

**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: Hermitage Inn Real Estate Holding Company LLC (Hermitage)

Owner/Applicant(s) Mailing Address: P.O. Box 2210, West Dover, VT 05356

Address of the subject property: 177 Fannie Hill Road

Tax Map: #HAYSTACK.SKI

A copy of the request is filed in the office of the Board and is referred to as: **#2015-045**

**Description of Case per Public Notice:**

Application # 2015-045: Owner(s): Hermitage Inn Real Estate Holding Company LLC.

Application is being made for Conditional Use in a Planned Unit Development to:

A. Construct two (2) duplex villas and a 93-unit hotel with a lounge, bar, restaurant, locker room, general store, offices, squash court, spa and parking garage

B. Subdivide the existing lot into three (3) lots

1. One (1) 9.14 +/- acres for hotel, parking garage, maintenance building

2. Two (2) lots of 1.12 +/- acres with a 0.43 acre right-of-way each residential development

Notice for a public hearing was published in the Valley News on: **June 18, 2015**

Notice was posted in three public places on: **June 18, 2015**

A copy of the notice was mailed to the applicant on: **June 17, 2015**

A copy of the notice was mailed to the abutters on: **June 17, 2015**

Public hearings were held on July 6, 2015 and July 20, 2015

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 Environmental Court.

**Appeal period for this Case expires on: October 2, 2015**

**Approval expires on: September 2, 2017**

In *addition* to the Applicant/Agent the following persons, heard by the Board in connection with this request, were determined by the Board to be “interested persons”: Copies of this decision have been mailed to those persons listed below.

The following presented testimony on behalf of the Applicant or an Interested Person:

Robert Fisher Fisher and Fisher	Attorney for Applicant
Robert Harrington Harrington Engineering	Witness for Applicant
Ben Joyce Joyce Land Surveying	Witness for Applicant
Robert Rubin Hermitage, VP of Construction & Development	Witness for Applicant
Bob Mancini Hermitage, Construction Manager	Witness for Applicant
Ken March Fire Chief, Wilmington, VT	Witness for the Applicant
Andrew Maneggin (7/6/15 only) Abutter, Powderhorn Village	Interested Person

## **EXHIBITS**

The following Exhibits were placed in evidence by the Applicant or Interested Person:

1. Wilmington DRB Application for 93-unit Hotel w/ Duplex Villas, including:

Section

- 1.01: Wilmington DRB Application consisting of 5 pages;
- 1.02: Project Narrative
- 1.03: Project Purpose
- 1.04: Copy of DRB Case #2014-113 Master Plan Update
- 1.05: Hotel Abutters
- 1.06: Table of Hotel Usage & Parking Spaces
- 1.07: Table of Water and Sewer Usage
- 1.08: Typical Landscape Photos
- 1.09: Police Agreement
- 1.10: Fire Agreement
- 1.11: Proposed Subdivision & Plot Plan
- 1.12: Hotel Construction & Architectural Plans

2. Memo dated June 16, 2015 5:41 PM from Ethan Ahlberg (architect) to Robert Rubin, including:

- 2a. Site Plan A0.0
- 2b. Residential Summary, Gross Floor Areas, and Parking Summary

3. DRB Hearing for the Hotel Hermitage July 20, 2015 folder including:
  - 3a. Memo dated July 14, 2015 3:21 PM from Patrick Jarvis, to Robert Harrington, Robert Rubin, and Bob Fisher indicating that High Country Road will assume the name of Chamonix Trail
  - 3b. Current Unit Mix and Sprinter Van Seating Counts from Bob Rubin dated 7/15/15
  - 3c. Coldbrook Fire District No. 1 Commercial Water and Sewer Allocation agreement for 6,750 gallons sewer and 6,750 gallons water per day (150 seats/3 meals @ 45 gpd), dated and signed July 2, 2015.2
  - 3d. Coldbrook Fire District No. 1 Commercial Water and Sewer Allocation agreement for 15,615 gallons sewer (72 one-bedroom @ 140 = 10,080 gpd, 21 two-bedroom @ 210 = 4,410 gpd, plus 75 employees @ 15 = 1,125 gpd) and 17,325 gallons water per day (114 bedrooms x 135 gal x 120, plus 75 employees @ 15 gpd), dated and signed July 2, 2015.
  - 3e. Crosswalk pavement markings, VTrans Guidelines for Pedestrian Crossing Treatments, January 2015.
  - 3f. Portland Cement Concrete Sidewalk, Vermont Agency of Transportation Standard C-2A and Standard C-2B
  - 3g. Sidewalk Ramps and Median Islands, Vermont Agency of Transportation Standard C-3B.
  - 3h. Street lighting Details, Vermont Agency of Transportation Standard E-180B
  - 3i. Plank Rail Guide Posts, Wood Marker Posts, Vermont Agency of Transportation Standard G-4
  - 3j. Bull Stockwell Allen rendering of Villas-Perspective Vignette
  - 3k. External Lighting Site Plan E1.01
  - 3l. Exterior Lighting, Luminaire Photometric Reports, July 13, 2015
  - 3m Ground Floor Plan, Restaurant Seating by Bull Stockwell Allen.
  
4. HIREHC (Hermitage Inn Real Estate Holding Company, LLC Draft Master Plan dated November 2014. (The Master Plan has not been finalized and is still under review by Act 250)
  - 4.1 Exhibit 21 Air Quality Permit
  - 4.2 Exhibit 32 Transportation Master Plan – September 2014 Conley Associates

## **APPLICABLE DISTRICT**

**Finding of Fact:** Subject property is known as the “Base Tract” owned by Hermitage Real Estate Holding Company (Hermitage). The Base Tract is identified as Tax Map #HAYSTACK.SKI covering the Haystack ski area and facilities

**Conclusions of Law:** The Base Tract lies in the Resort-Commercial/Residential and Conservation zoning districts. The Base Tract includes property known as the Glebe Land, owned by the Town of Wilmington, in the Conservation District. However, this application does not include any development on the Glebe Land property. The proposed development lies solely in the Resort-Commercial/Residential District pursuant to Article II, Section 270 F.

