

TOWN OF WILMINGTON
DEVELOPMENT REVIEW BOARD
RECONSIDERATION OCTOBER 16, 2015
ADDEDUM TO SEPTEMBER 2, 2015
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

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: _____

Approval expires on: _____

CONDITIONS:

In response to the applicant's motion to reconsider and clarify Findings of Fact and Conclusions of Law, the following conditions, restrictions, requirements, limitations or specifications of approval are modified as follows:

Condition 1(a) states:

“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.”

Having duly reviewed this matter the Board finds:

A. The Zoning Ordinance applies both General and Specific Standards. Specific Standards such as PUD requirements, are applied to only Specific Uses, in this instance a PUD. Other Standards that are not Use specific apply in the absence of a Use Specific Standard. This layering approach to zoning is a standard industry practice and is not ambiguous. A reasonably prudent person would understand that if they choose to create a PUD, then the height limitation of 35 feet applies.

B. Conditional Uses, regardless of type, are subject to provision 320A(1) General Standards, requiring that all development not have an undue adverse impact on Community Facilities. The Hermitage Hotel proposed development has been found by the Board to have an undue adverse impact on the Community, both in physical ability to provide fire safety as well as in the fiscal impact of placing the funding of the otherwise unnecessary firetruck and firetruck garage on the taxpayers of the town. [The cost of the firetruck is estimated to be \$800,000 plus the cost of ancillary equipment required to supply the truck, of which the HIREHC proposes to pay \$350,000 with the remainder paid by the taxpayers. In addition there would be the cost to construct a new firetruck garage to house the truck, to be paid entirely by the taxpayers.] The failure of the proposed development to meet the standard precludes any approval of this application in the absence of a remedy to this “undue adverse impact” on the community,

C. The building height of greater than 35 feet is self-created and reasonable use of the property is possible without added height. Therefore, a waiver can be granted only if it is in the interest of the municipality in the “amenities, services, or concessions” offered to justify allowing a height in excess of 35 feet. The Board finds that the only adequate way to justify this height waiver is to address the undue adverse impact on the community as described in above.

D. The Board notes that an agreement entered into between HIREHC and the Town of Wilmington was included with the application materials. The individuals negotiating and entering into this agreement were not members or representatives of the Development Review Board. Pursuant to Section 520 et. seq. of the Zoning Ordinance, the DRB has the responsibility and authority to find facts and render decisions consistent with the Zoning Ordinance. In the absence of an amendment to the Zoning Ordinance by due process of law, the authority of the DRB cannot be limited or waived by an outside agreement. Therefore, the DRB does not find itself to be outside the bounds of that agreement.

In due consideration of these factors, Condition 1(a) will not be overturned by this reconsideration of the Board.

Conditions 1(c) & 1(e)

The Board rescinds, without prejudice, conditions 1(c) Shuttle access to the Hotel will be available to the public and 1(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.” as a concession on this case. The Board finds that the zoning ordinance does not limit the “amenities, services or concessions” required to justify a height waiver to be limited only to those that directly impact

issues of height. As such, this concession is without prejudice or admission of inappropriateness. The Board reserves the right to apply the provisions of Section 335B(2) in all future decisions.

The Board does suggest, however, that making Wilmington Residents aware of the availability of ski passes and encouraging Wilmington residents to take advantage of this benefit will best support the spirit of this development in alignment with the Town Plan.

Condition 4: Parking Spaces

Condition 4 states “There shall be minimum of 210 hotel parking spaces. This number has been adjusted down from 248 for a parking waiver of 38 parking spaces without concessions.”

The applicant has agreed with the Board parking calculations for the employee, restaurant and retail space, but has requested reconsideration of parking required for the hotel bedrooms.

The zoning ordinance requires:

Lodging: One and one-half (1.5) parking space for every guest bedroom.

Residential: Two (2) bedrooms per residential unit

The applicant has argued that the two-bedroom units should be treated as residential units as they would be individually owned and occupied, albeit rentable by the owner. While the “hotel” provides lodging through unit owners, they believe the hotel will be primarily owner occupied. They suggest that only the lock-out rooms should be treated as lodging. This calculation would yield a result of:

118 @ 2 spaces for 59 residential units

51 @ 1.5 spaces for 34 lock-off rooms

169 Total Spaces

2 spaces for 400 square feet of retail

12 spaces for 150 seat restaurant (with 38 of 50 seats waived due to hotel occupant use)

173 total spaces required

There are a total of 180 proposed available

The Board finds that the above calculation is a reasonable approach to viewing the parking space requirements of this ordinance and **hereby amends its findings and decision in conformity with this calculation.**

This decision commences on the date of this amended decision. 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

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.