented**.

The road connecting the parking lot and the drop-off zone by the building are also **approved as presented**.

III. CONDITIONS:

This is granted subject to the following restrictions, requirements, limitations or specifications.

1. All Conditions listed in Case #2012-051 shall remain in effect. This includes, but is not limited to, a signed agreement with the Town of Wilmington regarding fire equipment, training and fire calls (Condition 3), submission of "AS-BUILT" plans (Condition 22) and the number of parking spaces in the upper parking lot (Condition 13).
2. Fire access to and the uses of the clock towers shall be specifically addressed with the Wilmington Fire Chief and the Fire Chief shall sign off on the specific plans.
3. If, in fact, the Chamonix Village parcel was subdivided without the necessary approval an application shall be made to this Board for subdivision. If a subdivision was legally made, a letter and pertinent supporting documentation concerning the subdivision shall be submitted to the Zoning Administrator by the Applicant.
4. The location, size, height and uses of the building shall be substantially as shown in Exhibit C and in the testimony cited above.

Thus, the Development Review Board does **approve** the application for **Conditional Use review to allow expansion of a previously approved Base Lodge in the Commercial District**.

If unused, this individual Approval expires on December 31, 2014 as noted in Condition for Planned Unit Development Use #24 in Case #2012-051. A request for extension may be made in writing to the Development Review Board before the expiration date. Such request shall be in the form of an APPLICATION FOR EXTENSION.

There is a thirty (30) day appeal period from the date of signature before this Approval becomes final. In addition, all fees must be paid and a Zoning Permit *must* be issued prior to the commencement of any work requested in this application. When a Zoning Permit is issued, there is an additional fifteen (15) day appeal period before the Permit becomes final. Work may commence when the Permit has been issued and all Appeal periods have ended.

This approval **does not relieve you**, as applicant, from obtaining any and ALL applicable

State and other local permits.

IN FAVOR of granting the APPROVAL FOR the above referenced application, with whatever restrictions, requirements, limitations or specifications are contained herein:

David Kuhnert
Gil Oxley
Andrew Schindel
Nicki (Polly) Steel
Paul Tonon

OPPOSED: None

For the Board: Polly Steel, Chairperson

Date: 10/24/2012

Appeal Rights: An interested person may appeal this decision to the Vermont Superior Court, Environmental Division, pursuant to 24 VSA 4471 and VRECP Rule 5, in writing, within 30 days from the date this decision is issued. If you fail to appeal this decision, your right to challenge this decision at some future time may be lost because you waited too long. You will be bound by the decision, pursuant to 24 VSA 4472(d) (exclusivity of remedy; finality).

This approval does not relieve the Applicant of the responsibility to obtain all other applicable approvals that may be required by Federal, State, and local laws and ordinances.