## **SUBDIVISION**

Subdivisions must provide access to lots on a public road or 20’ right-of-way, where lot size and frontage requirements are met for that district.

**Findings of Fact:** The applicant seeks to subdivide the existing lot into three (3) lots

- One (1) 9.14 +/- acres for hotel, parking garage, maintenance building
- Two (2) lots of 1.12 +/- acres with a 0.43 acre right-of-way each for residential development

The purpose of subdivision of the hotel lot from the residential lots is to facilitate ease of obtaining financing on sale of hotel units. All properties front on Chamonix Trail, a private road in the PUD.

The hotel lot has: (evidence-Subdivision and Plot Plan dated May 1, 2015)

- 994.95 +/- feet of road frontage
- 379.77 +/- feet in depth at the southern, most narrow, boundary line, 768.45 feet on the north line
- 9.14 acres +/-

The Residential Lot 1 (OP1) has:

- 335.28 feet +/- of road frontage
- 148.27 feet in depth (excluding the right-of-way)
- 1.12 acres +/-

The Residential Lot 2 (OP1a) has:

- 327.06 +/- feet of road frontage
- 148.27 feet in depth (excluding the right-of-way)
- 1.12 acres +/-

The proposed hotel footprint will be 68,000 square feet including the parking deck. (For comparison, the Base Lodge is 38,000; 20,000 plus 18,000 decks). The proposed hotel height is 79 feet. (Base Lodge height is 55' to the ceiling of the lodge). Applicant testified there will be a total of 93 units, 55 one bedroom studios, 38 two bedroom units (one is a lock-out unit). 5 units will be ADA accessible (the minimum number required by The Department of Public Safety).

**Conclusions of Law:** The hotel commercial lot created by this subdivision meets the lot size dimensional requirements of the Resort-Commercial/Residential District. The commercial lot created:

- Has frontage of at least 300 feet on a public road
- Meet the depth requirement of at least 200 feet from the road or right-of-way
- Has greater than 1 acre in size

The residential lots created by this subdivision do not meet the lot size dimensional requirements of the Resort-Commercial/Residential District. The residential lots created:

- Have frontage of at least 150 feet +/- on a public road
- Fail to meet the depth requirement of 150 feet +/- from the road or right-of-way
- Are greater than 1 acre in size

This residential lots of the subdivision do not meet the depth requirements of Subdivision of Land as defined in Article III Section 300. In that the lot depth is a self-created situation, a waiver will not be granted. Lot development will be conditioned on meeting dimensional requirements, including having a minimum depth of 150 feet from the road or right-of-way on residential lots.

## **GENERAL STANDARDS – SECTION 320**

The proposed development shall not have an undue adverse effect on:

### **A1: Community Facilities**

**Findings of Fact:** The applicant testified they believe the proposed PUD development will not have undue adverse impact on the capacity of community facilities. The facility will be on public sewer. Water allocations for 114 bedrooms, 150 restaurant seats, and 75 employees has been reached with Coldbrook Fire District. The Fire Chief of Wilmington, VT testified on their behalf that the proposed development meets fire safety needs based on agreements between HIREHC and the fire department. This involves a cash contribution toward the expense of acquiring a ladder truck to reach the 68 feet to the highest balcony, 6 on-site fire hydrants, sprinklers throughout the property, and fire truck access to the building on the ground level on all sides. No Emergency Medical Services Plan has been provided with this application.

Ken March testified that Fannie Hill Road should be paved prior to the opening of the Hotel as it must be relied upon as a secondary source of access to the hotel in case of fire. Applicant indicated they are willing to meet this requirement if required for fire safety.

**Conclusions of Law:** The applicant has demonstrated the proposed development will not have adverse undue impact on fire and police department services provided Fannie Hill Road is paved prior to the opening of the hotel. The board finds that the Coldbrook Fire District water allocation is 17 bedrooms short of the requested 131 bedrooms. In addition, the fire agreement does not address a storage garage for the fire truck. The construction of a garage to house the fire truck will place an additional burden on the taxpayers of the town, beyond the agreed upon co-funded acquisition of the firetruck. Finally, the applicant had not provided evidence of Emergency Medical Service provisions. Approval will be conditioned on the applicant reaching agreement with 1) receiving a water allocation from Coldbrook Fire District for the full 131 bedrooms, 2) reaching agreement with the town on plans for development of and funding a garage for the fire truck as well as the development and 3) finalization of an emergency services plan.

### **A2: Character of the Area**

**Findings of Facts:** The applicant testified the proposed PUD development is consistent with the clustered development and preservation of open spaces. The applicant also testified that the hotel development is justified based on anticipated membership levels and they believe it is consistent with the economic development goals of the community. Applicant testified there are currently 625 members, with an anticipated 1500 members. Maximum housing units to be developed in the PUD is 450, leaving a significant housing shortfall at peak season for member visitors wanting both permanent and temporary housing. The applicant testified that the Vermont House was full to capacity throughout the winter and that the White House would have been had it not been under renovation. They testified both the Vermont House and White House will be full to capacity during peak season. The Hermitage Club is working to develop four season offerings to attract members and visitors throughout the year. They believe the housing developed at the PUD will be insufficient for demand, pushing additional demand on the town permanent housing market and the hotels and inns of the town, as well as increasing downtown demand for restaurants and retail. They believe the demand of their members justifies development of additional housing within the PUD as well as having a positive impact the demand for services in the downtown.

**Conclusions of Law:** The proposed development is consistent with the defined purpose of the Resort-Commercial/Residential District and is expected to contribute to the character of the area.

### **A3: Traffic on Roads and Highways**

**Findings of Facts:** Applicant testified projected traffic is less than historic levels in this area and referred to Exhibit 4.2 (Master Plan Exhibit 32). Applicant testified that their traffic engineer is working with VTrans to ensure no undue adverse impact on traffic and highways and that no on-street parking in the village is to be removed by VTrans. Applicant testified Act 250 state requirements are being placed on HIREHC requiring the hotel be equipped with monitors that report on traffic flow at the intersection of route 100 and route 9 in Wilmington center and provide Hermitage guests and members with the estimated wait time to get through the downtown traffic light. Through their agreement with VTrans, HIREHC will provide up to \$50,000 toward computerized re-signalization of the town stop-light. Employees at the Base Lodge (150 – 200 workers currently) and the Hotel (an estimated 75 full time) will have hours staggered to not coincide with peak visitor departure and arrival times and will park off-site from the hotel and base lodge. There will be Hermitage vans transporting employees and visitors from the hotel to and from downtown to mitigate traffic and parking space requirements. The Hermitage Club has just two (2) points of entry onto Coldbrook Road, one at the Gatehouse and one at the Hermitage Inn, to manage traffic impact on the town road.

**Conclusions of Law:** Traffic and highway impacts on the town road are successfully managed through two points of access. Traffic is estimated to be below historic levels and downtown traffic will be managed through traffic light controls and monitors at the PUD informing visitors and employees of wait times at the route 100/route 9 intersection in the center of Wilmington. Impacts on any state highways are managed by VTrans under the Act 250 application. The DRB will defer to VTrans Act 250 findings for state highway management.

### **A4: Bylaws and Ordinances in Effect**

**Finding of Facts:** Applicant testified proposed development will not have an undue adverse impact on bylaws and ordinances in effect at the time of this decision as:

- All development would be in compliance with current zoning ordinance
- The development will conform with the Highway Ordinance in effect as the time of this decision.

**Conclusions of Law:** This application is:

- In conformity with the zoning ordinance
- Will condition all road development on Highway Ordinance conformance.

### **A5. Utilization of Renewable Energy & Natural Resources**

**Findings of Fact:** Sections of trees will have to be removed to build the hotel, but will be removed only to the extent necessary. Trees will be replaced to the extent possible. There will be a minimum of 75 trees re-planted. HIREHC has a deep water well and a half million gallon water tank. A new well will be added in the near future. Coldbrook Fire Agreement, Exhibit 3c and 3d, allocated water capacity for this development, but covers 17 fewer beds than has been requested (see A1). Closed culverts will be replaced with open to allow for fish movement.

**Conclusions of Law:** To manage the impact on natural resources, this decision will be conditioned on minimization of tree disruption and required tree replacement. This development is being reviewed by Act 250. The hotel and villas will comply will comply with all Act 250 findings on renewable energy and natural resources to ensure no undue effect on renewable energy and natural resources.

## **SPECIFIC STANDARDS FOR CONDITIONAL USES SECTION 320**

### **B. Must satisfy General Standards and Flood Hazard Regulations**

**Finding of Fact:** See above for General Performance Standards conformity. This development is not in the flood hazard area.

**Conclusions of Law:** General Performance Standards (Section 340) are addressed above. Flood 320 Hazard regulations are not applicable.

**C. Dimensional, density, coverage and purpose of the district.**

**Findings of Fact:** See Subdivision section for dimensional Finding of Facts

**Conclusions of Law:** Density and coverage requirements of this district have been modified for this PUD in conformance with DRB decision case 2014-113.

**D. Traffic and parking safety**

**Findings of Fact:** See Parking Plan Exhibit 1.12, Diagram A2.00 A, B and A2.01 for parking diagrams and Exhibit 2b parking summary. Applicant testified interior and valet parking spaces will be 9 x 18. Exterior surface spaces will be 10 x 20. Parking will provide for ADA compliant accessible spaces and VTrans compliant pedestrian safety in parking areas. Applicant testified pedestrian cross-walks will be placed at all road intersections with sidewalks. Sidewalks and cross-walks will conform to VTrans recommendations (see exhibit 3e, f, g). Sidewalks will be 5 feet in width. Walkways will be lit to ensure pedestrian visibility and safety (see exhibit 3h). Wooden guardrails will be placed along roadways (see exhibit 3i). All walkways and crossings will meet standards of accessibility.

**Conclusions of Law:** The proposed parking plans conform to the traffic and parking safety requirements.

**E. Snow removal, the maintenance of parking areas, internal roads**

**Findings of Fact:** Applicant testified there will be radiant heat melt system snow removal on the upper deck of the parking garage and the hotel plaza. Water from the snowmelt system will be diverted into the Stormwater Treatment and Detention System on the HIREHC property (see exhibit 1.12 diagram C7A1). Roadways will be plowed. Road Maintenance will be in conformity with the town Highway Ordinance.

**Conclusions of Law:** Snow removal and maintenance of parking areas and internal roads meet this standard.

**F. Landscaping and screening**

**Findings of Fact:** See Exhibit 1.12 diagram L1A Landscaping Plan covering tree and shrub planting plans. Applicant testified trees will be undisturbed to the extent possible. Tree removal to make way for construction of the hotel will be mitigated by the planting of not less than 75 trees on the hotel property. Trees will be 3"- 4" in diameter and shrubs will be at least 2 feet in height. Planting varieties will be those indigenous to the area and suitable to zone 4. Landscaping beds shall be placed throughout the property consistent with Exhibit 1.08 Typical Landscape Photos. Beds should be planted with a diversity of hardy flowering perennials and non-deciduous plants. Landscaping will be maintained in good condition in perpetuity.

**Conclusions of Law:** Landscaping and screening plans as defined above meet this standard.

**G. Allowance for Conditions.** (see conditions section of this document)

**H. Independent Technical Review** (the Board finds no reason to convene an Independent Technical Review.

**I.** Any substantial alteration, extension or other change to a Conditional Use affecting one or more

of the Conditional Use criteria shall require reapplication to the Development Review Board.

## **Section 335: PUD Standards and Requirements**

### **A. General Standards for a PUD:**

#### **A1. PUD shall be consistent with the Town Plan**

**Findings of Fact:** The development complies with the Town Plan in that it supports the goals of Economic Development by creating an estimated 75 full-time jobs in addition to the 415 current employees of The Hermitage Club, excluding construction workers. (see Exhibit 1.02, page 4). Applicant testified the 93 unit condo/hotel and its 150 restaurant seats would be open to the public and all units are expected to be sold within 6 (six) to 12 (twelve) months from date of completion. Testimony indicated that there is demonstrated sufficient demand for the hotel to not have undue adverse effect on the downtown as evidenced by:

- a. HIREHC has a 450 maximum housing allowance in this PUD. There is current membership in The Hermitage Club of 625 with a maximum membership of 1500. Projected demand during peak season is expected to be well above the allowed 450 housing units allowed for the PUD, resulting in a need for added capacity outside of the PUD.
- b. Every Hermitage Club member receives 175 guest passes which can be shared with anyone of their choosing. This includes renters of hotel condo owners. This is in addition to the 175 passes available daily to Wilmington residents.
- c. Applicant testified that the HIREHC owned hotel in the downtown (The Vermont House) was consistently full to capacity in the winter (no data on actual occupancy rates were provided) and The White House (HIREHC owned, previously leased) is under reconstruction, but is otherwise full to capacity in the winter.
- d. Applicant testified HIREHC is working to develop year-round attractions to the area, including having two boats on Lake Harriman available for member use.

#### **Conclusions of Law**

This application is consistent with the Town Plan in that it:

- a. Conforms to the Income and Economy Economic Development goals of the Town Plan by creating an estimated 75 jobs in Wilmington (in addition to the current 415).
- b. Will conform to Economic Development goals of the Town Plan by ensuring growth and demand to support growth goals for both The Hermitage Club as well as hotel/inn and food services in the Wilmington Downtown.
- c. Conforms to the Natural Resources goal of the Town Plan to enhance and develop recreational opportunities for residents and visitors by providing public access to skiing, hotel services and food services in the hotel.
- d. Conforms to Land Use goals of the Town Plan for Haystack mountain development of dwellings, lodgings, restaurants, and resort related commercial enterprises.
- e. Conforms to the Town Plan goal of pursuing Economic Development in a fashion that “preserves what makes Wilmington special” and supporting the goal of partnering with owners “in such ways that will enable the proprietors and the communities to mutually benefit.” This plan conforms to the Town Plan goal above by seeking to “float all boats”.

#### **2. Only allow uses, or a mix of uses that are Permitted or Conditional Uses of the District**

**Findings of Fact:** The Resort-Commercial/Residential District allows for current uses as a ski area and recreational facility including Base Lodge and other recreational facilities. This application seeks to expand current uses to include a 93-unit hotel with duplex villas, a lounge, bar, restaurant, locker room, general store, offices, squash court, spa and parking garage.



**Conclusions of Law:** The Resort-Commercial/Residential District, pursuant to the zoning ordinance Article II, Section 270 F, allows for the following uses consistent with this application:

- Planned Unit Development
- Lodging > 6 guests
- Retail Business
- Service Business
- Restaurant
- Bar or Lounge
- Offices
- Recreation Indoor
- Maintenance Facility
- Parking Lot
- Dwelling, Two-Family or Duplex (Uses within the duplex villas will be residential only)

**3. Overall density** (shall not exceed that allowed if the land were subdivided)

**Findings of Fact:** Total approved density for this PUD is 450 pursuant to DRB decision 2014-113. The planned 93 unit hotel and 2 duplex villas are consistent with these density limits. Overall planned density for the development is as follows:

270	3 hotels with an estimated 90 units each (at 93 units, this hotel is 3 over the 90 per unit)
88	22 four unit townhouses
14	Stags Leap homes
32	Upper mountain trailside homes
14	7 duplex villas
<u>32</u>	As yet unplanned units
450	

**Conclusions of Law:** Development of one (1) hotel and two (2) duplex villas are consistent with the overall total density plan.

**4. Conditions for approval of greater densities** (does not apply)

**5. Effective and unified treatment of the project site** - with preservation of forested land, streams and stream banks, steep slopes, wetlands, soils unsuitable for development, agricultural and open lands, unique natural and manmade features, including historic sites and structures, watersheds, wildlife habitat, floodplains, stormwater detention, impervious surfaces, and scenic features.

**Findings of Fact:** The design and building materials of the hotel and villas are consistent with the look of the Base Lodge and other condo development within the PUD, creating a unified look. The development is not within a floodplain. Haystack Mountain is a scenic vista of the town. The view of Haystack Mountain will be negatively impacted by the presence of a 5 story hotel that will be viewable from various locations in town including Handel Road, Cold Brook Crossing, Stow Hill Road and Wellman Farm. Regarding management of forest lands, natural features, streams and stream banks, steep slopes, agricultural land, land unsuitable for development, watersheds, wildlife habitat, stormwater, and impervious surfaces, this application is subject to Act 250 review.

**Conclusions of Law:** The Board finds that proposed construction provides a unified look and treatment to the PUD and is compatible with look of the community. A five story hotel will be viewable from a number of locations in Wilmington impacting the scenic vista of Haystack Mountain. However, this PUD development is consistent with the goals of the Resort-Commercial/Residential district and with the economic development plans of the town, including recreational development of Haystack as a natural resource. The Board finds the impact on this

scenic vista does not outweigh the economic development opportunities for this hotel. Regarding the management of floodplains, this development is not within the flood plain. For all other natural resource management issues noted above including forest lands, natural features, streams and stream banks, steep slopes, agricultural land, land unsuitable for development, watersheds, wildlife habitat, stormwater, and impervious surfaces, the Development Review Board (DRB) and Act 250 hold overlapping responsibilities on these topics. The DRB defers to the state Act 250 decision and state expertise on these particular issues.

**6. Shall not unduly burden transportation networks, municipal facilities, public services** (see section 320, A1 General Standards for Conditional Uses)

**7. Modifying dimensional requirements** is allowed if the project remains compliant with District purpose and applicable standards

**Findings of Fact:** Planned Development meets the dimensional requirements of this district with the exception of lots OP1 and OP1a which do not satisfy depth requirements and the hotel that does not meet the side setback requirements.

**Conclusions of Law:** Development shall be conditioned on satisfying all dimensional requirements including lot depth and side setback.

**8. Minimum of two (2) acres of land required for a PUD.**

**Findings of Fact:** HIREHC exceeds 2 acres.

**Conclusions of Law:** This PUD meets this standard.

**9. All land contained in a PUD proposal must be contiguous**

**Findings of Fact:** The development is in the Base Tract which is a contiguous piece of land.

**Conclusions of Law:** This PUD development meets this standard.

## **B. PUD Requirements:**

### **1. Building Setbacks**

Required setbacks are:

a. Perimeter: buildings abutting the perimeter setback fifty feet (50)

b. Side yard setback: residential abutting an interior street setback twenty feet (20)

c. Side yard setbacks: commercial abutting commercial setback zero (0) between.

Commercial abutting residential or street setback feet (20) with a natural buffer required, buffer cannot be not be used for parking

d. Front yard setback: building fronting on a street setback twenty feet (20) from the sidewalk

e. Rear yard setback: commercial abutting commercial setback ten feet (10). Commercial abutting residential setback twenty feet (20). Shall not be used for parking or drives, shall be landscaped.

**Findings of Fact:** Duplex Villa structure placement with setbacks have not been provided. Unable to determine setback conformity.

Hotel side setback on the east side to Powderhorn Circle where the commercial hotel abuts the road and future residential housing, is 16 feet +/- . West side setback is hundreds of feet. Front yard setback is approximately 125 feet +/- to Chamonix Trail. Rear yard setback is approximately 40 feet +/- to an existing work road

**Conclusions of Law**

1a. Development is not on the perimeter of the PUD. Does not apply

1b. Commercial structure. Does not apply

1c. East side setback for Commercial development abutting Residential is not met. Development approval will be conditioned on east side setbacks being met.

1d. Front and rear yard setbacks are met.

## 2. Height Requirements

Building height shall not exceed thirty five (35) feet at the eave line. The DRB may allow an increase “if justified based on unique lot characteristics, topographical conditions or other natural features or can be justified on the basis of amenities, services or concessions made by the developer for which some additional incentive is warranted. Fire protection shall be considered in relation to this provision.”

**Findings of Fact:** Applicant proposed hotel is 79 feet high, or approximately 20 feet higher than the base lodge. Ken March, Wilmington Fire Chief testified that he is satisfied that the fire department can adequately protect the building with the addition of a ladder truck purchased with a cash contribution from the developer. The building of a garage, however, will be an additional burden on the taxpayers of Wilmington as there is no place to house a ladder truck. (See section 320 A1).

**Conclusions of Law:** The building significantly exceeds the height limitation of 35 feet to the eave line. The DRB will consider allowing a height waiver based on amenities, services or concessions.

## 3. Parking Requirements:

a. Parking shall conform to Section 340 General Performance Standards (see Section 340 F).

b. May allow a reduction in parking requirements based on concessions

4. **Traffic safety and emergency access.** See section 320 D above

5. **Sidewalks:** See section 320 D above

6. **Site grading, erosion control, soil conditions, and landscaping.** Act 250 will address site grading, erosion control, soil conditions, and landscaping. The DRB will defer to the Act 250 expert advice and decisions on this matter, with the exception landscaping which is discussed in Section 320F above.

7. **Native trees and any other areas of substantial vegetation shall be preserved.** See section 320F above.

8. **Open Space:** At least forty (40) percent of the Open Space shall be common outdoor living and open land.

**Findings of Fact:** Applicant testified the hotel will be built in an area that is primarily open space. Currently there is maintenance facility and snowmaking facility. This was confirmed by the DRB through a site visit. Applicant testified tree disruption will be minimal and replaced to the extent possible. Applicant testified there will be at least 40% open land on the hotel lot excluding streets, driveways and parking.

**Conclusions of Law:** The proposed development satisfies the 40% open land requirement.

9. The preservation of Open Space, recreation areas and/or parks shall be in perpetuity.

**Conclusions of Law:** Retaining 40% open space will be conditioned in the DRB decision.

10. **Underground Utilities:** As development will be dwellings, all electric and telephone facilities, fire alarm conduits, street light wiring, and other wiring, conduits and similar facilities or utilities shall be placed underground.

**Findings of Fact:** Applicant testified all utilities and similar facilities will be placed underground. Utility feeds to the substation will all be underground. Transformers will be above ground but wrapped in metal.

**Conclusions of Law:** The proposed development satisfies the intent of the underground utilities standard.

11. **Easements:** may be required for utility extension in anticipation of future adjacent developments

**Findings of Fact:** A Coldbrook Fire District easement is in place for this PUD.

**Conclusions of Law:** No future easements are anticipated for this development.

12 **Private roads may be allowed.** Road requirements may be modified after considering specific criteria.

**Finding of Facts:** Road development shall occur on Chamonix Trail, Powderhorn Circle, and Fannie Hill Road. Applicant testified all road development shall comply with the Wilmington Highway Ordinance.

**Conclusions of Law:** Private roads will be developed in full conformity with the Wilmington Highway Ordinance.

13. **If not subject to State of Vermont stormwater review:** may require evidence that there will be no increase in the peak discharge of water offsite.

**Findings of Fact:** The proposed development is subject to Act 250 stormwater review.

**Conclusions of Law:** The DRB will defer to Act 250 expert review of stormwater discharge.

### **Section 340: General Performance Standards (for Conditional Uses and PUDs)**

For Conditional Uses and PUDs, the following general performance standards must be met and maintained for all uses, except for agriculture and forestry, in all districts. All applicable criteria shall be determined or measured at the property line.

**A: See Article II for District Requirements** – see Subdivision dimensional Findings of Fact and Section 335 items 3 and 4.

**B: Air Emissions for Commercial Operations:** There shall be no emission of dust, ash, smoke or other particulate matter

1. Which can cause damage to human or animal health, vegetation, or property by reason of concentration or toxicity;
2. Which can cause contamination of the subject property or beyond the property boundaries;
3. Which is composed of solid or liquid particles in concentrations exceeding current state authority standards;
4. Which causes emission of non-farming, odorous matter in such quantities, as determined by the current state authority standards to be offensive.

**Findings of Fact:** Applicant testified there are not expected to be any notable emissions of dust, ash, smoke, or other particulate matter.

**Conclusions of Law:** This standard has been met.

**C: Buffer Areas:** No industrial or commercial buildings or uses shall be established abutting a residential use (except in the Village District) unless a landscaped buffer strip of at least twenty (20) feet in depth is provided to visually screen the buildings or uses. Where no natural vegetation can be maintained or where necessary due to varying site conditions, the landscaping may consist of fences, walls, tree plantings, hedges or combinations thereof. The buffer areas shall be maintained and vegetation replaced to insure continuous year-round screening.

**Finding of Facts:** Applicant testified tree buffers are maintained between residential areas and ski trails. A wooded buffer area of greater than 20 feet exists to Fannie Hill. Applicant testified these buffers will be maintained.

**Conclusions of Law:** Buffer does exist to Fannie Hill and will be maintained. The proposed development is of commercial hotel/condos. The hotel lot will abut residential areas on Powderhorn Circle and Chamonix Trail. A 20 foot buffer is normally required. The Board finds that in consideration of the intended clustered development objectives of the PUD, a waiver will be granted for the 20 foot buffer requirement to residential areas within the PUD.

**D: Landscaping:** See Section 320.F.

**E: Lighting and Glare:** Exterior lighting on the site shall be shielded and downcast and shall not impair motor vehicles, aircraft or provide undue glare in surrounding areas. Lighting will not exceed 5 foot candles at abutting properties.

**Findings of Fact:** See exhibit 1.12 diagram E1.00 and exhibits 3h, 3k, 3l. All lighting will be shielded and downcast. It not create undue glare of interfere with motor vehicles or aircraft.

**Conclusions of Law:** The proposed development meets this standard.

**F: Parking:** Required off-street parking (except in the HRD)

1. A parking space shall be at least ten (10) feet by twenty (20) feet.
  2. For every residential dwelling: Two (2) parking spaces for every unit.
  3. Lodging: One and one-half (1.5) parking space for every guest bedroom.
  5. Retail Business: One (1) parking space for every two hundred (200) square feet of floor area.
  6. Restaurant, bar, lounge, Entertainment / Cultural Facility: One (1) parking space for every three (3) persons permitted for occupancy by the Vermont Department of Labor and Industry
- Parking and loading docks should not be a predominant aspect of the site viewed from the road. Some visible parking is appropriate. However, front parking should not exceed the front width of the building and have no more than 5 spaces. If significant volume is needed, should be located toward the rear of the building and screened.

**Findings of Fact:** Applicant testified internal parking spaces will be 9 x 18, external 10 x 20. HIREHC proposed parking is as follows (see exhibit 2b1.5)

Applicant calculation (Note: this calculation does not align with zoning regulations)

1 bedroom lofts	55 at 2 spaces each	110
Studio/lock-out rooms	38 at 1 space each	38
Restaurant/Lounge/Bar	150 seat guest capacity	*
Misc Food & Beverage		<u>13</u>
		161

\* 0 restaurant spaces - assumes hotel guests are 100% of restaurant use

Applicant testified parking for 75 staff will be provided off-site of the hotel property on HIREHC lands. The proposed development has 25 parking spaces in the lower level (below ground level) garage, 104 spaces at ground level for a total of 129.

**Conclusions of Law:**

Required space size is 10 x 20. However most parking spaces in town are not 10 x 20, a precedent has been set by approving other DRB applications with 9 x 18 spaces, and future proposed zoning regulation changes are expected to allow 9 x 18. As such, a waiver will be granted to allow 9 x 18 spaces.

Number of Required Spaces based on Zoning Ordinance:

2 spaces for 400 square feet of retail

196 spaces for 131 bedrooms (55 units with 1 bedroom, 38 units with 2 bedroom)  $55 + 76 = 131$

$131 \times 1.5 = 196$  spaces

12 spaces for 150 seat restaurant: (50 spaces are required by regulation. However, in consideration that many restaurant users will also be hotel guests, 38 spaces will be waived, 12 spaces will be counted toward non-hotel public usage)

210 total spaces required

180 Total available spaces: 30 short of the required parking allowance.

No employee parking is allocated in this calculation as applicant testified that employees will be provided shuttle service and parking away from the hotel area. Development will be conditioned on 30 additional parking spaces and employee shuttle and parking services apart from the hotel area.

**G: Shared Access:** The applicant may be required to provide for shared access between adjoining properties.

**Findings of Fact:** The Hermitage Club is accessed through two access points, at the Gatehouse and from Hermitage Inn. No adjoining properties require shared access.

**Conclusions of Law:** No shared access is required for this property.

**H: Setbacks and Screening:** Storage area setbacks and screening are required to provide a visual buffer and minimize visual impact. Minimize any potential physical hazards.

**Findings of Fact:** See Exhibit 1.12 diagram L1A Landscaping Plan. Storage and utility facilities will be visually buffered by landscaping. The outdoor spa will require safety planning to ensure a safe environment.

**Conclusions of Law:** Storage and Utility Facility screening meets this standard. Spa safety precautions will be conditioned in this decision.

**J: Traffic Impacts and Street Access Control:** traffic circulation must safeguard against hazard to vehicles and pedestrians to avoid traffic congestion, and provide safe and accessible circulation.

**Findings of Fact:** See sections 320 A3 and D.

**Conclusions of Law:** Proposed development meets this standard.

**K: Road development:** Any new roads, whether Town or private, shall conform with the Town of Wilmington Town Highway Ordinance 2011, adopted September 27, 2011

**Findings of Fact:** Applicant testified all road development will conform to the Wilmington Highway Ordinance and that roadways will be at least 20 feet wide with a minimum of 2 foot wide shoulders on each side.

**Conclusions of Law:** Proposed development meets this standard.

**L: Vibration:** There shall be no permanent, ongoing vibration discernible at the property line

**Findings of Fact:** Applicant testified there will be no permanent and ongoing vibration.

Compressors will be oriented toward the mountain and ski area to minimize impact on residences.

**Conclusions of Law:** Proposed development meets this standard.

**M: Noise:** No Continuous, permanent or ongoing noise > 70 decibels at the property boundary line.

**Findings of Fact:** Applicant testified there will be no continuous, permanent, or ongoing noise. No ledge has been found so it does not appear there will be a need for any blasting.

**Conclusions of Law:** Proposed development meets this standard.

**N: Water Quality:** Stormwater management and detention.

**Findings of Fact:** Applicant testified that runoff from the hotel grounds will be channeled toward the on-site Stormwater Treatment and Detention facility. See Exhibit 1.12 diagram C7A1 for stormwater management plan. Access to the hotel will be 7 to 8 percent grade. Access to future trailside homes will be at a 4-6 percent grade. Maximum grade is 8 percent in the proposed development. There is a 25 foot grade drop to the lower level parking entry. To the mountain-side of the hotel fill will be place to make for a gradual transition from hotel to mountain slope. Act 250 will be reviewing grading, soil conditions, and stormwater management.

**Conclusions of Law:** The DRB will defer to the Act 250 expert review and conclusions on this erosion control, soil quality, and grading.

## **WAIVERS**

The DRB must “consider” the following in granting a dimensional or use waiver:

- Whether it is necessary to make reasonable use of the property possible
- Whether it is the minimum reduction to allow reasonable use
- Whether the need for a waiver was self-created through past decisions of applicant
- Whether it increases a footprint of a structure by  $\leq 5\%$
- Front setback shall not reduced to less than 2 feet
- Whether it conforms to the purposes of the Town Plan and District
- Whether it is a detriment to public welfare, safety, or maintenance of town/state highways
- Whether it places and undue adverse impact on:
  - 1) Use or development surrounding properties
  - 2) The aesthetics or character of the neighborhood
  - 3) Traffic patterns and circulation
  - 4) Public health, safety or utility services
  - 5) Stormwater management
  - 6) Water and wastewater capacity
  - 7) The preservation of open spaces and scenic vistas

### **The following areas are in non-conformity for Waiver consideration:**

1. Subdivision OP1 and OP1a lot depth: The situation is self-created and does not justify a waiver.
2. 20' Side Setbacks of the Hotel: The situation is self-created and does not justify a waiver.
3. Hotel Parking Spaces: size: 9 x 18 are granted a waiver
3. 20 Foot Buffer: between commercial and residential areas within the PUD are granted a waiver. (a 20 foot buffer must be maintained between the PUD and Fannie Hill residences in perpetuity.)
4. Building Height: The building height is self-created, and reasonable use of the property is possible without added height. A Waiver should be granted only if it is in the interest of the

municipality and significant concessions, amenities, or services offered. Concessions in the interest of the municipality will be requested as a condition for receiving a waiver.

5. Parking: A waiver is granted for 38 restaurant parking spaces without concessions, to adjust for hotel guests who will also be using the restaurant. Total adjusted restaurant spaces will be 50 minus the waived 38 spaces for a total of 12 restaurant spaces. Total required spaces are 210 (248 minus 38 waived). Available spaces are 180. Space is available within the PUD for the additional parking. The 30 space shortage is self-created and does not justify additional waiver.

## **CONDITIONS:**

The application for subdivision is **approved** with the condition that all setback requirements, including lot depth, are met. Commercial lots will be at least 1 acre and will have at least 300 feet of road frontage and 200 feet in depth to the road or right-of-way. Residential lots will be at least 1 acre and will have at least 150 feet of road frontage and be at least 150 feet in depth to the right-of-way.

The application for duplex villas is **not approved at this time** due to an incomplete application. Duplex villas will be reviewed at a future date when further information becomes available.

The application for the hotel is **approved** subject to the following restrictions, requirements, limitations or specifications:

1. Concessions for a height waiver include:
  - a. Agreement shall be reached with the Town of Wilmington regarding development plans and location for a garage to house the ladder fire truck to be acquired. Funding to cover construction of a town garage to house the fire truck shall be provided by the applicant. The fire truck shall be acquired and construction of the fire truck parking garage shall be completed prior to the opening of the hotel.
  - b. Hotel facilities, restaurants, bar, lounge and retail shall be open to the public.
  - c. Shuttle access to the Hotel will be available to the public.
  - d. Signage will be placed prominently at entry points of the PUD advising the public is welcome on hiking trails and at the hotel facilities. No signage or actions will suggest other than public availability of these services.
  - e. Applicant shall provide prominent and easily accessible notice to Wilmington residents of the availability of 175 ski passes per day for Wilmington residents, including notice of what facilities at the PUD are open to the public.
2. Restaurant seating shall be limited to 150 seats, consistent with the Coldbrook Fire District allocation.
3. Coldbrook Fire District agreement for hotel water supply allocation shall be updated to address a total of 131 bedrooms. Current allocations address only 114 bedrooms.
4. There shall be a minimum of 210 hotel parking spaces. This number has been adjusted down from 248 for a parking waiver of 38 parking spaces without concessions.
5. An EMS Plan shall be executed prior to the opening of the hotel.
6. Development and construction shall be managed to address all safety hazards.
7. To ensure fire safety, Fannie Hill will be paved with asphalt to a minimum of 20 feet in width and 2 foot shoulders, prior to opening of the hotel. An agreement will be reached with Fannie Hill residents on road development and maintenance.
8. A 20" natural buffer of vegetation will be maintained between the PUD and the residential development of Fannie Hill Road.



9. Unpaved roads used during construction shall be treated to minimize dust.
10. Noise and vibration will be minimized during construction to so as to not negatively impact neighboring properties between the hours of 8 PM and 8 AM.
11. Security measures will be taken to ensure public safety in the outdoor spa area.
12. All dimensional requirements of the District shall be met with the exception of a 20 foot buffer area between commercial and residential areas within the PUD. (A 20' buffer to residential areas outside of the PUD, such as Fannie Hill, shall be maintained). This includes:
  - a. Increasing the depth of residential lots to be at least 150' to the right-of-way
  - b. Increasing hotel side setback to be at least 20' to the road or right-of-way
13. 40% open space shall be maintained by the PUD in perpetuity.
14. All road development shall comply with the Wilmington VT Highway Ordinance. Roads will be a minimum of 20' wide with 2' shoulders.
15. All facilities, parking areas, crosswalks and walkways will be handicapped accessible compliant with ADA.
16. There will be a minimum of 5 ADA accessible rooms.
17. All sidewalks, crosswalks, parking, and guard-railings will be made safe for the public and compliant with VTrans safety recommendations and requirements.
18. Pedestrian pathways will be planned and maintained in such a fashion as to provide for maximum pedestrian safety at all times.
19. All outdoor public areas and sidewalks will be lit sufficiently to provide for public safety.
20. All outdoor lighting will be shielded and downcast, with the minimum lumens necessary to meet the needs of the lighting purpose. Lighting will not impair motor vehicles or aircraft and will not produce undue glare.
21. All utility facilities and storage will be underground to the extent possible. Any above ground facilities (such as meters, transformers, or generators), storage areas and dumpsters shall be shielded from public view through natural landscaping and/or fencing.
22. All loading docks visible to the public will be shielded with natural landscaping and/or fencing.
23. Stormwater runoff will be directed to the stormwater treatment and detention plant. Other stormwater management as may be required through Act 250 shall be completed.
24. Trees will remain undisturbed to the extent possible. Any trees disturbed will be replaced to the extent possible. There shall be a minimum of 75 trees of at least 3 inches in caliper and at least 6 feet in height at time of planting. Shrubs shall be at least 2 feet at time of planting and landscape beds will be used throughout the development area. Landscaping shall be maintained in good condition in perpetuity.
25. Traffic impacts will be monitored. Traffic impact mitigation solutions will be carried out as required by any Act 250 decisions.
26. Roads will be maintained 24/7, 365 days a year, for safe usage including repairs, plowing, sanding, and such other maintenance as may be required.
27. Forest lands, natural features, streams and stream banks, steep slopes, agricultural land, land unsuitable for development, watersheds, wildlife habitat, stormwater, impervious surfaces, erosion control, grading, and soil condition management shall be carried out conforming to any Act 250 and VTrans findings.
28. Renewable energy and natural resources protection shall be carried out conforming to any Act 250 findings.
29. Scenic vistas shall be protected and maintained.
30. There shall be no significant air emissions of dust, ash, smoke or other particulate matter.
31. There shall be no permanent or ongoing vibrations created.
32. There shall be no ongoing or permanent noise created.
33. Except as otherwise required to accommodate the conditions of this decision, development will

be executed in accordance with the plans presented with this application and the testimony provided. Any changes to the plans will require an administrative approval from the zoning administrator or a review by the Development Review Board, in conformance with the Zoning Ordinance.

34. Evidence of conformity with these conditions shall be provided to the Zoning Administrator prior to opening of the hotel.

The applicant is responsible for obtaining all state and federal permits.

**If unused, this Approval expires 2 years from the date of issue.** 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.

Town of Wilmington, Zoning Administrator reserves the right to monitor compliance with this decision and all decisions issued by the Development Review Board

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

Peter Wallace  
Wendy Manners  
Meg Streeter  
Allen Taylor

OPPOSED:

None

ABSTAINING:

None

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For the Board: Peter Wallace, Chairperson

Date: \_\_\_\_\_

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.*